

A BIHAR PUBLIC SERVICE COMMISSION AND ANR. ETC.

v.

DR. SHIV JATAN THAKUR AND ORS. ETC.

JULY 22, 1994

B [K. RAMASWAMY AND N. VENKATACHALA, JJ.]

*Constitution of India/Bihar Public Service Commission (Conditions of service) Regulation, 1960 :*

C *Articles 226, 316 to 322/Regulations 2, 3, 4 and 17—Bihar Public Service Commission—Member—Appointment of—Conditions of service—Protection of—Writ petition by member claiming facilities and amenities on par with Chairman—Held member not entitled to similar type of facilities and amenities which the Chairman has—Chairman has power to withdraw facilities provided by him to the member in order to carry out administration of the Commission—Withdrawal of such facilities cannot be variation of service condition of the Member.*

E *Public Service Commission—Member challenging in writ petition the functions performed by the Commission—High Court granting interim orders—Held discretionary remedy vested in High Court cannot be allowed to be invoked by a Member to question validity of functions performed by Commission as a body—Member must be regarded to be a party to such functions—Writ jurisdiction of High Court cannot be availed of to make interim order interfering with normal function of the Commission.*

F **The petitioner in Transferred case No. 2/93 was appointed as a member of the Bihar Public Service Commission (BPSC). A writ petition was filed in the High Court seeking his removal from the membership of the BPSC on the ground that infirmity of blindness suffered by him had made him unfit for the assignment. The High Court dismissed the writ petition, but observed that as long as the petitioner was a member of the BPSC, he should be given all facilities and amenities as enjoyed by any other member of the BPSC and in such matters there should not be any difference between a Chairman and an ordinary member. Later, the petitioner filed a Contempt Petition against the Chairman and the Secretary of the BPSC alleging that they failed to provide him the facilities and amenities as directed by the High Court. Meanwhile, the petitioner**

also filed a writ petition (CWJC No. 1898/92) in the High Court with the prayers that (A) he was entitled to have a well furnished separate chamber (such chamber having been provided to him earlier) on par with the Chairman as the Chairman was also a member of the BPSC within the meaning of proviso to clauses (1), (2) and (3) of Article 316 and proviso to Article 318 of the Constitution as well as under Regulation 2(d) of the Bihar Public Service Commission (Condition of Service) Regulations, 1960; (B) in view of the protection to the service conditions of a Member of a Public Service Commission under Article 318 of the Constitution, the facilities given to him after his appointment could not have been denied to him; (C) direction be issued to State Government to report to the President of India for taking penal action against the Chairman for alleged commission for omissions; and (D) to pass orders for appropriate punishment to respondents No. 3 and 4 for their wilful disobedience of the directions passed by the High Court in the earlier writ petition in relation to providing facilities to the petitioner.

The High Court passed in quick succession five interim orders on 27.8.92, 1.9.92, 7.9.92, 8.9.92 and 16.9.92 respectively : (i) requiring the BPSC to hold a meeting to take a decision as to how the litigation initiated by the petitioner against the BPSC should be conducted; (ii) granting leave to petitioner to join all members of BPSC, including BPSC through its Chairman as party-respondents in the writ petition; (iii) directing the Chairman to appear in Court with all relevant records, and ordering issue of non-bailable warrants against him if he failed to appear in Court; (iv) directing BPSC to take a decision in regard to the stand to be taken by BPSC in the writ petition filed by the petitioner; and (v) appointing a retired Judge of the High Court to preside over the meeting of BPSC order to decide whether affidavits filed by the Chairman in the writ petition could be regarded as those filed on behalf of the BPSC as also directing the Chairman and the Member of the BPSC not to withdraw their salary, pending disposal of the writ petition. These interim orders were challenged in the appeals by special leave by the BPSC. This Court, besides staying operation of the interim orders, made the writ petition (CWJC No. 1898/92) withdrawn to it for disposal. The said writ petition, on transfer to this Court, was registered as Transferred Case No. 2/93.

Dismissing the transferred case (CWJC 1898/92) and the appeals, this court

**A HELD: 1.1. It cannot be said that the petitioner, as a Member of the Bihar Public Service Commission is entitled to get similar type of facilities and amenities which the Chairman of the BPSC has. Though in the matters relating to appointment, term of office, removal and suspension of a member, performance of functions and discharge of duties of the Public Service Commission, as provided in Articles 316 to 321 of the Constitution, the Chairman and a member are on a common footing and are equal participants, but that does not mean that there is no difference between the offices held by the two as regards functions to be performed by each of them in respect of his respective office. [110-D to G]**

**C 1.2. The Chairman of a Public Service Commission is, like the Chief Justice of a High Court, made the repository of duties to be performed in respect of administration of the Public Service Commission under the Constitution. He is entrusted with the discharge of the administrative duties obviously for the reason that as high constitutional functionary he could be depended upon to discharge such functions justly and fairly. Under the scheme of the provisions in the Constitution and the scheme of the Bihar Public Service Commission (Condition of Service) Regulations, 1960, the Chairman of a Public Service Commission has an exclusive role to play in discharge of administrative duties of his office as a Chairman while a member cannot have any role to play in that regard unless otherwise required. [111-C to E]**

