

**REFERENCE UNDER ARTICLE 317 (1) NO.2 OF 2008 A
IN RE: MEHAR SINGH SAINI, CHAIRMAN, HPSC AND
ORS.**

NOVEMBER 12, 2010

**[S.H. KAPADIA, CJI, K.S. PANICKER B
RADHAKRISHNAN AND SWATANTER KUMAR, JJ.]**

Constitution of India, 1950:

*Article 317(1) – Reference to Supreme Court for inquiry C
into allegations of misbehaviour against Chairman/Members
of a Public Service Commission – Nature of the proceedings
– Standard of proof – HELD: The proceedings are neither akin
to those under service law nor to those under criminal law –
The nature of such proceedings is sui generis and the Court D
can evolve its own procedure in consonance with the language
of Article 317(1) read with the provisions of the Supreme
Court Rules and the principles of natural justice – The
standard of proof applicable to such cases is not that required
under the criminal jurisprudence, i.e., to prove the charge E
'beyond any reasonable doubt' – The Court is not called upon
to record finding of guilt as if in a criminal case – The charge
has to be construed in a liberal manner so as to ensure
completion of inquiry in terms of Article 317(1) while keeping F
in mind the constitutional stature of the office – Where the
facts supported by record point a finger at the Chairman/
Member of the Commission with some certainty, it may
amount to misbehaviour in the given facts and circumstances
of a case – Rule of 'reasonable preponderance of
probabilities' would be the right standard to be applied to such G
cases – Doctrines – Rule of 'reasonable preponderance of
probabilities' – Maxim 'Qui non prohibet quod prohibere potest
facere videtur' – Supreme Court Rules, 1966 – Or. 38, Part
IV, Or. 47, r.6 – Inherent powers of Supreme Court.*

- A Article 317(1) – Reference to Supreme Court – Framing of articles of charge – HELD: The jurisdiction being of limited scope, Supreme Court cannot frame such entirely new articles of charge which have no link, connection or are not explanatory to the original charges stated in the Reference –
- B However, the Court can examine additional facts/subsequent events having a direct bearing, as well as additional or supplementary articles of charge which are explanatory or intrinsically related to the charges specified in the Reference.
- C Article 317(1) – Removal of Chairman/Member of a Public Service Commission 'on the ground of misbehavior' – Allegations against the Chairman/Members of improper selection of a candidate on the basis of bogus certificate which led to their arrest and prosecution for various offences under IPC and Prevention of Corruption Act – The
- D expressions 'misbehaviour' (Art. 317(1)), 'proved misbehaviour' (Article 124) and 'misconduct' (Article 311) – Explained – HELD: The expression 'on the ground of misbehaviour' is an expression of wide connotation and cannot be given a restricted meaning – It should be understood
- E keeping in view the nature of the misbehaviour complained of, the office in question and the standard expected to be maintained by the constitutional body in discharge of its functions – The term must be construed very liberally so as to bring within its ambit the behaviour of the Chairman/
- F Member of the Commission, which, as per settled norms, was not expected of him/her – The expression 'misbehaviour' generally refers to a conduct which might erode the faith and confidence of the public at large in such constitutional office – In the instant case, the conduct of the Chairman/Members
- G of the Commission in processing the application of the candidate concerned and selecting him does not meet the standards of behaviour, integrity and rectitude required to be maintained by the office they were holding – Their behaviour in this regard would certainly fall within the ambit of
- H misbehaviour justifying their removal from service.

Article 317(1) – Allegations against Chairman/Members of a Public Service Commission of withholding the information required in the investigation into the charges of illegal and improper selections made by the Commission, and despite directions by courts, refusing to cooperate in the investigation – Claim of privilege and immunity – HELD: It has been established that there was definite non-cooperation on the part of the Chairman/Members of the Commission in furnishing records and documents to the investigating agencies and this attitude of the persons concerned and claim of privilege lacks bona fides – High Court has clearly held that the claim of privilege for non-production of documents with reference to ss.123 and 124 of the Evidence Act was not sustainable – State had the right to get the records from the Commission for the purpose of investigation and on latter's failure, provisions of s.93 CrPC were rightly invoked – The SLP challenging the order of High Court having been dismissed, the order inter se the parties had attained finality and, keeping in view the doctrine, 'estoppel per rem judicatum', it is impermissible to examine such an order – Further, there has been an abuse of the office of Chairman and Members of the Commission, by the respondents, by withholding the material records, passing resolutions contrary to law, filing incorrect replies in judicial proceedings and committing manipulations/interpolations in regard to answer-sheets of the candidates – They are guilty of misbehaviour on this count as well – Doctrine, 'estoppel per rem judicatum' – Judicial propriety – Evidence Act, 1872 – ss.123 and 124.

Articles 317(1) r/w Article 316 – Reference for removal of Chairman/Members of a Public Service Commission on the ground that their qualifications, experience and stature were not of the required standard and their appointments were made with a view to ensure that they would further the objectives of the party in power – HELD: There is no constitutional requirement of any particular academic qualification for appointment as Official/Nor-official Member

- A *of the Commission – On facts, it cannot be said that the incumbents were guilty of misbehaviour on this count.*

- B *Article 316 – Appointment of Chairman/Members of a Public Service Commission – Desirability of providing qualification or experience – HELD: Is a function of Parliament and it would not be in consonance with the constitutional scheme that Supreme Court should venture into reading any specific qualifications in Article 316 or provide any specific guidelines in this regard – However, keeping in view the number of cases referred to Supreme Court in terms of Article 317(1) in recent years itself needs the attention of Parliamentarians and the quarters concerned to this aspect.*

Evidence:

- D *Proceedings under Article 317(1) of the Constitution – Record of judicial proceedings, to which the respondents were parties, produced before Supreme Court – HELD: Production of such material has not caused any prejudice to the respondents – They had full opportunity to defend themselves in the inquiry – They were granted liberty to rebut the evidence led against them but they did not do so – The reply filed by them is vague and ex facie unsatisfactory.*

Administrative Law:

- F *Public functionaries – Chairman/Members of a Public Service Commission – Accepting of application after the last date – Manipulation in the date of its receipt – Selection of the candidate on the basis of bogus certificate – HELD: Public Service Commissions are expected to adopt a fair and judicious process of selection to ensure that deserving and meritorious candidates are inducted in State services – In the instant case, the process adopted by the Commission, its Chairman and Members was not in consonance with the known canons of administrative jurisprudence – The conduct of Chairman and Members not only shows omissions and*
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commissions on their part, but administrative lapses as well— A
Constitution of India, 1950 – Article 317(1).

The Haryana Public Service Commission was reconstituted with the appointments of its Chairman and Members between 5.7.2004 and 15.12.2004. It came to the notice of the subsequent Government that various B
irregularities and illegalities, such as acts of favouritism, discrimination and violation of rules/regulations had been committed by the Commission in the process of selection. Vigilance enquiries were initiated. First C
Information Reports were registered for the alleged irregularities, illegalities and acts of commissions and omissions by the Chairman and the Members of the Commission. For the investigations and enquiries, records were required by the investigating agencies, but D
the Commission did not furnish the same nor did it cooperate at all in the investigation. Ultimately, the Governor of the State made a reference to the President of India who, in turn referred the matter to the Supreme Court under Article 317 (1) of the Constitution of India, 1950 for enquiry and report “as to whether the existing E
Chairman and Members of the Haryana Public Service Commission, ought, on the grounds of misbehaviour, be removed from the office of the Chairman and Members of the Commission.”

In the Presidential Reference, the charges against F
the Chairman and the Members were: (i) that there were serious irregularities in the appointments made to the posts of Chairman and Members of the Commission, which were made without due regard to their G
qualifications, experience, status and accomplishments, required for the said constitutional posts; (ii) that four Members of the Selection Committee (one of whom later became the Chairman of the Commission) recommended the name of one ‘PS’ for the post of Drug Inspector on H

- A the basis of a bogus certificate for which an investigation was conducted by the State Vigilance Bureau and, subsequently, an FIR was registered against these persons for various offences under the Penal Code and the Prevention of Corruption Act, 1988 and for which
- B these persons were arrested and the challan was filed in the trial court; and (iii) that the Chairman and eight Members of the Commission, in spite of the directions issued by the Supreme Court, refused to co-operate in the investigation being carried out by the State Vigilance
- C Bureau in the complaints regarding selections made by the Commission.

- By order dated 9.8.2008 passed by the Governor of the State, the Chairman and all the Members were placed under suspension. Meanwhile six Members vacated the
- D office as their term ended by efflux of time, and the Chairman ('MSS') and two Members ('SS' and 'RK'), the respondents, continued as the Chairman and the Members under suspension. The legality of the order of suspension was challenged before the Supreme Court in
- E a writ petition, which was dismissed and, as such, the suspension order attained finality¹.

- During the pendency of the matter before the Supreme Court and because of subsequent events, the
- F State Government filed additional articles of charge and, ultimately, nine articles of charge (including Articles of charges 1 to 3 as mentioned in the reference) were approved by the Court for consideration.

- It was contended for the respondents that the
- G jurisdiction of the Court in terms of Article 317(1) of the Constitution was a limited one and the Court had to conduct its inquiry and record its findings in the report only in relation to the articles of charge referred to by the

H 1. Ram Kumar Kashyap v. Union of India [2009] 12 SCR 601=(2009) 9 SCC 378

President in exercise of its powers under Article 317(1), and it had no jurisdiction to go into the merits or otherwise of the additional articles of charge; that there was no evidence on record to substantiate any of the approved articles of charge. A

The question for consideration before the Court was: whether the conduct of the Chairman/Members of the Commission amounted to misbehaviour in the light of the approved articles of charge and the evidence produced on record, which would justify their removal in terms of Article 317 (1) of the Constitution? B C

Answering the reference in the affirmative, the Court

HELD:

1.1 The proceedings before this Court under Article 173(1) of the Constitution of India, 1950 are neither akin to proceedings under service law nor criminal law. The procedure for removal has neither been stated in the Constitution in detail nor has this Court framed any elaborate rules in exercise of its power under Article 145 of the Constitution. The nature of the proceeding is such that it may become necessary for the Court to adopt a procedure befitting the facts and circumstances of a given case. The burden of proof applicable to such cases is not that required under the criminal jurisprudence, i.e., to prove the charge 'beyond any reasonable doubt'. Rule of '*reasonable preponderance of probabilities*' would be the right standard to be applied to such cases. The Court is not called upon to record finding of guilt as if in a criminal case. The charge has to be construed in a liberal manner so as to ensure completion of inquiry in terms of Article 317(1) of the Constitution while keeping in mind the constitutional stature of the office. The content and nature of the proceedings before this Court under Article 317(1) is *sui generis* and the Court can evolve its own D E F G H

A procedure in consonance with the principles of natural justice to suit the facts of a given case and to ensure that ends of justice are achieved and there is no abuse of the process of Court. [para 33,35 and 86] [703-G-H; 704-A-C; 748-E-G; 705-D]

B 1.2 The Supreme Court, in exercise of its power under Article 145 of the Constitution of India, 1950, has, with the approval of the President, framed Supreme Court Rules, 1966 for regulating generally the practice and procedure of this Court and has provided rules under C Part VI, Order XXXVIII thereof for conducting inquiry under Article 317(1) of the Constitution. But a plain reading of the Rules clearly shows that no detailed procedure has been provided so far, as to how and in what manner the inquiry shall be conducted and what D shall be the scope of the inquiry and the manner in which the evidence shall be recorded. Thus, it has been left to the discretion of this Court to follow a procedure which is in consonance with the language of Article 317(1), read with the Rules and principles of natural justice. Inherent E power of this Court is wide enough to enunciate such a procedure, with reference to the facts and circumstances of a given case, as Rule 6 of Order XLVII of the Supreme Court Rules specifically provides that nothing in these Rules shall be deemed to limit or otherwise affect the F inherent powers of the Court to make such orders, as may be necessary for the ends of justice, or to prevent abuse of the process of the Court. [para 24,25 and 27] [694-H; 695-A-B; G-H; 696-A-B]

G 2.1 The articles of charge, which are referred to the Supreme Court by the President, are the very foundation of the reference proceedings. The reference jurisdiction, being advisory in nature and, as such, being the jurisdiction of limited scope in contradistinction to the original or the appellate jurisdiction, the Supreme Court, H

in exercise of its limited jurisdiction, cannot frame such
entirely new articles of charge which have no link,
connection or are not even explanatory to the original
charges stated in the Presidential Reference, nor can it
try them as part of the inquiry being conducted under
Article 317(1) of the Constitution. However, the inquiry
proceedings before the Supreme Court cannot be
circumscribed by the Presidential Reference under Article
317(1) *stricto sensu* that too to the extent that the Court
cannot examine any additional facts/subsequent events
having a direct bearing, additional or supplementary
articles of charge which are explanatory or intrinsically
related to the charges specified in the Presidential
Reference. The Supreme Court has jurisdiction to
examine additional or explanatory charges, records,
documents, evidence and facts which may come to light
even subsequent to the Presidential Reference in
exercise of its advisory jurisdiction under Article 317(1)
of the Constitution. [para 27, 30 and 69] [697-D-E; 701-B-
C; 733-B]

Reference under Article 317(1) of the Constitution of India
[1983] 3 SCR 639 = (1983) 4 SCC 258; and *Supreme Court*
Advocate-on-Record Association v. Union of India 1993 (2)
Suppl. SCR 659 = (1993) 4 SCC 441 – relied on.

Reference under Article 317(1) of the Constitution of India
[1983] 3 SCR 639=(1983) 4 SCC 258; and *Re: Smt. Sayalee*
Sanjeev Joshi 2007 (7) SCR 116 = (2007) 11 SCC 547 –
referred to.

Re: Smt. Sayalee Sanjeev Joshi 2007 (7) SCR 116 =
(2007) 11 SCC 547; *Ram Kumar Kashyap v. Union of India*
[2009] 12 SCR 601=(2009) 9 SCC 378 – relied on.

2.2 Charges 3, 5 and 9, relate to refusal on the part
of all the respondents to cooperate and to supply
documents withholding of the material records which

A were required by the investigating agencies as well as by
 the Government. Charges 5 and 9, as approved by the
 Court, thus, are explanatory and intrinsically inter-
 connected to Charge 3 as was mentioned in the
 Presidential Reference. Thus, these can be examined by
 B the Court on merits. Charge 4, in fact, is repetition in a
 concise form of the paragraphs mentioned in the letter
 of the Governor addressed to the President of India,
 which itself is the foundation for making of the Reference
 by the President. The illegalities, manipulations and
 C interpolations had been referred to not only on the
 records of this case but even in the writ petitions filed
 before the High Court. In terms of para 8 of Governor's
 letter, it is alleged that a reply had been filed by the
 Chairman and Members of the Commission in an unlawful
 D manner to cover up their own mistakes. Further, Charge
 8 is merely ancillary to Charge 4 which itself is not beyond
 the record which was placed before the President and,
 in any case, all these facts have come to light
 subsequently. [para 39-40] [707-A, F-G; 708-A-B]

E 2.3 Charges 6 and 7 of approved articles of charge
 are inter-connected. These pertain to the alleged
 malicious acts of influencing the subordinates to carry
 out intended manipulations to favour desired persons in
 selections, and the alleged conduct of the Chairman in
 F defending such patently illegal acts. However, it may be
 noted that these approved articles of charge are totally
 independent and are not incidental or explanatory to the
 articles of charge specified in the Presidential Reference.
 They do not even emerge directly from the record
 G produced before this Court. Charges 6 and 7, therefore,
 do not require examination by this Court as they are *ex-
 facie* beyond the permissible scope of the Presidential
 Reference. Further, though approved articles of charge
 have been framed against all the private respondents,

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pending the proceedings, six of them have ceased to be the Members of the Commission as their terms of appointment have come to an end by efflux of time and, accepting the request on behalf of the State Government, this Court would not be examining the alleged misbehaviour of these private respondents. [para 41 and 49] [708-D, 715-G-H; 716-A-D]

Reference 1 of 1983 (1990) 4 SCC 262 – referred to.

3.1 Higher the public office, greater is the responsibility. The adverse impact of lack of probity in discharge of functions of the Public Service Commission can result in defects not only in the process of selection but also in the appointments to the public offices which, in turn, will affect effectiveness of administration of State. The working of the Public Service Commission and its Members has to be of impeccable integrity and rectitude. The object should be to provide the best persons from the available candidates for appointment in the State/ Central cadres. This has to be done by adopting a judicious, fair and transparent method of selection, free of influence from any quarter in the Government or otherwise. [para 2-4 and 22] [673-D; 693-C]

Re: Dr. Ram Ashray Yadav, Chairman Bihar PSC 2000 (2) SCR 688 = (2000) 4 SCC 309 – relied on

Metropolitan Properties Co. vs. Lannon (1968) 3 All ER 304 – referred to

French Administrative Law by Profs. Brown and Garner's, 3rd ed. (1983) – referred to.

3.2 'Misbehaviour' in contradistinction to 'misconduct' and 'proved misbehaviour'

The condition precedent to an order being passed by

- A the President of India, removing the Chairman/Member of the Commission from office, is a report of the Supreme Court to the President recording a finding after inquiry that the Chairman/Member ought to be removed from office on the ground of misbehaviour. The plain language
- B of Article 317(1) indicates that the expression 'on the ground of misbehaviour' is an expression of wide connotation and cannot be given a restricted meaning. Normally, such term should be understood keeping in view the nature of the misbehaviour complained of, the
- C office in question and the standards expected to be maintained by the constitutional body in discharge of its functions. [para 42] [709-C-D]

- 3.3 The framers of the Constitution opted to use different expressions in other Articles relating to
- D misconduct or misbehaviour of other Constitutional institutions. This itself indicates the clarion intent of the framers to correlate a misconduct or misbehaviour to the constitutional status held by the person in terms of expected standards of performance, functions, integrity
- E and rectitude. While in Article 317(1) of the Constitution the expression 'on the ground of misbehaviour' has been used, which is to be established by the report of this Court, in Article 124(4) the expression 'on the ground of proved misbehaviour or incapacity' indicates a condition
- F precedent to removal of a Judge of the Supreme Court from office. To demonstrate this clear distinction, reference can usefully be made to Article 311 of the Constitution dealing with civil services. The concept of doctrine of pleasure, which is applicable to civil servants,
- G is not attracted in the constitutional appointments under Articles 124 and 316. Removal is possible only when the conditions postulated under these Articles are satisfied. [para 42] [709-E-G; 710-B]

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Law Lexicon 2nd Ed. 1997 – referred to.

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Reference No.1 of 2003 (2009) 1 SCC 344 – referred to.

3.4 Neither ‘misbehaviour’ nor ‘misconduct’ has been defined in the Constitution or even in the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Once an expression has not been defined, then it must be understood and explained in its common parlance, keeping in view the object sought to be achieved. ‘Misbehaviour’, when employed in respect of holders of high offices, has a well understood and well defined meaning according to the tradition and standards maintained by the members of a particular service or office. [para 45] [711-F-H; 712-A]

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R.P. Kapur v. S. Partap Singh Kairon [(1961) 63 Punj LR 780 – referred to. Narotam Chauraria v. M. R. Murli 2004 (1) Suppl. SCR 266 = (2004) 5 SCC 689; and State of Punjab v. Ram Singh Ex-Constable 1992 (3) SCR 634 = (1992) 4 SCC 54; and Union of India v. J. Ahmed 1979 (3) SCR 504 = [(1979) 2 SCC 286 – referred to.

