

PETITIONER:
JAI SHANKAR PRASAD

Vs.

RESPONDENT:
STATE OF BIHAR AND ORS.

DATE OF JUDGMENT 19/03/1993

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
VENKATACHALA N. (J)

CITATION:
1993 AIR 1906 1993 SCR (2) 517
1993 SCC (2) 597 JT 1993 (2) 356
1993 SCALE (2) 137

ACT:

Constitution of India : Articles 316(1) & 317(3) (c)-Bihar State Public Service Commission composed of eleven members-Appointment of seventh non-service member-Whether violative of proviso to Article 316(1)-Blind acknowledged scholar of English appointed as member of Public Service Commission-Whether unfit to continue in office by reason of infirmity of body.

Words & phrases: "Expression as nearly as may be one half"-Meaning in the context of Art. 316(1) Constitution of India.

HEADNOTE:

The proviso to clause (1) of Article 316 of the Constitution requires that 'as nearly as may be', one-half of the members of the Public Service Commission shall be from service category. Clause (2) of the Article entitles a member of a Public Service Commission to hold office for a term of six years from the date on which he enters upon his office or he attains the age of superannuation provided therein whichever is earlier. Subclause (c) of clause (3) of Article 317 provides for removal of a member of the Public Service Commission by reason of infirmity of mind or body.

Respondent No. 6, a blind, acknowledged scholar of English and Associate Professor in the Patna University, was appointed the seventh non-service member of the Bihar State Public Service Commission on 4th March 1991. The total strength of the Public Service Commission was eleven. The other four members belonged to the services category. On 11th September 1991, respondent No.5, the Chairman of the said Commission, gave a certificate stating that the respondent has been performing his duties with exceptional excellence without letting his blindness hinder his work and strongly recommended conferment of a national award in recognition of his excellence despite his blindness. On 22nd October 1991 the State Government addressed a letter to the Union Ministry of Home Affairs recommending him for the prestigious national award of

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'Padamshree' for his services as a member of the Public Service Commission. On 15th March 1992 the President of India conferred on him the National Award.

On 14th January 1992 the appellant, in a public interest litigation, challenged the appointment of respondent No. 6 as a member of the Bihar Public Service Commission. The High Court dismissed the writ petition.

In the appeal by special leave it was contended that the appointment of the seventh member from the non-service category was violative of the proviso to Article 316(1) of the Constitution. It was submitted that the expression 'as nearly as may be one-half' occurring in the said proviso has been used to convey that a fraction may be ignored if the total number of members cannot be exactly halved between service and non-service categories. The argument was that if the representation of the service members of the Commission fell short of 50% then all persons to be appointed on the Commission till the said proportion was made up, had to be from the service category, that being their necessary qualification. It was further contended that respondent No. 6 was totally blind even from a date prior to his appointment and was unfit to be appointed by reason of the said physical infirmity. The argument was that the blindness was an infirmity of body and if it was a ground for removal from office under Article 317(3) (c), it was much more a disqualification for appointment and hence respondent No. 6 should be prevented from continuing in his office.

In the affidavit filed on behalf of the State Government on 23rd January 1993 it was stated that although the proviso to Article 316(1) was not mandatory, that by itself was not a good ground for departing from the suggestion of the Constitution and hence the appointment of respondent No. 6 as the 7th non-Government member was not justified. It was further stated that at the time of the appointment, the aspect about his blindness was not specifically considered as the same was stated in the bio-data of respondent No. 6 in very causal way and in such a manner that it had escaped the attention of the constitutional authorities at the time of recommending respondent No. 6 for appointment. The affidavit further stated that while conducting the interviews, members of the Commission had to visually interview each of the candidates to determine his suitability and after the appointment of respondent No. 6 it had come to

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the notice of the respondent-State that the blindness of respondent No. 6 was clearly hampering the effective discharge of official duties by him.

It was contended for respondent No. 6 that it was on account of his academic distinctions, and with the full knowledge that he was totally blind from childhood that he was appointed as a member of the Public Service Commission; that his blindness did not come in his way of discharging his duties effectively-, that the only thing he could not do was to assess the individuals external personality on the basis of the candidate's external appearance, which was not a material requirement for the candidates for many posts; that his dependence upon the opinion of the other members of the interview board for this aspect was not of a kind which vitiated the assessment of the interview board as a whole; that he had made a representation to the President of India, the Governor of Bihar and others, against the serious misconduct, gross malpractices and wilful violation of the constitutional mandate by the Chairman of the Commission, and that it was this dispute with the Chairman, who was backed by the Chief Minister of the State, which had led to the writ petition.