**F 2.1. The Regulations under Article 318 of the Constitution made with respect to the conditions of service of Members of the Public Service Commission cannot vary the conditions of service of a Member of the Public Service Commission to his disadvantage after his appointment. A Member of the Public Service Commission, as may be the case with the Chairman, can make a grievance when any condition of his service is varied to his disadvantage after his appointment by Regulations made in that regard, and obtain relief from courts. [111-F, G]**

**G 2.2. When certain facilities or amenities are provided by the Chairman to a Member of the Public Service Commission after his appointment, while carrying out the administration of the Commission, the Chairman may withdraw any of such facilities or amenities if the administrative exigencies so demand. Withdrawal of such facilities or amenities cannot amount, at any rate to variation of service conditions of a Member of the**

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Public Service Commission envisaged under the proviso to Article 318. A  
[111-H, 112-A, B]

2.3. The facilities of accommodation to be provided to the Members of the BPSC for their office work has to necessarily depend upon the accommodation available for its functioning. However, an institution like the Public Service Commission should not be starved of the accommodation or any other facilities or amenities needed by its Members out of necessity, by the State Government. [112-F, G] B

2.4. Insofar as the compensatory allowance claimed by the petitioner is concerned, it is open to the petitioner to seek grant of the same under regulation 17 of the Regulations which if sought, would be considered and decided on merits. [112-H] C

3. No Member of a Public Service Commission could be allowed to question the validity or correctness of the functions performed or duties discharged by the Public Service Commission as a body, while he was its Member, for the simple reason that such Member must be regarded to be a party to the function required to be performed or the duty required to be discharged by the Public Service Commission as a body or institution even though he might have been a dissenting Member or a Member in a minority or a Member who had abstained from taking part in such function performed or duty discharged. Discretionary remedy vested in the High Court under Article 226 of the Constitution cannot, therefore, be allowed to be invoked by a Member of the Public Service Commission to question the correctness or validity of functions performed or duties discharged by the Public Service Commission as a body or institution according to well established procedures. [109-B to D] D E F

4. The contempt petition filed by the petitioner with reference to the very allegations as made in the writ petition against the Chairman and the Secretary of the BPSC having been rejected by the High Court earlier, the question of seeking the same relief over again can neither arise nor be permitted to be raised in the writ petition. [109-E] G

5.1. Article 226 of the Constitution empowers the High Court to exercise its discretionary jurisdiction to issue directions, orders or writs including those enumerated therein for enforcement of the right conferred under the Constitution or for any other purpose, but such discretion, being H

**A** a judicial discretion is to be exercised on the basis of well established judicial norms, and cannot be used by the High Court to make interim orders which can in no way help or aid the court in granting the main relief sought in the writ petition. [115-E-F]

**B** 5.2. The writ jurisdiction of the High Court could not have been availed of to make the interim orders which interfered with the normal functioning of the BPSC. The interim orders indicate that the High Court has sought to take over the responsibility of carrying on the functions of BPSC by appointing its own Chairman for conducting a meeting of the BPSC. [114-H, 115-B]

**C** 5.3. The interim orders passed by the High Court not being those made to maintain the *status quo* or *undo* an order the review of which is sought so that the ultimate relief to be granted to the party approaching it may not become futile, become wholly unsustainable. Such interim orders are made by the High Court, to say the least, without realisation that they had the effect of putting the Chairman and its Members to ridicule in the eyes of the general public and making a constitutional institution of the BPSC a mockery. [115-G, H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4878-82 of 1994.

**E** From the Judgment and Order dated 27.8.92, 1.9.92, 7.9.92, 8.9.92 & 16.9.92 of the Patna High Court in C.W.J.C. No. 1898 of 1992.

L.R. Singh for the Appellants.

**F** S.B. Upadhyay, Gopal Singh, B.B. Singh and S.K. Bhattacharya for the Appearing Parties.

The Judgment of the Court was delivered by

**G** VENKATACHALA, J. SLP(C) Nos. 12593-97 of 1992 are the Special Leave Petitions filed by the Bihar Public Service Commission - the BPSC and its Chairman. Dr. Ram Ashray Yadav, who are Respondent-4 and Respondent-3 respectively in Writ Petition, C.W.J.C. No. 1898 of 1992 filed by Dr. Shiv Jatan Thakur (Dr. Thakur) before the High Court of Judicature at Patna impugning the interim orders made therein by the High Court on several dates. Transferred Case No. 2 of 1993 is the very Writ Petition.

**H** C.W.J.C. No. 1898 of 1992 before the High Court, which has been

withdrawn to this Court according to an order made in that regard on 18th November, 1992 in the said SLPs. As the said SLPs as well as the said Transferred Case were set down together for hearing, we have heard learned counsel on all sides and are proceeding to dispose them of by this common judgment. A

Since a correct understanding of the factual background of the Special Leave Petitions and the Transferred Case, becomes necessary for their proper disposal, such background calls for a brief mention. B

