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DR. J. P. KULSHRESHTHA AND ORS.

v.

CHANCELLOR, ALLAHABAD UNIVERSITY, RAJ BHAWAN AND ORS.

April 30, 1980

B

[V. R. KRISHNA IYER, A. D. KOSHAL AND O. CHINNAPPA REDDY, JJ.]

Ordinance 9(2) *of the University of Allahabad issued under section* 32(2) *(f) of the Allahabad University Act,* 1921—*Whether strict compliance regarding the qualifications etc. prescribed for appointment of teachers is necessary—Whether non-compliance vitiates the selection.*

C

Six posts of Readers in the English Department of the University fell vacant and applications were invited by advertisement. The appellants and respondents 5 to 10, among others were applicants and they were all serving as lecturers in the University at that time. Since section 29 of the Allahabad University Act, 1921 stipulates that teachers of the University shall be appointed by the Executive Council on the recommendations of the Selection Committee, a Selection Committee was constituted. The selection committee has to do the statutory exercise of choosing the best among the applicants in conformity with the minimum qualifications prescribed under Ordinance 9(2) of the University. But the committee chose to interview the candidates who were otherwise eligible for consideration. 13 applicants turned up for interview. Respondent 9, Dr. Bhattacharya and appellant Skand Gupta resented the *viva voce* test as unauthorised and did not care to appear for the interview. However Dr. Bhattacharya, on being persuaded, did later turn up, was interviewed and eventually included in the Select List. Skand Gupta did not enjoy the benefit of a second pursuation to present himself for interview, did not appear before the Selection Committee and missed the bus. Respondents 5 to 10 were chosen and on the recommendation, the Executive Council made their appointment. The appellants thereupon moved the Chancellor under section 42 of the Act requesting him to cancel the appointments of respondents 5 to 10. But by an order dated November 22, 1973 he upheld the selection and appointment. The appellants, therefore, moved the High Court under Article 226 of the Constitution and impugned the selection process and the appointments on various grounds. The learned single judge considered the merits of the contentions and concluded that the selections and the consequent appointments were bad in law except in regard to respondents 7 and 10 and directed the University to make fresh selection and fill up the vacancies. Respondents 5 to 6 and 8 and 9 went in appeal to the Division Bench which accepted their appeals and reversed the judgment of the single judge in its entirety and hence the appeal by special leave.

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Allowing the appeal the Court,

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HELD : 1. Any Administrative or quasi-judicial body clothed with powers and left unfettered by procedures is free to device its own pragmatic, flexible and functionally viable processes of transacting business subject, of course, to the basics of natural justice, fair play in action, reasonableness in collecting decisional materials, avoidance of arbitrariness and extraneous considerations and

otherwise keeping within the leading strings of the law. Though there is no flaw in the methodology of interviews, certainly, cases arise where the art of interviewing candidates deteriorates from strategy to strategem and undetectable manipulation of results is achieved by remote control tactics masked as *viva voce* tests. This, if allowed is surely a sabotage of the purity or proceedings, a subterfuge whereby legal means to reach illegal ends is achieved. So, it is that Courts insist on recording of marks at interviews and other fair checks like guidelines for marks and remarks, about candidates and the like. If the Court is skeptical, the record of the Selection proceedings, including the notes regarding the interviews, may have to be made available. Interviews, as such, are not bad but polluting it to attain illegitimate ends is bad [908 H, 909 A-C]

2. Social scientists and educational *avant garde* may find pitfalls in our system of education and condemn the unscientific aspects of marks as the measure of merit, things as they now stand. But, however imperfect and obtuse the current system and however urgent the modernisation of our courses culminating in examinations may be, the fact remains that the Court has to go by what is extent and cannot explore on its own or ignore the measure of merit adopted by universities. Judges must not rush in where even educationists fear to tread. So the criterion of marks and class, the Allahabad University has laid down is sound, although to swear religiously by class and grade may be exaggerated reverence and false scales if strictly scrutinised by progressive criteria. [909 E-G]

3. The prescription of a high second class in Ordinance 9 is a mandatory minimum. A glance at the relevant portion of Ordinance 9 reveals that wherever relaxation of qualifications is intended, the Ordinance specifically spells it out and by necessary implication, where it has not said so, the possession of such qualification is imperative. The ordinance has a purpose when it prescribes at least a high second class for a Reader's post. It is obligatory.
[909 H, 910 A, C-D]

