FULL BENCH

Before R. S. Narula, C.J., P. C. Jain, and P. S. Pattar, JJ.

KARAM SINGH GREWAL —*Appellant.*

versus

THE STATE OF PUNJAB ETC —*Respondents.*

L.P.A. No. 381 of 1974.

April 7, 1975.

Punjab Civil Service (Executive Branch) Rules, (1930)—Rule 7(1)—Whether mandatory—Non-compliance of the rule—Whether invalidates the selection of the candidates in Executive Branch of the Government—Interpretation of statutes—Mandatory and directory provisions of law—Distinction between—Stated—The use of words 'shall' and 'may' in a statute—Whether necessarily imply the statute being mandatory or directory.

Held (per majority Hon'ble C.J. and Pattar, J., Jain, J., *contra*) that in sub-rule 1 of rule 7 of the Punjab Civil Service (Executive Branch) Rules, 1930 there is no mention of the procedure to be followed by the Financial Commissioners in preparing the list of suitable candidates for making recommendation to the Government for selection as members of the Punjab Civil Service (Executive Branch). There is also no express or implied prohibition/indication that the non-compliance of the provisions of the sub-rule would invalidate the proceedings ending with the final order of the Punjab Government selecting the candidates as members of the Executive Branch. The final selection of candidates is to be made by the Government and it is not provided in this rule that the condition precedent for the selection is that Punjab Government must confine it only to the names recommended by the Financial Commissioners. The Government is competent to relax the qualifications provided in rule 7(1) and in sub-rule (2) of rule 7, the use of word 'may' indicates that the Government can even refuse to select any of the candidates recommended by the Financial Commissioners. The Financial Commissioners are not the final selecting authority of the candidates and this right of selection vests in the Governor, i.e., the Government. If the Government, which is the final selecing authority is to confine its selection to the names submitted by the Financial Commissioners only, then it will be a selection by the Financial Commissioners and not by the Government. Hence the provisions of rule 7(1) of the Rules are not mandatory and are merely directory. The strict non-compliance of the Rules does not

render the selection in the Executive Branch of the Government to be invalid.

Held that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. The use of the word 'shall' in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word 'may' has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. The distinction between a mandatory provision of law and that which is merely directory is this that in a mandatory provision there is an implied prohibition to do the act in any other manner while in a directory provision substantial compliance is considered sufficient. In those cases where strict compliance is indicated to be a condition precedent to the validity of the act itself, the neglect to perform it is fatal. But, in cases where although a public duty is imposed and the manner of performance is also indicated in imperative language, the provision is usually regarded as merely directory when general injustice or inconvenience results to others and they have no control over those exercising the duty.

Held (per Jain, J. *contra*) that the requirement of sub-rule (1) of rule 7 is that the Financial Commissioners shall maintain a list of Tehsildars and Naib-Tehsildars whom they consider suitable for acceptance as candidates for the service and within the prescribed time given in the Rules or on the asking of the Government, to submit for the consideration of the Government the nomination rolls of so many persons borne on such list as the Government may prescribe. The persons whose names have to be sent must satisfy the qualifications mentioned in sub-rule (1), unless the Government otherwise directs. The real object underlying rule 7(1) appears to be that the initial selection of candidates should be left to the Financial Commissioners because of the reason that these officers have greater opportunities to assess the work and conduct of the Tehsildars and Naib-Tehsildars serving under them, than the Minister or the Chief Minister. The rules are statutory in character and cannot be amended by executive instructions though it is within the competence of the Government to fill up the gaps, if the rules are silent on any particular point, or supplement the rules and issue instructions not inconsistent with the rules framed. Under rule 7(1) sending of the names by the Financial Commissioners is a condition precedent. It is thereafter that the Governor gets jurisdiction to make selection after consulting the Punjab Service Commission on the suitability of those persons only. If sub-rule (1) is interpreted in the manner that the Revenue Minister or the Chief

Minister are also entitled to add their nominees to the list prepared by the Financial Commissioners then the whole purpose behind sub-rule (1) would be frustrated. The recommendation required to be made under sub-rule (1) would become just a farce as the Government would be entitled to make recommendation of its own nominees and thereby frustrate the real object of the rule. This could never be the intention of the rule making authority. Hence the provisions of rule 7 are mandatory and the Minister or the Chief Minister has no jurisdiction to add names of their nominees to the list prepared by the Financial Commissioners. The selection of any person other than the nominees of the Financial Commissioners is illegal and void.

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, and Hon'ble Mr. Justice Prem Chand Jain, on 10th October, 1974, to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice, Mr. R. S. Narula, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice Pritam Singh Pattar, finally decided the case on 7th April, 1975.

Letters Patent Appeal under Clause X of the Letters Patent, against the judgment of Hon'ble Mr. Justice Man Mohan Singh Gujral, passed in Civil Writ Petition No. 1207 of 1974, on 24th July, 1974.

H. L. Sibal, Advocate with Kuldip Singh and R. S. Mongia, Advocates, *for the appellant.*

H. S. Brar, Deputy Advocate-General, Punjab *for respondent No. 1 and 5.*

J. L. Gupta, G. C. Garg and Karminder Singh, Advocates *for respondent No. 6.*

Kulwant Rai Chaudhary, Advocate, *for Respondent No. 4.*

JUDGMENT

Pattar, J.—By this judgment, the following three letters patent appeals, which are directed against the judgment dated July 24, 1974 of a learned Single Judge of this Court will be decided :—

(1) L.P.A. No. 381 of 1974—Karam Singh Grewal *vs.* State of Punjab and others.

(2) L.P.A. No. 382 of 1974—Diljeet Rai *vs.* State of Punjab and others.

(3) L.P.A. No. 409 of 1974—State of Punjab *vs.* Gian Chand Jain.

(2) The facts of this case are that Gian Chand Jain, Respondent No. 6, joined as a Tehsildar in the year 1960, and was subsequently confirmed against that post in November, 1966. Devinder Singh, Harjinder Singh and Diljeet Rai, Respondents Nos. 2 to 4, and Karam Singh Grewal, appellant, were also appointed as Tehsildars on different dates. In January, 1971, the then Chief Secretary to Government, Punjab, asked the three Financial Commissioners in the State of Punjab, viz., Financial Commissioner (Revenue), Financial Commissioner (Taxation) and Financial Commissioner (Health), to submit the list of persons from amongst the Tehsildars and Naib-Tehsildars, for consideration of their names for appointment to the Punjab Civil Service (Executive Branch) in accordance with rule 7 of the Punjab Civil Service (Executive Branch) Rules, 1930, (hereinafter called the Rules). The Financial Commissioners, *vide* their letter dated January 13, 1972, sent the names of the following five Tehsildars/Naib Tehsildars for promotion to the Punjab Civil Service (Executive Branch):—

(1) Shri B. L. Sikka, Naib-Tehsildar, Jullundur Division.
(2) Shri Gian Chand Jain, Tehsildar, Patiala Division.
(3) Shri Devinder Singh, Tehsildar, Jullundur Division.
(4) Shri Harjinder Singh, Tehsildar, Jullundur Division.
(5) Shri Madan Mohan Chaudhry, Tehsildar, Peshi.

(3) The Financial Commissioners forwarded other names to the Government as asked for by the Government. They also forwarded the names of the Tehsildars and Naib-Tehsildars, who had been recommended by the Commissioners of Patiala and Jullundur Divisions, as desired by the Government. By another letter, the Financial Commissioners also forwarded the name of Darshan Singh, Tehsildar, Nawanshehar, as the Education Minister had directed that his nomination roll should also be sent. Again, *vide* U.O. letter dated July 6, 1972, the names of two other Tehsildars were sent to the Government against the quota for the year 1971, as the Chief Minister had directed that these names may also be forwarded. The Government then forwarded all these names to the Punjab Public Service Commission, Patiala, (hereinafter referred as the Commission) for selecting suitable candidates.

(4) Before, however, the selection could be made, the Government decided to recruit two Extra Assistant Commissioners from Register A-I against the vacancies for the year 1972. The

Financial Commissioners were asked by the Government, *vide* their letter dated 18/21 August, 1972, to send the nomination rolls of Tehsildars and Naib-Tehsildars, who fulfilled the conditions as laid down in rule 7(1) of the Rules, who were considered suitable by then for the posts of Extra Assistant Commissioners. These names were to be sent by the 10th September, 1972 at the latest. However, before these recommendations could be sent by the Financial Commissioners, the Chief Minister and the Revenue Minister made certain other recommendations and the Chief Minister also endorsed the recommendations made by the Commissioners of the two Divisions. The Financial Commissioners recommended the following five officers for consideration of their names for appointment to Punjab Civil Service (Executive Branch) against the quota for the year 1972 in the following order of merit :—

(1) Shri Gian Chand Jain.
(2) Shri Harjinder Singh.
(3) Shri Madan Mohan Chaudhry.
(4) Shri Jasbir Singh Bal.
(5) Shri Harbans Singh Pawar.

Besides these names, the Financial Commissioners also forwarded the nomination rolls of all the Tehsildars and Naib-Tehsildars, who had been recommended by the Commissioners of the two Divisions, the Chief Minister and the Revenue Minister. All these names were then in due course sent to the Commission by the Punjab Government. The Commission interviewed all the candidates, whose names had been forwarded for selection for the years 1971 and 1972. After persuing their records, the Commission recommended the names of the following officers as suitable persons for appointment to the P.C.S. (Executive Branch):—

(1) Shri Devinder Singh (Respondent No. 2).
(2) Shri Harjinder Singh (Respondent No. 3). } for the year 1971.

(3) Shri Diljeet Rai. (Respondent No. 4).
(4) Shri Karam Singh Grewal (appellant). } for the year 1972.

(5) As mentioned above, the name of Gian Chand Jain, Respondent No. 6, was recommended by the Financial Commissioners for promotion for the quota for the year 1971 and for the year 1972, but his name was not recommended by the Punjab Public Service Commission. The Punjab Government accepted the recommendations of the Commission and selected Respondents Nos. 2 and 3 for appointment to the Punjab Civil Service (Executive Branch) against the quota of Tehsildars and Naib-Tehsildars for the year 1971 and Karam Singh Grewal, appellant, and Diljeet Rai, Respondent No. 4, were selected against the quota for the year 1972. Gian Chand Jain filed Civil Writ No. 1207 of 1974 against the State of Punjab and others, alleging that the selection of the appellant and respondents Nos. 2 to 4 is contrary to the Punjab Civil Service (Executive Branch) Rules, 1930, that the selection also is *mala fide* and is violative of the provisions of Article 16 of the Constitution and it was prayed that their selection may be set aside and a writ of *mandamus* may be issued directing the respondent No. 1 and the Commission to reconsider the matter and also his claim strictly in accordance with the Rules.

