PARVEEN JINDAL AND ORS. ETC. ETC. A

v.

STATE OF HARYANA AND ORS.

MARCH 16, 1993

[B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.] B

Haryana Service of Engineers Class-I P.W.D. (Irrigation Branch) Rules, 1964: Rules 5(2), 7(2)—First proviso.

Haryana Service of Engineers Class-II P.W.D. (Irrigation Branch) Rules, 1970: C

Service Law—Power of employer to fill up posts—Cadre—Strength of—Fixed by Rules—But posts not filled for a long time—Held where strength of cadre is fixed by Rules—Government is not justified in not filling up the posts for a very long time except for very strong and good reasons—Directions to State to fill up the posts issued. D

State Public Service Commission—Power to notify vacancies—Commission has no authority to notify vacancies wihout requisition from Government—Only appointing authority viz. Government is competent to make requisition to Commission. E

Service Law—Selection—Written test and interview—Prescription of qualifying marks for interview—Obtaining of prescribed minimum marks does not create a right to be called for interview—Commission can limit number of candidates to be called for interview—Also mere appearance by candidate at selection does not clothe them with right to selection. F

The Public Works Department of Government of Haryana consists of three wings viz., Irrigation, Roads and Buildings and Public Health. The Engineering Service in the Irrigation Branch comprises both Class-I service-consisting of Assistant Executive Engineers, Executive Engineers and Superintending Engineers - and Class-II service including Assistant Engineers. While the Assistant Executive Engineers are recruited by direct recruitment only, the Executive Engineers are recruited by (i) direct recruitment; (ii) by transfer; (iii) by promotion from Class-II service. The cadre strength of Assistant Engineers, fixed under the Rules is very large G H

as compared to the cadre strength of Assistant Executive Engineers. For the purposes of promotion to Executive Engineers both Assistant Executive Engineers and Assistant Engineers are eligible for which *inter-se* quota is fixed under the Rules.

The Haryana Public Service Commission issued a notification in 1985 inviting applications for selection to the posts of Assistant Executive Engineers for all the three wings of the P.W.D. Although the requisition from the Government was to select Assistant Executive Engineers only for two wings viz. Public Health and Buildings and Roads yet the Commission notified the vacancies with respect to Irrigation Branch also stating that posts in the said category are also likely to be filled from the suitable candidates from this very advertisement after the receipt of demand from the Government. On the basis of written test and interview selections were made for Public Health and Buildings and Roads wings but no selections were made for the Irrigation wing because even by the date of finalisation of selections, no requisition or demand had come from the Government.

The appellants, who were not selected, filed writ petitions in the Punjab and Haryana High Court for a direction to respondents to fill up vacancies of Assistant Executive Engineers and others falling to the quota of direct recruits from amongst the applicants who had applied in pursuance to the advertisement and for a further direction to the State of Haryana to send requisition to the Commission to fill up all vacancies which are meant for direct recruits. The High Court dimissed all the petitions.

In appeals to this Court it was contended on behalf of the appellants that (1) the Government acted arbitrarily in not sending the requisition, inspite of the fact that vacancies in Irrigation Branch existed for a number of years; (2) when the rules created a particular category and the cadre strength was also fixed therefor and more particularly when a quota was reserved for them in the channel of promotion to the category of Executive Engineers, it was not open to the Government to nullify the spirit and object behind the Rules by refusing to make appointment to the said category; (3) the procedure adopted by the Haryana Public Service Commission was contrary to Rules because under the Rules a candidate obtaining 50 per cent marks in the written test is entitled to be called for *viva voce*, but the Commission arbitrarily prescribed a threshold of 65 per

cent which resulted in denial of opportunity of selection to the appellants. A

The stand taken by the Government of Haryana was that the decision not to send requisition for filling up the vacant posts of Assistant Executive Engineers in Irrigation Branch was *bona fide* and actuated by relevant considerations because a large number of Assistant Engineers, who can be posted only as Sub Divisional Officers/Sub Divisional Engineers, are in surplus over and above the cadre strength and if the Assistant Executive Engineers are also appointed as demanded by the appellants, they will be in further surplus inasmuch as they too can be posted only as Sub Divisional Officers/Sub Divisional Engineers. B