Dr. Thakur was appointed as a Member of the BPSC on 4th March, 1991. By a Writ Petition, C.W.J.C. No. 446 of 1992 filed in the Patna High Court by an advocate, issuance of a writ of *qua warranto* for removal of Dr. Thakur from his membership of the BPSC was sought on the ground that the infirmity of blindness suffered by him, had made him unfit to continue as a Member of the BPSC. The High Court, no doubt, dismissed that writ petition by its judgment dated the 16th January, 1992, but observed therein thus : "Dr. Thakur as long as was not removed from the membership of the BPSC in accordance with law, was entitled to and shall be given by the BPSC and its Chairman and Officers/employees all the facilities and amenities as enjoyed by any other Member of the BPSC and in such matters there should not be any difference between a Chairman and an ordinary Member like Dr. Thakur, who shall be entitled to enjoy all the facilities enjoyed by the Chairman." That observation of the High Court, it appears, prompted Dr. Thakur to file a Contempt Petition. MJC No. 324 of 1992 before it against the Chairman as also the Secretary of the BPSC. alleging that they had wilfully violated and disobeyed the directions contained in the said observation and the same called for taking contempt action against them. C  
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But, when the said contempt petition, was about to be rejected, Dr. Thakur, it also appears, filed an independent Writ Petition in the same High Court, being C.W.J.C. 1898 of 1992 seeking issuance of directions (i) to the Chairman of the BPSC, the State of Bihar and the Governor of Bihar to restore to him the facilities which, it was said, he had enjoyed till 1st October, 1991 and (ii) to the Government of Bihar and the Governor of Bihar to report to the President of India of the omissions and commissions of the Chairman, while he performed his functions or discharged his duties as the Chairman of the BPSC, so as to make the President to take suitable G  
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A punitive action against him according to law. In that writ petition he had also sought from the High Court, award of punishment to the Chairman of the BPSC and its Secretary for the alleged wilful disobedience of the directions in the observation of the High Court's earlier judgment in C.W.J.C. 446 of 1992.

B However, the High Court, which subsequently rejected the contempt petition filed by Dr. Thakur by its order dated 21st May, 1992, did so subject to the observation made therein to the effect that it was dismissing the contempt petition without prejudice to the rights and contentions of the parties in other proceedings.

C The other proceeding in respect of which the rights and contentions of parties were saved by the High Court as above while dismissing Dr. Thakur's contempt petition, is the aforesaid Writ Petition No. 1898 of 1992 of Dr. Thakur in which the High Court subsequently made several successive interim orders. Interim Order dated the 27th August, 1992, is that made upon an oral prayer of Dr. Thakur. By that interim order, the BPSC was required to hold a meeting on 29th August, 1992 and take a decision as to how litigation has to be conducted on behalf of the BPSC in respect of the writ petition filed by Dr. Thakur. The second interim order made in that Writ Petition by the High Court just two days later on 1st September, 1992, as appears from that order itself, was made for the reasons that no one appeared in Court on behalf of the BPSC on that day and that no one produced the decision which should have been taken by the BPSC pursuant to Court's earlier Order dated 27th August, 1992. The order further discloses that leave was given to Dr. Thakur to join all the members of the Commission including the BPSC through its Chairman as respondents in the Writ Petition. Then follows the third interim order made in the Writ Petition by the High Court on 7th September, 1992, which read :

G "This matter would appear tomorrow when the Chairman, Bihar Public Service Commission, is directed to appear in Court with all relevant records in connection with this matter, failing which non-bailable warrant of arrest shall be issued against him.

H Let it be recorded that no one appears on behalf of the Chairman except for asking adjournment by a junior advocate and no record is produced.

Let it appear tomorrow under the same heading.

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This order be communicated by the Registrar of this Court to the Chairman personally today."

There is made, on the heels of the said interim order, the fourth interim order on 8th September, 1992. By that interim order a meeting of the Commission has been ordered to be held to ascertain the views of the different members of the Commission regarding the various allegations made by Dr. Thakur and answers given to the same by the Chairman of the BPSC, making it clear that it will be open to each of the members to record his individual opinion. That order further reads thus :

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".....At the instance of any member of the Commission, both Dr. Thakur and the Chairman can be called upon by other members of the Commission to submit any explanation or clarification. However, the decision shall be taken in a meeting of the Commission but the petitioner or the Chairman shall not be entitled to vote or be present when the votes are being cast....."

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Then comes the fifth interim order made on September 16, 1992. By that order, the High Court appointed Mr. Justice L.P.N. Sahdeo, retired Judge of the Patna High Court to preside over the meeting of the BPSC to decide whether the affidavits filed by the Chairman of the BPSC in opposition to the Writ Petition filed by Dr. Thakur could be regarded as that filed on behalf of the Commission. Above all, the High Court, by that interim order, directed that during the pendency of the Writ Petition in the High Court neither the Chairman nor the Members of the BPSC shall draw their salaries and allowances.

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When the said interim orders of the High Court, were impugned in the above S.L.P.s, this Court having regard to the unwarranted situation which had developed on account of the successive interim orders made in the said writ petition pending before the High Court, did stay the operation of the said interim orders, as also, further proceedings in the Writ Petition, by appropriate orders made in that behalf from time to time. Thereafter, by consent of parties and at the instance of the Attorney General of India, the very Writ Petition in which the said interim orders were made is withdrawn to this Court, for disposal of the Writ Petition itself by this Court, because of the important points involved therein. The factual back-

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A ground of the special leave petitions and the Transferred Case being what we have stated, we may now proceed to consider and dispose of the Special Leave Petitions and the Writ Petition. C.W.J.C. No. 1898 fo 1992 (the transferred case).

