KERALA PUBLIC SERVICE COMMISSION

IN THE KERALA ADMINISTRATIVE TRIBUNAL AT THIRUVANANTHAPURAM
O.A.NO.1524 OF 2012
D.D. 26.07.2012
Hon'ble Mr.K.Balakrishnan Nair, Chairman &
Hon'ble Mr.Mathew C.Kunnumkal, Member

Rahul N.S. & Ors. … Petitioners
Vs.
State of Kerala & Anr. … Respondents

Qualification

Prescription of qualification for recruitment to post of Assistant in the Administrative Secretariat of Government of Kerala –Whether prescription of certain qualification for recruitment to post of Assistant in the Administrative Secretariat, by executive order pending amendment to Kerala Secretariat Subordinate Service Special Rules, 1967 can be interfered with by Courts in exercise of their power of judicial review under Article 226 of the Constitution? No.

Held that prescription of qualification for a post is a policy matter, Courts cannot interfere with rules unless it is found to be arbitrary, irrational and perverse. Further held that unless statutory rules are amended in tune with qualification prescribed by executive orders neither Government nor Public Service Commission can insist that candidates should have qualification provided in the executive order.

Case referred:

Pankajshy v. George Mathew, {1987 (2) KLT 723}

JUDGMENT

K.Balakrishnan Nair, Chairman:

The applicants are Graduates in various subjects. They say, they intended to apply for the post of Assistant in the Administrative Secretariat, when the Public Service Commission invited applications for the same. But, they feel aggrieved by the order Annexure A2 issued by the Government on 01.07.2011 prescribing the qualifications for appointment prescribed in the existing special rules. As pre Kerala Secretariat Subordinate Service Special Rules published on 05.07.1967, the qualification for the post of Assistant Grade II (now

designated as Assistant) was B.A., B.Sc., or B.Com degree from a recognized University or equivalent qualification. But, as per Annexure A2, the qualifications prescribed for the post are the following:

1. Graduation from a recognized University with 50% or above marks for Science Graduates and 45% or above marks for other Graduates.
2. Diploma in Computer Application obtained after a course of study with not less than six months duration or its equivalent recognized by Government.

Note: For applicants belonging to Scheduled Casts/ Scheduled Tribes category there is no restriction of minimum marks.

All existing orders on the above subject shall stand modified to the above extent.

Amendment to relevant Special Rules shall be issued separately.

Some of the graduates who were aggrieved by the prescription of qualifications moved the Government praying to review and cancel the additional qualifications prescribed. Thereafter, they moved the Hon'ble High Court, and the Hon'ble High Court as per the judgment in W.P.(C) No.27125/2011 dated 14.10.2011 directed the Government to consider their representations. The Government considered their grievances and issued Annexure A6 order dated 10.02.2012 declining to review the prescription of qualifications contained in Annexure A2. In the said order, it was stated as follows:

> "5. Government have fixed the qualification for the post of Assistant in Govt. Secretariat/Kerala Public Service Commission etc. as Graduation from a recognized University with 50% or above marks for Science Graduates and 45% or above marks for other Graduates and Diploma in Computer Application obtained after a course of study with not less than six months duration or its equivalent only with the intention to improve the qualify and efficiency of State Civil Service and to render better public services in conformity with the present professional requirement of the post."

This Original application is filed by the applicants challenging Annexure A2 and A6. They also pray, the qualification of Diploma in Computer Application may not be insisted. According to the applicants the prescription of the percentage of marks for Graduation is violative of their rights under Article 14 and 16 of the Constitution of India.

Apart from that, the said prescription violates the Directive Principles of State Policy contained in Article 41 of the Constitution of India. They point out that for the post of Deputy Collector, Block Development Officer, Panchayat Secretary etc., mere Graduation is prescribed. Even for Civil Services examination conducted by the Union Public Service Commission for appointment to IFS, IAS, and IPS etc. only Graduation is prescribed as the qualification. Therefore, prescription under Annexure A2 is liable to be interfered with.

2. We heard the learned Senior Counsel Sri.S.Sreekumar who appeared for the applicants. He reiterated the above contentions and further pointed out that now the field is occupied by statutory rules and therefore the executive order Annexure A2 does not have any efficacy over the statutory rules. Regarding the prescription of qualification of Diploma in Computer Application, the applicants submit that such a prescription is totally uncalled for, in view of the fact that basically the post of Assistant is a clerical post and the knowledge in computer application is not necessary for carrying out the duties of that post. They also contended that Government issued Annexure A4 order recognizing certain courses as equivalent as or higher than Diploma in Computer Application qualification for selection to the post of Assistant in Government Secretariat. Thereafter, there is no sufficient time to undergo that course. Therefore, the said prescription is invalid.

3. What should be the qualification for a post is a matter for the Government to decide. It is an area of policy. In such matters, Government should be given sufficient play in the joints. In the views of certain persons, the present prescription may be un-wise or unnecessary. But, essentially, it being in the realm of policy, the Government's decision on that point should prevail. Courts cannot interfere with a rule, unless it is found that the prescription of qualifications is so arbitrary, irrational and perverse, which may compel the courts to say that the Legislature cannot be intended to have conferred power to frame such arbitrary rules, and therefore the rules are ultra-vires and beyond the powers of the Government. Here, what is prescribed is 50% marks for Science Graduates and 45% of marks for others. The said prescription cannot be described as wholly arbitrary or irrational or manifestly unreasonable. Of course, some may feel that mere graduation is sufficient but difference of opinion will not enable the courts to strike down a prescription made by

the Government. It is well settled that courts cannot sit in appeal over the wisdom of the Legislature or its delegate. The policy behind a rule may be wise or foolish but it is not the concern of the courts. If only the policy is beyond the powers of the Government, the courts can interfere. In Pankajakshy Vs. George Mathew (1987 (2) KLT 723) a Division Bench of the Hon'ble High Court succinctly states the grounds for interfering with a subordinate legislation. The relevant portion of the said decision reads as follows:

> 12. Thus, the rule made under a statute by an authority delegated for the purpose can be challenged on the ground (1) that it is ultra vires of the Act, (2) it is opposed to the Fundamental rights, (3) it is opposed to other plenary laws. To ascertain whether a rule is ultra vires of the Act, the Court can go into the question (a) whether it contravenes expressly or impliedly any of the provisions of the statute, (b) whether it achieves the intent and object of the Act, and (c) whether it is "unreasonable" to be manifestly arbitrary, unjust or partial implying thereby want of authority to make such rules."

Therefore, the challenge against the percentage of marks for graduation prescribed as qualification cannot be interfered with, in exercise of our powers of judicial review. The same principle applies to Diploma in Computer Application qualification also. The contention of the applicants that the above prescription of qualification is violative of Articles 14, 16 and 41 of the Constitution f India is plainly, untenable. The pleadings or materials available in the Original application are insufficient to sustain this ground of attack. The fact that graduation in any subject is still the qualification for many posts is not sufficient to quash the additional qualification prescribed for a post.

4. It is trite law that an executive order cannot over-ride the statutory rules. In this case, the qualification and method of appointment to the post of Assistant if the Government Secretariat which was earlier designated as Assistant Grade II are prescribed by statutory rules. Unless those statutory rules are amended in tune with Annexure A2, neither the Government nor the Public Service Commission can insist that the candidate should have the qualifications provided in Annexure A2. Annexure A2 was issued as early as on 01.07.2011. Normally, the rules would have been amended by this time. If it is not amended, the Government or the Public Service Commission cannot act upon Annexure A2 in the matter of recruitment. It is so declared.

5. Regarding the prescription of Diploma in Computer Application, the contention of the applicants cannot be accepted. The Government have clearly answered the grounds against the prescription of the additional qualification in Annexure A6, while disposing of the representations of certain persons mentioned therein. It is meant to improve the efficiency of civil service, and recently the Government have modified the qualification for Lower Division Clerks from S.S.L.C to Plus Two. Some candidates who were having only SSLC challenged the prescription of qualifications. This Tribunal did not entertain that challenge. The prescription of a better or superior qualification for a post when compared to the existing qualification is a matter of policy of the Government. The Government's action in this regard is well within its jurisdiction. It cannot be described as ultra-vires. Courses in Diploma in Computer Application and Degree in Computer Application were being held by various agencies apart from the Universities and Colleges. Further, the intention of the Government to insist Diploma in Computer Application qualification also for the post of Assistant was notified by the Government as per Annexure A2 dated 01.07.2011. So, the prospective candidates got a chance to undergo the said course for a period of one year. So, if the rules are amended and Diploma in Computer Application is insisted, we think that there is nothing illegal or irregular about it, warranting interference by a court of law.

In the result, the Original application fails and it is dismissed subject to the declaration that the qualifications prescribed by Annexure A2 can be implemented if only the rules are amended. It is clarified that since there is no prayer in this Original application against Annexure A4 order dated 26.05.2012, though a few contentions are raised against it in the pleadings, we are not pronouncing upon its validity. The contentions of the applicants in this regard are left open and they are free to approach the Government for appropriate reliefs against it.

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
W.P. (C) NO.31181 OF 2012 (S)
D.D. 27.02.2013
Hon'ble Chief Justice Mrs. Manjula Chellur &
Hon'ble Mr. Justice K.Vinod Chandran

Venjaramoodu.M.Ziyad … Petitioner
Vs.
State of Kerala & Anr. … Respondents

Age Limit

Prescription of maximum age limit of 35 years for employment under Kerala State Civil Service – Petitioner, a practicing Advocate, by filing a PIL assails fixation of maximum age limit by State Government for direct recruitment in public employment inter alia on ground that it is violative of Article 16 of the Constitution of India – Whether prescription of maximum age limit of 35 years for appointment under Kerala State Civil services Rules is violative of Article 16 of the Constitution of India? Whether merely because appointment by promotions are allowed/permitted beyond maximum age limit prescribed for direct recruitment can it be said that it is discriminatory? Whether extraordinary discretionary jurisdiction of Court under Article 226 of the Constitution can be invoked in such matter for grant of relief? No.

JUDGMENT

K.Vinod Chandran, J.:

The petitioner, a practicing Advocate, as a pro bono publico, assails the fixation of maximum age limit by the State Government for direct recruitment to various posts in public employment/service. Looking at the relief's, we find that the petitioner seeks for a declaration that the prescription of upper age limit for direct recruitment to public service is against the constitutional mandate in Articles 16 and 21 of the Constitution of India and seeks restriction of such prescription to only those posts which require physical fitness and ability. Relief's (b), (c) and (d) are pointedly against the prescription of such maximum age limit, in Rule 8 (a) of Special Rules for Kerala Last Grade Service, Rule 7 (a) of the Kerala Legislature Secretariat Part Time Contingent Service Rules, 1998 and Rule 10 (1) (c) of the Kerala Judicial Service Rules, 1991.

2. The learned counsel for the petitioner contends that the State Government has absolutely no authority to prescribe the upper age limit and that appointment to the posts under it by such prescription is violative of the right to equality of opportunity enshrined in Article 16. article (16) 1 declares equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State and by sub-clause (2) prohibits discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. The petitioner essentially contends that in prescribing a maximum age limit, those above the said age is disqualified from being considered for direct recruitment to various posts in the public service and that visits such persons with inequality.

3. The petitioner's contention that many may have reached the maximum age limit by they acquire the necessary qualification is an argument which is to be merely noticed to be rejected. The State cannot wait till a person acquires all the qualifications he would desire, to put himself forward for recruitment to an employment. Even according to the petitioner, for recruitment to the service in the State the maximum age limit prescribed is 35 years of age. The possibility that a person may have to do doctoral thesis and obtain a Ph.D. is one's own personal ambition and the State cannot be asked to wait till a person continues studying and acquire qualifications to his hearts content. Priorities are to be laid down early in life and if public employment is sought, nothing prohibits a person from applying for it within the permissible age limit, on the basis of the qualifications then acquired. We cannot shut our eyes to the normal period of study undertaken by any person and the prescription of 35 years as the maximum age in itself is far beyond such normal period. When out of the ordinary, academic pursuits are made by an individual, it is for him to arrange his affairs to achieve the personal goals so set. None can invoke the extra-ordinary jurisdiction to aid them such less on grounds of quality, when individual ambition is the benchmark. Extra-ordinary circumstances require extra-ordinary measures, but that by itself does not warrant the invocation of the extra-ordinary, discretionary jurisdiction under Article 226 of the Constitution.

4. We are unable to discern any violence to the equality of opportunity enshrined under Article 16. Any citizen at the point when he has not reached the maximum age limit

is eligible to apply for public employment, subject, however, to his satisfying the qualification prescribed. Within the minimum and maximum age limit prescribed, all citizens have the opportunity to apply for direct recruitment to public employment and obtain the same, subject to satisfying the qualifications prescribed as also subject to coming within the merit in any selection process, if so conducted. To say that such right should be available for all time, is to do offence to the concept of equality, since every citizen has to get an opportunity at one point or the other to compete among equally placed persons in a recruitment process. What is sought for by the petitioner is not equality in opportunity, but opportunity in perpetuity.

5. We are also not convinced with the ground, of discrimination raised by the petitioner, that promotions are permitted beyond the maximum age prescribed for direct recruitment. We have to alertly take cognizance of the simple fact that direct recruitment is not permitted to all promotional avenues. However, there are certain posts, identified by the State, where meritorious young are directly recruited to maintain a certain standard in the service and to ensure continued productivity for a longer period. But, we cannot simply ignore the significance of skill and efficiency acquired through experience which is the essential criteria in promoting in-service candidates to posts in which direct recruitment is also a mode of selection/recruitment. An in-service candidate aspiring for promotion and a person of the same age who is not borne in the service are not equals and the prohibition for direct recruitment after a certain age cannot result in any discrimination.

The prescription of age limit for direct recruitment between the age of 18 and 35 in many of the services does not at all infringe upon the fundamental rights guaranteed under Part III of the Constitution of India. We are unable to see any public interest, much less violation of any constitutional mandate. We, accordingly, dismiss the writ petition and restrain ourselves from making any order as to costs.

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
W.A.No.1298 of 2013
D.D. 10.09.2013
Hon'ble Chief Justice Mrs.Manjula Chellur &
Hon'ble Mr. Justice K.Vinod Chandran

Kerala P.S.C. & Anr. … Appellants/Respondents
Vs.
Sasikumar.S, … Respondent/Petitioner

Eligibility criteria

Satisfying eligibility criteria of possession of valid driving licence during selection process – Whether it is enough if the eligibility criteria of possession of 'valid driving licence' is satisfied on the last date for receipt of application or it should be throughout the selection process and thereafter? - Respondent – petitioner applied for post of Driver on 19.07.2010 by complying with one of the conditions of eligibility of possession of valid driving licence on date of application. His licence expired on 04.08.2010 even before last date fixed for receipt of application i.e., 18.08.2010 and he could get his licence renewed only on 09.11.2010. Thereby he was without valid driving licence from 04.08.2010 – 09.11.2010 during which period selection process was in progress. On noticing this, name of respondent was removed from select list on ground that he should not only possess valid driving licence on date of making application but also during entire process of selection, by interpreting condition of possession of "current driving licence on the date of application" as "current and valid driving licence during entire selection process" – Whether Public Service Commission was justified in removing name of respondent from select list? Yes. By following decision of Hon'ble Kerala High Court in Maheen v. State of Kerala, reported in 2013(3) KLJ 639, held that 'current driving licence stipulated in notification be read as ' current and valid' driving licence entire selection process and upheld action of removing the name of respondent from select list by reversing decision of single Judge bench.

> " 6. Looking at the facts, it is clear that though he had a valid driving licence on the date of his application, the respondent failed to apply for renewal within the time stipulated as per the M.V. Act to see that the 'driving licence remained current throughout the selection process'."

Case referred:

Maheen v. State of Kerala {2013 (3) KLT 639}

JUDGMENT

K.Vinod Chandran,J.:

The Kerala Public Service Commission (hereinafter referred to as "PSC") is in appeal from the judgment of the learned Single Judge, setting aside the proposal to remove the respondent/writ petitioner's name from the rank list. The decision to remove the name of the respondent from the rank list was made since the respondent's Driving Licence expired during the selection process and was renewed only after three months. The finding of the learned Single Judge was that erratum notification was not applicable and that the requirement that the candidate has a current valid licence on the date of application was satisfied in the instant case. The PSC assails the same as against the binding precedents of this Court in W.A.No.951 of 2012, W.A.No.2274 of 2012 and the decision reported in Maheen v. State of Kerala [2013 (3) KLT 639].

2. The learned counsel for the respondent however, contends that this Court, in W.A.No.951 of 2012 and W.A.No.2274 of 2012, was concerned with instances where the applicants did not have a valid Driving Licence as on the date of application. Maheen (supra) was also sought to be distinguished by pointing out that in paragraph 4 the learned Judges have specifically noticed that in that case there was no challenge either to the notification issued by the Public Service Commission or to the relevant recruitment rules. In the instant case the respondent complied with Exhibit P1 notification, i.e., he had a current Driving Licence on the date of application, i.e., on 19.07.2010 when he preferred the application. The learned counsel for the respondent contends that his licence expired on 04.08.2010 and the last date of application as per Exhibit P1 was 18.08.2010 and if that had been the stipulation, he definitely would have got his licence renewed and then made the application. The learned counsel would also point out that even going by the erratum notification he had a valid licence on all the other specified dates as per the notification except the last date for application. There was no disqualification on the applicant for the reason that his licence expired on 04.08.2010 and was only renewed on 09.11.2010. Any other interpretation, according to the learned counsel for the respondent, would be against what a reasonable prudent man would understand from the notification and would further

do violence to the valuable rights conferred on the respondent under Article 14, 16 and 21 of the Constitution of India. The learned counsel very vehemently contends that this Court cannot take such an interpretation, especially in the context of that interpretation interfering with the valuable right of equal opportunity for employment guaranteed under the Constitution of India.

3. Though precedents have been placed before us, in view of the strenuous arguments placed by the respondent, we think it fit to dilate first on the facts. Exhibit P1 notification contains a stipulation that:

"The Driving Licence should be a current one on the date of application".

The respondent contends to have made the application on 19.07.2010 when he had a valid driving licence, which had been valid for the period 05.08.2007 to 04.08.2010. On expiry, admittedly, no application was made for renewal within the extended time provided under Section 15 of Chapter II of the Motor Vehicles Act, 1988 (for brevity, "M.V.Act"). Section 15 of the M.V.Act permits the holder of a valid driving licence to make an application within thirty days of its expiry; upon which the renewal will be from the date of expiry. In the case of the respondent, the renewal was made only with effect from 09.11.2010 and between 04.08.2010 and 09.11.2010, the respondent had no valid current driving licence.

4. We would, for the moment and for the purpose of this case, ignore the erratum notification. We also notice that in W.A.No.2274 of 2012 we have found that the erratum notification, whether it be granting a concession or making the stipulation more rigorous, could not have been taken effect after the rank list was published. Though it was the strenuous argument of the learned counsel that if it was the intention of the PSC to provide for a current driving licence on the last date for receipt of application, then a further opportunity ought to have been granted before the last date for receiving the application; we do not think that the said contention arises for consideration at all, since we have already said that the erratum notification can neither make the conditions more rigorous nor relax it.

5. We are only concerned with the interpretation to be placed on the stipulation for a "current" driving licence in Exhibit P1. The distinction pointed out on the facts of Maheen (supra) that the petitioner therein did not have a Badge at the time of the proficiency test and there was no challenge to the notification issued by the PSC, according to us, is not at all significant. We notice the manner in which the declaration of law has been made in paragraph 5 of the said judgment:

> "It is trite law that an applicant has to possess the prescribed qualification as on the last date fixed for the receipt of applications by the P.S.C. Such qualification that an applicant possesses, has to continue to run with that person during the selection process, to be continually carried at the selection, appointment, joining the service, and even while holding the post to which the incumbent was selected and appointed; that is, during the entire spectrum of employment from the last moment available to apply for being considered. This is a basic doctrine and salutary principle of law. That cannot be watered down to hold that an applicant for the post of Driver Grade-II (LDV), who ought to possess a driver's badge along with the driver's licence as on the date of application or the last date fixed for receipt of application, need not necessarily continue to possess the driver's badge on the date of the proficiency test. This we say, not based on the interpretation of any provision of law applicable to driving of motor vehicles, but on the indefeasible legal effect of the prescriptions and terms of the recruitment rules and the P.S.C.'s notification, over which the petitioner has no dispute. The action of the P.S.C. is in conformity with the prescriptions in the notification issued by it and the provisions in the recruitment rules, which, as already noted, are not under challenge. We do not find any legal infirmity in the action of the P.S.C."

6. We are of the definite opinion that the same applies on all fours to the facts of the instant case also. The contention now that if it was the intention of the Corporation that every applicant should have a current licence as on the last date of application, then the respondent ought to have been given an opportunity to cure the defect does not hold water. On a specific question put to the learned counsel as to whether an applicant who had a valid licence on the date of his application, which later expired, could take up a contention that he need renew it only before he was offered an appointment; the learned counsel answered in the negative. It is contended that in the instant case the respondent had the current driving licence at the time of his application. Looking at the facts, it is clear that though he had a valid driving licence on the date of his application, the respondent failed to apply for

renewal within the time stipulated as per the M.V.Act to see that the driving licence remained current throughout the selection process. By his own failure, a valid driving licence expired on 04.08.2010 and the respondent did not have a valid licence during three months till its renewal on 09.11.2010. The requirement that an applicant should have a current licence during the entire spectrum of his employment, as has been stated in Maheen (supra), persuades us to reject the contention of the respondent and approve that of the PSC. The current driving licence stipulated in Exhibit P1 notification has to be current and valid during the entire selection process and that is the only interpretation that can be given to a stipulation requiring current driving licence on the date of application. It postulates the currency to be maintained throughout.

7. With respect to the contention of equal opportunity for employment based on Articles 14, 16 and 21 of the Constitution, we can only notice that the same is not perpetrated by the PSC, as the disability has been visited on the respondent by reason of the default of the respondent in not validating the licence as prescribed in the M.V.Act. The respondent has only himself to blame for not being able to participate in the selection process and be considered.

In the circumstances, we are of the opinion that the judgment of the learned Single Judge deserves to be reversed and we do so, allowing the appeal and dismissing the writ petition. The parties are left to suffer their costs.

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
W.A NO.740 OF 2011 & Connected matters
D.D. 05.11.2013
Hon'ble Mr. Justice Thottathil B.Radhakrishnan &
Hon'ble Mr. Justice Babu Mathew P. Joseph

The District Officer, Kerala PSC … Appellant
Vs.
Shyla Beevi P.A. & Ors. … Respondents

Appointment

Whether select list prepared for appointment of Lower Division Clerks by direct recruitment to various departments in different districts may be operated/advised for appointment as Warden in the Scheduled Tribes Departments when method of appointment to post of Warden in the Scheduled Tribes Development Department being by posting of Lower Division Clerks by transfer of service, as per the Kerala Scheduled Tribes Development Subordinate Services Special Rules, 1993? No. - Whether appointment of persons in the select list of Lower Division Clerks for Direct recruitment as Warden is permissible without there being appropriate amendment to 1993 Rules? No.

Held:

12. For one thing, Warden is a specific category, going by the STDSS Rules. The Clerks are not included there. The decision of the Government that post of Warden will be an addition to the post of Lower Division Clerk, without changing the method of recruitment, could not put the vacancies of Wardens in the basket of the Lower Division Clerks to apply direct recruitment as the method of appointment to the vacancies of Warden, when the statutory rules do not provide such prescription. This is the law."

JUDGMENT

Thottathil B.Radhakrishnan, J:

1. Two among the captioned writ appeals are by the State of Kerala. The others are by the Kerala Public Service Commission, for short, "PSC". Thought different judgments are under challenge in these writ appeals, the basic facts, contentions and arguments are common. Sequence of events and litigations which has led to the present situation also lies intertwined and evidenced by the materials in these different writ appeals. Therefore, these matters are consolidated and heard with consent of parties.

2. PSC issued gazette notification dated 30.12.2006 with Category No.168/2006 for district-wise recruitment of Lower Division Clerks to various departments in different districts. The method of appointment is by direct recruitment.

3. During the currency of that ranked list, different writ petitions were filed by the rank holders in the list for one or more of the districts, contending that the posts of "Warden" in the Scheduled Tribes Development Department are in addition to the cadre of Clerks and therefore, vacancies in that category may also be ordered to be reported for being advised.

4. At one stage, in WPC. No.15115 of 2004, this Court held that persons in the ranked list for Lower Division Clerks cannot be advised for appointment as Warden. However, in WPC.No.30967 of 2007, the Director of the Scheduled Tribes Development Department filed a statement before this Court to the effect that keeping the vacancies of Warden unfilled is detrimental to the interest of the department and therefore, considering the fact that the post of Warden is an addition to the cadre of clerks, the department craved leave of this Court to report the vacancies of Warden which are additional posts in the cadre of clerks in the department as per the Special Rules, to the PSC and to post the candidates advised by the PSC from the list of Lower Division Clerks as Wardens as against the vacancies. That was the stand taken by the Government through the Director of Scheduled Tribes Development Department in the said case relating to Wayanad district. This Court, therefore, by judgment dated 05.12.2007, ordered that writ petition directing such reporting of vacancies.

5. Thereafter, as per judgment dated 23.05.2008 in WPC.No.12969 of 2008, such exercise was also made possible in Palakkad district and, by later judgment in WPC.No.1927 of 2008, to Idukki district. In WPC.No.14019 of 2009, direction was issued by this Court to report the vacancies of Female Wardens in Kannur district from the list prepared for direct recruitment of Lower Division Clerks.

6. In WPC.NO.19728 of 2008, a learned single Judge had taken the view that the Government was competent to take a decision on the question of treating the post of

Warden as additional to the cadre of Lower Division Clerk and it was such decision that culminated in the judgment in WPC.No.30967 of 2007 noted above.

7. As already noted, the PSC's notification was one inviting applications for the post of Lower Division Clerks for different districts and the prescribed method of appointment is direct recruitment. The notification specifically stated that Lower Division Clerk will include the integrated post of Lower Division Clerk/Village Assistant in the Revenue Department. It was further stated in that notification that the vacancies of Amin in the Judicial Department will be filled up from the ranked lists prepared in pursuance of that notification after obtaining the willingness of the candidates and that vacancies of Lower Division Clerks in Kerala Water Authority, Kerala Khadi and Village Industries Board and Panchayat Schools will also be filled up from the ranked lists prepared in pursuance of that notification (For Direct Recruitment only).

8. Warden in the Scheduled Tribes Development Department is not included specifically in that notification. The Kerala Scheduled Tribes Development Subordinate Service Special Rules 1993, for short, "STDSS Rules", made and published by the Government of Kerala as the Special Rules for the Kerala Scheduled Tribes Development Subordinate Service has created a category by name 'Warden' which is at Sl.No.8 among the categories as per the constitution of that subordinate service. That is shown as addition to the cadre of Clerks. The method of appointment of Warden is by transfer from among Clerks. Direct recruitment is not a method of appointment to the post of Warden.

9. The fact situation noted above is nothing but the creation of the rank holders in the different districts who wanted the avenues for appointment to be opened up, also by treating the vacancies of Warden available to be filled up. They craved for such recruitment from the ranked list of Lower Division Clerks. Government, essentially, concerned to that situation by the statement made by the Director of Scheduled Tribes Development Department before this Court. When operated upon and given effect to, that does not appear to have been well taken by those among the rank holders who have filed the writ petitions from which these writ appeals arise.

10. One thing is certain. The department could not have reported the vacancies of the Warden as if they were vacancies of Lower Division Clerks without the Government's decision in that regard and PSC would not have, then, advised as against those vacancies. The records of these cases, by now, show that this Court had accepted the factual position that Government had treated the posts of Warden as an addition to the posts of Lower Division Clerks. It was thereafter that this Court acted upon the statement made by the Director of Scheduled Tribes Development Department in one among the earliest litigations relating to the recruitment and ranked list in question. Therefore, if such reporting of vacancies were not made, many in the ranked list who were later advised to join as 'Warden' would not have go that opportunity for public employment. More importantly, the larger public interest, which was projected in the statement of the Director of Scheduled Tribes Development Department, that is to say, the need for Warden in the Scheduled Tribe hostels, could not have been satisfied.

11. The PSC and the State of Kerala have filed these writ appeals primarily because the impugned judgments tend to proceed as if the post of Warden cannot be filled up from the ranked list of Lower Division Clerks and therefore, the advice made by the PSC in that regard is erroneous. The PSC is also aggrieved by the quashing of the advice memos with direction in some of the cases to put the respective candidates back in the appropriate slot in the ranked list and thereupon, to advise for appointment as Lower Division Clerks.

12. The Special Rules do not proved direct recruitment as a method of appointment to the cadre of Warden. The posts of Warden, though treated as addition to the posts of Lower Division Clerk in the Special Rules, was not specifically included in the notification of the PSC, though there are specific clarificatory statements relating to certain other departments and quasi-governmental establishments in that notification. When direct recruitment is not the method of appointment to a particular cadre, the select list prepared by the PSC for direct recruitment to yet another category cannot be operated for filling up the vacancies in the category, which were to be filled up by transfer. For one thing, Warden is a specific category, going by the STDSS Rules. The Clerks are not included there. The decision of the Government that post of Warden will be an addition to the post of Lower

Division Clerk, without changing the method of recruitment, could not put the vacancies of Wardens in the basket of the Lower Division Clerks to apply direct recruitment as the method of appointment to the vacancies of Warden, when the statutory rules do not provide such prescription. This is the law.

13. If the aforesaid situation in law is to be pushed further in this case, all advices made in excess of the vacancies of Lower Division Clerks have to fall. But the fact of the matter remains that with the passage of time, the different judgments referred to above, which followed on the basis of the view of the Government expressed through the Director, have led to the situation where advices for appointment had been issued, also taking into account the vacancies of Warden. When persons are advised for appointment as Lower Division Clerks, taking also into account the vacancies in the category of Warden, the Government will necessarily have the power in terms of the General Rules to appoint such persons by transfer as Wardens having regard to the public interest involved. In this fact situation of the case, it would be within the domain of the State's power in terms of Article 309 of the Constitution of India to rectify anomalous situation, if any, now existing.

14. It appears that on the basis of the judgments impugned, in some of the cases, the PSC had undone the advices and had again advised some of the rank holders who are the respondents in some of these writ appeals to different other departments and they have joined those departments and are working for quite some time in those posts. That fact situation cannot also be ignored.

In the result, these writ appeals are ordered as follows:

i. The judgments impugned in all the writ appeals are vacated.

ii. It is declared that the post of Warden governed by the Kerala Scheduled Tribes Development Subordinate Service Special Rules 1993 is to be filled up by transfer and not by direct recruitment. Such appointments by transfer are to be from Clerks and have to be done following due procedure in terms of the said Special Rules and the General Rules, as also, other applicable laws.

iii. All advices made by the PSC from the ranked list of Lower Division Clerk following the selection as per the gazette notification dated 30.12.2006 for category No.168/2006, in so far as the rank holders advised to Scheduled Tribe Development Department are concerned, shall be treated as advices for being appointed as Lower Division Clerks, also taking into account the vacancies reported by the department treating the vacancies of Warden in the Scheduled Tribes Development Department in the district also, however that, after the entry of that incumbent into service, it will be open to the Government to appoint any such person as Warden, by transfer, in terms of the Special Rules and the General Rules.

iv. In so far as those cases where the PSC had undone the advices and had again advised some other rank holders to different other departments, the situation obtained by such exercise shall not be disturbed and they will be treated as lawfully joined those other departments and are working as against the posts to which they have been appointed. Such situation shall not be disturbed on the basis of the declaration and other directions contained in this judgment.

v. No costs.

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MADHYA PRADESH
PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF JUDICATURE AT JABALPUR
W.P.No.10473 of 2007 (PIL)
I.A.No.8651/2007
D.D. 10.12.2007
Hon'ble Mr. Justice A.K.Patnaik &
Hon'ble Mr. Justice Ajit Singh

Dr.Neeti Prakash Dubey … Petitioner
Vs.
MP PSC & Anr. … Respondents

Reservation

Working out limitation of 50% of post in reservation – Whether it should be worked out on basis of total number of advertised posts or on basis of total number of posts available in the service? Held that it has to be worked out on basis of total number of posts available in the service.