Dismissing the appeal, the Court,
HELD: 1.1. Merely because at the time of appointment of respondent No. 6, there were four service members and six non-service members, it cannot be said that he was disqualified for being appointed as the 7th member from the non-service category. [531D]

1.2. The reasonable interpretation of the proviso to Article 316(1) of the Constitution requiring that as nearly as may be one half of the members of the Public Service Commission shall be from service category, is to treat it not as a strict rule to be enforced but as a binding guideline to be followed in practice in spirit as far as possible and without deliberately flouting it. [531D]

1.3. The expression "as nearly as may be" used in the proviso itself suggests that the proportion of 50% of the service members is not exact but approximate and is meant not to, be mandatory but directory. The said proviso does not, in terms, say that In no case and at no point of time, the said proportion should either go above or fall below 50%. The fraction is and can be taken care of without the aid of the expression "as nearly as may be", and a document like Constitution does not have to incorporate
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normal rules of interpretation. The need to have 50% members from the service category also cannot be said to be of such paramount importance to the composition of the Commission that the breach of it at any particular point of time would defeat the very object of constituting the Commission. [528F-G, 529F]

1.4. Furthermore, when the members are appointed, they are bound to differ in age, whether they belong to the service category, or the non-service category. In the normal course, they would retire at different points of time. At that time, a suitable person from the same category may not be available to be appointed in their place. It is not always possible to make an advance list of persons of either category who are suitable for such appointment. Hence the total strength of the Commission as well as the number from each of the categories, are bound to vary from time to time. At any given point of time, therefore, it may not be possible to maintain the proportion between the two categories strictly in accordance with the direction given in the Constitution. [529B-C]

1.5. By providing the proportion between the service and non-service members of the Commission, the framers of the Constitution sought to strike a balance amongst the two categories. However, on that account, the framers of the Constitution cannot be presumed to ensure that on all occasions there shall be an exact balance of views between these two categories of members. It is unrealistic to believe that individuals with different backgrounds always insist on the acceptance of the outlook dictated by their background alone and refuse to share the viewpoint of others. It is certainly not expected of the members of such high ranking constitutional body as the Public Service Commission. Furthermore, the Service Commissions mostly sit in Committees and are aided and assisted by experts from the concerned faculties, disciplines and departments. The Committees take their decision collectively after due deliberations and discussion. It is, therefore, the composition of these Committees and not so much the composition of the Commission at any particular point of time that matters. [530C-E]

1.6. The appointing authority, therefore, cannot be said to have no option, under any circumstance whatever, to allow

reduction of representation from the service category and a breach of the requirement contained in the proviso to Article 316(1) by reasons of appointment of a

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member from non-service category would vitiate such appointment or the duties performed by such appointee as a member of the Public Service Commission. [530G]

2. Respondent No. 6 cannot be said to be unfit to carry on his duties as a member of the Commission because of his blindness. Nothing concrete has been brought on record to show that he had failed to perform his duties as a member of the Commission efficiently. Except the external appearance of the candidates appearing before him, he is able to ascertain the required merits or demerits of the candidates, as to the other members of the Commission. The Commission operates through Committees. For selecting the candidates for almost all disciplines and departments, the experts from the concerned departments sit in these Committees and the opinion of the experts ordinarily prevails in such appointments since the members of the Committees, who are the members of the Commission do not have the expertise in the relevant fields. This shows that all members of the Commission sitting on the interview Committees have also to be guided in their opinion by the experts. If respondent No. 6 has to take guidance only in the matter of external appearance of the candidates, all members of the Commission have to be guided by the experts with regard to the most vital equipment of the candidates, viz., the intellectual caliber and the proficiency of the candidates in the relevant subjects. There is, therefore, nothing wrong if only for external appearance, for which only a small percentage of the total marks is reserved, respondent No. 6 has to depend on the advice, opinion or guidance of other members of the Committees and the Commission. [532B-E]

3.1. By 'infirmary of body' what is spoken of in sub-clause (c) of clause (3) of Article 317 of the Constitution is an infirmity which disables the member from discharging his functions as such member effectively. It is not every infirmity of body or every loss of use of every limb of the body. The defect or deficiency must be such as would disable the member from carrying out his duties satisfactorily and consistent with the trust reposed in him. The said infirmity further must necessarily be such as has arisen after the appointment and not the one which existed at the time of the appointment, unless of course, the Government was unaware of the same at the time of appointment. [533A-B, D]

