A RAM GOVIND UPADHYAY

v.

SUDARSHAN SINGH AND ORS.

MARCH 18, 2002

B [UMESH C. BANERJEE AND Y.K. SABHARWAL, JJ.]

Code of Criminal Procedure, 1973—Sections 436 and 439—Bail—Rejection just a month ago—Another FIR registered against accused persons for threating witnesses and charge-sheet filed—Subsequently, High Court granting bail—Held, High Court ought to have taken note of facts on record including the second FIR and charge-sheet thereon—No specific reason given for grant of bail especially when bail was rejected just a month ago—Hence High Court was in error.

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D **Appellant's brother was a candidate contesting election for the post of Pradhan. While the polling was in progress informant was prohibited from casting his vote. Appellant's brother interfered and the torture fell on to him which resulted in his death. FIR was lodged and accused persons were arrested. Accused person then filed bail application. Both the trial court and High Court dismissed the application. Subsequent bail applications filed before**

E **the Sessions Judge were also rejected. Against this order accused persons filed application for bail before High Court. Subsequently another FIR was registered and charge-sheet was filed. Bail applications was allowed and against this order, an application for cancellation of bail was filed, which was rejected. Hence the present appeal.**

F **Allowing the appeal, the Court**

HELD: 1. Grant of bail though being a discretionary order-but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be

G **sustained. However, grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one**

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of the basic considerations for the grant of bail-more heinous is a crime, greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter. [529-E-F] A

2. While it is true that availability of over-whelming circumstances is necessary for an order of cancellation of a bail, the basic criterion, however, being interference or even an attempt to interfere with the due course of administration of justice and/or any abuse of the indulgence/privilege granted to the accused. [531-E] B

3. Considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The subsequent FIR is on record under Sections 323 and 504 IPC in which the charge-sheet have already been issued– the Court ought to take note of the facts on record rather than ignoring it. In any event, the discretion to be used shall always have to be strictly in accordance with law and not dehors the same. The High Court thought it fit not to record any reason far less any cogent reason as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot be a relevant consideration in the matter of grant of bail more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment-it is a heinous crime against the society and as such the Court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of very serious nature. [531-G-H; 532-A-B-C] C D E F

4. The High Court has committed a manifest error in the matter of grant of bail when public tranquility has been stated to be disturbed on the election day and when there is an obstruction for the exercise of a right guaranteed under the Constitution and when there is an existence of crime against the society at large. Irrespective of different factors to be taken note of in regard to the cancellation of the grant of bail, interest of justice seem to be over-whelmingly in favour of the appellant in the matter of cancellation of the bail. When another FIR was recorded and charge-sheet having been filed, the Court ought to have taken a serious note of these factual details. Tampering G H

with the evidence and threatening of the witnesses are two basic grounds for cancellation of bail-both these two factors stand alleged and by reason of subsequent filing of charge-sheet therein, there should have been some mention of it in the order for grant of bail. The factum of the second charge-sheet has been omitted in its entirety. [532-D-E-F]

Prahlad Singh Bhati **v.** *NCT, Delhi and Anr.,* **[2001] 4 SCC 280 and** *Shahzad Hasan Khan* **v.** *Ishtiaq Hasan Khan and Anr.,* **[1987] 2 SCC 684, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 381 and 382 of 2002.

From the Judgment and Order dated 3.5.2001 of the Allahabad High Court in Cr.M.B.A. No. 15548 and 17697 of 2000.

V.K. Singh and T.N. Singh for the Appellant.

Ashok Kumar Singh for the Respondent No. 1-2.

Subodh Markandeya, Ms. Chitra Markandaya, Mohan Babu Agarwal, Alok Gupta and K. Mishra for the Respondent No. 3.

The Judgment of the Court was delivered by

BANERJEE, J. Leave granted.