Held that limitation of 50% of reservation of posts has to be worked out on basis of total number of posts available in the service and not in relation to total number of advertised vacancies or posts.

JUDGMENT

This is an application for vacating the interim order dated 03.09.2007 passed by this Court in Writ Petition No.10473/2007. By the said interim order we had restrained respondent No.1, the Madhya Pradesh Public Service Commission, from declaring the result of the State Services Main Examination, 2005 because it was contended before the Court by Mr.Hemant Shrivastava, learned counsel for the petitioner that more than 50% of the advertised posts are sought to be reserved for the reserved categories contrary to the Judgment of the Apex Court.

It has now been brought to our notice by Mr.K.S.Wadhwa, learned counsel appearing for the Madhya Pradesh Public Service Commission, that the limitation of 50% put by the Supreme Court for appointing reserved category candidates is in relation to the total number of posts and not in relation to the total number of advertised vacancies on posts. Mr.Wadhwa further submitted that it will be clear from para 5.7 of the writ petition that

the percentage of the reservation has been worked out on the basis if the advertised posts in different services and not on the basis of the total number of posts.

We find on reading of para 5.7 of the writ petition that percentage of the reservation has been worked out on the basis of the advertised posts in different services and not on the basis of the total number of posts available in the services to show that more than 50% of the advertised posts are sought to be filled up by the reserved category of candidates. Hence, we are inclined to modify our interim order dated 03.09.2007 and instead direct that respondent no.1 may declare the results of the State Services Main Examination, 2005 but the State Government will not make the appointments until it satisfies the Court by filling an affidavit that posts reserved for the reserve category candidates do not exceed 50% of the posts.

I.A.No.8651/2007 stands disposed of.

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IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR
W.P.NO.10384 OF 2007 & Connected cases
D.D. 06.05.2008
Hon'ble Mr. Justice A.K.Patnaik, Chief Justice &
Hon'ble Mr.Justice Sanjay Yadav, Judge

Rekha Bhadarsen … Petitioner
Vs.
State of Madhya Pradesh & Ors. … Respondents

Reservation

Reservation in favour of women to posts of Civil Judges Class-II under Madhya Pradesh Lower Judicial Service – Method of working out reservation in favour of women in Madhya Pradesh Judicial Service - Held that reservation in favour of women in lower judiciary of Madhya Pradesh has to be worked by making provision in the Madhya Pradesh Lower Judicial Service (Recruitment& Conditions of Service) Rules, 1994 or by executive instructions by taking into consideration requirement of service and existing representations of women in judiciary keeping in view observations of Court in Rajneesh Kumar Jain v. State of M.P. and others, reported in 2000(1) MPLJ 272.

Cases referred:

1. Rajneesh Kumar Jain v. State of M.P. and others, 2000(1) MPLJ 272
2. Smt. Sangeeta Singh v. The Chairman, MP Public Service Commission and others, W.P.No.7783/2006, decided on 10.08.2006

JUDGMENT

A,K.Patnaik, Chief Justice

In this batch of writ petitions, the petitioners have made a grievance that the Recruitment Rules for recruitment to Civil Judge (Class II) have not made any provision for reservation in favour of the women and they have prayed for appropriate writ/directions to the respondents to make such provisions for reservation in favour of the women in the recruitment to the post of Civil Judge Class II in the State of Madhya Pradesh.

2. Mr.Hemant Shrivastava learned counsel appearing for the petitioner in W.P.No.9157/2007 (s) submitted that in almost all the States, provision for reservation in favour of the women has been made for recruitment to judicial services but in the State of M.P., no such

reservation in favour of the women is made only on the ground that women are sufficiently represented in the lower and higher judicial services in the State of Madhya Pradesh. He submitted that the chart in page No.3 of the WP.No.9137/2007 (s) would show that the representation of women in higher judicial services is only 12.5% and in the lower judicial services is only 13.86% and that overall representation of women in both higher and lower judicial services taken together is 13.29%. He argued that the basis of the decision taken by the Government in consultation with the High Court for not providing the reservation in favour of the women in the Rules for recruitment to the post of Civil Judge, Class-II, is factually not correct.

3. Mr.Shrivastava submitted that under Article 15 (3) of the Constitution, the State has been conferred with the power to make special provision for women and this power has to be exercised by the State in a fair and reasoned manner and not in the manner which is discriminatory towards women. He argued that this is a fit case in which High Court in exercise power under Article 226 of the Constitution should direct the respondents to reconsider the statistics with regard to the representation of the women in judicial services in the State of Madhya Pradesh and other relevant factors and take a decision for making reservation in favour of the women in the recruitment to the post of Civil Judge Class II.

4. Mr.Shrivastava referred to the earlier judgment of this Court in Rajneesh Kumar Jain Vs. State of M.P. & Others (2000 {1} MPLJ 272) in which a Division Bench of this Court while holding that reservation to women candidates for recruitment to judicial services is essentially a policy matter to be decided by the appointing authority depending upon various salient factors such as the nature and source of recruitment, availability of suitable number of posts, the need for representation of a special class and the requirements of the service and has held that a valid policy of reservation in future in favour of women for recruitment to judicial services should not be ruled out.

5. Mr.V.S.Shroti, learned senior counsel appearing for the respondent/High Court of M.P., on the other hand, submitted that Article 15 (3) of the Constitution is only an enabling provision and it is for the Governor in consultation with the High court and the State Public Service Commission to decide whether to make a provision in the rules made under Article

234 of the Constitution to provide for reservation in favour of the women for appointments to be made to posts other than the post of District Judges.

6. Mr.Shroti submitted that the question regarding reservation in favour of the women in Civil Judge Class II was considered by the High Court in Writ Petition No.7783/2006 (Smt.Sangeeta Singh Vs. The Chairman, MP Public Service Commission & others) and the High Court has held in its order dated 10.08.2006 that unless and until provision is made in the M.P. Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994 made under Article 234 of the Constitution with the consultation of the State Public Service Commission and the High Court or in any executive instructions issued by the State Government in consultation with State Public Service Commission and the High Court for reservation in favour of women candidates, the Court cannot direct for reservation in favour of women candidates for recruitment to the posts of Civil Judge, Class II, in the M.P. Lower Judicial Services. He further submitted that the communications annexed to the return filed by the High Court of M.P in WP.No.10384/2007 as Annexures R-2 and R-3 would show that the High Court has taken a view that reservation in favour of women in judicial services is not necessary.

7. We have considered the aforesaid submissions of the learned counsel for the parties and we find that since the last judgment delivered by the High Court on 10.08.2006 in Smt.Sangeeta Singh Vs. The Chairman, M.P. Public Service Commission and others, recruitments to 150 posts of Civil Judge Class II and 240 posts of Civil Judge Class II have taken place pursuant to the advertisements published by the M.P. Public Service Commission on 01.05.2006 and 26.02.2007. Hence, fresh statistics must be available to show how many of these 150 and 240 posts were filled up by women candidates. Besides these statistics with regard to the number of women candidates who have been selected for appointments to 150 and 240 posts of Civil Judge Class II, other statistics with regard to the representation of the women in both lower and higher judicial services, are obviously available. The representation of the women in higher and lower judicial services in the State of Madhya Pradesh, the number of women who have been selected for the 150 posts and 240 posts of Civil Judge Class II, the requirement of services and other relevant factors, in our considered opinion, should be taken into consideration by the respondents afresh

for deciding whether a provision should be made either in the M.P. Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994 or in the executive instructions for providing reservation to women for recruitment to the posts of Civil Judge, Class II, in future.

8. The writ petitions are disposed of with the directions that the respondents will reconsider the question of reservation in favour of women to the posts of Civil Judge (Class-II) in the M.P. Lower Judicial Service afresh in accordance with the observations of this Court in this order and in the order in Rajneesh Kumar Jain Vs. State of M.P. & others.

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IN THE HIGH COURT OF MADHYA PRADESH JUDICATURE
JABALPUR BENCH AT GWALIOR
W.P.NO. (S) 3091 of 2004
D.D. 02.09.2009
Hon'ble Justice S.C.Sharma

Manoj Kumar Goyal … Petitioner
Vs.
State of Madhya Pradesh & Ors … Respondents

Waiting list

Operation of waiting list – Whether waiting list prepared in respect of select list for the year 2001, may be operated to fill up vacancies in the select list after expiry of life of select list, in the year 2003? No.

A select list for appointment to 49 posts of Child Development Project Officer was prepared on 04.04.2001. A waiting list was also prepared comprising of 6 persons. Waiting list was operated to fill up 3 vacancies in the select list upto 04.07.2003. In the meanwhile one more vacancy existed in the year 2004. By that time the life of select list expired and M.P. Public Service Commission refused to extend life of select list. Consequently, waiting list could not be operated to fill up the vacancy – Select list being no longer in existence, held that question of issuing directions to appoint petitioner does not arise.

Cases referred:

1. Purushottan v. Chairman, M.S.E.B. and another, (1999) 6 SCC 49
2. Virendra S. Hooda and others v. State of Haryana and another, 1999 SC 1701
3. Vijay Kumar Sharma and others v. Chairman, School Service Commission and others, (2001) 4 SCC 289
4. Kanchan Saxena v. State of M.P. and others, 2006(2) MPHT 447
5. A.P. Public Service Commission v. P. Chandra Mouleeswara Reddy and others, (2006) 8 SCC 330

JUDGMENT

1. The petitioner before this Court has filed this present writ petition claiming appointment on the post of Child Development Project Officer, State services, State of Madhya Pradesh. The contention of the petitioner is that an advertisement was issued by the Madhya Pradesh Public Service Commission (herein after referred to as the MPPSC) for filling up the posts of the Child Development Officer, State Services examination for

the year 2000 and the petitioner has submitted his candidature in respect of the aforesaid advertisement. After completing the process of selection, a select list was prepared by the MPPSC on 04th April, 2001 and 49 candidates were placed in the main list and 6 candidates were placed in the waiting list. The name of the petitioner finds place at Sl.No.6 in the waiting list. The grievance of the petitioner is that out of 49 selected candidates, 41 have joined and 08 posts were lying vacant and in spite of the same, no appointment order was issued in favour of the petitioner. The petitioner has stated before this Court that from the waiting list, Harnod Kumar Sharma, and Bhushan Tiwari were appointed to the post of Child Development Officer and the remaining 04 vacancies were not filed by the respondents. The petitioner has further stated by filing an amendment application in the writ petition that Harnod Kumar Sharma, Kumar Rashmi Nema and Bhushan Tiwari who stood at Sl.No.1, 2 and 3 in the waiting list were issued the appointment orders, however, Kumari Rashmi Nema has not joined the post and therefore, the petitioner should have been appointed on the post in question. The petitioner has further stated that the State Government has also requested the MPPSC for extending the validity of the select list but it was not accepted by the MPPSC and therefore, the petitioner left with no other choice has approached this Court seeking appointment on the post in question.

2. A reply has been filed by the respondent/State and it has been stated in the return that 49 posts of Project Officer were advertised by the MPPSC in the year 2000 and the petitioner was placed at Sl.No.6 in the waiting list. The respondents have categorically stated that after receiving the select list, 48 candidates were appointed and in respect of one candidate kumari Vandana Parihar at Sl.no.11 of the select list, a complaint was received and the matter of her appointment was under consideration. It has been further stated that three candidates, namely, Alok Pare, Sanjay Tiwari and Kumari Vandana Dixit placed at Sl.No.5, 9 and 13 did not submit their joining and therefore, their appointments were cancelled on 02nd May, 2003. The respondents have further stated that thereafter appointment orders were issued in respect of persons placed at Sl.No.1, 2 and 3 of the waiting list on 04th July, 2003. The respondents have also stated that all this process took place before the expiry of the validity of the select list and after the year 2003, only one post was vacant and therefore, the MPPSC was requested to extend the validity of the select

list which was refused by the MPPSC vide letter dated 01st November, 2004. No junior to the petitioner in the waiting list has been appointed and therefore, writ petition deserves to be dismissed.

3. The respondent/MPPSC has filed a reply and it has been stated that the select list was valid for a period of one year only and all the appointments have been made during the validity of the select list. It has been categorically stated that no appointment has been made out of the said select after expiry of the validity of the period. It has been further contended that no extension can be granted in the peculiar facts and circumstances of the case specially in respect of an advertisement issued in the year 2000. The respondent/ MPPSC has prayed for dismissal of the writ petition.

4. The petitioner has pointed out that Kumari Vandana Parihar was appointed in the year 2005 after expiry of the period of select list. In this regard, the respondent/State has furnished information that Kumari Vandana Parihar was placed at sl.No.11 in the select list and a complaint was received against her and the same was enquired into. It was further stated that after completing the enquiry, she was granted appointment in the year 2005 and therefore, her appointment for all the purposes has to be treated within the validity period of the select list.

5. Heard learned counsel for the parties and perused the record.

6. In the present case, it is an admitted fact that the name of the petitioner was placed at sl.No.6 in the waiting list and out of the select list, appointments were made in the year 2003. The select list was prepared and published by the MPPSC on 04th April, 2001 and therefore, during the validity of the select list, all appointments were made by the State Government from time to time. The State Government made a request for extending the validity of the select list in the year 2004 and the same was refused by the MPPSC in respect of the selection which took place in the year 2001. The learned senior counsel for the petitioner has relied upon a judgment delivered by the Hon'ble Apex Court in the case of Purushottam vs. Chairman, M.S.E.B, and another, (1999) 6 SCC 49 wherein appointment was denied to a duly selected candidate only on the pretext that the term of the panel has

expired and someone else has been appointed. In the facts and circumstances of the aforesaid case, it was held by the Hon'ble Apex Court that as there was a doubt regarding status of the candidate in question and therefore, he was not given appointment in time and after conclusion of the enquiry, it was held that he is a member of the scheduled tribe and in those circumstance, the Hon'ble Apex Court has held that the appellants right therein was illegally taken away. In the present case, there is no such contingency involved in the matter. The petitioner is placed in the waiting list and claiming the appointment after expiry of the select list and therefore, the judgment relied upon by the learned senior counsel is distinguishable on facts.

7. Learned senior counsel has also relied upon a judgment delivered by the Hon'ble Apex Court in the case of Virendra.S.Hooda and others vs. State of Haryana and another, 1999 SC 1701 wherein further vacancies were available within six months from the receipt of recommendation from the Public Service Commission and in those circumstances, the Hon'ble Apex Court held that such vacancies can be filled up out of waiting list candidates maintained by the Commission. The Hon'ble Apex Court in the aforesaid case has not considered the issue regarding the validity of the select list and therefore, the judgment relied upon by the learned senior counsel is again distinguishable on facts.

8. Learned senior counsel has further relied upon a judgment delivered by the Hon'ble Apex Court in the case of Vijay Kumar Sharma and others vs. Chairman, School Service Commission and others, (2001) 4 SCC 289. In the aforesaid case, there was a discrimination in respect of the general category and the OBC category. The life of the panel in respect of the general category candidates was extended and the extension of the life of the panel in respect of the OBC was not granted and in those circumstances, the Hon'ble Apex Court has issued a direction for appointment of OBC category candidates also. In the present case there is no such contingency involved in the matter as the period of the select list has expired and there was no extension of the life of the panel in respect of a particular category and denial of the same in respect of a particular category and therefore, the judgment relied upon by the learned senior counsel is distinguishable on facts.

9. Learned senior counsel has also relied upon a judgment delivered by a Division Bench of this Court in the case of Kanchan Saxena vs. State of M.P. and others 2006 (2) MPHT 447. in the aforesaid case, writ petition was filed much before the expiry of the validity of the select list and the select list expired during pendency of the writ petition and in those circumstances, the appointment was ordered to the candidates in the select list and therefore, the judgment relied upon by the learned senior counsel is distinguishable on facts.

10. Learned senior counsel has further relied upon a judgment delivered by the Hon'ble Apex Court in the case of A.P. Public Service Commission vs. P.Chandra Mouleesware Reddy and others (2006) 8 SCC 330 wherein the A.P. State Public Service Commission after conducting the process of selection was directed by the State Government to send the recommendation in respect of reduced number of vacancies by mistake and in those circumstances, the Hon'ble Apex Court held that candidates who had applied in response to such advertisement and who have appeared in the written test and interview cannot be made to suffer for the mistake of the Government. In the present case, there is no such a situation and therefore, the judgment relied upon by the learned senior counsel is again distinguishable on facts.

11. In the present case, the select list prepared by the MPPSC has already expired way back in the year 2003 and the validity of the same has not been extended by the MPPSC. The petitioner has not pointed out before this Court that any candidate who was lower in merit has been appointed by the MPPSC. The select list is no longer in existence and therefore, the question of issuing a direction to the respondents to appoint the petitioner on the basis of the select list which is no longer in existence does not arise in the peculiar facts and circumstances of the present case.

12. Resultantly, writ petition sans merit and is accordingly, dismissed. No order as to cost.

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IN THE HIGH COURT OF MADHYA PRADESH AT PRINCIPAL SEAT JABALPUR
W.P. NO.770 OF 2009 (S)
D.D. 03.08.2010
Hon'ble Mr. Justice Arun Mishra &
Hon'ble Mrs. Justice Sushma Shrivastava

Ku. Bindu Patel … Petitioner
Vs.
State of Madhya Pradesh & Anr. … Respondents

Age limit

Prescription of minimum age limit of 24 years for appearance in examination conducted for recruitment to posts of Assistant District Public Prosecution Officer – Whether prescription of minimum age limit of 24 years for appearance in examination conducted for recruitment to posts of Assistant District Public Prosecution Officer vis-à-vis prescription of minimum age limit of 21 years for recruitment to post of Civil Judge Class-II can be said to be illegal and arbitrary? No. Whether Courts can interfere in such matters in exercise of its power of judicial review? No. Petitioner who was 23 years and 6 months old has challenged prescription of minimum age limit of 24 years for appearing in written exam conducted for recruitment to posts of Assistant District Public Prosecution Officer inter alia on ground that in the case of recruitment to posts of Civil Judge minimum age limit of 21 years has been fixed and therefore such prescription of minimum age limit is illegal and arbitrary.

Held that prescription of minimum or maximum age required for a post is in the discretion of rule making authority or employer. The matter of fixation of the age limit being a policy matter, the courts cannot interfere in such policy matters. Further held that parity between different posts in matter of age limit cannot be claimed.

Cases referred

1. D.R. Sharma v. State of M.P. and others, W.P.No.1710/2008 dated 05.09.2008
2. Dr. Amilal Bhat v. State of Rajasthan and others, AIR 1997 SC 2964
3. V.M. Gadre and others v. M.G. Diwan and others, 1996 3 SCC 454

JUDGMENT

Arun Mishra, J.:

1. The petitioner has challenged the vires of Rule 8 (i) (a) and Column No.3 of Schedule III of Madhya Pradesh Public Prosecution (Gazetted) Service Recruitment Rules,

1991 (hereinafter referred to as Rules of 1991) which prescribes the minimum age limit to be 24 years for appearance in the examination for the post of Assistant District Public Prosecution Officer (in short ADPO).

2. The petitioner has submitted that she had passed five years LLB course (P/1) on 16.07.2008 with 1st division. On 29.12.2008, advertisement (P/2) was published in Rozgar Nirman Employment newspaper for the post of ADPOs. 200 posts of ADPOs were advertised. Qualification for the afore referred posts was the degree in law from any recognized University or equivalent and persons possessing 1st division or two years practice at Bar or higher qualification shall be preferred.

3. Rule 8 (i) (a) of the Rules of 1991 provides that the candidate must have attained the age as specified in Column (3) of Schedule III and below the age specified in Column (4) of the said Schedule. In Column (3) of Schedule III of the Rules of 1991, the minimum age limit prescribed is 24 years whereas maximum age limit prescribed is 30 years.

4. The petitioner has submitted that fixation of age of 24 years is illegal and arbitrary whereas fixation of minimum age limit should be 21 years and maximum age limit should be 35 years. The petitioner was of 23 years & five months of age. For appearance in Civil Judges examination, the minimum age limit fixed is 21 years. Mind has not been applied while fixing the minimum age limit resulting into unjust and arbitrary operation of the Rules of 1991. Experience of 2 years practice at Bar is not mandatory. Thus, deprivation to the candidates between 21 to 24 years is illegal.

5. A return has been filed by respondent No.1/State contending that an incumbent can pass class 12th examination at the minimum age of 17 years and thereafter, three years are required for graduation and three years for obtaining degree in law. Thus, fixation of age as 24 years is in accordance with law.

6. In Writ Petition No.1710/2008 (D.R.Sharma Vs. State of M.P. & others), an incumbent has assailed the age limit of 35 years, which has been dismissed vide order (R/1) dated 05.09.2008, the Gwalior Bench of this Court has opined that parity cannot be sought by the petitioner vis a vis to the Civil Judges as the posts of Civil Judge are different than that of ADPOs.

7. A return has also been filed by respondent No.2/Public Service Commission supporting Rule 8 (i) (a) of the Rules of 1991.

8. Shri Parag Chaturvedi, counsel for petitioner has submitted that an incumbent having 1st division in LLB course has to be given priority. Fixation of age of 24 years for the post of ADPOs becomes arbitrary when for the post of Civil Judge, the minimum age limit prescribed is 21 years. There is no rhyme or reason to fix the minimum age limit for the post of ADPOs as 24 years.

9. Shri P.K.Kaurav, Deputy Advocate General for respondent No.1/State has supported Rule 8 (i) (a) of the Rules of 1991 as well as fixation of minimum age. He has also submitted that the posts in question are different. Parity between different services cannot be claimed. Fixation of age is within domain of policy decision of the State. It is not amenable for interference in writ jurisdiction.

10. Rule 8 of the Rules of 1991 is quoted below:

"Rule 8 Condition of eligibility for direct recruitment.

In order to be eligible to be selected, a candidate must satisfy the following conditions, namely:

(I) Age – (a) He must have attained the age as specified in column (3) of Schedule III and not attained the age as specified in column (4) of the said Schedule on the first day of January next following the date of commencement of selection.

(b) xxx xxx xxx xxx

SCHEDULE III
(See Rule 8)

Name of Department	Name of Post in the service	Minimum age limit	Maximum age limit	Education qualification
Home Department	The Madhya Pradesh Prosecution Service Assistant District Prosecution Officer	24 years	30 years	A degree in Law from any recognized University or equivalent and persons possessing first division or 2 years practice at Bar or Higher Qualifications shall be preferred.

11. After hearing learned counsel for the parties, we are of the opinion that there is no merit in the writ petition for the reasons to be mentioned hereinafter.

12. It is apparent that for the post of ADPOs degree in law from any recognized University equivalent qualification is necessary. It is necessary to mention here that the persons possessing 1st division in LLB course or two years practice at Bar or higher qualification shall be preferred.

13. It is apparent that a person after attaining the age of three years is given admission in nursery class and while passing 10+2 examination, normally he attains the age of 17 years and thereafter one has to complete three years course of graduation and further three years course of LLB. Even in the case of a student opting for five years course can clear the five years course at the age of 22-23 years. As per Rules of 1991, priority is given to the student possessing 1st division in LLB course or two years practice at Bar or higher qualification. Considering the priority clause of two years practice at Bar or having higher qualification than LLB course i.e., LLM etc, it is obvious that practice of 2 years at Bar is to be preferred or higher qualification of LLB/LLM etc. It would obviously consume additional years after passing of LLB course.

14. Thus, fixation of minimum age limit of 24 years cannot be said to be illegal or arbitrary at all. Merely by the fact that the petitioner is having 60% and could clear five years LLB course at the age of 23years cannot be made a ground to assail the vires of Rule 8 (i) (a) of the Rules of 1991. The posts of Civil Judges are different then that of ADPOs. The posts of ADPOs require special skill which can be acquired by an incumbent practicing at Bar hence an incumbent with two years practice at Bar is to be preferred. ADPOs are supposed to practice in the Court in criminal matters and represent the State government in criminal cases. Thus, fixation of minimum age limit of 24 years has the purpose behind it of appointing the persons of special skill/experience having at least 2 years practice at Bar. The intendment is that the persons appointed on priority basis are not absolutely raw bands.

15. The Supreme Court in Dr.Amilal Bhat Vs. State of Rajasthan & Others AIR 1997 SC 2964 while dealing with question whether Rule 11 (3) of Rajasthan Medical Services (Collegiate Branch) Rules 1962, which prescribes the maximum age of the applicants with

reference to 1st of January following the last date fixed for receipt of applications has held that basically the fixing of a cut-off date for determining the maximum or minimum age required for a post is in the discretion of rule making authority or the employer as the case may be. The Supreme Court has further observed that the matter of fixation of the age limit is a policy matter and the Court cannot interfere in such a policy matter. Fixation of age is shown to be arbitrary one. In the instant case, matter is realm of policy we decline to interfere.

16. A Division Bench of this Court in Writ Petition No.1710/2008 (D.R.Sharma Vs. State of M.P. & Others) vide order (R/1) dated 05.09.2008 has observed that parity cannot be claimed by Judges, two posts being different. In this context, the Apex Court in V.M.Gadre & Others Vs. M.G.Diwan & Others (1996) 3 SCC 454 has also laid down that parity between different services cannot be claimed. The Court has no power to grant relief on the ground of parity between different services. The services of Civil Judges are different then that of ADPOs. Thus, the petitioner cannot claim interse parity, besides we have found justification in fixation of the minimum age limit to be 24 years for the post considering the priority given to the ADPOs having two years practice at Bar and priority is also given to the person having higher qualification then that of LLB.

17. At this stage, it is also submitted by Shri Parag Chaturvedi, counsel for petitioner that since the petitioner has appeared in the examination of ADPOs on the basis of interim order passed by this Court, she should be permitted to appear in the interview as now she attains the age of 24 years.

The submission cannot be accepted for the reason that the petitioner was not entitled to appear in the examination having not completed eligibility criteria and her merit has to be considered not with the students of this year but with the students of that year itself. She had not completed 24 years of age on 01.01.2009. Consequently, no relief can be granted to the petitioner as she was not entitled to appear in the written examination itself.

18. Resultantly, we find the petition to be devoid of merits. The same is hereby dismissed. No costs.

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HIGH COURT OF MADHYA PRADESH AT JABALPUR
Writ Petition No. 16541 of 2010
D.D. 25.11.2010
Hon'ble Mr. Justice Rajendra Menon

Subhash Kumar Dwivedi … Petitioner
Vs.
State of M.P. & Ors. … Respondents

Age relaxation

Whether decision of State Government to grant age relaxation for State Civil Services examination to extent of three years for the year 2008-09 and again for the year 2009-10, on ground of non-conduct of examination between the years 2001-2008 but not in respect of examination conducted for the year 2010-11 can be said to be illegal, arbitrary and unsustainable? No. Whether courts can in exercise of jurisdiction under Art. 226 of the Constitution interfere with such decisions of Government? No. Under what circumstances courts can interfere in such matters? Explained.

Held:

6. It is well settled principle of law that laying down criteria for selection to State Service is a prerogative of the State Government. It is an executive function to be discharged by the executive authorities keeping in view the requirements of the administrative and various other factors. A Court exercising jurisdiction in a petition under Article 226 of the Constitution interferes with, in such matter only if constitutional provisions are found to be breached, rights statutory in nature taken away or action impugned is found to be in contravention to statutory rules or regulations.

7. This decision of the State Government cannot be interfered with by this Court until and unless, the statutory rules or regulations or any constitutional provisions are shown to be violated. Merely because the decision of the State Government causes hardship to the petitioner or it acts against his interest, that by itself is not a ground for interference by this Court. The State Government having fixed the criteria of age in accordance with required of the service, this Court does not find any ground to interfere in the matter only because the age relaxation that was granted in the previous two examinations is not continued now in the current examination."

JUDGMENT

Petitioner is working as an Assistant Professor. He is 36 years of age and feels aggrieved by non-grant of age relaxation in the forthcoming State Civil Service Examination to be conducted for the year 2010-11.

2.It is an admitted position that the petitioner is over age and as per the criteria laid down in the advertisement Annexure-P3 dated 23.2.2008 and the rules framed for the examination, is not eligible to appear in the examination.

3. Grievance of the petitioner is that the State Cabinet had taken a decision for granting age relaxation to the extent of three years vide circular Annexure-P3 dated 23.2.2008. The aforesaid age relaxation was granted for the examination to be held in the year 2008-09 and again in the year 2009-10 because the examinations to be conducted every year was not conducted and between the year 2001 to 2008, only two examinations were conducted i.e. in the year 2005 and 2007. Accordingly, the decision was taken by the State Cabinet but now in this examination i.e. for the year 2010-11, it is stated that this decision is not being followed and persons like the petitioner are not being granted age relaxation.

4. Shri Vipin Yadav, learned counsel for the petitioner taking me through the documents filed argued that when examination was not held every year for various period between 2001 to 2008 and when examination was held only on two occasions in the year 2005 and 2007 and when the cabinet denied to give age relaxation due to non-conduct of the examinations, the decision of the respondents in not granting age relaxation to the petitioner now is wholly illegal, arbitrary and unsustainable as the Cabinet decision as contained in Annexure-P3 for the year 2010-11 is not being followed.

5. Shri K.S.Wadhwa, learned counsel for Public Service Commission and Shri Rajesh Tiwari learned counsel for the State argues that the question as to whether the age relaxation should be granted or not and the period and the extent of which the age relaxation is to be granted is a policy decision to be taken by the State Government on evaluating the totality of the circumstances, the State Cabinet approved for grant of age relaxation to the extent of three years for the examinations to be held in the year 2008-09 and 2009-10. For the current year, no such decision is taken and, therefore, it is stated that no benefit can be extended to the petitioner. It is submitted by Shri K.S.Wadhwa that the policy decision of the State Government cannot be subject matter of judicial review in a petition under Article 226 of the Constitution in the absence of statutory rules or regulations being violated or constitutional right of the

petitioner infringed. Accordingly, learned counsels for the respondents pray for dismissal of this writ petition.

6. I have heard learned counsel for the parties and perused the record. It is well settled principle of law that laying down criteria for selection to State Service is a prerogative of the State Government. It is an executive function to be discharged by the executive authorities keeping in view the requirements of the administration and various other factors. A Court exercising jurisdiction in a petition under Article 226 of the Constitution interferes with, in such matter only if constitutional provisions are found to be breached, rights statutory in nature take n away or action impugned is found to be in contravention to statutory rules or regulations.

7. In the present case, considering the totality of the circumstances, the State Government took a decision to grant age rela xation for the examinations to be held in the year 2008-09 and again in the year 2009-10 after having granted age relaxation for two years on theground of non-conduct of examinations prior to 2007, the State Government found that it is inappropriate to grant any further age relaxation in the examination to be held in the current session 2010-11. This decision of the State Government cannot be interfered with by this Court until and unless, the statutory rules or regulations or any constitutional provisions are shown to be violated. Merely because the decision of the State Government causes hardship to the petitioner or it acts against his interest, that by itself is not a ground for interference by this Court. The State Government having fixed the criteria of age in accordance with requirement of the service, this Court does not find any ground to interfere in the matter only because the age relaxation that was granted in the previous two examinations is not continued now in the current examination.

8. It is a matter completely within the domain and jurisdiction of the administrative authority and this Court, in the absence of constitutional and statutory provision being breached, does not find any ground to interfere in the matter.

9. Accordingly, finding no case made out for interference on the grounds raised, the writ petition is dismissed.

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IN THE HIGH COURT OF MADHYA PRADESH, BENCH AT GWALIOR
W.P. (S) NO.3452 of 2009
D.D. 18.05.2011
Hon'ble Mr. Justice S.N.Aggarwal

Dinesh Kumar Arya … Petitioner
Vs.
State of Madhya Pradesh & Anr … Respondents

Public Service Commissions

Duty and obligation of Public Service Commissions to produce original documents/ records pertaining to selections before judicial forum when records are called for – Held that Public Service Commissions being instrumentalities of State entrusted with task of making selections for civil posts, are required to produce records pertaining to selections before judicial forum to show its transparency in matters of selection made – Misplacement of selection records which are just about 1-2 years old when cases pertaining to selections are pending in Courts is deprecated.

