A JAI SINGH DALAL AND ORS.

v.

STATE OF HARYANA AND ANR.

DECEMBER 18, 1992

B [A.M. AHMADI, M.M. PUNCHHI AND YOGESHWAR DAYAL, JJ.]

Civil Services: Punjab Civil Services (Executive Branch) Rules, 1930: Rule 5—Haryana Civil Services (Executive Branch)—Selection for appointment by Special Recruitment—Notificatioin issued—Change in Government—Subsequent withdrawal and issue of fresh notification revising selection criteria—Whether could be challenged—Whether employee could claim appointment as of right—Whether selection process once started must be completed—Whether the authority, having power to specify the method of recruitment could be deemed to have power to revise and substitute the same in the same manner.

C

D

Punjab General Clauses Act, 1898: Section 19—Applicability of—Selection for appointment by Special Recruitment—Notification issued—Subsequent withdrawal and issue of fresh notification fixing revised eligibility criteria—Validity of.

E

The appellants were members of the Haryana State Services and were working in different capacities in the year 1990. In that year there were 45 vacancies in the Services. The State Government took a decision to resort to special recruitment under Rule 5 of the Punjab Civil Services (Executive Branch) Rules, 1930 which were in force then, and in exercise F **of the power conferred by the proviso to Rule 5, 21 posts belonging to the State Civil Service were taken out from the purview of the State Public Service Commission and were decided to be filled up by special recruitment. The State Government issued a Circular dated July 17, 1990, to all Heads of Departments of the State Government calling upon them to** G **recommend eligible and suitable officers as per the criteria indicated therein for being considered for appointment by special recruitment. By a subsequent notification dated January 25, 1991, the State Government in consultation with the Public Service Commission made a slight modification in the eligibility requirement.**

H **The Circular and the subsequent Notifications issued by the State**

Government were challenged in a Writ Petition filed by certain State employees wherein the validity of Rule 5 was also put in issue. Another set of Writ Petitions was also filed by officers of various departments who were not eligible for special recruitment under the Circular and Notifications. The Writ Petitions were ultimately dismissed by the High Court. Against the said order of dismissal of the Writ Petitions, two appeals were filed in this Court by special leave. This Court directed that six posts should be kept available for the appellants in case they succeeded in the appeals.

A

B

While the process of selection was in progress there was a change of the Government and the new Government decided to review the earlier Government's decision in regard to special recruitment. Thereupon another notification was issued on December 30, 1991, withdrawing the earlier notifications. The new Government took a decision to reframe its policy in regard to making of special recruitment in consultation with the P.S.C. under the proviso to Rule 5 of the Rules.

C

D

Thereupon, the appellants filed a Writ Petition before the High Court, challenging the decision of the new Government to cancel the notifications dated December 20, 1990 and January 25, 1991, by the notification dated December 30, 1991 under challenge.

E

The respondents filed a counter explaining the reasons for its subsequent action. The Division Bench of the High Court dismissed the writ petition. Aggrieved, the appellants filed the appeal, by special leave, before this Court.

F

It was contended that even the newly formed Government saw the need for special recruitment to meet the exigencies of service but instead of permitting the P.S.C. to complete the selection process it decided to set at naught the entire process by issuing the notification dated December 30, 1991, even though the selection process was at an advanced stage and only the names of candidates from the aforesaid two departments were required to be forwarded, the entire process was scuttled by the State Government's refusal to forward the names of the candidates belonging to the said two departments. They further contended that this exercise was undertaken by the newly formed Government in total disregard of the decision of the High Court rendered in an earlier Writ Petition.

G

H

A The appellants also contended that the notification of March 9, 1992, was unsustainable as it was neither just nor fair, and, therefore, the High Court was in error in dismissing their writ petition *in limine*, that the State Government had no power to withdraw or rescined the earlier notifications of December 20, 1990 and January 25, 1991, and that since the notifications were issued under the Rules and not any statute, section B 19 of the Punjab General Clauses Act, 1898 would not be applicable, that the power, even if exercisable, could be exercised 'in the like manner and subject to like sanction and conditions' which necessitated consultation with the P.S.C. before the issuance of the notification dated December 30, 1991, by which the earlier two notifications were cancelled or withdrawn.