While liberty of an individual is precious and there should always be an all round effort on the part of Law Courts to protect such liberties of individuals-but this protection can be made available to the deserving ones only since the term protection cannot by itself be termed to be absolute in any and every situation but stand qualified depending upon the exigencies of the situation. It is on this perspective that in the event of there being committal of a heinous crime it is the society that needs a protection from these elements since the latter are having the capability of spreading a regin of terror so as to disrupt the life and the tranquility of the people in the society. The protection thus to be allowed upon proper circumspection depending upon the fact situation of the matter. It is in this context the observations of this court in *Shahzad Hasan Khan* v. *Istiaq Hasan Khan and Anr.,* [1987] 2 SCC 684 seem to be rather apposite. This Court observed in *Shahzad Hasan Khan* (supra) as below:-

"Had the learned Judge granted time to the complainant for filing

counter-affidavit correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being *prima facie* material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case."

Grant of bail though being a discretionary order-but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail-more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and nor exhaustive neither there can be any. The consideration being:

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the serverity of the punishment, if the accusation entails a conviction and the nature of evidence in

A support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

B (c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a *prima facie* satisfaction of the Court in support of the charge.

C (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution in the normal course of events, the accused is entitled to an order of bail.

D A recent decision of this Court in *Prahlad Singh Bhati* v. *NCT, Delhi and Anr.*, [2001] 4 SCC 280 lends concurrence to the observations as above.

Turning attention to the factual score, it is stated that the appellant's brother, one Amar Nath Upadhyay (since deceased) was a candidate contesting the election for the post of Pradhan in Budhepur Gram Panchayat along with one Ravindra Nath Singh. While the polling was in progress on 23rd June, E 2000, there were said to be some scuffles which resulted in the obstruction of polling process thrice by booth so-called jamming/booth capturing resulting in forcible taking up of ballot papers from the voters and said to be casting the same in favour of one particular candidate.

It has been stated that as and when informat came to the booth in order F to cast his vote, there was stated to be definite obstruction and resultantly a hue and cry and thus alleged scuffles were had an on hearing the cries of the informant, Amar Nath Upadhyay (since deceased) said to have rushed for the inormant's rescue and the torture thereafter fell on to the candidates, which resulted in the death of Amar Nath Upadhyay. There is thus an allegation of G booth capturing as also that of a refusal to permit the voters to vote. The First Information Report lodged recorded offence under Section 302 IPC along with other charges and it is on this score that the private respondents in these appeals were arrested. Applications for bail were moved before the trial Court but the same did not meet with any success. Even the High Court did not lend any support to the application. Subsequent bail applications were H also filed on behalf of accused persons before the Sessions Judge, Chandauli,

which however stood rejected upon recording an observation that the prosecution case *prima facie* stands supported by ocular testimony of the witnesses as also the post-mortem report and against such an order of rejection, the co-accused moved the High Court for the grant of bail being Crl. Misc. Bail application No. 17697 of 2000. The records further depict, however, that between 4th and 6th December, 2000, the witnesses in the matter were said to have been threatened and assaulted by reason wherefore a FIR under Sections 323 and 504 IPC was registered at the Police Station on 6th December, 2000 as M.C.R. No. 91 of 2000. The police after completing the investigation has also submitted the charge-sheet before the Chief Judicial Magistrate but no committal has taken place as yet, since the co-accused who had been granted bail, were not attending the Court of Chief Judicial Magistrate by reason wherefore bailable warrants against them were issued and it is only thereafter that the accused persons appeared before the Sessions Judge. The two petitions for bail as noticed above, by Sudarshan Singh and Kaushal Singh came up for hearing before the High court on 3rd May, 2001, whereupon the bail was granted to both the accused persons and thus the application for cancellation of bail which however, resulted in an order of rejection and hence the appeals before this Court.

While it is true that availability of over-whelming circumstances is necessary for an order as regards the cancellation of a bail order, the basic criterion, however, being interference or even an attempt to interfere with the due course of administration of justice and/or any abuse of the indulgence/ privilege granted to the accused. The contextual facts depict and as noticed hereinbefore that the incident occurred at the time when the election was going on and the murder was said to have been committed in the broad day light by reason of interference of the deceased when the informant was prohibited from casting his vote. The situation is rather grave and having regard to the same, the High Court on 29th August, 2000 refused the application for bail.

Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The subsequent FIR is on record and incorporated therein are the charges under

A Sections 323 and 504 IPC in which the charge-sheet have already been issued-the Court ought to take not of the facts on record rather than ignoring it. In any event, the discretion to be used shall always have to be strictly in accordance with law and not de-hors the same. The High Court thought it fit not to record any reason far less any cogent reason as to why there should be a departure when in fact such a petition was dismissed earlier not very B long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter of grant of bail more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment-it is a heinous crime against the society and as such the Court ought to be rather circumspect C and cautious in its approach in a matter which stands out to be a social crime of very serious nature.

In our view, the High Court has committed a manifest error in the matter of grant of bail when public transquility has been stated to be disturbed on the election day and when there is an obstruction for the exercise of a D right guaranteed under the Constitution and when there is an existence of crime against the society at large. Irrespective of different factors to be taken note of in regard to the cancellation of the grant of bail, in our view interest of justice seem to be over-whelmingly in favour of the appellant herein in the matter of cancellation of the bail. The elder brother has been brutally murdered E and the proceeding is pending before the Sessions Judge. It is during the period when the accused persons were enlarged on bail that another FIR was recorded and charge-sheet having been filed, the Court ought to have taken a serious note of these factual details. Tampering with the evidence and threatening of the witnesses are two basic grounds for cancellation of bail-both these two factors stand alleged and by reason of subsequent filing of F charge-sheet therein, there should have been some mention of it is order for grant of bail. The factum of the second charge-sheet has been omitted in its entirety.

In that view of the matter, these appeals succeed. The order of the High Court stands set aside and quashed. The bail order as granted by the High G Court stands cancelled and the private respondent be re-arrested forthwith.

N.J. Appeals allowed.

S.K. KUSHWAHA

v.

D.K. JOSHI AND ORS.

MARCH 18, 2002

[S.N. PHUKAN AND P. VENKATARAMA REDDI, JJ.]

Service Law:

Selection—Kurukshetra University Ordinance XVI—Selection to the post of Principal of College of Education—Academic qualification prescribed—Candidate possessing doctorate qualification with adequate teaching experience and not the requisite qualification of M.Ed. or B.Ed.—However, Executive Council approved the appointment and appointed/candidate—Appointment challenged—High Court set aside the appointment—Whether B.Ed. or M.Ed. qualification is an essential requirement and could be relaxed—On appeal held, one of the two qualifications under Clause (a) i.e. M.A. (Education) with B.Ed. or Masters' degree in any subject with M.Ed. as well as the qualification in Clause (b). viz. M. Phil Degree or a recognised degree beyond the Masters' level or published research level work are necessary—However, under Clause (c) when candidate having both the qualifications is not available or is found unsuitable, candidate fulfilling the qualifications under Clause (a) could be selected—On facts since the candidate lacked one of the qualifications, namely, M.Ed. he cannot take protection under Clause (c)—However, Executive Council was empowered to relax the qualification—Order of High Court is set aside and matter remitted back for fresh consideration.

Kurukshetra University advertised for the post of Principal in the College of Education. The qualifications prescribed by Ordinance XVI for the post is either M.A. (Education) with B. Ed. or Masters' degree in any subject with M.Ed. under Clause (a) and M. Phil degree or a recognised degree beyond Masters' level or published research level work under Clause (b). Both the appellant and respondent No. 1 applied and were called for interview. Appellant possessed doctorate qualification with adequate teaching experience and not the requisite qualification of M.Ed./B.Ed. Executive Council considered him eligible to appear for selection in view of relaxation provision and approved the selection of appellant as Principal. About one year later, respondent No. 1 filed representations to the University questioning the

A selection and appointment of the appellant. Respondent No. 1 then filed a writ petition which was disposed of directing the representation of respondent No. 1 to be considered before confirming the appellant. However, University rejected the representation on the ground that the case of the appellant was covered under the relaxation clause, as opined by the Executive Council in its meeting held on 22.9.1993. Respondent No. 1 filed another writ petition B for quashing the decision of the Executive Council dated 22.9.1993 and also the rejection of the representation. High Court set aside the selection and appointment of the appellant. Hence the present appeals.