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3.5 All these expressions, namely, ‘misbehaviour’, ‘proved misbehaviour’ and ‘misconduct’, fall under different domains of jurisdiction and operate in distinct and different fields. The distinction, primarily, is that of degree, intent and expected standard required to be maintained in relation to the office that the delinquent holds. Onus of proof and severity of misconduct will be relatable to the office one is holding. Misconduct may relate to graver acts, deeds and omissions while misbehaviour may relate to the standards expected to be maintained by the holder of the constitutional office. Thus, misbehaviour/misconduct could be used interchangeably in certain circumstances while in other

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- A they may have to be understood as clearly distinguishable. [para 48] [715-A-C]

Sub-Committee on Judicial Accountability v. Union of India 1991 (2) Supl. SCR 1 = (1991) 4 SCC 699 – relied on.

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- 3.6 'Misbehaviour' may include behaviour that was not expected of the holder of the constitutional office but would not include 'grave misconduct' or 'proved misbehaviour'. This distinction has to be kept in mind by this Court where the constitutional mandate refers to 'misbehaviour' which is an expression of very wide magnitude. This term must be construed very liberally so as to bring within its ambit the behaviour of the Chairman/Member of the Commission which, as per settled norms, was not expected of him/her. The expression 'misbehaviour' generally refers to a conduct which might erode the faith and confidence of the public at large in such constitutional office. Where the facts supported by record point a finger at the Chairman/Member of the Commission with some certainty, it may amount to misbehaviour in the given facts and circumstances of a case. [para 48 and 86] [715-D-E]

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Reference No.1 of 2003 – referred to.

- F 4.1 Article of Charge 1

- It is alleged that the qualifications, experience and stature of the Chairman and Members (respondents 1,8 and 9) were not of the required standard for appointment to their respective constitutional offices and their appointments were made with a view to ensure that they would further the objectives of the political party, then in power; and thus, by conniving in the subversion of the Constitution, they are guilty of misbehaviour under Article

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317(1) of the Constitution. It needs to be noticed that the words 'by conniving in the subversion of the Constitution' are introduced in the draft charges which, of course, stand approved by this Court. In any case, this is only an explanatory line and does not change the content and meaning of this article of charge, as stated in the Presidential Reference. [para 50 and 51] [716-E-G]

4.2 Appointment to the offices of Chairman and Members of the Commission are made by the Governor of the State in terms of Article 316 of the Constitution. Under the proviso to Article 316(1), one half of the members of the Commission shall be persons who, at the dates of their respective appointments, have held an office either under the Government of India or under the Government of a State for at least 10 years; these members are termed as 'Official Members'. The remaining half of the 'Non-official Members' of the Commission can be appointed by the Governor in accordance with law. 'In accordance with law' means that the appointments are to be made on the recommendation of the State Government, as the Governor has to act on the advice of the Council of Ministers. The provisions of Article 316 do not lay down any qualification, educational or otherwise, for appointment to the Commission as Chairman/Member. Even for the Official Members no specific academic qualification has been provided. Thus, there is no constitutional requirement of any particular academic qualification for appointment as Official/Non-official Member of the Commission. Therefore, it cannot be held that the respondents are guilty of misbehaviour and can be removed from their office in terms of Article 317(1) of the Constitution nor can it be said 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

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- A defeat the very object of constituting the Commission.
[para 51] [716-H; 717-A-H]

**Jai Shankar Prasad v. State of Bihar* 1993 (2)
SCR 517 = (1993) 2 SCC 597 – referred to.

- B *Re: Dr. Ram Ashray Yadav, Chairman Bihar PSC* 2000
(2) SCR 688 = (2000) 4 SCC 309; *Inderpreet Singh
Kahlon v. State of Punjab* 2006 (1) Suppl. SCR 772 = (2006)
11 SCC 356 – referred to.

- C 4.3 In the instant case, the Chairman was a private
practitioner holding a BAMS degree. He was from the
Non-official category and, as such, the experience of ten
years as Government appointee would not apply to him.
D Similar is the case with regard to respondent No. 8, a
teacher. Respondent No.9, who has been appointed to
the Commission as Official Member, possessed ten years
experience of holding Government office. In the case of
an Official Member, it is nowhere spelt out as to which
cadre in the official hierarchy, he should have experience
E of 10 years. In these circumstances, the Government has
failed to prove Charge 1 and it is held that the three
respondents, namely, the Chairman and two Members,
are not guilty of any misbehaviour as contemplated
under Article 317(1) on this count. [para 54] [720-G-H; 721-
A-D]

- F 4.4 Desirability, if any, of providing specific
qualification or experience for appointment as Chairman/
Members of the Commission is a function of Parliament.
The guidelines or parameters, if any, including that of
G stature, if required to be specified are for the appropriate
Government to frame. It will not be in consonance with
the constitutional scheme that this Court should venture
into reading any specific qualifications into Article 316 or
provide any specific guidelines controlling the academic
H qualification, experience and stature of an individual who

is proposed to be appointed to this coveted office. A
However, this Court still feels constrained to observe that
this is a matter which needs the attention of
Parliamentarians and quarters concerned in the
Governments. One of the factors, which has persuaded
this Court to make this observation, is the number of B
cases which have been referred to this Court by the
President of India in terms of Article 317(1) of the
Constitution in recent years. A large number of inquiries
are pending before this Court which itself reflects that all
is not well with the functioning of the Commissions. [para C
53] [719-H; 720-A-D]

5.1 Article of Charge 2 is *simpliciter* relating to
improper selection of one 'PS' for the post of Drug
Inspector for which he was recommended at serial
number 1 and was, subsequently, appointed by the D
Government. The approved article of charge may not
spell out every minute detail of the improper selection
but, in substance and keeping in view the dignity of the
office of the Commission, it would be sufficient if a
serious suspicion is cast on the process of selection E
which is attributable to and/or is the result of commission
or omission of the members of the Selection Committee.
[para 55 and 57] [722-G-H]

5.2 The State Government had advertised various F
posts including two posts of Drug Inspectors with the
essential qualification and experience for the same. The
qualifications could not be relaxed at the discretion of the
Commission. 'PS' submitted his application dated
9.9.2004, after the last date, i.e., 3.9.2004. However, G
respondent No.5 initialled the application with the date as
3rd September, 2004. This, obviously, means that the
endorsement by respondent No. 5 on the application was
ante-dated to the actual date of receipt of the application.

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- A This application having been received after the prescribed last date ought to have been rejected at the very threshold. Further, in column No.12 of the application, the applicant had not stated that he had any experience of teaching on regular and/or voluntary basis.
- B However, he had annexed to the application copies of two experience certificates from two institutions situate in two states, which indicated that he was shown to have worked at two places during the same period. A complaint was received making a specific allegation that the experience certificate furnished by 'PS' was bogus.
- C Despite these defects, the application was processed. Further, despite the fact that there were more competent and meritorious candidates available, he was selected and placed at serial No.1. In response to the complaint, a note was put up to state that neither the complainant nor 'PS' was a candidate for the post and, therefore, no action was required to be taken. It was put up for consideration of a Member of the Commission, who approved its filing and then it was also signed by the Chairman of the Commission. It needs to be noticed that
- E this process adopted by the Commission and, particularly, by its Member and Chairman was not in consonance with the known canons of administrative jurisprudence. Despite the complaint, the results were approved by the Chairman and Members of the Commission. The private respondents had signed those minutes and forwarded the names to the Government. Such conduct of the Chairman and the Members of the Commission not only shows omissions and commissions on their part but administrative lapses as well.
- F This resulted in providing employment to an undeserving candidate at the cost of more meritorious candidates. [para 57,59 and 61] [725-F-H; 726-D]

5.3 Definite documentary and oral evidence had been

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produced on record to show that the certificate annexed A
with the application of 'PS' was not genuine. It is,
therefore, clear that he did not possess the requisite
experience in terms of the advertisement. Besides, PW-
20, in his affidavit, has specifically stated that experts, B
invited by the Commission for the selection, were not
provided the original record despite demand. Thus, the
members of the Selection Committee, namely, the
respondents, obviously favoured the selection of 'PS'.
Therefore, this Court is of the considered view that the
conduct of the Chairman and the Members of the C
Commission, in processing the application of 'PS',
endorsing and approving his name for the interview,
selecting him and finally recommending his name for
appointment to the post of Drug Inspector, does not meet
the standards of behaviour, integrity and rectitude D
required to be maintained by the office they were holding.
Thus, their behaviour with respect to this article of charge
would certainly fall within the ambit of misbehaviour
justifying their removal from office. [para 62, 63, 65 and
66] [727-B-E; 731-C-E]

6.1 In terms of Charge 3, the Chairman and the
Members of the Commission, in spite of directions of the
High Court, refused to cooperate in the investigation
carried out by the State Vigilance Bureau and
intentionally did not supply the documents requested in F
furtherance to the complaints received by the authorities
in relation to selections made by the Commission.
Approved article of charge 5, 8 and 9 are explanatory to
or extension/repetitive of Article 3. The cumulative
reading of these articles of charge shows that emphasis G
is on non-cooperation of the Chairman and the Members
of the Commission in not furnishing the records, when it
was demanded by the investigating agencies. Further,
there has been an abuse of office of the Chairman and

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A Members of the Commission by withholding the material records, passing resolutions contrary to law, filing incorrect replies in judicial proceedings and lastly the manipulation and interpolations in regard to answer sheets of the selected/non-selected candidates. [para 67-69] [731-G-H; 732-A-B; 733-B-E]

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6.2 It is not in dispute that the Government as well as the Commission had received various complaints in regard to the process of selection as well as the selections themselves, made by the Chairman and Members of the Commission to various appointments in the State services. In furtherance to these complaints and the complaint made regarding appointment of 'PS' to the post of Drug Inspector, five different vigilance enquiries and two different FIRs were registered, primarily, on the ground that the Commission had adopted unfair method of selection. It was also stated that there has been interpolation and manipulation of marks in the answer sheets of the selected as well as non-selected candidates. Despite repeated demands, complete records were not given to the investigating agencies. Instead, the respondents opted to file a writ petition, through the Commission, wherein the High Court clearly observed that the Commission could not claim immunity from providing records, particularly, when the investigations were in furtherance to the complaints of corruption against its office holders. This Court declined* to interfere with the orders and observations of the High Court, which *inter se* the parties, have attained finality. It is impermissible to examine an order passed by the High Court or the Supreme Court which has attained finality *inter-se* the parties that too in a collateral proceeding. This will be opposed to the doctrine, '*estoppel per rem judicatam*'. [para 70 and 75] [734-D-G; 735-B; 741-A-B]

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**Jitendra Kumar v. State of Haryana (2008) 2 SCC 161* A
– referred to.

6.3 The other phase of non-cooperation appears to be when, during the period 15.12.2005 to 4.1.2007, all the private respondents passed four different resolutions declining to hand over the records to the investigating authorities. The stand taken was that the Commission was a constitutional body and its record could not be made available to the investigating agencies. A bare reading of the resolutions, except resolution dated 4.1.2007, clearly shows that there was non-application of mind. The alleged claim of privilege did not find mention in them and the orders of the courts including the highest Court of the land were ignored. The High Court clearly held that the claim of privilege for non-production of documents with reference to ss.123 and 124 of the Evidence Act, 1872 was not sustainable or justified. It further held that the provisions of s.93 of the Code of Criminal Procedure, 1973 were rightly invoked as there was sufficient material on record to justify the issuance of search warrant u/s 93(1)(a) of the Code of Criminal Procedure and that the State had the right to get the records from the Commission for the purpose of investigation. Despite such unambiguous and clear directions of the High Court, the Commission, acting through the private respondents failed to hand over the records, and for a very considerable time investigations were delayed and the guilty could not be brought to book. [para 74] [738-G-H; 739-B-H] B C D E F

6.4 The collective reading of the evidence along with documents which have been placed on record establishes two facts: (1) That there was definite non-cooperation on the part of the Chairman/Members of the Commission in furnishing record and documents to the G

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A investigating agencies; and (2) This attitude of the private
respondents as well as the claim of privilege lacks bona
fides, much less protects the constitutional stature of the
Commission, and was, primarily, intended to withhold the
records from the Investigating Agencies to cover up the
B misdeeds, irregularities and illegalities. In the name of the
constitutional authority, the Chairman and the Members
of the Commission certainly violated the expected
standards of behaviour. [para 76, 81 and 87] [741-C-E;
745-C; 749-H]

C 7.1 The record of the judicial proceedings, which has
been produced before this Court has not caused any
prejudice to the private respondents. First, they had full
opportunity of defending themselves in the inquiry and
second, they were parties in the proceedings before the
D High Court. The records, along with affidavit including the
statements recorded by the Investigating Officer u/s 161
CrPC, can be taken note of in this inquiry. Of course,
reference to these proceedings is limited to the purpose
of examining the veracity of the evidence produced by
E the State in support of approved articles of charge other
than charges 6 and 7 which are beyond the scope of
Presidential Reference. This Court certainly, is not
expressing any view whether, on the basis of these
statements, private respondents are even *prima facie*
F guilty of any offence in relation to those two charges.
[para 83] [746-G-H; 747-A-B]

G 7.2 This Court, by order dated 22-4-2009 granted
liberty to the Chairman and the Members of the
Commission to rebut the evidence led against them, but
they maintained silence in this behalf, and chose to lead
no evidence. It was expected of the respondents to
render some explanation in their defence in respect of the
allegations stated in the Presidential Reference and/or in
the articles of charge approved by this Court. It is not that
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this Court is drawing any adverse inference against the respondents for not leading evidence during the enquiry, but certainly it is a relevant consideration. The replies filed on behalf of these respondents have vaguely denied the articles and have attempted to justify the acts of omissions and commissions on the ground that they were in bona fide exercise of power vested in them as Chairman and Members of the Commission. Such explanation *ex facie* is unsatisfactory. [para 84] [747-G-H; 748-A]

8.1 The instances narrated clearly show that the expected standards of performance and functions have clearly been infringed by the private respondents. Objectivity has been the victim in the process of selection as a result of the callous attitude adopted by the private respondents. In view of the settled position of law, where instances of non-disclosure of likelihood of the child of a Member appearing for the civil services examination and a Member slapping the Chairperson of the Commission have been considered as misbehaviour within the meaning of Article 317 (1), then certainly, the present case discloses misbehaviour of graver nature. [para 85] [748-B-C]

8.2 On a holistic view of the matter, it is apparent that irregularities and acts of irresponsibility committed by the private respondents delineate their misbehaviour in terms of Article 317(1) of the Constitution as it certainly lowers the dignity of the Commission. The private respondents were certainly in a position to prevent most of the events which have occurred in giving rise to the Presidential Reference and have tarnished the image of the Commission. The maxim, '*Qui non prohibet quod prohibere potest facere videtur*' would alter the equities against the private respondents. Absolute integrity and impartiality is required to be exercised by the Chairman

- A and the Members of the Commission to maintain the dignity of their office. The Commission has been entrusted with the task of selecting candidates to various posts under the Government and, therefore, the function of the Commission is of great importance. [para 86] [748-
B E-H; 749-A-B]

- 8.3 Resultantly, it is held that: (1) the State has failed to prove, even on the rule of reasonable preponderance of probabilities, Charge 1 of the articles of charge by leading any cogent evidence or on any legal principles;
C (2) Charges 6 and 7 of the approved articles of charge are beyond the scope of Presidential Reference and, therefore, they were not required to be examined; (3) Upon holding inquiry in accordance with the procedure prescribed, this Court returns the finding that private
D respondents, namely, 'MSS', 'SS' and 'RK', who are Chairman/Members of the Commission (under suspension) have failed to maintain the required standards of integrity and rectitude in performance of their constitutional duties, expected to be maintained by
E the holder of such coveted office. Therefore, approved articles of charge 2 to 5, 8 and 9 stand established. As such, the private respondents are guilty of misbehaviour on these counts. Thus, there exist justifiable grounds for removal of the private respondents from their respective
F offices in terms of Article 317 (1) of the Constitution. [para 88-89] [750-A-G]

Case Law Reference:

- | | | | |
|---|-------------------------|-------------|---------|
| | 2000 (2) SCR 688 | relied on | para 2 |
| G | (1968) 3 All ER 304 | referred to | para 5 |
| | [1983] 3 SCR 639 | relied on | para 25 |
| | 2007 (7) SCR 116 | referred to | Para 29 |
| H | 1993 (2) Suppl. SCR 659 | relied on | para 30 |

[2009] 12 SCR 601 relied on para 14 and 31 A
(2008) 2 SCC 161 referred to Para 72

Under Articles 317(1) of the Constitution of India.

P.N. Misra, Hara Singh Hooda, AG., Haryana, Manjit B
Singh, Haryana, Kamal Mohan Gupta and Tarjit Singh for the
Petitioner.

Shanti Bhushan, Sidhartah Luthra, S.W.A. Qadri, Indira C
Sawhney, Saima Bakshi, Anil Katiyar, B. Krishna Prasad, D.S.
Chauhan, Rajinder Juneja, Aditya Kumar Choudhary, Sanjai
Kumar Pathak, Hitender Nath Rath, Arundhati Katju, Amit
Sharma, Supriya, B.S. Rajesh and R. Chandrachud for the
Respondents.

The Judgment of the Court was delivered by D

SWATANTER KUMAR, J. 1. Historically, the constituent
assembly debates reflect the desire of the framers of the
Constitution to ensure complete independence, integrity and
fairness in the country's administration. Besides discernibly E
stating the privileges, functions and responsibilities of the three
paramount pillars of the Indian Constitution, i.e. legislature,
executive and judiciary, the Constitution also provided three
instruments to ensure proper checks and balances in the
functioning of the Government. These organs are the Supreme F
Court to ensure proper administration of justice, the Auditor
General to maintain the purity of the country's finances,
expenditure and collection of taxes and lastly, the Federal
Public Service Commission to maintain the purity and integrity
of the country's services.

2. The Constitution, in Part XIV, provides for establishment G
of the Union and State Public Service Commissions with the
primary object of providing equal opportunity to the people of
India in matters relating to appointment. Establishment of these
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- A Commissions is one of the important facets of the constitutional scheme. Public Service Commissions are expected to adopt a fair and judicious process of selection to ensure that deserving and meritorious candidates are inducted to the services of the State. This should not only be done but also appear to have been done. *In re, Dr. Ram Ashray Yadav, Chairman Bihar PSC* [(2000) 4 SCC 309], this Court observed as follows:

C "1. Founding Fathers of the Indian Constitution relying upon the experience in other countries wherever democratic institutions exist, intended to secure an efficient civil service. This is the genesis for setting up autonomous and independent bodies like the Public Service Commission at the center and in the States. The values of independence, impartiality and integrity are the basic determinants of the constitutional conception of Public Service Commissions and their role and functions."

E 3. A clear distinction has been drawn by the framers between service under the Centre or the States and services in the institutions which are creations of the Constitution itself. Article 315 of the Constitution commands that there shall be a Union Public Service Commission for the Centre and State Public Service Commissions for the respective States. This is not, in any manner, linked with the All India Services contemplated under Article 312 of the Constitution to which, in fact, the selections are to be made by the Commission. The fact that the Constitution itself has not introduced any element of inter-dependence between the two, undoubtedly, points to the cause of Commission being free from any influence or limitation. The constitutional scheme contained in Articles 315 to 320 noticeably demonstrates not only the complete independence of the Public Service Commissions in discharge of their functions, but also ensures complete security and protection of tenure to its Chairman/Members. A very cumbersome process has been provided by the Constitution

for the removal of the Chairman and Members of the Commission. This constitutional intent of ensuring autonomy is underscored by the fact that it is only where the Governor of the State makes a reference to the President of India, stating grounds of misbehaviour of Chairman/Member of the State Commission that the President may remove such a Chairman/Member but only after the Supreme Court of India, on a reference by the President under Article 317(1) of the Constitution, reports that the Chairman/Member ought to be removed on the ground of misbehaviour. Thus, the immunities enjoyed by the Chairman and Members of the Commission under the Constitution are far greater and cannot be impinged upon by the normal procedure of service law for dismissal of a civil servant under the Civil Services Rules for an alleged misconduct.