C

The respondent-State Government contended that it formulated the new policy to ensure that a more healthy criteria was laid down for the purpose of selection of candidates to the State Civil Service (Executive Branch) by way of special recruitment; that the State Government, in consultation with P.S.C., issued notification providing for special recruit- D ment for filling up 30 vacancies during 1992, the new notification laid down revised eligibility criteria.

It was also contended that the appellants had no right to be appointed to the posts in question and it was open to the Government, if the E circumstances so demanded, to revise the criteria for selection, and therefore, the High Court was justified in summarily rejecting the writ petition as no right of the appellants had been violated on the State Government withdrawing the earlier notifications by the subsequent notification of December 30, 1991 and that the State Government had inherent power to withdraw, rescind or cancel the notifications it had issued on the principle F that the authority in whom the power to create is vested has the power to destroy or mould its creation. Reliance was placed on section 19 of the Punjab General Clauses Act, 1898.

Dismissing the appeal, this Court

G

HELD : 1.1. It is settled law that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection and appointment on revised criteria. [828-H, 829-A]

H *Shankarsan Dash* v. *Union of India*, [1991] 3 S.C.C. 47, followed.

State of Haryana v. *Subhash Chander Marwaha & Ors.*, [1974] 1 S.C.R. 165, relied on. A

Rameshwar Nath Moudgil v. *State of Punjab & Ors.*, (1978) 6 SLJ 258, overruled.

B

1.2. In the instant case, the selection was yet to be made by the P.S.C. Therefore, the appellants cannot even claim that they were selected for appointment by the P.S.C. The selection process had not been completed and before it could be completed, the State Government reviewed its earlier decision and decided to revise the eligibility criteria for appointment. Therefore, the appellants had no right to claim that C the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the P.S.C. Merely because the selection process had travelled a certain length it cannot be said that it was not open to the Government to interfere with the selection process by revising the criteria for appointment and that the Government was under an obligation to make an D appointment on selection. The appellants had not yet been selected for appointment by special recruitment. [829-B]

1.3. Even assuming that the withdrawal of the earlier notifications by the subsequent notification dated December 30, 1991 does not, *stricto* E *sensu*, attract the provision of section 19 of the General Clauses Act, since the appellants have no legal right to insist on their selection and appointment to the vacant posts in question, the mode of arresting the process recedes in the background as the State Goverment could have informed the P.S.C. not to proceed with the selection process as it F desired to revise the norm for appointment. Once it is realised that merely because the State Government had sent a requisition to the P.S.C. to select candidates for appointment did not create any vested right in the candidates called for interviews, regardless of the fact that the selection process had reached an advanced stage, it does not matter whether the selection process is arrested by cancelling the earlier G notifications by another notification or by a mere communication addressed to the P.S.C. Even if the P.S.C. were to complete the process and select candidates, such selection by itself would *not confer a right* to appointment and the Government may refuse to make the appointment for valid reasons. At best, the Government may be required to H

A justify its action on the touchstone of Article 14 of the Constitution. [831-C,E]

1.4. Besides, the proviso to Rule 5 requires the method for recruitment to be specified by notification after consultation with the P.S.C. The consultation with the P.S.C. has to be in regard to the positive act of specifying the B method for recruitment and not in regard to the decision whether or not to resort to special recruitment. The proviso enables the making of special recruitment, but the method of such recruitment has to be specified by notification. It is, therefore, obvious that even after the State Government has decided to resort to special recruitment, it may for valid reasons change C its mind and one of the reasons could be that it desires to revise the extant eligibility criteria or substitute the same. This can be communicated to the P.S.C. for arresting the selection process which need not be done by a notification nor does it require consultation with the P.S.C. Prior consultation with the P.S.C. is required before the issuance of a notification specifying the method of recruitment which was done when the notification of D March 9, 1992, was issued. Therefore, even if Section 19 of the Punjab General Clauses Act is applied the notification of December 30, 1991 would not be rendered invalid for want of prior consultation on the thrust of the words 'in the like manner' employed therein. [831-G,H; 832-A,B]

E 1.5. There is no reason to hold that a State Government which has the power to specify the method of special recruitment by notification has no inherent power to revise the same if it for good reasons considers the same necessary. To so hold, would mean that even if the State Government has committed a mistake it has no power to rectify or correct the same. The authority which has power to specify the method of recruitment must F be deemed to have the power to revise and substitute the same in the same manner. On the anology of section 19 of the Punjab General Clauses Act, such an inherent power always exists in the authority to alter, vary, change or replace its creation. [832-C,D]

G CIVIL APPELLATE JURISDICTION : Civil Appeal no. 5428 of 1992.