3.2. In the instant case, not only the blindness of respondent No. 6

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does not prevent him from discharging his duties expected of him, but in fact the services rendered by him as such member have been eulogised and commended for a national award by no other than the State Government itself and the Chairman of the Commission, who had first hand knowledge of his functioning. This is apart from the fact that the Governor who appointed him on the advice of the Council of Ministers is presumed to have done so after satisfying himself that the loss of eyesight was not an infirmity which would impede him in the discharge of his duties. [533C]

4.1. No responsible public authority could have made the claim that none of the constitutional functionaries concerned was aware that respondent No. 6 was totally blind from his childhood, when that fact must have been widely known in the State and in all probability the extra-ordinary

Abilities exhibited by him despite his blindness must have been the main reason for his appointment as a member of the Public Service Commission. The State Government should not have considered it compulsive to allow such blatantly rabid statements to be made on oath with impunity. The affiant by making such statement has made the constitutional authorities look ridiculous and their functioning a mockery. [534H-G]

4.2. Neither the certificate given by respondent No. 5, the Chairman of the Public Service Commission, on 11th September, 1991 nor the letter of the State Government to the Union Home Ministry dated 22nd October 1991, has been controverted by the Chairman and the State Government. The averment in the affidavit that the blindness of respondent No. 6 is hampering his work, therefore, has no basis. The belated claim of the State Government against respondent No. 6 has its obvious roots in the strained relations between him on the one hand and the Chairman and the State Government on the other. [535E-F]

5. The appellant and the respondent-State is directed to pay the costs of the appeal to respondent No. 6. [537C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1359 of 1993. From the Judgment and Order dated 16.1.192 of the Patna High Court in C.W.J.C. No. 446 of 1992.

K.N. Chaubey, K. Pandeya and Mohan Pandey for the Appellant. 523

Gobinda Mukhoty, N.N. Goswami, S.K. Bhattacharya, C.V.S. Rao Ms. K.K. Manglam, L. R. Singh, Vikas Singh, Yunus Malik, B.B. Singh Ms. Vimal Sinha and Ms Kumud L. Das for the Respondents. The Judgment of the Court was delivered by SAWANT, J. Leave granted.

The appellant is a member of the Bar. He had filed a petition in the nature of a public interest litigation under Article 226 of the Constitution of India before the High Court of Patna praying for a writ of quo warranto challenging the appointment of respondent No. 6, Dr. Shiva Jatan Thakur as a Member of the Bihar, State Public Service Commission. The High Court dismissed the writ petition. Hence the present appeal.

2. The attack against the appointment of respondent No. 6 is based on, two grounds:

[a] on the date of his appointment i.e., 4th March, 1991 respondent No. 6 was the seventh non-service member. The total strength of the Public Service Commission being eleven [excluding the Chairman] the appointment of the seventh member from the 'non-service category, was violative of the proviso to article 316[1] of the Constitution which requires that as nearly as may be one half of the members shall be persons who have held office for at least ten years either under the Government of India or under a Government of the State.

[b] respondent no.6 was totally blind even from a date prior to his appointment and was unfit to be appointed by reason of the said physical infirmity.

We are, accordingly, required to consider whether these two grounds were sufficient to disqualify respondent no. 6 from being appointed as a member of the, commission.

3. In his counter-affidavit, respondent No. 6 has stated among other or things, that he happens to be the son of a peon retired from the Railway. We are informed by Shri Mukhoty, the learned counsel appearing for him