(6) The State of Punjab as well as Respondents 2 to 4 and the appellant contested this writ petition. Shri Rajan Kashyap, Joint Secretary to Government, Punjab, Services and Political Department, did not contest the facts stated in the writ petition. He did not deny that the nomination rolls of the Tehsildars and Naib-Tehsildars, who had been recommended by the Chief Minister, the Revenue Minister and the Commissioners of the two Divisions, were asked for and the same were sent by the Financial Commissioners and it was pleaded that this was done in order to comply with the general procedure laid down by the Government in their U.O. reference dated 28th July, 1959, copy of which is Annexure R-2 to the writ petition. He maintained that the procedure contained in Annexure R. 2 was devised to make the selection more broadbased. Shri Sant Singh Minhas, Secretary to the Commission, filed an affidavit stating that it was pointed out to the Government that the recommendations of the other names were not in accordance with the Rules, but the Government explained that they had the power to make additions and alterations to the list sent by the Financial Commissioners.

(7) Devinder Singh, Respondent No. 2, filed a separate affidavit on his own behalf and on behalf of Respondent No. 3. He maintained that both he and Respondent No. 3 were selected by the

Financial Commissioners alongwith the writ-petitioner and others against the vacancies for the year 1971 and their appointments are, therefore, perfectly valid and the writ-petitioner had no *locus standi* to file this petition against them. As regards the appellant and Diljeet Rai, Respondent No. 4, they supported the return filed by the State Government. They asserted that according to the instructions issued by the Government in their letter dated 28th July, 1959, copy of which is Annexure R. 2, it was open to the Government to consider the names of other suitable Tehsildars and Naib-Tehsildars while selecting candidates for Register A-1 maintained under the Rules.

(8) After hearing the counsel for the parties, the learned Single Judge held that the selection of Devinder Singh and Harjinder Singh, Respondents Nos. 2 and 3 respectively, against the quota for the year 1971 was valid and legal and he dismissed the writ petition against them. He further held that the selection of Diljeet Rai, Respondent No. 4, and Karam Singh Grewal, appellant had been made in violation of rules 5 and 7 of the Rules, because their nomination rolls had not been submitted by the Financial Commissioners under the provisions of rule 7(1) and he allowed the writ petition against them and their selection for being placed on Register A. 1 and their subsequent appointment as members of the Punjab Civil Service (Executive Branch) was quashed. The parties were left to bear their own costs.

(9) Feeling aggrieved, Karam Singh Grewal filed Letters Patent Appeal No. 381 of 1974, Diljeet Rai, Respondent No. 4, filed Letters Patent Appeal No. 382 of 1974 and the State of Punjab filed Letters Patent Appeal No. 409 of 1974, alleging that the decision of the learned Single Judge is wrong and incorrect and it may be set aside and the writ petition of Gian Chand Jain, Respondent No. 6, may also be dismissed against the two appellants, namely, Karam Singh Grewal and Diljeet Rai. The writ-petitioner, Gian Chand Jain, Respondent No. 6, did not file any appeal against the decision of the Single Bench dismissing his writ petition against Devinder Singh and Harjinder Singh, Respondents Nos. 2 and 3, who were selected against the quota for the year 1971. These letters patent appeals were heard by a Division Bench and by order dated 10th October, 1974, in view of the importance of the main question involved in the appeals, these were referred to be heard by a Full Bench and that is how these letters patent appeals are before us.

(10) To appreciate the contentions of the counsel for the parties, I set out below the relevant rules of the Punjab Civil Service (Executive Branch) Rules, 1930 :—

"5. Members to be appointed by the Governor of Punjab from among accepted candidates—

Members of the Service shall be appointed by the Governor of Punjab from time to time as required from among accepted candidates whose names have been duly entered in accordance with these rules in one or other of the registers of accepted candidates to be maintained under these rules. * * *

* * * * *

6. Registers to be maintained — The following Registers of accepted candidates shall be maintained by the Chief Secretary, namely :—

(a) Register A-1 of Tehsildars and Naib-Tehsildars accepted as candidates ;

(b) Register A-II of members of Class III Services holding ministerial appointments accepted as candidates;

(c) Register B of persons accepted as candidates on the result of a competitive examination; and

(d) Register C of persons accepted as candidates from amongst officials of the temporary departments of Government, e.g., Food and Civil Supplies Department, Relief and Rehabilitation Department.

7. Selection of candidates for Register A-1—

(1) The Financial Commissioners shall maintain a list of Tehsildars and Naib-Tehsildars whom they consider suitable for acceptance as candidates for the Service, and shall, each year not later than the first day of December and at such other time as Government may

require, submit for the consideration of Government the nomination rolls in Form I of so many persons borne on such list as Government may prescribe; provided that, unless Government otherwise directs, the roll of no person shall be submitted who:—

(a) has not completed five years' continuous Government service;

(b) has attained the age of 40 years on or before the first day of November immediately preceding the date of submission of names; and

(c) is not a graduate of a recognised University.

(2) Government may select from the persons whose nomination rolls are submitted by the Financial Commissioners under the provisions of sub-rule (1) such persons as he may deem suitable for the Service, and the names of persons selected shall be entered in Register A-1; provided that it shall first be necessary to consult the Commission on the suitability of each such person."

(11) It is undisputed that in response to U.O. No. 10176-SI(U)-71, dated 25th January, 1971, the Financial Commissioners, *vide* their letter dated 13th January, 1972, recommended the names of the following five candidates in order of merit :—

(1) Shri B. L. Sikka.

(2) Shri Gian Chand Jain.

(3) Shri Madan Mohan Chaudhry.

(4) Shri Devinder Singh.

(5) Shri Harjinder Singh.

But, later on in continuation of their earlier recommendations, the Financial Commissioners forwarded for the consideration of the Government the names and service records of three Tehsildars, whose

names were recommended by the Commissioner of Patiala Division, the names of five Tehsildars, who were recommended by the Commissioner of Jullundur Division and also the names of certain other Tehsildars, whose names were recommended either by the Revenue Minister or by the Chief Minister. These names were recommended for the quota reserved for the Tehsildars/Naib Tehsildars in the Punjab Civil Service (Executive Branch) for the year 1971. The names which were recommended need not be given as in these appeals we are not concerned with the quota reserved for the Tehsildars/Naib-Tehsildars for the year 1971.

(12) In response to a requisition made by the Government, the Financial Commissioners forwarded to the Government the names of the following 16 candidates for the purpose of selection to the Punjab Civil Service (Executive Branch) against the quota of vacancies for the year 1972:—

Sarvshri

(1) Gian Chand Jain, Tehsildar. (2) Harjinder Singh, Tehsildar. (3) Madan Mohan Chaudhry, Tehsildar. (4) Jasbir Singh Bal, Tehsildar. (5) Harbans Singh Pawar, Tehsildar	Recommendees of the Financial Commissioners.
(6) Harnam Singh, Tehsildar. (7) Devinder Singh, Tehsildar. (8) Hardyal Singh, Tehsildar. (9) Daljit Rai, Tehsildar. (10) Sant Singh, Tehsildar. (11) Narinder Singh, Tehsildar. (12) Mukhtiar Singh, Naib-Tehsildar. (13) Hardip Singh, Naib-Tehsildar.	Recommendees of the Commissioner, Jullundur Division.
(14) Piara Singh, Naib-Tehsildar. (15) R. K. Jain, Tehsildar.	Recommendees of the Commissioner, Patiala Division.
(16) Karam Singh, Tehsildar, U.T. Chandigarh.	Recommendee of the Revenue Minister / Chief Minister.

(13) The first submission made by Mr. H. L. Sibal, the learned counsel for the appellants Karam Singh Grewal and Diljeet Rai, is that the provisions of rule 7 of the Punjab Civil Service (Executive Branch) Rules, 1930 are directory and not mandatory and that the decision of the learned Single Judge that the provisions of rule 7 are mandatory and that in terms of rule 7(1), the consideration of the Government is to be confined only to the nomination rolls of persons submitted by the Financial Commissioners from the list maintained by them under this rule is wrong and it may be set aside. The main point for consideration, therefore, is whether the provisions of rule 7(1) of the Rules are mandatory or merely directory. It is admitted that the Punjab Civil Service (Executive Branch) Rules, 1930 are statutory rules and are to be deemed to have been framed under Article 309 of the Constitution of India by the Government. These rules thus have got the force of law. The Supreme Court has laid down the tests in various decisions to determine whether the provisions of a statute or the rules having the force of a statute are mandatory or directory.

(14) In *Dattatraya Moreshwar* v. *The State of Bombay and others* (1), it was held :—

> "It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done."

(15) In *State of Punjab* v. *Satya Pal*, (2), it was held :—

> "The distinction between a mandatory provision of law and that which is merely directory is this that in a mandatory provision there is an implied prohibition to do the act in any other manner while in a directory provision substantial compliance is considered sufficient. In those cases

(1) A.I.R. 1952 S.C. 181.
(2) A.I.R. 1969 S.C. 903.

where strict compliance is indicated to be a condition precedent to the validity of the act itself, the neglect to perform it is fatal. But in cases where although a public duty is imposed and the manner of performance is also indicated in imperative language, the provision is usually regarded as merely directory when general injustice or inconvenience results to others and they have no control over those exercising the duty."