The question which arose for consideration was whether B.Ed. or M.Ed. C qualification is an essential and indispensable requirement for selection to the post of Principal of University College of Education, whether such requirement could be relaxed and whether factually there was relaxation, and if so, by a competent body or authority. The correct interpretation of Clause (c) to Note II of Ordinance XVI also fell for consideration.

D Allowing the appeals, the Court

HELD: 1. Reading qualifications prescribed in sub-clauses (a) and (b) of Note II of Ordinance XVI for the post of Principle in the recognised Colleges of Education as alternative qualifications and the qualifications in (b) prevailing over those in (a) ignores the conjunctive expression 'and'. There E is no compelling reason to read the word 'and' as 'or'. The reasonable and harmonious way of construing sub-clause (c) is that in order to get eligibility for selection to the post of Principal, one of the two academic qualifications under sub-clause (a) i.e. M.A. (Education) with B.Ed. or Masters' Degree in any subject with M.Ed. is necessary. In addition thereto, the qualification in (b) should also be fulfilled in the normal course. That is to say, a candidate in F addition to the academic qualification in sub-clause (a) should have M. Phil Degree or a recognised degree beyond the Master's level or published a research-level work. However, in case such a candidate having both the qualifications is not available or is otherwise found unsuitable, the option is left to select a candidate fulfilling the qualifications laid down in (a) only. Sub-G clause (c) does not lay down any rule of preference in favour of a candidate having M. Phil or Ph.D. qualification, but it is only a provision enabling the appointment of a candidate without the qualification specified in (b) i.e. M. Phil or a Masters' level degree beyond that which may include Ph.D. Thus, the appellant cannot take refuge under sub-clause (c) since he lacks one of the qualification prescribed in sub-clause (a), namely, M.Ed.

H [540-A-B-C-D-E; 543-B]

2. The Executive Council was empowered to relax the educational qualification but not merely the requirement as to minimum percentage of marks. The statement in the resolution that the appellant was eligible to appear before the selection committee does not necessarily imply that the power of relaxation of educational qualification was in fact exercised, after application of mind to the relevant factors. That fact has to be verified with reference to records and pleadings. The communication rejecting the representation *prima facie* indicates that the Establishment Committee relaxed the qualification. But the Establishment Committee which was incharge of selection cannot usurp the power of relaxation which is vested in the Executive Council.

[543-B; 542-E; 543-C; 542-G-H]

3. Matter is remitted to the High Court for fresh consideration in the light of declaration of law and the observations made in the judgment.

[544-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6048 of 2000.

From the Judgment and Order dated 18.9.99 of the Punjab and Haryana High Court in C.W.P. No. 1082 of 1999.

WITH

C.A. No. 6047 of 2000.

G.L. Sanghi, Dr. G.S. Sangwan, Santosh Singh, A.K. Sanghi, Jinender Manu and Alok Sangwan for the Appellants.

Rakesh Dwivedi, Vishwajit Singh, Ms. Vimla Sinha and Tripurari Ray for the Respondents.

The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. The appellant in C.A.No. 6048/2000 who was working as a lecturer in Art and Crafts in the University College of Education, Kurukshetra, for considerable time applied for the post of Principal pursuant to the advertisement No. 10 of 1995 issued by Kurukshetra University. It appears that this advertisement is the fourth in the series since 1990. No candidate was selected on the earlier occasions. The appellant and the 1st respondent in the said appeal who was lecturer in English in the same College, were called for the interview. The Establishment Committee which interviewed candidates, recommended the appointment of the appellant. The

A recommendation was accepted by the Executive Council on 10.1.1997 and the appellant was appointed as Principal in January 1997. About one year later, the 1st respondent in CA No. 6048 of 2000 filed C.W.P. No. 351/98 questioning the selection and appointment of the appellant on the ground of not having the requisite qualification for the post of Principal and sought for direction not to confirm him in that post. This was preceded by a representation B filed a few days earlier by the 1st respondent to the University.