4. Higher the public office, greater is the responsibility. The adverse impact of lack of probity in discharge of functions of the Commission can result in defects not only in the process of selection but also in the appointments to the public offices which, in turn, will affect effectiveness of administration of State. Most of the democratic countries in the world have set up Public Services Commissions to make the matter of appointments free from nepotism and political patronage. For instance the Conseil d'Etat in France, which is composed of the cream of the French Civil Service, has acquired considerable veneration for its capacity to police intelligently the complex administration of the modern state. Justice J.C. Shah in his report on the excesses of the Emergency, struck by the "unhealthy factors governing the relationship between ministers and civil servants", recommended the adoption of *droit administratif* of the French model by the Government. He observed that the commitment of a public functionary should be to the duties of his office, their due performance with an emphasis on their ethical content and not to the ideologies, political or otherwise of the politicians, who administer the affairs of the State.

A 5. Great powers are vested in the Commission and
therefore, it must ensure that there is no abuse of such powers.
The principles of public accountability and transparency in the
functioning of an institution are essential for its proper
governance. The necessity of sustenance of public confidence
B in the functioning of the Commission may be compared to the
functions of judiciary in administration of justice which was spelt
out by Lord Denning in *Metropolitan Properties Co. vs. Lannon*
(1968) 3 All ER 304) in following words:

C "Justice must be rooted in confidence; and confidence is
destroyed when right-minded people go away thinking:
'The Judge was biased.'"

6. The conduct of the Chairman and Members of the
Commission, in discharge of their duties, has to be above
D board and beyond censure. The credibility of the institution of
Public Service Commission is founded upon faith of the
common man on its proper functioning. Constant allegations of
corruption and promotion of family interests at the cost of
national interest resulting in invocation of constitutional
E mechanism for the removal of Chairman/Members of the
Commission erode public confidence in the Commission. Profs.
Brown and Garner's observation in their treatise *French*
Administrative Law, 3rd ed. (1983) in this regard can be usefully
referred to. They said "the standard of behaviour of an
F administration depends in the last resort upon the quality and
traditions of the public officials who compose it rather than upon
such sanctions as may be exercised through a system of
judicial control." Regrettably, the present case is one of many
References made to this Court where serious allegations and
imputations have been made against the Chairman and
G Members of the Commission in regard to performance of their
constitutional duties. The omissions and commissions
amounting to misbehaviour, allegedly committed by the
Chairman/Members of the Haryana Public Service Commission
have led to the Presidential Reference dated 31st July, 2008
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IN RE: MEHAR SINGH SAINI, CHAIRMAN, HPSC 675
[SWATANTER KUMAR, J.]

in exercise of the powers vested in the President under Article A
317 of the Constitution of India to this Court.

FACTS

7. The facts, as gleaned from the reference, are as under: B

The Haryana Public Service Commission (for short, 'the Commission') was constituted by the Governor of State of Haryana in exercise of the powers vested under Article 316 of the Constitution by appointing its Chairman and Members, on different dates, during the period 7th June, 1998 to 4th May, C
2002. The details of the appointees including date of appointment and their credentials are as on page 676:

8. The election to the Haryana Legislative Assembly was due in February, 2005 and the model code of conduct was imposed by the competent authority on 17th December, 2004. D
The Government started taking steps for appointing the Chairman/Members of the Commission just before the imposition of the model code of conduct and appointed the Chairman and Members of the Commission, official/non-official, E
between 5th July, 2004 and 15th December, 2004. Four Members were appointed to the Commission on 5th July, 2004, while Shri Mehar Singh Saini, erstwhile Member of the Commission, was appointed as Chairman of the Commission on 1st December, 2004 and on the same date wife of Dr. K.C. Bangar, erstwhile Chairman of the Commission, was appointed F
as Member of the Commission. Thus, by 15th December, 2004, the Commission came to be reconstituted. Constitution of the Commission with the dates of retirements and credentials of its Chairman and Members respectively are as follows on page 678: G

9. During its tenure, the Commission had made selections and recommended candidates for appointment to various posts in different cadres of the State. Subsequently, it came to the notice of the Government that various irregularities and H

A illegalities, such as acts of favouritism, discrimination and violation of rules/regulations had been committed by the Commission in the process of selection made by them. After conducting preliminary enquiries, the Government claims to have initiated vigilance enquiries as well as First Information
 B Reports were registered for the alleged irregularities, illegalities and acts of commissions and omissions by the Chairman and Members of the Commission. This resulted in the Chief Secretary, Government of Haryana, writing a letter dated 18th December, 2006, to the Secretary to the Governor
 C of Haryana, requesting him to refer the matter to the President of India at the earliest for removal of the Chairman and Members of the Commission in terms of Article 317(1) of the Constitution of India. It was averred that the Chairman and Members of the Commission were guilty of misbehaviour, as mentioned under Article 317(1) of the Constitution. It was also
 D averred that they do not possess requisite qualification, experience and had been appointed to the coveted offices only to achieve political ends. In this letter, detailed facts were given about the qualifications, experience and credentials of the Chairman and Members of the Commission with definite
 E emphasis on the fact that they had made appointments contrary to the rules and with favouritism. Their conduct in making selection to different posts was an exercise in subversion of the constitutional protections rather than sub-serving, the interest of the Constitution.

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 10. After receiving this Reference, the Governor of Haryana, vide letter dated 16th January, 2007, forwarded it to the President of India with supporting documents and records for consideration. The President, after examining the records,
 G referred the matter to this Court under Article 317(1) of the Constitution for inquiry and report, as to whether the existing Chairman and Members of the Commission ought to be removed from the office on the alleged grounds of misbehaviour.

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 11. In order to fully appreciate the subject matter of the

Sl. No.	Name of the Chairman/ Member	Qualification	Whether official or non-official	Past credentials	Date of Appointment	Date of normal retirement/ completion of term	Date of premature resignation
1.	Dr. Krishan Chander Banger, (Chairman)	Ph.D.	Non-official	Vice Chancellor, G.J. University	02-08-2000	1-08-2006	1.12.2004
2.	Sh. Narender, Singh (Member)	BA (LLB)	Non-Official	Journalist	17.06.1998	16.06.2004	-
3.	Sh. Dayal Singh, (Member)	B.Sc. Engg.	Official	G.M. Industries, Haryana	03.07.1998	18.07.1998	-
4.	Sh. Jagdish Rai, (Member)	MA	Official	Lecturer	18.07.1998	17.07.2004	-
5.	Sh. Mahender Singh Shastri, (Member)	BA (LLB) Shastri O.T.	Official	Teacher	28.02.2000	27.02.2006	07.12.2004

6.	Sh. Mehar Singh Saini (Member)	BAMS	Non-Official	Non-Practitioner	07.07.2000	06.07.2006	1.12.2004
7.	Sh. Gulshan Bhardwaj (Member)	LLB	Non-official	Social Activist	04.04.2001	09.08.2004	-
8.	Sh. S.K. Gupta, (Member)	B.A.	Non-official	-	04.04.2001	03.04.2007	05.07.2004
9.	Sh. Pardeep Chaudhary, (Member)	B.A.	Non-official	Social Activist	04.05.2002	03.05.2008	05.07.2004

Sl. No.	Name of the Chairman/ Member	Qualification	Whether official or non-official	Past credentials	Date of Appointment	Date of normal retirement/
1.	Sh. Mehar Singh Saini (Chairman)	BAMS	Non-Official	Private Practitioner	01.12.2004	30.11.2010
2.	Sh. Dungar Ram, (Member)	MA (Eng.)	Official	Lecturer Govt. National College, Sirsa	5.7.2004	9.6.2009
3.	Sh. Chatter Singh, (Member)	BE (Elect.)	Official	District Transport Officer	5.7.2004	4.7.2010
4.	Sh. Yudhvir Singh, (Member)	BA	Non-official	District Marketing Enforcement Officer	5.7.2004	4.7.2010
5.	Sh. Satbir Singh, Advocate (Member)	BA (Hons) LLB	Non-official	Advocate	5.7.2004	4.7.2010
6.	Sh. Om Prakash (Member)	BA LLB	Official	District Attorney	10.8.2004	9.8.2010

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[SWATANTER KUMAR, J.]

7.	Dr. Ranbir Singh Hooda (Member)	B.Sc. (Agronomy, M.Sc. (Agronomy, Ph.d, LLB	Non-official	Associate Professor Haryana, Agriculture University	10.8.2004	9.8.2010
8.	Mrs.Santosh Singh (Member) W/O Dr. K.C. Banger (Ex-Chairman)	M.Sc. B.Ed.	Non-official	School Teacher	1.12.2004	30.11.2010
9.	Sh.Ram Kumar Kashyap, (Member)	MA (Economics) LLB.	Official	Field Assistant in ESA Department	15.12.2004	14.12.2010

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[SWATANTER KUMAR, J.]

present inquiry, it will be appropriate to reproduce the Reference A
dated 31st July, 2008 made by the President of India to this
Court :

"WHEREAS the Governor of Haryana, vide letter
dated 16th January, 2007 together with a reference from B
the Government of Haryana, has set out the grounds for the
removal of the existing Chairman and Members of the
Haryana Public Service Commission under Article 317(1)
on grounds of misbehaviour (A copy of the letter dated
16.1.2007 along with the copy of reference with annexures C
mentioned therein is enclosed),

AND WHEREAS from the reference prepared by the
Government of Haryana it appears that there were serious
irregularities in the appointments made to the posts of D
Chairman and Members of the Haryana Public Service
Commission, which were made without due regard to their
qualifications, experience, status and accomplishments,
required for appointment to the said constitutional posts,

AND WHEREAS from the reference prepared by the
Government of Haryana it appears that S/Shri Mehar Singh E
Saini, Dungar Ram, O.P. Bishnoi and Chattar Singh, as
members of the Selection Committee, recommended the
name of Shri Pradeep Sangwan for the post of Drug
Inspector on the basis of a bogus certificate for which an
investigation was conducted by the State Vigilance Bureau, F
Chandigarh and subsequently an FIR was registered
against these persons for various offences under the Indian
Penal Code and the Prevention of Corruption Act, 1988
and for which these persons were arrested and challan has
already been filed in the Trial Court, G

AND WHEREAS from the reference prepared by the
Government of Haryana it appears that Shri Mehar Singh
Saini, Chairman and S/Shri Dungar Ram, Chattar Singh,
Yudhvir Singh, Satbir Singh, Om Prakash Bishnoi, Ranbir H

- A Singh Hooda, R.K. Kashyap and Smt. Santosh Singh as
Members of the Haryana Public Service Commission
refused to co-operate in the investigation being carried out
by the State Vigilance Bureau in spite of the directions
issued by the Hon'ble Supreme Court, in complaints
B regarding selections made by the Commission,

AND WHEREAS I am satisfied from the above
referred material before me that it is necessary that the said
allegations be inquired into.

- C Now, therefore, in exercise of the powers conferred
upon me by clause (1) of the Article 317 of the Constitution,
I, Pratibha Devisingh Patil, President of India, do hereby
refer to the Supreme Court of India for enquiry and report
as to whether the existing Chairman and Members of the
D Haryana Public Service Commission, ought, on the grounds
of misbehaviour, be removed from the office of the
Chairman and Members of the Commission."

12. It is evident from the above-mentioned Reference that
the Chairman as well as all the eight Members are alleged to
E have conducted themselves in a manner, which amounts to
misbehaviour within the meaning of Article 317(1) and, thus, are
liable to be removed from their office. We may notice from the
second tabulated statement afore-referred that out of the nine
Members, six have already vacated their office as their term of
F appointment to the Commission has ended by efflux of time.
Thus, out of the nine appointed Members, presently only three
Members are holding the office of the Chairman/Members in
the Commission. However, vide order dated 9th August, 2008,
passed by the Governor of State of Haryana, the Chairman and
G all the Members of the Commission were placed under
suspension. While Mr. Mehar Singh Saini, Chairman, Mrs.
Santosh Singh and Mr. Ram Kumar Kashyap, Members of the
Commission continued to be Chairman and Members of the
Commission under suspension respectively till date, there other
H Members remained under suspension till expiry of their

respective terms.

13. Amongst other complaints, a complaint in the matter of the appointment of Pradeep Sangwan as Drug Inspector was also received and inquiry is stated to have been conducted by the State Vigilance Bureau vide Enquiry No.5 dated 16th May, 2005, Chandigarh and subsequently FIR No.15 dated 8th August, 2005 under Sections 420, 468, 471, 120B IPC and Section 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 was registered at Police Station SVB, Rohtak. In the vigilance inquiry, Dr. K.C. Bangar, the then Chairman, Shri Mehar Singh Saini, former Member and present Chairman, Shri Dungar Ram, Shri Chattar Singh and Shri Om Prakash Bishnoi, Members of the Commission, were found to be involved in criminal conspiracy for selection of Pradeep Sangwan. With respect to other complaints, which have been received in relation to various selections, made by the Commission in respect of various civil posts in the State Government, the State Vigilance Bureau initiated different enquiries being Enquiry No.1 dated 16th May, 2005, Enquiry No.3 dated 21st April, 2005 and Enquiry No.4 dated 25th April, 2005. Enquiry Nos.1 and 3, related to allegations of corruption and irregularities in recommending candidates for appointment to different posts for the period 2000 to 2004, led to registration of FIR No.20 dated 18th October, 2005 under Sections 420, 468, 471, 120B IPC, read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. For the investigations and enquiries above-referred, records were required by the investigating agencies and they wrote various letters to the authorities of the Commission to hand over the same for expeditious completion of inquiry. However, it is the case of the Government and the investigating agencies that the Commission did not cooperate at all and the records, despite repeated demands, had not been handed over to them. As a result of non-cooperation by the Chairman and Members of the Commission, proceedings in the Court were initiated in which, ultimately, the High Court of Punjab and Haryana in *Haryana Public Service Commission v. State of Haryana* (Writ

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- A Petition no.12593 of 2005) [(2005)141 PLR 486], passed an order dated 12th August, 2005 making certain observations against the conduct of the Commission, its Chairman and Members. We will be referring to this order in some detail shortly. Against this order of the High Court, Special Leave Petition was preferred before this Court, which came to be dismissed as withdrawn vide order dated 19th September, 2005. Separate proceedings were also initiated by the Member(s) of the Commission in their own right, who had prayed for permission to file Special Leave Petition, against the order of the High Court but the same was also declined by this Court vide order dated 28th October, 2005.

14. We have already mentioned that it is the case of the State Government that after noticing the irregularities and favouritism on a mass scale and on suspicion of serious charges of corruption against the Chairman and Members of the Commission, the Governor of Haryana had passed an order dated 9th August, 2008 suspending the Chairman and the Members of the Commission. The validity and legality of this order of suspension was questioned by the affected Chairman and Members of the Commission by filing a petition under Article 32 of the Constitution before this Court, which came to be dismissed by a detailed order dated 7th August, 2009 reported as *Ram Kumar Kashyap v. Union of India* [(2009) 9 SCC 378]. The relevant extract of the order reads as under:

- F "16. It is very clear that since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of dismissals of government employees cannot be extended to the proceedings for the removal and suspension of the members of the said Commissions. Hence, we are of the opinion that the en bloc suspension of the 8 Members and Chairman of the Haryana Public Service Commission by the Hon'ble Governor of Haryana by an order dated 09.08.2008 under Article 317(2) of the Constitution and the impugned notification dated 09.08.2008 are valid and not

IN RE: MEHAR SINGH SAINI, CHAIRMAN, HPSC 685
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liable to be quashed. The writ petitions are dismissed." A

15. In view of the order of this Court, the order of suspension passed against the Chairman/Members of the Commission, the respondents herein, attained finality.

16. As a result of various enquiries being conducted by the Vigilance Bureau of State of Haryana and other investigating agencies in furtherance to FIR Nos.15 and 20 of 2005 dated 8th August, 2005 and 20th October, 2005 respectively, various documents/correspondence and other evidence came to light which, according to the State, pointed towards the involvement of the Chairman and Members of the Commission in mal practices, favoritism and even to some extent corruption in the functioning of the Commission in making selections and recommending names to the State Government for appointment to various posts. These documents, along with certain additional charges, were placed on record before this Court. Only three articles of charge were stated in the Presidential Reference. However, during the pendency of the matter before the Court and because of subsequent events the State Government filed additional articles of charge. Six charges were sought to be added to the charge-sheet, in all bringing the total to nine. From the record, it appears that the matter was heard at some length and on 22nd April, 2009, a Bench of this Court passed the following order: B
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"Heard Mr. Shanti Bhushan, learned senior counsel appearing for the Chairman of the Haryana Public Service Commission, and also Mr. Harish N. Salve, learned senior counsel appearing for the State of Haryana. F

Mr. Shanti Bhushan, learned senior counsel has objected to the draft charges Nos.1, 4, 7 and 8. The objections were regarding the very appointment of the Chairman as one of the grounds of misbehaviour under Article 317(1) of the Constitution of India. It was argued on behalf of the State that the very appointment itself requires G
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A consideration, therefore, these draft charges require to be
looked into. As regards other charges, it was alleged by
Mr. Shanti Bhushan that many of the facts are not stated
either in the Presidential reference or in the Governor's letter
of reference in detail. However, State counsel replied that
B they have materials to substantiate all the charges. It is made
clear that the Chairman of the Public Service Commission
would be at liberty to raise legal objections at the time of
adducing evidence on these draft charges. Draft charges
are approved.

C The State is directed to file list of witnesses and
documents by 15th July, 2009. Post on 21st July for further
orders."

17. In light of the above order, the parties were given
D opportunity to lead the evidence on all the nine articles of charge.
The documentary and oral evidence was led by the State and,
as many as, 31 witnesses were examined. The Chairman and
Members of the Commission did not examine any witness. It
will be useful to refer to the articles of charge which were
E approved by this Court vide its order dated 22nd April, 2009.

"1. That Shri Mehar Singh Saini is a beneficiary of
favouritism and nepotism in the matter of his
appointment as Chairman of the Haryana Public
Service Commission. His qualifications, experience,
F status and accomplishments namely that of a private
practitioner in Ayurveda (BAMS), were not of the
stature required for appointment to the Constitutional
position of Chairman of the Haryana Public Service
Commission. His appointment, after obtaining
G resignation of then Chairman, was with a view to
ensuring that he would further the objectives of the
political party then in power. By, thus, conniving in
the subversion of the constitution, he is guilty of
misbehaviour under Article 317(1) of the
H Constitution.