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that he belongs to the backward community of barbers. He has been blind since the age of eight years. In spite of his blindness, he was able to pursue his educational career successfully, and he earned degrees and diplomas. He is a Ph.D. in English of the Patna University. He has been a University college teacher in English and he was promoted to the post of Reader in English on the completion of bare eight years of service. He was the first teacher of the Patna University who was unanimously recommended for the award of D. Litt. on account of the excellence of his thesis written for Ph.D. As a scholar in English, he has submitted papers to national and international conferences. He is a life-member of the organisations who sponsor these conferences. The Government of Bihar vide its D.O. letter No. 2740 dated 22nd October, 1991 sent to the Union Ministry of Home Affairs, had recommended him for the prestigious national award of 'Padmashree' for his services as a Member of the Public Service Commission. The President of India on 15th March, 1992 conferred on him National Award which reads: "this national award is given to Dr. Shiva Jatan Thakur in public recognition of his outstanding performance as the most efficient employee". He has also referred to the circumstances under which his present appointment came to be challenged nearly 9-1/2 months after it was made. While he was appointed on 4th March, 1991, the writ petition was filed in the High Court on 14th January, 1992. According to him, he had made a representation to the President of India, the Governor of Bihar and others, against the serious misconduct, gross malpractice and wilful violation of the constitutional mandate by the Chairman of the Commission. The present writ petition was filed in the High Court 18 days after a copy of the representation was received by the Chairman, among others. It is his dispute with the Chairman who according to him is backed by the Chief Minister of the State which has led to the present writ petition. He has also stated that the Chief Minister in his press interview given to the local Urdu daily, viz., Qaumi Tanzeem and published on 27th March, 1992, had made his intentions public to move this Court against his appointment. Those averments are not controverted. According to him further, it was on account of his academic distinctions, and with the full knowledge that he was totally blind from childhood, that he was appointed as a Member of the Public Service Commission. He has also stated that his blindness never came in his way either in the pursuit of his studies or in his service as a teacher. His experience in the public Commission also showed that the said defect did not come in his way of

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discharging his duties effectively. In this connection, he points out that the only thing he cannot do is to assess the individual's external personality on the basis of the candidate's external appearance which is not a material requirement for the candidates for many posts. He has further added that the Commission sits in Committees or interview boards and every Committee usually consists of four or five persons including members of the Commission and experts from the respective departments. The marks awarded to the candidates are agreed upon after due discussions and deliberations in the interview board. The advice of the

experts is a determinative factor in such decisions. When the members of the interview board with non-technical and non-professional qualifications interview candidates for technical and professional posts, they do so with the aid and advice of the experts from the concerned departments. Hence, if he is required to depend upon the opinion of the other members of the interview board for the external appearance of the candidates, that is not a dependence of a kind which vitiates the assessment of the interview board as a whole. In any case, the dependence is not worse than the dependence of the members of the board on the opinion of the experts when they are not qualified to adjudge the candidates for posts requiring the relevant expertise.

4. The State Government has lent a tragicomic touch to the controversy by filing its affidavit, the relevant contents of which deserve reproduction here for reasons more than one. The pathos is made poignant by the fact that the affiant Shri R.C. Vaish, Resident Commissioner of the State at New Delhi in his letter, which is placed on record, has stated that the draft affidavit was approved by Hon'ble the Chief Minister of the State. He has also stated that he has been authorised by the Secretary of the concerned department to swear the affidavit. The relevant portion of the affidavit reads as follows:

"That the respondent-State upon reconsideration of the entire matter under controversy feels that the words of the Constitution have to be interpreted in letter and spirit and any departure from the express words of the Constitution wherever such departure seems to be permissible under the Constitution should be done only for sound and good reasons. In the instant case, the departure with regard to appointment of members of the Bihar Public

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Service Commission was made only because the proviso to Article 316 (1) of the Constitution is not mandatory. Accordingly, while appointment the respondent no. 6 as the seventh non-government member of the B.P.S.C. the mandate of proviso to Article 316 (1) was not followed. it is felt that the fact that proviso to Article 316(1) not being mandatory is by itself not a good ground for departing from the suggestion of the Constitution and accordingly, the appointment of respondent no. 6 as member of the State Public Service Commission cannot be justified., At the time of appointment of respondent no. 6 as 'a member of the Bihar Public Service Commission he was the seventh nongovernment member when' at that time there were only four government members in a 'total strength of eleven members in the B.P.S.C.

That with regard to the infirmity of the respondent no. 6, it is submitted that at the time of appointment of respondent no. 6, the aspect about his blindness was not specifically considered the same was stated in the Bio-data of the respondent no. 6 in a very casual way and in such a manner that it had escaped the attention of the Constitutional authorities at the time of recommending the respondent No.6 for appointment to the post of

member the B.P.S.C. In this regard, it is submitted that the respondent no. 6 in his Bio-data while praising his achievements had only stated that he is the first blind person to have been awarded Ph.D.' There was no mention whether such blindness was subsequent to birth or whether such blindness was congenial. There was also no details in the Bio-data stating whether such blindness was complete or the same was partial, temporary, curable or not curable. In these facts, the aspect about the blindness of the respondent no. 6 was not specifically considered by any of the Constitutional Authorities who are involved in the appointment of a member to the State Public Service Commission.