JUDGMENT

The petitioner belongs to a Handicapped Scheduled Caste Category. The respondent No.2 had advertised four posts of Assistant District prosecution Officer (ADPO) vide advertisement published in the Employment News with block dates of 29th December, 2008 to 4th January, 2009 (Annexure P/3 at page 14 of the paper-book). All these four posts were reserved for handicapped people. Out of them, two were unreserved, on reserved for SC and one for ST.

2. The selection was to be made on the basis of written test followed by an interview. The petitioner and respondent No.3 both belong to SC handicapped category. Petitioner got 247 marks in the written examination whereas respondent No.3 got only 180 marks. The mark-sheet of the petitioner is Annexure P-9 at page 10 of the rejoinder. The mark sheet of the respondent No.3 is Annexure R-3/4 at page 13 of the return to the petitioner filed by respondent No.3. There is no dispute between the parties that the petitioner is more meritorious than the respondent No.3 in the selection process held for recruitment to the post of Assistant District Prosecution Officer (ADPO) pursuant to the advertisement, Annexure P/3.

3. The petitioner was denied appointment by respondent No.2 (PSC) for reasons best known to it. The respondent No.3, who also belongs to SC handicapped category and was less meritorious than the petitioner, got her appointment to the post in question vide appointment letter dated 23rd October, 2010 (Annexure R-3/6 at page 15 of the return filed by respondent No.3). Her appointment was however, subject to the final outcome of the present writ petition and this was so mentioned as condition No.2 in her appointment letter.

4. The respondent No.2 being the Public Service Commission, PSC who had held the recruitment process for recruitment to the post of Assistant District Prosecution Officer (ADPO), was called upon by this Court vide its order dated 3rd May, 2011 to produce the original record of selection before this Court on the next dated. When the case was taken up on the next adjourned date of hearing, i.e., on 10th May, 2011, Mr.S.K.Jain, appearing on behalf of respondent No.2 again gained time for producing the selection record and on his said request the case was adjourned on that date for today. While adjourning the case on 10th may, 2011 it was made clear that in case the respondent No.2 would fail to produce the selection record called for from it, the Court may draw an adverse inference against the respondent No.2 at the time of decision of the present case.

5. Mr.S.K.Jain, learned counsel appearing on behalf of PSC (respondent No.2) has today placed on record copy of office notings to contend that the selection record is not traceable in the office of respondent No.2 and efforts are on for tracing the record. The Public Service Commission (PSC) is an instrumentality of the State and has been entrusted with the task of making selection for civil posts to be filled up in public offices. The respondent No.2 cannot be expected to function in a casual manner misplacing the selection record which was just about 1-2 year old knowing full well that the case pertaining to selection is pending in the Court and it may be required to produce the record before the Court to show its transparency in the matter. It seems that the respondent No.2 has set all principles of transparency at naught in not only producing the selection record called for from it but also by filing a false affidavit stating in para 4 thereof that the last SC handicapped candidate selected for appointment to the post of Assistant District Prosecution Officer (ADPO) had scored 319 marks completely forgetting that there was only one post reserved for handicapped SC candidate, against which respondent No.3 was appointed,

who got only 180 marks as per her mark sheet (Annexure R-3/4 at page 13 of the return of respondent No.3). This attempt on the part of respondent No.2 appears to be to mislead this Court on vital question of fact and the same was not expected of it. In the opinion of this Court, the respondent No.2 has wrongly denied appointment to the petitioner, who admittedly was more meritorious than the respondent No.3. This Court is conscious of the fact that the respondent No.3 has got entry into service of respondents No.1 and 2, though she was less meritorious than the petitioner. This Court if further conscious of the fact that the respondent No.3 pursuant to her appointment vide Annexure R-3/6 to the return of respondent No.3 has already worked for 6 to 7 months. However, it may be noted that the appointment of respondent No.3 in terms of her appointment letter (Annexure R-3/6) was subject to final outcome of the present writ petition. Upon balancing the equities between petitioner and respondent No.3, this Court is of the considered view that the respondent No.3, who admittedly is less meritorious than the petitioner, must pave way for the petitioner for his appointment to the post of Assistant District Prosecution officer (ADPO), for which he was found more meritorious in the selection process. The respondent No.3 should immediately vacate the office occupied by her, as the post against which she was appointed has to go to the petitioner.

6. In the facts and circumstances of the case delineated herein above, this petition is allowed with directions to the respondents No.1 and 2 to consider the merit of the petitioner for his appointment to the post of Assistant District Prosecution Officer (ADPO) under the handicapped SC category and if found entitled, appoint him to the said post after completing the left over formalities. The appointment of respondent No.3 is set aside. The respondents No.1 and 2 are further directed to grant all consequential benefits to the petitioner in the event of his appointment to the post of Assistant District Prosecution Officer (ADPO) like benefit of seniority without any monetary claim till the date of his actual appointment. The needful exercise in regard to appointment of the petitioner be completed by the respondents as expeditiously as possible but not later than four weeks of receipt of certified copy of this order. There shall be no order as to costs.

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IN THE HIGH COURT OF MADHYA PRADESH BENCH AT JABALPUR
MISC. PETITION NO.1461 OF 1991
D.D. 07.07.2011
Hon'ble Mr. Justice Rajendra Memon &
Hon'ble Mr. Justice Alok Aradhe

Shivanand Shukla … Petitioner
Vs.
State of Madhya Pradesh & Ors … Respondents

A. Ex-Servicemen

Reservation in favour of ex-servicemen for the post of Civil Judge Class-II – Whether in absence of provision in relevant Recruitment Rules for reservation or relaxation in favour of ex-servicemen category persons, Courts can grant such reservation dehors the Recruitment Rules? No. – Held that reservation or relaxation for appointment can be granted only if Recruitment Rules permit for the same. When petitioner unable to demonstrate before the Court by referring to specific provision in the Recruitment Rules such claims cannot be accepted.

B. Selection process

Interference of Courts in selection process – when selection committee comprising of Chairman, Public Service Commission, expert in the subject and a sitting Judge of the High Court nominated by the Chief Justice assessed the performance of candidates in the interview for selection to the post of Civil Judge Class-II, whether merely on basis of vague and unspecified allegation like interview conducted was not fair and proper, exhorbitant marks were awarded in the interview or favouritism shown to some candidates, marks sheet of the re-evaluation was not supplied etc., without bringing specific instances of allegation to notice of Court, the selection process can be said to be vitiated warranting interference of Courts? No.

> "11. Except for making the contention that the interview was not fair, nothing specific in nature is brought to the notice of this Court on the basis of which it can be held that the selection process conducted by way of an interview after the written examination was not fair, warranting interference. It is also not the case of the petitioner that exhorbitant marks were awarded in the interview or favouritism was shown to any candidate, only certain vague allegations are made by the petitioner for challenging the interview. Interview to the post is conducted by an Expert Committee as indicated hereinabove and, therefore, in the absence of any material available to show that the process of interview stood vitiated on any count merely on the basis of vague and unspecified allegations, interference on this count is not warranted."

Cases referred:

1. Ashok Kumar Yadav and others v. State of Haryana and others, AIR 1987 SC 454
2. Dr. C.P. Kulashrestha v. Government of M.P. and others, Mis. Petition No.1185/1989, decided on 02.05.1990
3. Talat Parveen v. State of M.P. and others, M.P.No.736/1990 decided on 09.07.1990

JUDGMENT

This petition was filed in the year 1991, wherein challenge is made to the recruitment process conducted by the public Service Commission for appointment to the post of Civil Judge Class II.

2. An advertisement was issued by the Public Service Commission being Advertisement No.388/88, for appointment to the post in question. Petitioner, who claims to be a Post Graduate [i.e. MA in Sociology] has also passed the LLB Examination in the year 1986, applied for participating in the process of selection, as an Ex-serviceman. According to the petitioner earlier he was employed as a signalman in the Code of Signals and after his retirement from the Army, had appeared in the examination as an ex-service man. Records indicate that petitioner served with the Indian Army between March 1977 to October 1980 and when this petition was filed in the year 1991, he was already 34 years of age. Be it as it may be, petitioner participated in the process of selection and obtained 149 marks out of 200, in the written examination. According to the petitioner in general category candidates who had obtained 148 marks have been selected after they were subjected to interview. However, no reservation or relaxation was granted to ex-military personnel like the petitioner. According to the petitioner, the selection and process of recruitment is vitiated as no reservation or relaxation was granted to persons like the petitioner, who are ex-service men.

3. The second contention of the petitioner is that in the matter of conducting interview, no guidelines or criteria was laid down and, therefore, the entire interview conducted is contrary to the law laid down by the Supreme Court in the case of Ashok Kumar Yadav and others Vs. State of Haryana and others, AIR 1987 SC 454. It is argued by Shri A.P.Singh, learned counsel, that petitioner had fared well in the interview, but as no proper

criteria were laid down for conducting the interview, the same is vitiated. Subsequently, the petition was amended and various other grounds were raised to point out that persons less meritorious than the petitioner have been selected in various other categories like Scheduled Caste, Scheduled Tribe, but without granting any reservation or relaxation to ex-service men, the entire selection has been done which is unsustainable. It is further stated that, a Division Bench of this Court in Misc. Petition No.1185/1989 (Dr.C.P.Kulashrestha Vs. Government of MP and others), decided on 02.05.1990, had directed for revaluation of the answer-sheets of all candidates who had received more than 125 marks and the same principle has been followed in the present selection also and as the revaluation was not done in petitioner's case and as no mark sheet after revaluation was issued to the petitioner as was done in the case of certain other candidates, it is argued that the entire selection is vitiated.

4. Respondents have filed their return and it is the case of respondent No.2, Public Service Commission that under the Recruitment Rules there is no provision for reservation or relaxation, in the criteria fixed for ex-service men and therefore, it is argued that the contention of the petitioner that there should be reservation or relaxation cannot be accepted. As far as grant of mark sheet to the petitioner and revaluation in accordance to the Division Bench judgment is concerned, respondents have pointed out that taking note of the fact that petitioner had obtained more than 125 marks and keeping in view the directions issued in the case of Dr.C.P.Kulashrestha (supra), similar proceeding was undertaken in the matter and the answer-sheets of all such candidates, including the petitioner, were re-valued and on such 'revaluation' in the case of two candidates with Roll No.1375 and 6437 there was change in the marks. According to the respondents after the 'revaluation' the result was again declared vide Annexure R/1 and as there was no change in the result after 'revaluation' as far as the present petition was concerned, it is said that there is no illegality.

5. Even though the petitioner has tried to say that there has been no 'revaluation' and the contention of the respondents is incorrect, therefore, the original records be called for, Shri K.S.Wadhwa, learned counsel for the PSC, has produced before us certain enquiry

report and documents ordering 'revaluation' of answer-sheets and the fact that there is no change in the result so far as the petitioner is concerned.

6. Shri A.P.Singh, learned counsel for the petitioner, tried to emphasize that in the present case the entire process of selection stands vitiated for the reason that there is no reservation or relaxation for ex-service men and the petitioner, who had fared well in the examination, has been deprived of appointment even though he had obtained high marks i.e,. 149 out of 200.

7. Having heard learned counsel for the parties and on a perusal of the records, it is clear that the grounds raised by the petitioner in this writ petition are mainly with regard to non-grant of reservation or relaxation to ex-service men, 'revaluation' of his answer-sheets not undertaken and his non-selection even though he had received high marks i.e…. 149/200. As far as these questions are concerned, reservation or relaxation for appointment to a post can be granted only if the recruitment rule permits for the same. In the present case, except for contending that there is no reservation or relaxation for ex-service men, petitioner is unable to demonstrate before this Court by referring to the Recruitment Rules as to whether any reservation or relaxation to these category of persons i.e…. ex-service men are contemplated in the Rules. In the absence of any provision being contemplated under the Recruitment Rules for reservation or relaxation, this Court cannot hold or grant the same to the petitioner dehors the Recruitment Rules. Accordingly, contrary to the provisions of the Recruitment Rules the claim made for reservation and relaxation to ex-service men cannot be accepted.

8. As far as 'revaluation' of the answer-sheets as directed by the Division Bench of this Court in the case of Dr.C.P.Kulashrestha (supra) is concerned, from the averments made by the respondents in the return and on a perusal of the material available on record, it is clear that 'revaluation' was undertaken and in paragraphs 4,5 and 6 of the reply, the respondents have clearly stated that in pursuance to the advertisement for judicial service examination 1988-89, petitioner appeared in the examination and secured 149 marks whereas the last candidate who was called for interview secured 148 marks. It is further clear from the return filed by the respondents that in pursuance to the order passed by the Gwalior Bench of this Court in the case of Dr.C.P.Kulashrestha (supra) and the Indore Bench in the case of Talat Parveen Vs. State of MP and others, M.P.No.736/1990, decided

on 09.07.1990, 'revaluation' of answer-sheets of all candidates, who had received 125 marks and above, were ordered. It is seen from the return that all candidates were notified to submit an application for 'revaluation' along with a bank draft of Rs.100/- on or before 28.07.1990 and in pursuance to the same, it is stated that 2605 candidates sought for 'revaluation' and the respondents admit that petitioner also submitted his claim for 'revaluation' and according to the respondents variation were found in the answer-sheets of 382 candidates and out of them two candidates obtained more than 145 marks and, therefore, they were called for interview. Respondents have filed Annexure R2/1, the amended result published after such 'revaluation' on 12.01.1991. As far as petitioner is concerned it is case of the respondents that in the petitioner's case there was no change in the result after such 'revaluation'. The affidavit filed by the respondents and the documents filed in this regard are contained in Annexure R2/1 and the enquiry report produced before us for perusal dated 30.11.1990, indicate that the averments made in the return in this regard are correct. Except for making certain vague allegations petitioner has not adduced any cogent material or evidence to dis-believe the aforesaid statement. There is no reason as to why the PSC will come out with a false claim. That being so, we are unable to accept the contention of the petitioner. 'Revaluation' as ordered in the case of Dr.C.P.Kulashrestha (supra) having been undertaken and in the petitioner's case as there being no change in the marks obtained, petitioner cannot have any grievance.

9. It is clear from the records that petitioner had obtained 149 marks in the written examination and as he had qualified to participate in the interview, he was called for interview, after interview he could not obtain the merit position, therefore, he was not selected either in the main list or in the supplementary list. It is seen from the records that as petitioner had obtained more than 145 marks in the written examination, he was also called for interview on the basis of the marks obtained in the written examination, but after the interview as he did not come within the merit criteria fixed therefore, was not selected. It is clear from the records that the petitioner has not made out any case for interference on the ground that the 'revaluation' was not done in accordance to the directions issued by the Division Bench, in the case of Dr.C.P.Kulshrestha (supra).

10. As far as the process of interview is concerned, even though during the course of hearing Shri A.P.Singh referring to the judgment in the case of Ashok Kumar Yadav (supra) tried to emphasize that the interview and the selection undertaken was not fair and proper,

this assertion of the petitioner is nothing but a vague allegation. The interview is conducted by a Three Member Board, consisting of the Chairman of the PSC, an Expert in the subject and a Sitting Judge of the High Court nominated by the Chief Justice and there is nothing to indicate that the interview board conducted its proceedings in a manner which warrants interference.

11. Except for making the contention that the interview was not fair, nothing specific in nature is brought to the notice of this Court on the basis of which it can be held that the selection process conducted by way of an interview after the written examination was not fair, warranting interference. It is also not the case of the petitioner that exhorbitant marks were awarded in the interview or favouritism was shown to any candidate, only certain vague allegations are made by the petitioner for challenging the interview. Interview to the post is conducted by an Expert Committee as indicated herein above and, therefore, in the absence of any material available to show that the process of interview stood vitiated on any count merely on the basis of vague and unspecified allegation, interference on this count is not warranted.

12. Finally, Shri A.P.Singh, learned counsel, tried to emphasize that after 'revaluation' mark sheet were given to some candidates, but in the case of the petitioner the mark sheet after 'revaluation' was not granted. Merely because mark sheet after 'revaluation' is not granted that would not vitiate the process of selection nor would it entitle the petitioner to seek appointment to the post once it is found that he did not fare well in the interview and his name was not include in the merit list after the interview. Mere non-supply of the mark sheet to the petitioner has not caused any prejudice to the petitioner nor does it in any manner, whatsoever, vitiate the selection. The petitioner has not made out any case for interference on the grounds raised and finding the respondents to have conducted the entire process of selection in accordance to law, this Court does not find it proper to interfere into the matter on the grounds raised.

13. Accordingly, finding no merit in the claim made by the petitioner warranting consideration, the petition is dismissed.

* * *

IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR
W.P.NO.711 of 2010 & Connected cases
D.D. 02.02.2012
Hon'ble Mr. Justice Ajit Singh &
Hon'ble Mr. Justice Sanjay Yadav

Ratnarashi Pandey … Petitioner
Vs.
Madhya Pradesh P.S.C & Ors. … Respondents

Appointment – Disqualification for appointment

A. Whether Madhya Pradesh Public Service Commission is justified in disqualifying petitioners for appointment who got themselves married before attaining the minimum age fixed for marriage? Yes.

B. Whether M.P.S.C. is justified in disqualifying the petitioners for appointment, who got themselves married before attaining the minimum age fixed for marriage, even prior to coming into force of Rule 6(5) of Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961, i.e., 10.03.2000? Yes.

C. Whether M.P.S.C. is justified in disqualifying petitioners for appointment who got themselves married before attaining the minimum age fixed for marriage, but whose marriage is dissolved at the time of applying for appointment under State Civil Service? Yes.

> " 10.. The provision of the Act for fixing the age for eligibility of marriage was required to be obeyed since 1978 almost 22 years before the impugned sub-rule was inserted. For this reason it cannot be held that the petitioners/ candidates who were marked before the insertion of the sub-rule are not affected by it or that it would be unreasonable or arbitrary to hold them disqualified. In Writ Appeal No.112/2008 (Gendlal Patel v. M.P. Public Service Commission and another) also a Division Bench of this high Court comprising of A.K. Patnaik, C.J. and Prakash Shrivastava, J. by order dated 27.02.2008 has upheld the disqualification of a candidate for State service on the ground that he married before the minimum age fixed for marriage despite the fact that his marriage took place much prior to the date of coming into force of sub-rule (5) and we find no good ground to disagree with that order.
>
> 11. But the fact that the petitioner was married before minimum age of 18 years remains and is not obliterated by the subsequent divorce. Her case, therefore, also come within the disqualification brought about by the impugned sub-rule (5) of Rule 6 of the Rules."

Case referred:

Gendlal Patel v. M.P. Public Service Commission and another, Writ Appeal No.112/2008

JUDGMENT

Ajit Singh,J.

All these petitions are being decided by this common order because they involve a common issue and were heard together.

2. According to the petitioners, they appeared in the State Civil Services Examination in response to the posts advertised and despite having been found successful, they have been held disqualified for appointment to any State Service or post by the respondents on the ground that they had married before the minimum age fixed for marriage.

3. Madhya Pradesh Civil Services (General Conditions of Services) Rules, 1961 (in short, "the Rules") apply to every person who holds a post or is a member of service in the State. Rule 6 deals with disqualification and its relevant sub rule (5) reads as under:

"6. Disqualification:-

(1) xxxxxxxx

(2) xxxxxxxx

(3) xxxxxxxx

(4) xxxxxxxx

(5) No candidate shall be eligible for appointment to a service or post who has married before the minimum age fixed for marriage".

This sub-rule was inserted by amendment and it came into force with effect from 10.03.2000.

4. The conditions for a Hindu Marriage are narrated in section 5 of the Hindu Marriage Act, 1955 (in short, "the Act"). The relevant extract of this section is as follows:

> **"5. Conditions for a Hindu marriage**- A marriage may be solemnized between any two Hindu, if the following conditions are fulfilled, namely:-
>
> (i) xxxxxxxx
>
> (ii) xxxxxxxx
>
> (iii) The bridegroom has completed the age of twenty one years and the bride, the age of eighteen years at the time of the marriage."

Age 21 years for the bridegroom and 18 years for the bride at the time of marriage, as a condition of marriage, was notified by Act No.2 of 78 which was made applicable with effect from 02.10.1978. Contravention of this condition has also been made punishable under section 18 of the Act with rigorous imprisonment up to two years or with fine up to Rs.1,00,000/- or with both. Earlier, the punishment prescribed for contravention was only simple imprisonment up to 15 days with fine up to Rs.1,000/- or with both and it was enhanced by Act No.6 of 2007.

5. From the reading of section 5 of the Act and sub-rule (5) of Rule 6 of the Rules, it is clear that from 10.03.2000 no candidate was eligible for appointment to a service or post who had married before the minimum age fixed for marriage which is 21 years for the bridegroom and 18 years for the bride since 02.10.1978.

6. Admittedly, all the petitioners who are Hindus were married before the minimum age fixed for marriage on the date when they applied for appointment int eh State service and the respondents, relying on sub-rule (5) of Rule 6 of the Rules, have disqualified them for appointment.

7. Being aggrieved, the petitioners have challenged the vires of sub-rule (5) of Rule 6 on the ground that it disqualifies a person who had married before the minimum age fixed for marriage even prior to the Rule came into force and, therefore, it being arbitrary, is violative of Article 14 of the Constitution of India. The petitioners have also submitted that sub-rule (5) is not consistent with section 11 of the Act because sub-rule (5) makes a candidate ineligible for appointment to a State service whereas section 5 does not make such a marriage void.

8. In reply the respondents, State of Madhya Pradesh and the Madhya Pradesh Public Service Commission, have justified their action in disqualifying the petitioners. The State has also defended the validity of sub-rule (5) of Rule 6 on the ground that it has been inserted to eradicate the menace of child marriage more effectively because the other measures were not producing desired results.

9. The impugned sub-rule (5) of Rule 6 of the Rules is made under Article 309 of the Constitution and is well within the rule making power of the State Government. As already seen above, under section 5 of the Act age 21 years for the bridegroom and 18 years for the bride was fixed as far back as in the year 1978. And contravention of this condition of marriage is also punishable under section 18. The purpose of these provisions is to eradicate social evil of child marriages. But the provision did not bring desired results and solemnization of marriages continued in utter violation of the prescribed condition. Even the petitioners got married before the minimum age fixed for marriage. The state, therefore, inserted sub-rule (5) to prevent child marriages more effectively. The sub-rule, therefore cannot be said to be arbitrary because it is intended to eradicate a social evil of child marriages.

10. Further, the fact that marriage below the age of 21 years in case of bride groom or 18 years in case of bride is not declared void by the Act has no relevance in the present controversy as the impugned sub-rule also does not make such marriage void. All that the sub-rule says that the persons covered by it will become ineligible for service. The provision of the Act for fixing the age for eligibility of marriage was required to be obeyed since 1978 almost 22 years before the impugned sub-rule was inserted. For this reason it cannot be held that the petitioners/candidates who were married before the insertion of the sub-rule are not affected by it or that it would be unreasonable or arbitrary to hold them disqualified. In Writ Appeal No.112/2008 (Gendlal Patel v. M.P.Public Service Commission and another) also a Division Bench of this High Court comprising of A.K.Patnaik, C.J. and Prakash Shrivastava, J. by order dated 27.02.2008 has up held the disqualification of a candidate for State service on the ground that he married before the minimum age fixed for marriage despite the fact that his marriage took place much prior to the date of coming into force of sub-rule (5) and we find no good ground to disagree with that order.

11. In Writ Petition No.711/2010 the petitioner submits that at the time of applying for State service her marriage was dissolve by an ex-parte decree dated 07.02.2003 and therefore, she could not have been held disqualified. But the fact that the petitioner was married before minimum age of 18 years remains and is not obliterated by the subsequent divorce. Her case, therefore, also come within the disqualification brought about by the impugned sub-rule (5) of Rule 6 of the Rules.

12. In view of the aforesaid discussion, we find no merit in the petitions. They are accordingly dismissed but without any order as costs.

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HIGH COURT OF JUDICATURE MADHYA PRADESH BENCH AT INDORE
W.P.NO.9986 of 2012
D.D. 21.11.2012
Hon'ble Mr. Justice Shantanu Kemkar &
Hon'ble Mr. Justice Prakash Shrivastava

Paras … Petitioner
Vs.
State of Madhya Pradesh & Anr. … Respondents

Public Interest Litigation

Whether Public Interest Litigations are maintainable before courts in respect of service matters? No.

Petitioner filed a petition in the nature of Pro Bono Publico with a prayer for relaxation in maximum age limit in respect of female candidates. Following the principles laid down in catena of judgment of Hon'ble Apex Court held that PIL is not maintainable in service matters. Petition dismissed in limine.

Cases referred:

1. Gurpal Singh v. State of Punjab and others, (2005) 5 SCC 136
2. Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra, (1998) 7 SCC 276
3. B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees Assn., (2006) 11 SCC 731
4. Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655
5. Bholanath Mukherjee and others v. Ramakrishna Mission Vivekananda Centenary College and others, (2011) 5 SCC 464

JUDGMENT

Shantanu Kemkar, J.

Heard on the question of admission.

2. This petition in the nature of Pro Bono Publico is filed by the petitioner seeking directions to the respondents to extend the benefit to those female candidates of appearing in the next competitive examination conducted by the State Government and the Public Service Commission who on account of wrong policies adopted by the Public Service Commission since the year 1997 to 2011, were deprived of appearing in the various competitive examinations held for those years. A prayer for relaxation in the age of those

female candidates and permission for them to appear in the ensuring examinations conducted by various Government Departments and the Public Service Commission has also been sought.

3. We have considered the submissions made by the learned counsel for the petitioner and have gone through the averments made in the writ petition.

4. We find that this petition in the nature of public interest litigation (PIL), is not maintainable, as it is not the case of the petitioner that those female candidates who could not appear in the earlier examinations on account of the alleged wrong policies of the State Government could not and cannot approach the Court for redressal of their individual grievances as they were and are in such financial constraints so as to be incapable to afford the litigation. Those female candidates cannot qualify as 'little Indians' warranting entertaining this petition as PIL.

5. The Supreme Court in the case of Gurpal Singh vs. State of Punjab and others [(2005) 5 SCC 136] has issued a note of caution by observing that weapon of public interest litigation should be used with great care and circumspection. It is also seen that this PIL is essentially relating to the service matter. It has been now well settled by catena of judgments by the Supreme Court that a PIL is not maintainable in service matters. In service matters only the non appointees can assail the legality of the appointment procedure, except in a case of writ of quo warranto no PIL in service matter is maintainable. (see Duryodhan Sahu (Dr.) vs. jitendra Kumar Mishra (1998) 7 SCC 276, B.Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees Assn., (2006) 11 SCC 731, Hari Bansh Lal vs. Sahodar Prasad Mahto, (2010) 9 SCC 655 and Bholanath Mukherjee and others vs. Ramakrishna Mission Vivekananda Centenary College and others (2011) 5 SCC 464.

6. In view of the aforesaid legal position, we decline interference in the matter and dismiss this petition in limine.

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IN THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE
W.P. NO.1506 OF 2012 (S) & Connected cases
D.D. 07.12.2012
Hon'ble Mr. Justice S.C.Sharma

Rekha Sachdev ... Petitioner
Vs.
State of Madhya Pradesh & Ors. ... Respondents

Examination

Re-valuation of answer scripts and re-tabulation of marks pertaining to Madhya Pradesh Civil Services Preliminary Examination – Madhya Pradesh Public Service Commission admits in the affidavit that marks have been allotted on basis of wrong answers reflected in model key answers but reluctant to rectify the mistake on plea that court is not competent to re-appreciate answers provided in model answer key; and discrepancy, if any, in framing question of answer key was for all and not for petitioner only; and court cannot act as an appellate authority to examine correctness or otherwise of questions/answers/authenticity of books based on which model answers key is prepared – Court, aware of its limitations in interfering in such matters, in order to do complete justice, referred the matter to the Principal Secretary to G.A.D. to report on the matter of discrepancy in evaluation of answer scripts – Based on the report directed inter alia to the Public Service Commission to re-evaluate answer scripts of entire Preliminary Examination and to re-tabulate the marks of the examination, as follows:

" (a) The respondent/MP Public Service Commission shall re-tabulate the result of the petitioner and the petitioners in the linked cases, keeping in view the report submitted by the Principal Secretary, General Administrative Department on 03.11.2012. The aforesaid exercise of re-tabulating the result of the petitioner and those who have already qualified the Main Examination shall be concluded within a period of 15 days from the date of receipt of certified copy of this order.

(b) In case, the petitioners receive minimum marks required to participate in the main examination, the respondent – MP Public Service Commission shall hold a special examination for the present petitioner and other petitioners in other connected cases.

(c) The result of the persons, who have appeared in the Preliminary Examination and in the Main Examinations and they are not parties before this Court will not be affected.

(d) The MP Public Service Commission shall also take an appropriate action against the examiners for framing wrong questions and wrong answers that too after granting them an opportunity of hearing.

The relief granted by this Court shall be confined to the petitioner of this case and the petitioners of other linked cases only."

Cases referred:

1. H.P. Public Service Commission v. Mukesh Thakur, AIR 2010 SC 2010
2. B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749

JUDGMENT

Regard being had to the similar controversy involved in the bunch of cases, they were heard analogously together with the consent of the learned counsel for the parties and by a common order all the aforesaid writ petitions are being disposed of. Facts of Writ Petition No.1506/2012 (s) are narrated, as under:-

The petitioner before this Court has filed the present petition being aggrieved by her non-selection in the M.P. Civil Services Examination, 2010 (Preliminary Examination). The contention of the petitioner is that an advertisement was issued inviting applications for the M.P. State Civil Services Examination, 2010 for the various posts and the petitioner submitted her application for to the M.P. Public Service Commission. The examination was to be held in three stages- (a) Preliminary (b) Main Examination and (c) Interview. The petitioner has stated that the preliminary examination took place on 20.02.2011 and was purely an objective type of examination. A candidate required to fill in Optical Mark Reader Sheet (OMR Sheet) based upon the four answers given in the question paper itself. The petitioners contentions is that as she has opted for Public Administration as one of the optional subject, she was permitted to appear in Public Administration and the other paper was of General Knowledge. The petitioner further stated that each question of General Knowledge was assigned one mark and each question of Public Administration was assigned two and half marks. The petitioner further stated that result of the examination was declared in the month of August, 2011 and the petitioner was not declared successful. The petitioner further stated that she submitted an application to the respondent-M.P. Public Service Commission under Right to Information Act, 2005, with a request to furnish the Model Answer Key, meaning thereby that the key on the basis of which marks were awarded to all the candidates. The petitioner kept on representing before the MP Public Service Commission demanding Model Answer Key. However, it was only on 22.10.2011, a reply was received by the petitioner asking the petitioner to produce the Examination Hall

Ticket. The petitioner however, submitted the desired information and she was also informed that she has received 322 marks and the cut off marks, prescribed by the MP Public Service Commission, entitling a candidate to appear in the Main Examination, were 324 in the category of women. The petitioner has further stated that in spite of her request, the Model Key Answers were not furnished to her and the petitioner kept on reminding the authorities with a request to decide her application, which was submitted under the Right to Information Act, 2005. The petitioner for the first time on 16.12.2011 was served with a copy of Model Answer Key along-with petitioners OMR Sheet. The OMR Sheet of the petitioner and the model answers are on record as Annexure P/9. The petitioner immediately after receiving the Model Answer Key, based on which the marking was done by the MP Public Service Commission, submitted a representation to the respondents on 20.12.2011. The petitioner in her representation informed the MP Public Service Commission that questions No.34, 53, 62, 81 in the subject of General Knowledge and questions No.84, 97, 103 and 125 in the paper of Public Administration were having wrong answers in the Model Answers Key and based upon in-correct answer key, marks have been awarded to the candidates and the petitioner has been disentitled to participate in the Main Examination. The petitioner has stated in the writ petition that the Officers of the MP Public Service Commission asked the petitioner to contact them after seven days and petitioner after seven days submitted a representation on 27.12.2011. The petitioner later on as no action was initiated by the MP Public Service Commission came up before this Court by filing the present writ petition.

The petitioner has re-produced the questions and the answers in the writ petition and has also categorically stated that in respect of certain answers as per the answers reflected in the Model Answer Key, marks have been awarded on the basis of the incorrect answers.