(6) In *State of U.P.* v. *Manbodhan Lal* (3), the facts were that Manbodhan Lal, respondent, was employed in the Education Department of the State of Uttar Pradesh in the year 1920 and in due course he was promoted to the United Provinces Education Service (Junior Scale) in the year 1946. He was appointed in the year 1948 as the Officer on Special Duty and Managing Editor of a quarterly journal issued by the Education Department under the style '*Shiksha*'. While holding that post he was also appointed a member of the Book Selection Committee. His conduct as a member of that Committee was not found to be satisfactory and above board. He was alleged to have shown favours in the selection of books on approved list about certain books said to have been written by a nephew of his aged only 14 years and by another relation of his and also by a firm of publishers, who had advanced certain sums of money to him on interest. In July, 1952, he was transferred as Headmaster of a certain High School, but he did not join that post and proceeded on leave on medical grounds. While on leave, he was suspended from service with effect from August 2, 1952. In September, 1952, the Director of Education issued orders framing charges against him and called upon him to submit his written statement of defence and gave him an opportunity to call evidence in support of it. The Director of Education after a thorough enquiry into the charges framed against the respondent submitted a report to the effect that the charges framed against him had been substantially proved and he recommended that he be demoted to the Subordinate Education Service and be compulsorily retired. After considering the report, the Government decided on November 7, 1952, to call upon the respondent under Article 311(2) of the Constitution to show cause why the punishment suggested in the departmental enquiry report should not be imposed upon him. In pursuance of the show-cause notice, he submitted his long explation on November 26, 1952. A Government notification dated January 9, 1953, was published showing the names of the officers of the

(3) A.I.R. 1957 S.C. 912.

Education Department, who would retire in due course on superannuation, that is to say, at the age of 55 and the corresponding dates of superannuation and the name of the respondent was also shown therein and the date of retirement mentioned against his name was September 15, 1953. The respondent filed writ petition on February 2, 1953, challenging the validity of the order of the Government suspending him and calling upon him to show cause why he should not be reduced in rank with effect from the date of suspension and also compulsorily retired. In the writ petition, he also challenged the legality of the entire enquiry proceedings against him. The Director of Education realising that the show cause notice served upon the respondent in November, 1952, would not fully satisfy the requirements of a reasonable opportunity as contemplated by the Constitution, forwarded to the respondent along with a covering letter dated June 16, 1953, a copy of the report of the enquiry and again called upon him to show cause why the proposed penalty of reduction in rank be not imposed on him. The State Public Service Commission was also consulted by the Government as to the punishment proposed to be imposed as a result of the enquiry. The respondent submitted his explanation to the second show cause notice on July 3, 1953. After considering the opinion of the Commission, the enquiry report and the several explanations submitted by the respondent, the State Government passed its final order dated September 12, 1953 reducing the respondent in rank from the U.P. Education Service (Junior Scale) to Subordinate Education Service, with effect from August 2, 1952 and compulsorily retired him. The High Court quashed the orders of the Government reducing him in rank and reducing his emoluments with effect from the date of suspension, holding that the last written explanation of the respondent submitted on July 3, 1953, had not been placed before the Commission and, therefore, the impugned order of the Government was vitiated. Feeling aggrieved, the State of Uttar Pradesh filed an appeal in the Supreme Court against the judgment of the Allahabad High Court. The main question for decision before the Supreme Court in this appeal was whether the provisions of Article 320(3)(c) of the Constitution to consult the Public Service Commission are mandatory and non-compliance with those provisions would vitiate the impugned order. In other words, did the irregularity of not consulting the Public Service Commission afford a cause of action to the respondent to challenge the final order passed by the State Government on September 12, 1953. On these facts, it was held by the Supreme Court:—

> "The use of the word 'shall' in a statute, though generally taken in a mandatory sense, does not necessarily mean that in

every case it shall have that effect that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceedings, would be invalid. On the other hand, it is not always correct to say that where the word 'may' has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceeding invalid.

The provisions of Article 320(3) (of the Constitution of India) are not mandatory and non-compliance with those provisions, does not afford a cause of action to civil servant in a court of law. They are not in the nature of a rider or proviso to Article 311.

Article 320(3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a court of law, or entitle him to relief under the special powers of a High Court under Article 226 of the Constitution or of the Supreme Court under Article 32. It is not a right which could be recognised and enforced by a writ. On the other hand, Article 311 of the Constitution has been construed as conferring a right on a civil servant of the Union or a State, which he can enforce in a court of law. Hence, if the provisions of Article 311 have been complied with he has no remedy against any irregularity that the State Government may have committed, in not complying with the provisions of Article 320(3)(c).

* * * * *

* * * * *

It is clear that the requirements of the consultation with the Commission does not extend to making the advice of the Commission on those matters, binding on the Government. In the absence of such a binding character, it is difficult to see how non-compliance with the provisions of Article 320(3)(c) could have the effect of nullifying the final order passed by the Government."

It was further observed in paras Nos. 10 and 11 of this judgment as under :—

> "The question may be looked at from another point of view. Does the Constitution provide for the contingency as to what is to happen in the event of non-compliance with the requirements of Article 320(3)(c) ? It does not, either in express terms or by implication provide that the result of such a non-compliance is to invalidate the proceedings ending with the final order of the Government."
>
> — — — —
>
> — — — —
>
> An examination of the terms of Article 320 shows that the word 'shall' appears in almost every paragraph and every clause or sub-clauses of that Article. If it were held that the provisions of Article 320(3)(c) are mandatory in terms, the other clauses or sub-clauses of that Article will have to be equally held to be mandatory.
>
> If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter."

To the same effect was the law laid down in *Biswanath Khemka* v. *Emperor* (4), and *Tuhi Ram* v. *Prithvi Singh* (5). In *Tuhi Ram's* case (supra), a Full Bench of this Court held :—

> "There is no doubt that rule 7 of Haryana Agricultural Services, Class II of 1947 is a statutory rule and has the force of law.
>
> At the same time, the requirements of the rule being no other than those of Article 320(3), non-compliance with those requirements in so far as the cases of promotion are concerned, neither effects the validity of the appointment nor

(4) A.I.R. 1945 F.C. 67.
(5) 1971 S.L.R. 184=I.L.R. 1971 (1) Pb. & Hr. 353.

entitles the person aggrieved by such promotion to approach this Court for relief under Article 226 of the Constitution."

(17) The legal position that emerges from the consideration of the above decisions of the Supreme Court etc. is that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. The use of the word 'shall' in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word 'may' has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. The distinction between a mandatory provision of law and that which is merely directory is this that in a mandatory provision there is an implied prohibition to do the act in any other manner while in a directory provision substantial compliance is considered sufficient. In those case where strict compliance is indicated to be a condition precedent to the validity of the act itself, the neglect to perform it is fatal. But, in cases where although a public duty is imposed and the manner of performance is also indicated in imperative language, the provision is usually regarded as merely directory when general injustice or inconvenience results to others and they have no control over those exercising the duty.

(18) Now, I proceed to discuss the provisions of rule 7(1) of the Punjab Civil Service (Executive Branch) Rules, 1930, to determine whether these provisions are mandatory or merely directory. In sub-rule (1) of rule 7, the word 'shall' is used, but that by itself does not make its provisions mandatory. In this rule, there is no mention that what procedure is to be followed by the Financial Commissioners in preparing the list of suitable candidates for making recommendation to the Government for selection as members of the Punjab Civil Service (Executive Branch). The rules do not say what is to happen in the event of non-compliance of rule 7(1). There is no express or implied prohibition/indication in this rule that the result of non-compliance of the provisions of sub-rule (1) of this rule would invalidate the proceedings ending with the final order of the Punjab Government selecting the candidates as members of the Punjab Civil Service (Executive Branch). The final selection of candidates is to be made by the Government. Rule 7(1) does not say that the selection of candidates by the Government from

amongst the Tehsildars and Naib-Tehsildars for bringing their names on Register A-1 must be confined only to those names, which are recommended by the Financial Commissioners. It is not mentioned in this rule that the condition precedent for selection of the names is that Punjab Government must confine the selection only to the names recommended by the Financial Commissioner. In the instant case, Diljeet Rai and Karam Singh Grewal appellants were working as Tehsildars and were thus eligible for selection and appointment to the post of Punjab Civil Service (Executive Branch). They possessed all the requirements regarding length of continuous Government service, age and educational qualifications prescribed in the rules. The Public Service Commission interviewed them along with other persons, including the writ-petitioner Gian Chand Jain, Respondent No. 6, and recommended their names as being suitable for selection for appointment as members of the Punjab Civil Service (Executive Branch). The Punjab Government accepted the recommendation of the Commission and selected them for appointment and entered their names in the Register A-1 of the accepted candidates from the Tehsildars/Naib-Tehsildars. There was thus a substantial compliance of the provisions of rule 7 in this case.

(19) However, in this case there is only a violation of the procedure that the names of both these candidates, Karam Singh Grewal and Diljeet Rai, were not selected and recommended by the Financial Commissioners. In the year 1959, the Punjab Government issued instructions regarding the procedure to be followed for recruitment to the Punjab Civil Service (Executive Branch) from Tehsildars/Naib-Tehsildars, a copy of which is Annexure R. 2 to the return filed by the Punjab Government. These instructions read as follows :—

"2. This Department have, after careful consideration, decided to follow the following procedure for recruitment to the P.C.S. (Executive Branch) from Register A-1 (Tehsildars and Naib-Tehsildars) with effect from the year 1959 :

(i) Each Deputy Commissioner will recommend at the most one Tehsildar or Naib-Tehsildar from among those posted in his district possessing the prescribed qualifications and having an outstanding record. The recommendations will be forwarded by the Deputy Commissioners to the respective Commissioners.

(ii) Each Commissioner will consider these recommendations and make out a list of his own, the number in

the list not exceeding twice the number of candidates to be brought on Register A-I. The Commissioner will then forward his recommendations to the Financial Commissioners, along with the recommendations of the Deputy Commissioner. In case any officer is included in the list, who has not been recommended by the Deputy Commissioners, the Commissioner should give sufficient reasons in support thereof.

(iii) The Financial Commissioner will prepare their list, the number not exceeding twice the number of candidates to be brought on Register A-I, giving reasons where any name included in their list does not find a place in the Commissioners' list. This list will be put up by the Financial Commissioners to Revenue Minister/Chief Minister.

(iv) Revenue Minister/Chief Minister may add any suitable names to the list prepared by the Financial Commissioners. While putting up the file to Revenue Minister/Chief Minister, the list of names recommended by the Deputy Commissioners, will also be put up.

(v) The Financial Commissioners will send the list of names recommended by them with the additions, if any, made by Revenue Minister/Chief Minister to the Chief Secretary to Government, Punjab (in Gazette III Branch) who will forward it to the Punjab Public Service Commission, without indicating separately, the recommendations made at various levels. The list of names recommended by the Commissioners will also be sent to the Chief Secretary to be forwarded to the Public Service Commission.