That in this regard it is further submitted that the nature of duty of a member of a Public Service Commis-

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sion is primarily to make selections for appointments the various Govt. jobs of the State and accordingly while making such recommendations the member of the State Public Service Commission has to interview the eligible candidates. While conducting such interview, the member of the State Public Commission is to visually interview each candidate to determine his suitability. After the appointment of the respondent of the respondent no. 6 it has come to the notice of the respondent no. 6, it has come to the respondent no. 6 is clearly hampering the effective discharge of official duties by the respondent no. 6".

[Emphasis supplied]

To appreciate the first attack against the appointment it is necessary to reproduce the provisions of Article 316[1] and [2] of the Constitution which relate to the appointment and the term of office of the members of the Public Service Commissions,

"316. Appointment and term of office of members. [1] The Chairman and other members of a Public Service Commission shall be appointed in the case of the Union Commission or a Joint Commission, by the President and in the case of a State Commission by the Government of the State:

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates, of their respective appointments have held office for at least ten years, either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

[1-A] x x x x x

[2] A member of a Public Service Commission shall hold

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office for a term of six years from the date

on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier: Provided that

[a] a member of a Public Service Commission may, by writing under his hand addressed, in 'he case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office;

[b] a member of a Public Service Commission may, be removed from his office in the manner provided in clause (1) or clause (3) of Article 317.

[3] x x x x

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It is apparent from these provisions that the Chairman and other members of the State Public Service Commission are appointed by the Governor of the State. The appointments are obviously made on the advice of the Council of Ministers of the State. The proviso to Clause 11 of the Article requires that "as nearly as may be", one half of the members of the Commission shall be persons who on the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State. For brevity's sake we may refer to this category of members as service members. The expression "as nearly as may be" itself suggest that the proportion of 50% of the service members is not exact but approximate and is meant not to be mandatory but directory. The said proviso does not, in terms, say that in no case and at no point of time, the said proportion should either go above, or fall below 50%. In the very nature of things, a strict adherence to the said direction is not practicable at any particular point of time. In the first instance, the superannuation age of the member of the Commission is 62 years and his total tenure as a member cannot exceed six years. He has to vacate his office either when his tenure comes to an end or when he attains the age of 62 years whichever is earlier. When the members are appointed, they are bound to differ in age, whether they belong to the service category

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or the non-service category. In the normal course, they would retire at different points of time. If it is insisted, as is done on behalf of the appellant, that the said requirement must be followed strictly at all times, it would be well-nigh impossible to do so. Every time a member, whether belonging to the service or the non-service category, retires, there should be available a suitable person from the same category to be appointed in his place. It is not always possible to make an advance list of persons of either category who are suitable for such appointments. Hence, the total strength of the Commission as well as the number from each of the categories, are bound to vary from time to time. At any given point of time, therefore, it may not be possible to maintain the proportion between the two categories strictly in accordance with the direction given in the Constitution. It appears that it is for this reason that the words "at least half" used in the proviso to Section 265 [1] of the Government of India Act, 1935, corresponding to the present proviso to Article 316 [11, have been substituted by the words "as nearly as may be one

half'.

The learned counsel appearing for the appellant, however, submitted that the expression "as nearly as may be one half" has been used to convey that a fraction may be ignored if the total number of members cannot be exactly halved between service and non-service categories. We are afraid that this argument is too simplistic. The fraction is and can be taken care of without the aid of such expression and a document like the Constitution does not have to incorporate the normal rules of interpretation. It is clear that the framers of the Constitution realised that to make the provision rigid was both inadvisable and unnecessary. We have already demonstrated its impracticability. It can further hardly be suggested that the need to have 50% from the service category is of such paramount importance to the composition of the Commission that the breach of it at any particular point of time would defeat the very object of constituting the Commission. The purpose for which the said provision is made is obvious. It was realised by the framers of the Constitution that the democratic system can be maintain only if civil servants are appointed solely on the basis of their merit adjudged by open competition, and only if they can carry of the administration according to law independently, instead of under pressure of their political superiors. Hence they provided for Public Service Commissions at both the Union and the State level as autonomous bodies to enable them to carry on their functions independently, fairly and impartially. Since the Commission's main task was to recruit administrative personnel it was