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2. That Sh. M.S. Saini, as a member of the selection committee, recommended the name of Shri Pradeep Sangwan for selection to the post of drug Inspector on the basis of the bogus certificate in which the charges of criminal conspiracy and indulgence in acts of corruption have been brought out against him. He has since been arrested and released on bail and the final investigation report has been placed before the criminal court for trial. His involvement in a case of criminal conspiracy, which is pending trial, constitutes misbehaviour under Article 317(1) of the Constitution. A
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3. That Shri Mehar Singh Saini refused to cooperate in the investigation being carried out by the State Vigilance Bureau, ins pite of the directions issued by the Hon'ble Supreme Court, in complaints regarding selections made by the Commission and his deliberate non-supply of documents needed in the inquiry and refusal to co-operate in the investigations. This constitutes misbehaviour within the meaning of Article 317(1). D
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4. That the bare reading of the contents of the additional documents placed on record, including inspection reports dated 24.1.2008/1.2.2008 and the interim order dated 14.1.2008, passed by the Hon'ble Punjab and Haryana High Court in CWP No.15,390 of 2002, clearly established that the acts of manipulations and interpolations in answer-sheets of favourite candidates was deliberate abuse of the process of selection by Sh. Mehar Singh Saini as Member of Haryana Public Service Commission, in the selection of 2002 for Haryana Civil Services (Executive and Allied) Examination in the year 2002 and the same constitute an act of grave misbehaviour, warranting the invocation of Article 317(1) of the Constitution of India, for his removal. F
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- A 5. That the acts of omission and commission of Sh. Mehar Singh Saini as Member of Haryana Public Service Commission and his subsequent act and conduct as Chairman of Haryana Public Service Commission in making deliberate efforts to with-hold the material record, which was required by the investigating agency to investigate the complaints received by the Government regarding serious illegalities and irregularities committed by the Chairman and Member of the Commission while making selections including the selection of 2002 for Haryana Civil Services (Executive and Allied), again clearly establish his grave misbehaviour as envisaged under Article 317(1) of the Constitution of India, warranting his removal.
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- D 6. That the malicious acts of influencing his subordinates to carry out intended manipulations to favour desired persons in selections and endorsement of such illegal selections as member of the Commission by Sh. Mehar Singh Saini constitute an act of grave misbehaviour warranting invocation of Article 317(1) of the Constitution of India for his removal.
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- F 7. That Sh. Mehar Singh Saini abused his public office and showed his dubious act and conduct by defending the above mentioned patently illegal acts which constitute an act of grave misbehaviour warranting invocation of Article 317(1) of the Constitution of India for his removal.
- G 8. That Sh. Mehar Singh Saini, Chairman of Haryana Public Service Commission and S./Sh. Dungar Ram, Chattar Singh, Yudhvir Singh, Satbir Singh, Om Prakash Bishnoi, Ranbir Singh Hooda, Smt. Santosh Singh and R.K. Kashyap wrongly and unlawfully decided to file a written reply on behalf of
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the Haryana Public Service Commission to the inspection reports dated 24.1.2008/1.2.2008 vide reply dated 25/2/2008 in CWP No.15390 of 2002, attempting to justify the illegalities regarding the manipulations, interpolations and forgeries committed during the selection process of Haryana Civil Services (Executive & Allied), which was finalized by the Commission in 2002. A B

9. That Sh. Mehar Singh Saini, Chairman of Haryana Public Service Commission and the members S/ Sh. Dungar Ram, Chattar Singh, Yudhvir Singh, Satbir Singh, Om Prakash Bishnoi, Ranbir Singh Hooda, Smt. Santosh Singh and R.K. Kashyap had taken a decision not to hand over the record to the investigating agency on the pretext that the State Public Service Commission, being a constitutional authority, enjoys a distinct status, despite the fact that the Hon'ble Punjab and Haryana High Court and Hon'ble Apex Court were pleased to direct the Commission to co-operate with the investigating agency. This deliberate act on their part clearly amounts to misbehaviour as envisaged under Article 317(1) of the Constitution of India for their removal." C D E

18. Thus, this Court has been called upon to examine whether the conduct of the Chairman/Members of the Commission amounts to misbehaviour in light of these approved articles of charge and the evidence produced on record, which would justify their removal in terms of Article 317(1) of the Constitution. F

19. The challenge by Mr. Shanti Bhushan, learned senior counsel appearing on behalf of one of the respondents in the present Reference, to the additional charges, which have been approved by the Court, is, primarily, on the ground that the jurisdiction of this Court in terms of Article 317(1) is a limited jurisdiction and the Court has to conduct its inquiry and record G H

- A its finding in the report only in relation to the articles of charge referred to by the President in exercise of its powers under Article 317(1). Thus, this Court has no jurisdiction to go into the merit or otherwise of the said additional articles of charge. It is his submission that it is not an omnibus Reference. It is also
- B contended that Charges 4, 6, 7 and 8 are new articles of charge and have no link to the referred charges and as such they are beyond the scope of Reference. Further, it is argued that there is no evidence on record to substantiate any of the approved articles of charge, even if it is assumed for the sake of argument
- C that the Court can examine all the approved articles of charge. Thus, it is stated that the Presidential Reference to this Court is *ex facie* a case of no evidence but political vendetta alone. It was also contended that the entire evidence produced in respect of the allegations has not been tendered in accordance with
- D law. A police officer cannot prove the allegations merely by filing an affidavit. Thus, it is no evidence in the eye of law. In regard to charge 1, relating to qualification and status of the Chairman and Members of the Commission, it is argued that this approved article of charge itself suffers from infirmity of non-application of mind as no qualification or status has been prescribed under
- E Article 316 of the Constitution for such appointment.

20. While refuting these arguments, Mr. Mishra, learned counsel appearing for the State of Haryana, argued that all the articles of charge can be gone into by this Court inasmuch as
- F the charges are interlinked as well as they were duly approved by the order of this Court dated 22nd April, 2009. According to him, though no specific qualifications have been provided under Article 316 of the Constitution, but keeping in view the constitutional functions of public importance performed by the
- G Commission, it is expected that persons of adequate educational qualification, experience and proper status should be appointed to the Commission. The respondents are alleged to have managed their appointments to the Commission as its Chairman and Members. In support of these submissions,
- H reference has been made to the qualification of the Chairman,

who was a private practitioner with degree of BAMS, while some of the Members were graduates only. The wife of the former Chairman of the Commission, on his exit, was immediately appointed as a Member of the Commission; and Mehar Singh Saini was appointed as Chairman on 1st December, 2004, the very date on which his term as member was to expire. These appointments, thus, have been made only for gaining political mileage and to make selections on the basis of favouritism and other extraneous considerations. According to the learned counsel there is sufficient evidence, documentary and oral, on record to substantiate and prove the approved articles of charge in accordance with law. With reference to the charge of non-cooperation, it is contended that despite the order of the Punjab and Haryana High Court, the course of action adopted by the Chairman and Members of the Commission is not only misbehaviour but is contemptuous to the extent that it violates prudent norms of governance in accordance with law. The acts of favouritism, manipulation of records and the conduct of the Chairman and Members of the Commission are unacceptable from constitutional functionaries and, therefore, they are liable to be removed from their office. We may notice that the learned counsel appearing for some of the other respondents principally adopted the arguments advanced by Mr. Shanti Bhushan, but added greater emphasis on the contention that exercise of right of privilege in relation to records of the Commission, being affairs of the State, was a justifiable claim. Further, the charge that the Chairman/Members of the Commission do not possess requisite qualification and experience is no charge in the eye of law that can be attributed to the private respondents, as the Constitution itself does not provide for any such qualification and experience. As such, both these charges cannot, in law, amount to misbehaviour as contemplated under Article 317(1) of the Constitution.

21. Before we proceed to examine the merit or otherwise of the contentions raised before us as well as the evidence on each approved article of charge, reference to Article 317 of the

A Constitution would be proper. Article 317 reads as under:

"Article 317 - Removal and suspension of member of a Public Service Commission-(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in

any benefit or emolument arising therefrom otherwise than
as a member and in common with the other members of an
incorporated company, he shall, for the purposes of clause
(1), be deemed to be guilty of misbehaviour.” A

22. A bare reading of Article 317 shows that the
constitutional protection for the term of office of Chairman and
Members of the Commission is provided to ensure independent
functioning of the Commission. The working of the Commission
and its Members has to be of impeccable integrity and rectitude.
The object should be to provide the best persons from the
available candidates for appointment in the State/Central
cadres. This has to be done by adopting a judicious, fair and
transparent method of selection, free of influence from any
quarter in the Government or otherwise. That is why the framers
of the Constitution clearly distinguished appointments to the
Commission from appointments to the State Services or All India
Services. The Members of the Commission cannot be subjected
to regular departmental enquiries and can only be removed from
their office by strictly complying with the provisions of Article
317 of the Constitution. This provision contemplates removal of
the Member on two different grounds. First, where a Chairman
or Member could be removed on the ground of misbehaviour by
the President only after making a Reference to this Court and
where this Court has given a report, after holding inquiry in
accordance with the prescribed procedure, that the Chairman
or the member ought to be removed on the grounds stated in
that report. Second, by reason of automatic disqualification as
provided under Article 317(3) and (4) of the Constitution. The
President of India can act without any report from this Court in
terms of Article 317 (3) and (4). Under Article 317(4), if the
Chairman or Member of the Public Service Commission
becomes interested or concerned in any agreement or in any
profit thereof or commits any of the stated defaultss, then such
Chairman/Member shall be deemed to be guilty of misbehaviour
for the purpose of clause (1) of Article 317. Article 317 thus
provides for a complete and composite procedure, which is to B
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- A be adopted by the President of India, before a Chairman/ Member of the Commission can be removed from his office. Making Reference to this Court under Article 317(1) of the Constitution invokes the Reference/Advisory jurisdiction of this Court. In the scheme of the Constitution relating to this aspect,
- B it is clear that before the Reference can be made to this Court, certain procedure is required to be satisfied. The Governor, acting on the advice of the State Government, would request the President for taking steps for removal of a Member in accordance with the provisions of Article 317(1) of the
- C Constitution. There is requirement of proper application of mind by the President while making a Reference to this Court and it is but natural that Reference to this Court would be made only where the President is satisfied that a *prima facie* case of misbehaviour is made out.

- D 23. In light of the above provisions, it is obvious that normally this Court would follow the prescribed procedure and record its findings only on the articles of charge referred to by the President. However, in some cases, the Court may take cognizance and examine the articles of charge which are incidental/explanatory
- E to the articles of charge mentioned in the Reference. In law, it may not be possible to examine charges which are entirely independent and unconnected with all or any of the articles of charge stated in the Presidential Reference. There has to be
- F some link or inter-connection between the articles of charge subsequently suggested before this Court and the original articles of charge referred by the President. The question of any prejudice to the delinquent will not arise inasmuch as the concerned party is given full opportunity to challenge the articles of charge as well as the evidence led in support of charges by
- G the Government, during the process of inquiry before this Court.

- H 24. Article 317(1) requires that the inquiry held by this Court is to be in accordance with the procedure prescribed in that behalf under Article 145 of the Constitution. Article 145 empowers the Supreme Court to make rules, with the approval of the President, for regulating generally the practice and

procedure of this Court. In turn, Article 145(1)(j) specifically empowers the Supreme Court to frame Rules, with the approval of the President of India, to regulate the procedure for enquiries referred to under clause (1) of Article 317 of the Constitution. Of course, such rules have to be subject to any law that may be enacted by the Parliament. The Supreme Court has framed the following rules under Part VI, Order XXXVIII of Supreme Court Rules, 1966 for conducting inquiry under Article 317(1) of the Constitution:-

"1. On receipt by the Registrar of the order of the President referring to the Court a case for inquiry under article 317(1) of the Constitution, the Registrar shall give notice to the Chairman or Member of the Public Service Commission concerned and to the Attorney-General for India or the Advocate-General of the particular State to appear before the Court on a day specified in the notice to take the directions of the Court in the matter of the inquiry. A copy of the charges preferred against him shall be furnished to the respondent along with the notice.

2. The Court may summon such witnesses as it consider necessary.

3. After the hearing of the reference under article 317(1) of the Constitution, the Registrar shall transmit to the President the Report of the Court.

4. No Court-fees or process fees shall be payable in connection with any reference dealt with by the Court under this Order."

25. A plain reading of these Rules clearly shows that no detailed procedure has been provided so far, as to how and in what manner the inquiry shall be conducted and what shall be the scope of the inquiry and the manner in which the evidence shall be recorded. In other words, it has been left to the discretion of this Court to follow a procedure which is in consonance with the language of Article 317(1), read with the above Rules and

- A principles of natural justice. Inherent power of this Court is wide enough to enunciate such a procedure, with reference to the facts and circumstances of a given case, as Rule 6 of Order XLVII of the Supreme Court Rules specifically provides that nothing in these Rules shall be deemed to limit or otherwise
- B affect the inherent powers of the Court to make such orders, as may be necessary for the ends of justice, or to prevent abuse of the process of the Court. *In the Matter of Reference under Article 317(1) of the Constitution of India* [(1983) 4 SCC 258] (hereinafter referred to as '*Reference 1 of 1983*') this Court,
- C while dealing with this aspect, clearly stated that the Court can appoint any officer of the Court, or direct an Additional/Sessions Judge or any other Judge, to record evidence. Evidence, as far as practicable, has to be recorded in accordance with the provisions of the Indian Evidence Act, 1872 and by way of filing
- D affidavit, wherever directed, in view of the provisions of Order XIX of the Code of Civil Procedure, 1908. After recording of evidence, the matter is to be placed before the Court for regular hearing upon which, the Court is expected to make a report of its findings on the misbehaviour of the Chairman/Members of the Commission.

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26. Article 316 of the Constitution of India regulates appointment of Chairman and Members of a Public Service Commission. Proviso to Article 316(1) provides that, as nearly as may be, one half of the members of every Public Service
- F 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 the Government of a State. In other words, one-half of the members of the Commission who are to be appointed by the Governor, should have held
- G 'public office' for a period of ten years prior to their appointments and are normally termed as 'official members'. However, it is not necessary for the remaining one-half of the members of the Commission to possess such qualifications or experience for appointment and they are termed as 'non-official members'.

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27. The power to remove a Chairman/Member of the Public Service Commission has been vested exclusively in the President. This power, under the scheme of the constitutional provisions, is to be exercised by the President only upon report of the Supreme Court that the conduct of the member is tantamount to misbehavior of the kind that justifies his removal from the office, except in cases specifically covered under Clauses (3) and (4) of Article 317. Upon a Reference from the President, the jurisdiction of the Court is, primarily, advisory inasmuch as the Court, in its report to the President, has to record a finding that the delinquent Chairman/Member is guilty of the misbehaviour complained of, which would justify his removal from the office. The articles of charge, which are referred to the Court by the President, are the very foundation of the reference proceedings. Reference jurisdiction, by its very nature, is jurisdiction of limited scope in contradistinction to original or appellate jurisdiction of the Supreme Court. For that reason, it may be difficult for the Court to hold that in exercise of its limited jurisdiction, the Court can frame such entirely new articles of charge which have no link, connection or are not even explanatory to the original charges stated in the Presidential Reference and try them as part of the inquiry being conducted by the Court under Article 317(1) of the Constitution. This will not be true where the charges are found to be linked, inter-dependent, explanatory or incidental to the main articles of charge referred by the President to this Court. This would depend upon the facts and circumstances of a given case, but it can be stated with some certainty that this Court can examine articles of charge, facts or evidence which were not before the President while making a reference to this Court. Such need may arise because of subsequent events, as a result of investigation or otherwise, and which have a direct connection to the matters in issue. Thus, the contention of the respondents that this Court can neither frame nor examine additional charges beyond, or in addition to, the articles of charge referred to in the Presidential Reference cannot be accepted as a proposition of law. The scope of inquiry by this Court is of a wide nature and has to be regulated by the

- A procedure which may be prescribed by the Court in terms of the above stated provisions of law.

28. In *Reference 1 of 1983* referred by us *supra*, this Court also examined whether additional facts or grounds can be examined while holding an inquiry into the matters referred in the Presidential Reference and held as under:

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- C “7. ... The inquiry which this Court is required to hold is not into the limited question whether, on the basis of facts found by the President, the charge of misbehaviour is made out and whether the misbehaviour is of such a nature as to warrant the removal of the person from his office. The inquiry contemplated by the article is into the facts themselves and facts also so as to enable this Court to pronounce upon the question whether the allegations made against the Chairman or member are proved at all.
- D The purpose of Article 317(1) is to ensure the independence of members of the Public Service Commissions and to give them protection in the matter of their tenure. The Judges of the Supreme Court can be removed from their office only in accordance with the procedure prescribed by Article 124(4) which is made applicable to the Judges of High Courts, the Comptroller and Auditor-General of India and the Chief Election Commissioner by Articles 218, 148 and A 324(5) respectively. Members of Public Service Commissions are,
- E in one sense, given a higher degree of protection by the elimination, as far as possible, of political pressures in the matter of their removal. Any allegation of misbehaviour made against them has to be examined by the Supreme Court on merits unlike the allegations made against those
- F others whose removal on the ground of proved misbehaviour or incapacity depends upon the will of the Parliament. It is impossible to accept that the Supreme Court in one case and the Parliament in the case of those others are entrusted by the Constitution with the limited
- G power of determining whether the facts found by some other
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body establish misbehaviour in one case and misbehaviour or incapacity in those others. *Their function is to find upon facts and their duty is to pronounce whether the facts found by them establish the charge of misbehaviour or incapacity, as the case may be.*"

(emphasis supplied)

29. We may usefully refer to a recent judgment of this Court *In Re: Smt. Sayalee Sanjeev Joshi* [(2007) 11 SCC 547]. In this case the President had made a Reference under Article 317(1) of the Constitution relating to various aspects of misbehaviour alleged to have been committed by Smt. Joshi, Member of the Maharashtra Public Service Commission. The preliminary steps were completed under the directions of this Court and after issue of notice, the Court requested the Attorney General for India to scrutinize the materials. Originally 22 charges were proposed, then they were reduced to 6 charges and finally Charges 3 & 6 were dropped as they were not strictly within the purview of the Presidential Reference and related to conduct entirely subsequent to and independent of the misbehaviour complained of. Thus, the charges were framed/ approved by the Court vide order dated 5th October, 2005 in Reference No. 1 of 2004. The evidence was led by the parties and Smt. Joshi's conduct was found to be misbehaviour of the kind which would justify her removal from the office. While dealing with the Reference on these facts and discussing the scope of the inquiry to be conducted by the Court in terms of Article 317 (1) of the Constitution, the dictum of this Court as stated in para 5 of the judgment in *Reference No. 1 of 1983* (supra) was reiterated with approval as follows:

"5. The contours of enquiry when a reference is made by the President of India under Article 317(1) of the Constitution of India has been clearly drawn by this Court in Special Reference No. 1 of 1983 [1983] 3SCR639 . This Court therein has held that the President's prima facie satisfaction based on available materials was enough for making a

- A reference to this Court under Article 317(1) of the Constitution of India and that there was no need for the President to obtain the opinion of any fact finding body before making a reference. The enquiry which this Court is required to hold is not into the limited question whether, on the basis of facts found by the President, the charge of misbehavior is made out and whether the misbehavior is of such a nature as to warrant the removal of the person from his office. The inquiry contemplated by the Article is into the facts themselves so as to enable the Court to pronounce upon the question whether the allegations made against the member are proved. This Court also indicated the procedure that could be conveniently followed when this Court is called upon to answer a reference under Article 317(1) of the Constitution of India."
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- D 30. To apply the rule of strict construction to the language of Article 317(1) of the Constitution to the extent that the Court cannot examine any facts, records or extended charges, would defeat the object of this provision and the constitutional intent. While it may be possible to argue that Presidential Reference
- E in such cases is not an omnibus Reference which will include each and every misbehaviour of all time, it will not be possible to accept the argument that the allegations stated in the Presidential Reference *stricto sensu* can be examined by this Court and nothing else. Keeping in view the stature of the
- F Commission, it is important to understand the message behind the provision and the intendment of enacting Articles 316 to 318 of the Constitution. The Constitution has assigned a definite stature to the Commission and has provided special methodology and procedure for removal of its Chairman/
- G Member(s) from their respective offices. The message behind this constitutional scheme may stand frustrated if the argument advanced on behalf of the respondents is accepted. This Court, in the case of *Supreme Court Advocate-on-Record Association v. Union of India* [(1993) 4 SCC 441], held that the Supreme Court being the highest Court of the land, its vitality is a national
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imperative. The primary institutional task of this Court is to clearly understand the true message that the Constitution intends to convey; second, to assert the original meaning in that message in the light of the constitutional provisions; and third, to pronounce what the law is, in harmony with meaningful purpose, original intent and true spirit of the Constitution. As a result of the above discussion, we are of the considered opinion that the inquiry proceedings before the Supreme Court cannot be circumscribed by the Presidential Reference under Article 317(1) of the Constitution *stricto sensu* that too to the extent that the Court cannot examine any additional facts/subsequent events having a direct bearing, additional or supplementary articles of charge which are explanatory or intrinsically related with the charges specified in the Presidential Reference.