The said Writ Petition was disposed of by Punjab & Haryana High Court on 12.1.1998 directing the representation of the 1st respondent to be considered by passing a speaking order before confirming the appellant. By a communication dated 03.09.1998 addressed to the 1st respondent herein, C the University communicated the factum of rejection of the representation and the grounds of rejection. The last para of the letter dated 03.09.1998 reads as follows:

> "Dr. Kushwaha was M.A. in first Division. No doubt he did not D possess the qualification of M.Ed. but in view of the resolution of the Executive Council this qualification was relaxable and accordingly he was considered and selected by the Establishment Committee by relaxing the qualification of M.Ed. Therefore, the plea of Dr. Joshi that he did not possess the qualification laid down in the advertisement is wrong as his case was covered under relaxation clause as passed E by the Executive Council in its meeting held on 22.9.1993. Therefore, the representation of Dr. Joshi has no merits and be rejected."

Thereafter another Writ Petition-CWP No. 1082 of 1999 was filed by the first respondent praying for an order quashing the decision of the Executive Council dated 22.9.1993 by which relaxation of qualification of M.Ed./B.Ed. was F granted to the appellant and for quashing the communication dated 3.9.1998 by which his representation was rejected. A further direction was sought for to re-advertise the post of principal by quashing the appointment of the appellant. The judgment rendered in this CWP has given rise to these appeals filed by the appointee - Dr. Kushwaha and the University.

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The High Court held that the appellant herein did not possess the essential qualification of M.Ed or B.Ed in terms of the advertisement and it was not open to the Executive Council to relax that qualification as it had no such power. Adverting to the resolution of the Executive Council dated 22.9.1993, the High Court commented that the said Resolution had no H relevance to the advertisement issued in the year 1995. The High Court,

therefore, set aside the selection and appointment of the 3rd Respondent as Principal and directed a fresh advertisement to fill up the post in accordance with law. The appellant was directed to vacate the post forthwith. However, he has been continuing in office till date in view of the interim order passed by this Court and the consequential decision taken by the University.

We have, therefore, to consider the crucial question whether B.Ed or M.Ed. qualification, as the case may be, is an essential and indispensable requirement for selection to the post of Principal of University College of Education.

The qualifications for the posts of Lecturers and Principals in the recognized Colleges of Education are prescribed by Ordinance XVI. The following are the qualifications prescribed for the post of Principal :-

Principal :

(a) A Doctor's Degree.

(b) A consistently good academic record with high Second Class (55% marks or grade B in even point scale) M.A. Education with B.Ed (Second Class with 50% marks in Theory and Practice separately) or Master's Degree in any subject with M.Ed (55% marks in one degree and 50% marks in the other).

(c) Teaching experience of at least 8 years in a recognized College or University out of which teaching experience of at least five years should be in recognized College of Education or the Department of Education of a University. Persons with some administrative experience in an educational Institution will be preferred.

Provided that the teaching experience in the case of lady Principals of Women Colleges of Education may be reduced upto five years by the Vice-Chancellor on the basis of merit taking into consideration the age, academic record and experience.

Note :

(i) The condition of Ph.D. Degree shall not apply to those having 16 years of teaching experience in the capacity as a regular lecturer in a College.

(ii) The following qualifications are applicable in the case of

A University appointed lecturer or a university approved lecturer of a Recognised college appointed before 27.1.1976.

(emphasis supplied)

Principal—

B (a) A consistently good academic record with High Second Class (55% marks or grade B in seven point scale) M.A. Education with B.Ed. (Second Class with 50% marks in Theory and Practice separately) or Master's degree in any subject with M.Ed. (55% marks in one degree and 50% marks in the other).

C (Relaxable in the case of a University appointed lecturer or a University approved lecturer in any capacity, of a recognized College appointed before 27.1.1976); and

(b) An M.Phil Degree or a recognized degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work.

D (c) Provided that if a candidate possessing the qualification as at (b) is not available or not considered suitable, the College on the recommendation of the Selection Committee may appoint a person possessing the qualifications as at (a).