4. *"High"* is the antithesis of *"low"* and a high second class is, therefore, a contrast to a low second class. When the range of a second class marks is wide, of the candidate who gets that class with marks *within the lower* half bracket it cannot be said that he gets a *high* second class. If he manages to get 48 marks he barely gets a second class not a high second class. And commonsense, which is not an enemy of Courtsense, points clearly to the meaning of *high second* class as one where the marks fall a *little short of first* class marks and he narrowly misses first class. In the context of Ordinance 9 and its purpose and the collocution of words used viz. 'first class or a high second class', the interpretation will misfire if the Court disregard the intent and effect of the adjective 'high' and indifferently read it to mean merely the minimum marks needed to bring the candidate within the second class. High is high and a superior second class denotes marks somewhere near first class marks. Even by relaxing, diluting and liberalising the rigour clearly imported by the draftsman by using the expression "high second class", still it is impermissible to render the word 'high' nugatory or make, by construction, that intensive adjective redundant. Nor did the University has all these years treat a high second class to mean a mere second class and English has not lost its potency in he Allahabad University so as to include *low* in *high*. The utmost construction would be : Draw a line at mid-point, and marks above and below that line will be high and low second class respectively. In the instant case, the mid-line

being 54 those who have not secured above 54 cannot claim to have obtained a high second class and are ineligible. [910 D-H, 911 A, D]

5. It is true that the Selection Committee is an expert body. But their expertise is not in law, but in other branches of learning and the final interpretation of an Ordinance is a legal skill outside the academic orbit. [911 E-F]

6. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the court out. To respect an authority is not to worship it unquestioningly since the *bhakti* cult is inept in the critical field of law. In short, while dealing with legal affairs which have an impact on academic bodies, the views of educational experts are entitled to great consideration but not to exclusive wisdom. [911 G-H, 912 B-D]

The University of Mysore and Anr. v. *C. D. Govinda and Anr.*, [1964] 4 SCR 575 @ 586; followed.

7. An illegal act cannot be deemed to be legal by reading a legislative function into an executive action. Were this dubious doctrine applied to governmental affairs and confusion between executive and legislative functions jurisprudentially sanctioned, the consequences could well be disastrous to the basics of our democracy. Small gains in some case should not justify the urging of propositions which are subversive of our constitution. [912 E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1524 of 1977.

Appeal by Special Leave from the Judgment and order dated 21-9-1976 of the Allahabad High Court in S.A.Nos.26,66 and 37/76.

S. P. Gupta and Pramod Swaroop for the Appellants.

Yogeshwar Prasad and *Mrs. Rani Chhabra* for the Respondents 5 and 6.

U. R. Lalit and *Manoj Swarup, Miss Lalit Kohli* for the Respondent (University.)

The Judgment of the Court was delivered by

KRISHNA IYER J.—The core controversy in this appeal by special leave rages round the legality of the selection of Readers by the Allahabad University. The fortunes of the litigation, pending for seven years have been fluctuating from court to court. The fine line of distinction between internal autonomy for educational bodies and insulation of their operations from judicial interference on the one hand and the constitutional obligation of the court to examine the legality of academic

actions and correct clear injustices on the other is jurisprudentially real and the present appeal illustrates the demarcation between the two positions. While legal shibboleths like "hand-off universities" and meticulous forensic invigilation of educational organs may both be wrong, a balanced approach of leaving universities in their internal functioning well alone to a large extent, but striking at illegalities and injustices, if committed by however high an authority, educational or other, will resolve the problem raised by counsel before us in this appeal from a judgment of the Division Bench of the High Court.

Once we recognise the basic yet simple proposition that no islands of insubordination to the rule of law exist in our Republic and that discretion to disobey the mandate of the law does not belong even to university organs or other authorities, the retreat of the Court at the sight of an academic body, as has happened here, cannot be approved. On the facts and features of this case such a balanced exercise of jurisdiction will, if we may anticipate our utltimate conclusion, result in the reversal of the appellate judgment and the restoration, in substantial measure, of the learned single Judge's judgment quashing the selections made by the University bodies for the posts of Readers in English way back in 1973.

A perception in perspective of the facts which are brief and the law which is clear, persuades us to narrate the circumstances which have led a number of lecturers of the Allahabad University to fighting forensic battles over the selection of some as Readers in English by the selection Committee and their opportunity by the Executive Council.