B The reliefs sought for, by Dr Thakur, the member of the BPSC, in his writ petition (the transferred case), filed invoking the jurisdiction of the High Court under Article 226 of the Constitution were, these :

(A) To issue an appropriate writ/s, direction/s, order/s for the retrieval of all the facilities unfailingly enjoyed by the petitioner till the 1st October, 1991 which *inter alia*, include

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- (i) the well furnished officer-chamber house in room No. 2 of the administrative building containing telephone, cooler, one English Typewriter, two steel almirahs, ante-room for P.A. and the toilet attached to the Chamber.
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- (ii) the service of reader, Mr. R.P. Verma, appointed under sub-regulation 2(b) of the Bihar Public Service Commission Regulation (called in short hereinafter Regulation) read with the Education Department letter No. J/M/-07/83 dated 30.4.1985, and the Finance Department Circular No. 3/A-3-2/91/3985/F92) of 25.7.91.
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- (iii) P.A. of confidence, Shri S.M. Das and the orderly of choice Shri Abhinandan Prasad Badal in spirit of Rule 1(iv)(g)(5) and 2.8(b) respectively of the Secretariat Instructions were attached with the petitioner.

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(B) to issue appropriate writ/s, order/s directing the respondents No.1 and 2 to report the misbehaviour and omission or commission of Respondent No.3 to His Excellency the President of India for suitable action under Article 317(1) and (2) of the Constitution of India for his violation of Articles 14, 318 and 320(3) of the Ccnstitution for his con-travention of Sections 176, 186, 189 and 504 of the Indian Penal Code, for his gross misuse of official position.

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(C) To issue appropriate Writ/s, order/s directing the respondent No. 1 to take suitable action against respondent No. 4 for his wilful execution or illegal orders passed by respondent No. 3 in the omission or commission.

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(D) To pass order/s for the appropriate punishment to the respondent No. 3 and respondent No. 4 for their wilful disobedience of the direction passed by this Court by way of observation in the C.W.J.C. No. 446/92 ruling thereby the petitioner is entitled to and shall be given by the Commission, its Chairman, officers/employees all the facilities as enjoyed by any other member in respect of those matters where there is no difference between the Chairman and ordinary members in this regard, he shall also be entitled to enjoy all the facilities enjoyed by the Chairman.

The said reliefs claimed by Dr. Thakur in his writ petition, are since based on his membership of the BPSC, it would be advantageous to notice here itself, the provisions relating to Public Service Commissions found in the Constitution of India and the provisions in the Bihar Public Service Commission (Conditions of Service) Regulations, 1960, for short 'the Regulation', which would give out the institutional character of the BPSC, functions to be performed and duties to be discharged by the BPSC in respect of certain matters as a body comprised of Chairman and Members, administrative functions of the BPSC to be performed by the Chairman, eligibility of persons to become Chairman or Member of the BPSC and the duration of their offices, the rights and privileges of the Chairman and Members, their service conditions, finances of the BPSC and the Legislature's control over the BPSC.

Chapter II of Part XIV of the Constitution contains provisions relating to Public Service Commissions. Article 315 in that Chapter relates to establishment of Public Service Commissions for the Union and for the State. Article 316 therein which refers to appointment and term of office of Chairman and members of the Public Service Commissions, states that such appointments of Chairman and members to a State Public Service Commission are to be done by the Governor of the State concerned subject to the eligibility criteria to be satisfied by the appointees as provided for under the proviso to that Article. Article 316 (1-A) therein which specifically deals with the office of the Chairman of the Commission reads :

"If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under clause (i) to the vacant office has entered on duties thereof or, as the case may be, until the

- A Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission and the Governor of the State in the case of a State Commission, may appoint for the purpose."
- B Article 316(2) therein while fixes the term of office of the member of Public Service Commission, its proviso says that his membership ceases on resignation or removal. Article 316(3) therein makes such member, on the expiration of term of his office, ineligible for re-appointment to that office. Article 317(i) therein states that subject to the provisions in clause
- C (3) thereof, the Chairman or any other member of the Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that
- D the Chairman or such other member, as the case may be, ought on any such ground to be removed. Clause (2) of that Article empowers the President in the case of Union Commission or a Joint Commission and the Governor in the case of a State Commission to suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (i) until the
- E President has passed orders on receipt of the report of the Supreme Court on such reference. But clause (3) thereof enables the President, to remove from office, the Chairman or any other member of a Public Service
- F Commission if the Chairman or such other member, as the case may be is adjudged as insolvent : or engages during his term of office in any paid employment outside the duties of his office : or is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. Clause (4) of that Article says as to when the Chairman or a member of the Public Service Commission shall be deemed to be guilty of misbehaviour under clause (i) thereof.
- G Then, comes Article 318, which found in the same Chapter, empowers the President or the Governor, as the case may be, by regulations –
- (a) to determine the number of members of the Commission and their conditions of service, and
- H (b) to make provision with respect to the number of members of the

staff of the Commission and their conditions of service. A

But proviso to that Article, protects the conditions of service of a member of the Public Service Commission, by stating that the conditions of service of a member shall not be varied to his disadvantage after his appointment.