(vi) Normally, no relaxation in the essential qualifications should be made unless the officer concerned has an exceptionally brilliant record and is known for his integrity.

* * * * *

* * * * * *."

(20) In accordance with clause (iv) of para 2 of these instructions, when the list of names recommended by the Financial Commissioners was put up before the Revenue Minister and the Chief

Minister, then the Revenue Minister instructed that the name of Karam Singh Grewal on deputation to the Union Territory, Chandigarh, may be added and the Chief Minister also gave a similar direction regarding the name of Karam Singh Grewal, appellant. The Financial Commissioners added the names of these two appellants also in the final list submitted by them to the Government along with the names recommended by them and also by the Commissioners of Jullundur Division and Patiala Division and the details of these have been given in the earlier part of this judgment. It is thus clear that the names of both the appellants were not recommended by the Financial Commissioners. The name of Diljeet Rai, appellant was recommended by the Commissioner, Jullundur Division, and that of Karam Singh Grewal by the Revenue Minister and the Chief Minister. The return of the Punjab Government shows that the instructions contained in Annexure R. 2 are being followed uptil now since the year 1959. This fact was also not contested before us by the counsel of any of the parties to the appeals.

(21) However, Mr. Jawahar Lal Gupta, learned counsel for Gian Chand Jain, Respondent No. 6, contended that Annexure R. 2 contained administrative instructions of the Government and these cannot amend the statutory rules contained in the Punjab Civil Service (Executive Branch) Rules, 1930, and, therefore, these instructions have to be ignored. It is undisputed that Annexure R. 2 contains administrative instructions and it cannot amend, alter or vary the statutory rules. However, in *State of Haryana and others* v. *Shamsher Jang Bahadur and others* (6), it was held as under :—

> "The Government cannot amend or supersede the statutory rules by administrative instructions, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

To the same effect was the law laid down in *Sant Ram Sharma* v. *State of Rajasthan and another* (7).

(22) In rule 7(1) or any other rule of the Rules, there is no mention that what procedure is to be followed by the Financial Commissioners to prepare the list as required by rule 7(1). In other

(6) 1972 S.L.R. 441.
(7) 1967 S.L.R. 906.

words, the Rules are silent on this particular point and the Government could issue administrative instructions to fill up gaps and to supplement the rules and issue instructions not inconsistent with these rules. Clauses (i) to (iii) of para No. 2 of Annexure R. 2 lay down the procedure to be followed by the Financial Commissioners in preparing the list. These instructions do not amend, alter or vary any portion of rule 7(1) of the Rules. Clause (iv) of para No. 2 of Annexure R. 2 gives powers to the Revenue Minister and the Chief Minister to add any suitable name/names to the list prepared by the Finanicial Commissioners. This clause further lays down that when the list of the Financial Commissioners is put up before the Revenue Minister/Chief Minister, then the list of names recommended by the Deputy Commissioners will also be put up. The purpose of putting up the lists recommended by the Deputy Commissioners is that if the Financial Commissioners have ignored the names of any suitable person, then the Revenue Minister and the Chief Minister may add any of those names. In clause (v) of para No. 2 of Annexure R. 2, direction is given to the Financial Commissioners that they shall send the lists of names recommended by them with the additions, if any made by the Revenue Minister/Chief Minister, to the Chief Secretary to Government and the latter is to send the same to the Public Service Commission. Thus, clause (iv) of para No. 2 gives powers to the Revenue Minister and the Chief Minister to add names of some suitable candidates to the list prepared by the Financial Commissioners, but under the existing rule 7(1) of the Rules, they have no such power. It is well settled law that no Government servant has the right to be promoted to the higher rank and the only right that he has is the right to be considered for promotion. If he is considered on merits and is not selected for promotion, he can have no cause for grievance, *vide Sardul Singh* vs. *Inspector-General of Police* (8). In the instant case, 16 names mentioned above in the earlier part of the judgment were sent by the Financial Commissioners to the Government for purposes of selection to the Punjab Civil Service (Executive Branch) for entering their names in Register A-I against the quota of vacancies for the year 1972 for the Tehsildars and Naib-Tehsildars. The Government forwarded all these 16 names to the Commission for consultation regarding the suitability of those persons. The Commission interviewed all the 16 candidates and recommended the names of the two appellants, namely, K. S. Grewal and Diljeet Rai, as suitable persons for promotion. Under rule 7(1) of the Rules, a statutory duty is cast on the

(8) I.L.R. (1970) II Pb. & Hr. 489=A.I.R. 1970 Pb. Hr. 481 (F.B.).

Financial Commissioners to prepare a list of suitable names out of Tehsildars and Naib-Tehsildars and to submit the same to the Government. If the contention of the counsel for the respondent No. 6 is accepted, then the Government is bound to confine its selection to the recommendees of the Financial Commissioners for promotion and none else. According to the Supreme Court decisions discussed above, it is well settled that the provisions of a statute creating public duties are directory and, therefore, these provisions of rule 7(1) cannot be held to be mandatory and the contention of the learned counsel for the respondent must be rejected.

(23) It may further be noticed that the proviso to rule 7(1) of the Rules lays down that unless the Government otherwise directs, the roll of no person shall be submitted, who has not completed five years' continuous Government service, has attained the age of 40 years and is not a graduate of a recognised University. The Government alone is competent to relax these qualifications and this would also go to show that the provisions of rule 7(1) are not mandatory. In sub-rule (2) of rule 7, the use of the word 'may' indicates that the Government can even refuse to select any of the candidates recommended by the Financial Commissioners. Further, the Financial Commissioners are not the final selecting authority of the candidates and this right of selection vests in the Governor, i.e., the Government. There is no mention in rule 7(1) that from what date the list is to be prepared and what facts and points are to be taken into consideration by the Financial Commissioners in preparing the list. This rule as it stands at present gives arbitrary and unguided power to the Financial Commissioners to select any person they like and they can ignore the best person or persons and the elements of favouritism and bias cannot be ruled out. Further, this rule does not indicate that they are to consider the names of all eligible persons. The official files of this case were produced by the counsel for the State during arguments and it did not show that what criteria was followed by the Financial Commissioners in making the selection of five persons for the quota for the year 1972 and whether they considered the names of all eligible persons or not. If the name of any deserving and eligible person is ignored arbitrarily by the Financial Commissioner, he has no remedy under this rule. According to the administrative instructions, copy of which is Annexure R. 2, such a person can move the Revenue Minister and the Chief Minister, who can suggest the names of such persons to be considered by the Financial Commissioners. If the Government, which is the final selecting authority is to confine its selection to the names submitted

by the Financial Commissioners only, then it will be a selection by the Financial Commissioners and not by the Government. Therefore, in such a situation, this rule 7(1) as it stands contravenes the provisions of Article 16 of the Constitution. The file produced by the Government Advocate showed that the name of Diljeet Rai was included in the names of persons recommended by the Commissioner, Jullundur Division, and sent to the Financial Commissioner, Revenue. Karam Singh Grewal was at that time serving under the Union Territory, Chandigarh, and his name was included in the list by the Financial Commissioners at the suggestion of the Revenue Minister and the Chief Minister. The Financial Commissioners while forwarding the names of all the 16 candidates, including the names of Diljeet Rai and Karam Singh Grewal, did not say that they were not suitable or eligible persons. The Government forwarded all these 16 names to the Commission, who after interviewing them, recommended the two appellants.

(24) For the reasons given above and in view of the law laid down by the Supreme Court in the decisions discussed above, it is held that the provisions of rule 7(1) of the Rules are not mandatory and are merely directory and the strict non-compliance of the Rules does not render the selection of the two appellants to be invalid. The provisions of this rule 7(1) were substantially complied in this case.

(25) Mr. Jawahar Lal Gupta, the learned counsel for Gian Chand Jain, Respondent No. 6, cited some cases to show that the provisions of rule 7(1) of the Rules are mandatory and the selection of the two appellants is not valid.

(26) The first decision relied upon by him is *Prithvi Raj Mehra* vs. *The State of Punjab* (9). The facts of this case were that Prithvi Raj Mehra, petitioner, was appointed as a temporary Engineer on the 2nd of September, 1953 by the Government of Pepsu and was attached to the Irrigation Department. On the merger of the State of Pepsu with the State of Punjab, the petitioner continued in service of the State of Punjab as a temporary Engineer. According to the rules in force in Pepsu at the time the petitioner joined as a temporary Engineer, he was eligible to officiate as an Executive Engineer without being included in Class I Service of the

(9) 1968 S.L.R. 887.

Punjab Service of Engineers Class I, Public Works Department (Irrigation Branch) Service Rules, 1956. He was promoted on May 2, 1961, to the post of Executive Engineer under rule 9 of the old Rules with the approval of the Public Service Commission. On July 10, 1964, the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964, were promulgated. Under these rules, a procedure is prescribed for promoting officers of Class II Service or temporary Engineers to Class I Service. According to rule 8 of the above mentioned new Rules framed in 1964, appointment by promotion shall be made by a Committee consisting of the Chairman of the Public Service Commission, or where the Chairman is unable to attend, any other member of the Commission representing it, the Secretary P.W.D. (Irrigation Branch) and the Chief Engineers, Punjab, P.W.D. (Irrigation Branch). The Committee was to hold its meeting at intervals and to prepare a list of officers suitable for promotion to the senior scale of the Service. The list prepared by this Committee was to be forwarded to the Commission by the Government and after the approval of those names by the Commission, the list had to be approved by the Government and appointments to the Service were to be made by the Government from that list. It appears that this Committee did not approve the name of Shri Prithvi Raj Mehra and he was reverted from the post of officiating Executive Engineer. Feeling aggrieved, Prithvi Raj Mehra filed writ petition in this Court, which was heard by a Division Bench. It was found that the Screening Committee, which considered and rejected the case of the petitioner and other officers, included only the Chief Engineer (Establishment) and not all the Chief Engineers of the P.W.D. (Irrigation Branch). It was, therefore, held that the constitution of the Screening Committee was invalid and consequently the selection made by that Committee was illegal and, therefore, the impugned order of reversion of the writ-petitioner Prithvi Raj Mehra was set aside. This case is clearly distinguishable and has no application to this case. The Screening Committee, which was to prepare the list of suitable candidates, was not validly constituted and, therefore, the selection was held to be invalid. In the instant case, there is no such allegation. The Financial Commissioners were to send some names to the Government, which, after consultation of the Public Service Commission, was to finally select the names. The Financial Commissioners in this case were only to make recommendation and were not to select names and the final selection was to be made by the Government.