From the Judgment and Order dated 7.2.1992 of the Punjab and Haryana High Court in C.W.P. No. 565 of 1992.

H P.P. Rao, R.K. Gupta and P.C. Kapur for the Appellants.

Harish N. Salve, Ayesha Khatri and Ms. Indu Malhotra for the Respondents. A

Ms. Madhu Tewatia and Vishnu Mathur for the impleading party.

The Judgment of the Court was delivered by

B

AHMADI, J. Special leave granted.

The appellants were members of the Haryana State Services and were working in different capacities in the State of Haryana in the year 1990. In that year the total strength of the Haryana Civil Service (Executive Branch) was 200 against which only 155 officers were in position; there C being 45 vacancies. The Government of Haryana took a decision to resort to special recruitment under Rule 5 of the Punjab Civil Services (Executive Branch) Rules, 1930 (hereinafter called 'the Rules') which were admittedly in force then. Special recruitment to service could be made under Rule 5 which rule may be reproduced at this stage:

D

> "5. Members to be appointed by the Governor of Haryana from amongst accepted candidates - Members of the service shall be appointed by the Governor of Haryana from time to time as required from among accepted candidates whose names have been duly entered in accordance with E these rules in one or other of the registers of accepted candidates to be maintained under these rules:
>
> Provided that if in the opinion of the State Government the exigencies of the service so require, the State Government may make special recruitment to the service by such F methods as it may by notification specify, after consultation with the Public Service Commission."

The appellants contend that in exercise of the power conferred by the said proviso, 21 posts belonging to the Haryana Civil Service (Executive Branch) were taken out from the purview of the Haryana Public Service G Commission (hereinafter called 'the HPSC') and were decided to be filled up by special recruitment. The State Government issued a Circular dated July 17, 1990, to all Heads of Departments of the State Government calling upon them to recommend eligible and suitable officers as per the criteria indicated therein for being considered for appointment by special recruit- H

A ment. The Circular *inter alia* provided that special recruitment would be made from amongst Class-II officers, excepting those who have a channel of promotion to the Haryana Civil Service (Executive Branch) and excepting those belonging to technical services, who fulfil the eligibility conditions set out therein. The eligibility criteria indicated in the Circular read as under:

B

"(i) should at least be a graduate of recognised university.

(ii) should not have attained the age of more than 48 years.

C (iii) should have rendered at least five years continuous Government service in regular capacity in Haryana.

(iv) should have overall record of 'very good' category or better than that during the last 5 years (i.e. from 1985-86 to 1989-90)."

D The date of reckoning for the purpose of age, educational qualifications and length of service was fixed as 1st January, 1990. The Heads of Departments were also informed that uptodate confidential reports, integrity certificates, information regarding pendency of any complaints/departmental proceedings, service book, etc., should also be forwarded to the Govern-

E ment. It will be seen from the above Circular that the Government initially decided not to consider those officers having a promotional channel for special recruitment but it was later felt that the exclusion was not warranted and consequently by a notification dated December 20, 1990, they too were included for consideration provided they satisfied the eligibility criteria set out hereinabove. By a subsequent notification dated January 25, 1991, the

F Government of Haryana in consultation with the HPSC made a slight modification in the eligibility requirement by substituting it as under:

"should have overall record of 'Very Good' category, i.e. at least 3 'Very Good' or better reports and 2 reports of not

G less than 'Good' category, during the last five years (i.e. from 1985-86 to 1989-90)."

The above Circular and the subsequent Notifications issued by the Haryana Government were challenged in a Writ Petition, C.W.P. No. 1201 of 1991, filed by certain State employees wherein the validity of Rule 5 was also put

H in issue. Another set of Writ Petitions was also filed by officers of various

departments who were not eligible for special recruitment under the aforesaid circular and notifications. The said Writ Petitions were ultimately dismissed by the High Court of Punjab and Haryana on April 2, 1991. Against the said order of dismissal of the Writ Petitions, two appeals have been filed in this Court by special leave and they are numbered Civil Appeal Nos. 2481 and 2482 of 1991. In those appeals this Court has ordered that 1 plus 5 i.e. 6 posts of Haryana Civil Service (Executive Branch) be kept available for the appellants should they succeed in the appeals.