However, Article 319 therein prohibits the holding of governmental offices by the Chairman and members of Commission on ceasing to be Chairman or members. B

When it comes to Article 320 therein, it deals with functions of Public Service Commissions. Clause (i) thereof states that it shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively. Clause (2) thereof refers to the duty to be performed by the Union Public Service Commission in situations mentioned therein. Clause (3) thereof refers to duty of the Union Public Service Commission or the State Public Service Commission, as the case may be, to advise on matters on which it shall be consulted, or referred for its advice. Article 321 therein empowers the Parliament and the Legislature of a State to provide by legislation, for the exercise of additional functions by the concerned Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution. C D E

Article 322 therein states that the expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State. Clause (i) of Article 323 therein imposes a duty on the Union to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereby together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non- acceptance to be laid before each House of Parliament. Similarly the Governor is required to cause a copy of the report together with a memorandum to be placed before the Legislature of the State. F G

Coming to the regulations which are made under Article 318 of the H

**A** Constitution - Part I thereof contains preliminary provisions, Part II thereof contains provisions relating to composition of the Commission and pay of members, Part-III contains provisions relating to conditions of service of members, and Part-IV contains provisions relating to staff of the Commission. Clause (b) and Clause (d) of Regulation 2 in Part I of the Regulations, give the meaning of 'compensatory allowance' and 'member' thus :

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"(b) "Compensatory Allowance" means an allowance granted in consideration of personal expenditure or loss of amenities or private practice, necessitated by the special circumstances in which duty is performed. It includes a travelling allowance but does not include a sumptuary allowance or the grant of a free passage by sea to or from any place outside India :"

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"(d) "Member" means a member of the Commission and includes the Chairman;"

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Out of the Regulations in Part II Regulation 3(i) declares that the Commission shall consist of a Chairman and 10 other members, while Regulation 4 thereof provides for a higher monthly pay of the Chairman and a lower monthly pay for each of the members. Out of the Regulations in Part III dealing with the conditions of service of members. Regulations 5A to 7 thereof deal with the matters concerning leave of the Chairman and the members of the Commission. Regulation 8 says, "when the Chairman is absent on leave or otherwise, the seniormost Member may hold current charge of the administrative duties of the Chairman and be allowed a special pay of Rs. 200 per month during such period." Then Regulations 9, 10, 11, 12, 13, 14 and 15 deal with pensions payable to the Chairman and the members of the Commission. Regulation 16 deals with travelling and halting allowances of the Chairman and members. Coming to Regulation 17 it empowers the Governor to grant special compensatory allowance as may be fixed by him. Regulation 18 says that medical facilities admissible to the All India Service officers and their family will be admissible to the Chairman and the members of the BPSC and their families. Regulation 19 thereof says that the Chairman and the members of the Commission may recess at Ranchi on their own expense for a period not exceeding three months in any calendar year subject to the following conditions :

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(a) That the recess will be continuous : and

(b) that the Chairman and other members may take one stenographer and two orderlies each at Government expenses. A

Regulation 20 thereof deals with the right of the member to subscribe to the General Provident Fund. Regulation 21 thereof which deals with residence, says, "if a residence owned or leased by Government is allotted to a Member, his occupation of the residence shall be subject to the rules which apply to an officer of the I.A.S. provided that if the residence is one specially meant for a member, the member shall be liable to pay the standard rent of the residence or rent at the rate equal to 10 per cent of his monthly emoluments, whichever is less, irrespective of whether he occupies the residence or not." B C

Regulation 21A enables the member to obtain house building advance and motor car purchase advance, as per appropriate rules applicable to Government servants drawing comparable emoluments. D

Part IV contains Regulations connected with the staff of the Commission, as may be determined by the Governor in consultation with the Commission. In that part there is Regulation 31 which empowers the Secretary to appoint the staff subject to the control of the Chairman. The last Regulation i.e. Regulation 33 therein which is of a general nature, says "if any question arises relating to the interpretation of these Regulations, the decision of the Governor thereon shall be final." E

From the said provisions of the Constitution and the Regulations, it becomes clear that the BPSC is an independent institution, which has been brought into existence with the avowed object of maintaining the integrity, sanctity and efficiency of the civil services of the State of Bihar. The Chairman and members to be appointed to the BPSC become constitutional functionaries. The provisions clearly indicate as to what are the functions to be discharged by the Chairman and members of the Commission as a body and as to what are the administrative functions to be discharged by the Chairman of the Commission. At the same time, the provisions indicate as to what are the service conditions of members which are protected. Thus, the provisions in the Constitution and the Regulations together constitute an exhaustive Code for the BPSC within the frame work or parameters of which its functionaries can function. F G H

A We shall now take up for our consideration the reliefs sought by Dr. Thakur in his writ petition (transferred case).

B What is claimed in prayer paragraph (A) as relief of retrieval of facilities, is founded mainly on two grounds : (i) Petitioner (Dr. Thakur), who is a Member of the BPSC, is entitled to have a well furnished separate chamber in the Administrative Building, when the Chairman of the BPSC, who is also a member of the BPSC within the meaning of proviso of clauses (1), (2) and (3) of Article 316 and Article 318 of the Constitution and regulation 2(d) of the Regulations is having a well furnished separate chamber in the Administrative Building, inasmuch as he was given such separate chamber earlier. (ii) When the proviso to Article 318 of the Constitution has protected the service conditions of a member by stating that 'the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment', the facilities which were given to the petitioner after his appointment could not have  
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D been denied to him.