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necessary to have on the Commission members with sufficient administrative experience. To induct persons of experience, it was imperative to provide that a certain proportion of the members of the Commission should have had an actual experience of running the administration so that the Commission is better able to adjudge the fairness of fitness of persons to be recruited in the administration. However the very fact that the Service Commission was not proposed to be constituted of the members from the service category exclusively also shows that the framers of the Constitution did not desire that the outlook of the service members alone should prevail while recruiting the personnel. The view of the persons from outside the administration was also considered to be equally imperative in selecting the personnel. A balance was therefore sought to be struck by providing the e, in Detecting the proportion between the two categories of members. It would, however, be naive to suggest on that account that the framers of the Constitution presumed to ensure that on all occasions there shall be an exact balance of views. It is unrealistic to believe that individuals with different backgrounds always insist on the acceptance of the outlook dictated by their background alone and refuse to share the view- point of others. It is certainly not expected of the members of such high ranking Constitutional body as the Public Service Commission. We cannot also lose sight of the fact that the Service Commissions mostly sit in Committees and are aided and assisted by the experts from the concerned faculties, disciplines and departments. The Committees take their decision collectively after due deliberations and discussions. It is, therefore, the composition of these Committees and not so much the composition of the Commission at any particular point of time that matters.

Hence, we are unable to subscribe to the view that the

proviso to Article 316 [1] requiring that as nearly as may be one-half of the members of the Public Service Commission shall be from service category leaves no option to the Appointing Authority under any circumstance whatever, to allow reduction of representation from that category and a breach of the said requirement by reason of appointment of a member from non-service category vitiates such appointment or the duties performed by such appointee as a member of the Public Service Commission.

The learned counsel for the appellant went so far as to contend that the said requirement constituted a qualification of the member to be appointed every time a vacancy is to be filled. According to him depending

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upon the shortfall in the representation of the respective category the member to be appointed has to be either from the service or non-service category as the case may be and that is an essential qualification for his appointment. The argument was that is an essential as in the present case, the representation of the service members of the Commission fell short of 50% then all persons to be appointed on the Commission till the said proposition was made up had to be from the service category that being their necessary qualification. It is not possible to accept this contention for the simple reason that as pointed out earlier, it may be possible to get a suitable person either from service or non-service category over a period of time and for want of suitable candidates from the concerned category, the vacancies on the Commission may remain unfilled during that period. The persons from the other category are available during that period. The reasonable interpretation of the said proviso therefore is to treat it not as a strict rule to be enforced but as a binding guideline to be followed in practice in spirit as far as possible and without deliberately flouting it, Hence it is not possible to hold that merely because at the time of appointment of respondent no. 6 there were four service members and six non-service members he was disqualified for being appointed as the 7th member from the non-service category.

5. The, second attack which is based upon the blindness of respondent No.6 is equally myopic. As has been pointed out earlier respondent no.6 been blind from his childhood. In spite of his blindness he acquired high educational qualifications and in fact at the time of his appointment he was an Associate Professor in the Patna University. He is an acknowledged scholar of English Although the Government has now come forward to disown any knowledge about his complete blindness from the childhood, with which we will deal instantly they must be presumed to have known the said infirmity and should be deemed to have formed the opinion that in spite of his blindness, he was fit to be a member of the Commission. We see no reason to hold otherwise in the circumstances pointed out by respondent no. 6 in his affidavit to which we have already referred. Nothing concrete has also been brought on record to show that he has failed to perform his duties as a member of the Commission efficiently because of his blindness. On the other hand as has been pointed out earlier the State Government itself had recommended him for 'Padmashree' for his efficient discharge of the work as a member of the Commission and that too over a short span of few months. We are also in agreement with the contentions advanced on his behalf that

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except the external appearance of the candidates appearing

before him, he is able to ascertain the required merits or demerits of the Candidates, as do the other members of the Commission. The Commission, as it normally should, operates through Committees, and as regards the external appearance, the other members of the Committees give him the required information on the basis of which he is able to assess the overall merit of the candidates. The external appearance of the candidates is also not of importance in all appointments. What is further necessary to note is that for selecting the candidates for almost all disciplines and departments, the experts from the concerned departments do sit in the Committees and the opinion of the experts ordinarily prevails in such appointments since the members of the Committees, who are the members of the Commission, do not have the expertise in the relevant fields. This shows that all members of the Commission sitting on the interview Committees have also to be guided in their opinion by the experts. If respondent No. 6 has to take guidance only in the matter of external appearance of the candidates, all members of the Commission have to be guided by the experts with regard to the most vital equipment of the candidates, viz., the intellectual calibre and the proficiency of the candidates in the relevant subjects. There is, therefore, nothing wrong if only for external appearance, for which only a small percentage of the total marks is reserved, respondent No. 6 has to depend on the advice, opinion or guidance of the other members of the Committees and the Commission. The decision of the interview board is always a collective one and is taken after deliberation on the merits and demerits of the candidates which are evaluated on the basis of various factors. We are, therefore, unable to see as to how, in the circumstances, respondent No. 6 is unfit to carry on his duties as a member of the Commission because of his blindness.