(27) The next case relied upon by him is *Kenchiah and others* v. *State Level Recruitment Committee* (10). In that case also selection of candidates was to be made by a Committee whose constitution was invalid and the selection was held to be illegal. This case is also distinguishable for the same reasons as *Prithvi Raj's case* (9) (supra).

(28) Next reliance was placed on *Mohan Singh* vs. *Financial Commissioner, Punjab and others* (11). In that case, according to rule 6 of the Punjab Tehsildari Rules, 1932, the selection of Tehsildars from among the Consolidation Officers, Zilladars and Panchayat Officers could be made by the Financial Commissioners. However, the selection of Tehsildars from among these officers was made by the Financial Commissioner, Revenue, in pursuance of administrative instructions issued by the Government without amending the rule. It was held that the selection made by the Financial Commissioner, Revenue is wholly illegal and without jurisdiction being in violation and contravention of those rules. This case is also clearly distinguishable.

(29) In *S. C. Barat and another* v. *Hari Vinayak Pataskar and others* (12), the facts were that the appointment of Vice-Chancellor of the Jabalpur University according to section 11 of the Jabalpur University Act, 1956, was to be made by the Chancellor from a panel of not less than three names recommended by a Committee constituted in accordance with sub-section (2) of section 11. This Committee is constituted by the Chancellor and consists of three persons. One of them is nominated by the Chancellor and the other two are appointed by the Executive Council in the manner laid down in subsection (2). According to that procedure, two members shall be appointed by the Executive Council by single transferrable vote from amongst persons not connected with the University or a College. The Chancellor in accordance with this section constituted a Committee and the Committee made a recommendation and the Chancellor appointed one of those persons whose names were recommended, as Vice-Chancellor. One Shri S. C. Barat, a member of the Executive Council of the University, and another person, who is a member of the Academic Council, filed a petition to quash the selection of the

(10) A.I.R. 1966 Mysore 36.
(11) 1967 S.L.R. 79.
(12) A.I.R. 1962 M.P. 180.

respondent on the ground that the Committee, which was constituted by the Chancellor under section 11(2) was not validly constituted, as Shri Shriman Narayan, who was one of the members appointed by the Executive Council on the Committee, was disqualified from becoming a member of the Committee. This objection was upheld by a Division Bench of the Madhya Pradesh High Court and the selection of the respondent as Vice-Chancellor was quashed. In that case also, the constitution of the Selection Committee was held to be illegal and, therefore, this case is also distinguishable.

(30) In *State of Uttar Pradesh and others* v. *Babu Ram Upadhya* (13) cited by the learned counsel for the respondent, the facts were that according to the Police Rules, departmental enquiry against a police officer could be held only after a police investigation has been held and not otherwise. The police investigation was not held against Babu Ram Upadhya, respondent in that case, and as a result of the departmental enquiry, he was dismissed. On these facts, it was held that the holding of police investigation was a condition precedent to the holding of the departmental enquiry and the rules were mandatory and as the police investigation was not held, the departmental enquiry was illegal and the impugned order was quashed. This case has no application to the facts of the present case, because no such point is involved in this case. In the instant case, in the rules there is no mention that the condition precedent to the validity of the selection by the Punjab Government is that the names of the selected persons must be recommended by the Financial Commissioners.

(31) For all these reasons, it is held that the above mentioned cases do not support the contention of the learned counsel for the respondent and the same is rejected.

(32) Mr. Gupta also cited some other cases, which need not be noted because none of those cases was relevant for the decision of the point involved in this case.

(33) It was next contended by the learned counsel for Respondent No. 6 that according to sub-rule (2) of rule 7 of the Rules, the final selection is to be made by the Government, but in this case selection was made by the Punjab Public Service Commission and

(13) A.I.R. 1961 S.C. 751.

not by the Government and hence the selection is bad as the Government abdicated its function in favour of the Commission. In this respect, reliance was placed on *The Purtabpur Company Limited* v. *Cane Commissioner of Bihar and others* (14) and *Atam Parkash Mohan* v. *Kurukshetra University* (15). In *The Purtabpur Company's case* (14) (supra), the facts were that under Clause II of the Sugar Cane (Control) Order, 1966, the State Government and the Cane Commissioner of Bihar had been delegated the powers of the Central Government under clause 6 of the Order. The Cane Commissioner held the view that the reservation of area made in favour of the appellant could not be disturbed but under the direction of the Chief Minister, the Cane Commissioner prepared two separate lists and divided the area. On these facts, it was held that in the matter of exercise of the power under rule 6(1), the State Government and the Cane Commissioner are concurrent authorities and their jurisdiction is coordinate. However, in this case the Cane Commissioner was definitely of the view that the reservation made in favour of the appellant should not be disturbed, but the Chief Minister did not agree with that view and he directed the Cane Commissioner to divide the reserved area into two portions and allot one portion to Respondent No. 5 and in pursuance of that direction the Cane Commissioner prepared two lists. It was held that the power exerciseable by the Cane Commissioner under clause 6(1) of the Sugar Cane (Control) Order was statutory and he alone could have exercised that power and while exercising that power he could not abdicate his responsibility in favour of anyone not even in favour of the State Government or the Chief Minister, and, therefore, the impugned order was quashed.

(34) In *Atam Parkash Mohan's case* (15) (supra), the Vice-Chancellor alone was competent for recruitment to the post of Senior Clerk. However, the selection was made by the Selection Committee, on the basis of which the respondents were appointed. On these facts, it was held that if power is vested in a particular officer by the Legislature, that power has to be exercised by him alone in his discretion and judgment and that the Vice-Chancellor should have made the appointments on his own without being influenced by the recommendations of any Committee and the selection of the respondents was, therefore, quashed.

(14) A.I.R. 1970 S.C. 1896.
(15) 1970 S.L.R. 16.

(35) There is no dispute regarding the law laid down in the aforesaid two authorities. However, the factual position goes against the respondent. In para No. 7 of the return filed by Shri Rajan Kashyap, Joint Secretary to Government, Punjab, Services and Political Department, it was asserted that the Government had the power to make additions and alterations in the list submitted by the Financial Commissioners and that the Commission accepted this position and recommended for selection two names against the quota for the year 1971 and two names for the quota reserved for the year 1972. This assertion in the return does not imply that the final selection was made by the Commission. The Government consulted the Commission on the suitability of the names of the persons sent to them and they approved the names of the two appellants. After the receipt of the report of the Commission, the final selection was made by the Government. As mentioned in the earlier part of the judgment, the Government is not bound to accept the recommendation of the Public Service Commission. Further, according to the Supreme Court decision in *Manbodhan Lal's case* (3) (supra) and others, even consultation of the Commission is not necessary by the Government while making selection.

(36) In the departmental file produced by the State counsel, at page 73 there is the letter dated March 18, 1974, written by the Secretary of the Public Service Commission to the Chief Secretary, Punjab Government, stating that with reference to the earlier letter of the Government sending 16 names for the consultation of the Commission regarding their suitability, 15 candidates were present on March 4, 1974, and they were interviewed and one candidate was absent and that the Commission recommended the names of Sarvshri Diljeet Rai and Karam Singh Grewal, as suitable for appointment. The Government was not bound to accept this recommendation. Therefore, there is no substance in the contention of the counsel for Respondent No. 6 that the selection was made by the Commission and that the Government abdicated its function in favour of the Commission and the selection was made by the latter.

(37) The writ-petitioner Shri Gian Chand Jain, who is respondent No. 6 in these appeals has prayed to issue a writ of *qua warranto* to set aside the appointments of the two appellants and Respondents Nos. 2 and 3. The counsel for the appellants contended that in the instant case no writ of *quo warranto* can be issued and in support

of this contention, reliance was placed on *The University of Mysore* v. *C. D. Gobinda Rao* (16). The facts of this case were that the University of Mysore published an advertisement on July 31, 1959, calling for applications for six posts of Professors and six posts of Readers. Amongst them were included the posts of Professor of English and the Reader in English and the qualifications for these posts were also prescribed in the advertisement. In accordance with the provisions of the Mysore University Act, 1956, a Board of Appointments was nominated, consisting of the Vice-Chancellor and two Specialists in English. Four applications were received for the posts of Professors and Reader in English and these applicants were interviewed. The Board, after considering all the aspects of the case, decided to select Anniah Gowda as suitable person for appointment as Reader in the grade of Rs. 500—25—800 under the University Grants Commission Scheme and this report in due course was approved by the Chancellor on October 3, 1960, and he was appointed to the post of Reader. C. D. Gobinda Rao, who was one of the applicants, filed a writ petition under Article 226 of the Constitution to issue a writ of *quo warranto* quashing the appointment of Anniah Gowda as he did not fulfil all the qualifications prescribed in the advertisement. The Mysore High Court decided to quash the appointment of Mr. Gowda on the ground that it was plain that he did not satisfy the first qualification prescribed in the advertisement. On these facts, the Supreme Court held as follows :—

> "Broadly stated, the *quo warranto* proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of *quo warranto* ousts him from that office. In other words, the procedure of *quo warranto* confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers

(16) A.I.R. 1965 S.C. 491.

> of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of *quo warranto* is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of *quo warranto*, he must satisfy the court, *inter alia*, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

The finding of the High Court that Mr. Gowda did not satisfy the first qualification mentioned in the advertisement was also set aside and it was observed :—

> "The question of manifest error is a consideration, which is more germane and relevant in a procedure for a writ of *certiorari*. What the High Court should consider is whether the appointment made by the Chancellor on the recommendation of the Board had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should show due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted."

The appeal of the University was accepted and the order of the High Court was set aside and the writ petition was dismissed. To the same effect was the law laid down in *Nitya Nand Kul Bhushan Lal* v. *Khalil Ahmed Ali Ahmad and others* (17). In the instant case, the two appellants, Shri Diljeet Rai and Shri K. S. Grewal, are eligible and qualified for selection as members of the Punjab Civil Service (Executive Branch). The Public Service Commission, Punjab, was consulted and it approved their names as suitable for appointment and the final selection was made by the competent authority, which is the Punjab Government. The only violation alleged in this case is in the procedure as the names of these two appellants were not selected by the Financial Commissioners. As held above,

(17) A.I.R. 1961 Pb. 105.

rule 7(1) is merely directory and is not mandatory and its non-compliance does not render the selection as invalid and a writ of *quo warranto* as prayed for in the writ petition cannot be issued. The decision of the learned Single Bench, is, therefore, liable to be set aside.