Notices were issued by this Court and a detailed and exhaustive reply has been filed by the M.P. Public Service Commission. It has been stated in the reply that the examination was held on 20.02.2011, result was declared on 05.08.2011 and as per the M.P. State Civil Services Examination Rules, 2008, the respondents were required to call fifteen times candidates of the total number of vacancies. It is further state that fifteen times candidates were called to appear in the main examination however, as the petitioner has not been able

to receive the cut off marks prescribed by the M.P. Public Service Commission, she was not called for interview. It has been state in the reply that Model Answer Key Sheet was prepared by the experts of the subject and thereafter the question paper was given to candidates and based upon the answers reflected in the Model Answers Key, marks have been awarded. The M.P. Public Service Commission, instead of commenting upon the fact whether marks have been awarded to certain candidates on the basis of incorrect answers reflected in the Model Answer Key, submitted a reply duly supported by some of the judgments of the Apex Court and has taken a stand that his Court is not competent to re-appreciate the answers provided by the M.P. Public Service Commission in the Model Answer Key. A stand was also taken that discrepancy, if any, in framing the question or answer was for all candidates and not for petitioner alone. The M.P. Public Service Commission has placed heavy reliance on the judgment delivered by Supreme Court in the matter of H.P. Public Service Commission Vs. Mukesh Thakur, reported in AIR 2010 SC 2010. not only this, other judgments have also been brought to the notice of this Court by the learned counsel appearing for the M.P. Public Service Commission and his contention is that the High Court is under no obligation to stood as an appellate authority to examine the correctness of the questions or the answers or the authenticity of the books based upon which the answers find place in the Model Answer Key. Learned counsel has prayed for dismissal of the writ petition.

Heard learned counsel for the parties and perused the record.

The matter is being disposed of at motion hearing stage itself with the consent of the learned counsel for the parties.

In the present case, as some of the questions and their answers were related to the subject of Geography and other historical events and as in respect of the aforesaid two subjects, there could not have been two answers or three answers, this Court directed the Public Service Commission to file an affidavit in support of the averments in respect of the answers reflected in the Model Key Answers and to inform this Court that correct answers are reflected in the Model Answer Key. The M.P. Public Service Commission has filed an affidavit on 20.07.2012 and in the aforesaid affidavit, it was admitted by the M.P. Public

Service Commission that two questions of General Studies were having incorrect model answers. The M.P. Public Service Commission has later on again filed an affidavit on 01.10.2012, which is again of the Secretary, M.P. Public Service Commission and it has been admitted in the aforesaid affidavit that total three answers in the Model Answers key sheet are incorrect answers. This Court as there was an affidavit of the Secretary of M.P. Public Service Commission admitting that three answers were incorrect answers in the Model Answer Key sheet has referred the matter to an expert committee, especially in light of the fact that in respect of other answers also a dispute was raised by the present petitioner. The matter was referred to the Principal Secretary, Government of Madhya Pradesh, General Administration Department and a detailed and exhaustive report has been received vide letter dated 03.11.2012, wherein it has been reflected that as many as five answers were incorrect in the Model Answer Key. The report has been submitted, after constituting the expert committee and the expert committee based upon the documentary evidence has given the aforesaid report. This Court is of the considered opinion that this Court does not have the power to revalue the answer sheet and such a task cannot be performed by the High Court. The Supreme Court in the case of H.P Public Service Commission Vs. Mukesh Thakur, reported in AIR 2010 SC 2010 in paragraph 14 and 19 has held as under:-

> "In view of the above it was not permissible for the High Court to examine the question paper and answer sheet itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the recruitment examination and not for Respondent No.1 only. It is a matter of chance that the High Court ws examining the answer sheets relating to law. Had it been other subjects like Physics, Chemistry and Mathematics, we were unable to understand as to whether such a course could have been adopted by the High Court."

This Court has constituted a High Power Committee by referring the matter to the Principal Secretary, General Administration Department and he has submitted a report in the matter. It is true that the Apex Court in a large number of cases has held that the High Courts as they are not expert bodies, should not undertake the task of valuation or revaluation of question and answers, but at the same time, in the present case, as there was an admission on the part of the Public Service Commission that there are certain wrong answers, in order to do the complete justice, a Committee was constituted by referring the

matter to the Principal Secretary, General Administration Department. The Apex Court in the case of B.C.Chaturvedi v. Union of India (1995) 6 SCC 749 in paragraphs 20 to 26 has held, as under:

> "20. Consequently, the appeal of the Union of India is allowed. The order of the Tribunal modifying the punishment is set side and that of the disciplinary authority is maintained. In the circumstances, parties to bear their own costs.
>
> HANSARIA, J. (concurring) – I am in respectful agreement with all the conclusions reached by learned brother Ramaswamy, J. This concurring note is to express my view on two facets the case. The first of these relates to the power of the High Court to do "complete justice", which power has been invoked in some cases by this Court to alter the punishment/penalty where the one awarded has been regarded as disproportionate, but denied to the High Courts. No doubt, Article 142 of the Constitution has specifically conferred the power of doing complete justice on this Court, to achieve which result it may pass such decree or order as deemed necessary, it would be wrong to think that other courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under Article 142, a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, inter alia, be because of the poverty of the concerned person. It may be remembered that the framers of the Constitution permitted the High Courts to even strike down a parliamentary enactment, on such a case being made out, and we have hesitated to concede the power of even substituting a punishment/penalty, on such a case being made out. What a difference! May it be pointed out that Service Tribunals too, set up with the aid of Article 323-A have the power of striking down a legislative act.
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> 22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.
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> 23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh's case,

AIR 1963 SC 1909, that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide which this Court has under Article 142. That, however, is a different matter.

24. What has been state above may be buttressed by putting the matter a little differently. The same is that in a case of dismissal, Article 21 gets attracted, and in view of the inter-dependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case, 1970 (3) SCR 530, which thinking was extended to cases attracting Article 21 in Maneka Gandhi vs. Union of India, AIR 1978 SC 597, the punishment/penalty awarded has to be reasonable, and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in Bhagat Ram vs. State of Himachal Pradesh, 1983 (2) SCC 442 also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting in appropriate cases, a punishment deemed reasonable by it.

25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts, have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the lawmakers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimization by the management. Even so, the power under section 11A is available to be exercise, even if there be no victimizaion or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionately of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate.

> 26. I had expressed my unhappiness qua the first facet of the case, as Chief Justice of the Orissa High Court in paras 20 and 21 of Krishna Chandra v. Union of India, AIR 1992 Orissa 261 (FB), by asking why the power of doing complete justice has been denied to the High Courts. I feel happy that I have been able to state, as a judge of the Apex Court, that the High Courts too are to do complete justice. This is also the result of what has been held in the leading judgment."

Keeping in view the judgment delivered by the Apex Court, in order to do the complete justice, the exercise of referring the matter to the Principal Secretary, GAD to submit a report was undertaken by this Court. The powers to do complete justice has to be exercised by the High Courts and has been exercised by this Court, in the present writ petition under Article 226 of the Constitution of India bearing in mind the restraints inherent in exercising power of judicial review.

The present case is also having a distinguishable feature. In the present case marks have been awarded on the basis of objective question and answers, whereas in the case of H.P. Public Service Commission (supra) the situation was altogether different. Not only this in the present case Public Service Commission has admitted in the affidavit that marks have been allotted on the basis of wrong answers reflected in the model key answer sheet meaning thereby a candidate, who has answered a particular question even wrongly, has been awarded marks because the fully wrong answer was treated as the right answer by the MP Public Service Commission based upon their Model Answer Key. The MP Public Service Commission was certainly having an option to delete all the questions in respect of which wrong answers were provided and to award the marks to all candidates except those, who have already been awarded the marks on the basis of wrong answers and to re-tabulate the result in respect of preliminary examination. However, it has been informed that no further corrective action has been taken by the MP Public Service Commission. In the present case, the petitioner has received 322 marks and the cut off marks as prescribed are 324 and if additional marks are granted to the petitioner, she will certainly qualify to appear in the Main Examination. The Main Examination is already over. A Division Bench of this Court in the matter of recruitment to the post of Civil Judge Class II, while dealing with almost identical situation has allowed W.P.Nos.8783/2012, 8568/2012, 8377/2012

and other connected matters on 27.06.2012. The Division Bench of this Court in the aforesaid case has granted additional marks in respect of certain answers and has directed the authorities (High Court) to re-tabulate the preliminary examination result and to send information to the concerned candidates to appear in the examination. The Division Bench of this Court in the aforesaid case has observed as under:

> "Before proceeding to deal with the issue involved in the instant writ petitions, at this stage, it would be apt to note relevant decisions of the Supreme Court. In Kanpur University and others, Supra, the Supreme Court has held that key answer should be assumed to be correct unless it is proved to be wrong and it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong. That is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. In Subhash Chandra Verma Vs. State of Bihar and others, 1995 Suppl. (1) SCC 325, it has been held that a question may have more than one correct answer and the candidate will have to select the one which is more correct out of the alternative answers. In H.P. Public Service Commission, supra, it has been held that the Court cannot take upon itself the task of the statutory authorities."

In the present case, based upon the admission of the Public Service Commission, it is evident that the marks have been awarded to the candidates even thought they have answered a particular question wrongly. This Court is left with no other choice except to direct the MP Public Service Commission to revalue the answer books and to re-tabulate the examination result. In case after re-tabulating the results, if the petitioner is able to obtain the cut off marks as prescribed by the MP Public Service Commission, she will be permitted to appear in the Main Examination.

This Court, as there was an admission on the part of the MP Public Service Commission that two answers are wrong in respect of General Studies and one question was wrong in respect of Public Administration, has directed the MP Public Service Commission vide order dated 21.11.2012 to inform this Court as to what corrective measures has been taken by the MP Public Service Commission, in the present case.

The MP Public Service Commission has filed the compliance report on 03.12.2012. Paragraph Nos.2 and 3 of the report read as under:

"2. That, Since the main examination of the State Services Examination 2010 has already been held prior to filing of the petition by the petitioner and as such there was no occasion to take any action and after the examination no decision can be taken and further petition was pending before the Court raising the objection by the petitioner about the 15 question in the petition without filing any proof in support of the objection. After including all the question raised by the other petitioner also, in all 21 answers are in dispute (General Studies 13, Public Administration 8 total 21 question). Therefore, at this stage also there was no occasion to take any decision by the Respondents – M.P.P.S.C.

3. That, it is further humbly submitted that in the General Studies paper 150 questions were asked and each question was 1 marks and in the Public Administration 120 questions were asked and each question was 2 ½ Marks. It is further humbly submitted that according to the Respondent – M.P.P.S.C. there are 2 answers wrong in the General Studies and 1 question was wrong in the Public Administration. In this connection Principle Secretary, General Administration Department has also submitted the report and the basis of the report in all 3 answers are wrong in the General Studies and 2 answers are wrong in the Public Administration. Thus, dispute is about 3 marks in General Studies and 5 marks in Public Administration and if the Hon'ble Court has come to the conclusion that the petitioner is entitled to get these marks of the wrong answer the position will be to rescaling of the marks of the non scaling marks as per the formula published in the advertisement and this scaling formula is approved by the Supreme Court also. On the basis of this formula the actual marks (Non Scaled Marks) may be less or above while calculating the scaled marks. Thus, looking to the dispute of about very low marks and further looking to the number of petitioners which are about 12, it is desirable to held the action of the Respondent –M.P.P.S.C. as proper action by virtue of the fact that 1, 65, 082 had participated in the preliminary examination and 4929 were found eligible for the Main Examination as per the rules and as such other candidates who were not found to be eligible for the Main Examination are satisfied with the action of the Respondent – M.P.P.S.C.

In the aforesaid report, the MP Public Service Commission has categorically admitted once again, that there are two answers wrong in respect of General Studies and one question was wrong in the subject of Public Administration.

This Court as already stated earlier, as there was a serious dispute in respect of M.P. Public Service Commission's report regarding correctness of questions and answers also keeping in view the admission of the M.P. Public Service Commission has finally referred the matter to the Principal Secretary, General Administration Department and the Principal

Secretary, General Admission Department, after constituting an expert committee has submitted a detailed report on 03.11.2012.

The M.P. Public Service Commission in its compliance report has thereafter, admitted that based upon the report of the Principal Secretary that there is a dispute about 3 marks in General Studies and 5 marks in Public Administration.

Normally this Court would not have referred the matter to the expert committee, but as in the present case, the M.P. Public Service Commission has admitted wrong answers in General Studies and in respect of Public Administration, therefore, the matter was referred to the expert committee also.

In the present case it is established on the basis of the admission of M.P. Public Service Commission and as well as on the basis of the report of the Principal Secretary, General Administration Department dated 03.11.2012 that there were wrong questions and the marks have been awarded on the basis of wrong answers to certain candidates.

Resultantly, this Court is of the considered opinion that the entire result of the preliminary examination deserves to be re-tabulated. The writ petition is allowed with following directions:

a) The respondent/M.P. Public Service Commission shall re-tabulate the result of the petitioner and the petitioners in the linked cases, keeping in view the report submitted by the Principal Secretary, General Administration Department on 03.11.2012. The aforesaid exercise of re-tabulating the result of the petitioner and those who have already qualified the Main Examination shall be concluded within a period of 15 days from the date of receipt of certified copy of this order.

b) In case, the petitioners receive minimum marks required to participate in the main examination, the respondent - M.P. Public Service Commission shall hold a special examination for the present petitioner and other petitioners in other connected cases.

c) The result of the persons, who have appeared in the preliminary examination and in the Main Examinations and they are not parties before this Court will not be affected.

d) The M.P. Public Service Commission shall also take an appropriate action against the examiners for framing wrong questions and wrong answers that too after granting them an opportunity of hearing.

The relief granted by this Court shall be confined to the petitioner of this case and the petitioners of other linked cases only.

With the aforesaid directions, all the twelve writ petitions are allowed.

No order as to costs.

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HIGH COURT OF MADHYA PRADESH AT JABALPUR
WRIT PETITION NO.5978/2013 & Connected matters
D.D. 02.07.2013
Hon'ble Mr. Jutice R.S.Jha

Shailesh Kumar Patel & Ors. … Petitioners
Vs.
State of Madhya Pradesh & Ors. … Respondents

Candidature

Rejection of candidature for non-possession of educational qualification prescribed– One of the eligibility criterion for appointment to post of Veterinary Assistant Surgeon being possession of degree of B.V.Sc. & A.H. on the last date for submission of application by online i.e. 16.12.2012, whether petitioners who had completed the written part of their course and pursuant to which a course completion certificate has been granted on 22.12.2012 and had obtained provisional registration for purpose of undertaking internship by the M.P. Veterinary Council on 24.12.2012 can be said to possess degree in B.V.Sc. & A.H. in terms of Indian Veterinary Council Act, 1984 read with Veterinary Council of India Regulations 1993, so as to satisfy the requisite educational qualification prescribed by law for appointment to post of Assistant Veterinary Surgeon? No. Whether rejection of candidature of petitioner by the M.P. Public Service Commission can be found fault with? No.

As per provisions of Indian Veterinary Council Act, 1984 and Regulations 1993 framed there under to be eligible to award B.V.Sc. & A.H. degree every candidate, after passing the final B.V.Sc. & A.H. examination must satisfactorily complete compulsory rotational internship for a minimum period of six months and full registration. As admitted by the petitioners they would complete their internship only on 23.06.2013 i.e. well after 16.12.2012, the cut off date fixed for receipt of application – Held: Petitioners having not possessed necessary requisite educational qualification prescribed by law on the last date fixed for receipt of application and rejection of their candidature by M.P. Public Service Commission held valid.

Cases Referred:

1. Ashok Kumar Sonkar v. Union of India and Others, (2007) 4 SCC 54
2. Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18
3. A.P.Public Service Commission v. B. Sarat Chandra, (1990) 2 SCC 669
4. District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, (1993) 3 SCC 655
5. Rekha Chaturvedi v. University of Rajasthan, 1993 Supp (3) SCC 168
6. M.V. Nair (Dr.) v. Union of India, (1993) 2 SCC 429
7. U.P. Public Service Commission v. Alpana, (1994) 2 SCC 723
8. Alka Ojha v. Rajasthan Public service Commission and another, (2011) 9 SCC 438

9. Dr. Kantu Damor v. State of M.P. and others, W.P. No.5590/2008 (S) decided on 26.07.2010
10. Dipitima Yee Oarida v. State of Orissa and others, 2009 (1) SCC (L&S) 50
11. Chief Executive Officer, NSSO v. Biswa Bhusan Nandi, (2009) 1 SCC (L&S) 23.

JUDGMENT

The facts and issues involved in both these petitions being identical, they are heard and decided concomitantly.

The petitioners, who are all students prosecuting a Bachelors degree course in Veterinary Science, have filed this petition praying for a direction to the respondents to permit them to participate in the selection process initiated by the respondents for making appointments on the post of Veterinary Assistant Surgeon by issuing an advertisement dated 8.10.2012 as well as the subsequent clarification to the said advertisement issued on 10.12.2012 and 31.12.2012. The petitioners are aggrieved by the fact that their forms/applications for participating in the selection process have been rejected by the respondents on the ground that they do not possess the requisite necessary educational qualification prescribed by law.

2. The brief facts, necessary for adjudicating the issue raised by the petitioners in both the petitions, are that the petitioners applied for appointment on the post of Veterinary Assistant Surgeon pursuant to the advertisement issued on 8.10.2012 wherein 308 posts of Veterinary Assistant Surgeon were advertised. The advertisement clearly specified that the last date for filling online application was 9.11.2012 whereas the last date for accepting application forms by hand would be 24.11.2012.

The advertisement also stipulates that the candidate concerned must possess the requisite qualifications on the cut-off date prescribed for accepting online application forms. The advertisement also prescribed that the necessary educational qualification required for consideration of cases for appointment on the post of Veterinary Assistant Surgeon was a Degree of Bachelor in Veterinary Science from any recognized Indian University and the necessary registration under the provisions of the Indian Veterinary Council Act, 1984 (hereinafter referred to as 'the Act of 1984'). By notification dated 10.12.2012 the number of posts were increased to 504 and the last date for filling up online

application also extended to 16.12.2012 whereas the last date for accepting application forms by hand was extended to 26.12.2012. On 31.12.2012 another clarification was issued whereby the number of posts advertised was increased to 525 while maintaining all the other conditions of advertisement previously notified.

All the petitioners, at the relevant time, were students who were undergoing studies in the Nanaji Deshmukh Veterinary Science University, Jabalpur and had completed the written part of their course, pursuant to which they have been granted a course completion certificate on 22.12.2012, copies of which have been collectively filed alongwith the petition as Annexure P-2 and were also granted provisional registration for the purposes of undertaking internship by the M.P. Veterinary Council, Bhopal on 24.12.2012, copies of which have been collectively filed as Annexure P-3.

On the strength of the aforesaid documents the petitioners applied for being considered for appointment on the post of Veterinary Assistant Surgeon but their applications were not accepted on the ground that they do not possess the necessary educational qualification prescribed by the Rules, i.e. a Degree of Bachelor in Veterinary Science and Animal Husbandry. The petitioners, being aggrieved, have filed these petitions.

3. It is pertinent to note that by an interim order dated 4.4.2013 the petitioners have been permitted to participate in the selection process subject to the condition that their result shall not be declared without the leave of the Court and their participation in the selection process would not create any equity in their favour.

4. The learned counsel for the petitioner submits that the petitioners are fully qualified for being considered for appointment on the post of Veterinary Assistant Surgeon in view of the provisions of the Indian Veterinary Council Act and the Regulations of 1993 framed thereunder. It is submitted by the learned counsel for the petitioners that the term recognized Veterinary qualification has been defined under section 2(e) of the Act of 1984, to mean any of the Veterinary qualification included in the first schedule or the second schedule and that the B.V.Sc & A.H degree obtained by them is included in the First Schedule of the Act.

5. The learned counsel for the petitioners has relied upon the provisions of Section 22 of the Act, which provides that the minimum standards of veterinary education may be prescribed by the Veterinary Council of the State to which the Act extends and submitted that pursuant to the aforesaid powers the Veterinary Council of India (Minimum Standards of Veterinary Education Degree Course – B.V.Sc & A.H) Regulations, 1993 (hereinafter referred to as the Regulations of 1993) have been framed. Relying upon Regulation 7(2)(ii) and (iii) of the Regulations of 1993, the learned counsel for the petitioners submits that the Regulations themselves provide for issuance of a provisional course completion certificate on passing the final examination which, in the instant case, has been issued on 22.12.2012 by the respondents vide Annexure P-2 and pursuant to the aforesaid provisional course completion certificate, the respondent Veterinary Council of the State has granted provisional registration to the petitioners on 24.12.2012 as envisaged by Regulation 7(2)(ii) of the Regulations of 1993 and in such circumstances as the petitioners are holders of the course completion certificate and the provisional registration, they should be deemed to be holders of a B.V.Sc & A.H degree as they have completed the B.V.Sc & A.H course and are, therefore, entitled to be considered for appointment on the post of Veterinary Assistant Surgeon.

6. It is also contended by the learned counsel for the petitioners that recruitment on the post of Veterinary Assistant Surgeon has been undertaken by the respondent State after a long lapse of 10 years and there is all possibility of the next recruitment being undertaken by the State after another lapse of 10 years by which date the petitioners would become overage and in such circumstances, looking to the aforesaid aspect, the petitioners who have completed their Degree in B.V.Sc & A.H be permitted to participate in the selection process and the act of the respondents in not permitting them to do so is contrary to law and deserves to be quashed.

7. The learned counsel for the respondent PSC, per contra, submits that the last date for filling online application form, as extended by the advertisement dated 10.12.2012, was 16.12.2012 and the last date for accepting the application form by hand was 26.12.2012. It is pointed out by the learned counsel for the respondent that in view of the admission

made by the petitioners in paragraphs 1.4, 5.2 and 5.4 of their petition, it is clear that the petitioners knew and have admitted that they do not possess a Degree in B.V.Sc & A.H on the last date/cut-off date prescribed in the advertisement and in such circumstances the respondent PSC has not committed any mistake or illegality in rejecting the applications of the petitioners.

8. It is further contended by the learned counsel for the respondent PSC that the IIIrd Schedule of the recruitment rules, namely the M.P. Veterinary Services (Gazetted) Recruitment Rules, 1966 (hereinafter referred to as 'the Recruitment Rules of 1966'), as notified on 5.11.1983, prescribes a Degree in Veterinary Science from a recognized University or institution in India or abroad, as the minimum eligible educational qualification for appointment on the post of Veterinary Assistant Surgeon. It is contended that the course completion certificate and provisional registration certificate, Annexure P-2 & 3, issued to the petitioners are not sufficient for the purposes of completing the B.V.Sc course as the course would be completed only when the compulsory rotational internship is successfully completed by the candidate and a degree has been issued to them and they have been duly registered under the provisions of the Act and the Rules and, therefore, the contention of the learned counsel for the petitioners based on Annexure P-2 & 3 deserves to be rejected. It is also submitted that pursuant to the selection process, interview for the post of Veterinary Assistant Surgeon have also taken place on 22.6.2013 but the result of the selection process have not been declared till date.

9. Looking to the controversy involved, this Court by order dated 18.6.2013 had directed the competent authorities of the State and its counsel to file an affidavit to clarify as to whether the petitioners are the persons who have completed their B.V.Sc course and hold a degree in that regard and also make a statement regarding the value of their certificates, Annexures P-2 & P-3 issued to the petitioners, pursuant to which the respondents have filed an affidavit sworn by the Joint Director of Veterinary Services along with a letter issued by the Registrar of respondent no.5 dated 24.6.2013 wherein it has been stated that the degree in B.V.Sc & A.H is complete only when a student has completed the B.V.Sc & A.H course which includes compulsory internship and that without successful

completion of internship a degree in B.V.Sc & A.H cannot be issued, in the following terms:-

[The letter mentioned in para-9 is in Hindi. Its English translation is given below:]

To/Copy,
Deputy Secretary,
Govt. of Madhya Pradesh,
Department of Animal Husbandry,
Ministry Office, Bhopal.

Sub: Petition No:5678/13, by Dr. Shailesh Kumar Patel vs. Govt. of Madhya Pradesh, (pointwise information)
Ref: Directorate of Animal Husbandry, Madhya Pradesh, Bhopal, letter No.8043/10-R/Bhopal, dt:22.06.2013.

…

Submitted before Hon'ble High Court point wise information as mentioned in the petition (as per rules).

1. If the petitioner has completed B.V.Sc. and A.H. and internship only then he will be considered as Bachelor of B.V.Sc. and A.H.

2. Along with syllabus of Bachelor's degree completion of internship is mentioned as per of syllabus itself. In other words, any student without completion of internship along with B.V.Sc. & A.H. may not be considered as graduate in B.V.Sc. & A.H.

By order of Vice Chancellor

Registrar/Secretary
Date: 14.06.2013

10. In reply, the learned counsel appearing for the petitioners has placed before this Court the provisional degree certificate issued to some of the petitioners dated 28.6.2013 on completing the compulsory internship subsequent to the filing of the present petitions and has contended that even otherwise as the petitioners have now obtained the B.V.Sc & A.H degree, they should be declared to be qualified for appearing in the selection process and their cases should be directed to be considered for appointment on the post of Veterinary Assistant Surgeon pursuant to the advertisement issued by the respondents.

11. I have heard the learned counsel for the parties at length. From a perusal of Schedule III of the Recruitment Rules of 1966, it is clear that the requisite and necessary educational

qualification prescribed for appointment on the post of Veterinary Assistant Surgeon is a Bachelors Degree in Veterinary Science from a recognized University or institution in India or abroad. It is also undisputed that the degree course being perused by the petitioners in the instant case is duly recognized.

12. Section 22(1) of the Act of 1984, enables the council to prescribe the minimum standard of veterinary education and apparently does not deal with recognition of any educational qualification. In exercise of powers under section 22(1) read with Section 21 of the Act of 1984, the Veterinary Council of India with the approval of the Central Government has framed the Regulation of 1993. Part-II of the Regulations of 1993, deals with the course of study, Clause (1) of which provides that a degree course of B.V.Sc & A.H shall comprise of a course of study consisting of the curriculam and syllabus provided in these regulations spread over five complete academic years including a compulsory internship of six months duration undertaken after successful completion of all credit hours provided in the syllabus. Part-IV which contains Regulation 7(2) of the Regulations of 1993, deals with internship. A conjoint reading of clauses (i), (ii), (iii), (iv) & (vii)(b) & (viii) of the aforesaid Regulation, makes it clear that every candidate, after passing the final B.V.Sc & A.H examination, has to undergo compulsory rotating internship for a minimum period of six months so as to be eligible for award of a B.V.Sc & A.H degree and full registration and that for the purpose of undertaking the internship the University is required to issue a provisional course completion certificate on passing of the final examination, on the strength of which a candidate is granted provisional registration by the State Veterinary Council for a limited period of six months to enable him to undertake training as a Veterinary Surgeon during internship. Clause (vii)(b) & (viii) of the Regulations of 1993, further provides that the Dean/Principal/Associate Dean, as the case may be, based on the record of the work of the student, shall thereafter issue a certificate of satisfactory completion of training "following which" the University shall award the B.V.Sc & A.H degree or the provisional certificate and that the candidate shall get himself registered with the State Veterinary Council only after the award of B.V.Sc & A.H degree or a provisional certificate in that regard by the University.

13. From a perusal of the aforesaid provisions of law and the Regulations, it is clear that the B.V.Sc. & A.H degree can be awarded to a candidate only after he successfully completes his compulsory internship and the issuance of a successful completion certificate in that regard. When the documents, Annexure P-2 & P-3, are read alongwith the aforesaid Regulations of 1993, it is clear that the aforesaid documents only certify that the candidate has passed the final examination and is now eligible for undertaking internship. This fact is clearly mentioned in the last paragraph of the certificate issued to the petitioners, Annexure P-2. It is also clear that this certificate has been sent to the Registrar of State Veterinary Council, Bhopal to enable him to issue a provisional registration certificate as envisaged in Regulation 7(2)(iv) of the Regulations of 1993, so that the candidate can undertake internship training as a Veterinary Surgeon and this has been clarified by the Council in notes no.1 & 2 appended to the certificates which read as under:-

[The matter is in Hindi. Its English translation is given below:]

> Note:-
> 1. Holders (read as graduates) are authorized to practice only in recognized institutions for training.
> 2. At the time of final registration it is required to submit original certificates.

14. It is also clear from a perusal of the last column of this certificate, Annexure P-3, that they were valid only upto 23.6.2013 for undertaking internship and that final registration, after completion of internship, would be granted only after this provisional certificate is returned and deposited with the Council.

15. It is pertinent to note that the petitioner themselves were very clear about this factual position and have, therefore, admitted this fact in paragraph 1.4, page 12 (subject in brief) and paras 5.3 and 5.5 of the petition, in the following terms:-

> "4. Subject in brief ....It is submitted that the vacancies have been advertised after about 10 years. In all such cases, the applications of those, who have completed their courses and are prosecuting their internship, are also accepted. But the action of the MPPSC (respondent no.3) in not accepting the application of the petitioners is illegal and amounts to violation of the fundamental rights of the petitioners.

The petitioners have the Course Completion Certificates. They are also registered under the provisions of Indian Veterinary Council Act, 1984. As such the petitioners shall complete their 180 days internship on 23.06.2013 and whereupon in terms of Indian Veterinary Council Act, 1984 they shall be conferred their B.V.Sc. Degrees and Permanent Registrations much before the due date of interview/preparation of the final select list of the posts in question.

5..3 That the petitioners shall complete their 180 days internship on 23.06.2013 they shall be conferred their B.V.Sc Degrees and be granted permanent registration in terms of the Act. Presently the petitioners are undergoing 6 months/180 days internship at Veterinary College & Hospital, Jabalpur since dt.24.12.2012 which shall be completed on 23.06.2013.

5.4 xxx xxx xxx

5.5 That as aforesaid the petitioners have already successfully appeared in all the five professional examinations of B.V.Sc. and A.H course as certified vide Annexure P-2 Series supra and have also been given temporary registration Annexure P-3 series supra. The petitioners have already completed nearly half of their internship which will be concluded on 23.06.2013 and they will be getting the graduation degrees as also their permanent registration immediately thereafter."

16. It is clear and undisputed from a perusal of the aforesaid admission of the petitioners themselves that the petitioners were well aware of the fact that they would complete their internship only on 23.06.2013, i.e. well after 16.12.2012 and 26.12.2012 which are the cut-off dates mentioned in the advertisement.

17. From the aforesaid facts and circumstances, it is clear and manifestly evident that the petitioners did not possess the minimum eligibility qualification on the last date of submission of the forms.

18. At this stage, it is pertinent to take into consideration the stipulation made by the respondents in the advertisement itself. The first advertisement dated 8.10.2012 clearly stipulates in para-1 itself that the applications would only be received online and that the last date for receiving such online applications would be 9.11.2012. Note- appended to the advertisement clearly specifies that the candidate applying must possess the requisite qualification on the last date/cut-off date for filing/submitting online forms and that any person who acquires eligibility qualification after the cut-off date would not be eligible for participating in the selection process. Clause (2t) of the note which relates to the

description of the post provides that the minimum eligible qualification would be a degree of B.V.Sc & A.H and registration by the State Veterinary Council under the Act of 1984.

19. Note (2) of the advertisement also states that the State would have the power to increase the number of posts advertised. By the subsequent publication dated 10.12.2012 the cut-off date for submitting online forms was extended up to 16.12.2012 and it was also provided that the application forms by hand could be submitted to the competent authority upto 26.12.2012. By this advertisement the number of posts was also increased from 308 to 504. The respondents, thereafter, issued another advertisement by which while the number of posts were increased to 525 all other terms of the advertisement were maintained.

20. It is not disputed that the petitioners applied within the time prescribed for being considered for appointment on the post of Assistant Veterinary Surgeon and have filed applications, however, their applications were not accepted on account of the fact that they do not possess the requisite educational qualification as notified in the advertisement.