Out of 90 candidates whose names were recommended for consideration by different Heads of Departments the State Government, after taking into consideration their *inter se* merit, suitability and eligibility, recommended the names of 75 candidates to the HPSC for selection. While the HPSC was in the process of selecting candidates on the basis of their past record and the interviews, it appears that pursuant to an undertaking given by the Advocate-General of Haryana at the hearing of C.W.P. No. 1201 of 1991 to send the eligible candidates from the education and local self-departments of the State Government, the cases of eligible candidates from these two departments had to be considered and forwarded to the HPSC to enable it to complete the selection process. However, before this could be done the scenario on the political front underwent a change. A new Government headed by Shri Bhajan Lal came to power. It decided to review the decision of the earlier Government in regard to special recruitment and, therefore, the names of candidates from the education and local self-department were not forwarded to the HPSC. The petitioners contend that even though the selection process was at an advanced stage and only the names of candidates from the aforesaid two departments were required to be forwarded the entire process was scuttled by the State Government's refusal to forward the names of the candidates belonging to the said two departments. They further contend that this exercise was undertaken by the newly formed Government in total disregard of the decision of the High Court rendered on April 2, 1991, in C.W.P. No. 1201 of 1991. It may here be mentioned that the newly formed Government called a meeting of the Council of Ministers to review the decision in regard to special recruitment taken by the earlier Government and decided to withdraw the notifications dated December 20, 1990 and January 25, 1991. It was also noticed that there was nothing on Government record to show that the

A Advocate-General was authorised to give such an undertaking on behalf of the Government. Be that as it may, the fact remains that the administrative department of the State Government decided to withdraw the aforesaid two notifications and the matter was placed before the Council of Ministers for approval as required by the Rules of Business (1977) of the State
B Government. Thereupon, on December 30, 1991, the following notification was issued:

> "The Governor of Haryana hereby withdraws Haryana Government, General Administration (Services) Department, Notification No. 41/2/90-SII, dated 20th December,
C 1990 and No. 41/2/90-SII, dated 25th January, 1991."

Thus, the newly formed Government took a decision to reframe its policy in regard to making of special recruitment in consultation with the HPSC under the proviso to Rule 5 of the Rules as is evident from the Agenda of
D the meeting of Council of Ministers to be held on December 11, 1991. The appellants contend that even the newly formed Government saw the need for special recruitment to meet the exigencies of service but instead of permitting the HPSC to complete the selection process it decided to set at naught the entire process by issuing the notification dated December 30, 1991. The present appellants thereupon filed a Writ Petition, C.W.P. No.
E 565 of 1992, impugning the decision of the new Government to cancel the notifications dated December 20, 1990 and January 25, 1991, by the impugned notification dated December 30, 1991. Notice was issued by the High Court at the preliminary hearing of the Writ Petition whereupon the respondents filed a counter explaining the reasons for its subsequent
F action. The Division Bench of the High Court after taking into consideration the submissions made at the Bar dismissed the Writ Petition on February 7, 1992, by the following order :

> "No ground to interfere. Dismissed."

G It is this decision of the Division Bench of the High Court which is sought to be assailed before us.

In the counter filed by the State Government in the High Court as well as in this Court, it has indicated the reasons for the formation of the
H new policy for special recruitment as under:

"(i) There have been changes twice in the previous policy for making special recruitment to the HCS (Ex. Branch), during 1990. The first notification dated 20.12.90 (Annex. P-2) provided that the candidates should not have attained the age of more than 48 years, should have rendered at least 5 years' continuous service in regular capacity in Haryana and should have overall record of 'Very Good' category or better than that during the last five years. Thereafter another notification dated 25.1.91 which was about a month after the first notification was issued when the interviews on the basis of the first notification were being conducted by Haryana Public Service Commission which provided that the candiates should have overall record of Very Good category i.e. at least 3 'Very Good' or better reports and 2 reports of not less than 'Good' category during the last five years. As a result of these changes in the policy framed previously, there has been considerable litigation against the State Government.