(38) As a result, all the three letters patent appeals Nos. 381 of 1974, 282 of 1974 and 409 of 1974 are accepted and the decision of the learned Single Bench quashing the selection of Shri Diljeet Rai and Shri Karam Singh Grewal appellants for being entered in the Register A-1 as accepted candidates for their appointments as members of the Punjab Civil Service (Executive Branch) Service is set aside and the writ petition filed by Shri Gian Chand Jain, Respondent No. 6, is dismissed. There will be no order as to costs.

Prem Chand Jain, J.

(39) This judgment and order of ours would dispose of L.P.A. 381 of 1974 filed by Karam Singh Grewal, L.P.A. 382 of 1974 filed by Daljit Rai and L.P.A. 409 of 1974 filed by the State of Punjab and others, against the judgment and order of a learned Single Judge of this Court, dated 24th July, 1974, by which Civil Writ No. 1207 of 1974 filed by Gian Chand Jain respondent was dismissed *qua* the relief which related to the selection of Devinder Singh and Harjinder Singh respondents to the Punjab Civil Service (Executive Branch), hereinafter referred to as the Service, for the year 1971, while it was allowed *qua* the relief against Daljit Rai and Karam Singh Grewal appellants (who were respondents Nos. 4 and 5 in the writ petition) in respect of their selection to the Service for the year 1972 and their subsequent appointment as members of the Service. The brief facts, which are necessary to decide the controversy raised before us, read as under :—

Gian Chand Jain joined as a Tehsildar in the year 1960 and was confirmed against that post in November, 1966. Karam Singh Grewal and Daljit Rai appellants and Harjinder Singh and Devinder Singh respondents against whom the writ petition was dismissed, were appointed as Tehsildars on different dates. In 1971 the then Chief Secretary to Government, Punjab, asked the Financial Commissioners through U.O. reference No. 10176-SI(U)-71, dated 25th January, 1971, to send nomination rolls of persons whose names were borne on the list maintained under rule 7(1) of the Punjab Civil Service (Executive Branch) Rules, 1930 (hereinafter referred to as the

Rules), for selection of names for appointment to the posts of Extra Assistant Commissioners. In response to this letter, the Financial Commissioners sent their recommendations through U.O. letter No. 8185-E-III-71/834 dated 13th January, 1972, the relevant portion of which reads as under :—

> "The Financial Commissioners having considered the recommendations of Commissioners, Jullundur and Patiala Divisions, Home Secretary, Union Territory, Chandigarh, and that of Deputy Commissioners have recommended the following five officers for promotion to Punjab Civil Service (Executive Branch) on Register A-1 (Tehsildars and Naib-Tehsildars) against the quota for the year 1971 in order to merit :
>
> (1) Shri B. L. Sikka, Naib-Tehsildar, Jullundur Division.
>
> (2) Shri Gian Chand Jain, Tehsildar, Patiala Division.
>
> (3) Shri Devinder Singh, Tehsildar, Jullundur Division.
>
> (4) Shri Harjinder Singh, Tehsildar, Jullundur Division.
>
> (5) Shri Madan Mohan Chaudhry, Tehsildar, Peshi."

Subsequently, by U.O. letter No. E-III-72/7707, dated 23rd May, 1972, the Financial Commissioners forwarded other names of the Tehsildars and Naib-Tehsildars, who had been recommended by the Commissioners of Patiala and Jullundur Divisions, as desired by the Government, to the Government in reply to U.O. letter from the Chief Secretary No. 8186-E-III-71/8341 dated 13th January, 1972. By another letter of the same date the Financial Commissioners also forwarded the name of Darshan Singh, Tehsildar, Nawanshahr, as the Education Minister had directed that his nomination roll be also sent. Again by U.O. letter No. E-III-72/10000, dated 6th July, 1972, the names of two other Tehsildars were sent to the Government against the quota of the year 1971 as the Chief Minister had directed that those names be also forwarded. The Government thereafter forwarded all the names to the Punjab Public Service Commission (hereinafter referred to as the Commission) for selecting suitable candidates.

(40) Before, however, the selection could be made, the Government decided to recruit two Extra Assistant Commissioners against the vacancies for the year 1972. Consequently, through U.O. letter

No. 5338-SI(4)/72, dated 18th/21st August, 1972, the Financial Commissioner (Revenue) was asked to send the nomination rolls of the Tehsildars and Naib-Tehsildars who fulfilled the conditions as laid down in rule 7(1) of the Rules and who were considered suitable by the Financial Commissioners, Punjab, for the posts of Extra Assistant Commissioners. The Financial Commissioners, after considering the recommendations of the Commissioners and the Deputy Commissioners and the cases of all other candidates eligible for recruitment to the Service from Register A-1, recommended the following five names :—

(1) Shri Gian Chand Jain (writ petitioner and now respondent).

(2) Shri Harjinder Singh (respondent).

(3) Shri Madan Mohan Chaudhry.

(4) Shri Jasbir Singh Bal.

(5) Shri Harbans Singh Pawar.

After the recommendations of the Financial Commissioners, the case was put up before the Revenue Minister who made a note on 5th November, 1972, to the effect :

"Mr. Karam Singh Grewal, Tehsildar, U.T. is also recommended" When the file was placed before the Chief Minister, an order was passed by him on 23rd January, 1973, the translation of which is as under :—

> "The names of Madan Mohan Chaudhry and the recommendees of the two Commissioners and Karam Singh be sent to the Public Service Commission, as it being done previously."

Thereafter, *vide* U.O. letter No. 621-E-III-73/2056, dated 3rd January, 1973, the Revenue Secretary sent the five names which had been recommended by the Financial Commissioners and also the names of the recommendees of the Revenue Minister and the Chief Minister. All the names then, in due course, were sent to the Commission. The Commission held the interview and the names of Devinder Singh, Harjinder Singh, Daljit Rai and Karam Singh Grewal, respondents Nos. 2 to 5 in the writ petition, were communicated to the Punjab Government for being appointed as Extra Assistant Commissioners. It is in these circumstances that the selection

of the said four persons was challenged by Gian Chand Jain. As earlier observed, *qua* Devinder Singh and Harjinder Singh, the writ petition was dismissed while *qua* Daljit Rai and Karam Singh Grewal, the writ petition was allowed and their selection and appointment was quashed. Hence the present three appeals, two by the aggrieved persons, Daljit Rai and Karam Singh Grewal, and the third by the State of Punjab have been filed.

(41) On the respective contentions raised on either side, the learned Single Judge found as follows :—

(1) That Annexure R-2, a communication addressed to the Financial Commissioners by the State Government, did not have the effect of amending rule 7 and that till this rule was amended, the provisions of this rule had to be followed in making selection ;

(2) that the writ petitioner (now respondent) having taken part in the interview was not estopped by his conduct from challenging the selection ;

(3) that a combined reading of rules 5 and 7 of the Rules clearly brought out that the intention of the rule making authority was to restrict the appointment of the members of the Service to the manner provided in these rules ;

(4) that there was a clear indication in the rules that appointment in any other manner would not be valid ;

(5) that to hold that rule 7(2) enabled the Government to make selection out of the names not recommneded by the Financial Commissioners would defeat the object with which rule 7 was framed ;

(6) that having regard to the language of rules 5 and 7 and the object behind the Rules, it was clear that rule 7(2) was mandatory in character and that the selection by the Government was restricted to those candidates whose nomination rolls had been forwarded by the Financial Commissioners under rule 7(1) ; and

(7) that the selection of a candidate whose name did not occur on that list would be void.

(42) Before us the case was argued at length by Mr. H. L. Sibal, Senior Advocate, whose contentions were adopted by Mr. Kuldip Singh and Mr. H. S. Brar. It was submitted by Mr. Sibal that rule 7 when read as a whole did give power to the Government to send its own names in addition to the names recommended by the Financial Commissioner. According to the learned counsel, if the Government had power to relax rules and ask for the rolls of those who were otherwise not eligible, then it should be deemed that under rule 7, the Government had power to ask for the rolls of persons other than those sent by the Financial Commissioners. In order to determine the correctness of the contention of the learned counsel for the appellants it would be appropriate to notice rule 7 of the Rules, which reads as under :—

"7. (1) The Financial Commissioners shall maintain a list of Tehsildars and Naib-Tehsildars whom they consider suitable for acceptance as candidates for the Service and shall each year not later than the first day of December, and at such other time as Government may require, submit for the consideration of Government the nomination rolls in Form I of so many persons borne on such list as Government may prescribe : provided that unless Government otherwise directs, the roll of no person shall be submitted who—

(a) has not completed five years' continuous Government service ;

(b) has attained the age of 40 years on or before the first day of November, immediately preceding the date of submission of names ; and

(c) is not a graduate of a recognised University.

(2) Governor may select from the persons whose nomination rolls are submitted by the Financial Commissioners under the provisions of sub-rule (1) such persons as he may deem suitable for the Service, and the names of persons selected shall be entered in Register A-I :

Provided that it shall first be necessary to consult the Commission on the suitability of such person."