E (d) Teaching experience of at least 10 years in a recognized or affiliated college or University out of which teaching experience of at least 5 years should be in recognised college of Education or the Department of Education of a University. Persons with some administrative experience in an educational institution will be preferred.

F Provided that the teaching experience in the case of lady Principals of Women Colleges of Education may be reduced up to five years by the Vice-Chancellor on the basis of merit taking into consideration the age, academic record and experience."

G In the advertisement, it is stated that the qualifications are mentioned in the application form. A copy of the application form is not on record. However, an extract of the qualifications for the post of Principal, University College of Education is found in the paper book. In that, the word 'and' occurring at sub-clause (a) of Note II (extracted above) is found omitted. The same mistake is repeated in the extract of qualifications given by the High H Court. The qualifications set out in the advertisement coupled with the

application form are supposed to be in conformity with the relevant rules and ordinances. A copy of the Ordinance No. XVI (corrected upto 1994) has been filed by the learned counsel for the 1st respondent-writ petitioner at the time of hearing. We must presume that the qualifications mentioned in the application form are in conformity with the Ordinance. Therefore, we proceed on the basis that at the end of sub-clause (a) following Note II, the expression 'and' occurs. We have pointed out this glaring omission as the word 'and' has some bearing on the interpretation sought to be placed by the learned counsel for the appellant.

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It may be seen that two categories of eligible candidates are dealt with in the Ordinance. The second part prescribes the qualifications for such of those lecturers who were either appointed by the University or whose appointments in a recognized College were approved by the University before 27.1.1976. The first part applies to the candidates who do not come within the ambit of second part (i.e. Note II of the Ordinance). We are concerned here with second part underlined above.

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Now, let us see the educational qualifications of the first respondent. They are: M.A. in 1st Division with the subjects of drawing and painting, Ph.D (in Fine Arts subject) and 5 year diploma in Commercial Arts. Admittedly, he does not possess the qualification of M.A. (Education) with B.Ed or Masters Degree with M.Ed. as required under sub-clause (a). Of course, he had teaching experience of 26 years as lecturer.

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The learned senior counsel for the appellant, Shri G.L. Sanghi, has put forward, in the first instance, a new contention harping on sub-clause (c) which, for the sake of ready reference, is repeated hereunder:

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> "(c)-Provided that if a candidate possessing the qualification as at (b) is not available or not considered suitable, the College on the recommendation of the Selection Committee may appoint a person possessing the qualifications as at (a)."

According to Shri G.L. Sanghi, sub-clause (c) lays down a rule of preference and if a candidate with M.Phil or Ph.D is available, it enjoins that such a candidate should necessarily be appointed. As the appellant possesses Ph.D. Degree which is a recognized Degree beyond the Masters' level within the meaning of sub-clause (b) and he fulfils the teaching experience criteria, he is eligible for appointment irrespective of the fact that he does not have one of the qualifications set out in sub-clause (a). The learned counsel wants to

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A read sub-clauses (a) and (b) as alternative qualifications and the qualification in (b) prevailing over those in (a). Such argument, in our view, ignores the conjunctive expression 'and'. There is no compelling reason to read the word 'and' as 'or'. In our view, the reasonable and harmonious way of construing sub-clause (c) is this : in order to get eligibility for selection to the post of Principal, one of the two academic qualifications set out in (a) i.e. M.A. B (Education) with B.Ed. or Masters Degree in any subject with M.Ed. is necessary. In addition thereto, the qualification in (b) should also be fulfilled in the normal course. That is to say, a candidate in addition to the academic qualification in sub-clause (a) should have M.Phil Degree or a recognized Degree beyond the Masters' level or published a research-level work. However, C in case such a candidate having both the qualifications is not available or is otherwise found unsuitable, the option is left to select a candidate fulfilling the qualifications laid down in (a) only. That, in our view, is the plain meaning of sub-clause (c) and we agree with the submission made by Mr.R. Dwivedi, the learned Senior counsel for Respondent No.1 in this regard.