(ii) When the present Government took over, it noticed that some persons who even did not fulfil the eligibility criteria specified in notifications dated 20.12.90 and 25.1.91 were recommended by the Government to the Haryana Public Service Commission for special recruitment to the HCS (Ex. Branch). It was also observed by the Government that as a result thereof some more people might challenge these recruitments when these facts are known to them and there would be more delay in finalising the special recruitment and a large number of posts in the HCS (Ex. Branch) will remain vacant.

(iii) As the HCS (Ex. Branch) service is a premier Class-I service of the State, it is expected that special recruitment should be so made that really competent and experienced officers are recruited."

A The State Government, therefore, contends that it formulated the new policy to ensure that a more healthy criteria was laid down for the purpose of selection of candidates to the Haryana Civil Service (Executive Branch) by way of special recruitment. This was the stage at which the Writ Petition was disposed of by the High Court. Thereafter, on March 9, 1992, the State Government in consultation with HPSC issued notification B providing for special recruitment for filling up 30 vacancies during 1992. The revised eligibility criteria provided in the said notification requires that the candidate should not be more than 45 years of age, he should have rendered at least seven years continuous service in regular capacity and should have an overall record of 'Very Good' i.e. at least five 'Very Good' C or better reports and two of not less than 'Good' category during the last seven years. Conceding that there had been an acute shortage of officers belonging to the Haryana Civil Service (Executive Branch) cadre, with a sanctioned strength of 240 only 127 officers being in position and five officers likely to retire during the year, the State Government was anxious to ensure speedy recruitment and with that in view it had formulated a new D criteria in consultation with HPSC to enable the latter to complete the selection process at an early date. The various other allegations made by the petitioners in their petition have been formally denied both by the State Government as well as by the HPSC. The State Government contends that the petitioners had no right to be appointed to the posts in question and E it was open to the Government, if the circumstances so demanded, to revise the criteria for selection. They, therefore, contend that the High Court was justified in summarily rejecting the Writ Petition as no right of the petitioners had been violated on the State Government withdrawing the earlier notifications by the subsequent notification of December 30, 1991. F It is also denied that the subsequent notification was issued to over-reach the decision of the High Court in C.W.P. No. 1201 of 1991 rendered on April 2, 1991.

In the rejoinder affidavit filed on behalf of the petitioners while reiterating their objections in regard to the withdrawal of the earlier G notifications by the notification of December 30, 1991, the appellants contend that the notification of March 9, 1992, is unsustainable as it is neither just nor fair. On this line of reasoning, they contend that the High Court was in error in dismissing their Writ Petition *in limine*.

H It is clear from the above pleadings that in 1990 the State Govern-

ment resolved to resort to special recruitment to the Haryana Civil Service (Executive Branch) invoking the proviso to Rule 5 of the Rules. Pursuant thereto, it issued the notifications dated December 20, 1990 and January 25, 1991. The names of the candidates were forwarded by the State Government to the HPSC for selection. The HPSC commenced the selection process and interviewed certain candidates. In the meantime, on account of an undertaking given by the Advocate-General to the High Court at the hearing of C.W.P. No. 1201 of 1991 and allied Writ Petitions, the State Government was required to forward the names of the candidates belonging to two other departments of the State Government. Before it could do so, the new Government came into power and it reviewed the decision of the earlier Government and found the criteria evolved by the earlier Government unacceptable and also noticed certain infirmities in the matter of forwarding the names of eligible candidates. It, therefore, resolved to rescined the earlier notifications of December 20, 1990 and January 25, 1991. It will thus be seen that at the time when the Writ Petition which has given rise to the present proceeedings was filed, the State Government had withdrawn the aforesaid two notifications by the notification dated December 30, 1991. The stage at which the last mentioned notification came to be issued was the stage when the HPSC was still in the process of selecting candidates for appointment by special recruitment. During the pendency of the present proceedings the State Government finalised the criteria for special recruitment by the notification of March 9, 1992. Thus, the HPSC was still in the process of selecting candidates and had yet not completed and finalised the select list nor had it forwarded the same to the State Government for implementation. The candidates, therefore, did not have any right to appointment. There was, therefore, no question of the High Court granting a mandamus or any other writ of the type sought by the appellants. The law in this behalf appears to be well-settled. In the *State of Haryana* v. *Subhash Chander Marwaha & Ors.* [1974] 1 SCR 165, this Court held that the mere fact that certain candidates were selected for appointment to vacancies pursuant to an advertisement did not confer any right to be appointed to the post in question to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment. In that case, an advertisement was issued stating that there were 50 vacancies in the Haryana Civil Service (Judicial Branch). An examination was held by the HPSC and 40 candidates passed the said examination with the required minimum 45% marks. Their names were