E Insofar as the relief as to direction to be given to the State Government for reporting to the President of India for taking penal action against the Chairman sought by the petitioner in prayer paragraphs (B) and (C) is concerned, the same is founded on allegations of certain acts and omissions attributed to the Chairman, while the BPSC discharged its functions relating to conduct of certain examinations etc.

F Then coming to the relief as to award of punishment by the Court claimed in prayer paragraph (D), the same is founded on alleged violation and disobedience of the direction by the Chairman as to the need to provide all the facilities to Dr. Thakur said to have been contained in the observation made in the order of the High Court, dismissing the C.W.J.C. No. 446/92.

G Shri R.K. Garg, Senior Advocate, who appeared for Dr. Thakur, the petitioner in the writ petition, since did not make any submission in support of the reliefs sought in paragraphs (B) and (C) of the prayer in the writ petition, we do not feel the need to consider them. Shri Garg, we are inclined to think, did not make any submission in support of the reliefs  
H sought in paragraphs (B) and (C) obviously realising that the allegations

on which those reliefs were founded, related to functions of the BPSC, which could not have been disowned by the BPSC's sitting member. Whatever that be, no member of a Public Service Commission, in our considered view, could be allowed to question the validity or correctness of the functions performed or duties discharged by the Public Service Commission as a body, while he was its member. It ought to be so for the simple reason that, such member must be regarded to be a party to the function required to be performed or the duty required to be discharged by the Public Service Commission as a body or institution, even though he might have been a dissenting member or a member in a minority or a member who had abstained from taking part in such function performed or duty discharged. Discretionary remedy vested in the High Court under Article 226 of the Constitution cannot, therefore, be allowed to be invoked by a member of the Public Service Commission to question the correctness or validity of functions performed or duties discharged by the Public Service Commission as a body or institution, according to well established procedures.

Again, Shri R.K. Garg did not make any submission as regards relief (D) sought for in the prayer of the writ petition. He appears to have done so and, in our view, very rightly, because the contempt petition which Dr. Thakur had filed with reference to the very allegation now put forward, against the Chairman and the Secretary of the BPSC, when was rejected by the High Court earlier, the question of seeking the same relief over again can neither arise nor be permitted to be raised.

Therefore, what now, remains for our consideration is the relief sought by Dr. Thakur in prayer paragraph (A) of the writ petition (the Transferred Case).

The facilities, the retrieval of which is sought by way of relief here by Dr. Thakur were those which he claimed to have enjoyed for a short time after his appointment on 4th March, 1991 till 1st October, 1991. Those facilities, according to him comprised of, firstly, the well-furnished office room in the administrative building containing telephone, cooler, one English typewriter, two steel almirahs, anti-room for P.A. and the toilet attached to the room; secondly, the services of a reader, Mr. R.P. Verma, who had been appointed for the petitioner's benefit; and thirdly, services

A of Mr. S.N. Das, his P.A. of confidence, and orderly of his choice, Mr Abhinandan Prasad Badal.

B The contention of Shri R.K. Garg, the learned Senior counsel for the  
petitioner, Dr. Thakur, was to put it in his own words. "Chairman was after  
all, the first among the members, in that, Article 316 of the Constitution of  
India relating to appointment and term of the Office of the Chairman and  
other members and Article 317 relating to removal and suspension of  
Chairman and members, make no distinction between the Chairman and  
other members of the BPSC. If that be so, there was no reason why a  
member should be denied the facilities which were available to the Chair-  
man". The other contention urged by him was that Article 318 of the  
Constitution which enables the making of regulations in respect of service  
conditions of members of the Commission, when by its proviso, declares  
that the conditions of service of the member of the Public Service Com-  
mission shall not be varied to his disadvantage after his appointment, the  
facilities provided to the member (Dr. Thakur) after his appointment  
should not have been withdrawn by the Chairman of the BPSC. Both the  
contentions of Shri Garg, in our view, lack merit. It is true that the  
provision in Article 316 of the Constitution relating to appointment and  
term of Office of a Member of the Public Service Commission and that the  
provision in Article 317 relating to removal and suspension of a Member  
of the Public Service Commission treat the Chairman of the Public Service  
Commission and the member of the Public Service Commission, on a  
common footing, as regards matters provided for therein. It may also be  
true that in the matter of performance of functions and in the matter of  
discharge of duties of the Public Service Commission, required to be  
performed or discharged under Article 320 or Article 321 of the Constitu-  
tion, the Public Service Commission's Chairman and every member are  
equal participants. But, that does not mean that there is no difference  
between the office held by the Chairman and the office held by member  
of the Public Service Commission as regards functions to be performed by  
each of them in respect of his respective office. When Article 316 (1A) of  
the Constitution, expressly recognises "the office of the Chairman" and  
specifically refers to the duties to be performed by him as the Chairman  
of the Public Service Commission, the Chairman of the Public Service  
Commission and the member of the Public Service Commission cannot be