Nearly a decade ago, six posts of Readers in the English Department of the University fell vacant and applications were invited by advertisement. The petitioners and respondents 5 to 10, among others, were applicants.These parties were all serving as lecturers in the univerity at that time. A selection committee was constituted as contemplated by the statutes and ordinances framed under the Allahabad University Act, 1921 (for short, hereinafter called the Act.) Section 29 of the Act, stipulates that teachers of the university shall be appointed by the executive council on the recommendations of the selection committee. There are statutory provisions regulating the functions of the selection committee section 32(2)(f) of the Act. provides for the issuance of ordinances prescribing qualifications for appointment of teachers. ordinance 9(2) lays down the qualifications for teachers in the various faculties. We are concerned with Ordinance 9 with special reference to the prescription of qualifications for Readers and it runs thus:

A 9. The following qualifications are prescribed for the appointment of teachers in the Faculties of Arts, Science, Commerce and Law

(2) For Readers : (i) First or *High Second Class* Master's degree in the subject concerned and good academic
B record.

(ii) Established reputation for sound scholarship and be competent to teach upto Master's degree and guide research.

(iii) A doctor's degree, or equivalent published work.

(iv) At least 5 years' teaching experience of the subject con-
C cerned in post-graduate classes in a University recognised by law, or research experience in a Research Institute recognised by the University or the State, or the Central Government.

Provided that the selection Committee *may relax* the qualifi-
D cations contained in clause (iii) for the post of Readers in the case of candidates whose total length of service as teachers in this Universty is not less than the period required to teach the maximum of the Lecturer's grade and who shall have established a reputation as teachers.

Provided further that in the case of women teachers of
E this (*i.e.* Allahabad University), in place of qualification [No. (IV) requiring 5 years' teaching experience in post-graduate classes a minimum of 5 years teaching experience of the subject in the graduate classes in this University may also be considered adequate for the post of Readers.

F The statutory exercise of choosing the best among the applicants in conformity with the minimum qualifications is done by the selection committee which recommends to the executive council its panel. While there is no specific legislative provision regarding the procedure to be adopted by the selection committee there is no doubt that arbitrariness is anathema, violation of natural justice vitiates and subject
G to this, self-created rules, flexible and pragmatic, fair and functionally viable, may well be fashioned by the selection committee. In this case the committee chose to interview the candidates who were otherwise eligible for consideration. 13 applicants turned up for interview. But respondent No, 9, Dr. Bhattacharya, and petitioner No. 2, Skand Gupta, apparently resented the *viva voce* test
H as unauthorised and did not care to appear for the interview. However, Dr. Bhattacharya (R. 9), on being persuaded, did later turn up, was interviewed and eventually included in the 'select list'. The

second petititioner did not enjoy the benefit of a second persuasion to persent himself for interview, did not appear before the Selection Committee and missed the bus. A

The Committee, which consisted of academic experts, prepared a panel and forwarded it to the Executive Council. As is inevitable in situations of over supply, many are called but few are chosen and Respondents 5 to 10 (Dr. Mrs. Hem Lata Joshi, R-5, Shri H. S Saxena, R-6 Dr. R. R. Dutt, R-7, Shri I. N. Agarwal, R-8, Dr. A. N. Bhattacharyya, R-9, and Dr. L. M. Upadhayaya, R-10) were lucky to be chosen while the petitioners were luckless and lost. Petitioner No. 2 represented against the propriety of the selection to the executive council, but the latter overruled the objection and accepted the recommendation. Respondents 5 to 10 were thus appointed Readers. The petitioners thereupon moved the chancellor under s.42 of the Act and urged, in their petition, that the selection was illegal, but were disappointed because the chancellor, by this order of November 22, 1973, upheld the selection and the appointments. The last refuge of those with lost causes is the writ jurisdiction of the High Court. The petititoners invoked Art. 226 of the Constitution and impugned the legality of the selection process and the appointments on various grounds.The learned single Judge considered the merits of the contentions and concluded that the selections and the consequent appointments were bad in law except in regard to respondents 7 and 10 and directed the university, in January 1976, to hold fresh selections for filling the vacancies of long years ago. B C D E

Inevitably, the vanquished respondents rushed to the appellate Bench of the High Court where success greeted them; for, the appeals were allowed in reversal of the single Judge's reasoning and the writ petition was dismissed in entirety. The final sanctuary of those who fancy that they are victims of judicial injustice of other forms of iniquity is the Supreme Court in its misleadingly immense and self defeatingly multiform jurisdiction under Art. 136, The appellants are here hopefully invoking our power to heal their alleged injury. F