C

Allowing the appeals in part, this Court,

HELD: 1. The Public service commission had no authority to include the vacancies in the Irrigation Branch in the notification issued by it when the Government had not asked for it. May be the Commission did so *bona fide.* Even so, the fact remains that none were selected against the vacancies in the Irrigation Branch, evidently because no demand/requisition ever arrived from the Government. Indeed, it is not as if the apellants appeared only for the vacancies in Irrigation Branch. It was a composite notification for all the three wings. The appellants do not say that they confined their applications to Irrigation wing alone. Those selected for the other two wings had admittedly scored more marks at the selection. Therefore, the mere appearance at the selection does not clothe them with the right to selection or appointment. [366G-H, 367A-C] D E

State of Haryana v. *Subhash Chandra Marwaha,* [1974] 3 S.C.C. 220 and *I.J. Divakar* v. *Government of Andhra Pradesh,* A.I.R. 1982 S.C. 1555, relied on. F

2. Where the Rules have created a particular category, fixed its cadre strength and have also prescribed a quota for such categroy in the matter of promotion to the higher category, the Government would not be justified in not making appointments to such category for over a decade unless there are very strong and good reasons therefor. The Government would not be justified in nullifying - though not in word, but in spirit - the Rules in this manner. [367C-D] G

2.1. There is no reason why the Government did not think it fit to H

A make some *ad hoc* appointments to the category of Assistant Executive Engineers when it was recruiting such a large number, on *ad hoc* basis, to the category of Assistant Engineers. At the same time, the Courts have to think twice before adding the numbers to the already over-loaded service. It is not so much a question of 'punishing' the errant but one of what to B do with the surplus personnel and the consequent unwarranted burden upon the public exchequer. On balancing the contending rights and equities, the Court is of the opinion that at least part of the cadre strength of Assistant Executive Engineers in the Irrigation Branch should be filed up in the near future. [367E-G]

C 3. The selection held in which the appellants had appeared, cannot be directed to be finalised. The only direction that can properly be made herein is to direct the Government to take steps for filling up the vacancies existing in the catgory of Assistant Executive Engineers in the Irrigation Branch as early as possible. Atleast half the vacancies therein should be D filed within a period of one year from today. [367H, 368A-B]

I.J. Divakar v. *Government of Andhra Pradesh,* A.I.R. 1982 S.C. 1555, distinguished.

4. A reading of the first proviso to Sub-Rule (2) of Rule 7 shows that E it prescribes a minimum percentage of marks in the written test both for appointment as well as for being called for interview (*viva voce*). It does not create a right in the candidate, who has obtained the prescribed percentage of marks, to be called for interview. [363A]

Ashok Kumar Yadav v. *State of Haryana,* A.I.R. 1987 S.C. 454, relied F on.

Umesh Chandra v. *Union of India,* [1985] 3 S.C.C. 721; *Nilima Shangla* v. *State of Haryana,* [1986] 4 S.C.C. 268 and *P.K. Ramachandra Iyer & Ors. etc. etc.* v. *Union of India & Ors.,* [1984] 2 S.C.C. 141, referred G to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.3465-69 of 1988.

From the Judgment and Order dated 26.10.1987 of the Punjab and H Haryana High Court in C.W.P. Nos. 755, 5141 & 3659/87 & 3138/88.

Shanti Bhushan and Prem Malhotra for the Appellants. A

Ms. Nisha Bagchi for Ms. Indu Malhotra, U.S. Chowdhary and Ravindra Bana for the Respondents.

Bhal Singh Malik and S.M. Hooda for the Intervenor.

B

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. This batch of appeals is preferred against a common judgment of Punjab an Haryana High Court dismissing a batch of six writ petitions.

C

There are three wings/branches in the Public Works Department of the Government of Haryana, viz., Irrigation, Roads and Buildings and Public Health. We are concerned herein with the Irrigation branch. The Engineering service in the Irrigation branch comprises both class-I and class-II services. Recruitment to and conditions of service of class-I are D governed by the Haryana Service of Engineers Class-I P.W.D., Irrigation Branch Rules, 1964 whereas recruitment to and conditions of service of class-II is governed by Haryana Service of Engineers Class-II P.W.D. (Irrigation Branch) Rules, 1970. The lowest category in class-I is that of Assistant Executive Engineers. Above it is the category of Executive Engineers and above it Superintending Engineers. Recruitment to the E category of Assistant Executive Engineers is only by direct recruitment. Recruitment to the category of Executive Engineers is (a) by direct recruitment, (b) by transfer of an officer already in class-I service of the Government of India or of a State Government and (c) by promotion from class-II service. Sub-rule (2) of Rule 5 of the class-I Rules says, "recruitment to the F service shall be so regulated that the number of posts filled by promotion from class-II service shall not exceed 75% of the number of posts in the service excluding the posts of Assistant Executive Engineers for the first 10 years from the date of commencement of these Rules and thereafter shall not exceed 50% of the number of posts in the service excluding the G post of Assistant Executive Engineers." The proviso to this sub-rule, however, says that "in case an adequate number of Assistant Executive Engineers who are eligible and considered fit for promotion are not available the actual percentage of officers promoted from class-II service may be larger than 75% or 50%, as the case may be." In other words, after the year 1974, the share of class-II officers in the promotion quota to the category H