31. Another facet of the same issue is the nomenclature of the proceedings before this Court while conducting an inquiry in terms of Article 317(1) of the Constitution. The proceedings *prima impressionis* may appear akin to the service jurisprudence as commonly understood. The basic requirements for the applicability of service jurisprudence are relationship of employer and employee, alleged misconduct being in breach of the rules/regulations controlling the conditions of service of such an employee and such charges then are to be proved in accordance with the specified procedure for imposition of minor and major penalties. The departmental proceedings have to be conducted in accordance with the specified rules and regulations. The concept of departmental enquiry under the service jurisprudence cannot be equated with the proceedings in an inquiry under Article 317(1) of the Constitution. This distinction is a marked one. Keeping in mind the constitutional protections available to the Chairman and Members of the Commission, the stature they enjoy and the duties that they are expected to perform, the principles of service jurisprudence cannot be strictly applied to these proceedings. As already noticed, the power to remove the Chairman/Member of the Commission is exclusively vested in the President and not even

- A in their appointing authority. The appointments to the State
Commissions are made by the Governor but still in the wisdom
of the framers of the Constitution, the power to remove them
from office has not been vested in the Governor. This reflects
the kind of autonomy that the framers of the Constitution
B bestowed on the Chairman/Member(s) of the Commission to
ensure proper and fair performance of the functions of the
Commission. The Chairman and Members of the Commission
are not Government servants, as commonly understood, though
they may be holding a public office. The standard of burden of
C proof as postulated under service jurisprudence may, to some
extent, be applicable to these proceedings. In the case of *Ram
Kumar Kashyap (supra)*, this Court while upholding the order
of suspension of the very respondents in the present case,
passed by the Governor in exercise of the powers vested under
D Article 317(2) of the Constitution, held as under:

- E “9. It will be useful to refer to a judgment of this Court in
Reference under Article 317(1) of the Constitution of India,
In re wherein it was held that the position of a Chairman or
a member of a Public Service Commission cannot be
equated with that of a public servant and hence the case
law pertaining to the suspension and removal of public
employees has no relevance in the context of the
proceedings under Article 317. The relevant observations
were made at para 9:

- F “9. The case of a government servant is, subject to
the special provisions, governed by the law of master
and servant, but the position in the case of a member
of the Commission is different. The latter holds a
constitutional post and is governed by the special
G provisions dealing with different aspects of his office
as envisaged by Articles 315 to 323 of Chapter II of
Part XIV of the Constitution. In our view the decisions
dealing with service cases relied upon on behalf of
the respondent have no application to the present
H matter and the reference will have to be answered

on the merits of the case with reference to the
complaint and the respondent's defence." A

32. Therefore, principles of service jurisprudence may not
be strictly applicable to the inquiry proceedings under Article
317(1) of the Constitution. *Inter alia*, it is for the reason that being
constitutional body, the Chairman and Members of the
Commission are to maintain much higher standards of
performance and behaviour than the civil servants appointed to
the state services. B

33. The next limb of the same argument is with regard to
applicability of principles of criminal jurisprudence to the present
proceedings in regard to opportunity of being heard, burden of
proof and content of charges. The principles of criminal
jurisprudence contemplate different standards of proof, language
of charge and protections available to a suspect/accused. It is
neither practicable nor possible to apply the norms of criminal
law to the proceedings under Article 317(1) of the Constitution
of India. In criminal law, the charge should be proved beyond
reasonable doubt and an accused cannot be convicted on the
basis of probability. Under the service jurisprudence, a person
may be found guilty even on the charge being proved on the
basis of preponderance of probabilities while in the proceedings
of the present kind, conduct of a person may amount to
misbehaviour requiring his removal under Article 317(1) of the
Constitution on the basis of rule of reasonable preponderance
of probabilities. This distinction is fully justified with reference to
the constitutional scheme behind these provisions and the
standards of performance and behaviour that the holders of such
office are required to maintain. In other words, the proceedings
before this Court are neither akin to proceedings under service
law nor criminal law. In fact, they are *sui generis*. That may be
one of the reasons that the framers of the Constitution opted not
to give power of removal of Chairman/Member of the
Commission to any other person except the President of India,
and that too, on the basis of a report of this Court. Further, the C
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- A procedure for removal has neither been stated in the Constitution in detail nor has this Court framed any elaborate rules in exercise of its power under Article 145 of the Constitution. The nature of the proceeding is such that it may become necessary for the Court to adopt a procedure befitting the facts and circumstances of a given case. Thus, we also have no hesitation in rejecting the contention of the respondents that the burden of proof applied to such cases has to be 'beyond reasonable doubt'. In fact, we need not deliberate any further on this point in view of the fact that this Court in the case of *Smt. Joshi* (supra) also took the same view, the reasoning whereof we adopt with respect and refer to paragraph 15 of the judgment which reads as under :

D "15. Learned counsel for Respondent 3 argued as if this reference was a criminal trial and the charge against the respondent has to be proved beyond reasonable doubt. Learned counsel for the Public Service Commission submitted that these proceedings were neither in the nature of a criminal trial nor in the nature of the service dispute, but that it was a question of an inquiry into the conduct of a member of the Public Service Commission who was expected to maintain the highest standards of integrity. This Court in *Reference under Article 317(1) of the Constitution of India, In re* while answering Special Reference No. 1 of 1983 had noticed:

F "9. The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case of a member of the Commission is different. The latter holds a constitutional post and is governed by the special provisions dealing with different aspects of his office as envisaged by Articles 315 to 323 of Chapter II of Part XIV of the Constitution. In our view the decisions dealing with service cases relied upon on behalf of the respondent have no application to the present matter and the reference will have to be answered on the merits of the case with reference to the complaint

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and the respondent's defence."

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34. Further in para 143, this Court held as under :

"143...As we have indicated in the beginning, what we are concerned with is the appreciation of the evidence of PW 15 examined before us in the light of his cross-examination, the other evidence and in the light of his prior statement contained in Ext. 53. So viewed, it is really a question of believing or disbelieving the evidence of PW 15 given before us. We are not dealing with a prosecution and in that context the alleged confession of a co-accused. We are on a fact-finding enquiry based on the evidence before us and the probabilities of the case."

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35. The above reasoning persuades us to follow the law enunciated in the afore-referred cases and take the view that the content and nature of the proceedings before this Court under Article 317(1) is *sui generis* and the Court can evolve its own procedure in consonance with the principles of natural justice to suit the facts of a given case and to ensure that ends of justice are achieved and there is no abuse of the process of Court.

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Discussion on the scope of approved articles of charge

36. There is no doubt that in the Presidential Reference dated 31st July, 2008, there were only three articles of charge attributing misbehaviour to the Chairman and Members of the Commission. We have reproduced them above. However, because of subsequent investigation, certain additional facts, documentary evidence came to the notice of the concerned authorities. On the strength of the subsequent events and additional information thus acquired, it is stated on behalf of the Government that attitude of complete non-cooperation was adopted by the Chairman and Members of the Commission as a result of which complete records could not be placed before the Governor/President. It is also submitted that the newly nominated Members of the Commission decided to hand over the records to the inquiry/investigating agencies. As a result

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- A thereof it became possible for the authorities and the State Government to place the same before this Court in these proceedings. We do not wish to examine this issue in any further elucidation at this stage as non-cooperation itself is a separate charge against the respondents and it will be more appropriate to discuss the entire issue at that stage.

- B 37. Nine articles of charge were proposed to be framed and they were termed as draft charges, which we have already referred to in the earlier part of the judgment. They came to be placed for the consideration of this Court. Arguments were heard and vide order dated 22nd April, 2009, the draft charges framed were approved by this Court. Once the charges have been approved by the Court, the parties have gone to trial on all the approved articles of charge and have led evidence in support thereof. There can hardly be any bar for this Court to consider all the approved articles of charge. Besides this, the respondents were given liberty to raise legal objections at the time of adducing evidence on these draft charges. This liberty was granted on the contention raised that the referred articles of charge are not complete and several facts have not been stated either in the Presidential Reference or in the Governor's letter of Reference. In face of this order, we are afraid that we cannot accept the contention now that charges 4 to 9 need be excluded from the zone of consideration by this Court.

- F 38. The approved articles of charge 1, 3, 5, 8 and 9 have been framed against all the nine private respondents. Charges 4, 6 and 7 have been framed only against respondent No.1. Lastly, Charge 2 has been framed against respondents No.1 to 4. While Charge 1 relates to lack of qualification and experience. Charges 3, 5 and 9 relate to non-cooperation by passing resolutions not to handover the records to the inquiring/ investigating agencies. Charges 6 and 7 relate to influencing subordinates and abuse of public office by the respondent specifically named under these charges. Charge 2 attributes misbehaviour to respondent Nos. 1 to 4 in relation to irregular appointment of Pradeep Sangwan.

39. Charge 3, as approved by this Court, relates to refusal on the part of all the respondents to cooperate and to supply documents, as required by the investigating agencies. Charge 5 of the approved articles of charge also refers to withholding of the material records which were required by the investigating agencies as well as by the Government in face of the fact that the Government had received complaints of serious irregularities and illegalities committed by the Chairman and members of the Commission in various selections including selection to the Haryana Civil Services (Executive Branch) and Allied Services Examination, 2002. Charge 9, again, is a repetition and, primarily, refers that there was direction to the Commission to cooperate with the investigating agencies. Despite such orders, the Commission did not cooperate and such conduct amounted to misbehaviour on their part. All these three approved articles of charge have been framed against all the nine respondents. In the letter of the Governor to the President dated 16th January, 2007, it has been specifically mentioned that several complaints were received against various selections made by the Commission. Enquiries by the Vigilance Bureau as well as by other investigating agencies, in furtherance to the FIRs registered, were pending. The wrong and arbitrary selections had generated 139 Writ Petitions and seven Special Leave Petitions during the tenure of the Chairman/Members of the Commission, the respondents herein. Specific reference was made to the High Court's order directing the Commission to fully cooperate. These charges are analogous to the third charge mentioned in the Presidential Reference. Charges 5 and 9, as approved by the Court, thus, are explanatory and intrinsically inter-connected to Charge 3. Thus, these can be examined by the Court on merits.

40. Charge 4 merely refers to the proceedings of Writ Petition No. 15390 of 2002 which had been specified in detail in the letter of the Governor to the President which itself is the foundation for making of the Reference by the President in the present case. Charge 4, in fact, is repetition in a concise form

- A of the paragraphs mentioned in the letter of the Governor. The illegalities, manipulations and interpolations had been referred to not only on the records of this case but even in the Writ Petitions filed before the High Court. In terms of para 8 of Governor's letter, it is alleged that a reply had been filed by the Chairman
- B and Members of the Commission in an unlawful manner to cover up their own mistakes. Further, Charge 8 is merely ancillary to Charge 4 which itself is not beyond the record which was placed before the President and, in any case, all these facts have come to light subsequently. We may also notice here that during the
- C course of hearing, some of the original answer sheets were produced before us, however, the entire compilation was filed and accepted, during the recording of evidence in the present inquiry.

- 41. Charges 6 and 7 of approved articles of charge are
- D inter-connected. However, we may notice that these approved articles of charge are totally independent and are not incidental or explanatory to the articles of charge specified in the Presidential Reference. They do not even emerge directly from the record produced before us. The alleged malicious acts of
- E influencing the subordinates to carry out the intended manipulations to favour desired persons and abuse of the public office and defending the illegal acts referred to in approved article 6 of the charges, therefore, cannot be gone into by this Court. We have already held that this Court can examine
- F explanatory, incidental or intrinsically inter-connected charges to the charges mentioned in the Reference and in that respect can take note of additional facts, take evidence and examine the entire record before it. But where the charges, apparently and in substance, are new and do not appear to be justifiable
- G on the basis of the record and there is no direct evidence to substantiate them, it may not be in the ends of justice that this Court should examine those articles of charge in the present inquiry. In the event they are examined, the delinquent Chairman/ Member of the Commission may suffer prejudice to his right of

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defence and this may offend the constitutional protection that is available to such Chairman/Member which cannot be permitted. Therefore, we would only proceed to examine Charges 1-5, 8 and 9.

'Misbehaviour' in contradistinction to 'misconduct' and 'proved misbehaviour'

42. The condition precedent to an order being passed by the President of India, removing the Chairman/Member of the Commission from office, is a report of the Supreme Court to the President recording a finding after inquiry that the Chairman/Member ought to be removed from office on the ground of misbehaviour. The plain language of Article 317(1) indicates that the expression 'on the ground of misbehaviour' is an expression of wide connotation and cannot be given a restricted meaning. Normally, such term should be understood keeping in view the nature of the misbehaviour complained of, the office in question and the standards expected to be maintained by the constitutional body in discharge of its functions. The framers of the Constitution opted to use different expressions in other Articles relating to misconduct or misbehaviour of other Constitutional institutions. Use of different expressions in different Articles of the Constitution itself indicates the clarion intent of the framers to correlate a misconduct or misbehaviour to the constitutional status held by the person in terms of expected standards of performance, functions, integrity and rectitude. While in Article 317(1) of the Constitution the expression 'on the ground of misbehaviour' has been used, which is to be established by report of this Court, in Article 124(4) the expression 'on the ground of proved misbehaviour or incapacity' indicates a condition precedent to removal of a Judge of the Supreme Court from office. To demonstrate this clear distinction, reference can usefully be made to Article 311 of the Constitution dealing with civil services. A civil servant such as Member of the All India Service or Civil Services of the State, though not a constitutional appointee in the sense understood under Articles 316 and 124, shall be dismissed or removed from office or

- A reduced in rank only after holding an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The concept of doctrine of pleasure, which is applicable to civil servants, is not attracted in the constitutional appointments under Articles 124 and 316. Removal is possible only when the conditions postulated under these Articles are satisfied. In order to clearly understand the fine distinction between misbehaviour and misconduct which at some places have even been treated synonymously, we may refer to some accepted definitions of these terms. In Law Lexicon 2nd Ed. 1997, the term 'misbehaviour' is explained as under:

- D "ill-conduct: improper and unlawful behaviour. The term 'misbehaviour', in a statute providing that the award of arbitrators may be vacated if the arbitrators were guilty of misbehaviour, is used to imply a wrongful intention, and not a mere error of judgment, on the part of the arbitrators.

- E 43. In *Reference No.1 of 2003* [(2009) 1 SCC 344] this Court noted that the expression 'misbehaviour' has not been defined, but still ventured to provide certain examples of such misbehaviour which would constitute 'misbehaviour' as contemplated under Article 317(1) of the Constitution held as under :

- F "28. Article 317, like Article 124(4) does not define misbehaviour or enumerate what acts would constitute misbehaviour except that clause (4) of Article 317 makes an improvement in specifying misbehaviour, namely, being interested in any government contract. Outside clause (4), it is left to the Supreme Court to determine whether any particular act or conduct is of such a nature as to warrant the removal of the Chairman or member on the ground of "misbehaviour". Ordinarily bribery, corruption and the like should be regarded as such "misbehaviour". But there is no limitation prescribed by the Constitution itself.

- H 30. In Article 124(4) "misbehaviour" means wrong conduct

or improper conduct. It has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or the statute under consideration. Every act or conduct or error of judgment or negligence by a constitutional authority per se does not amount to misbehaviour. Misconduct implies a creation of some degree or mens rea by the doer. Willful abuse of constitutional office, willful misconduct in the office, corruption, lack of integrity or any other offence involving moral turpitude would be misbehaviour. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform duties or willful abuse of the office would be misbehaviour. On the facts and in the circumstances of the case this Court is of the opinion that Charge 1 that Dr. Mirdha, who was the Chairman of OPSC, committed misbehaviour by not informing that his two married daughters were to appear in the examination is not proved."

44. The expression 'misconduct' has been explained in Law Lexicon (2nd Edn.) as under :

"The term "misconduct" implies a wrongful intention, and not a mere error of judgment.

Malfeasance; improper conduct.

45. Needless to notice neither misbehaviour nor misconduct has been defined in the Constitution or even in the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Once an expression has not been defined, then it must be understood and explained in its common parlance, keeping in view the object sought to be achieved. In the case of *R.P. Kapur v. S. Partap Singh Kairon* [(1961) 63 Punj LR 780], the Court explained the term 'misbehaviour' while dealing with the matter under the Public Servants (Inquiries) Act, 1850 and held that misbehaviour qua proceeding under that Act, in absence of definition, is a word of very wide import. 'Misbehaviour', when employed in respect of holders of high offices, has a well understood and well defined meaning according to the tradition and standards maintained

- A by the members of a particular service or office. This Court had the occasion to deal with the expression misconduct in the case of *Narotam Chauraria v. M. R. Murli* [(2004) 5 SCC 689] wherein the Court referred to its earlier judgment in the case of *State of Punjab v. Ram Singh Ex-Constable* [(1992) 4 SCC 54] and referred to paragraph 6 of that judgment with approval and held in paragraph 10 and 11 of the judgment as under :

"10...

- C "6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

- G (See also *Probodh Kumar Bhowmick v. University of Calcutta* and *B.C. Chaturvedi v. Union of India*.)

- H 11. Section 35 of the Advocates Act, however, refers to imposition of punishment for professional or other misconduct. A member of the legal profession which is a noble one is expected to maintain a standard in a dignified

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and determined manner. The standard required to be maintained by the member of the legal profession must be commensurate with the nobility thereof. A lawyer is obligated to observe those norms which make him worthy of the confidence of the community in him as an officer of the court. This Court in *Bar Council of Maharashtra v. M. V. Dabholkar* observed :

"The high moral tone and the considerable public service the Bar is associated with and its key role in the developmental and dispute-processing activities and, above all, in the building up of a just society and constitutional order, has earned for it a monopoly to practise law and an autonomy to regulate its own internal discipline."

46. This Court in the case of *Union of India v. J. Ahmed* [(1979) 2 SCC 286], while dealing with disciplinary proceedings, under the service law, explained the term 'misconduct' to mean conduct not expected of a member of service, conduct in a manner inconsistent with due and faithful discharge of duties and service or gross or habitual negligence in performance of duties.

47. 'Proved misbehaviour' is an expression clearly distinguishable from the above terms of 'misbehaviour' and 'misconduct' as is apparent from the language of Article 124(4) of the Constitution. Intent, gravity and onus are of a much higher degree. The prefix 'proved' places an obligation of actually proving the misbehaviour before the parliamentary procedure for removal of a Judge can come into play. This Court in the case of *Sub-Committee on Judicial Accountability v. Union of India* [(1991) 4 SCC 699] held as under:

"44. The Constitution intended a clear provision for the first part covered fully by enacted law, the validity of which and the process thereunder being subject to judicial review independent of any political colour and after proof it was

A intended to be a parliamentary process. It is this synthesis made in our Constitutional Scheme for removal of a Judge.