With this backdrop, it will be easy to appreciate the few submissions urged by the appellants in substantiation of their case that although the selection committee was legally constituted, the process of selection and the criteria for selection were illegal. If the selecion were invalidated by any lethal vice the council's action in accepting the commendees cannot survive. Nor can the chancellor's dismissal of the objections of the appellants lend life to what otherwise is *non est.* Thus, the crucial issue is whether the grounds of attack levelled against the selection have substance. G H

A few basic facts must be remembered before we discuss the merits. All the parties with whom we are concerned as candidates, have acquired their master's degree from the Allahabad University. In tune with the hierarchical ethos of Indian society which does not spare the academia, there is a pyramidal structure with lecturers at the bottom, Readers above them and professors at the top, speaking simplistically. Our concern in this appeal is with Readers; and the eligibility qualifications mentioned in Ordinance 9 are the minimum, not the maximum. We may straight get into the meat of the matter. The substantial contention urged by the appellant with success before the single Judge and failure before the Division Bench is that the contesting respondents are not even qualified for consideration because they do not have a first class or a *high second class* in the Master's degree. It is common ground that none of them has a first class. It is undisputed that the Allahabad University awards first class to those who obtain 60% and above and second class to those who secure anything between 48% to 59%. For the nonce, we are not concerned with the other qualifications itemised in Ordinance 9. The marks obtained by the appellants show that they are recipients of first class or high second class. The controversy is not about their eligibility but that of the contesting respondents. Dr. Mrs. Joshi (R. 5) has secured 52·2 marks; Shri Saxena (R. 6) has scraped through with 49·3 marks; Dr. Dutt (R. 7) has, however, obtained a first class while Shri Agarwal (R.8) is slightly below the middle line in the second class range having got only 53·8, marks; Dr. Bhattacharya (R9.) has fared a little better with 54·5 marks. Dr. Upadhyaya (R. 10) also has a better performance record in the Master's degree examination since he has 55·1 marks to his credit. From these figures it is obvious that Dr. Dutt (R.7) has the distition of being the holder of a first class. It is beyond one's comprehension how his selection can be challenged on the score of ineligibility. Indeed, the appellants have accepted the findings of the learned single Judge who has disallowed the writ petition *vis-a-vis* R. 7 and R. 10. We agree. Even in regard to the conclusion arrived at so far as R. 10, Dr. Upadhyaya, is concerned who has secured marks above the middle line in the range between 48% and 59%, we are not disposed to disagree with the single Judge. Thus, the appointments of R. 7 and R.10 do not call for any interference. The rest will, right now, be exposed to the actinic light of legal scrutiny.

We may dispel two mystiques before we debate the real issues. Did the selection committee act illegally in resorting to the interview process to pick out the best ? We think not. Any administrative or quasi-judicial body clothed with powers and left unfettered

by procedures is free to devise its own pragmatic, flexible and functionally viable processes of transacting business subject, of course to the basics of natural justice fairplay in action, reasonableness in collecting decisional materials, avoidance of arbitrariness and extraneous considerations and otherwise keeping with in the leading strings of the law. We find no flaw in the methodology of 'interviews.'Certainaly, cases arise where the art of interviewing candidates deteriorates from strategy to strategem and undetectable manipulation of results is achieved by remote control tactics masked as *viva voce* tests. This, if allowed, is surely a sabotage of the purity of proceedings, a subterfuge whereby legal means to reach illegal ends is achieved. So it is that courts insist, as the learned single Judge has, in this very case, suggested on recording of marks at interviews and other fair checks like guidelines for marks and remarks about candidates and the like. If the court is skeptical, the record of the Selection proceedings, including the notes regarding the interviews, may have to be made available. Interviews, as such, are not bad but polluting it to attain illegitimate ends is bad. Dr. Martin Luther King Jr. was right when be wrote(1)

> "So I have tried to make it clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or even more, to use moral means to preserve immoral ends."

The second obscurantism we must remove is the blind veneration of marks at examination as the main measure of merit. Social scientists and educational *avant garde* may find pitfalls in our system of education and condemn the unscientific aspects of marks as the measure of merit, things as they now stand. But, however imperfect and obtuse the current system and however urgent the modernisation of our courses culminating in examinations may be, the fact remains that the court has to go by what is extent and cannot explore on its own or ignore the measure of merit adopted by universities. Judges must not rush in where even educationists fear to tread. So, we see no purpose in belittling the criterion of marks and class the Allahabad University has laid down, although to swear religiously by class and grade may be exaggerated reverence and false scales if strictly scrutinised by progressive criteria.