(43) From a bare perusal of rule 7, I find that there is no merit in the contention of the learned counsel and that the view taken by the learned Single Judge is unexceptionable. The requirement of sub-rule (1) of rule 7 is that the Finaicial Commissioner shall maintain a list of Tehsildars and Naib-Tehsildars whom they consider suitable for acceptance as candidates for the Service and within the prescribed time given in the Rules or on the asking of the Government, to submit for the consideration of the Government the nomination rolls of so many persons borne on such list as the Government may prescribe. The persons whose names have to be sent must satisfy the qualifications mentioned in sub-rule (1), unless the Government otherwise directs. It is correct that the Government has been given the power to relax the conditions which a candidate would otherwise be required to fulfill, but that by itself would not give power to the Government to recommend its own nominees for selection. Relaxation of conditions for eligibility and recommending the names for selection are two different acts. In a given case, there may be some persons who may be suitable for recommendation, but may not be eligible due to non-fulfilment of the three conditions mentioned in sub-rule (1). In that case the Government has ample power to relax the said conditions with the result that those persons would also become eligible for consideration; but the consideration part is still left with the Financial Commissioners. Admittedly, there are three Financial Commissioners. Under sub-rule 1 of the rule 7 all of them are required to sit together and after due deliberation make recommendation out of the list maintained by them. If sub-rule 1 is interpreted in the manner in which it is sought to be interpreted by the learned counsel for the appellants, then the whole purpose behind sub-rule 1 would be frustrated. The recommendation required to be made under sub-rule 1 would become just a farce as the Government would be entitled to make recommendation of its own nominees and thereby frustrate the real object of the rule. This could never be the intention of the rule making authority. As the learned Judge has observed, the real object underlying rule 7(1) appears to be that the initial selection of candidates should be left to the Financial Commissioners because of the reason that these officers have greater opportunities to assess the work and conduct of the Tehsildars and Naib-Tehsildars serving under them, than the Minister or the Chief Minister. In this view of the matter, I find no substance in the contention of the learned counsel.

(44) Faced with this situation Mr. Sibal sought to argue that rule 7 stood amended by the instructions issued by the Government,

copy of which is attached with the return as Annexure 'R-2'. Reference, in particular, was made to instructions (iv) and (v) which read as under : —

> "(iv) Revenue Minister/Chief Minister may add any suitable names to the list prepared by the Financial Commissioners. While putting up the file to Revenue Minister/Chief Minister, the list of names recommended by the Deputy Commissioner, will also be put up.
>
> (v) The Financial Commissioners will send the list of names recommended by them with the additions, if any, made by Revenue Minister/Chief Minister to the Chief Secretary to Government, Punjab (in Gazette III Branch) who will forward it to the Punjab Public Service Commission, without indicating separately, the recommendations made at various levels. The list of names recommended by the Commissioners will also be sent to the Chief Secretary to be forwarded to the Public Service Commission."

(45) Again, I am unable to agree with this contention of the learned counsel. It may be observed that it was conceded by the learned counsel that the rules are statutory in character. That being so, there can be no gain saying that the same could not be amended by executive instructions though it is within the competency of the Government to fill up the gaps, if the rules are silent on any particular point, or supplement the rules and issue instructions not inconsistent with the rules framed. In the instant case the administrative instructions, referred to above, are clearly inconsistent with the provisions of rule 7, inasmuch as power is being given to the Revenue Minister/Chief Minister to add any suitable names to the list prepared by the Financial Commissioners thereby trying to frustrate the object underlying rule 7(1) which provides a definite procedure for submitting for the consideration of the Government the nomination rolls of so many persons borne on such list, that is, the list maintained by the Financial Commissioners of Tehsildars and Naib-Tehsildars whom they consider suitable for acceptance as candidates for the service. The aforesaid instructions are neither supplemental nor consistent with rule 7, rather under the guise of the aforesaid instructions the basis and the structure of the said rule is being changed and entirely a new colour and complex is sought to be given. Consequently, I have no hesitation in holding that under rule 7(1), the Revenue Minister/Chief Minister have no power to add

in the list names of some persons who have not been recommended by the Financial Commissioners.

(46) This brings me to the real point of controversy on which the fate of the case hinges. It was vehemently contended by Mr. Sibal that even if there was violation of the provisions of rule 7, the same was not fatal as the rule was directory in nature and not mandatory and that any infraction of the rule would not be fatal to the selection made by the Government. In other words, what was sought to be argued was that the provisions of rule 7 were merely directory and that a literal compliance with its terms was not a condition precedent to the Governor exercising his jurisdiction under the provisions of sub-rule- (2) of rule 7. The basis for this submission of the learned counsel is mainly the decision of their Lordships of the Supreme Court in *State of U.P.* v. *Manbodhan Lal* (3), wherein their Lordships were dealing with the question whether the provisions of Article 320(3)(c) of the Constitution were mandatory in nature or not, on that aspect of the matter their Lordships made certain observations, which are reproduced below, on which great reliance was placed by the learned counsel :—

> "The use of the word 'shall' in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always correct to say that where the word 'may' has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceeding invalid.
>
> The provisions of Article 320(3) (of the Constitution of India) are not mandatory and non-compliance with those provisions, does not afford a cause of action to civil servant in a court of law. They are not in the nature of a rider or proviso to Article 311.
>
> Article 320(3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a court of law, or entitle him to relief under the special powers of a High Court under Article 226

of the Constitution or of the Supreme Court under Article 32. It is not a right which could be recognised and enforced by a writ. On the other hand, Article 311 of the Constitution has been construed as conferring a right on a Civil servant of the Union or a State, which he can enforce in a court of law. Hence, if the provisions of Article 311, have been complied with he has no remedy against any irregularity that the State Government may have committed, in not complying with the provisions of Article 320(3)(c).

* * *

* * *

It is clear that the requirements of the consultation with the Commission does not extend to making the advice of the Commission on those matters, binding on the Government. In the absence of such a binding character, it is difficult to see how non-compliance with the provisions of Article 320(3)(c) could have the effect of nullifying the final order passed by the Government."

* * *

"The question may be looked at from another point of view. Does the Constitution provide for the contingency as to what is to happen in the event of non-compliance with the requirements of Article 320(3)(c) ? It does not, either in express terms or by implication provide that the result of such a non-compliance is to invalidate the proceedings ending with the final order of the Government."

* * *

* * *

An examination of the terms of Article 320 shows that the word 'shall' appear in almost every paragraph and every clause or sub-clauses of that Article. If it were held that the provisions of Article 320(3)(c) are mandatory in terms, the other clauses or sub-clauses of that Article, will have to be equally held to be mandatory.

If they are so held, any appointments made to the public services of the Union or a State, without observing strictly,

the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter."

(47) What was sought to be argued by Mr. Sibal was that if the provisions of Article 320(3)(c) of the Constitution could be held to be directory by their Lordships, then the provisions of rule 7 could by no stretch of imagination be held to be mandatory.

(48) On the other hand, Mr. J. L. Gupta, learned counsel for the respondents, contended that the provisions of rule 7 were mandatory, and from the perusal of the scheme of the rules, this intention of the Legislature was evident.

(49) After giving my thoughtful consideration to the entire matter, I find myself unable to agree with the contention of Mr. Sibal. The question whether the provision in a statute are mandatory or directory in nature, has frequently arisen and my learned brother Pattar, J., has very elaborately dealt with that matter. I too have carefully gone through the judicial decisions cited by Mr. Sibal and also the discussion by brother Pattar, J., but do not find any such authority wherein the point involved, or the provisions of the rules and the implication of their disobedience are similar to those in the instant case. The Supreme Court decisions, in my opinion, are all distinguishable and do not settle the controversy in hand. In fact, each case has its own angle and context and has been decided in consideration of the same. Therefore, each case has to be decided on its own facts, considering the provisions which have been disobeyed, the object and intention of the Legislature, the whole context and the rights of the persons effected and the remedy to which they are entitled. On this aspect of the matter, the observations of Lord Penzance in *Howard and others* v. *Bodington* (18) are quite instructive and may be read with advantage, as under :—

"The real question in all these cases is this :

"A thing has been ordered by the legislature to be done. What is the consequence if it is not done ? In the case of statutes that are said to be imperative, the Courts have decided that if it is not done the whole

(18) (1876-77)2 P.D. 203.

thing fails, and the proceedings that follow upon it are all void. On the other hand, when the Courts hold a provision to be mandatory or directory, they say that, although such provision may not have been complied with, the subsequent proceedings do not fail. Still, whatever the language, the idea is a perfectly distinct one. There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject-matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end. Now the question is, to which category does the provision in question in this case belong? Mr. Jenne was good enough to refer me to Sir Benson Maxwell's book." and to quote a number of cases from it (Maxewell, on the interpretation of Statutes, ch.xii., sec., 3, pp. 330—345). Since the matter was argued I have been very carefully through those cases, but upon reading them all the conclusion at which I am constrained to arrive is, that you cannot gleen a great deal that is very decisive from a perusal of those case. They are on all sorts of subjects. It is very difficult to group them together, and the tendency of my mind, after reading them, is to come to the conclusion which was expressed by Lord Campbell in the case of the *Liverpool Borough Bank* v. *Turner* (19). Lord Campbell was then sitting as Lord Chancellor. In an appeal from the Vice-Chancellor, and in giving judgment, his Lordship said this:—

'No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the

(19) 29 L.J. (Ch.) 827.

duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered'.

"I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

(50) At this stage, it would be appropriate to briefly refer to the facts of *Manbodhan Lal's case* (3) (supra) and to find out its applicability to the instant case, as Mr. Sibal has based his contentions chiefly on that decision. Manbodhan Lal (hereinafter referred to as the respondent) was employed in the Education Department of the State of Uttar Pradesh in the year 1920 and in due course he was promoted to the United Provinces Education Service (Junior Scale) in the year 1946. He was appointed in the year 1948 as the Officer on Special Duty and Managing Editor of the quarterly journal issued by the Education Department. While holding that post he was also appointed a member of the Book Selection Committee. His conduct as a member of that Committee was not found to be satisfactory and above board. In July, 1952, he was transferred as Headmaster to a certain High School, but he did not join that post and proceeded on leave on medical grounds. While on leave, he was suspended from service with effect from August 2, 1952. In September, 1952, the Director of Education issued orders framing charges against him and called upon him to submit his written statement of defence and gave him an opportunity to call evidence in support of it. After thorough enquiry, the Director of Education submitted a report to the effect that the charges had been substantially proved. Accordingly, a recommendation was made that he be demoted to the Subordinate Education Service and be compulsorily retired. After considering the report, the Government decided on November 7, 1953, to call upon the respondent under Article 311(2) of the Constitution to show cause why the punishment suggested in the departmental enquiry report, should not be imposed upon him. In pursuance of the show-cause notice, the respondent submitted his long explanation on November 26, 1952. A Government notification, dated January 9, 1953, was published showing the names of the officers of the Education