A of Executive Engineers categroy, shall not exceed 50%, the balance being allocated to the Assistant Executive Engineers who are also entitled to be promoted to the categroy of Executive Engineers. But in case adequate number of Executive Engineers are not available, the said ceiling can be exceeded.

B

Though the Assistant Executive Engineers are in class-I and Assistant Engineers are in Class-II, both these categories discharge similar functions, duties and responsibilities. Members of both these categories are posted as Sub-Divisional Officers/Sub-Divisional Engieers. Both are eligible for promotion to the category of Executive Engineers as stated C above, but while the cadre strength of Assistant Engineers is very large, the cadre strength of Assistant Executive Engineers is quite small, with the consequence that in the matter of promotion to the category of Executive Engineers, the Assistant Executive Engineers enjoy a marked advantage in view of the *inter se* quota prescribed by sub-rule (2) of Rule 5. The D Assistant Executive Engineers get promoted far sooner than the Assistant Engineers. The cadre strength of Assistant Executive Engineers is stated to be 49. While the cadre strength of Assistant Engineers is not stated before us, it is admittedly far larger.

E In the year 1985, the Haryana Public Service Commission issued a notification stating that "a combined competitive examination for recruitment to the post of Assistant Executive Engineers (C) in the P.W.D. will be held by the Haryana Public Service Commission in August/September, 1985 in accordance with the rules of Haryana P.W.D. Irrigation, B&R and F Public Health Branches, as amended from time to time." Then followed the table of particulars, which must be noticed:

Name Of Post	No. Of Post.	Reserved For S.c. of Haryana	Reserved For B.c. Haryana	Reserved For Ex. Service Men.
1.	2.	3.	4	5.
(i) Haryana Service of Engineers Class I (Junior Scales) in P.W.D. Public Health Branch.	15	4	2	1

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(ii) Haryana Service of enginners Class I Engineers Class I (Junior Scales) in P.W.D. B & R. Br.	8	2	1	
(iii) Haryana Service of Engineers Class I (Junior Scale) posts in the P.W.D. Irrigation Branch are also likely to be filled from the suitable candidates from this very advertisement after the receipt of demand from the Government.				

2. The number of posts given against each category is liable to variation. Three posts (two for S.C. of Haryana and One B.C. of Haryana) in P.W.D. B & R Branch are reserved failing with other shall be considered. Seven posts (four for S.C. of Haryana, two for B.C. of Haryana and one for Ex-Servicemen) in P.W.D. Public Health Branch are reserved failing whom others will be considered".

It is significant to notice the wording of item (iii) in the table. It is clear therefrom that the Public Service Commission had notified the vacancies in the category of Assistant Executive Engineers (referred in the Rules and in the notification as Engineers class-I (Junior Scale)) even without a requisition from the Government. The Commission by stating that posts in the said category "are also likely to be filled from the suitable candidates from this very advertisement after the receipt of demand from the Government", had made it known to the candidates of the absence of authority. Admittedly, no such demand or requisition was ever received by the Government at any time after the issuance of the said notification. It is equally relevant to point out that under the notification, applications for selection to the category of Assistant Executive Engineers in all the three wings of the P.W.D. were called for. The eligibility criteria and the qualifications required for appointment to the said category is stated to be indentical in all the three wings though they are governed by different sets of rules. It is also stated before us that no separate applications were necessary and that one could apply for appointment in all or any of the three wings indicating his choice and subject to his fulfilling the prescribed qualifications.