treated/on a common footing as urged. The Chairman cannot be treated A  
on par with a member, becomes clear not only from regulation 4 of the  
Regulations which provides for higher salary to the Chairman and lower  
salary for the member, but also from regulation 8 thereof which provides  
for payment of a special allowance to a senior member who holds current B  
charge of administrative duties of the Chairman. Further, the Chairman  
and the member of the Public Service Commission cannot be treated as  
persons standing on the same footing in respect to every matter, when the  
Constitution in several of its Articles treats the Chairman and the members C  
alike for certain purposes and in several other Articles treats them dif-  
ferently for certain other purposes by use of the words 'the Chairman and  
the member', and 'other than the Chairman'. Therefore, under the scheme  
of the provisions in the Constitution and the scheme of the Regulations to  
which we have already adverted. Chairman of a public Service Commission  
has an exclusive role to play in discharge of administrative duties of his  
office as a chairman while a member cannot have any role to play in that D  
regard unless otherwise required. As the Chief Justice of a High Court is  
made the repository of duties to be performed in respect of administration  
of a High Court under the Constitution, the Chairman of a Public Service  
Commission is made the repository of duties to be performed in respect  
of administration of the Public Service Commission under the Constitution. E  
Chairman of a Public Service Commission is entrusted with the discharge  
of administrative duties of the Public Service Commission obviously for the  
reason that as high constitutional functionary he could be depended upon  
to discharge such functions justly and fairly. When Regulations under  
Article 318 of the Constitution are made with respect to the conditions of  
service of Members of the Public Service Commission, it is true, such F  
regulations cannot vary the conditions of service of the Member of the  
Public Commission to its disadvantage after this appointment. Therefore,  
what becomes obvious is that so far as the Member of the Public Service  
Commission is concerned, as may be the case with the Chairman, he can  
undoubtedly make a grievance thereof when any condition of his service is G  
varied to his disadvantage after his appointment, by regulations made in  
that regard and obtain relief from courts. But, when certain facilities for  
amenities are provided by the Chairman to a member of the Public Service  
Commission after his appointment, while carrying out the administration  
of the Commission nothing could come in the way of such Chairman of the H

- A Public Service Commission, to withdraw any of such facilities or amenities given to a member in carrying out the administration of the same Commission if the administrative exigencies so demand. Withdrawal of such facilities or amenities cannot amount, at any rate to variation of service conditions of a member of the Public Service Commission envisaged under the proviso to Article 318. Hence, the contentions of the learned counsel for the petitioner based on equal status of member with the Chairman and on proviso to Article 318 of the Constitution. Lacks merits. From this it follows that the petitioner member of the Public Service Commission is entitled to get similar type of facilities and amenities which the Chairman of the BPSC has, cannot be countenanced and is liable to be rejected.

- Though we have rejected the contentions of the learned counsel of the petitioner for retrieval of the facilities claimed by the petitioner as a matter of his constitutional or legal right, there should be no reason for the petitioner to feel, as urged by Shri R.K. Garg, that as a member of the Public Service Commission, he is humiliated by withdrawal of the facilities of Public Service Commission provided to him earlier by the Chairman as we were told on behalf of the BPSC that almost all the facilities which he had earlier are restored and the same was not disputed. However, Shri R.K. Garg's insistence that a separate room with toilet facility shall be ordered to be provided for the petitioner, in that, according to him such facility was required by him not only as a completely blind person but also for effective functioning as a member, cannot bear fruit since it was submitted on behalf of the BPSC that there were hardly three rooms in its Administrative Building available for the BPSC to function, one room cannot be spared exclusively for use of the petitioner. We cannot say anything in this matter, in that the facilities of accommodation to be provided to the members of the BPSC for their office work has to necessarily depend upon the accommodation available for its functioning. All that could be said is that an institution like the Public Service Commission should not be starved of the accommodation or any other facilities or amenities needed by its members out of necessity, by the State Government concerned. Insofar as the compensatory allowance claimed by the petitioner is concerned, we clarify it is open to the petitioner to seek grant of the same under regulation 17 of the Regulations which we are sure, if sought, would be considered and decided on merits.

For the foregoing reasons, question of granting any of the reliefs in prayer 'A' of the Writ Petition (Transferred Case) does not arise. A

We now come to the Special Leave Petitions filed against the interim orders made in the Writ petition. All the interim orders made in the Writ Petition (Transferred case), are those made by the Hon'ble Chief Justice B.C. Basak and Hon'ble Mr. Justice Ch. S.N. Mishra, as members comprising of a Division Bench. When we see the interim orders none of them is made on the basis of a written application made in that regard. We have already pointed out that the first interim order under appeal, which is dated 27.8.1992 is made requiring the BPSC to hold a meeting on 29.8.1992 to take a decision as to how the litigation initiated by Dr. Thakur, its Member, against the BPSC by way of Writ Petition (Transferred Case) should be conducted on behalf of the BPSC. That interim order itself, insofar as it is material, could be excepted here for sake of facility. B C

".....A meeting of the Commission be held on 29.8.1992 for the purpose of taking a decision on behalf of the Commission regarding conduct of litigation on behalf of the Commission. We make it clear that as such decisions is to be taken in respect of the petition filed by Dr. Thakur. Dr. Thakur Shall not participate in respect of such Agenda in such meeting." D E