6.-The attack, however, was sought to be strengthened by relying on the provisions of sub-clause [c] of Clause [3] of Article 317 of the Constitution which provides for removal of a member of the Public Service Commission on the ground that he is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. The argument was that the blindness was infirmity of body and if it is a ground for removal from office, it is much more a disqualification for appointment and hence respondent No. 6 should be prevented from continuing in his office. We are afraid that the first premise on which this limb of the argument is based misses the obvious fact, viz., that by "infirmity of body"

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what is spoken of in the sub-clause in question, is an infirmity which disables the Member from discharging his functions as such member effectively. It is not every infirmity of body or every loss of use of any limb of the body. The defect or deficiency must be such as would disable the Member from carrying out his duties satisfactorily and consistent with the trust reposed in him. We have already pointed out that not only the blindness of respondent No. 6 does not prevent him from discharging his duties expected of him, but in fact the services rendered by him as such member have been eulogised and commended for a National Award by no other than the State Government itself and the Chairman of the Commission who had the first-hand knowledge of his functioning. This is apart from the fact that the Governor who appointed him on the advice of the Council of Ministers is presumed to have done so after satisfying himself that the loss of eye-sight was not an

infirmity which would impede him in the discharge of his duties. The infirmity of body or mind which is referred to in the sub-clause, further must necessarily be such as has arisen after the appointment and not the one which existed at the time of the appointment unless of course, the Government was unaware of the same at the time of the appointment.

7. We may now turn to the affidavit filed on behalf of the State Government. A reading of the said affidavit leaves no doubt in our mind that it has been filed only to prejudice the case of respondent No. 6 before us because, for some reasons, he has fallen foul some persons in power. As is evident from the portions of the affidavit reproduced above, firstly, a case is sought to be made out there that respondent No.6 was appointed as the 'non-Government member' of the Commission only because the proviso of Article 316 11 is not mandatory. That may be so. But the affidavit then proceeds to state almost in relenting terms that although the said proviso is not mandatory, that by itself is not a good ground for departing from the "suggestion of the Constitution" and hence the appointment of respondent No. 6 "as the 7th non-Government member" was not justified. It is not clear as to when this wisdom dawned on the Government for the first time. The record further does not show as to who had suggested his name to the Governor and whether the decision was taken by the Council of Ministers as a whole or by the Chief Minister or any of his colleagues alone and what advice was received or obtained by them, if at all, while making the appointment. We are however, happy to know that

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the State Government "upon reconsideration of the entire matter under controversy feels that the words of the Constitution have to be interpreted in letter and spirit and any departure from the express words of Constitution..... should be done only for sound and good reasons". We only hope that the State Government keeps that solemn declaration in mind for all purpose and for all times to come and does not forget it the moment the ink in the present proceedings dries.

But more breast-beating of the Government is on the second issue viz, the blindness of respondent no.6 The affidavit states that at the time of the appointment "the aspect about his blindness was not specifically considered as the same was stated in the Bio-data of the respondent no. 6 in a very casual way and in such a manner that it had escaped the attention of the Constitutional authorities at the time of recommending the respondent no.6 for appointment". not to be outdone by this ludicrous averment, the affidavit proceeds to state "that respondent No. 6 in his bio-data while praising his achievements, had only stated that he is the first blind person to have been awarded Ph.D. There was no mention whether such blindness was subsequent to birth or whether such blindness was congenital..... There was [sic] also no details in the Bio-data stating whether such blindness was complete, or the same was partial, temporary, curable or not curable. It is then the case of the State Government that in the view of these facts the aspect above the blindness of the respondent No. 6 was not specifically considered by any of the Constitutional authorities who are involved in the appointment of a member to state Public Service Commission". Since the affiant himself has brought into picture the "Constitutional Authorities who are involved in the appointment the aspect of the blindness of respondent

no.6 was not specifically of a member to the State Public Service Commission and has Stated that considered by them, we cannot help observing that the affiant by making such statement as made the Constitution authorities look ridiculous and their functioning a mockery in the eyes of the public. We are anguished more on account of the that state Government should have considered it compulsive to allow such blatantly rabid statements to be made on the oath with impunity. No responsible public authority could have aware the that respondent No.6 was totally blindly from his childhood, when that made the client that none of the constitutional functionaries concerned was fact must have been widely known in the State and in all probability the extra-ordinary abilities exhibited by him despite his blindness must have