In response to the notification aforesaid, several Engineers including

A the appellants herein applied. A written test was conducted followed by an oral interview. On the basis of the marks obtained in the written test and the oral interview, certain persons were selected for Public Health and Buildings & Roads wings. No selections were made for the Irrigation wing evidently for the reason that even by the date of finalisation of selections, no requisition or
B demand had come from the Government. It is only then that the appellants approached the Punjab and Haryana High Court with a batch of writ petitions praying for the issuance of an appropriate writ, order or direction to the respondents (Government of Haryana and the Haryana Public Service Commission) "to fill up 44 vacancies of Assistant Executive Engineers and others falling to the quota of direct recruits from amongst the applicants who had
C applied in pursuance of the advertisement....." They asked for a further direction to the State of Haryana "to send requisition to the Respondent-Commission to fill up all the vacancies in the Class-I service which are meant for direct recruits forthwith and to make appointment to the class-I service by the method of direct recruits as required by the Rules." The appellants
D challenged the method of selection followed by the Commission as also the refusal/failure of the Government to fill up the vacancies in the category of Assistant Executive Engineers.

The writ petitions were opposed by the Public Service Commission as also by the State Government. The High Court dismissed the writ
E petitions rejecting the several contentions urged by the appellants.

In this appeal, Sri Shanti Bhushan, the learned counsel for the appellants urged the following contentions:

F (1) The cadre strength of Assistant Executive Engineers in the Irrigation wing is 49. As against the said strength, there were only 5 persons holding the posts, which means the vacancies are 44 in number. There has been no recruitment to this category since 1979. In that year, the Government had sent a requisition for 22 posts but only 8 were selected by the Commission.
G From out of these eight, only five were appointed to the category. In the year 1983, the Government sent a requisition to the Commission for 23 posts but none were selected or appointed. It is in this situation that the notification issued by the Commission in the year 1985 envisaged a selection to the category of Assistant Executive Engineers in the Irrigation Branch as well. The Commission expected that in view of the vacancies
H earlier notified, the Government would be sending a requisition and with

a view to save time and effort, it included the vacancies in Irrigation wing as well in the Notification, which pertained to the vacncies in the very same category in the other two wings of the P.W.D., for which requisition was received. The Government acted arbitrarily and unreasonably in no sending the requisition, inspite of the fact that 44 vacancies have been existing in this category in Irrigation Branch since a long number of years. This refusal to fill up the said vacancies is *mala fide* and is designed to help and promote the interest of class-II officers. Though, according to the Rules, the number of promotees from class-II in the category of Executive Engineers should not exceed 50%, the fact is that practically all the promotion posts in the category of Executive Engineers are held by erstwhile class-II officers for the reason that the category of Assistant Executive Engineers in this branch is being kept practically empty. When the statutory rules have created a particular category and a cadre strength is also fixed therefor and more particularly when a quota is reserved for them in the channel of promotion to the category of Executivie Engineers, it is not open to the Government to nullify the spirit and object behind the Rules by refusing to make appointment to the said category. If these 44 posts are filled up, many of the appellants, if not all, are likely to be selected and appointed.

(2) The procedure adopted by the Haryana Public Service Commission is contrary to statutory Rules. Whereas the Rules say that a candidate obtaining 50% marks in the written test is entitled to be called for *viva-voce*, the Commission has arbitrarily prescribed a threshold of 65% which it had no jurisdiction to do. As a result of the said arbitrary stipultion several of the appellants have been denied the opportunity of selection. The Commission must now be directed to make selection afresh for all the three wings/branches in the Public Works Department.

With a view to clear the ground, it would be appropriate to deal with the second contention first. It is based upon the proviso to sub-rule (2) of Rule 7 of the 1964 Rules. Rule 7 deals with direct appointment. For the sake of convenience, we may set out sub-rules (1) and (2) of Rule 7:

> "DIRECT APPOINTMENT:- (1) A Candidate for direct appointment shall not be less than 20 years and more than 25 years on age of or before the first day of August next preceding the last date of submission of applications to the commission;

A Provided that:-

(a) in the case of candidates who are displaced persons and in whose case the age limit for admission to Engineering College had been relaxed, and in the case of candidates belonging to the Scheduled Castes, Scheduled Tribes and other backward classes the upper age limit shall be such as may be fixed by the Government from time to time.