Department who would retire in due course on superannuation and the corresponding dates of superannuation, and the name of the respondent was also shown therein and the date of retirement mentioned against his name was September 15, 1953. The respondent filed a writ petition on February 2, 1953, challenging the validity of the order of the Government, suspending him and calling upon him to show-cause why he should not be reduced in rank, with effect from the date of suspension and also compulsorily retired. In the writ petition, he also challenged the legality of the entire enquiry proceedings against him. Realising that the show-cause notice served upon the respondent did not satisfy the requirement of a reasonable opportunity, as contemplated by the Constitution, the Director of Education forwarded to the respondent along with a covering letter, dated June 16, 1953, a copy of the report of the enquiry, and again called upon him to show-cause why the proposed penalty of reduction in rank be not imposed upon him. The State Public Service Commission was also consulted by the Government as to the punishment proposed to be imposed, as a result of the enquiry. The respondent submitted his explanation to the second show-cause notice on July 3, 1953. After considering the opinion of the Commission, the enquiry report and the several explanations submitted by the respondent, the State Government passed its final order, dated September, 12, 1953, reducing the respondent in rank from the Uttar Pradesh Education Service (Junior Scale) to Subordinate Education Service, with effect from August 2, 1953, and compulsorily retired him. When the matter came up for hearing, the High Court quashed the order of the Government, on the ground that the last written explanation of the respondent submitted on July 3, 1953, had not been placed before the Commission, and, therefore, the impugned order of the Government was vitiated. Feeling aggrieved from the order of the High Court, the State of Uttar Pradesh filed an appeal in the Supreme Court, which was ultimately allowed by their Lordships of the Supreme Court. The observations on which reliance was placed by Mr. Sibal have already been reproduced in the earlier part of the judgment. From the narration of the facts, it would be clear that *Manbodhan Lal's case* is distinguishable and the observations of their Lordships of the Supreme Court made in that judgment do not help the appellants. The main controversy before their Lordships of the Supreme Court was whether the High Court was right in taking the view that Article 311 was subject to the provisions of Article 320(3)(c) of the Constitution which were mandatory and as such non-compliance with those provisions was fatal to the proceedings. One of the main reasons that prevailed with their

Lordships for holding provisions of Article 320(3)(c) to be directory, was the language of the proviso to Article 320, which permitted the President or the Governor to make regulations specifying the matters in which either generally or in any other particular class of cases or in particular circumstances, it shall not be necessary for a Public Service Commission to be consulted. From the facts, it is clear that the mandatory provisions of Article 311 were completely followed and the only question that was to be determined was the effect of non-consultation of the Public Service Commission and that too at a stage when final reply had been received from the respondent. It is in that situation that all the observations which have been reproduced above were made.

(51) Even, from the observations of their Lordships of the Supreme Court, it is clear that the use of the word 'shall' in a statute may not necessarily mean imperative, and so also where the word 'may' has been used in a statute, it may not always be correct to say that as the word 'may' has been used, the statute is only permissive or directory in the sense that non-compliance with the provisions would not render the proceedings invalid.

(52) In view of the aforesaid discussion, it has now to be determined, whether the provisions of rule 7 are directory or mandatory in nature. On facts, there is no dispute that in the instant case, the list of the names recommended by the Financial Commissioners was put up before the Revenue Minister and the Chief Minister, and this apparently was done on the basis of the instructions (R-2). The Revenue Minister put up a note that the name of Karam Singh Grewal (appellant) on deputation to the Union Territory, Chandigarh, may be added and the Chief Minister also gave a similar direction regarding the names of Karam Singh Grewal, appellant and one M. M. Chaudhry. The names of these two persons were added in the final list submitted to the Government along with the names recommended by the Financial Commissioners and also by the Commissioners of Jullundur Division and Patiala Division.

(53) From the perusal of rule 7(1), I find that it prescribes the qualifications and conditions for eligibility, in addition to the procedure for submitting the nomination rolls of the Tehsildars and the Naib-Tehsildars, who are considered suitable for acceptance as candidates for the service, by the Financial Commissioner. Thus, it would be evident that the persons whose nomination rolls are submitted to the Governor under rule 7(1), are recommendees or nominees of the Financial Commissioners and that is what is the precise

mandatory requirement of the rule. When the names are added by the Minister or the Chief Minister, then those persons become the recommendees or nominees of the Minister, or the Chief Minister, and the Financial Commissioners have nothing to do with that recommendation. Under sub-rule 2, the Governor is required to select out of the persons whose nomination rolls have been submitted by the Financial Commissioners. In other words, the selection has to be made out of the nominees of the Financial Commissioners. The rule postulates recommendation by the Financial Commissioners. The two names sent by the Minister and the Chief Minister do not become recommendees of the Financial Commissioners. The inclusion of names by the Minister and the Chief Minister is not merely a procedural lapse or irregularity, but is a clear violation of the rule laying down the qualifications and the eligibility of the candidate. Rule 7(1) has been framed with an intention to give an incentive to the honest and hardworking employees who could show their efficiency and capacity to work to the fullest to their superiors who have been given the right to judge their suitability as laid down in the rule. The well-defined object of the framers of the rule was to restrict the selection out of those persons whose names have been sent by the Financial Commissioners. If addition of names by the Minister or the Chief Minister is permitted, and the mandate given in the rule by the rule making authority is not punctiliously given effect to, then the purpose behind the rule and the object sought to be achieved by the rule making authority, would be completely negatived, e.g. if names are added by the Minister or the Chief Minister, then such persons whose names have been added, would apparently have an edge over and above the persons who are the nominees or recommendees of the Financial Commissioners. The Governor acts on the aid and advice of the Council of Ministers and does not act personally. Whatever advice would be given by the Council of Ministers, shall be accepted by the Governor. In such circumstances, it can safely be inferred that the nominees of the Minister and the Chief Minister would most likely be selected and the sending of the nomination rolls by the Financial Commissioners would become practically a farce. Under rule 7(1), sending of the names by the Financial Commissioners is a condition precedent and this has been so indicated. It is, thereafter, that the Governor gets jurisdiction to make selection after consulting the Commission on the suitability of those persons only. The Commission is consulted only to adjudge the suitability of persons whose nomination rolls have been sent by the Financial Commissioners. Under the rule, even the Commission does not have any jurisdiction to adjudge the

suitability of the persons whose nomination rolls have not been sent by the Financial Commissioners. The persons who are to be brought after selection on Register A-1, have to be out of those whose names have been recommended by the Financial Commissioners. Register A-1, is meant for those persons only, i.e., the persons who have been selected out of the nominees of the Financial Commissioners. After selection the names are brought on Register A-1. There is another rule 8 to which reference may be made at this stage. Under this rule, power is given to various authorities to send nomination rolls from among their personal Assistants and under sub-rule (4), the Governor is empowered to select such persons as he may deem suitable for the Service and then their names are brought on Register A-2. This rule again postulates nomination by the authority referred to in column I of the rule. If the provisions of rule 7 are held to be directory, *a fortiori*, the provisions of rule 8 would have to be held directory and as a result thereof the Minister or the Chief Minister would be entitled to add names to the list submitted by the appropriate authority of its nominees, thereby making the nomination of the appropriate authority ineffective, which could never be the intention of the framers of the rule. It is only the nominees of the authority mentioned in the rules, whose names can be brought in the respective registers after selection and under rule 5, the Governor shall make appointment out of the names brought on such registers. Under rule 7, this valuable right vests only in those persons whose nomination rolls have been submitted by the Financial Commissioners, to be considered for selection by the Governor and no outsider can impinge on that right by setting up an untenable claim that he had also the right to be considered in spite of the fact that his case was not at all covered by the statutory provisions of the governing rules. Such an infringment if permitted, would not only be illegal but also harsh, unjust and inequitable and would cause irrepairable injury to the interest of the rightful claimant. In the instant case, the legal rights of the nominees of the Financial Commissioners have been invaded and their interest has been adversely affected. The injury caused to them is actionable and remediable and the writ petition filed by Gian Chand, respondent, is certainly maintainable.

(54) In view of my aforesaid discussion, I hold that the provisions of rule 7 are mandatory, that the Minister or the Chief Minister had no jurisdiction to add names of their nominees and that selection of any person other than the nominees of the Financial Commissioners, is illegal and void. The view of the learned Single

Judge in this respect is unexceptionable and I find myself in full agreement with the same. Accordingly, all the three appeals fail and are dismissed with costs.

R. S. Narula, C.J.

(55) I have had the benefit of carefully going through the separate judgments prepared by my learned brothers Pattar and Jain, JJ. I agree with Pattar, J., that in the light of the authoritative pronouncement of their Lordships of the Supreme Court in *State of U.P.* v. *Manbodhan Lal* (3), the requirements of rule 7 are of a directory nature and are not mandatory. I am also unable to find anything illegal in the circular letter Annexure R-2, which was issued in 1959, and has since then been followed and implemented throughout these years in letter and spirit. The State Government is the appointing authority and the procedure prescribed for obtaining the names for appointment in consultation with the Public Service Commission appears to be a matter of mere detail, the non-compliance with any particular insignificant item of which cannot vitiate the selection particularly when no name was kept back by the Government from the Commission and it is only the selectees of the Public Service Commission which were appointed. The Financial Commissioners are required by section 11(1) of the Punjab Land Revenue Act, 1887, to discharge their functions "subject to the control of the State Government." The mere fact that the Financial Commissioner who was a Secretary to the Government forwarded to the Chief Secretary the names of two candidates at the instance of the Revenue Minister and the Chief Minister for consideration along with all other names which names had not been included in the original list of persons selected by the three Financial Commissioners collectively does not, in my opinion, render the selection by the Public Service Commission and the appointment of the selectees of the Commission illegal. It is not the case of Gian Chand respondent that he was not considered. He was considered at all stages and the mere fact that other eligible/qualified candidates were approved by the Commission, and Gian Chand was not so approved does not, in my opinion entitle him to claim relief under Article 226 of the Constitution. Agreeing with Pattar, J., therefore, I would allow all the three Letters Patent Appeals (L.P.As. Nos. 381, 382 and 409 of 1974), set aside and reverse the judgment and order of the learned Single Judge and dismiss the writ petition of Gian Chand respondent No. 6 without passing any order as to costs in the appeal or in the writ petition.

ORDER OF THE COURT

(56) In the view taken by the majority all these three appeals (L.P.As. Nos. 381, 382, and 409 of 1974) are allowed, the judgment of the learned Single Judge granting the writ petition is set aside and reversed, and Civil Writ Petition 1207 of 1974, filed by Shri Gian Chand Jain, respondent, is dismissed without any order as to costs.

19975 I.L.R.—Govt. Press, Chd.