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been the main reason for his appointment as a member of the Public Service Commission. Any statement seems to be good enough, whether true or untrue, so long as it is considered serviceable for the immediate purpose in hand. We refrain from making more comments which certainly such affidavits deserve, in ample measure, and let the affidavit speak for itself.

The affidavit further states that while conducting the interviews, members of the Commission have to visually interview each of the candidates to determine his suitability and after the appointment of respondent No. 6 "it has come to the notice of the respondent-State that the blindness of the respondent No. 6 is clearly hampering the effective discharge of official duties by him. It is necessary to remember in this ' connection that this affidavit has been filled on 23rd January 1993. Respondent No.6 had filed his affidavit on 7th October, 1992. In that affidavit, respondent No. 6 has, among other things referred to, the certificate given by respondent No.5, Dr. Ram Ashray, Yadav, Chairma of the Public Service Commission on 11th September 1991 where he has stated that respondent No. 6 "has been performing his duties with exceptional excellence without letting his blindness hinder his work. I strongly recommend that Dr. Thakur be awarded National Award in recognition of his excellence despite his blindness." He has also referred in his affidavit to the letter of 22nd October, 1991 of the State Government to the Union Home Ministry recommending him for the award of "Padmashree" for his services as a Member of the Public Service Commission. Neither the certificate nor the letter has been controverted by the Chairman and the Government. In the face of the certificate and the Said recommendatory letter, it is difficult to understand the basis on which it is now stated in the affidavit that the blindness of respondent No.6 is hampering his work. There is, therefore, no doubt in our mind that the affidavit has been filed for the only purpose of seeking somehow the removal of respondent no.6. Respondent No. 6 in his affidavit has alleged that he has since fallen 'but the respondent No. 5, the Chairman of the Commission and the Chairman is bent upon ousting him from the Commission. To shows the animosity of the Chairman towards him he has given a list of events alongwith his affidavit. These events have not been in controverted. The High Court has referred to some of these events in paragraph 6 of its judgment. Since they have a bearing On the Governments comments on his performance, we may reproduce the events catalogued by the High Court.

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"1. His P.A. has been replaced;

2. His chamber, which contains two almirahs containing documents, has been locked up;
3. The service of the reader, who is to read to him documents and journals and other papers is not being provided to him and his services have been terminated;
4. The use of staff car by him has been stopped;
5. His orderly has been transferred;
6. The Chairman of the Commission has issued instructions not to receive any document from him or to obey his orders;
7. His telephone bill for the month of Oct. 1991, for Rs. 598 only has not been paid though a sum of Rs. 18,154 on account of telephone bill of the Chairman's residence has been paid.
8. The newspaper allowance payable to him is not being paid;
9. He has not been allowed to attend the meetings of the Commission held on 11th December, 20th December and 31st December, 1991 and he is not aware when any other meeting has been held thereafter or not in as much as he has not been provided with any notice in respect of the same;
10. He has been physically prevented from going to inside [sic.] the campus of the Commission since 28th of November, 1991."

In the list of events accompanying his counter-affidavit he has also referred to other incidents such as the attempted physical assault on him by the Chairman during a meeting of the Commission, the threats of physical liquidation administered from the telephonic line of the Chairman, the complaints made by him to the police, to the Chief Minister and to the

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Governor etc. We do not desire to burden this judgement, with the said details.

it is also not necessary to make any comment upon the aforesaid events since they speak for themselves. They only reinforce the conclusion that the belated claim of the State Government that the appointment of respondent No.6 is invalid and that his blindness hampers the discharge of his duties has its obvious roots in the strained relations between him on the one hand and the Chairman and the State Government on the other.

8. While, therefore, dismissing appeal in the special facts of the case,, we also direct both the appellant and the respondent-State of pay the costs of this appeal to respondent No.6, in the amounts of Rs. 5,000 and Rs., 10,000 respectively.

P.S.S.

Anneal dismissed.

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