B

(b) in the case of candidates possessing the requisite qualifications who are already in the service of the State Government, the upper age limit shall be 30 years;

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(2) The selection of candidates, including those belonging to Scheduled Castes, Scheduled Tribes or Backward Classes, shall be made by the Commission, after holding a competitive examination, the syllabus for which shall be such as may be prescribed by the Government from time to time. The Commission shall recommend the required number of candidates after arranging their names in the order of merit and indicating which out of them belong to Scheduled Castes, Scheduled Tribes or Backward Classes:

D

E

Provided that a candidate shall not be considered qualified for appointment, unless he obtains not less than forty per cent marks in each subject and also not less than fifty per cent marks in the aggregate, and no candidate who does not obtain the qualifying marks shall be called for interview by the commission.

F

Provided further that where a vacancy has been reserved for a person belonging to Scheduled Castes, Scheduled Tribes or Backward Classes, who secures the highest marks in the aggregate and has qualified for an appointment shall be selected irrespective of his position with respect to the other candidates."

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A reading of the first proviso to Sub-Rule (2) of Rule 7 shows that it prescribes a minimum percentage of marks in the written test hoth for appointment as well,as for being called for interview (*viva voce*). It does not create a right in the candidate, who has obtained the prescribed percentage of marks, to be called for interview. This is how a similar Rule has been understood by a Constitution Bench of this Court in *Ashok Kumer Yadav* v. *State of Haryana,* A.I.R. 1987 S.C. 454. Regulation 3 in the Appendix to the Haryana Civil Service (Executive) and other allied services read as follows:

> "3. No candidate shall be eligible to appear in the *viva voce* test unless he obtains 45 per cent marks in the aggregate of all subjects including at least 33 per cent marks in each of the language papers in Hindi (in Devanagri Script) and Hindi Essay provided that if at any examination a sufficent number of candidates do no obtain 45 per cent marks in the aggregate the Commission may at their discretion lower this percentage to not below 40 per cent for the language papers remaining unchanged."

Construing the said Regulation, the Court held:

> "It is clear on a plain natural construction of Regulation 3 that what is prescribes is merely a minimum qualfication for eligibility to appear at the *viva voce* test. Every candidate to be eligible for appearing at the *viva voce* test must obtain at least 45 per cent marks in the aggregate in the written examination. But obtaining of minimum 45 per cent marks does not by itself entitle a candidate to insist that he should be called for the *viva voce* test all candidates who satisfy the minimum eligibility requirement. It is open to the Haryana Public Service Commission to say that out of the candidates who satisfy the eligibility criterion of minimum 45 per cent marks in the written examination, only a limited number of candidates at the top of the list shall be called for interview. And this has necessarily to be done because otherwise the *viva voce* test would be reduced to a farce. It is indeed difficult to see how a *viva voce* test for properly and satisfactorily measuring the personality of a candidate can be carried out, if

A over 1300 candidates are to be interviewed for recruitment to a service. If a *viva voce* test is to be carried out in a thorough and scientific manner, as it must be in order arrive at a fair and satisfactory evaluation of the personality of a candidate, the interview must take anything between 10 to 30 minutes."

B

In view of this decision, we do not think it necessary to deal with the decisions cited by Sri Shanti Bhushan, namely, *Umesh Chandra* v. *Union of India,* [1985] 3 S.C.C. 721; *Nilima Shangla* v. *State of Haryana,* [1986] 4 S.C.C. 268 and *P.K. Ramachandra Iyer & Ors. etc. etc.* v. *Union of India &* C *Ors.,* [1984] 2 S.C.C. 141. Suffice it to say that neither of them lays down any principle contrary to the one quoted above from *Ashok Kumar Yadav.*

Coming to the first submission of Sri Shanti Bhushan, the defence of the Government is to the following effect:

D

"It is also admitted that cadre strength of Assistant Executive Engineer was fixed on 22.1.82 and is 49 out of which 5 persons are in position. However, at present, there is no vacant post of Assistant Executive Engineer in the Department. The true facts are that during the year 1979-
E 80 some major projects viz. Drainage Projects, Jawahar Lal Nehru Project and Linning etc. under the World Bank Schemes were taken into hand and there was immediate requirements of technical staff. For this purpose and to take up the time bound works, 212 Assistant Engineers
F were recruited on *adhoc* basis and 178 Sub Divisional Officers were promoted from Junior Engineers/Draftsmen etc. on *adhoc* basis to meet the immediate requirement during the aforesaid period till their replacement by the joining of regular Assistant Engineers through Haryana Public Service Commission. The Haryana Public
G Service Commission recommended 176 number of Assistant Engineers in December, 1981 for regular appointment against the posts of those, who were appointed/ promoted as Assistant Engineer/Sub Divisional Officers on *adhoc* basis. They were given offer of appointment on
H 29.1.1982. On joining of regular Assistant Engineers, the