21. Though, rival submissions have been made by the learned counsel for the parties, the law in this regard has been settled by the Supreme Court in several decision which has been summarized in the case of Ashok Kumar Sonkar vs. Union of India and Others, (2007) 4 SCC 54, in the following terms:-

> "14. A review application was filed which was admitted. The matter was again placed before a three Judge Bench of this Court in Ashok Kumar Sharma and Others v. Chander Shekhar and Another, (1997) 4 SCC 18. One of the issues which fell for consideration of the Bench being issue No. 1 reads as under :"(1) Whether the view taken by the majority (Hon'ble Dr. Thommen and V. Ramaswami, JJ.) that it is enough for a candidate to be qualified by the date of interview even if he was not qualified by the last date prescribed for receiving the applications, is correct in law and whether the majority was right in extending the principle of Rule 37 of the Public Service Commission Rules to the present case by analogy?"
>
> 15. It was held: "So far as the first issue referred to in our order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr. T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the

applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in Rekha Chaturvedi v. University of Rajasthan, 1993 Supp (3) SCC 168. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

The said decision is, therefore, an authority for the proposition that in absence of any cut-off date specified in the advertisement or in the rules, the last date for filing of an application shall be considered as such.

16. Indisputably, the appellant herein did not hold the requisite qualification as on the said cut-off date. He was, therefore, not eligible therefor.

17. In Bhupinderpal Singh & Others v. State of Punjab & Others, (2000) 5 SCC 262], this Court moreover disapproved the prevailing practice in the State of Punjab to determine the eligibility with reference to the date of interview, inter alia, stating :

"13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar, A.P. Public Service Commission v. B. Sarat Chandra, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, Rekha Chaturvedi v. University of Rajasthan, M.V. Nair (Dr) v. Union of India and U.P. Public Service Commission U.P., Allahabad v. Alpana the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant

service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice."

18. Yet again in Shankar K. Mandal and Others v. State of Bihar and Others [(2003) 9 SCC 519], this Court held that the following principles could be culled out from the aforementioned decisions:

"(1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority."

19. In M.A. Murthy v. State of Karnataka & Others [(2003) 7 SCC 517], a contention was made that Ashok Kumar-II (supra) was to operative prospectively or not. The said contention was rejected, stating:

"It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma case No. II. All the more so when the subsequent judgment is by way of

review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."

> 20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application."

22. It is also apparent from a perusal of the aforesaid decision and the law laid down by the Supreme Court therein that while doing so the Supreme Court has also taken into consideration its previous judgments rendered in the cases of Ashok Kumar Sharma vs. Chander Shekhar, (1997) 4 SCC 18; A.P. Public Service Commission vs. B. Sarat Chandra, (1990) 2 SCC 669; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi, (1990) 3 SCC 655; Rekha Chaturvedi vs. University of Rajasthan, 1993 Supp (3) SCC 168; M. V. Nair (Dr.) vs. Union of India, (1993) 2 SCC 429 and U.P Public Service Commission vs. Alpana, (1994) 2 SCC 723. Similar view has also been taken by the Supreme Court in the case of State of Rajasthan vs. Hitendra Kumar Bhatt, JT 1997 (7) S.C. 287.

23. In a subsequent decision reported in the case of Alka Ojha vs. Rajasthan Public Service Commission and Another, (2011) 9 SCC 438, the Supreme Court has again considered the aforesaid decisions and has reiterated the law in the following terms:-

> "15. The question whether the candidate must have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement is no longer res integra. In Bhupinderpal Singh v. State of Punjab (2000) 5 SCC 262, this Court referred to the earlier judgments in A.P. Public Service Commission v. B. Sarat Chandra (1990) 2 SCC 669, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, (1990) 3 SCC 655, M.V. Nair (Dr.) v. Union of India ,(1993) 2 SCC 429, Rekha Chaturvedi v. University of Rajasthan 1993 Supp. (3) SCC 168, U.P. Public Service Commission, v.

Alpana (1994) 2 SCC 723 and Ashok Kumar Sharma v. Chander Shekhar (1997) 4 SCC 18 and approved the following proposition laid down by the Punjab and Haryana High Court, Bhupinderpal Singh (supra):

"13..... (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority."

16. The same view was reiterated in M.A. Murthy v. State of Karnataka (supra) and Ashok Kumar Sonkar v. Union of India (supra). Therefore, the Full Bench of the High Court rightly held that a candidate who does not possess driving licence on the last date fixed for submission of the application is not eligible to be considered for selection. "

24. From a perusal of the aforesaid law laid down by the Supreme Court, it is clear that it is not enough for a candidate to be qualified on the date of interview or selection and that he must infact possess the requisite qualifications necessary for being considered for appointment on the last date specified and notified for receiving the applications and that in such cases hardship in individual cases or consideration on sympathetic grounds is not permissible for extending the date as it would result in gross injustice to others. In other words, if a candidate does not possess the necessary qualifications on the cut-off date, he is disqualified and cannot be permitted to participate in the selection process or be considered therein.

25. Similar view has been taken by a learned Single Judge of the Indore Bench of this Court in the case of Dr. Kantu Damor vs. State of M.P. and others, W.P No.5590/2008(S) decided on 26.07.2010, again relying upon the decision of the Supreme Court in the case of Ashok Kumar Sonkar (supra) as well as the judgments of the Supreme Court report in the cases of Dipitima Yee Oarida vs. State of Orissa and others, 2009 (1) SCC (L&S) 50, Chief Executive Officer, NSSO vs. Biswa Bhusan Nandi, (2009) 1 SCC (L&S) 23. I am in respectful agreement with the view taken by the learned Single Judge in the aforesaid judgment.

26. In view of the aforesaid facts and circumstances, as it is established without doubt on the basis of the aforesaid analysis and the petitioners' statement in the petition itself that they did not possess the necessary qualifications on the cut-off date specified in the advertisement, their applications have rightly been rejected as they have no right to participate in the selection process for making appointments on the post of Veterinary Assistant Surgeons. I am also of the considered opinion that in view of the law laid down by the Supreme Court in the aforementioned cases, even if the petitioners have completed their internship in June, 2013 and have been registered under the Act of 1984 during the pendency of the present petition, they are not entitled to any relief as they did not possess the necessary qualifications on the cut-off date specified in the advertisement.

27. In the result, I find no merit in the petition which is accordingly dismissed.

28. It is clarified that the interim order would not confer any right on the petitioners as their consideration in the selection was pursuant to the interim order passed by this Court which stands vacated on the dismissal of the present petition.

29. In the facts and circumstances of the case, there shall be no order as to the costs. A copy of this order be placed in the record of W.P No.6388/2013.

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HIGH COURT OF MADHYA PRADESH: JABALPUR
Writ Petition No. 10965 OF 2013
D.D. 03.07.2013
Hon'ble Mr. Justice R.S.Jha

Somdutt Dixit … **Petitioner**
Vs.
M.P. P.S.C. & Ors. … **Respondents**

Selection process

Verification of documents – Relaxation in cut off date fixed for verification of document/completion of formalities – Petitioner appeared for State Civil Services main exam 2010, the results of which were released on 27.04.2013 on internet after one year 4 months of conduct of examination. The results were also released in news papers on 06.05.2013 with instructions to selected candidates to complete formalities of verification of documents by the cut off date of 21.05.2013, failing which it would be presumed that the candidate concerned does not wish to participate in selection process. However, petitioner failed to note result in time and could not complete formalities within cut off date, but only after 20 days of expiry of cut off date. On account of this his candidature was rejected by Public Service Commission – Whether in the circumstances, Public Service Commission was justified in debarring the petitioner from taking part in personality test for failure to complete formalities of verification of documents within cut off date fixed? Yes. Whether the cut off date fixed may be extended or relaxed in individual cases? No.

Held:

7. It also goes without saying that in the instant case after declaration of the result and completing all the formalities regarding filing documents etc., the respondent PSC is required to scrutinize the documents of each and every applicant and thereafter prepare a list, which is a time consuming meticulous process and it is for this purpose that the PSC in the instant case has specifically stated while declaring result of the main examination that the requisite formalities have to be completed by the candidate concerned latest by 21.5.2013, failing which it shall be presumed that the candidate is not interested in participating any further in the selection process. I am also of the considered opinion that this cut off date mentioned by the PSC in the result is final and binding on all concerned and should not generally be extended or relaxed in individual cases. It may however, be extended for justified reasons by the PSC itself by a general order extending the date uniformly for all the candidates concerned. If relaxation is granted or permitted in individual cases on selective basis without public notice and general relaxation, it would offend Articles 14 and 16 of the Constitution of India as it would deprive other candidates of participation, who for some reason have not been able to apply or comply with the stipulations before the cut off date and who may be more deserving and meritorious. I am inclined to say so, as the petitioner or any candidate for that matter has no indefensible, constitutional or statutory right to claim relaxation of the date only for himself except in

exceptional cases of extreme hardship and injustice on account of reason beyond the control of the candidate which is not the case in the present petition, which may be granted by this Court in exercise of its extraordinary jurisdiction."

JUDGMENT

The petitioner has filed this petition praying for a direction to quash the order dated 17.6.2013 Annexure P/1 and permit him to appear in the interview being conducted by the respondent no. 1/State Services Examination 2010 for appointment in the State Services.

2. The brief facts leading to the filing of the present petition are that the petitioner had appeared in the preliminary and main examination of State Services Examination 2010 and has cleared the same. It is stated that the result of the preliminary examination was declared on 5.8.2011, thereafter the main examination was conducted in December 2011 and January 2012, however, the result thereof was declared after one year four months by releasing the same on the Internet on 27.4.2013 and was also published in the Rojgar and Nirman on 6.5.2013. In the said result, it was stated that the selected candidates were required to complete all formalities and submit requisite documents before the competent authority by the cut-off date of 21.5.2013 but as the petitioner failed to note the result of the main examination in time, he could not complete the formalities by 21.5.2013 but did so, after 20 days i.e. 10.6.2013, on account of which, the respondents have issued communication dated 17.6.2013 Annexure P/1 rejecting the candidature of the petitioner.

3. It is submitted by the learned counsel for the petitioner that the petitioner is a successful candidate having passed the preliminary as well as the main examination inspite of which he has been debarred only on account of the fact that he could note the result of the main examination in time and in such circumstances, the respondents/authorities be directed to consider the case of the petitioner for selection in the State Services.

4. The learned counsel appearing for the respondents/ Public Service Commission, per contra, submits that the respondents had published the result in the Internet on 27.4.2013 and had also published in Rojgar and Nirman on 6.5.2013 alongwith a specific and clear note that all relevant documents and formalities were required to be completed by the selected candidates latest by 21.5.2013, failing which it would be presumed that

the applicant concerned does not wish to participate in the process. This fact is mentioned at the back of page no. 28 of Annexure P/3, filed alongwith the petition. It is submitted that in such circumstances as the necessary formalities were completed after the cut-off date of 21.5.2013 by the petitioner, therefore, the petitioner's claim has rightly been rejected and in such circumstances, there can be no consideration on sympathetic ground as this would open a flood gate and would make the entire selection process unending and illegal as it would result in participation of disqualified candidates in the selection process.

5. Having perused the averments made in the petition and the documents filed therewith, it is clear that though on the one hand the petitioner claims to be an alert and intelligent candidate as he has cleared the preliminary and main examinations, however on the other hand he has himself stated that he failed to take note of the fact that the result of the main examination was declared on the Internet on 27.4.2013 and thereafter published in the Rojgar and Nirman on 6.5.2013. The aforesaid contention of the petitioner is unacceptable as no reasonably acceptable explanation has been furnished as well as in view of the fact that the entire process of selection including filling of the initial application form was done through Internet by the petitioner himself. The petitioner has also not stated or specified the date on which he actually came to know about the result nor has he stated any reason as to why he could not take the necessary steps between 6.5.2013 and 21.5.2013 i.e. from the date of publication of the result in the news paper. For the above reasons, the submissions of the petitioner do not deserve to be accepted.

6. It is also observed that the process of selection undertaken by the respondents is a tedious one, which requires time and meticulous scrutiny and therefore, specific and clear dates for doing particular acts like filing of applications, documents, conducting examinations, interview etc., are specified only for the purposes of ensuring that the entire selection process is transparent and fair and that equal opportunity and notice to all those who participate in the selection process is given.

7. It also goes without saying that in the instant case after declaration of the result and completing all the formalities regarding filing documents etc., the respondent PSC is required to scrutinize the documents of each and every applicant and thereafter prepare

a list, which is a time consuming meticulous process and it is for this purpose that the PSC in the instant case has specifically stated while declaring result of the main examination that the requisite formalities have to be completed by the candidate concerned latest by 21.5.2013, failing which it shall be presumed that the candidate is not interested in participating any further in the selection process. I am also of the considered opinion that this cut off date mentioned by the PSC in the result is final and binding on all concerned and should not generally be extended or relaxed in individual cases. It may however, be extended for justified reasons by the PSC itself by a general order extending the date uniformly for all the candidates concerned. If relaxation is granted or permitted in individual cases on selective basis without public notice and general relaxation, it would offend Articles 14 and 16 of the Constitution of India as it would deprive other candidates of participation, who for some reason have not been able to apply or comply with the stipulations before the cut off date and who may be more deserving and meritorious. I am inclined to say so, as the petitioner or any candidate for that matter has no indefensible, constitutional or statutory right to claim relaxation of the date only for himself except in exceptional cases of extreme hardship and injustice on account of reason beyond the control of the candidate which is not the case in the present petition, which may be granted by this Court in exercise of its extra ordinary jurisdiction.

8. From the above discussion, it is clear that any relaxation of the date in individual cases would offend Articles 14 and 16 of the Constitution of India and would also result in opening a flood gate thereby frustrating the entire selection process as well as depriving the PSC of sufficient and adequate time to scrutinize documents and applications of the candidates thereby prejudicing the fairness of selection and therefore, the prayer for sympathetic consideration made by the petitioner without any acceptable and justifiable reasons deserves to be rejected. Similar view has been taken by the Full Bench of the Patna High Court in the case of Braj Kishore Prasad and etc.etc V. State of Bihar and others reported in 1999 (2) SLR 444.

9. In the circumstances, the petition filed by the petitioner being meritless, is accordingly dismissed.

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HIGH COURT OF MADHYA PRADESH: JABALPUR
Writ Petition No. 13632 of 2013
D.D. 10.09.2013
Hon'ble Mr. Justice R.S. Jha

Satish Kumar Dwivedi & Ors. … Petitioners
Vs.
M.P. PSC & Anr. … Respondents

Answer key

Correctness of answer key – Whether Court can sit in appeal over opinion of expert committee and determine correctness of answers or otherwise, when answers in respect of questions in dispute are examined by expert committee and came to the conclusion that no change is required in the answer? No.

Held:

9. Objections in respect of these two questions are also examined by the expert committee which has not found any change in the same and the model answers i.e. option 'D' and 'C' to the questions Nos.54 and 89, respectively, are correct. The aforesaid analysis has been done by the expert committee and does not warrant any interference by this Court as this Court cannot sit over the opinion of the expert committee and determine the correct answers or otherwise."

JUDGMENT

The petitioners have filed this petition being aggrieved by the allotment of marks in the examination conducted by the M.P. State Public Service Commission for recruitment and appointment in the State Civil Services Preliminary Examination, 2012.

2. It is submitted by the learned counsel for the petitioners that the model answers approved by the respondent/State Public Service Commission for question Nos. 10, 33, 42, 55, 71 and 79 of General Knowledge Paper are wrong inasmuch as there are two possible answers to the said questions. It is submitted that the petitioners have given the right answers but are being deprived of their proper merit in the select list on account of the said ambiguity. The petitioners have also challenged non-awarding of bonus marks in question Nos. 13 and 17 in the General Aptitude Test (Set-B), on the ground that once the authorities

have decided to give bonus marks in question No. 10, they should also award bonus marks in the said two questions.

3. Looking to the contention of the petitioners, this Court had asked the respondent/ authorities to examine the matter and submit an affidavit in this regard. The respondents have filed a return as well as a detailed affidavit on 9-9-2013 in connected W.P.No 11370/ 2013.

4. Dr. Shrikrishna Sharma, the controller of examinations, who is personally appearing before this Court, submits that the Question Nos. 10, 33, 42, 55, 71, 79 and 89 in W.P.No. 13632/2013 are same and identical to the Question Nos. 30, 53, 62, 75, 91, 95, and 54 which have been assailed in W.P.No. 11370/2013 wherein this Court has upheld the stand of the respondent/P.S.C. and dismissed the petition filed by the petitioner and, therefore, the contention of the petitioners in this regard stands covered by the decision of this court in W.P.No. 11370/2013.

5. On examining the records, the contention of the learned counsel for the respondents and Dr. Shrikrishna Sharma, the controller of examinations, appears to the correct and, therefore, in view of the decision of this Court rendered in W.P.No. 11370/2013, the contention of the petitioners in this regard is rejected.

6. It is submitted by the respondents that as far as the question paper of General Aptitude Test (Set-C) is concerned, on the basis of the report of expert committee, the model answers were again amended vide Annexure P-15 and in question No. 10 the Commission decided to award bonus marks as the expert committee found that there was ambiguities in the choices given. It is stated that as the options given for questions No. 13 and 17 were not ambiguous bonus marks were not awarded for that.

7. I have also perused the averments of the learned counsel for the respondents regarding the question paper of General Aptitude and I am of the considered opinion that the authorities have rightly awarded bonus marks to all in question No. 10 to avoid any ambiguity and disadvantage to any candidate and the action being fair in this regard does

not prejudice any candidate and therefore the same does not warrant any interference by this Court.

8. The petitioners have also assailed model answers given to questions No. 54 and 89.

9. Dr. Shrikrishna Sharma, the controller of examinations, submits that the objections in respect of these two questions are also examined by the expert committee which has not found any change in the same and the model answers i.e. options "D" and "C" to the questions Nos. 54 and 89, respectively, are correct. The aforesaid analysis has been done by the expert committee and does not warrant any interference by this Court as this Court cannot sit over the opinion of the expert committee and determine the correct answers or otherwise.

10. Dr. Shrikrishna Sharma also submits that the ambiguities that have occurred in the question papers are on account of difference in the study material. He submits that in future the respondent/Public Service Commission shall ensure and try its best to see that such a situation does not arise.

11. In the aforesaid facts and circumstances of the case, I do not find any merit in the petition filed by the petitioners and therefore the same accordingly stands dismissed.

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HIGH COURT OF MADHYA PRADESH: JABALPUR.
WRIT PETITION NO.22144/2012 & Connected case
D.D. 11.09.2013
Hon'ble Mr. Justice K.K.Trivedi

Nazia Khan & Ors. … Petitioners
Vs.
State of M.P. & Ors. … Respondents

Candidature

Rejection of candidature for appointment to post of Medical Officer – Appointment to post of Medical Officer being possession of M.B.B.S. having permanent registration with the Madhya Pradesh Medical Council, as on last date for filing online application, whether rejection of candidature of petitioners, who have passed theory and practical examination of M.B.B.S. course without completing compulsory rotating internship training for a period of 12 months and possessing only provisional registration with M.P. Medical Council, as on last date for filing application can be said to have acquired essential qualification for appointment on post of Medical Officer? No. Whether rejection of candidature of such petitioners by M.P. Public Service Commission can be said to be unjustified and illegal? No.

"10. If a course of study requires a practical training before conferral of such a degree, it cannot be said that merely because a candidate has passed the theory examination, he has acquired the eligibility qualifications. The Regulations made by the State Council in this respect where the complete period of study is described, also includes the compulsory rotating internship as a part of degree as before completing the same, a degree is not to be conferred, by University. While prescribing the training period and time distribution, in the Regulations it is very categorically said that every student shall undergo a period of certified studies extending over four and half academic years divided into nine semester of six months each from the date of commencement of studies for the subject comprising the medical curriculum to the date of completion of examination and followed by one year compulsory rotating internship. It is clear that unless this rotating internship is completed a degree of MBBS will not be conferred on a candidate by the recognized University. It is further made clear in the Regulations contained in Chapter-V wherein it is prescribed that every candidate will be required, after passing the final MBBS examination, to under compulsory rotating internship to the satisfaction of the college authorities and University concerned for a period of 12 months, so as to become eligible for the award of the degree of Bachelor of Medicine and Bachelor of Surgery and full registration. This leaves no doubt that unless the rotating internship is completed, and a certificate of such satisfactory performance is not issued by the concerned college where the studies have been done by the candidate concerned, the University concerned will not confer the degree of MBBS.

The word 'degree' though no specifically mentioned in the qualifications of post mentioned in the Schedule appended to the Rules, but MBBS itself without a degree, is no qualification recognized under the 1956 Act, and therefore, mere passing of theory and

practical examination of such a medical course would not mean that the candidates have acquired the essential qualification for appointment on any such medical post."

Cases referred:

1. Shailesh Kumar Patel and others v. State of M.P. and others, W.P.No.5978/2013, decided on 02.07.2013
2. Council of Homeopathic System of Medicine, Punjab and others v. Suchintan and others, AIR 1994 SC 1761

JUDGMENT

These two writ petitions are directed against the action of the respondent No.3-Madhya Pradesh Public Service Commission (hereinafter referred to as the PSC for brevity) refusing to accept the applications submitted by the petitioners for taking part in selection for appointment on the post of Medical Officer, on the grounds that though the petitioners are fulfilling the requisite qualifications prescribed in the advertisement, but only because the petitioners are not having the permanent registration with the M.P. Medical Council, their candidature has not been considered. It is contended that in view of the fact that such condition of permanent registration with the aforesaid Council is not essential condition prescribed in the statutory Rules, the PSC has exceeded in exercise of its jurisdiction in prescribing said condition in the advertisement, and that an arbitrary act on the part of the PSC, the petitioners have been denied the opportunity to participate in selection, therefore, they are required to file the writ petition.

2. It is contended by the petitioners that they were students in the course of Bachelor of Medicine and Bachelor of Surgery (hereinafter referred to as MBBS for brevity) and have completed their studies. Since the petitioners have qualified in the final examination, they applied before the M.P. Medical Council for their registration as Medical Practitioner. The petitioners were granted a provisional registration certificate by the said Council under Section 11(3) of the M.P. Ayurvigyan Parishad Adhiniyam, 1987 (hereinafter referred to as the 1987 Act for brevity). Thus, they became eligible to take part in the aforesaid selection. The petitioners were undergoing one year compulsory rotating internship

training. In the statutory Service Rules made by the State Government in exercise of power under proviso to Article 309 of the Constitution of India, known as M.P. Public Health and Family Welfare (Gazetted) Service Rules, 1988 (hereinafter referred to as Rules for brevity), the requisite qualification for appointment on the post of Assistant Surgeon which is now designated as Medical Officer is only MBBS and not even a training prescribed. Since the petitioners have passed the MBBS course, they became eligible to take part in selection. An advertisement was issued by the PSC inviting applications for the post of Medical Officer. In the said advertisement, the last date initially prescribed for filling the on-line form was 9.11.2012 and the last date by which the written application was to be submitted was 24.11.2012. In this advertisement, it was categorically said that all those who have the requisite qualification on the last date to fill in the form on-line would be eligible to take part in the selection. This was categorically said that the MBBS or any other recognized equivalent qualification prescribed by Indian Medical Council is the minimum qualification prescribed for the said post which a candidate must possess along with a certificate of permanent registration as Medical Practitioner in the M.P. Medical Council. By an corrigendum published by the PSC, certain modification was done in the earlier advertisement with respect to grant of relaxation in age and, therefore, the last date for filling the form on-line was extended to 23.12.2012 and the last date for filing the application in writing by hand was extended to 3.1.2013. The petitioners made the application, but since their applications were not being considered, they approached the Court by way of filing the writ petition. It is contended that de hors the Rules, no such conditions could have been prescribed by the PSC in the advertisement for eligibilities of candidate to take part in selection and, as such, rejection of candidature of the petitioners was unjustified and illegal.

3. While entertaining this writ petition, by an interim order, it was directed that the petitioners be permitted to take part provisionally in the selection, but their selection would be subject to final outcome of the writ petition. Upon service of the notices on the respondents, a return has been filed by the PSC and it is contended that all the allegations made by the petitioners are misconceived. The degree of MBBS was not conferred on the petitioner and, therefore, they were not eligible on the last date of filling the on-line form

to take part in the selection initiated by the PSC for appointment on the post of Medical Officer. It is contended that only when a degree of MBBS is conferred on a candidate by the University established for the said purposes, such a candidate become eligible to be registered as a Medical Practitioner, by the M.P. Medical Council. The petitioners were undergoing the internship training which was the part of the studies of course for conferral of the degree of MBBS and were having no degree of MBBS on the last date of filling on-line form. Thus, their candidature was not to be considered at all. This being so, action has rightly been taken by the respondent PSC in refusing the petitioners to take part in the selection to be held by the PSC. That being so, it is contended that the petitions are misconceived and deserve to be dismissed.

4. Heard learned counsel for the parties at length and perused the record.

5. It is, vehemently, contended by the learned counsel for the petitioners that if the Rules prescribe only one thing that is obtaining of MBBS or equivalent qualification recognized by Medical Council of India, it was not necessary to have a degree of MBBS as the word degree was not used in the relevant column of Schedule-III of the Rules referred to herein above. It is contended that the petitioners have already passed the MBBS course successfully much before the last date of filling the form, have applied to the M.P. Medical Council for their registration as Medical Practitioner and since under the 1987 Act, such a certificate has been issued to them which clearly demonstrate that the petitioners are eligible to take part in selection for appointment in service also, it cannot be said that the petitioners were not eligible on the last date of filling the on-line form to take part in the selection commenced by the respondent No.3. It is further vehemently contended that this being not a requirement under the Rules, such a condition cannot be enforced against them. The syllabus of studies prescribed by the M.P. Medical Council, nowhere contemplates that rotating internship should have also been completed for the purposes of conferral of degree of MBBS as the internship is a phase of training wherein a graduate is expected to conduct actual practice of Medical and Health care and acquire skill in supervision so that he/she may become capable of functioning independently. It is contended that since in the Regulations made by the Council object of such a training is separately prescribed and

defined and since it has been categorically said that every candidate will be required after passing the final MBBS examination to undergo compulsory rotating internship, only for the purposes of becoming eligible for the award of degree of Bachelor of Medicine and Bachelor of Surgery and registration in the M.P. Medical Council, if the specific word degree is not mentioned in the requisite qualification prescribed under the Rules, insistence of the respondent No.3 to produce such a degree on the last date of filling the on-line form is illegal. It is, thus, contended that the petitioners are entitled to be declared as eligible candidate to take part in the selection.

6. Per contra, it is contended by Shri K.S. Wadhwa, learned standing counsel for respondent-PSC that unless there is a degree conferred, the registration of a medical practitioner is not permissible in the Council. The persons like petitioners cannot be treated to be full fledged degree holder as the rotating internship is the part of the course of study for the purposes of conferral of such a degree of MBBS. It is submitted that merely because word degree is not mentioned in the statutory Rules, where the qualification is prescribed by the State Government, it cannot be said that a candidate, who has passed only the theory examination of MBBS course would also be entitled to take part in the selection held by the PSC. This being so, specifically such a condition is mentioned indicating that under no bonafide mistake, forms may be filled in by ineligible candidates. Thus, entire claim made by the petitioners is misconceived and their petitions are liable to be dismissed. Relying in the case of Shailesh Kumar Patel and others Vs. State of M.P. and others, (Writ Petition No.5978/2013, decided on 2.7.2013), learned counsel for the respondent No.3 has contended that such a contention has already been rejected by this Court and, therefore, these petitions are also liable to be dismissed.

7. To summarize the rival submissions, it is necessary to examine the entire scope of grant of degree of MBBS course. The Parliament has enacted the Indian Council Act, 1956 (hereinafter referred to as 1956 Act). It has certain objects and reasons. The basic objects and reasons were for recognition of the Indian Medical Council, certain qualifications obtained from Medical Institutions by the citizens of India, and so also to provide for

temporary recognition of medical qualifications granted by Medical Institutions in countries outside India. With these objects the Act was made. In the definition given in Section 2(h) and 2(j) of the 1956 Act, the recognized medical qualification and State Medical Council means are defined as under :-

> "2(h) "recognised medical qualification" means any of the medical qualifications included in the Schedules;
>
> 2(j)"State Medical Council'' means a medical council constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine."

Section 11 of the 1956 Act is also relevant for the purposes of examining what are the recognized medical qualifications, to be granted by Universities or Medical Institutions in India, which read thus :-

> "11.Recognition of medical qualifications granted by Universities or medical institutions in India.-(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognized medical qualifications for the purposes of this Act.
>
> (2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognized, and the Central Government after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date."

8. Schedule-I appended with the 1956 Act describes the Universities which are required to confer the degree of MBBS. In unamended Schedule, the name of Barkatulla University, Bhopal and Jabalpur University, are mentioned. It is categorically said that the aforesaid Universities will confer the "degree" of Bachelor of Medicine and Bachelor of Surgery, which is duly recognized medical qualifications by the Indian Medical Council. The provisions of Section 15 of the 1956 Act gives certain right to the persons possessing qualification in the Schedules to be enrolled which read as under :-

"15. Right of persons possessing qualifications in the Schedules to be enrolled.

(1) Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

(2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register,-

(a) shall hold office as physician or surgeon or any other office (by) whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practice medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the Indian Evidence Act, 1872 (1 to 1872) on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

9. In light of these, if the 1987 Act is looked into, the said Act was enacted for the purposes of making the laws relating to registration of practitioners of medicine in Madhya Pradesh and for the purposes of constitution of Medical Council for the State. In this Act also the definition of recognized medical qualifications and registered practitioner have been given in Section 2(d) and (e) respectively which read thus:-

"2(d). "recognised medical qualification" means

1. any of the medical qualifications for the time being, included in the Schedules to the Indian Medical Council Act, 1956 (No.102 of 1956);

2. any of the medical qualifications specified in the Schedule;

2(e) "registered practitioner" means any person enrolled on the State Medical Register under the provisions of this Act."

A register is required to be prepared maintaining a State Medical Register of Medical Practitioner for the State as per the provisions of Section 11 of the 1987 Act. The provisions of this Section are materially important, therefore, the same are reproduced:-

> "11. Preparation of Register.-(1) The Registrar shall prepare and maintain a state medical register of medical practitioners for the State, in accordance with the provisions of this Act.
>
> (2) The State medical register shall be in such form, and shall be divided into such parts as may be prescribed. The register shall include the full name, address and qualifications of the registered practitioner, the date on which each qualification was obtained and such other particulars as may be prescribed.
>
> (3) Any person who possesses a recognized medical qualification shall at any time on an application made in the prescribed form to the Registrar and on payment of a fee as may be prescribed by regulation and on presentation of his degree or diploma, as the case may be, be entitled to have his name entered in the State medical register ordinarily within three months after completion of prescribed formalities:

Provided that if a person possesses more than recognized medical qualifications, he shall mention in the application all the recognized medical qualifications which he possesses on the date he makes the application.

Provided further that the applicant who is unable to present for sufficient cause, his degree or diploma may be granted a provisional registration for a period not exceeding one year if he satisfies the Council that he holds such a degree or diploma.

> (4) Notwithstanding anything contained in sub-section (3) the name of every person which on the day immediately preceding the date of commencement of this Act stands entered in the register kept by the Mahakoshal Medical Council or the Medical Council, Bhopal shall be entered in the State medical register prepared under this Act, without such person being required to make an application, or to pay any fee for this purpose.
>
> (5) Every registered practitioner shall be given a certificate of registration in the prescribed form. The registered practitioner shall display the certificate or certified true copy of the certificate of registration at a conspicuous part in the place of his practice."

10. Merely because a provisional certificate of registration for a period of one year is issued whether a candidate could be said to be a medical practitioner duly recognized under

the aforesaid Act or whether it can be said that he/she was possessing the recognised qualification required for such purposes. The proviso made in this respect that the provisional registration can be done is only to save the unnecessary time of getting the registration done after obtaining a degree, but it nowhere prescribes that before the conferral of a degree, any candidate becomes eligible to take part in selection. Conferral of a recognized qualifications means a conferral of a degree by a University. If a course of study requires a practical training before conferral of such a degree, it cannot be said that merely because a candidate has passed the theory examination, he has acquired the eligibility qualifications. The Regulations made by the State Council in this respect where the complete period of study is described, also includes the compulsory rotating internship as a part of degree as before completing the same, a degree is not to be conferred, by University. While prescribing the training period and time distribution, in the Regulations it is very categorically said that every student shall undergo a period of certified studies extending over four and half academic years divided into nine semester of six months each from the date of commencement of studies for the subject comprising the medical curriculum to the date of completion of examination and followed by one year compulsory rotating internship. It is clear that unless this rotating internship is completed a degree of MBBS will not be conferred on a candidate by the recognized University. It is further made clear in the Regulations contained in Chapter-V wherein it is prescribed that every candidate will be required, after passing the final MBBS examination, to undergo compulsory rotating internship to the satisfaction of the college authorities and University concerned for a period of 12 months, so as to become eligible for the award of the degree of Bachelor of Medicine and Bachelor of Surgery and full registration. This leaves no doubt that unless the rotating internship is completed, and a certificate of such satisfactory performance is not issued by the concerned college where the studies have been done by the candidate concerned, the University concerned will not confer the degree of MBBS. This particular aspect was considered by this Court in the case of Shailesh Kumar Patel and others (supra) at length though the consideration was done with respect to the conferral of a degree of Bachelor of Veterinary Science and Animal Husbandry, but the analogous provision made in the Act and the Regulations of the Council, established in that field have been interpreted. It has been categorically held by this Court that if on the last date of filling

the on-line form, such a degree was not available with a candidate, he/she was ineligible to take part in the selection.