A B C D E F G H

published in the Government Gazette. The State Government, the appointing authority, made seven appointments out of the said list in the order of merit. Respondents, who ranked 8, 9 and 13 respectively in that list, did not get an appointment although there were vacancies. The reason for not appointing the respondents was that in the view of the State Government, which was incidently identical to that of the High Court, candidates getting less than 55% marks in the examination should not be appointed as Subordinate Judges in the interest of maintaining high standards of competence in judicial service. Respondents 1 to 3 challenged this decision on the ground that the State Government was not entitled to pick and choose only seven out of them for appointment, because to do so tantamounted to prescribing a standard which was not contemplated. The State Government on the other hand contended that the rules did not oblige them to fill in all the vacancies and it was open to them to appoint the first seven candidates in the interest of maintaining high standards. It was further contended that there was no question of picking and choosing and since the rules did not preclude it from selecting from the list the candidates for appointment to set a higher standard, the State Government could not be said to have infringed any legal right of the selectees for appointment. In the background of these facts this Court came to the conclusion that the mere fact that the candidates were chosen for appointment in response to the advertisement did not entitle them to appointment. To put it differently, no right had vested in the candidates on their names having been entered on the select list and it was open to the Government for good reason not to make the appointments therefrom and fill in the vacancies. In a recent decision in *Shankarsan Dash* v. *Union of India*, [1991] 3 SCC 47, the Constitution Bench of this Court reiterated that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to appointment against the existing vacancies. It was pointed out that ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. The State is under no legal duty to fill up all or any of the vacancies by appointing candidates selected for that purpose. Albeit, the State must act in good faith and must not exercise its power *mala fide* or in an arbitrary manner. The Constitution Bench referred with approval the earlier decision of this Court in *Subash Chander's* case. Therefore, the law is settled that even candidates selected for appointment

have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection and appointment on revised criteria. In the present case, the selection was yet to be made by the HPSC. Therefore, the petitioners cannot even claim that they were selected for appointment by the HPSC. The selection process had not been completed and before it could be completed the State Government reviewed its earlier decision and decided to revise the eligibility criteria for appointment. It is, therefore, clear from the settled legal position that the petitioners had no right to claim that the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the HPSC.

Strong reliance was, however, placed on a decision of the Punjab and Haryana High Court reported in *Rameshwar Nath Moudgil* v. *State of Punjab & Ors.* (1978) 6 SLJ 258. In that case the petitioner fulfilled all the requirements of the advertisement and answered the eligibility criteria for appointment under the extant rules. He was permitted to appear at the examination and stood first among the candidates belonging to the category of released Indian Armed Forces Personnel. Since the process of selection had commenced he thought he would in ordinary course get the appointment. At that stage a rule was made which jeopardised his selection for appointment since it rendered him ineligible. The candidate challenged the rule which was given retrospective operation and the High Court invoking Article 16(1) came to the conclusion that his right to be considered for appointment was jeopardised since it violated the guarantee of the said article. In that case the main question was whether a rule giving retrospective operation could be validly enacted. The High Court came to the conclusion that the rule was aimed at excluding the petitioner and perhaps another candidate belonging to the same category and hence it was not *bona fide*. Learned counsel, however, placed emphasis on the following observations in paragraph 7 of the judgment :

> "We are of the opinion that exclusion from consideration by the retrospective operation of a rule, when consideration was crystallising into selection was, in the circumstances of the present case, a denial of the Fundamental Right guaranteed by Article 16 (1)."

These observations have to be read in the context of the facts of the

A case. The facts revealed that the Court was inclined to take the view that the events which had preceded the making of the rule led to an irresistible reference that the rule was aimed at excluding the petitioner and perhaps his companion from being considered for appointment. The explanation offered for the making of the rule was also found to be unsatisfactory. It was in that context that the Court came to the conclusion that when the B process of selection had gone to a certain length and was crystalling into selection, it was not open to the Government to amend the rule retrospectively with a view to excluding the petitioner and perhaps his companion from being considered for appointment. If the observations of the High Court were to be read to convey that merely because the selection process C had travelled a certain length it was not open to the Government to interfere with the selection process by revising the criteria for appointment and that the Government was under an obligation to make an appointment on selection, such an interpretation would run counter to the ratio laid down by the Constitution Bench of this Court in the case of *Shankarsan Dash* and would, therefore, not be good law. We are, therefore, of the D opinion that the case of the appellants is weak in the sense that they had not yet been selected for appointment by special recruitment.