B If the motion for presenting an address for removal is envisaged by Articles 121 and 124(4) 'on ground of *proved* misbehaviour or incapacity' it presupposes that misbehaviour or incapacity has been proved earlier. This is more so on account of the expression 'investigation and proof' used in clause (5) with specific reference to clause (4). This indicates that 'investigation and proof' of misbehaviour or incapacity is not within clause (4) but within clause (5). Use of the expression 'same session' in clause (4) without any reference to session in clause (5) also indicates that session of House has no significance for clause (5) i.e., 'investigation and proof' which is to be entirely governed by the enacted law and not the parliamentary practice which may be altered by each Lok Sabha.

E 45. The significance of the word 'proved' before the expression 'misbehaviour or incapacity' in clause (4) of Article 124 is also indicated when the provision is compared with Article 317 providing for removal of a member of the Public Service Commission. The expression in clause (1) of Article 317 used for describing the ground of removal is 'the ground of misbehaviour' while in clause (4) of Article 124, it is, 'the ground of *proved* misbehaviour or incapacity'.

F The procedure for removal of a member of the Public Service Commission is also prescribed in clause (1) which provides for an inquiry by the Supreme Court on a reference made for this purpose. In the case of a Judge, the procedure for investigation and proof is to be in accordance with the law enacted by the Parliament under clause (5) of Article 124. In view of the fact that the adjudication of the ground of misbehaviour under Article 317(1) is to be by the Supreme Court, in the case of a Judge who is a higher constitutional functionary, the requirement of judicial determination of the ground is reinforced by the addition of the word 'proved' in Article 124(4) and the requirement of

law for this purpose under Article 124(5)."

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48. All these expressions fall under different domains of jurisdiction and operate in distinct and different fields. The distinction, primarily, is that of degree, intent and expected standard required to be maintained in relation to the office that the delinquent holds. Onus of proof and severity of misconduct will be relatable to the office one is holding. Misconduct may relate to graver acts, deeds and omissions while misbehaviour may relate to the standards expected to be maintained by the holder of the constitutional office. In other words, misbehaviour/ misconduct could be used interchangeably in certain circumstances while in other they may have to be understood as clearly distinguishable. 'Misbehaviour' may include behaviour that was not expected of the holder of the constitutional office but would not include 'grave misconduct' or 'proved misbehaviour'. This distinction has to be kept in mind by this Court where the constitutional mandate refers to 'misbehaviour' which is an expression of very wide magnitude. As already held by this Court in the case of *Reference No.1 of 2003 (supra)*, this term must be construed very liberally so as to bring within its ambit the behaviour of the Chairman/Member of the Commission which, as per settled norms, was not expected of him/her. The expression 'misbehaviour' generally refers to a conduct which might erode the faith and confidence of the public at large in such constitutional office.

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Discussion on merits of the approved articles of charge

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49. Before we proceed to discuss the evidence on each approved article of charge, as well as record our findings in that regard, it is imperative to note, as already held, that we are only examining Charges 1 to 5, 8 and 9. Charges 6 and 7 do not require examination by this Court as they are *ex-facie* beyond the permissible scope of the Presidential Reference. The second aspect, which requires to be noticed by the Court, is that though approved articles of charge have been framed against all the private respondents, while the proceedings were pending,

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- A private respondents, namely, Doonger Ram, Chattar Singh, Yudhvair Singh, Satbir Singh, Om Prakash and Dr. Ranbir Singh were suspended vide order dated 9th August, 2008 and, thereafter, they have ceased to be the Members of the Commission as their terms of appointment has come to an end by efflux of time during 9th June, 2009 to 9th August, 2010. The learned counsel, appearing for the State, submitted that though in view of the judgment of this Court in the case of *Reference 1 of 1983* [(1990) 4 SCC 262, para 8], the Court may be called upon to examine the misbehaviour even in respect of the Chairman/Member whose term has already expired, still he has specific instructions not to press for recording of findings in the inquiry against these respondents. Consequently, while accepting this request which was unopposed, we further declare that this Court would not be examining the alleged misbehaviour of these private respondents.

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Article of Charge 1

50. Therefore, the Court has to examine the correctness or otherwise of article 1 of the approved charges only qua Mehar Singh Saini, Chairman, Mrs. Santosh Singh and Ram Kumar Kashyap, Members of the Commission. It is alleged that their qualifications, experience and stature were not of the required standard for appointment to their respective constitutional offices. Their appointments have been made with a view to ensure that they would further the objectives of the political party, then in power. Thus, by conniving in the subversion of the Constitution, they are guilty of misbehaviour under Article 317(1) of the Constitution.

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51. First, it needs to be noticed that the words 'by conniving in the subversion of the Constitution' are introduced in the draft charges which, of course, stand approved by this Court. In any case, this is only an explanatory line and does not change the content and meaning of this article of charge, as stated in the Presidential Reference. The appointment to the office of Chairman and Members of the Commission is made by the

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Governor of the State in terms of Article 316 of the Constitution. A
Under proviso to Article 316(1), one half of the members of the
Commission shall be persons who, at the dates of their
respective appointments, have held an office either under the
Government of India or under the Government of a State for at
least 10 years, implying that the remaining half of the Members B
of the Commission can be appointed by the Governor in
accordance with law. 'In accordance with law' means that they
are to be appointed on the recommendation of the State
Government as the Governor has to act on the advice of the
Council of Ministers. The provisions of Article 316 of the C
Constitution do not lay down any qualification, educational or
otherwise, for appointment to the Commission as Chairman/
Member. One-half of the Members of the Commission, as nearly
as may be, are expected to fulfil the requirement of holding
appointments under the State or the Centre for a period of ten D
years. These Members are termed as 'Official Members' while
the others are 'Non-official Members' as already indicated by
us above. Even for the Official Members no specific academic
qualification has been provided. In other words, there is no
constitutional requirement of any particular academic E
qualification for appointment as Official/Non-official Member of
the Commission. Similarly, no specific experience of any number
of years is required for appointment as Non-official Member. In
the case of *Jai Shankar Prasad v. State of Bihar* [(1993) 2 SCC
597], this Court stated that it is clear that framers of the
Constitution realized that to make the provision rigid was both F
inadvisable and unnecessary. The Court also 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 G
object of constituting the Commission. The purpose, for which
the said provision is made, is obvious. It was realized by the
framers of the Constitution that the democratic system can be
maintained only if civil servants are appointed solely on the basis
of their merit adjudged by open competition and only if they can H

- A carry on 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 State levels. Charge 1 alleges improper qualifications, experience and status against these private respondents. What
- B is lacking has been left to imagination? Whether they do not fulfil the prescribed qualification or do not have adequate experience and stature, which they ought to possess, is again a matter of guess work. Whenever a charge of misbehaviour is framed, it needs to be specific in its content. If only vague averments are
- C made without giving any particulars or even documentary evidence to support such a charge, the delinquent Member may not be able to respond to them properly. This may cause serious prejudice to the concerned Chairman/Member. Once a constitutional provision does not provide for any specific
- D academic qualification or experience of any particular cadre, official post or stature in the private field that they ought to have held before their appointment to this constitutional office, then any such allegation will stare the State in face and it will be difficult for this Court to hold that these respondents are guilty of misbehaviour and can be removed from their office in terms of
- E Article 317(1) of the Constitution. The learned counsel appearing for the State vehemently argued that even if the constitutional provisions do not provide specific qualification and experience, still this Court should lay down such prescriptions keeping in view the high constitutional office that the private respondents
- F hold. According to him, the Court should, at least, state clear guidelines in that regard for appointment to such office. We may refer to the judgment of this Court in *Reference No. 1 of 1997 In the Matter of Dr. Ram Ashray Yadav* (supra), wherein the Court emphasized that keeping in line with the high expectations of
- G their office and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the Chairman and Members of the Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they are expected to be role models for the persons whom they
- H are going to select for Civil Services. The character and conduct

of the Chairman and Members of the Commission, like Caesar's wife, must therefore, be above board. They occupy a unique place and position; utmost objectivity in the performance of their duties, integrity and detachment are essential requirements for holding these high constitutional offices. Similarly, in the case of *Inderpreet Singh Kahlon v. State of Punjab* [(2006) 11 SCC 356], this Court in exercise of its appellate jurisdiction was concerned with allegations against the Chairman of the Punjab Public Service Commission that in discharge of his duties, he had selected persons for extraneous as well as monetary considerations during 1996 to 2002. For such conduct and selections, FIRs had been registered in that behalf while the selection of the appointed candidates was also challenged. While dealing with these allegations, the Court held as under:

"102. This unfortunate episode teaches us an important lesson that before appointing the constitutional authorities, there should be a thorough and meticulous inquiry and scrutiny regarding their antecedents. Integrity and merit have to be properly considered and evaluated in the appointments to such high positions. It is an urgent need of the hour that in such appointments absolute transparency is required to be maintained and demonstrated. The impact of the deeds and misdeeds of the constitutional authorities (who are highly placed), affect a very large number of people for a very long time, therefore, it is absolutely imperative that only people of high integrity, merit, rectitude and honesty are appointed to these constitutional positions."

52. In the above lines, this Court has explained the standards of performance which are expected to be maintained by the Chairman/Members of the Commission.

53. Desirability, if any, of providing specific qualification or experience for appointment as Chairman/Members of the Commission is a function of the Parliament. The guidelines or parameters, if any, including that of stature, if required to be specified are for the appropriate Government to frame. This

- A requires expertise in the field, data study and adoption of the best methodology by the concerned Government to make appointments to the Commission on merit, ability and integrity. Neither such expertise is available with the Court nor will it be in consonance with the constitutional scheme that this Court should venture into reading such qualifications into Article 316 or provide any specific guidelines controlling the academic qualification, experience and stature of an individual who is proposed to be appointed to this coveted office. Of course, while declining to enter into such arena, we still feel constrained to observe that this is a matter which needs the attention of the Parliamentarians and concerned quarters in the Governments. One of the factors, which has persuaded us to make this observation, is the number of cases which have been referred to this Court by the President of India in terms of Article 317(1) of the Constitution in recent years. A large number of inquiries are pending before this Court which itself reflects that all is not well with the functioning of the Commissions.

54. The Government has led documentary and oral evidence and has opted to examine, as many as, 31 witnesses in support of the approved articles of charge. In regard to approved article of charge 1, we find that there is hardly any direct oral or documentary evidence. While this charge relates to lack of qualification, experience and stature, the Governor's letter to the President states that these persons influenced the Government in making their appointments. Of course, it is expected that persons being appointed to such high office should not use any influence or pressure or take favour from the Government in power but at the same time that fault would have to be traced to the processing and the appointing authority rather than the candidate alone. It was contended that the Chairman, Mehar Singh Saini, is a private practitioner holding a BAMS degree only and, therefore, ineligible/incompetent to be appointed to the post of Chairman of the Commission. However, it was not disputed by any of the parties appearing before us that he was from the Non-official category and, as such, the

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experience of ten years as Government appointee would not apply to him. Similar is the case with regard to respondent No. 8, Mrs. Santosh Singh, a teacher. Respondent No.9, Mr. Ram Kumar Kashyap, who has been appointed to the Commission as Official Member possessed ten years experience of holding Government office, as he had held the post of Field Assistant in ESA Department. It is contended that experience of holding such a post, in terms of stature and otherwise, is entirely inadequate for appointment to the Commission. The constitutional provisions do not provide any qualification for Official/Non-official Members. It also does not provide any experience in any particular field or office for Non-official Members. In the case of an Official Member, it is nowhere spelt out as to which cadre in the official hierarchy, he should have experience of 10 years. In these circumstances, we find that the Government has failed to prove Charge 1 and we hold the respondents not guilty of any misbehaviour as contemplated under Article 317(1) on this count.

Article of Charge 2

55. This charge has been framed against four of the nine private respondents. It is alleged that Mehar Singh Saini along with Dunger Ram, O.P. Bishnoi and Chattar Singh as members of the Selection Committee recommended the name of Pradeep Sangwan for the post of Drug Inspector on the basis of bogus experience certificate. It was contended that selection of Pradeep Sangwan was, thus, arbitrary and constituted misbehaviour under Article 317(1) of the Constitution. In regard to the irregularities committed, an FIR being FIR No.15 of 2005 was lodged; during investigation and on further inquiry by the State Vigilance Bureau, various documents have come to light which show that selection of Pradeep Sangwan was arbitrary and was made in a manner, which is not acceptable in law. Pradeep Sangwan did not possess the requisite essential qualifications and experience. A complaint against his selection was filed by one Rakesh Walia. Despite this, the candidate was not only selected but also recommended on the basis of the

- A bogus experience certificate and subsequently appointed to the post of Drug Inspector by the State Government. The documents, which are on record and have been referred by the learned counsel in that behalf, are the application form and certificates submitted by the candidate, statements of witnesses
- B including the witness from M/s. Zee Drugs, whose certificate was produced by the candidate for the purpose of satisfying the essential condition of experience before the Selection Committee.

- C 56. The counsel appearing for the Commission has not even attempted to deny these averments and the charge against these Members. However, on behalf of four private respondents, it is contended that it was not for the Members of the Selection Committee to verify the contents of the certificate. They have conducted the selection in accordance with law and no
- D arbitrariness can be attributed to them. As many as 27 candidates were considered for the post and, ultimately, two names were recommended. Pradeep Sangwan, being at serial number 1, was then appointed by the Government and as such no fault could be attributed to the members of the Selection
- E Committee. It is also argued that if Pradeep Sangwan has obtained a bogus certificate then, at best, he can be said to have committed some offence and that cannot be understood as an instance of misbehaviour on the part of the private respondents. Further, the contention is that there is no evidence
- F to support this charge.

- G 57. The charge is *simpliciter* relating to improper selection of Pradeep Sangwan for the post of Drug Inspector for which he was recommended at serial number 1 and was, subsequently, appointed by the concerned Government. The approved article
- H of charge may not spell out every minute detail of the improper selection but, in substance and keeping in view the dignity of the office of the Commission, it would be sufficient if a serious suspicion is cast on the process of selection which is attributable to and/or is result of commission or omission of the members of the Selection Committee. We may scrutinize the merits of

this approved charge by examining the documents on the record. A
The State Government had advertised various posts including
two posts of Drug Inspector and the essential qualification and
experience for the same were as follows :

"Essential Qualifications and Experience :

(a) Second Class Bachelor Degree in Pharmacy or
Pharmaceutical Chemistry. B

(b) 1 ½ years experience in manufacturing of at least
one of the substances specified in schedule 'C'
appended to the Drugs and Cosmetic Rules, 1945 C
OR 1 ½ years experience in testing of at least one
of the substances specified in the said Schedule
'C' in a Laboratory approved for the purpose by the
Licensing Authority OR three years experience in D
inspection of Firms manufacturing any of the
substances specified in the said Schedule 'C'.

(c) Adequate knowledge of Hindi."

58. Condition No.2 of general clarifications, as published
in the advertisement, reads as under : E

"General Clarifications

2. Incomplete application form i.e. without proof of age
and the minimum required qualifications and
experience will be straightway rejected without F
entering into any correspondence."

59. From the bare reading of the above essential
qualifications, it is clear that these qualifications could not be
relaxed at the discretion of the Commission. Furthermore, a G
candidate has to have one and a half years of experience in
manufacturing of at least one of the substances specified in
Schedule C appended to Drug and Cosmetic Rules, 1945 or
one and a half years experience in testing of any such substance
in a laboratory approved for the purpose by the Licensing H

- A Authority. Any application, which was incomplete and did not annex the required certificate of experience, was liable to be rejected straightaway. The last date of submission of application as well as for consideration of the eligibility criteria was 3rd September, 2004. Let us now examine the application that was submitted by Pradeep Sangwan. Pradeep Sangwan had submitted application No.25827, as per the endorsement made under receipt No. (???????? ???? ??) 713 dated (??????) 9th September, 2004. However, respondent No.5 had initialed the application with the date as 3rd September, 2004. This, obviously, means that the endorsement by respondent No.5 on the application was ante-dated to the actual date of receipt of the application. This application ought to have been rejected at the very threshold inasmuch as this was received after the prescribed last date of receipt of application i.e. 3rd September, 2004.

60. In his application, under column No.10, Pradeep Sangwan had stated that he has done his B. Pharma from M.D. University, Rohtak in 2001. In column No.12 of the application, the applicant had not stated that he had any experience of teaching on regular and/or voluntary basis. However, he had annexed to the application a copy of the certificate dated 16th August, 2004 stating that he had served in Janta College of Pharmacy, Butana, Sonapat over the weekends on voluntary basis for the period February 2001 to 15th May 2003 and worked as Lecturer in the same from June 2003 till the date of issuance of the certificate. Another certificate of experience, which was annexed to the application and which was mentioned in column No.12 of the application, was the certificate issued by Zee Drugs, Agra. This certificate is alleged to have been signed by authorized signatory of the firm and it states that during the period 20th May 2001 to 20th May 2003, Pradeep Sangwan worked as a Pharmacist in the company at a salary of Rs.5,000/- . This application, despite the above defects, appears to have been processed by the office of the Commission. From the original records produced before the Court during the course of

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hearing, it is clear that correct noting was not recorded. Still, the same was approved by the Members of the Commission (private respondents) and the candidate was called for the interview. The interview was held on 29th September, 2004 and despite the fact that there were more competent and meritorious candidates available, he was selected and placed at serial No.1.

61. It may be noticed that there were 76 applicants for the post, of which 27 were called for the interview and finally a select list of two was prepared. The recommendation of the selection committee was sent to the Government on 2nd November, 2004. However, on 5th October, 2004, a complaint was received from Mr. Rakesh Walia about the selection of Pradeep Kumar, son of Ram Singh having residential address, which was not that of this applicant as given in his application. This complaint made a specific allegation that the experience certificate furnished by Pradeep Kumar was bogus. The candidate had never worked as a Manufacturing Chemist in Zee Drugs. In fact, he was working as a Lecturer and, therefore, it was physically impossible for him to have worked with Zee Drugs on a regular basis. Complainant stated that he could file an affidavit to prove that the experience certificate was bogus and false. Copy of this complaint was sent to the Chairman of the Commission, Chief Secretary, Government of Haryana and Chief Minister of the State of Haryana. In response to the complaint, a note was put up to state that neither the complainant Rakesh Walia nor Pradeep Kumar was a candidate for the post and hence no action was required to be taken. It was put up for consideration, through the Superintendent, before Mr. Yudhvair Singh, Member of the Commission, who approved its filing and then it was also signed by the Chairman of the Commission. It needs to be noticed that this process adopted by the Commission and, particularly, by its Member and Chairman was not in consonance with the known canons of administrative jurisprudence. May be the names of Pradeep Sangwan and his father were stated incorrectly as Pradeep Kumar and Ram Singh in the complaint, but fact of the matter remains that Pradeep Sangwan was the

- A selected candidate. Select list of only two persons had been prepared and approved by the Selection Committee. Thus it was expected that this complaint ought to have been examined in some detail, particularly when the facts alleged in the complaint found due support from the documents annexed to the application of the candidate as well as the official records of the Commission. In the present day when unemployment is one of the biggest problems faced by our country, it is expected that the Commission will scrutinize the antecedents of a candidate with utmost care before recommending him for appointment that
- B too for a responsible post such as Senior Drug Inspector. Despite this complaint, the results were approved on 26th and 27th October, 2004 by the Chairman and Members of the Commission. The private respondents had signed those minutes and forwarded the names to the Government on 2nd November, 2004. Such conduct of the Chairman and members of the Commission not only shows omissions and commissions on their part but administrative lapses as well. This resulted in providing employment to an undeserving candidate at the cost of more meritorious candidates.
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- E 62. As already noticed, on the basis of the complaint received by the State Government, inquiries were initiated by the State Vigilance Bureau and some FIRs were also registered including FIR No.15 of 2005. In this investigation, various documents and evidence came to the notice of Vigilance Bureau and the investigating agencies, all of which were collected and placed on record of this Court by way of affidavit, filed by PW6, namely, P. Raghavendra Rao, Special Secretary, Govt. of Haryana. These allegations were found to be correct as reflected in the report of the Deputy Inspector General, M.S. Ahlawat which is on record. In the affidavit of PW6, specific reference has been made to the appointment of Pradeep Sangwan and the fact that his certificate of experience was a forged certificate. PW26, M.S. Ahlawat, stated that he had conducted an inquiry into the allegations levelled against Dr. K.C. Bangar, the then Chairman of the Committee. It was noticed in the inquiry that Pradeep
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Sangwan had produced a false certificate from M/s. Zee Drugs and that he was given appointment as an undue favour. During this investigation, the statement of PW30, Bangti Jha, Quality Control Manager in Zee Drugs, was also recorded who stated that Pradeep Sangwan had not worked as Assistant Chemist or Manufacturing Chemist in Zee Drugs during his period of appointment. In other words, definite documentary and oral evidence had been produced on record to show that the certificate annexed with the application of Pradeep Sangwan was not a genuine one and, in fact, he was never employed by M/s. Zee Drugs during the relevant period. It is, therefore, clear that he did not possess the requisite experience in terms of the advertisement.