services of about 45 *adhoc* Assistant Engineers were terminated by the Government. The *adhoc* Assistant Engineers whose services were terminated by the Government filed Civil Writ Petition No. 1529/89 *Amarjeet Singh and others* v. *State of Haryana and other,* writs involving the same cause of action challenging their termination orders. Upon regular hearing the above Civil Writ Petition, the Punjab and Haryana High Court (Hon'ble Justice Mr. I.S. Tiwana) in its orders dated 3.9.84 decided the matter in favour of the *adhoc* Assistant Engineers recruited during the year 1980. Thus the services of *adhoc* Assistant Engineers could not be terminated and they continued to hold the posts of Assistant Engineers, till date. However, Government have filed Letter Patent Appeal No.186-90 of 1985 and 374-381 of 1985. *Amarjeet Singh etc.* v. *State* and the same is pending for decision in the Hon'ble Punjab and Haryana High Court. Similarly, the Sub Divisional Officers, who are promoted on *adhoc* basis in the year 1979-80 in excess of their quota could not be reverted by the Government for want of finalisation of Ranking List for the purpose of promotion to the post of Sub-Divional Officers in pursuance of the direction given by the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 5630-5631 of 1981. *J.P. Gupta and Shri Krishan* v. *State,* 1524/76 *M.L. Verma* v. *State* and 4489/82 *Shri R.K. Jain* v. *State.*"

The learned counsel appearing for the Government of Haryana explains that 176 Assistant Engineers selected by the Commission in December, 1981 for regular appointment are in addition to 390 Officers (212 Assistant Engineers recruited on adhoc basis and 178 Sub Divisional Officers promoted from the category of Junior Engineers/Draftsment etc. on *adhoc* basis). This statment is, however, disputed by learned counsel for the appellants. Be that as it may, the submission of the learned counsel for the Government of Haryana is this: both the Assistant Engineers and Assistant Executive Engineers are posted as Sub-Divisional Officers/Sub-Divisional Engineers. There is no other posting availabe for them. In the circumstances explained in the counter-affidavit, a large number of Assistant Engineers are in surplus over and above the cadre strength. They have to be posted some-

A where and they can be posted only as Sub Divisional Officers/ Sub Divisional Engineers. If Assistant Executive Engineers are also appointed as demanded by the appellants, they will be in further surplus inasmuch as they too can be posted only as Sub Divisional Officers/Sub Divisional Engineers - and there are no posts available to post them. The Government is finding it difficult to B give postings to the already existing Assistant Engineers, who have been recruited/promoted on *adhoc* basis as stated above and who could not be ousted because of the orders from courts. It is for this reason that the Government did not send requisition for filling up the 44 posts of Assistant Executive Engineers in Irrigation Branch. The said decision is a *bona fide* decision actuated by relevant considerations. There are absolutely no *mala* C *fides* on the part of the Government in not filling up the said posts of Assistant Executive Engineers. It is also brought to our notice that though a requisition was sent to the Commission in the year 1983 for 23 posts of Assistant Executive Engineers in the Irrigation Branch, the Government had withdrawn the said requisition on May 20, 1983 itself i.e., even before any D selection could be made. It was for this reason that no one was selected or appointed to the said category in that year. Counsel submitted, supported by the counsel for the Commission, that in these circumstances, the Commission was justified in not selecting anyone against the post of Assistant Executive Engineers in the Irrigation wing, more particularly when the expectation of the Commission that the Government may send a requisition therefor did not E materialise even by the date of finalisation of selections.

The question that arises in the above circumstances is whether the Government can be compelled to send a requisition to the Commission for the selecting Assistant Executive Engineers in respect of 44 vacant posts? F and if it can be so compelled, would it be appropriate to direct that those posts shall be filled by the candidates who applied for and appeared at the selection held in the year 1985?