We are really unable to understand as to why the said order should have been made by the Court requiring the holding of a meeting of the BPSC to decide whether the BPSC could contest the Writ Petition (Transferred Case) filed by Dr. Thakur or not, inasmuch as, if it was not contested or the contest was untenable, the Court could have decided the writ petition on merits. The second interim order dated 1.9.1992 which was made by the Court granting leave to Dr. Thakur to join all the members of the BPSC including the BPSC through its chairman as party- respondents in the writ petition, appears to have been indeed made for the reasons that no one appeared on behalf of the BPSC in the court and that no one produced the decision which was asked to be taken by the BPSC. Then comes the third interim order dated 7.9.1992 which says that the matter would appear the next day when the Chairman should appear in the Court with all the records in connection with the matter, and a non-bailable warrant for his arrest would be issued if he does not appear the H

A next day with the required records. The fourth interim order made there-  
 after by the Court says that a decision was to be taken by the commission  
 with regard to the petition of Dr. Thakur without allowing the Chairman  
 and Dr. Thakur to vote on the decision. This interim order to which we  
 have adverted to earlier, is reproduced in extenso for the sake of knowing  
 B its clear purport :

".....As the questions, which are being raised as to whether  
 the decision taken by the Chairman regarding Dr. Thakur is the  
 decision of the Commission or not, that was the whole purpose of  
 our earlier orders. Accordingly, we direct that the meeting be held  
 C as directed by us, to ascertain the views of the different members  
 of the Commission regarding the various allegations made by the  
 petitioner and answer to the same by the Chairman. We direct the  
 Commission to take a decision in the matter, given it not unani-  
 mously, but a majority decision. It will be open to each one of  
 D them to consider the same and to record their opinion. In the  
 discussions before the Commission, Dr. Thakur and the Chairman  
 may take part. At the instance of any member of the Commission,  
 both Dr. Thakur and the Chairman can be called upon by other  
 members of the Commission to submit any explanation or clarifica-  
 tion. However, the decision shall be taken in a meeting of the  
 E Commission but the petitioner or the Chairman shall not be  
 entitled to vote or be present when the votes are being cast."

This interim order also says that the senior-most of the Members  
 shall preside over the meeting, but he shall not have any casting vote. Then  
 F comes the fifth and the last of the interim orders made on 16.9.1992. By  
 that interim order appointment of Mr. Justice L.P.N. Sahdeo, a retired  
 Judge of the Patna High Court is made to preside over the meeting of the  
 BSPC to decide whether the affidavit filed by the Chairman could be  
 treated as affidavit of the Commission or not. That interim order does not  
 stop there but proceeds to direct the Chairman and the Members of the  
 G BPSC not to draw their salaries and allowances until the disposal of the  
 writ petition.

It is the said interim orders which are the impugned in the Special  
 Leave Petitions. We are really unable to see how the Writ Jurisdiction of  
 H the High Court under Article 226 of the Constitution of India could have

been availed of to make the said interim orders which interferred with the normal functioning of the BPSC by the constitutional functionaries, even if the High Court desired to have the views of the BPSC as regards the writ petition filed by Dr. Thakur against the BPSC and the functioning of its Chairman. We are indeed unable to understand now such interim orders could be regarded as those which have been made in aid of the final relief, if any, required to be granted in the Writ Petition or required to maintain status quo pending final disposal of the writ petition. When the nature of the interim order is seen, it becomes obvious that the High Court has sought to take over responsibility of carrying on the functions of the BPSC by appointing its own chairman for conducting a meeting of the BPSC. It is no doubt open to the Court to reject the affidavit filed on behalf of the BPSC by the Chairman on its view that it cannot be regarded as the opinion of the BPSC. But, in a case, even where such decision of the Commission as a body had been called for, the High Court was not enabled, in the purported exercise of its jurisdiction under Article 226 of the Constitution, to make such interim orders which would have made the functioning of the BPSC, a constitutional institution, a mockery in the eyes of the general public and exposed its constitutional functionaries to ridicule. It is true that Article 226 of the Constitution, empowers the High court to exercise its discretionary jurisdiction to issue directions, orders or writs, including writs in the nature of habeas corpus, certiorari, quo warranto and mandamus or any of them for the enforcement of the rights conferred under the Constitution or for an other purpose, but such discretion to issue directions or writs on orders conferred on the High Court under Article 226 being a judicial discretion to be exercised on the basis of well-established judicial norms, could not have been used by the High Court to make the said interim orders which could not have any way helped or aided the Court in granting the main relief sought in the writ petition. The said interim orders, therefore, not being those made to maintain the *status quo* or *undo* an order, the review of which is sought, so that the ultimate relief to be granted to the party approaching it, may not become futile, they become wholly unsustainable. Such interim orders are made by the High Court, to say the least, without realisation that they had the effect of putting the Chairman and its Members to ridicule in the eyes of the general public and making a constitutional institution of the BPSC a mockery. For the said reasons, the interim orders impugned in the S.L.P.s cannot be sustained and are

A liable to be set aside.

In the result we grant leave in the S.L.P.s allow the appeals, set aside the interim orders appealed against and dismiss the Writ Petition (Transferred Case). However, in the Circumstances of these appeals and the transferred case, we make no order as to costs.

R.P.

Appeal allowed.