63. Another important aspect, which needs to be noticed, is that, in his affidavit, PW20, Hazari Lal, Deputy Superintendent of Police (since retired), has specifically stated that experts, invited by the Commission for this selection, were not provided the original record despite demand. PW20 had also recorded the statement of Dr. Mrs. Usha Batta, Senior Deputy Director, Health Department in that behalf. In other words, the members of the Selection Committee, namely, the private respondents, obviously favoured the selection of Pradeep Sangwan. PW2, Sajjan Kumar, who is Deputy Superintendent of Police had investigated the matter and also filed an affidavit, the relevant portion of which is stated as under :

1. That above noted case was registered following the Vigilance enquiry No.5 dated 16.5.2005, Chandigarh against Dr. K.C. Bangar, Chairman, Haryana Public Service Commission (hereinafter called as HPSC) and Sh. Pradeep Sangwan s/o Mohinder Singh Sangwan, Drug Inspector, Jhajjar r/o Vill. Kohla, Distt. Sonapat and others. In this enquiry, it was alleged that during August, 2004, Haryana Public Service Commission advertised the Post of Drug Inspectors in Health Department in

A Haryana. The said Pradeep Sangwan also applied
for this post and submitted two different experience
certificates along with his application form. While
one of them was issued by Zee Drugs, Sikandara,
B Agra (U.P.), the other was issued by Janta
Pharmacy College, Bhutana, Distt. Sonapat, for the
same period (20.05.2001 to 20.05.2003 and 2001
to 2004 respectively). It was alleged that he had also
drawn salary as Lecturer from Janta Pharmacy
College, Butana, Distt. Sonapat. He was called for
C interview by Haryana Public Service Commission
on 06.10.2004, whereas remaining candidates
were interviewed on 28/29.09.2004. Dr. K.C.
Bangar, Chairman, HPSC, who happened to be
D resident of village Kohla, the village of Sh. Pradeep
Sangwan, deliberately ignored the forged
experience certificate of Zee Drugs, Agra and
influenced the selection process and at his instance,
the selection committee i.e. Members of HPSC,
E selected Sh. Pradeep Sangwan by giving him undue
advantage and ignoring the claim of other suitable
candidates.

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8. That during the course of investigation, Sh. Rohtash
F Singh, DSP, had recorded the statement of Dr. Isha
w/o Dr. Hari Mohan r/o Rohtak on 09.08.05. She
stated that she had attested the experience
certificate of Pradeep Sangwan on the
recommendation of Sh. Mahender Singh r/o Garhi
Bohar. Mahender Singh had wrongly put the date
G as 28.08.04 on the experience certificate dated
02.09.04, after obtaining my signatures. Mahender
Singh is father of Pradeep Sangwan, who was later
appointed as Drug Inspector."

H 64. The affidavits of PW2 and PW6, in addition to other

records, are the basic evidence, which has been produced by the State before this Court, to establish the approved article of charge. It was contended on behalf of the private respondents that these affidavits of the police officers and the statements recorded under Section 161 of the Code of Criminal Procedure are inconsequential in this inquiry and cannot be taken into consideration by this Court. We are unable to accept this contention. Though these statements are inadmissible in evidence as far as a criminal trial is concerned, however, in the inquiry before this Court and even in a departmental proceeding, they can be considered to substantiate the facts which otherwise are being established by the concerned authority. We make it clear that it is not only the statements of the Investigating Officers and the witnesses which were recorded by him during the course of investigation are not the only basis for which we are drawing certain inferences. But they are certainly relevant considerations, which have to be kept in mind by the Court, while examining the matter in its entirety to see whether the misbehaviour complained of is attributable to and committed by the private respondents. Conclusion of misbehaviour of the private respondents shall further be substantiated by the fact that when the private respondents were cross-examining PW20, they did not even suggest that he had not recorded the statement of other witnesses including expert Dr. Mrs. Usha Batta correctly or not at all. On the contrary, the question was put suggesting that statement of this witness was recorded and a particular question was not put to this witness. The following question and answer in the cross-examination completely demolishes the objection now sought to be raised before us :

Q. At the time of questioning of Dr. Usha Batta, did you ask her as to whether in the interview on 28th and 29th September, she had objected in writing that the relevant certificates were not shown to her?

A. I had recorded her statement, in her statement she had mentioned that she was not shown the documents."

A 65. The Chairman and Members of the Commission, particularly, the Members, who have attested and approved the orders of summoning Pradeep Sangwan for the interview, should have exercised greater degree of care in scrutiny. Further, the matter ought to have been examined by the private respondents
 B when the complaint against the selected candidate was made and copy thereof was sent to the highest authority in the Commission and in the State Government. It is a matter of common knowledge and, in fact, there is no dispute before us that the application and record of the candidate are placed before
 C the members of the Selection Committee at the time of interview of the candidate. We fail to understand as to why the members of the Selection Committee did not notice that the application had not been submitted before the last prescribed date, i.e., 3rd September, 2004 and why respondent No.5 had put his
 D initials with the date of 3rd September, 2004 when application was actually received on 9th September, 2004; particularly, when this was apparent from the first glance on the very opening sheet of the application form. It may be noticed from the record that the receipt number and the date of receipt has been written by the receiving clerk against the printed column on each application
 E form and on the application form of Pradeep Sangwan it was written as receipt No. 713 dated 9th September, 2004. Another factor, which would substantiate that this application was received after the deadline, is that the application of the other recommended candidate was received on 23rd August, 2004
 F against receipt No. 226 and the entries were made in the normal course of business. All these facts and evidence, when cumulatively examined, unambiguously show that these private respondents have failed to act judiciously and in accordance with principles of fairness. They have failed to maintain the
 G expected standard of transparent and fair selection on merit. The application of Pradeep Sangwan was liable to be rejected at the very threshold in terms of condition No. 2 of the General Clarifications but the same was accepted and he was called for interview and selected. Despite the complaint, which
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subsequently was found to be correct, his name was also
forwarded for appointment to the State Government. We are
not holding that furnishing of the false certificate by Pradeep
Sangwan was an act attributable to the Chairman/Members of
the Commission but its acceptance, despite the complaint and
the manner in which Pradeep Sangwan was selected and
recommended for appointment to a very responsible post in
the State Government, certainly is clothed in suspicion and
favouritism. We are informed that Pradeep Sangwan is now no
longer in service

66. As a result of the above discussion, we are of the
considered view that the conduct of the Members of the
Commission, in processing the application of Pradeep
Sangwan, endorsing and approving his name for the interview,
selecting him and finally recommending his name for
appointment to the post of Senior Drug Inspector, does not meet
the standards of behaviour, integrity and rectitude required to
be maintained by the office they were holding. Thus, their
behaviour with respect to this article of charge would certainly
fall within the ambit of misbehaviour justifying their removal from
office.

Articles of Charge 3 to 5, 8 and 9

67. Approved articles of charge 3, 5, 8 and 9 pertaining to
alleged acts, omissions and commissions amounting to
misbehaviour have been framed against all the respondents in
the present inquiry. However, article of charge 4 has been framed
only against Mehar Singh Saini, respondent No.1, who was
earlier Member and later appointed as Chairman of the
Commission. These approved articles of charge can be dealt
with together inasmuch as they are based on common
allegations, common evidence and with reference to the same
records produced by the State Government in support of the
allegations. In terms of Charge 3, Mehar Singh Saini and other
respondents refused to cooperate in the investigation carried
out by the State Vigilance Bureau in spite of directions of the

- A High Court and intentionally did not supply the documents requested in furtherance to the complaints received by the authorities in relation to selection made by the Commission. While referring to the proceedings before the High Court of Punjab and Haryana in Writ Petition No. 15390 of 2002, to which
- B all the parties before us were parties, it has been stated that these acts of manipulation and interpolations in the answer sheet were carried out favouring certain candidates and, thus, there was deliberate abuse of process of selection by Mehar Singh Saini as Member of the Commission in selection for Haryana
- C Civil Services (Executive Branch) and Other Allied Services Examination, 2002. Approved article of charge 5 only expands the scope of approved article of charge 3 as it states that deliberate attempt was made by the private respondent to withhold material records which were required by the
- D investigating agencies to investigate the matter in furtherance to the complaints received by the Government in regard to the irregularities and illegalities committed by the then Chairman and Members of the Commission in the selection for the year 2002. Approved article of charge 8, to some extent, is repetitive and it refers to the proceedings before the Punjab and Haryana
- E High Court in Writ Petition No. 15390 of 2002 wherein reply was filed on behalf of the Chairman and Members of the Commission, only as an attempt to justify the manipulation and interpolations committed in the course of selection. Approved article of charge
- F 9 is again extension of/explanatory to above approved articles of charge as it only refers to the resolution which were passed by the Chairman and Members of the Commission deciding not to hand over the records to the investigating agencies upon demand and despite directions. All these allegations of commissions and omissions according to the State Government
- G amount to misbehaviour within the meaning of Article 317(1) of the Constitution and justify their removal from the office.

68. We have already noticed that the contention raised, on behalf of the private respondents, is that the articles of charge are beyond the scope of Presidential Reference. There is no

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evidence to support them and, in any case, the alleged conduct does not amount to misbehaviour as it was a legitimate right of the Commission to claim privilege acting through its Chairman and Members. Thus, the decision not to furnish the records to the investigating agencies was justifiable.

69. In the preceding paragraphs we have already held that this Court has jurisdiction to examine additional or explanatory charges, records, documents, evidence and facts which may come to light even subsequent to the Presidential Reference in exercise of its advisory jurisdiction under Article 317(1) of the Constitution. They are not such independent articles of charge to which there is no reference in the entire record and/or are likely to cause prejudice to the delinquent Chairman/Members of the Commission. The cumulative reading of these articles of charge shows that emphasis is on non-cooperation of the Chairman and Members of the Commission in not furnishing the records, when it was demanded by the investigating agencies. Further there has been an abuse of office of the Chairman and Members of the Commission by withholding the material records, passing resolutions contrary to law, filing incorrect replies in judicial proceedings and lastly the manipulation and interpolations in regard to answer sheets of the selected/non-selected candidates. More particularly, reference has been made to the selections made in the year 2002. Before we examine the evidence on these charges, we may refer to the points which emerge from these approved articles of charge :

- (a) Whether during their tenure as Chairman and Members of the Commission, the private respondents adopted a non-cooperative attitude and intentionally decided not to furnish relevant records to the concerned authorities/investigating agencies?
- (b) Whether the right of privilege in terms of Section 123 of the Indian Evidence Act, 1872 was available to

A the Commission acting through its Chairman and Members?

- (c) Whether non-furnishing of documents or records to the inquiring/investigating agencies, under the pretext that the Commission is a constitutional authority and thus not amenable to investigation, was a bona fide decision/resolution or it was an attempt to cover up the misdeeds, omissions and interpolations made in the process of selection? Furthermore, if the records were made available to the agencies would it have exposed the misbehaviour of the private respondents?

70. It is not in dispute that the Government as well as the Commission had received various complaints in regard to the process of selection as well as the selections themselves, made by the Chairman and Members of the Commission to various appointments in the State services. In furtherance to these complaints and the complaint made by Rakesh Walia in case of appointment of Pradeep Sangwan to the post of Senior Drug Inspector, five different vigilance enquiries and two different FIRs being FIR Nos. 15 of 2005 and 20 of 2005 were registered. These cases were registered, primarily, on the ground that the Commission had adopted unfair method of selection. Favorite candidates were selected and it was also stated that there has been interpolation and manipulation of marks in the answer sheets of the selected as well as non-selected candidates. In furtherance to FIR No.15 dated 8th August, 2005, a charge-sheet, for the offences afore-stated, had been filed before the Court of competent jurisdiction on 30th August, 2006. Despite repeated demands, complete records were not given to the investigating agencies. It is clear from the record that during the period 25th May, 2005 to 5th July, 2005, the Vigilance Bureau issued as many as 8 letters asking for the records in relation to different inquiries. Instead of cooperating, the private respondents opted to file a writ petition, through the Commission, being Writ Petition No.12593 of 2005, which was contested by the State. Various

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complaints, reports and documents were produced before the High Court and ultimately in its judgment in *Haryana Public Service Commission* (supra), dated 12th August, 2005, the High Court clearly observed that the Commission could not claim immunity from providing records, particularly, when the investigations were in furtherance to the complaints of corruption against its office holders having received by the Government. It will be useful to refer to the relevant part of this order of the High Court wherein certain observations were made against the Chairman and Members of the Commission and their claim of absolute immunity was not accepted, which reads as under:

"11. At the outset we may notice that the petitioner/ Commission has tried to drag political considerations -by insinuations at least. It has been pleaded that the present Chairman and the Members of the Commission are appointees of the previous "Indian National Lok Dal" Government and that after the elections, a new "Congress Government" has assumed office. Although it has been asserted that all the persons i.e. the Chairman and the Members of the Commission are non-political persons but the insinuations and the attempt to politicise the whole controversy is loud and clear. The aforesaid attempt cuts at the very root of the various arguments raised by the Commission. As a constitutional body, it is not expected of the Commission to bring in politics or rely upon the fact that the ruling party in the State had changed. We can only express our disapproval for the aforesaid attempt made by the Commission.

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14. ... It is not in dispute that the enquiries now being conducted by the Vigilance Bureau pertain to certain past selections. From the communication received by the petitioner-Commission, it appears that the action of the past Secretary, the past Chairman and certain other Officers/ Officials of the Commission, are being probed with regard

A to the serious charges. Under any circumstances, the
aforesaid enquiries cannot be taken to mean any erosion
of the authority of the Commission or its independence.
Even an expert and constitutional body like the Commission
is supposed to perform its duties, fearlessly and carry out
B selections on the basis of the best merit available. However,
if the aforesaid selections are alleged to be tainted and
based upon consideration other than merit, the
Commission cannot, in such circumstances, claim any
immunity. No body has a vested right to perpetuate illegality
C or hide a scandal. All selections made by public servants
are supposed to be based upon competence, merit and
integrity. The allegations to be contrary would not only erode
the public confidence in the Commission but would also
result in merit being a casualty.

D 15. ... Therefore, if a formal F.I.R. is registered, then even
as per the learned Counsel, the holding of the vigilance
inquiries could be justified. In our considered view, it would
embarrass the Commission, its Chairman and its Members
more rather than protect. Holding of the vigilance inquiry
E without registration of any formal F.I.R., in our view is in the
nature of a fact finding exercise. If after the aforesaid
exercise is undertaken, the commission of any criminal
offence is made out, the law will take its own course.

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G 18. We find that the aforesaid contention of the learned
Counsel is also without any merit. There is no dispute with
the proposition (*sic*) of law that while exercising the power
of judicial review this Court would be slow in making
competitive comparison of the selected candidates vis-a-
vis the unsuccessful candidates. To this extent reliance
placed by the petitioner on the judgment of Jasjit Singh
Sidhu's case (*supra*) is wholly justified. However, we
express our inability to extend the aforesaid analogy any
H further to hold that even in the case of corruption charges,

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tainted selections, or any illegality, no investigation in the matter of selection, could be made. Accepting the aforesaid argument would be perpetuating the tainted selections. A

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22. It is, thus, apparent that an effort has been made by the Commission to protect its Chairman and the members, who for undisclosed reasons have chosen not to directly approach this Court. The commission which is a constitutional body has unnecessarily filed the present petition to watch the interest of the Chairman and member, who have chosen to remain behind the curtain. The Commission cannot equate itself, nor under the Constitution of India can it be so equated, with its Chairman and its members. The Commission has a distinct and a constitutional identity, independent of its Chairman and members. It is, thus apparent that the present petition has been filed at the instance of the Chairman and members, although in the name of the Commission. We cannot put any seal of approval to this act of the Commission." B C D

71. The correctness and legality of the order of the High Court was challenged by the Commission before the Supreme Court by filing a Special Leave Petition being SLP (C) No.18726 of 2005. The same was dismissed as withdrawn vide order dated 19th September, 2005. It is useful to note a strange behaviour on the part of the Chairman and Members of the Commission that they chose to file a separate application along with the petition seeking leave of this Court to appeal against the order of the High Court dated 12th August, 2005. The permission prayed for, by the Chairman and Members of the Commission, was declined vide order dated 28th October, 2005. In other words, the order of the High Court and the observations made by it, *inter se* the parties have attained finality. E F G

72. We may also notice that, in the meantime, the H

- A candidates selected for the Haryana Civil and Allied Services (Executive Branch) in the year 2004, had filed a Writ Petition before the High Court of Punjab and Haryana praying for issuance of a writ directing the respondent to issue letters of appointment to them on the premise that they had duly been selected to the service. The High Court dismissed the Writ Petition noticing the fact that the elections in the State had been announced and model code of conduct had come into force, therefore, appointment letters were rightly not issued to them. The order of the High Court was challenged before this Court.
- B While dismissing the appeal this Court in *Jitendra Kumar v. State of Haryana* [(2008) 2 SCC 161] noticed the disturbing feature of non-cooperation by the Commission in the Vigilance Enquiries and held as under:

- D "...we only hope and trust that a constitutional authority like the Commission should neither withhold any document nor refuse to cooperate with the State Vigilance Bureau in the matter of conduct of an inquiry. If the statements made by the Commission are correct, they have nothing to hide. It would be in the interest of all concerned including the appellants herein to see that the inquiry should be completed at an early date."

- F 73. It was argued that despite directions/observations of the Court still complete cooperation was not extended and there was conscious decision taken by the private respondents, as the Chairman and Members of the Commission, not to cooperate in the investigation which can be inferred as an intention to cover up their own commissions and omissions including mal practices in selections.