The first thing to notice is that the Public Service Commission had no authority to include the vacancies in the Irrigation branch in the notification G issued by it when the Government had not asked for it. The requisition from the Government was to select Assistant Executive Engineers only for the other two wings viz., Buildings and Roads and Public Health. May be the Commission did so *bona fide*. Even so, the fact remains that none were selected against the vacancies in the Irrigation branch, evidently because no H demand/requisition ever arrived from the Government. Merely because the

appellants appeared at such selection they did not get any right to compel either the commission or the Government to select and appoint them. Indeed, it is not as if the appellants appeared only for the vacancies in Irrigation Branch. It was a composite notification for all the three wings. The appellants do not say that they confined their applications to Irrigation wing alone. Those selected for the other two wings had admittedly scored more marks at the selection. Because, the appellants could not get selected against the vacancies in the other wings, they have turned their attention to Irrigation wing. The relevance of their attack upon the selection procedure adopted by the Commission becomes clearer in this context. Be that as it may, the mere appearance at the selection does not clothe them with the right to selection and/or appointment. This is the principle affirmed by this court in *State of Haryana* v. *Subhash Chandra Marwaha,* [1974] 3 SCC 220 and *I.J. Divakar* v. *Governemt of Andhra Pradesh,* A.I.R. 1982 S.C. 1555. At the same time, we are constrained to observe that where the Rules have created a particular category, fixed its cadre strength and have also prescribed a quota for such category in the matter of promotion to the higher category, the Government would not be justified in not making appointments to such category for over a decade unless there are very strong and good reasons therefor. The Government would not be justified in nullifying - though not in word, but in spirit - the Rules in this manner. We are also not persuaded that the defence put forward by the Government in this case is acceptable. There is no reason why the Government did not think it fit to make some *adhoc* appointments to the category of Assistant Executive Engineers when it was recruiting such a large number, on *adhoc* basis, to the category of Assistant Engineers. The situation in which the Government finds itself today is really of its own making. The problem is no doubt real. The courts have to think twice before adding the numbers to the already over-loaded service. It is not so much a question of 'punishing' the errant but one of what to do with the surplus personnel and the consequent unwrranted burden upon the public exchequer. On balancing the contending rights and equities, we are of the opinion that at least part of the cadre strength of Assistant Executive Engineers in the Irrigation branch should be filled up in the near future.

The question then arises whether the selection held in 1985-86 at which the appellants had appeard, should be directed to be finalised. We do not think so. The situation is not similar to the one considered by this court in *Divakar.* That was a case where the commission called for applications pursuant to the requisition from the Government, held the interviews

A and was about to finalise the select list that the Government withdrew the requisition. In those circumstances, this Court, while holding that the candidates who appeared for the selection had no right to compel the commission or the Government to select and appoint them, yet gave a direction, in the interest of justice, to finalise the selection process and forward the select list to the Government. The situation in this case, as B already explained hereinbefore is totally different. The only direction that can properly be made herein is to direct the Government to take steps for filling up the vacancies existing in the category of Assistant Executive Engineers in the Irrigation branch as early as possible. Atleast half the vacancies therein should be filled within a period of one year from today.

C Before concluding, we must refer to certian letters relied upon by Sri Shanti Bhushan to justify the notification issued by the Commission. He relied upon the letters of the Engineer-in-Chief dated 16.8.1985, 16/20.5.1986 and another letter written in between (the date of this letter is not given) addressed to the Government of Haryana stating that while at the D moment there was no vacancy of Assistant Executive Engineer, there was a possibility of some vacancies arising on account of retirement etc. He, therefore, requested the Government to take steps to select persons therefor. Firstly, it may be noticed that the appointing authority for this category being the Government, only the Government could send the requirsition/demand E to the commission and not the Engineer-in-Chief. The aforesaid letters are merely in the nature of recommendation to the Government. Secondly, all the three letters are subsequent to the notification issued by the commission calling for applications. These letters, therefore, do not justify the commission calling for applications in respect of vacancies in the Irrigation branch.

F For the above reasons, the appeals are allowed partly. A direction shall issue to the Government of Haryana to take steps for filling up the vacancies in the category of Assistant Executive Engineers in Irrigation branch of P.W.D. as early as possible in accordance with law. Atleast half the vacancies shall be filled up within one year from today. It is further G directed that if any of the candidates who had applied in pursuance of the 1985 Notification apply again, and if they are found to have become age-barred, relaxation in the matter of age shall be granted to them so as to make them eligible for consideration. No other relief can be granted in these appeals. There shall be no order as to costs.

T.N.A. Appeals allowed.