We have stated earlier that the prescription of first class or high second class is part of the Ordinance as a qualification for a Reader's post. Is this condition mandatory or directory ? The High Court at the two tiers has taken contrary views. But we are inclined to

(1) The Negro is your Brother by Martin Luther King Jr. published in "119 years of the Atlantic" ed. by Louise Desaulniers, p. 515.

hold that a high second class is a mandatory minimum. A glance at the relevant portion of Ordinance 9 reveals that wherever relaxation of qualifications is intended, the Ordinance specifically spells it out and by necessary implication, where it has not said so, the possession of such qualification is imperative. We must remember that a Reader is but next to a Professor and holds high responsibility in giving academic guidance to post-graduate students. He has to be a creative scholar himself capable of stimulating in his students a spirit of enquiry and challenge, intellectual ferment and thirst for research. If the teacher is innocent of academic excellence, the student, in turn, will be passive, mechanical, negative and memorising where he should be innovative, imaginative and inventive. The inference is irresistible that a Reader who guides the students and raises his faculties into creative heights is one who himself has had attainments to his credit. Putting aside for a moment the value of examinations and marks as indicators of the student's potential, we must agree that the ordinance has a purpose when it prescribes atleast a high second class for a Reader's post. It is obligatory.

Now we come to close grips with the principal point debated before us. When is a second class *high*, going by marks? For any layman the meaning is clear. For any purpose-oriented interpretation the decoding is simple. *High* is the antithesis of *low* and a high second class is, therefore, a contrast to a low second class. When the range of second class marks is wide, of the candidate who gets that class with marks *within the lower half* bracket you cannot say he gets a *high* second class. If he manages to get 48 marks he barely gets a second class—not a high second class. And commonsense which is not an enemy of court sense, points clearly to the meaning of *high second class* as one where the marks fall a *little short of first* class marks and he narrowly misses first class. In the context of Ordinance 9 and its purpose and the collocution of words used *viz.* 'first class or a high second class', the interpretation will misfire if we disregard the intent and effect of the adjective 'high' and indifferently read it to mean merely the minimum marks needed to bring the candidate within the second class. High is high and a superior second class denotes marks some where near first class marks. Assuming we relax, dilute and liberalise the rigour clearly imported by the draftsman by using the expression 'high second class', still it is impermissible to render the word 'high' nugatory or make, by construction, that intensive adjective redundant. Nor are we impressed with the strange submission that the University has all these years treated a high second class to mean a mere second class, and, therefore English has lost its potency in the Allahabad University and high includes low. Such bathetic semantics

must be rejected since continuing commission of wrong does not right it. A

The utmost we may reluctantly accept is the construction that the learned single Judge has adopted. Draw a line at mid-point, and marks above and below that line will be high and low second class respectively. B

It was urged that marks for the second-class grade vary from university to university and start sometimes with 40% and so, even 48% must be regarded as high second class for Allahabad University. Here we are concerned only with holders of second class from the Allahabad University and so the complication of other universities does not rise. Even otherwise, with reference to any particular university, the marks for second class may be from X to Y and 'high' with reference to that university will be the superior half between X and Y. Lexically, logically, legally, teleologically, we find the conclusion the same. We regretfully but respectfully disagree with the Division Bench and uphold the sense of high second class attributed by the learned single Judge. The midline takes us to 54 and although it is unpalatable to be mechanical and mathematical, we have to hold that those who have not secured above 54 marks cannot claim to have obtained a high second class and are ineligible. In the instant case, Dr. Mrs. Joshi, Shri Saxena and Shri Agarwal do not fill the bill, their marks being below 54 in the Master's degree examination. We have earlier held that the power to relax, as the Ordinance now runs, in so far as high second class is concerned, does not exist. Inevitably, the appointment of the 3 respondents violate the Ordinance and are therefore, illegal. It is true, as counsel for the respondent urged, that the Selection Committee is an expert body. But their expertise is not in law, but in other branches of learning and the final interpretation of an ordinance is a legal skill outside the academic orbit. C D E F

Rulings of this Court were cited before us to hammer home the point that the Court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the Court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the Court G H