11. Now the question is raised that since a provisional certificate was already granted by the State Council to the petitioners wherein it was said that they may take part in selection for appointment in certain services, in fact, the petitioners were to be treated as eligible to take part in the selection for appointment on the post of Medical Officer. For the said purposes, this part mentioned in the certificate of provisional registration is required to be looked into which read thus:-

> "Subject to the provisions of the said Act, this certificate is valid only for one year till the date of completion of the Compulsory Rotating Internship Training whichever earlier and for the purpose of enabling him/her to be engaged in employment in a Resident Medical Capacity in any approved Institution, or in the Medical Service of the Armed Forces of the Union and for no other purpose (i.e. Internees are not authorised to carry on Private Practice and issue the Medical Certificate)."

A plain and simple reading of this will make it clear that if a person is interested to get himself engaged as a resident medical intern in any approved institution or in the Government services of Armed Forces of Union, while undergoing the rotating internship, he/she may be allowed to do so. In fact, this residential medical capacity is also a part of the rotating internship and nothing else. It is made clear that internees were not to be allowed to private practise and to issue any medical certificate. This makes it further clear that the provisional registration was not for the purposes of taking part in any selection for appointment on any post where the qualification of MBBS is required. The petitioners cannot be said to have a full fledged MBBS till they obtained the degree from the University concerned. Now to this extent if the submission made by learned counsel for the petitioners are examined that the petitioners have passed the course examination of MBBS much earlier, could it be said that after completing of rotating internship, conferral of the degree of MBBS would have to be treated from the date they have passed the examination and when their results were declared. It is not the result of the examination only which confers a right to obtain a degree of MBBS. A satisfactory certificate of completion of rotating internship is also a part of the course for the purposes of conferral of a degree of MBBS

by the University and, therefore, doctrine of relation back would not be applicable and it cannot be said that the petitioners have obtained the qualification on the date they have passed the MBBS course examination. In the case of Council of Homeopathic System of Medicine, Punjab and others Vs. Suchintan and others (AIR 1994 SC 1761) while dealing with almost same submission, the Apex Court refused to make the application of "doctrine of relation back" in para 33 of the report which read thus :-

> "33. Supposing he passes in that subject or subjects in the supplementary examination he is declared to have passed at the examination as a whole. This should obviously be so; because once he completes all the subjects, he has to necessarily be declared to have passed. Merely on this language, "declared to have passed at the examination as a whole", we are unable to understand as to how the "doctrine of relation back" could ever be invoked. The invocation of such a doctrine leads to strange results. When a candidate completes the subjects only in the supplementary examination, then alone, he passes the examination. It is that pass which is declared. If the "doctrine of relation back" is applied, it would have the effect of deeming to have passed in the annual examination, held at the end of 12 months, which on the face of it is untrue."

12. Now it is to be seen whether the petitioner can be said to be a qualified person on the last date of filling the on-line form or not. This Court while looking into such a claim as made in the case of Shailesh Kumar Patel (supra), has considered the law laid down by the Apex Court in several cases and has held that it is the conferral of a degree which in fact granted only after the complete course of study including training, making an eligibility and therefore, even if the candidates have passed the theory papers only and are undergoing training they cannot be said to be illegible to take part in selection. This has to be seen that under 1956 Act, the Schedule-I contains the degree which are to be granted by Universities. The word "degree" though not specifically mentioned in the qualifications of post mentioned in the Schedule appended to the Rules, but MBBS itself without a degree, is no qualification recognized under the 1956 Act, and therefore, mere passing of theory and practical examination of such a medical course would not mean that the candidates have acquired the essential qualification for appointment on any such medical post.

13. In full agreement with the findings recorded by this Court in case of Shailesh Kumar Patel (supra), it is to be held in the facts and circumstances of these cases that the

petitioners were ineligible to take part in the selection so held by the PSC as they were not having the degree of MBBS on the last date of filling the on-line form for appointment on the post of Medical Officer. The claim made in this respect therefore has to be rejected and the writ petitions are liable to be dismissed. Since the petitioners were permitted to take part provisionally in the selection subject to final outcome of the present writ petitions, it cannot be commanded to the PSC to declare their result. In fact, the candidature of the petitioners are liable to be rejected as was rightly done by the PSC. However, it is submitted by learned counsel for petitioners that as many as 1416 posts were advertised by the PSC. 15Even after completing the selection hundreds of posts are lying vacant. Since the petitioners have already been permitted to take part in the selection by an interim order of this Court, after declaring their result, the respondent- State may be directed to consider the case of petitioners for grant of appointment in case they are found fit for appointment exercising the powers available under Rule 21 of the Rules. It is submitted that the specific power of relaxation is available with the State Government and looking to the fact that appointment on such posts are done after a long gap of years, such a direction could be issued to the State. This Court is unable to accept such a submission made by learned counsel for the petitioners for the simple reason that, if, the petitioners were ineligible to take part in selection, on the last date of filling the on-line form, even on the strength of interim direction issued by this Court, such ineligibility cannot be cured and no such relaxation can be granted. However, it will be open for the State to ask the PSC to re-advertise the posts which have remained unfilled even after making selection, expeditiously, looking to the fact that the facilities of treatment to the large number of population in the State is not available only because of non-availability of the doctors. However, no direction in this respect could be issued in view of the aforesaid findings.14: The writ petitions fails and are hereby dismissed. However, there shall be no order as to costs.

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MAHARASHTRA
PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
Writ Petition No.7883 of 2012
D.D. 03.12.2012
Hon'ble Mr. Justice R.M.Borde &
Hon'ble Mrs. Justice U.D.Salvi

Maharashtra PSC … Petitioner
Vs.
Tejrao Bhagaji Gadekar & Anr. … Respondents

Answer key

Evaluation of answer key – Whether the Tribunal can, in exercise of its power of judicial review, enter into the area of examining correctness of the opinion expressed by the expert committee and record a finding that the opinion given by the expert committee is incorrect? No.

The Maharashtra Public Service Commission published first answer key soliciting objections from the candidates in respect of the screening test conducted for appointment to the posts of Educational Officers. After receiving objections and on consideration of same with the assistance of experts in the field published revised key answers and the performance of the candidates was evaluated as per the revised key. Respondents challenged the correctness of some of the revised key answers provided by the Commission. The Maharashtra Administrative Tribunal took upon itself the task of examining correctness of answers and ruled that the answers provided by the Commission in the revised answer key is incorrect - Held: By relying on judgment of Hon'ble Apex Court in Himachal Pradesh Public Service Commission v. Mukesh Thakur and another, reported in (2010) 6 SCC 759, held that it was not open for the Tribunal to encroach upon the field of experts and record its own findings. The Tribunal cannot said to possess expertise to examine correctness of the answers provided by the Commission. The Tribunal has exceeded its jurisdiction while recording a finding that the answers provided by the Commission in the revised answer key are erroneous.

Cases referred:

1. Himachal Pradesh Public Service Commission v. Mukesh Thakur & another, (2010) 6 SCC 759
2. State of U.P. and another v. Johri Mal, 2004 AIR SCW 3888

JUDGMENT

R.M.Borde, J.:

1 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioner – Maharashtra Public Service Commission is taking exception to the decision rendered by the Maharashtra Administrative Tribunal, Bench at Aurangabad, in Original Application No.769/2011, decided on 13.12.2011. The Tribunal, while allowing the Original Application tendered by Respondent No.1 herein, granted a declaration that Respondent No.1 has achieved the benchmark for general category prescribed by the Commission for holding him eligible to appear for the interview.

3 The Maharashtra Public Service Commission undertook selection process for filling up 74 vacancies of the post of Education Officer in State services. The Commission conducted screening test of the candidates and results were declared on 17.07.2011. The Commission published first answer key soliciting objections from the candidates and after receiving objections and on consideration of same with the assistance of experts in the field, published a revised answer key. The performance of candidates, appearing at the examination, was evaluated as per the revised answer key.

4 Respondent No.1 herein approached Maharashtra Administrative Tribunal at Aurangabad by filing Original Application No.769/2011. It is the contention of Respondent No.1 that the revised answer key provided by the Commission is erroneous so far as it relates to three questions, namely questions at Sr.Nos.17, 53 and 118. According to Respondent No.1, he has answered all the questions correctly and that he is entitled to get more marks.

5 The Maharashtra Administrative Tribunal considered the objection raised by Respondent No.1 in respect of answer to question no.53 provided under the revised answer key and found that the answer provided by the Commission is erroneous and that the answer recorded in the first answer key is the correct answer. The Tribunal, as such, granted interim relief and directed the Commission to conduct interview of the candidate. The Tribunal took up the matter for final disposal and recorded a finding that the answers provided by the Commission in the revised answer key relating to question nos.17 and 53 are incorrect and answers provided in the first answer key were the correct answers. The Tribunal granted a declaration that Respondent No.1, on the basis of revaluation of his performance at the instance of Tribunal, has secured 97.5 marks which are above the benchmark

prescribed by the Commission and as such, he is eligible to contest further by appearing in the interview.

6 Question no.53 was, "as to which is the longest river in the World?" and options provided were, (1) Ganga, (2) Nile, (3) Amazon; and (4) Brahmaputra. The first answer key recorded the correct answer as (2) Nile, whereas, revised answer key recorded the correct answer as option no.(3) Amazon. The Tribunal took upon itself the task of examining the correctness of answer on the basis of literature relied upon by the Expert Committee and ruled that the answer provided by the Commission in the revised answer key is incorrect and that "Nile" is the longest river in the world. In paragraph no.6 of the judgment, the Tribunal has observed as below:

> "6 Firstly, about the answer to question no.53, the Commission has now placed on record (marked Exh.X) xerox copy of a document which runs into two pages. First is the noting of the Expert Committee accepting that option 3 (river Amazon) is the correct answer and not option 2 (river Nile). The second sheet is pertaining to literature relied upon by the Expert Committee and we reproduce the relevant portion as under:
>
> "The length of a river can be very hard to calculate. There are many factors, such as the source, the identification or the definition of the mouth, and the scale of measurement of the river length between source and mouth, that determine the precise meaning of "river length". As a result, the length measurements of many rivers are only approximations. In particular, there has long been disagreement as to whether the Nile or the Amazon is the world's longest river. The Nile has traditionally been considered longer, but in recent years some Brazilian and Peruvian studies have suggested that the Amazon is longer by measuring the river plus the adjacent Para estuary and the longest connecting tidal canal."
>
> From the paragraph relied upon by the Expert Committee, it is evident that, traditionally Nile river is considered as longer and it is only in recent years some Brazilian and Peruvian studies suggested that Amazon river is longer. But for the purpose of this opinion also the Brazilian and Peruvian studies have added to the length of Amazon, the adjacent Para estuary and the longest connecting tidal canal. If these details are taken into consideration, it can at least be said that while preparing question papers and first answer key; Expert Committee did not take sufficient precaution to incorporate only those questions for which answers will not be debatable. In spite of this literature, we are unable to agree with the view recorded by the Expert Committee. This is because, even Brazilian and Peruvian studies have added to the length of river Amazon the adjacent Para estuary and the longest connecting tidal canal.

> We must say that the river Nile is the correct answer and therefore applicant must get improvement of 1.25 marks for his correct answer to question no.53, since Key on that aspect is wrong, even after relying upon the literature that is referred by the Experts Committee.

7 On perusal of the reasons recorded by the Tribunal, it is evident that the Tribunal has expressed inability to agree with the view recorded by the Expert Committee and recorded its own finding that Nile is the correct answer and proceeded to award additional marks in favour of Respondent No.1. Similar is the case in respect of question no.17. While recording reasons in paragraph no.8 of the judgment, the Tribunal has recorded its disagreement with the view expressed by Expert Committee and recorded a finding that answer provided by the Commission is incorrect, whereas, answer provided in first answer key is the correct answer.

8 On perusal of the judgment delivered by the Tribunal, it is evident that the Tribunal has entered into the area of examining correctness of the opinion expressed by the Expert Committee and recorded a finding that the opinion given by the Expert Committee is incorrect. The Tribunal has taken upon itself the task of examining the literature relied upon by the Expert Committee and provided by the petitioner and has arrived at a conclusion that the answers recorded in the revised answer key, which was the basis for assessing performance of the candidate at examination, was incorrect so far as it relates to two questions, namely question no.17 and question no.53.

9 It is, thus, evident that the Tribunal has adopted role of expert and encroached upon their field while examining correctness of the answers provided by the Commission in the revised answer key. We are of the considered opinion that it was not open for the Tribunal to encroach upon the field of experts and record its own findings. The Tribunal cannot be said to possess expertise to examine correctness of the answers provided by the Commission. The Tribunal has exceeded its jurisdiction while recording a finding that the answers provided by the Commission in the revised answer key, relating to two questions, is erroneous. In this context, it would be advantageous to refer to the judgment of the Supreme Court in the matter of Himachal Pradesh Public Service Commission Vs. Mukesh Thakur & another, reported in (2010) 6 SCC 759. The Himachal Pradesh Public Service

Commission advertised 13 vacancies of Civil Judge (Junior Division) providing the eligibility criteria and mode of selection. Respondent, before the Supreme Court, tendered an application in pursuance to advertisement and was called upon to appear for written test. He failed to secure 45% marks in the paper of Civil Law II though he had secured 50% marks in aggregate. Respondent, before the Supreme Court, filed Writ Petition seeking direction for revaluation of the paper of Civil Law II and appointment to the said post as a consequential relief. The High Court directed the appellant-Commission to produce answer sheet of the Respondent and thereafter proceeded to pass an order directing the appellant-Commission to arrange for a special interview of the Respondent. The High Court recorded a finding that there is inconsistency in framing question nos.5 and 8 and in evaluation of the answers to the said questions. The High Court also directed to send answer papers of the Respondent to another examiner and on revaluation, it was found that Respondent ought to have secured 119 marks. On the basis of report of revaluation, the High Court disposed of the writ petition directing the Commission to issue letter of appointment to the Respondent.

10 The question, that arose before the Supreme Court, as to whether in the absence of there being any provision for revaluation or rechecking of answer sheets, was it permissible for the High Court to direct revaluation of the answer sheets and as to whether the Court can take the task of examiner/Selection Board upon itself and examine discrepancies and inconsistencies in the question papers and evaluation thereof. After considering rival contentions, the Honourable Supreme Court, in paragraph 20 of the judgment, has observed thus:

> "20 In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court."

11 In the reported matter, although selection process for appointment of Civil Judges was a matter of challenge before the High Court and objection was raised in respect of framing of questions in the paper of Civil Law II, still the Supreme Court ruled that it was not permissible for the High Court to examine question papers and answer sheets itself when the Commission had assessed inter se merit of the candidates. The Supreme Court has observed that had it been other subjects like Physics, Chemistry and Mathematics, it was not understood as to whether such course could have been adopted by the High Court.

12 In the instant matter, the objections raised by Respondent No.1 are referrable to the questions not concerning Law, but in respect of Subjects Geography and General Knowledge. The Tribunal took up itself the task of experts and in doing so, overruled the opinion of experts. In our opinion, the Tribunal has transgressed the limits while entertaining the challenge raised in the Original Application. Apart from this, it is also to be taken note of that whatever deficiencies, if any, are uniform to all those candidates who appeared in the examination. The Tribunal ought not to have entertained the petition of one candidate and issued directions to consider his claim. Consideration of claim of one of the candidates, amongst numerous other similarly situated candidates, is surely likely to cause injustice to those candidates who have appeared for the examination and attempted those questions. In our opinion, the Tribunal has exceeded its jurisdiction in causing interference in the matter and issuing directions to the Commission to consider claim of Respondent No.1.

13 Respondent No.1 has placed reliance on the judgment in the matter of State of U.P. and another Vs. Johri Mal, reported in 2004 AIR SCW 3888 and more particularly paragraph no.30 thereof, which reads thus:

> "30 It is well settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the

> decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Court of judicial review can reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian Administrative Law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker."

14 According to Respondent No.1, for limited extent to scrutinize the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker. It is contended that the Tribunal has not committed any error in entertaining the questions of facts while scrutinizing the decision making process. We are afraid, that the submission canvassed by the Respondent No.1, cannot be accepted for the reason that the Tribunal, in the instant matter, has assumed the role of an expert while entertaining the questions of facts and has even overruled opinion of the experts. The Tribunal cannot be said to be possessed of the expertise in the specialized field. Even in respect of matters concerning the field of Law, as opined by the Supreme Court, it is not permissible for the Courts or Tribunals to entertain the objection and substitute its own opinion in place of opinion of the experts.

15 For the reasons recorded above, the judgment and order passed by the Tribunal in Original Application No.769/2011, decided on 13.12.2011, is unsustainable and deserves to be quashed and set aside and same is accordingly quashed and set aside.

16 Rule is accordingly made absolute. There shall be no order as to costs. In view of disposal of Writ Petition, pending Civil Application Nos.10728/2012 and 10729/2012 and 13559 of 2012 do not survive and stand disposed of.

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MANIPUR
PUBLIC SERVICE COMMISSION

MANIPUR INFORMATION COMMISSION, IMPHAL
C.C.NO.15 (B)/2012
D.D. 16.03.2012
Ch. Birendra Singh, State Information Commissioner

Shri.O.Sadananda Singh … Complainant
Vs.
The SPIO/ Jt.Secy. MPSC
Manipur & Anr. … Respondents

R.T.I.

Whether Information Commission has powers to enquire into correctness of information furnished? No. Held that Commission has powers only to enquire whether correct information as sought for is furnished or not on basis of records/documents in their possession and not otherwise.

ORDERS

The SPIO represented by Shri.l.somorendro Roy, Advocate of the Chamber Shri Genanda Hijam, Advocate and the complainant appeare before this commission. Perused the statement of the Respondents dated:16.03.2012. Heard both the parties. From the statement of the complainant, it is confirmed that he received the information desired by him relating to the answer to question 184 of the General studies in Civil services Preliminary Examination conducted by the MPSCIN 2011. Further, he sought certain clarification from the MPSC vide his application dated:09.11.2011 and the same was clarified by the Secretary, MPSC vide his letter N.6/8/2011-MPSC (RTI) dated:30.01.2012. The present complaint is to direct the MPSC to provide true information and award penalty to the SPIO and FAA. The Complaint is further admitted that he received a copy of the key question No.184 as provided by the MPSC.

This Commission is not empowered under the RTI Act to enquire into the correct of the answer to question No.184 but to inquire whether correct information was furnished to the applicant as per record documents in their possession.

The complainant admitted that the correct information was furnished to him and requested for the closure of the inquiry. The request is allowed and the inquiry is closed.

Pronounced in open.

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IN THE GAUHATI HIGH COURT, IMPHAL BENCH
W.P. (C) NO.101/2008
D.D. 31.07.2012
Hon'ble Mr. Justice T.Vaiphei

Shri Moirangthem Raghumani Singh … Petitioner
Vs.
Manipur PSC & Ors. … Respondents

Appointment

Method of appointment to post of Librarian in Government Colleges – Whether Manipur Public Service Commission is justified in its recommendation that the post of Librarian in Government Colleges has to be filled up by direct recruitment as per University Grants Commission's guidelines and not by promotion from the cadre of Assistant Librarian as per Recruitment Rules of 1991 which is in force, when State of Manipur is yet to adopt U.G.C. guidelines? No. The case of petitioner, the Assistant Librarian in the taken over Government College, was sent to M.P.S.C. for its approval for promotion to the cadre of Librarian in accordance with Recruitment Rules, 1991, which was in force. However, M.P.S.C. rejected the proposal of State Government on ground that appointment to the post of Librarian is by direct recruitment as per U.G.C. guidelines and not by promotion, even though State Government is yet to adopt the U.G.C. guidelines and Recruitment Rules 1991 were still in force – In the circumstances, held that post of Librarian in Government Colleges is a promotional post and not a direct recruitment one. The recommendation of M.P.S.C., accordingly quashed with directions to reconsider the case of petitioner for promotion to the post of Librarian.

JUDGMENT

In this writ petition, the petitioner is aggrieved by the letter dated:20.09.2007 of the Manipur Public Service Commission holding that the petitioner, who is holding the post of Assistant Librarian in the Government College, does not have the essential qualification for promotion to the post of librarian as prescribed in the Recruitment Rules of 1991 and that as per the guidelines adopted by the Government of Manipur, the post of Librarian being the direct recruitment, the appointment to the post of librarian cannot be made by promotion. The background of the case is that the passed the B.Sc. examination in 1985 where after he was appointed to the post of Assistant Librarian of United Colloge, Chandel which was then under grant-in-aid stage. The college was subsequently taken over by the Government vide order dated:26.07.1996. In the year 1991, the Government published the

Recruitment Rules for the post of Librarian of Government Colleges. In the meantime, with the approval of the concerned authorities, the petitioner underwent and completed the courses of Bachelor in Library and Information Science and Master Degree in Library and Information Science in the years 1998 and 2003 respectively from Indira Gandhi National Open University. He secured 71.89% marks and 60.88% marks in the examinations respectively. He there after submitted a representation to the respondent authorities for promotion to the post of Librarian. On the basis of the representation made by him, the Department of Higher Education, Government of Manipur sent a proposal to the MPSC for considering his case for promotion to the post Librarian along with some other incumbents. As indicated earlier, his case could not be considered due to the impugned letter dated:20.09.2007 which is at Annexure, A/4 to the writ petition.

2. A usual, both the State respondents and MPSC contested the writ petition by filing their respective affidavits-in-oppositions. It is stated by Mr.Kh.Tarunkumar, learned counsel appearing for the petitioner that the MPSC has completely overlooked the UGC guidelines, which requires the appointment of Librarian by Direct Recruitment and not by promotion has not been adopted by the State Government and has also overlooked the Recruitment Rules which stipulates the essential qualification for promotion to the post of Librarian in the case of Assistant Librarian of Government Colleges is five years of regular service in the grade and not those prescribed in column No.7 of the Recruitment Rules in question.

3. In my considered opinion, there is considerable force in the contention of the learned counsel appearing for the petitioner. I have pointedly asked Mr.I.Lalitkumar, learned senior counsel appearing for the MPSC to enlighten one as to whether it is the Recruitment Rules for the post of Librarian of Government Colleges, 1991 or the UGC guidelines which is to be adopted.

4. The learned senior counsel proceeds to argue the case on the submission that UGC guidelines have been adopted by the State government. This prompted me to ask Mr.H.Devendra, learned GA to clarify this issue. Learned State counsel drawing my attention to para No.4.2 of the supplementary affidavit in opposition by the respondents No.2 and 3 points out that indeed the State Government is yet to adopt the UGC guidelines

in respect of appointment to the post of Librarian in the Government Colleges and that the Recruitment Rules, 1991 is still in force. In the light of this disclosure made by the State respondents through learned counsel appearing for the State respondents, no other contention survives for consideration. Indisputably, the State Government, which is the competent authority, has not adopted the UGC guidelines. Resultantly, the impugned letter of MPSC at Annexure, A/4 cannot be sustained and is accordingly quashed. Consequently, I hold that the post of Librarian in Government Colleges under the State Government is a promotion post and not direct recruit post and that the petitioner is well qualified to be considered for the appointment of the post of Librarian.

5. For the foregoing reasons, this writ petition succeeds. The impugned letter is hereby quashed and the MPSC shall now consider the case of the petitioner, who is eligible for appointment to the post of Librarian in Government College, for promotion to the post of Librarian in the Government College.

6. The entire exercise shall be carried out within a period of four months from the date of receipt of a copy of this judgment.

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MIZORAM
PUBLIC SERVICE COMMISSION

IN THE GAUHATI HIGH COURT
W.P. (C) No.4415 of 2008 C/W
W.P. (C) No.502 of 2009
D.D. 19.12.2013
Hon'ble Mr. Justice K.Sreedhar Rao &
Hon'ble Mr. Justice M.R.Pathak

Ms. Zairemsangpuii & Anr. … Appellants
Vs.
State of Mizoram & Ors. … Respondents

Evaluation of written papers

Method of evaluation of written papers of examination conducted for recruitment to posts of Civil Judge (Junior Division) under Mizoram Judicial Service Rules, 2006 – Whether method of evaluation of written papers adopted, as per Schedule 'B' of 2006 Rules, for evaluating performance of candidates by conversion of numerical marks into grade in a seven point scale with grade value, when the written papers are valued by a single examiner can be said to be appropriate one? No – The written paper examinations held for recruitment to post of Civil Judge (Junior Division) were valued by a single examiner and the performance of candidates in the written examination held was arrived at by adopting grade value system in that grade value 7 was given to candidates securing 70% and above, and grade value 6 was given to persons who secured between 65% and 69% of marks, grade value 5 was given to candidates, who secured marks between 60% & 64%, grade value 4 was given to persons, who secured marks between 55% and 59% and grade value 3 was given to those who secured marks between 50% and 54% etc., indicating that persons getting lesser marks and higher marks in the same grade are given same grade value which is violative of Art. 14 of the Constitution – In the circumstances, held that application of formula of assessing the merits of candidates as contained in Schedule 'B' of 2006 Rules bad in law and accordingly it is struck down – By following the decision of Hon'ble Apex Court in Sanjay Singh & Another v. U.P. Public Service Commission, Allahabad and another, reported in (2007) 3 SCC 720, directed to follow moderation formula for assessment of merits of candidates and selections made in accordance with law. Further held that persons who have already been selected and in service for the past 5 years shall not be disturbed and petitioners appointed to vacant posts if they are found eligible.

Cases referred

1. U.P. Public Service Commission v. Subhash Chandra Dixit and others, (2003) 12 SCC 701
2. Sanjay Singh & Another v. U.P. Public Service Commission, Allahabad and another, (2007) 3 SCC 720

JUDGMENT

Sreedhar Rao, J.

The facts and subject matter of both the petitions are similar; hence, both the petitions are heard together. In both the petitions, the validity of Mizoram Judicial Service Rules, 2006 (for short, 2006 Rules) and the method of selection to the post of Civil Judges conducted in the year 2008 are under challenge.

2. The petitioners contend that the formula given in the Rule for assessment of the merit of a candidate at the written test is illegal and arbitrary and violates Article 14 of the Indian Constitution. The petitioners submit that by adopting the formula, the candidates, who have secured less mark in the written examination, have been selected whereas the petitioners securing the higher marks than the selected ones have been denied appointment. Hence, the selection of the Civil Judges held in the year 2008, is assailed as illegal.

3. In WP(C) No.4415 of 2008, the respondent Nos.1 and 2 are the State Authorities and the respondent No.3 is the Chairperson, Mizoram Public Service Commission, the respondent Nos.4 to 20 are the selected candidates and respondent No.21 is the Gauhati High Court. In WP(C) No.502 of 2009, the respondent Nos.5 to 16, who are called for the interview on the basis of the marks obtained in the written examination, are the finally selected candidates and respondent No.4 is the Gauhati High Court. The validity of the 2006 Rules and selection process is under challenge in both the petitions.

4. In the course of the proceeding in WP(C) No.4415 of 2008, the petitioners nos.1 to 4 have withdrawn the petition.

5. Rules 9 to 11 of 2006 Rules prescribes that direct recruitment to the Civil Judges would be on the basis of aggregate marks obtained in a competitive examination by the Commission as indicated in Schedule B of the Rules. Rules 9 and 11 and also the relevant portion of the Schedule B are extracted hereunder:

> "9. Method of Recruitment, Qualification and Age Limit: In respect of each category of the Cadre specified in Column (2) of the Table below, the method of recruitment and minimum qualification, age limit etc., are as shown in the corresponding entries in columns (3) and (4) thereof.
>
> Provided that the High Court shall have the power to relax the qualifying service of Judicial Officer for the purpose of promotion in case the same is considered necessary in the interest of service.

Sl.No.	Cadre	Method of recruitment	Qualification, age limit etc.
1.	District Judge	Not exceeding 25% of the posts in the cadre may be filled by direct recruitment on the basis of the aggregate marks/ grade secured in a competitive examination conducted by the High Court as specified in Schedule-B of these rules. (ii) ……..... (iii) …….....	By direct recruitment1. Must be holder of degree in Law of a recognized University.2. Must be practicing as and Advocate in courts of Civil and Criminal jurisdiction on the last date fixed for receipt of applications and must have so practiced for a period of not less than seven years as on such date.3. Must have attained the age of 35 (thirty five) years and must not have attained the age of 48 (forty eight) years in the case of candidates belonging to Scheduled Tribes and forty five years in the case of others, as on the last date fixed for receipt of applications.4. Must possess knowledge of Mizo Language at least Middle School standard. 1. …….. 1. ……..
2.	Civil Judge (Sr. Dvn.)	By promotion from the cadre of Civil Judges of the service on the basis of merit-cum-seniority by the High Court following the criteria in Schedule-E.	By Promotion:1. Must have been in the Cadre of Civil Judge for a period not less than 7 years regular service.
3.	Civil Judge	By direct recruitment on the basis of aggregate marks obtained in a competitive examination conducted by the Commission as indicated in Schedule-B of these rules.	By direct recruitment:1. Must be holder of degree in Law of a recognized University.2. Must not have attained the age of 35 (thirty five) years.3. Must not have completed 40 years of age in the case of candidates belonging to Scheduled Castes or Scheduled Tribes and 35 years of age in the case of others as on the last date fixed for receipt of applications.4. Must possess knowledge of Mizo language of at least Middle standard.

11. Recruitment: (1) To fill a vacancy required to be filled by promotion, the recruiting authority shall take all necessary steps well in advance so as to finalise the list of person considered eligible for promotion at least 10-15 days before the occurrence of the vacancy.

(2)(i) Whenever two or more vacancies required to be filled by direct recruitment occurs in a cadre in the service or once in two years, whichever is earlier, the recruiting authority shall, invite by advertisement and in at least two Local/National news papers in two consecutive issue, applications in such form as it may determine from intending candidates, who possess the prescribed qualifications. The advertisement shall indicate the number of vacancies and shall contain all necessary information relating to the recruitment. It shall also indicate that an additional list of selected candidates would be prepared as per clause (iv).

(ii) The decision of the recruiting authority as to the eligibility or otherwise of a candidate for admission to the written and viva voce examination shall be final. No candidate to whom Certificate of admission has not been issued by the recruiting authority shall be admitted for the examination.

(iii) The recruiting authority shall, on the basis of cumulative grade value secured by a candidate, prepare in the order of merit, assessed as provided in Schedule-B; a list of candidates to be included in the list which shall be equal to the number of vacancies notified.

(iv) The recruiting authority shall, in accordance with the provisions of clause (iii), also prepare an additional list of names of candidates not included in the list of candidates prepared under clause (iii) above, for which the number of candidates to be included, shall, as far as possible, be ten percent of the number of vacancies notified for recruitment or one, whichever is higher.

(v) The lists so prepared under clauses (iii) and (iv) above shall be published for general information and they shall cease to be operative on the expiry of one year from the date of such publication.

(vi) Candidates whose names are included in the list prepared under clause (iii) above shall be considered for appointment in the order in which their names appear in the list and subject to rule 10, they may be appointed by the appointing authority in the vacancies notified under clause (i) above. Candidates whose names are included in the additional list prepared under clause (iv) may be similarly appointed after the candidates whose names are included in the list published under clause (iii) above have been appointed.

(vii) Inclusion of the name of a candidate in any list prepared under clause (iii) or (iv) above shall not confer any right of appointment to such candidates."