- G 74. The other phase of non-cooperation appears to be when, during the period 15th December, 2005 to 4th January, 2007, all the private respondents in the present petition passed four different resolutions declining to hand over the records for investigation to the concerned authorities. The stand taken was that it is a constitutional body and its record cannot be made
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available to the investigating agencies even if such a demand was made in furtherance to the complaints, vigilance inquiries and First Information Reports. These resolutions were passed referring to certain Special Leave Petitions pending before this Court, but strangely no reference was made to the Punjab & Haryana High Court order dated 12th August, 2005 and/or that of this Court dated 19th September, 2005. Bare reading of the resolutions, except resolution dated 4th January, 2007, clearly show that there was non-application of mind. The alleged claim of privilege did not find mention in them and the orders of the Courts including the highest Court of the land were ignored. The investigating agencies had also demanded, by different letters, the records in relation to FIR No.20 of 2005. While invoking the provisions of Section 91 of the Code of Criminal Procedure, the agencies issued notice to the Commission but to no avail. An application had also been filed by the State Vigilance Bureau under Section 93 of the Code of Criminal Procedure before the Court of Chief Judicial Magistrate requesting production of relevant record and for appropriate directions. However, this application was vehemently contested by the Commission, at the behest and at the instance of the Chairman and Members of the Commission. The Chief Judicial Magistrate vide order dated 25th October, 2007 rejected the application filed by the investigating agencies against which a revision was filed before the learned Sessions Judge, who upheld the order of the Chief Judicial Magistrate vide order dated 30th November, 2007. Against the order of the Sessions Judge, revision was filed by State in the High Court which came to be allowed vide order dated 1st April, 2008. In that order, the High Court had clearly held that claim of privilege for non-production of documents with reference to Sections 123 and 124 of the Evidence Act, 1972 was not sustainable or justified. The Court further held that there was sufficient material on record to justify the issuance of search warrant under Section 93(1)(a) of the Code of Criminal Procedure and held that the State had the right to get the records from the Commission for the purpose of investigation and on latter's failure, the provisions of Section 93 of the Code of

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- A Criminal Procedure were rightly invoked. It observed that the Commission is a constitutional authority and it would not be in the fitness of things that a search is conducted in its office, but such a situation has been created by it. Liberty was granted to the Commission to produce documents, records before the
- B Investigating Officer, Inspector of Police, Vigilance (Ambala Range). Despite such unambiguous and clear directions of the Court, the Commission, acting through the private respondents failed to hand over the records but chose to prefer an SLP before this Court being SLP (Crl.) No. 3649 of 2008. This Court on
- C 16th May, 2008, granted stay of the operation of the High Court's order. However, the matter continued to be pending for a considerable time before this Court and this SLP was ultimately withdrawn vide order dated 14th December, 2009. In the meanwhile, as already stated, four new Members had been
- D appointed to the Commission in place of the Members whose term had expired. These newly nominated Members had taken a decision to hand over the record to the investigating agencies. Fact of the matter remains that for a very considerable time investigations were delayed and the guilty could not be brought to book. There was definite non-cooperation on the part of the
- E private respondents.

75. Pradeep Sangwan's case is just one of the examples of improper selection made by the private respondents. The Vigilance Bureau had instituted different inquiries. Enquiry Nos.
- F 1 and 3 resulted in registration of FIR No.20 of 2005 and the notices dated 21st December, 2006 and 4th January, 2007 along with other letters issued to the Commission for making available the records in question. Every possible effort was made to spend public money, time and energy by the Commission to withhold the records rather than to provide the same to the investigating
- G agencies to ensure expeditious completion of the inquiry/ investigation. Avoidable impediments, with the aid of law or otherwise, were created to ensure that the notices issued by the authorities and even observation of the Courts were not complied with. As far as the claim of the Commission with regard
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to privilege over its documents is concerned, it stood finally A
concluded by the order of the High Court against which the SLP
was withdrawn. It is not for us to re-examine that issue, all over
again, in the facts of the present case. It is impermissible to
examine an order passed by the High Court or Supreme Court
which has attained finality *inter-se* the parties that too in a B
collateral proceeding. This will be opposed to the doctrine
estoppel per rem judicatam.

76. We have examined in detail the evidence led in relation
to non-cooperation and the *malo-animo* of the Chairman/
Members with reference to the records before us, i.e., the C
documentary and ocular evidence. PWs 6, 8, 13, 14, 20 and 27
have filed their affidavits. The collective reading of this evidence
along with documents which have been placed on record
establishes two facts:

1. That there was definite non-cooperation on the part D
of the Chairman/Members of the Commission in
furnishing record and documents to the investigating
agencies; and
2. This attitude of the private respondents as well as E
the claim of privilege lacks bona fides, much less
protects the constitutional stature of the
Commission.

77. PW6, P. Raghvendra Rao, in his detailed affidavit, at F
the very outset, denied the suggestion that FIRs were registered
as a result of political vendetta. According to him, there were
various complaints received by the Government which were
examined and FIRs were registered in accordance with law. He
has further stated that despite requests in writing and otherwise, G
records were not provided and when records were provided it
has come to light that there has been manipulation and
interpolation in the answer sheets and the entire selection
process adopted by the Commission through private
respondents for selection to various posts in the State cadre H

A was arbitrary and contrary to rules. In the case of appointment to the post of Environmental Engineer and Assistant Environmental Engineer certain candidates were selected by the Commission, who admittedly were over age. The recruitment rules in question and the advertisement had not empowered the Commission to grant any relaxation in age limit. Despite that the Commission, while recommending the names, issued a corrigendum and made a reference for ex-post-facto approval for such relaxation. In addition to this, the Chairman and Members of the Commission appears to have exercised influence over its subordinates to push through above noticed selections under all circumstances. It is useful to notice that out of the four selected candidates, three were over age but still were selected for that post. PW29, Smt. Chandra Kanta Gupta, who was Dealing Assistant in the Commission, stated that in order to prepare and issue corrigendum to increase the age limit, in the post of Environmental Engineer, she was called to the office by the PA to the Chairman on a Saturday, which was a holiday. Such corrigendum was issued despite the fact that there was no Government approval for the same. Similar statement was also made by PW12, Lal Chand Sharma who was Officer on Special Duty in the Commission. This may not be the specific charge with which we are concerned but these are relevant attendant circumstances which need to be noticed for examining the genuineness of the reply filed by the private respondents before the Court.

F 78. PW1, Patram Singh, Superintendent of Police, State Vigilance Bureau had sworn an affidavit that he along with Deputy Superintendent of Police, in furtherance of the order of the Court, not only issued notices but also visited the office of the Commission with a request to furnish the records but no records were provided to them. This witness also produced, along with his affidavit, number of documents including compilation of results for the year 2001 to 2004. As per the statement of this witness, the marks of several candidates were either reduced or increased, without specifying any reason, much less as a

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genuine necessity. Where such changes have been made there were no initials in some cases while in others, the initials were in different ink and even by different persons. The marks had been considerably varied and the persons who had got higher marks in the written examination were given very low marks in the interview and vice-versa. This obviously disturbed the *inter se* merit of the candidates. During the course of hearing we had asked for the production of the original answer sheets of the candidates, which were produced. In the paper of Public Administration, the candidate with Sr. No. 1631 was originally awarded 84 marks in the paper for attempting five questions. The marks of this candidate thereafter had been scored out in a different ink and were reduced to 68. This candidate had got 16 marks for writing an answer to question No.7. The figure of 16 marks was scored out and instead the candidate was given '0' mark for the same. We have perused the answer to this question. Compared with answers given by other candidates, who have been awarded 16 or even more marks, the answer cannot be termed in any way inferior to the answer of the other candidates. Thus there appears to be no justification, whatsoever, for awarding 0 mark in place of 16 marks, which were originally awarded. Similarly, in the same paper a candidate with Sr. No. 1732 was original awarded, in all, 95 marks which were reduced to 84 by re-awarding marks in the answers to three different questions. Neither the figure of 84 in the tabulated statement for awarding marks nor any of the reduced marks in three questions are initialed by any examiner or appropriate authority. In Haryana Judicial Service Examination the candidate having Sr. No. 0150 had originally been awarded 58 marks which were reduced to 48 without any revaluation of the answer sheet. A note was written at the back of the first page of the answer sheet to say, "he has used English language while writing essay which is against the instruction as such Commission may kindly decide the penalty". In a most arbitrary manner 10 marks from the total marks were reduced. It was expected that some responsible person in the Commission and/or Examiner should have revaluated the answer-sheets to assess

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- A the penalty for partial use of some English words in the essay, particularly, when in all the remaining questions the candidate had not used any English word, as is apparent from the answer sheet. These are some of the circumstances which clearly show that if complete records were produced in time before the
- B investigating agencies/the State Government, that would have exposed the malfeasances and misdemeanours committed by the private respondents.

79. We may also notice that the investigating agencies have received the reports of the forensic experts under Section 293
- C of the Code of Criminal Procedure confirming that there are interpolations, manipulations and alterations in the answer sheets at various places.

80. Interestingly, the candidates who had scored very high marks in the written examination were awarded low marks in
- D interview while the candidates who had not fared so well in the written examination were awarded very high marks in the interview. Ms. Mona Pruthi and Ms. Sonia Narang are the candidates who got 544 and 537 marks, respectively, in the written examination but were awarded 30 and 37 marks in the
- E interview. In contrast to this Mr. Vatsal Vashisht, who got 507 marks in the written examination was awarded 92 marks in the interview. Ms. Mona Pruthi and Ms. Sonia Narang, both were declared unsuccessful in the Haryana Civil Services (Executive Branch) and Allied Services Examination held by the
- F Commission. But later Ms. Mona Pruthi topped the IAS examination while Ms. Sonia Narang was selected for IPS. This is certainly an indication of the arbitrary standards adopted by the private respondents in the selection process and the fact that the candidates were not dealt with equal hand and uniform
- G yardstick.

81. When all these facts are examined in their correct perspective, it is obvious that withholding of record and non cooperative attitude adopted by the then Chairman/Members
- H of the Commission, were not for bona fide reasons and, much

less, to protect the constitutional stature of the Commission. On the contrary, the image of the Commission has been lowered in the eyes of the public and the rule of fairness and merit has been substantially ignored in processes of selection for different posts. It is true, and as argued on behalf of the private respondents, that there is no direct evidence before us to show that these manipulations have actually been carried out by the private respondents but it is equally true that they, being the Chairman and Members of the Commission, were duty bound to exercise proper administrative control to ensure judicious and fair selection and prevent any act of commission or omission which would diminish public confidence in the functioning of the constitutional body. The claim of privilege for non-production of documents lacks bona fide and was, primarily, intended to withhold the records from the Investigating Agencies to cover up the above misdeeds, irregularities and illegalities.

82. Another pertinent document, which has been placed on record of this Court, is the report prepared by the counsel appearing in the case, under the interim order of the Court passed on 14th January, 2008 in Civil Writ Petition No.15390 of 2002 in the case of *Karan Singh Dalal & Ors. vs. State of Haryana & Ors.* In this Writ Petition, the selection of the candidates to the Haryana (Executive and Allied) Services was challenged by the unsuccessful candidates on different grounds including favouritism, discrimination and manipulations in results etc. The relevant part of the said order reads as under :

"All these ten persons, whose names have been given above who got lesser marks in written examination had been awarded more than 80% marks in the interview, whereas the 13 persons named above, who had secured more marks in written examination were given 20-30% marks in the oral examination.

How the marks in oral test were given to bring some of the candidates who secured lesser marks in written examination over those who had secured more marks in

A the written examination, is a question which needs attention of this Court.

In view of the facts narrated above, we direct the total inspection of all the Roll numbers indicated above be allowed to the counsel for the State as well as to the petitioner.,"

83. In furtherance to this order, the counsel had prepared inspection the inspection reports dated 1st February, 2008 and 15th February, 2008 and submitted the same to the High Court.

C In addition to pointing out the discrepancies, cuttings and manipulations done in the marking of the answer sheets, other irregularities were also pointed out. It was stated that some close relatives of then Chief Minister, former Chairman, Dr. K.C. Bangar and daughter of the DGP, M.S. Mallik were selected

D with disregard to merit. The most important aspect, which would clearly depict the defect in the process of selection, was that the candidates who took the competitive examination were given clear instructions that no candidate was to disclose his identity in any form; writing of serial number of script or putting any type of mark etc. would amount to use of unfair means and the

E candidates could be penalized even by cancelling the paper. Contrary to these instructions, it was reported to the Court that Anjana Malik (Roll No.81083) and Pramod Kumar (Roll No.9172) had disclosed their identity by writing their names or depicting

F particular signs on their answer sheets. Pramod Kumar had used a symbol of 'Om' at the top of page No.1, 3 and 5 of General Knowledge paper and, thus, violated the instructions. The record of the judicial proceedings, which has been produced before this Court with affidavit or even without affidavit, has not caused any prejudice to the private respondents. First, they had full

G opportunity of defending themselves in the inquiry and second, they were parties in the proceedings before the High Court. The production of records, along with affidavit including the statements recorded by the Investigating Officer under Section 161 of the Criminal Procedure Code, can be taken note of in

H this inquiry. Of course, reference to these proceedings is limited

to the purpose of examining the veracity of the evidence produced by the State in support of approved articles of charge other than charges 6 and 7 which are beyond the scope of Presidential Reference. We, certainly, are not expressing any view whether, on the basis of these statements, private respondents are even *prima facie* guilty of any offence in relation to those two charges.

84. It is clear from the record that the private respondents chose to lead no evidence during the inquiry before this Court. It was expected of the respondents to render some explanation in their defence in respect of the allegations stated in the Presidential Reference and/or in the charge-sheet approved by this Court. It is not that we are drawing any adverse inference against the respondents for not leading evidence during the enquiry but certainly it is a relevant consideration. The factors, which could have been explained, were that who were responsible and in what manner with regard to alleged attitude of non-cooperation, manipulations and interpolations made in various examinations, the reason for recommending Pradeep Sangwan for appointment to the post of Drug Inspector despite complaints as well as recommending overage candidates without any power or authority to relax age restrictions. Detailed affidavits were filed by different witnesses on behalf of the State Government but the private respondents opted not to file even their own affidavits as evidence to refute or rebut these allegations and contents of the evidence adduced on behalf of the State. Obviously, this Court, vide order dated 22nd April, 2009 granted liberty to the Chairman and Members of the Commission to rebut the evidence led against them. For reasons best known to them, they maintained silence in this behalf. No effort was made by the private respondents to demonstrate before this Court as to what steps were taken by them, if at all, to find out the persons responsible for such irregularities, misdeeds and what steps they had taken during their long tenure as Chairman/Members of the Commission to remedy these wrongs. The replies filed on behalf of these respondents have

A vaguely denied the articles and have attempted to justify the acts of omissions and commissions on the ground that they were in bona fide exercise of power vested in them as Chairman and Members of the Commission. Such explanation *ex facie* is unsatisfactory.

B 85. The above narrated instances clearly show that the expected standards of performance and functions have clearly been infringed by the private respondents. Objectivity has been the victim in the process of selection as a result of the callous attitude adopted by the private respondents. In view of the settled position of law, where instances of non-disclosure of likelihood of the child of a Member appearing for the civil services examination and a Member slapping the Chairperson of the Commission have been considered as misbehaviour within the meaning of Article 317 (1), then certainly, the present case
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D discloses misbehaviour of graver nature.

86. On a holistic view of the matter, it is apparent that irregularities and acts of irresponsibility committed by the private respondents delineate their misbehaviour in terms of Article 317(1) of the Constitution as it certainly lowers the dignity of the Commission. The burden of proof applicable to such cases is not that required under the criminal jurisprudence, i.e., to prove the charge 'beyond any reasonable doubt'. Where the facts supported by record point a finger at the Chairman/Member of the Commission with some certainty, it may amount to misbehaviour in the given facts and circumstances of a case. Rule of 'reasonable preponderance of probabilities' would be the right standard to be applied to such cases. The Court is not called upon to record finding of guilt as if in a criminal case. The charge has to be construed in a liberal manner so as to ensure
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G completion of inquiry in terms of Article 317(1) of the Constitution while keeping in mind the constitutional stature of the office. The private respondents were certainly in a position to prevent most of the events which have occurred in the present case and have tarnished the image of the Commission. In our view the maxim
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Qui non prohibet quod prohibere potest facere videtur would alter the equities against the private respondents. As stated *In Re Ram Ashray Yadav* (supra), absolute integrity and impartiality is required to be exercised by the Chairman and Members of the Commission to maintain the dignity of their office. The Commission has been entrusted with the task of selecting candidates to various posts under the Government and, therefore, the function of the Commission is of great importance. Most appropriately the words of Shri H.V. Kamath, Member of the Constituent Assembly, can be referred at this stage: "Whenever democratic institutions exist, experience has shown that it is essential to protect the public service as far as possible from political and personal influences and to give it that position, stability and security which is vital to its successful working as an impartial and efficient instrument by which the Government, of whatever political complexion, may give effect to their policies." These were the expectations of the framers of the Constitution from the Chairman and Members of the Commission.

87. We have dealt with all the above points in issue together for the purposes of convenience and to maintain continuity. We have no doubt in coming to the conclusion that the Chairman and Members of the Commission (private respondents herein) adopted a non-cooperative attitude and declined to furnish relevant records to the concerned authorities/investigating agencies. Furthermore, passing of resolutions and resistance despite directions/observations of the Court to comply with the notices issued by the investigating agencies to furnish records are acts which lack bona fides. The claim of privilege was sought to be invoked as a ploy to prevent production of records, which would have exposed the irregularities, illegalities and manipulations in the process of selection. In the name of the constitutional authority, the Chairman and Members of the Commission certainly violated the expected standards of behaviour. They not only adopted a non-cooperative attitude but also unduly delayed completion of the inquiry/investigations

A which, in fact, are stated to be pending at different stages even to this day.

88. In light of the above discussion now we may state our conclusions laconically and unambiguously as follows:

- B 1. We hold that the State has failed to prove, even on the rule of reasonable preponderance of probabilities, Charge 1 of the articles of charge by leading any cogent evidence or on any legal principles.
- C 2. We further hold that Charges 6 and 7 of the approved articles of charge is beyond the scope of Presidential Reference dated 31st July, 2008. Therefore, they are not required to be examined by us in the present inquiry.
- D 3. Upon holding inquiry, in accordance with the procedure prescribed, we return the finding that private respondents, namely, Shri Mehar Singh Saini, Mrs. Santosh Singh and Shri Ram Kumar Kashyap, who are Chairman/Members of the Commission (presently under suspension) have failed to maintain the required standards of integrity and rectitude in performance of their constitutional duties, expected to be maintained by the holder of such coveted office. Hence approved articles of charge 2 to 5, 8 and 9 stand established. As such, the private respondents are guilty of misbehaviour on these counts.
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G 89. Thus, there exist justifiable grounds for removal of the private respondents from their respective offices in terms of Article 317 (1) of the Constitution.

H 90. Resultantly, the Reference, made by the President of India to this Court, is answered in the affirmative to the above extent.

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91. Lastly, we make it clear that any observation made, findings recorded and conclusions arrived at, would in no way affect any proceedings or investigation pending before the Court of competent jurisdiction or agency, as the case may be. Subject matter of those proceedings shall be taken to its logical end in accordance with law without being influenced by the present judgment. None of the issues raised therein would be deemed to have been directly or indirectly decided by this judgment. All the parties concerned are free to raise all contentions and objections, which are available to them in law, in those Courts/ fora.

92. The Presidential Reference dated 31st July, 2008 is answered accordingly in the above terms. This should be transmitted to the President of India forthwith.

R.P.

Reference answered.