It was then argued that the State Government had no power to withdraw or rescind the earlier notifications of December 20, 1990 and E January 25, 1991. On behalf of the State Government counsel submitted that the State Government had inherent power to withdraw, rescind or cancel the notifications it had issued on the principle that the authority in whom the power to create is vested has that power to destroy or mould its creation. Reliance was also placed on section 19 of the Punjab General Clauses Act, 1898, which reads as under:

> "19. Power to make to include power to add to, amend, vary, or rescind orders, rules or bye-laws-Where, by any Punjab Act, a power to issue notifications or make orders, rules or bye- laws is conferred, then that power includes a power exercisable in the like manner and subject to like sanction and conditions (if any) to add, to amend, vary or rescind any notifications, order, rules or bye-laws so issued or made."

Counsel for the appellants argued that since the notifications were

issued under the Rules and not any statute the said provision would not be applicable. It was further submitted that the power, even if exercisable, could be exercised 'in the like manner and subject to like sanction and conditions', which necessitated consultation with the HPSC before the issuance of the notification dated December 30, 1991, by which the earlier two notifications were cancelled or withdrawn. We see no merit in these submissions.

Assuming (without deciding) that the withdrawal of the earlier notifications by the subsequent notification dated December 30, 1991 does not, *stricto sensu,* attract the provision of section 19 extracted above, counsel for the appellants overlooks the fact that since the appellants have no legal right to insist on their selection and appointment to the vacant posts in question, the mode of arresting the process recedes in the background as the State Government could have informed the HPSC not to proceed with the selection process as it desired to revise the norm for appointment. Once it is realised that merely because the State Government had sent a requisition to the HPSC to select candidates for appointment did not creat any vested right in the candidates called for interviews, regardless of the fact that the selection process had reached an advanced stage, it does not matter whether the selection process is arrested by cancelling the earlier notifications by another notification or by a mere communication addressed to the HPSC. Even if the HPSC were to complete the process and select candidates, such selection by itself would not confer a right to appointment and the government may refuse to make the appointment for valid reasons. At best the government may be required to justify its action on the touchstone of Article 14 of the Constitution. In the present case the pleadings do not show that the subsequent notification dated December 30, 1991 is specifically put in issue in the memo of appeal nor is there material placed on record to so hold. Besides, the proviso to rule 5 requires the method for recruitment to be specified by notification after consultation with the HPSC. The consultation with the HPSC has to be in regard to the positive act of specifying the method for recruitment and not in regard to the decision whether or not to resort to special recruitment. The proviso enables the making of special recruitment but the method of such recruitment has to be specified by notification. It is, therefore, obvious that even after the State Government has decided to resort to special recruitment, it may for valid reasons change its mind and one of the reasons could be that it desires to revise the extant eligibility

A criteria or substitute the same. This can be communicated to the HPSC for arresting the selection process which need not be done by a notification nor does it require consultation with the HPSC. Prior consultation with the HPSC is required before the issuance of a notification specifying the method of recruitment which was done when the notification of March 9, 1992, was issued. Therefore, counsel's submission that if section 19 applied, B the notification of December 30, 1991 would be rendered invalid for want of prior consultation on the thurst of the words 'in the like manner' employed therein, is clearly misconceived. Even if section 19 does not apply, *stricto sensu,* we see no reason to hold that a State Government which has the power to specify the method of special recruitment by C notification has no inherent power to revise the same if it for good reasons considers the same necessary. To so hold would mean that even if the State Government has committed a mistake it has no power to rectify or correct the same. The authority which has power to specify the method of recruitment must be deemed to have the power to revise and substitute the same in the same manner. On the anology of section 19 such an inherent power D always exists in the authority to alter, vary, change or replace its creation.

For the above reasons we see no merit in this appeal and dismiss the same with costs.

N.P.V. Appeal dismissed.