SCHEDULE 'B'

Evaluating performance in Competitive Examination for appointment to the Judicial Service

The system operates as follows:

1. The question in the question paper may carry numerical marks for each question.

2. The examiner may assign numerical marks for each sub-question which may be totaled up and shown against each full question in numbers.

3. The tabulator will then convert the numerical marks into grade in a seven point scale with corresponding grade values as follows:-

Percentage of marks	**Grade**	**Grade Value**
70% and above	O	7
65% to 69%	A+	6
60% to 64%	A	5
55% to 59%	B+	4
50% to 54%	B	3
45% to 49%	C+	2
40% to 44%	C	1
Below 40%	F	0

6. Mr. KN Choudhury, Additional Advocate General, Assam, Mr, MK Sharma, Advocate General, Mizoram, Mr S.Shyam, Standing Counsel, Gauhati High Court, Mr. AM Buzarbaruah, Additional Advocate General, Arunachal Pradesh, Ms. T.Khro, Senior Govt. Advocate, Nagaland and Mr M Das, Advocate of the private respondent have addressed their arguments. Mr. B.Chakraborty, counsel for the petitioners has argued for the petitioners in both the writ petitions.

7. It is the contention on the part of the State authorities that the selection process has been conducted strictly in compliance with the prescribed Rules. The Rules have also been

framed in consultation with the High Court, therefore, there is no flaw in the method of selection, nor there is any mala fide. The formula provided in the Rules for assessing the merit of the candidate at written examination is followed. The formula has been prescribed in accordance with the decision of the Supreme Court, in U.P. Public Service Commission v. Subhash Chandra Dixit and Others, reported in (2003) 12 SCC 701, the method of scaling formula has been approved to be a valid method in assessing the merit, when the papers are valued by different examiners in order to obviate the examiner variability, the scaling formula has been held to be a proper method for assessment of merit at the written examination. The formula given in the Rules broadly corresponds to the scaling method and it has been approved by the Supreme Court in Subhash Chandra Dixit case. Therefore, the petitioners are neither entitled to challenge the validity of the Rules nor the selection process, based on the Rules.

8. Sri. KN Choudhry also relied upon the decision of the Supreme Court in Sanjay Singh and Another v. U.P. Public Service Commission, Allahabad and Another, reported in (2007) 3 SCC 720, to contend that in order to overcome the examiner variability, the Supreme Court has laid down two methods to obviate the anomalies, one being the moderation and the other being scaling method. In that view of the matter, it is strenuously submitted that the selection process is done well in accordance with law and that the Rule, in question is intra vires.

9. The facts of the case disclose that the notification was issued for filling up of 13 posts and total 72 candidates had appeared in the written test. Out of 17 candidates, who have been called for interview, 12 candidates were selected, who are respondent Nos.5 to 16 in WP(C) No.502 of 2009.

10. The tabular columns of the names of the candidates in WP(C) No.4415 of 2008, who appeared in the examination and the raw marks obtained by them at the examination and the grades given to them as per the formula envisaged in the Rule is extracted below:

Sl. No.	Roll No.	Name	GK	Eng.	Law-I	Law-II	Total	%age	CGVA	Viva	Grand Total
Petitioner/Appellant/Applicant Marks obtained											
1	24	Hmingthanpuii Ralto	36	22	53	55	166	41.5	2.84		
2	68	R.Lalhmingmawia	30	24	53	52	159	39.75	2.37		
3	52	Lalrinpuii	35	48	52	50	185	46.25	2.98		
4	18	H.Lalchhuanawma	44	25	48	46	163	40.75	2.95		
5	92	Zairemsangpuii	25	13	52	48	138	34.5	2.07		
5	85	Vanlalhlimpuii	33	36	47	40	156	39	2.49		
Respondent/Opposite Party Marks obtained											
1	4	Birthoilal Sakadchep	42	21	55	53	171	42.75	3.21	39.5	210.5
2	6	C.Lalromruati	42	32	54	52	180	45	3.08	30.5	210.5
3	8	C.Lalzamliana	49	22	54	48	173	43.25	3.26	27	200
4	14	F.Lalengliana	47	35	42	37	161	40.25	3.23	39	200
5	17	Gracy.L.Bawillung	43	36	49	54	182	45.5	3.15	49	231
6	31	Joseph lalreniliana	42	43	41	40	166	41.5	3.18	40	206
7	33	Julie Lalrinzami	39	47	64	57	207	51.75	3.50	46	253
8	37	K.Lalnunhlima	49	35	48	48	180	45	3.21	29.5	209.5
9	42	Laldinpuia Tlua	50	38	50	42	180	45	3.28	50.5	230.5
10	47	Lalngaihmawia Xotc	62	41	52	52	207	51.75	3.77	44	251
11	49	Lalramsanga	46	43	49	54	192	48	3.43	38	230
12	54	Lalrochami Ralte	41	35	55	46	177	44.25	3.13	50	227
13	65	Ngursangzuali Sallo	37	31	60	55	183	45.75	3.11	52	235
14	72	R.Malsawmdawngzuala	44	27	50	51	172	43	3.13	36.5	208.5
15	83	T.Lalhmachhuana	46	26	43	50.5	165.5	41.375	3.23	44.5	210
16	84	Thomas Lalrammawia	41	37	49	46	173	43.25	3.17	35.5	208.5
17	90	Vincent Lalrokima	51	33	55	39	178	44.5	3.30	43.5	221.5

11. In WP(C) No.502 of 2009, the petitioner had obtained 177 raw marks in the written examination and according to the formula; she was given grade C+. All the petitioners, because of the low grade obtained compared to the respondents, who obtained the higher grade, are not called for interview.

12. In the present case, the valuation of the papers have been done only by one examiner, no multiple examiners have valued the same subject paper. The Supreme Court, in Sanjay Singh case has copiously analyzed the law in respect of valuation of the written papers, the pros and cons of the moderation method and scaling method is discussed with reference to examiner variability. It is taken into consideration that when one subject paper

is valued by multiple examiners, there would be non-congruence in assessment of the merit. Some examiner may be strict and some examiner may be liberal. In order to obviate the anomalies, a system of scaling method or a moderation method is adopted by the Public Service Commission in Subhash Chandra Dixit case, the Supreme Court had approved the scaling method when multiple examiners evaluate the same subject paper. However, in Sanjay Singh case, the Supreme Court has made a deep analysis of the merits and demerits of the scaling method in order to overcome the problem of examiner variability. The Supreme Court suggested that moderation method would be more appropriate to overcome the problem of examiner variability. The Supreme Court has also practically considered a different situation with illustrations in the judgment to come to the conclusion that the scaling method has lot of limitations and demerits and is not effective enough to overcome the problem of examiner variability, thus, suggested that moderation method would be more appropriate.

13. The Supreme Court in paragraphs 23 and 33 of Sanjay Singh case has made the following observations:

> "23. When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer scripts among several examiners for valuation with the paper setter (or other senior person) acting as the Head Examiner. When more than one examiner evaluate the answer scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer scripts. Inevitably therefore, even when experienced examines receive equal batches of answer scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is 'Hawk-Dove' effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer scripts is given to different examiners, there is all likelihood of different marks being assigned.

If a very well written answer script goes to a strict examiner and a mediocre answer script goes to a liberal examiner, the mediocre answer script may be awarded more marks than the excellent answer script. In other words there is 'reduced valuation' by a strict examiner and 'enhanced valuation' by a liberal examiner. This is known as 'examiner variability' or 'Hawk-Dove effect'. Therefore, there is a need to evolve a procedure to ensure uniformity inter se the Examiners so that the effect of 'examiner subjectivity' or 'examiner variability' is minimized. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows:

(i) The paper setter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/ scholars/senior civil servants/judges. Where the case of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer scripts for valuation.

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer scripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or erraticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top level answer scripts and some answer books selected at random from the batches of answer scripts valued by each examiner. The top level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest

and lowest award of marks etc., may also be prepared in respect of the valuation of each examiner.)

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggest upward or down ward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer scripts valued by such examiner are revalued either by the Head Examiner or any other Examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult to one Head Examiner to assess the work of all the Examiners. In such a situation, one more level or Examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.

The above procedure of 'moderation' would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.

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33. The reason given for introducing scaling is to cure the disparity of account of strictness or liberality of the examiners. But the effect of the scaling formula adopted by the Commission is to average the marks of a batch of candidates and convert the raw marks of candidates and convert the raw marks with reference to the average marks of the batch and the standard deviation. The scaling formula therefore, does not address or rectify the effect of strictness or liberality of the examiner. The scaling formula is more suited and appropriate to find a common base and inter se merit, where candidates take examinations in different subjects. As the scaling formula has no nexus or

> relevance to give a solution to the problem of eliminating the variation or deviation in the standard of valuation of answer scripts by different examiners either on account of strictness or liberality, it has to be concluded that scaling is based on irrelevant considerations and ignores relevant considerations."

14. In the context of the law laid down by the Supreme Court, the present formula prescribed in the Rules for assessment of the merit of the candidate at the written examination, if considered, the Rule appears to be illegal and ultra vires the Constitution.

15. Grade value 7 is given to candidates, who secure 70% and above marks, Grade Value 6 is given to persons, who secure between 65% and 69% of marks. Grade Value 5 is given to candidates, who secure marks between 60% and 64%, Grade Value 4 is given to person, whose marks is between 55% and 59%, Grade Value 3 is for candidates, whose mark is between 50% and 54%, Grade Value 2 is given to those, whose mark is between 45% and 49% and whose mark is between 40% and 44%, the Grade Value is 1. The formula virtually is akin to the scaling method. Although candidates, who secure more raw marks in the written examination by virtue of scaling down, they will be put on at par with the persons, who secure minimum marks of that Grade. There appears to be no rational in the Rule to keep the persons, getting lesser marks, with the persons getting higher marks in the same Grade at the written examination. The formula, which directs reducing the raw marks and placing the candidates getting higher marks with candidates getting lesser marks at the same Grade, is discriminatory and violative of Article 14 while assessing the merit of the candidate.

16. In fact, scaling and moderation method are to be adopted when a subject paper is valued by more than one examiner. In the instant case, only one examiner has valued the subject papers, therefore, question of examiner variability does not arise. The formula, without taking into consideration the applicability of examiner variability directing the Grading method, which is fallacious and arbitrary reduces the marks of the candidates and keeps on par with persons, who scored the lowest marks in that Grade. The Grading formula prescribed in the Rule is akin to the scaling method. It may be that a candidate, who scores the highest mark in the Grade and his paper might have been valued by a person, who is supposed to be a strict examiner and a person, who gets the lowest mark in the Grade,

his paper might have been valued by a liberal examiner. There cannot be any presumption that the person secured higher or the highest mark in the Grade, his paper is valued by a liberal examiner, thereby arbitrary scaling down the mark of a person in a Grade and make it level with the lowest mark, is arbitrary and violates Article 14 of the Constitution. More so, in the present case, there is no problem of examiner variability. Therefore, the application of the formula of assessing the merit at the written test is bad in law and therefore, the formula suggested in the Rule to that extent, is violative of Article 14 of the Constitution and accordingly struck down.

17. As suggested by the Supreme Court, when there are multiple examiners valuing the same subject paper, moderation formula is to be adopted and it is held to be more suitable and proved to be the best formula in assessment of the merit. The law laid down by the Supreme Court in Sanjay Singh case necessarily has to be followed being the law of the land under Article 141 of the Constitution of India.

18. The petitioner Nos.2 and 3 in WP(C) No.4415 of 2008, in fact, have obtained higher raw marks than the candidates, who are called for interview and the petitioner No.1 has secured low marks equivalent to respondent No.9, who is called for interview. The other petitioners are concerned; the marks obtained by them are below the marks obtained by the respondents, who are called for interview. Since the petitioner Nos.1 to 4 in WP (C) No.4415 of 2008 have withdrawn the petition, therefore, their petition have to be dismissed and other petitioners, who are prosecuting would not be entitled to any relief because the raw marks obtained them are below the raw marks obtained by the respondents. Accordingly the WP (C) No.4415 of 2008.

19. In WP (C) No.502 of 2009, the raw marks obtained by the petitioner is higher than some of the respondents, who are called for the interview, therefore, it is just and necessary that the petitioner should be interviewed and upon assessment of her merit in viva voce, the selection is to be made in accordance with law.

20. The respondents, who are selected, are already in service for the past 5 years. The Supreme Court in Sanjay Singh case in a similar situation held that the persons, who have

been selected, need not be disturbed and directed that the petitioners in the cited case should be appointed to the vacant post.

21. In the present case, the total cadre strength is 34, 13 posts are filled up in respect of 21 posts, stay has been granted by the Supreme Court for selection. In that view of the matter, it is directed that in the event the petitioner becomes eligible for selection, subject to her performance in viva voce, the State shall create superannuary (sic. Supernumerary) post and shall appoint the petitioner in WP (C) No.502 of 2009, subject to the result of the case pending before the Supreme Court with reference to 21posts where stay is granted. In the event appointments of these petitioners to superannuary (sic. Supernumerary) posts in future, it can be adjusted towards the regular vacancies.

22. Accordingly the WP (C) No.502 of 2009 is allowed in the terms indicated above.

23. The ratio laid down shall have prospective application for future appointment and it will not affect the appointments already made.

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PUNJAB
PUBLIC SERVICE COMMISSION

Civil Appellate Jurisdiction
Civil Appeal No.7640 of 2011 & Connected matters
(Arising out of SLPs (C) Nos.22010-12 of 2011)
D.D. 15.02.2013 [(2013) 5 SCC 1]
Hon'ble Mr. Justice A. K. PATNAIK and Madan B.Lokur, JJ.

State of Punjab … Appellant
Vs.
Salil Sabhlok & ors. … Respondents

A. Constitution of India – Arts. 316, 315, 318, 320, 226, 32 and 136 – Chairman/ Members of Public Service Commission (PSC) – Appointment of – Requirement (1): Integrity and competence of candidates/appointees; Requirement (2): qualifications and experience of candidates/appointees; Requirement (3): Method for identification of persons with integrity and competence; and Requirement (4): Procedure for selection and appointment – Relative meaning and scope of Requirements (1), (2), (3) and (4) – Authorities competent in respect of prescribing/laying down Requirements (1), (2), (3) and (4)

- Held, Requirement (1) is distinct from Requirement (2) – Requirement (1) is inherently contained in and is implicit in the Constitution, needs no prescription and must be mandatorily complied with in every case, though with sufficient elbow room for executive as long as constitutional, functional and institutional requirements are met and appointments are in conformity with principles laid down by Supreme Court from time to time – Appointment of a person who does not possess integrity and competence would be invalid and shall be struck down by Court, as rightly done by Division Bench of High Court herein [See Short note B] – As held in Mehar Singh Saini, In re, (2010) 13 SCC 586, prescription of requirement (2) however is a legislative function [See Short notes I and K]

- Requirement (3) is also distinct from Requirement (4) – Court can prescribe guidelines for Requirement (3), as have been laid down herein, that there must be: (a) a meaningful and effective consultative/deliberative process, and (b) constitutional, functional and institutional requirements of PSC must be duly considered – Both (a) and (b) are susceptible to judicial review and Court can examine whether there has been a meaningful and effective consultative/deliberative process and whether relevant material and vital aspects having nexus with the objectives of the constitutional post have been taken into account [See Short note B] – Requirement (4) however is in the domain of legislature and executive and Court cannot frame selection and appointment procedure (as erroneously done by Full Bench of High Court herein) nor direct legislature to pass legislation, but Court can direct State Government to lay down executive guidelines within a specified period, as also directed herein, so that constitutional imperative of proper appointments of Chairman/Members of PSC [See Short notes I and K] – Constitutional law - Constitutional Office/Post – Public Accountability, Vigilance and Prevision of Corruption – Public Office/Servant – High Public Office – Appointment to – Mandatory inherent and ineluctable norms for – Rule of Law.

B. Constitution of India – Arts. 316, 315, 320, 226, 32 and 136 – Appointment of Chairman/Members of State Public Service Commission (PSC) – Qualities necessary for/ Implied relevant considerations for – Parameters of (1) Integrity and (2) Functional/ Institutional competence and experience of public administration – Mode of ascertainment of – Non-consideration of said parameters – "Thorough and meticulous inquiry and scrutiny" requirement laid down in Inderpreet Singh Kahlon, (2006) 11 SCC 356 – Need for compliance with – Scope of interference/judicial review

- Held, vital and mandatory requirements for appointment of PSC are that personally Chairman/Member should be beyond reproach and his/her appointment should inspire public confidence in the institution of PSC – (A) Integrity of Chairman/Member can be ascertained through a meaningful and effective consultative/deliberative process – (B) That the appointment inspires public confidence can be determined by taking into account the constitutional, functional and institutional requirements necessary for appointment as Chairman/Member of PSC – Both (A) and (B) are susceptible to judicial review and Court can examine whether there has been a meaningful and effective consultative/deliberative process and whether relevant material and vital aspects having nexus with the objects of the constitutional post have been taken into account

- Even where a procedure has not been laid down by Governor for appointment of Chairman/Members of PSC, State Government is only permitted to select persons with integrity and functional/institutional competence, because discretion vested in State Government under Art. 316 is impliedly limited by very nature of duties entrusted to Public Service Commissions under Art. 320 - Even though Art. 316 does not specify above said qualifies as parameters for appointment of Chairman/Members of PSC, these are amongst the implied relevant factors which have to be taken into consideration by Statement Government while determining competency of person to be selected and appointed as Chairman/Members of PSC- If it is shown that above said material and vital relevant factors have not been considered by State Government and/or there has not been a meaningful and effective consultative/deliberative process in regard thereto, selection and appointment would be invalid and High Court can quash the same

- On facts, D and BA and LLB Degrees and was practising as an Advocate at District Courts and had been elected as President of District Bar Association and had been an MLA (of current political party in power which had sought to appoint him as Chairman of PSC) – Held, these do not indicate that D had any knowledge or experience whatsoever either in administration or in recruitment nor the required qualities to perform duties as Chairman of PSC – The "thorough and meticulous inquiry and scrutiny requirement laid down in Inderpreet Singh Kahlon, (2006) 11 SCC 356 was not at all met – Thus there was no deliberative process, and constitutional, functional and institutional requirements of PSC were not kept in mind when D was recommended for appointment as its Chairman, hence, D's appointment was deservedly declared as quashed by High Court – Constitutional Law – Constitutional Office/Post – Appointment to – Mandatory inherent and ineluctable requirements of - Rule of law

C. Constitution of India – Arts. 316, 315, 317, 319, 320, 322 and 323 – Chairman/ Members of Public Service Commission (PSC) – Nature of post and appointment thereto,

explained and distinguished from appointment to an administrative post – Constitutional office not a post in connection with affairs of Union or State – Inapplicability of service laws to - Government's discretion in appointment of Chairman/Members – Scope of – Discretion of Government in regard to "suitability" of candidate/appointee, if any – Held, Chairman and Members of PSC occupy a constitutional post and are not government servants, in the sense of there being a master and servant relationship between union/State and Chairman/Members of PSC – Hence, appointment of a person as Chairman is not a "service matter"

- Furthermore, relevance of "suitability/compatibility of appointee" and State Government, held, does not arise re Chairman/Member of PSC as it is a constitutional post – Chairman of PSC does not function at pleasure of Chief Minister/State Government – Independence of post of Chairman/Member of PSC cannot be overlooked – Lastly, appointment to that position cannot be made on considerations other than in public interest – Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 – Regns.2(c) & 4 and Appendix A – Words and Phrases – "Service matter" and "government servant" – Constitutional Law – Constitutional Office/Post – Nature of

D. Constitutional Law – Grant and Separation of powers – Generally – Implied restrictions on constitutionally or statutorily conferred discretionary power – Judicial review on grounds of – Besides express restrictions in Constitution or a statue and constitutional or statutory authority cannot exercise its discretionary power in breach of such implied restrictions – Administrative Law – Administrative Action – Administrative or Executive Function – Exercise of Power/Discretionary Power – Implied restrictions on – Constitution of India – Arts. 14, 226, 32, 136, 315, 316 and 320 – Ultra Vires – Grounds for Plea of Ultra Vires – Violation of Express or Implied Limitations

E. Constitution of India – Arts. 226, 136, 14, 32, 315, 316, 317, 318, 319 and 320 – PIL – Maintainability – Locus standi – Appointment of Chairman/Member of Public Service Commission (PSC) – Writ petitioner espousing cause of general public to ensure a person appointed as Chairman of PSC is a man of integrity and competence, recruitment to public services is fair and not influenced by politics and extraneous considerations – PIL impugning validity of appointment of Chairman and for a mandamus to State Government to frame regulations governing the conditions of service and appointment of Chairman/ Members of PSC – Held, writ petition does not concern just a service matter where only aggrieved party has locus to initiate legal action in court of law – It is a matter affecting interest of the general public and any member of the public can espouse such cause so long as his bona fides are not in doubt – Hence the present writ petition was clearly maintainable – Constitutional Law – Constitutional Office/Post – Appointment to – Locus standi to challenge

F. Constitution of India – Arts. 226, 32, 136, 315 and 317 – PIL – Maintainability – Writ of quo warranto or writ of declaration or any other writ/direction – Challenge to validity of appointment or Chairman/Member of Public Service Commission (PSC) – Grounds – Parameters of integrity and competence not considered by Governor/State Government while appointing Chairman/Member of PSC – Absence of violation of any statutory criterion/procedure (as no applicable statutory criterion/procedure existed)- Relief – Writ

of declaration issued quashing invalid appointment as writ of quo warranto was not technically maintainable in facts of present case (though in principle it was)

G. Constitution of India – Arts.226, 32, and 136 – Quo warranto – Writ of – Maintainability – Moulding of relief – Writ of declaration when may be issued in place of writ of quo warranto

H. Constitution of India – Arts. 226, 32 and 136 – Declaration – Writ of – Nature, scope and when may be issued

Partly allowing the appeals, the Supreme Court

Held:

Per Patnaik J.

It is for the Governor who is the appointing authority under Article 316 of the Constitution to lay down the procedure for appointment of the Chairman and Members of the Public Service Commission, but this is not to say that in the absence of any procedure laid down by the Governor for appointment of Chairman and Members of the Public Service Commission under Article 316 of the Constitution, the State Government would have absolute discretion in selecting and appointing any person as the Chairman of the State Public Service Commission. Even where a procedure has not been laid down by the Governor for appointment of Chairman and Members of the Public Service Commission, the State Government has to select only persons with integrity and competence for appointment as Chairman of the Public Service Commission, because the discretion vested in the State Government under Article 316 of the Constitution is impliedly limited by the purposes for which the discretion is vested and the purposes are discernible from the functions of the Public Service Commissions enumerated in Article 320 of the Constitution. In such matters, the State Public Service Commission is expected to act with independence from the State Government and with fairness, besides competence and maturity acquired through knowledge and experience of public administration. Therefore, even though Article 316 does not specify the aforesaid qualities of the Chairman of a Public Service Commission, these qualities are amongst the implied relevant factors which have to be taken into consideration by the Government while determining the competency of the person to be selected and appointed as Chairman of the Public Service Commission under Article 316 of the Constitution. Accordingly, if these relevant factors are not taken into consideration by the State Government while selecting and appointing the Chairman of the Public Service Commission, the Court can hold the selection and appointment as not in accordance with the Constitution and set them aside, as was rightly done by the High Court in the present case. (Paras 45 and 46)

Besides express restrictions in the Constitution or a statute, there can be implied restrictions in a statute and the Constitutional or the statutory authority cannot in breach of such implied restrictions exercise its discretionary power. Moreover, Article 226 of the Constitution vests in the High Court the power to issue to any person or authority,

including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. The power of the High Court under Article 226 of the Constitution is, thus, not confined to only the writ of quo warranto but to other directions, orders or writs. (Paras 50)

Though the High Court should not normally, in exercise of its power under Article 226 of the Constitution, interfere with the discretion of the State Government in selecting and appointing the Chairman of the State Public Service Commission, but in an exceptional case if it is shown that relevant factors implied from the very nature of the duties entrusted to Public Service Commissions under Article 320 of the Constitution have not been considered by the State Government in selecting and appointing the Chairman of the State Public Service Commission, the High Court can invoke its wide and extraordinary powers under Article 226 of the Constitution and quash the selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the Constitution. (Para 52)

There is no doubt that the respondent No.1 has filed this writ petition for espousing the cause of the general public of the State of Punjab with a view to ensure that a person appointed as the Chairman of the Punjab Public Service Commission is a man of ability and integrity so that recruitment to public services in the State of Punjab are from the best available talents and is fair and is not influenced by politics and extraneous considerations. Considering the averments in the writ petition, it cannot be held that the writ petition is just a service matter in which only the aggrieved party has the locus to initiate a legal action in the court of law. The writ petition is a matter affecting interest of the general public and any member of the public can espouse the cause of the general public so long as his bona fides are not in doubt. (Paras 26 to 29)

Considering this experience of the damage to recruitment to public services caused by appointing a person lacking in character as the Chairman of the Public Service Commission in the State of Punjab during the period 1996-2002 and as recorded in Inderpreet Singh Kahlon, (2006) 11 SCC 356, when respondent No.1 brought to the notice of the High Court through the writ petition that the State Government of Punjab proposed to appoint Mr. Harish Dhanda as the Chairman of the Public Service Commission only because of his political affiliation, the Division Bench of the High Court rightly entertained the writ petition as a public interest litigation and quashed the appointment of D. (Paras 43 and 44)

The State of Punjab produced the material on the basis of which D was selected for appointment as Chairman of the Punjab Public Service Commission. The aforesaid materials indicate that D had B.A. and LL.B Degrees and was practicing as an Advocate at the District Courts and had been elected as the President of the District Bar Association for seven terms and had been Member of the Legislative Assembly. These materials do not indicate that he had any knowledge or experience whatsoever either in administration or in recruitment nor do these materials indicate that he had the qualities to perform the duties as the Chairman of the State Public Service Commission under Article 320 of the Constitution. No other information has also been placed on record to show that D has

the positive qualities to perform the duties of the office of the Chairman of the State Public Service Commission under Article 320 of the Constitution. The decision of the State Government to appoint D as the Chairman of the Punjab Public Service Commission under Article 320 of the Constitution. The decision of the State Government to appoint D as the Chairman of the Punjab Public Service Commission was thus invalid for non-consideration of relevant factors implied from the very nature of the duties entrusted to the Public Service Commissions under Article 320 of the Constitution. Hence, the Division Bench of the High Court rightly quashed the selection and appointment of D as Chairman of the Punjab Public Service Commission. (Paras 53 to 55)

Per Lokur, J. (concurring)

The High Court could have and in this case has rightly interfered in the appointment of D as Chairman of the Punjab Public Service Commission. Furthermore, the appointment of the Chairman of the Punjab Public Service Commission is not a "service matter" and so a public interest litigation could have been entertained by the High Court. (Paras 58 and 60)

The Chairperson of a Public Service Commission holds a constitutional position and not a statutory post. The significance of this is that the eligibility parameters or selection indicators for appointment to a statutory post are quite different and distinct from the parameters and indicators for appointment to a constitutional position. The appointment of a person to a constitutional post is not a "service matter". The expression "service matter" is generic in nature and has been specifically defined only in the Administrative Tribunals Act, 1985. It cannot be said that the Chairman of the Public Service Commission holds a post in connection with the affairs of the Union or the State. He or she is not a Government servant, in the sense of there being a master and servant relationship between the Union or the State and the Chairman. All the functions of the State PSC as provided for in Article 320 to 323 of the Constitution are serious constitutional functions and obligations cast on the Chairman and Member of the Public Service Commission. Thus, in view of the constitutional provisions contained in Articles 316 to 323 of the Constitution, including those pertaining to the security of tenure and the removal procedure of the Chairman and Members of the Public Service Commission, it can only be concluded that he or she holds a constitutional post. (Paras 62 to 84)

The appointment of the Chairman of a Public Service Commission is an appointment to a constitutional position and is not a "service matter". A PIL challenging such an appointment is, therefore, maintainable both for the issuance of a writ of quo warranto and for a writ of declaration, as the case may be. However, there are no statutory criterion or parameters laid for the appointment of the Chairman of a Public Service Commission in the State of Punjab. Therefore, a petition for a writ of quo warranto would clearly not lie in the facts of the present case. However, as an aggrieved person a person acting in the public interest does have a public law remedy. Thus, in a unique situation like the present, where a writ of quo warranto may not be issued, it becomes necessary to mould the relief so that an aggrieved person is not left without any remedy in the public interest, and a writ of declaration can thus clearly be issued in such cases. (Paras 70 to 92 and 150)

The question of the Chief Minister or the State Government having "confidence" (in the sense in which the word is used with reference to the Chief Secretary or the Director General of Police or any important statutory post) in the Chairman of a State Public Service Commission simply does not arise, nor does the issue of compatibility. The Chairman of a Public Service Commission does not function at the pleasure of the Chief Minister or the State Government. Security of tenure is provided through a mechanism in the Constitution as provided for in Article 317. There is no question of the Chairman of a Public Service Commission being shifted out if his views are not in sync with the views of the Chief Minister or the State Government. (Paras 117 to 120)

The independence of the post of the Chairman or the Member of the Punjab Public Service Commission cannot be forgotten or overlooked. That independence is attached to the post is apparent from a reading of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 framed by the Governor of Punjab in exercise of power conferred by Article 318 of the Constitution. The Chairman takes the oath of allegiance to India and to the Constitution of India – not an oath of allegiance to the Chief Minister. An appointment to that position cannot be taken lightly or on considerations other than the public interest. Consequently, it is not possible to accept the contention that the Chief Minister or the State Government is entitled to act only on the perceived suitability of the appointee, over everything else, while advising the Governor to appoint the Chairman of the Public Service Commission. If such a view is accepted, it will destroy the very fabric of the Public Service Commission. (Paras 121 to 125)

Thus, the two most important qualities or requirements for appointment to a constitutional post such as the Chairman of the Public Service Commission are that personally the chairman of the Public Service Commission should be beyond reproach and his or her appointment should inspire confidence among the people in the institution. The first 'quality' can be ascertained through a meaningful deliberative process, while the second 'quality' can be determined by taking into account the constitutional, functional and institutional requirements necessary for the appointment. Thus, two factors that need to be jointly taken into account for the exercise of the power of judicial review are: the deliberative process and consideration of the institutional requirements. (Paras 93 to 99 and 113)

It is true that no parameters or guidelines have been laid down in Article 316 of the Constitution for selecting the Chairman of the Public Service Commission and no law has been enacted on the subject with reference to Schedule VII List II Entry 41 of the Constitution. Also, the State Government and the Governor have a wide discretion in the procedure to be followed in the appointment of the Chairman or Members of the Public Service. However, the Constitution or a statue cannot particularise every little procedure, otherwise it would become unmanageable and maybe unworkable. Moreover, some situations have to be dealt with in a common sense and pragmative manner. Thus, though the appointment of the Chairman/Member may not be subjected to a merit review of the integrity of the selected person, but it can certainly be subjected to judicial review and the Court can see whether relevant material and vital aspects having nexus with the objects of the constitutional post have been taken into account. Therefore, the jurisprudence of

prudence demands a fairly high degree of circumspection in the selection and appointment to a constitutional position having important and significant ramifications. (Paras 112 and 115)

However, it is necessary to keep in mind that sufficient elbow room must be given to the executive to make constitutional appointments as long as the constitutional, functional and institutional requirements are met and the appointments are in conformity with the indicators laid down by the Supreme Court from time to time. (Para 153)

D had used his political influence to effect the transfer of an officer and the transfer was set aside by the Central Administrative Tribunal as being mala fide which decision has attained finality, not having been challenged by anybody. This indicates that D was not above using his political influence to get his way. In the consultative or deliberative process (or whatever little there was of it, which took place in just one day) the Chief Minister did not even bother to check whether or not D was an appropriate person to be appointed as the Chairman of the Punjab Public Service Commission in the light of the adverse comment. The qualifications of D are that he was or had been the Vice-President of the Shiromani Akali Dal (the political party in power) and the President of its Legal Cell and its spokesperson. With these qualifications it cannot be said that he was eminently suited to holding the post of the Chairman of the Public Service Commission. This is not to say that he lacks integrity or competence, but that he clearly has no administrative experience for holding a crucial constitutional position. Merely because D is an advocate having had electoral successes does not make him eminently suitable for holding a constitutional position of considerable importance and significance. It is more than apparent that D's political affiliation weighted over everything else in his appointment as the Chairman of the Punjab Public Service Commission. The "thorough and meticulous inquiry and scrutiny" requirement laid down in Inderpreet Singh Kahlon, (2006) 11 SCC 356 was not at all carried out. (Paras 101 to 110)

There is nothing to show that any background check was carried out to ascertain whether D had come in for any adverse notice, either in a judicial proceeding or any police inquiry. It must be remembered that the appointment of D was to a constitutional post and the basics of deliberation before making the selection and appointment were imperative. In this case, clearly, there was no deliberative process, and if any semblance of it did exist, it was irredeemably flawed and that the constitutional, functional and institutional requirements of the Punjab Public Service Commission were not kept in mind when D was recommended for appointment as its Chairman. (Paras 114 to 116)

In a case for the issuance of a writ of declaration, exercise of the power of judicial review is presently limited to examining the deliberative process for the appointment not meeting the constitutional, functional and institutional requirements of the institution whose integrity and commitment needs to be maintained or the appointment for these reasons not being in public interest. The circumstances of this case leave no room for doubt that the Notification dated 7-7-2011 appointing D was deservedly quashed by the High Court since there was no deliberative process worth the name in making the appointment and also since the constitutional, functional and institutional

requirements of the Punjab Public Service Commission were not met. (Paras 151 and 152)

I. Constitution of India – Arts. 316, 315, 226, 32 and 136 – Appointment of Chairman/ Members of Public Service Commission (PSC) – Absence of procedure for – Implied power vested in Governor by Constitution to frame such procedure – Scope of judicial interference – Though Court cannot frame such procedure itself, held, it can direct State Government to frame such procedure within specified period

-PIL inter alia raising questions of how persons of competence and integrity could be identified for appointment as Chairman/Members of PSC – Larger Bench reference made by Division Bench of High Court only of specific issues: (1) how such persons are to be identified, and (2) if procedure adopted for such appointment in present case was not valid, the effect thereof – Full Bench of High Court prescribing procedure for appointment of Chairman/Members of PSC and directing State to follow the same till a policy is framed – Legality of – Held, under Art. 316, Governor has not only express power of appointing Chairman/Members of PSC but also implied powers to lay down procedure for their appointment – High Court acted beyond its jurisdiction in laying down such procedure itself, thus usurping Governor's power – Hence, to that extent judgment of High Court set aside – Though it was held in Mehar Singh Saini, In re, (2010) 13 SCC 586 that laying down qualifications and experience required for holding office of Chairman/Member of PSC is a legislative function, however necessary guidelines and parameters for holding such an office are within executive power of State – Thus, held, administrative and constitutional imperative can be met only if Government expeditiously frames guidelines/ parameters for appointment, until legislature exercises its power – Supreme Court/superior court is not precluded from giving a direction to State Government to conduct the necessary exercise within a specified period – Hence, State of Punjab directed to frame procedure and administrative guidelines for selection and appointment of Chairman/Members of Punjab PSC to eliminate arbitrary appointments

J. Constitution of India – Arts.136, 226, 32, 316 and 317 – Executive inaction/gaps in law – Procedure to properly effectuate constitutional provisions, not framed by Governor – State Government directed to frame procedure within a specified period – Administrative Law – Administrative Action – Administrative or Executive Function – Failure to Exercise Power/Delay in exercising power

K. Practice and procedure – Reference to Larger Bench – When permissible and warranted – Academic reference to determine question (s) of law – question of how persons of competence and integrity are to be identified and selected to post of Chairman of Public Service Commission (PSC) under Art.316 of Constitution – Academic reference to a larger Bench of High Court to determine question (s) of law, held, is permissible notwithstanding the fact that on merits irregularities and illegalities allegedly committed by appointee Chairman were found to be unsubstantiated by Division Bench – Furthermore, validity of charge of said irregularities/illegalities was not the only issue before Division Bench – Hence, disposal of that issue did not result in disposal of entire writ petition – Lastly, on merits of questions referred, field was not already covered Mehar Singh Saini, (2010) 13

SCC 586 – Clarified, ruling in Mehar Singh Saini case related only to qualifications and experience for appointment as Chairman/Members of PSC and had nothing to do with questions relating to procedure for identifying persons of integrity and competence to be appointed as Chairman/Members of PSC – Constitution of India, Arts.226, 32, 136, 141, 316, 315, 317, 318, 319 and 320

L. Constitution of India – Arts.141,144 and 226 – Questions which smaller Bench of High Court may refer to larger Bench of High Court – Question as to applicability of decision of Supreme Court to facts of case and for further follow-up action, if necessary, held, can be so referred – Practice and Procedure – Reference to Larger Bench – Questions that may be referred.