D We cannot, therefore, read Clause (c) as laying down any rule of preference in favour of a candidate having M. Phil or Ph.D qualification, but it is only a provision enabling the appointment of a candidate without the qualification specified in (b) i.e. M. Phil or a Master's level degree beyond that which may include Ph.D. In fact, the interpretation which is sought to be E placed on behalf of the appellant was never placed by the University. On the other hand, the University was only harping on the purported power of relaxation. It was only for the first time in the course of the arguments, the learned counsel for the University made an endeavour to support this argument advanced by the learned Counsel for the appellant.

F We shall now turn our attention to the next contention regarding relaxation of qualification which loomed large before the High Court. The stand of the appellant and the University is that the academic qualification prescribed as well as minimum marks in Masters' Degree could be relaxed in appropriate cases, whereas the stand of the first respondent is that relaxation G is contemplated in relation to percentage of marks only. The provision for relaxation is contained in the bracketed portion immediately following sub-clause (a) to Note II of the Ordinance quoted supra. The same provision is also found in Advertisement No.2 of 1990 which is the first in the series. Two questions arise here : (1) Whether the power to relax educational qualification is vested with the competent body/authority? (2) Factually, was H there relaxation? If so, by a competent body or Authority? The answer to first

question turns on the ambit and amplitude of relaxation clause. It seems to us that the interpretation placed by the University body in its resolution dated 22.9.1993 is a reasonably possible view, going by the plain language and the contextual setting of relaxation provision. Such provision for relaxation could have been thought of to open up opportunities to the lecturers of long standing and creditable record who may be deficient in one of the prescribed qualifications, whatever may be the wisdom behind it. For instance, if a candidate under consideration has at least B.Ed. qualification, there is no serious dispute that the requirement of M.Ed. degree could be relaxed. The wide scope of the relaxation provision was recognized by the University authorities even in the year 1990 and that is why the proposal was placed before the Executive Council to curtail its scope so as to limit the relaxation to marks only. The Executive Council approved the same on 23.11.1990 and decided to amend the Ordinance. We have not been enlightened as to what further happened. No one has pleaded that the relaxation clause was amended as per the resolution. In the Ordinance which we extracted above, the same provision in widely couched language exists. One point we would like to make clear is that we are not concerned here with the propriety of reserving the power to relax the basic educational qualification in a given case because such provision has not been attacked as ultra vires the Constitution or Statute. We need not, therefore, test it from the angle of Articles 14 and 16. We are concerned here with the limited aspect of existence or otherwise of the power to relax qualifications, on the basis of the relaxation clause, as it stands.

Coming to the second question, the first document to be referred to is Annexure R-5 to the counter of 1st respondent which is a Note circulated to the Executive Council which met on 31.7.1998 to take a decision on agenda item No. 62 pursuant to the direction given in C.W.P. No. 351/98. Therein it is mentioned that the appellant was called for interview on the orders of Vice-Chancellor issued on 15.12.1995 keeping in view the decision of the Executive Council recorded in resolution No. 28 dated 22.9.1993. The said resolution dated 22.9.1993 reads as follows :-

> "The Executive Council considered the representation of Shri S.K. Kushwaha, lecturer in Arts and Craft, University College of Education, and resolved that he is eligible to appear before the selection committee in terms of the advertisement as published in February 1990. He is an approved lecturer of the recognised college. The term relaxation as used in this advertisement is not restricted to percentage of marks only as interpreted by the then executive Council in its resolution

A No.82 dated 23.11.90, but has an extended meaning covering entire essential qualifications as listed in Clause (a) of this advertisement".