A out. In *Govinda Rao's case* (1) Gajendragadkar, J (as he then was) struck the right note:

> "*What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the* B *High Court should have shown due regard to the opinions expressed by the Board and its* recommendations on which the Chancellor has acted."
>
> (Emphasis added)

The later decisions cited before us broadly conform to the rule of C caution sounded in *Govinda Rao*. But to respect an authority is not to worship it unquestioningly since the *bhakti* cult is inept in the critical field of law. In short, while dealing with legal affairs which have an impact on academic bodies, the views of educational experts are entitled to great consideration but not to exclusive wisdom. Moreover, the present case is so simple that profound doctrines about D academic autonomy have no place here.

A strange submission was mildly made that the Executive Council has also the power to make ordinances and so, by accepting a low second class has equal to a High second class in the case of the three respondents, the Council must be deemed to have amended the Ordi- E nance and implicitly re-written it to delete the adjective 'high' before 'second class'. This argument means that an illegal act must be deemed to be legal by reading a legislative function into an executive action. Were this dubious doctrine applied to governmental affairs and confusion between executive and legislative functions jurisprudentially sanctioned, the consequences could well be disastrous to F the basics of our democracy. We mention this facet of the argument not only to reject it but to emphasise that small gain in some case should not justify the urging of propositions which are subversive of our Constitution Be that as it may, we are satisfied that respondents 5, 6 and 8 do not possess a high second class in their Master's degree.

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The second condition successfully urged before the single Judge of the High Court relates to Dr. Bhattacharya (R. 9). The point is that R. 9 and petitioner No. 2 for selection the second petitioner lost his chance of being considered because he did not appear for the interview and Dr. Bhattacharya averted that fate because he was H sent for a second time. The equivocal version of Dr. Bhattacharya

(1) *The University of Mysore and Anr.* v. *C.D. Govinda Rao and Anr.* [1964] 4 S.C.R. 575 at 586.

has not been accepted by the learned single Judge and we are unhappy that an academic has been put to the necessity of this dubiety which suggests that taking liberties with truth for getting a temporary advantage is a tendency which does not spare highly educated and gifted persons. In this connection, even the terminological inexactitude indulged in by Dr. Hem Lata Joshi (R. 5) is not complimentary, when she says that in her application she gave 54 marks as against the actual figure of 52·2 and when challenged, she excused herself by saying that her memory, working in a hurry, let her down. We are satisfied that if the Selection Committee had chosen to give an opportunity to the 2nd petitioner, even as they did to R. 9, he might well have turned up and having regard to his high marks, might also have stood a good chance of being selected. The criticism is not that the Selection Committee's action was mala-fide or biassed, but that there has been unequal treatment between equals. For this reason, the selection of R. 9 deserves to be struck down as violative of Art. 14.

Other minor points which have been urged and countered do not deserve serious consideration and we decline to deal with them. The conclusion we reach is that the selection and appointments of respondents 7 and 10 are good; but the selection and appointment of respondents 5, 6, 8 and 9 are bad in law.

The tragic sequel cannot be dismissed as none of our concern because the Court, by its process, must, as far as possible, act constructively, minimising the injury and maximising the benefit. Indifference to consequences upon institutions and individuals has an imperial flavour and we wish to make it clear that the fact that since 1973 the respondents 5, 6, 8 and 9 have been functioning as Readers without blemish is a factor which distresses us when we demolish their appointments. They have gained experience of several years in the Reader's post. They are otherwise well qualified on the academic side. The short-fall in the matter of a high second class, while some of them have been doctorates, should not have such disastrous consequences as to throw out the appointees 7 years after. We think that these special circumstances may well justify the appropriate authority in the University resorting to alternatives which may mitigate their misfortune. We have been informed by counsel Mr. Manoj Swarup that the University is inclined to take an accommodative attitude to mitigate the hardship that may flow from the adjudication. Of course, they are free to take such steps as they deem just and necessary. We do not think there was anything wrong in Dr. Bhattacharya having been persuaded to come to the interview, but we regard it as improper that such a facility was not extended to the 2nd petitioner.

A In conclusion, we allow the appeal and direct a fresh selection from among those candidates who are qualified for Readership in the light of our interpretation of Ordinance 9. We make it clear that the appointments of respondents 7 and 10 sustained by the High Court, will remain untouched.

B The appeal is allowed subject to the observations made above.

S.R. *Appeal allowed.*