The High Court was of the view that this resolution has no relevance to the advertisement No. 10 of 1995. That, in our view, amounts to taking a narrow view of the scope of the resolution. Though the resolution refers to the B 'terms' and 'qualifications' stipulated in the advertisement of February 1990, it holds good for the selections held subsequent to that date also so long as the conditions of eligibility and qualifications prescribed are the same. A xerox copy of the advertisement No.2 of 1990 has been filed by the counsel for the University. The fact that the qualifications in the advertisement of C 1990 and the present advertisement of 1995 are the same admits of no doubt. It is specifically mentioned so in the note placed before the Executive Council for its meeting held on 31.7.1998. In this fact situation, if the power of relaxation was exercised once, the benefit of such relaxation will enure to the appellant in relation to the subsequent advertisement also for the reason that the qualifications did not change and secondly the selection did not materialise D for one reason or the other). However, going by the language of the resolution, a doubt arises whether the Executive Council, which is undisputedly the competent authority, had in fact relaxed the M.Ed. qualification in the case of the appellant. The resolution dated 22.9.1993 merely sets out the wider scope of the relaxation clause. It does not say anything more than that. The E statement in the resolution that the appellant is eligible to appear before the selection committee does not necessarily imply that the power of relaxation of educational qualification was in fact exercised. The relevant record only could bear testimony to that fact. There is another allied aspect. Even if factum of relaxation before or at the time of passing the resolution dated 22.9.1993 is not established, it would still be necessary to enquire whether F the relaxation was given by competent authority in December 1995 when the appellant was called for interview on the orders of the Vice-Chancellor. In this connection, what is stated in the concluding para of the communication dated 3.9.1998 addressed to the first respondent deserves notice. It is said therein : "in view of the resolution of the Executive Council this qualification G was relaxable and accordingly he was considered and selected by the Establishment Committee by relaxing the qualification of M.Ed". *Prima facie* it indicates that the Establishment Committee relaxed the qualification. But, the Establishment Committee which was incharge of selection cannot usurp the power of relaxation which is vested in the Executive Council. Therefore, it has to be seen with reference to the record whether there was relaxation in H December 1995 before the appellant was called for interview and if so, such

relaxation was given by the Executive Council, after applying its mind to the factors justifying relaxation. It is made clear that in case there was due relaxation in September 1993 by the Executive Council, it is unnecessary to probe into question of relaxation in December 1995.

To summarise, we hold that the appellant cannot take refuge under sub-clause (c). He lacks one of the qualifications prescribed in sub-clause (a), namely, M.Ed. At the same time, we have held that the Executive Council was empowered to relax the educational qualification but not merely the requirement as to minimum percentage of marks. We have expressed a doubt on the question whether the power of relaxation was in fact exercised in favour of the appellant by the competent authority either during 1993 or 1995, after applying its mind to the factors warranting relaxation. That fact has to be verified with reference to records and additional pleadings if any. The validity or otherwise of the Ordinance conferring power to relax one of the educational qualifications is left open.

Finally, we must advert to the contention raised by the learned counsel for the appellant that the delay on the part of the first respondent and his conduct disentitled him for relief under Article 226 of the Constitution and the High Court at the instance of the first respondent should not have gone to the extent of setting aside the appointment made long back. It is pointed out that the first respondent filed the writ petition nearly one year after the appointment of the appellant though he was well aware of such appointment. It is submitted that even though the first respondent was on study leave for some time he was regularly visiting the University campus and therefore he must have been aware of developments. Moreover, it is contented that the first respondent being fully aware of the decision of the University relaxing the qualifications as early as in 1993 did not challenge that resolution all these years. On the other hand, having participated in the selection process and failed to get selected, he started the present litigation. The learned senior counsel for the first respondent, Shri R. Dwivedi, countered this contention mainly on the ground that this objection was not raised before the High Court and, therefore, the High Court did not have occasion to consider the same. Learned counsel submits that it is not open to the appellant to raise this issue of delay and latches at this point of time. We find from the pleadings that the appellant did raise the question of delay and latches on the part of the first respondent. As the case is being remitted to the High Court for consideration of the points set out above, we feel, it will be appropriate for the High Court to consider this aspect as well. Whether or not there was unexplained delay

A and, if so, whether it will have effect on the ultimate order that the High Court is inclined to pass will have to be considered by the High Court. We do not propose to express any view on this aspect. It is needless to point out that in case the finding of the High Court on the issue relating to relaxation is in favour of the appellant, no further question arises.

B For the reasons aforesaid, we set aside the judgment of the High Court and remit the matter to the High Court for fresh consideration in the light of the declaration of law and the observations made in the judgment, as expeditiously as possible. The appeal is thus allowed. No costs.

N.J. Appeal allowed.