M. Practice and Procedure – Reference to Larger Bench – Jurisdiction of larger Bench in case of reference on specific issue (s) – Enlarging scope of reference and deciding matters not referred –Impermissibility – Held, since Full Bench of High Court had considered issues not referred to it in an issue – specific reference, held, its judgment is without jurisdiction to that extent, and hence, is set aside – Punjab High Court Rules, Rs.6, 7, 8 and 9

N. Practice and Procedure – Reference to larger Bench – Scope of – Power of larger Bench to (a) reformulate questions referred, and (b) to adjudicate subsidiary question (s) which logically and unavoidably arise – Reiterated, scope of reference depends entirely on the reference made – it could be restricted to specific issues or extend to the entire case

O. Courts, Tribunals and Judiciary – High Courts – Allocation of Work, Roster and Benches – Jurisdiction of a particular Bench/larger Bench – Reference to larger Bench – Role and powers of Chief Justice and compliance with High Court Rules – Punjab High Court Rules, Rr.6, 7, 8 and 9

Held:

Per Patnaik, J.

Even if the Division Bench had recorded a finding in the order that the irregularities and illegalities pointed out in the writ petition against D do not stand substantiated, the writ petition could not be disposed of with the said finding only, as there were other issues which had to be decided. The Division Bench of the High Court was of the view that the persons to be appointed must have competence and integrity, but how such persons are to be identified and selected must be considered by a Bench of three Judges of the High Court and accordingly referred the matter to the three Judges. The Division Bench also referred the question to the larger Bench of three Judges as to whether the procedure adopted in the present case for appointing D as the Chairman of the Punjab Public Service Commission was valid and if not, what is the effect of not following the procedure. Therefore, there is no merit in the submission that the Division Bench of the High Court having found in its order that the irregularities and illegalities pointed out in the writ petition against D are unsubstantiated, could not have made an academic reference to the larger Bench of the High Court. (Paras 31 and 32)

The appellant made a submission that the Supreme Court in Mehar Singh Saini, In re, (2010) 13 SCC 586 had already declared the law that it is for Parliament to frame the guidelines or parameters regarding the qualifications, experience or stature for appointment as Chairman/Members of the Public Service Commission and hence it was not necessary for the Division Bench of the High Court to make a reference to a Full Bench on the very same question of law. The observation of the Supreme Court in Mehar Singh Saini, In re relate to the qualification and experience for appointment as Chairman/Members of the Commission and have nothing to do with the questions relating to the procedure for identifying persons of integrity and competence to be appointed as Chairman of the Public Service Commission, which were referred by the Division Bench of the High Court to the Full Bench of the High Court. (Para 34)

The Full Bench of the High Court exceeded its jurisdiction by enlarging the scope of reference and deciding matters which were not referred to it by the order of the Division Bench. In Rules 6, 7, 8 and 9 of the Punjab High Court Rules which relate to the Full Bench there is no provision which provides what matters a Full Bench comprising three Judges of the High Court will decide. Hence, it is the Division Bench of the High Court has the jurisdiction to decide a case, unless otherwise provided by law or by a special order of the Chief Justice and the jurisdiction of a Full Bench to decide matters will flow either from the order of the Chief Justice of the High Court or from the order of the Division Bench which makes a reference to the Full Bench. In the present case, there is no order of the Chief Justice making a reference but only the order of the Division Bench of the High Court making a reference to the Full Bench of three Judges of the High Court. (Para 36)

The order of the Division Bench of the High Court has referred only specific questions to the Full Bench: how persons of competence and integrity are to be identified and selected for appointment as Chairman of the Public Service Commission and if the procedure adopted for such appointment in the present case was not valid, the effect thereof. However, the Full Bench, instead of deciding these specific questions referred to it, has given directions to the State of Punjab and the State of Haryana to follow a particular procedure for appointment of Members and Chairman of the Public Service Commission till such time a fair, rational, objective and transparent policy to meet the mandate of Article 14 of the Constitution is made. Hence, the Full Bench of the High Court has decided issues which were not referred to it by the Division Bench of the High Court and the judgment of the Full Bench of the High Court was without jurisdiction to this extent. (Para 37)

Under Article 316 of the Constitution, the Governor of a State has not only the express power of appointing the Chairman and other Members of Public Service Commission but also the implied powers to lay down the procedure for appointment of Chairman and Members of the Public Service Commission and the High Court cannot under Article 226 of the Constitution usurp this constitutional power of the Government and lay down the procedure for appointment of the Chairman and other Members of the Public Service Commission. The Full Bench of the High Court, therefore, could not have laid down the procedure for appointment of the Chairman and Members of the Punjab Public Service Commission and the Haryana Public Service Commission by the impugned judgment. (Paras 39)

Per Lokur, J. (concurring)

There is no bar shown whereby a Bench is precluded from referring the entire case for decision by a larger Bench - it depends entirely on the reference made. Also, notwithstanding the law that a larger Bench should decide only the questions referred to it, of course, if a subsidiary question logically and unavoidably arises, the larger Bench cannot be dogmatic and refuse to answer it. A common sense approach must be taken on such occasions. Furthermore, in the present case the questions reformulated by the Full Bench of the High Court merely articulate and focus on the issues that were not quite attractively phrased by the Division Bench of the High Court. To this extent the Full Bench did not overstep its jurisdiction in the reformulation of the issues before it. (Paras 140, 145 and 146)

The reference made by the Division Bench to the Full Bench of the High Court was that even though Article 316 of the Constitution does not prescribe any particular procedure, having regard to the purpose and nature of appointment, the question is how such persons who have competence and integrity are to be identified and selected. The Full Bench reformulated the questions referred to it. It is difficult to agree that the entire "matter" was referred to the Full Bench. Firstly, the word "matter" must take colour from the context in which it was used, which is with reference only to the two questions placed before the Full Bench. Secondly, even the Full Bench did not think that the entire matter wa referred to it and that is why after answering the reference the "matter" was remitted to the Division Bench for disposal in accordance with law. It was then submitted that there was really no occasion for the Division Bench to make any reference to the Full Bench of the High Court on the question of framing guidelines or parameters for the appointment of the Chairman of the Punjab Public Service Commission since the Supreme Court had already laid down the law in Mehar Sing Saini, In re, (2010) 13 SCC 586 and the High Court was merely required to follow it. The Division Bench of the High Court was fully entitled to refer to the Full Bench of the High Court the question of the applicability of the decision of the Supreme Court to the facts of the case and for further follow-up action, if necessary. (Paras 141 to 144 and 147)

In Mehar Singh Saini case, it was held that laying down the qualifications and experience required for holding the office of Chairman or Member of the Public Service Commission is a legislative function.

However, the necessary guidelines and parameters for holding such an office are within the executive power of the State. The Court can neither legislate on the subject nor issue any direction to Parliament or the State Legislature to enact a law on the subject. Keeping this in mind, the High Court was in error in framing the guidelines that it did. (Paras 128 to 134)

The Supreme Court however is not helpless in the matter of laying down appropriate guidelines or parameters for the appointment of a Chairperson or members of the Public Service Commission, if Mehar Singh Saini is understood in its correct perspective. The administrative and constitutional imperative can be met only if the Government frames guidelines or parameters for the appointment of the Chairman and Members of the Punjab

Public Service Commission. That it has failed to do so does not preclude the Supreme Court or any superior court from giving a direction to the State Government to conduct the necessary exercise within a specified period. Only because it is left to the State Legislature to consider the desirability or otherwise of specifying the qualifications or experience for the appointment of a person to the position of Chairman or Member of the Punjab Public Service Commission, does not imply that the Supreme Court cannot direct the executive to frame guidelines and set the parameters. The Court can certainly issue appropriate directions in this regard and it is imperative for good governance and better administration to issue directions to the executive to frame appropriate guidelines and parameters based on the indicators mentioned by the Supreme Court. These guidelines shall be binding on the State of Punjab till the State Legislature exercises its power. Until the State Legislature enacts an appropriate law, the State of Punjab is directed to take urgent steps to frame a memorandum of procedure and administrative guidelines for the selection and appointment of the Chairman and Members of the Punjab Public Service Commission, so that the possibility of arbitrary appointments is eliminated. (Paras 135, 136 and 154)

P. Constitution of India – Arts.226, 315 and 316 – Parties – Writ petition/Reference regarding validity of appointment of Chairman of Public Service Commission (PSC) of State of Punjab – Impleadment of State of Haryana and Haryana PSC suo motu by Full Bench of High Court because "issues common in respect of the States of Punjab and Haryana were likely to arise" – Tenability of – Held, the same was not a reason for impleadment and enlarging of scope of controversy – Practice and Procedure – Parties (Para 148)

Q. Constitution of India – Arts. 163 (3), 315, 316 and 226 – Direction for production of advice tendered by Chief Minister to Governor in respect of appointment of Chairman of Punjab PSC – Validity of – As such advice is expressly saved by Art.163 (3) from being inquired into in any court, hence, such direction was invalid. (Para 149)

The Judgments * of the Court were deliverd by

A. K. PATNAIK, J. – Leave granted in S.L.P. (C) Nos. 22010-22012 of 2011. In these appeals against the judgment and orders of the Punjab and Haryana High Court, a very important question of law arises for our decision: whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution can lay down the procedure for the selection and appointment of the Chairman of the State Public Service Commission and quash his appointment in appropriate cases?

Facts:

2. The relevant facts very briefly are that by the Notification dated 07.07.2011, the State Government of Punjab appointed Mr. Harish Dhanda as the Chairman of the Punjab Public Service Commission. On 10.07.2011, the Respondent No.1 who was an advocate

practicing at the Punjab and Haryana High Court, Chandigarh, filed a public interest litigation under Article 226 of the Constitution (Writ Petition No.11846 of 2011) praying for a mandamus directing the State Government to frame regulations governing the conditions of service and appointment of the Chairman and/or the Members of the Public Service Commission as envisaged in Article 318 of the Constitution of India. Respondent No.1 also prayed for a direction restraining the State Government from appointing Mr.Harish Dhanda as the Chairman of the Punjab Public Service Commission in view of the fact that his appointment does not fall within the parameters of integrity, impartiality and independence as reiterated time and again by this Court.

3. The Division Bench of the High Court, after hearing the learned counsel for the writ petitioner and the learned Additional Advocate General for the State of Punjab, passed an order on 13.07.2011 [*Salil Sabhlok v. Union of India, CWP No.11846 of 2011, order dated 13-7-2011 (P & H) (DB)]* holding that even though Article 316 of the Constitution does not prescribe any particular procedure for appointment of Chairman of the Public Service Commission, having regard to the purpose and nature of the appointment, it cannot be assumed that the power of appointment need not be regulated by any procedure.

4. Relying on the judgments of this Court in the case of in Ram Ashray Yadav, In re [*(2000) 4 SCC 309 : 2000 SCC (L & S) 670]*, *Ram Kumar Kashyap* vs. *Union of Indi (2009) 9 SCC 378 : (2009) 2 SCC (L & S) 603 : AIR 2010 SC 1151]* and *Mehar Singh Singh Sain* In re [*(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]*, the Division Bench held that it is not disputed that the persons to be appointed as Chairman and Members of the Public Service Commission must have competence and integrity. The Division Bench of the High Court further held that a question, therefore, arises as to how such persons are to be identified and selected for appointment as Chairman of the Public Service Commission and whether, in the present case, the procedure adopted was valid and if not, the effect thereof. The Division Bench further observed that these questions need to be considered by a Bench of three Judges and referred the matter to the Bench of three Judges of the High Court.

5. Pursuant to the order dated 13.07.2011[*Salil Sabhlok v. Union of India]* of the Division Bench, the Chief Justice of the High Court constituted a Full Bench. On 19.07.2011 [*Salil Sabhlok v. Union of India, CWP No.11846 of 2011, order dated 19-7-2011 (P & H) (FB)*, the Full Bench of the High Court passed an order calling for certain information from the State Government of Punjab and the Punjab Public Service Commission on the number of posts filled up by the Public Service Commission in the last five years, the number of posts taken out from the purview of the Public Service Commission in the last five years and regulations, if any, framed by the State Government. On 01.08.2011 [*6 Salil Sabhlok v. Union of India, CWP No.11846 of 2011, order dated 1-8-2011 (P & H) (FB)]*, the Full Bench of the High Court also passed orders requiring the Union of India to furnish information on three questions:

5.1 Whether there were any criteria or guidelines to empanel a candidate for consideration for appointment as a Member of the Union India Public Service Commission;

5.2 Which authority or officer prepares such panel; and

5.3 What methodology is kept in view by the authority while preparing the panel.

6. Aggrieved by the order dated 13.07.2011 [*Salil Sabhlok v. Union of India]* of the Division Bench of the High Court and the orders dated 19.07.2011 [*Salil Sabhlok v. Union of India]* and 01.08.2011 [*Salil Sabhlok v. Union of India],*of the Full Bench of the High Court, the State of Punjab filed Special Leave Petitions (C) Nos.22010-22012 of 2011 before this Court. On 05.08.2011 [*State of Punjab v. Salil Sabhlok],* this Court, while issuing notice in the Special Leave Petitions, made it clear that issuance of notice in the Special Leave Petitions will not come in the way of the High Court deciding the matter and the State of Punjab is at liberty to urge all contentions before the High Court. Accordingly, the Full Bench of the High Court heard the matters on 08.08.2011[*Salil Sabhlok v. Union of India]* and directed the Chief Secretary of the State of Punjab to remain present at 2.00 P.M. along with the relevant files which contain the advice of the Chief Minister to the Governor. The Chief Secretary of the State of Punjab produced the original files containing the advice of the Chief Minister to the Governor of Punjab and after seeing the original files, the Full Bench of the High Court returned the same and reserved the matter for judgment.

7. Thereafter, the Full Bench of the High Court delivered the judgment and order dated 17.08.2011 [*Salil Sabhlok v. Union of India]* directing that till such time a fair,

rational, objective and transparent policy to meet the mandate of Article 14 is made, both the State of Haryana and the State of Punjab shall follow the procedure detailed hereunder as part of the decision-making process for appointment as Members and Chairman of the Public Service Commission:

7.1. There shall be Search Committee constituted under the Chairmanship of the Chief Secretary of the respective State Governments.

7.2. The Search Committee shall consist of at least three members. One of the members shall be serving Principal Secretary i.e. not below the rank of Financial Commissioner and the third member can be serving or retired Bureaucrat not below the rank of Financial Commissioner, or member of the Armed Forces not below the rank of Brigadier or of equivalent rank.

7.3. The Search Committee shall consider all the names which came to its notice or are forwarded by any person or by any aspirant. The Search Committee shall prepare panel of suitable candidates equal to three times the number of vacancies.

7.4. While preparation of the panel, it shall be specifically elicited about the pendency of any court litigation, civil or criminal, conviction or otherwise in a criminal court or civil court decree or any other proceedings that may have a bearing on the integrity and character of the candidates.

7.5. Such panel prepared by the Search Committee shall be considered by a High Powered Committee consisting of Hon'ble Chief Minister, Speaker of Assembly and Leader of Opposition.

7.6. It is thereafter that the recommendation shall be placed with all relevant materials with relative merits of the candidates for the approval of the Hon'ble Governor after completing the procedure before such approval.

7.7. The proceedings of the Search Committee shall be conducted keeping in view the principles laid down in [*Centre for Public Interest Litigation's case [Centre for PIL v. Union of India.*

8. By the order dated 17.08.2011 [*Salil Sabhlok v. Union of India]*, the Full Bench of the High Court also ordered that the writ petition be listed before the Division Bench to be constituted by the Chief Justice of the High Court.

9. Pursuant to the judgment dated 17.08.2011 [*Salil Sabhlok v. Union of India]*, the Division Bench constituted by the Chief Justice of the High Court quashed [*Salil Sabhlok v. Union of India]* the appointment of Mr. Harish Dhanda as Chairman of the Punjab Public Service Commission and disposed of the writ petition of Respondent 1 in terms of the judgment of the Full Bench.

10. Aggrieved, the State of Punjab, State of Haryana and Mr. H.R. Dhanda have filed these appeals against the judgment and orders dated 17.08.2011 of the Full Bench [*Salil Sabhlok v. Union of India]* and the Division Bench [*Salil Sabhlok v. Union of India]* of the High Court.

Contentions of the learned counsel for the parties

11. Mr. P.P. Rao, learned senior counsel for the State of Punjab, submitted that the writ petition before the High Court was a service matter and could not have been entertained by the High Court as a Public Interest Litigation at the instance of the writ petitioner. He cited the decisions of this Court in R.K. Jain v. Union of India *(1993) 4 SCC 119 : 1993 SCC (L & S) 1128 : (1993) 25 ATC 464]*, Duryodhan Sahu v. Jitendra Kumar Mishra [*(1998) 7 SCC 273 : 1998 SCC (L & S) 1802]*, Dattaraj Nathuji Thaware v. State of Maharashtra [*(2005) 1 SCC 590]*, Ashok Kumar Pandey v. State of West Bengal [*(2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865]*, Hari Bansh Lal v. Sahodar Prasad Mahto [*(2010) 9 SCC 655 : (2010) 2 SCC (L & S) 771]* and Girjesh Mr.vastava v. State of M.P. [*(2010)*

10 SCC 707 : (2011) 1 SCC (L & S) 192] for the proposition that a dispute relating to a service matter cannot be entertained as a Public Interest Litigation.

12. Mr. Rao next submitted that the Division Bench has recorded a clear finding in its order dated 13.07.2011 [*Salil Sabhlok v. Union of India]* that the allegations regarding irregularities and illegalities against Mr. Harish Dhanda in the writ petition do not stand substantiated and there was, therefore, absolutely no need for the Division Bench of the High Court to make an academic reference to the Full Bench of the High Court. He next submitted that this Court in *Mehar Singh Saini In re (2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]* had already declared the law that it is for the legislature to frame the guidelines or parameters regarding the experience, qualifications and stature for appointment as Chairman/Members of the Public Service Commission and this law declared by this Court was binding on all Courts in India and hence, there was no necessity whatsoever for the Division Bench to make a reference to a Full Bench on the very same questions of law.

13. Mr. Rao submitted that this Court has held in *Kesho Nath Khurana v. Union of India [1981 Supp SCC 38 : 1981 SCC (Cri) 674]* that a Court to which a reference is made cannot adjudicate upon an issue which is not referred to it and yet the Full Bench of the High Court in this case has gone beyond the order of reference passed by the Division Bench and held that until a fair, rational, objective and transparent policy to meet the mandate of Article 14 of the Constitution is laid down, the procedure laid down by the Full Bench must be followed and has also declared the appointment of Mr. Harish Dhanda as Chairman of the Public Service Commission to be invalid. He also relied on the Punjab High Court Rules to argue that the Full Bench can be constituted only for answering the questions referred to it by the Division Bench of the High Court. He vehemently argued that these provisions of the Rules of the Punjab High Court have been violated and the judgment of the Full Bench of the High Court is clearly without jurisdiction. He next submitted that the direction given by the Full Bench in its order dated 01.08.2011[*Salil Sabhlok v. Union of India]* to produce the file containing the advice tendered by the Chief Minister to the Governor is clearly unconstitutional and ultra vires

of Article 163(3) of the Constitution and relied on the decision of this Court in *State of Punjab v. Sodhi Sukhdev Singh [AIR 1961 SC 493 : (1961) 2 SCR 371]* on this point.

14. Mr. Rao next submitted that Article 316 of the Constitution has left it to the discretion of the State Government to select and appoint the Chairman and Members of a Public Service Commission and having regard to the doctrine of separation of powers which is part of the basic structure of the Constitution, the High Court cannot direct the Government to exercise its discretion by following a procedure prescribed by the High Court. He cited *Supreme Court Employees' Welfare Assn. v. Union of India (1989) 4 SCC 187 : 1989 SCC (L & S) 569], Suresh Seth v. Indore Municipal Corpn.[(2005) 13 SCC 287], Aravali Golf Club v. Chander Hass [(2008) 1 SCC 683 : (2008) 1 SCC (L & S) 289] and Asif Hameed v. State of J & K [1989 Supp (2) SCC 364]* in support of the aforesaid submission. He submitted that the appointments to the constitutional offices, like the Attorney General, Advocate General, Comptroller & Auditor General, Chief Election Commissioner, Chairman and Members of the Union Public Service Commission and appointments to the topmost Executive posts, like the Chief Secretary or Director General of Police, has to be made within the discretion of the Government inasmuch as persons in whom the Government has confidence are appointed to the posts. He relied on *E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3 : 1974 SCC (L & S) 165] and State of West Bengal v. Manas Kumar Chakrabort [(2003) 2 SCC 604]* for this proposition.

15. Mr. Rao argued that in the absence of clear violation of statutory provisions and regulations laying down the procedure for appointment, the High Court has no jurisdiction even to issue a writ of quo warranto. In support of this argument, he relied on the decision of this Court in B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Assn. [*(2006) 11 SCC 731 (2) : (2007) 1 SCC (L & S) 548 (2)].* He submitted that this is a fit case in which the order of the Division Bench dated 13.07.2011 [*Salil Sabhlok v. Union of India]* and the interim orders [*Salil Sabhlok v. Union of India]* as well as the judgment of the Full Bench dated 17.08.2011[*Salil Sabhlok v. Union of India]* and the final order of the Division Bench dated 17.08.2011[*Salil Sabhlok v. Union of*

India] of the High Court quashing the appointment of Mr. Harish Dhanda as well as consequential orders passed by the Government implementing the impugned judgment and order provisionally should be set aside by this Court.

16. Mr. U.U. Lalit, learned senior counsel appearing for the Respondent 1 who had filed the writ petition before the High Court, referred to the proclamation by the Queen in Council on 1-11-1858 to the Princes, Chiefs and the People of India to show that in the civil and military services of the East India Company persons with education, ability and integrity were to be recruited. He also referred to the report on the Public Service Commission, 1886-87 wherein the object of Public Service Commission was broadly stated to be to devise a scheme which may reasonably be hoped to possess the necessary elements of finality, and to do full justice to the claims of natives of India to higher and more extensive employment in the public service. He also referred to the report of the Royal Commission on the superior services in India dated 27.03.1924 and in particular Chapter IV thereof on "*The Public Service Commission*" in which it is stated that wherever democratic institutions exist, experience has shown that to secure an efficient civil service it is essential to protect it from political or personal influences and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which Governments, of whatever political complexion, may give effect to their policies and for this reason Public Service Commission should be detached so far as practicable from all political associations. He also referred to the speeches of Dr. B.R. Ambedkar, Mr. Jaspat Roy Kapoor, Pandit Hirday Nath Kunzru and Mr. H.V. Kamath in the Constitutional Assembly and argued that to perform this difficult job of finding the best talent for the State Public Services without any political influence and other extraneous considerations the Public Service Commission must have a Chairman of great ability, independence and integrity.

17. Mr. Lalit further submitted that this Court has also in a number of pronouncements emphasized on the need to appoint eminent persons possessing a high degree of competence and integrity as Chairman and Members of the Public Service Commission so as to inspire confidence in the public mind about the objectivity and impartiality of the

selection to be made by the Public Service Commission. In this context he referred to the judgments of this Court in Ashok Kumar Yadav v. State of Haryana [*(1985) 4 SCC 417 : 1986 SCC (L & S) 88]*, Ram Ashray Yadav, In re *(2000) 4 SCC 309 : 2000 SCC (L & S) 670]*, Inderpreet Singh Kahlon v. State of Punjab [*(2006) 11 SCC 356 : (2007) 1 SCC (L & S) 444]* and Mehar Singh Saini, In re [*(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423].*

18. Mr. Lalit submitted that Mr. Harish Dhanda may be eligible for appointment as Chairman of the Public Service Commission but eligibility is not enough to be the Chairman of the State Public Service Commission. He submitted that the person who is eligible must also have some positive qualities such as experience, ability, character and integrity for being appointed as the Chairman of the State Public Service Commission. He submitted that it is not only the personal integrity of the candidate who is to be appointed but also the integrity of the Pubic Service Commission as an institution which has to be borne in mind while making the appointment. He referred to the decisions of this Court in *Centre for PIL and Another v. Union of India [Centre for PIL v. Union of India]* in which a distinction has been made between personal integrity of a candidate appointed as the Central Vigilance Commissioner and the integrity of the Central Vigilance Commission as an institution and it has been held that while recommending a name of the candidate for appointment as Central Vigilance Commissioner, the question that one has to ask is whether the candidate recommended to function as the Central Vigilance Commissioner would be competent to function as a Central Vigilance Commissioner. He submitted that in the aforesaid case, this Court has also held that there was a difference between judicial review and merit review and has further held that the Courts, while exercising the power of judicial review, are not concerned with the final decision of the Government taken on merit but are entitled to consider the integrity of the decision-making process.

19. Mr. Lalit submitted that the writ petitioner challenged the decision-making process of the Government in selecting and appointing Mr. Harish Dhanda as Chairman of the Public Service Commission on the ground that it was not an informed process of

decision-making in as much as the State Government has not collected information and materials on whether Mr.Dhanda had the experience, ability and character for being appointed as the Chairman of the Public Service Commission:

19.1 He submitted that as a matter of fact the State Government was also not even informed of the fact that the Central Administrative Tribunal, Chandigarh Bench, in its order dated 15.11.2007 in O.A. No.495/PB/2007 had adversely commented on the conduct of Mr. Harish Dhanda. He explained that in the aforesaid O.A., Mr. Amit Misra, who belonged to the Indian Forest Service and was posted as Divisional Forest Officer, Ropar in Punjab, had alleged that he had been transferred out of Ropar and posted as Division Forest Officer, Ferozpur, because of an incident which had occurred on 21.06.2007 on account of which he incurred the displeasure of Mr. Harish Dhanda, who was then the Chief Parliamentary Secretary, Department of Local Government, Punjab. He alleged that Mr. Dhanda had been given the permission to stay at the Van Chetna Kendra/Forest Rest House at Pallanpur, District Ropar, for a few days, but later on he wanted to make the Forest Rest House as his permanent residence to which Mr. Amit Misra objected as the same was not permitted under the Rules and Mr. Amit Misra had directed the official incharge of the Rest House not to allow anybody to use the Rest House without getting permission and accordingly when Mr. Dhanda wanted the keys of the Rest House on 22.06.2007 he was not given the keys of the Rest House and Mr. Dhanda recorded a note addressed to the Principal Chief Conservator of Forests narrating the entire incident and ensured that Mr. Amit Misra was postedout of Ropar by an order of transfer dated 31.07.2007.

19.2. The Central Administrative Tribunal, Chandigarh Bench, called for the official noting which led to the passing of the transfer order dated 31.07.2007 and recorded the finding that even though the Government decided not to allowthe use of the Rest House as a permanent residence of the Chief Parliamentary Secretary, yet Mr. Amit Misra, being a junior officer, became the victim of the annoyance of Mr. Harish Dhanda and with his political influence, the Forest Minister initiated the proposal for his transfer from Ropar, which was approved by the Chief Minister. Mr. Lalit submitted

that this adverse finding of the Central Administrative Tribunal in a proceeding, in which Mr. Harish Dhanda was also a respondent, was not brought to the notice of the State Government when it took the decision to select and appoint Mr. Harish Dhanda as the Chairman of the Public Service Commission.

20. In reply to the submission of Mr. Rao that the Full Bench had no jurisdiction to expand the scope of the reference and should have limited itself to the questions referred to by the Division Bench by the order dated 13.07.2011 [*Salil Sabhlok v. Union of India]*, Mr. Lalit submitted that the order dated 13.07.2011[*Salil Sabhlok v. Union of India]* of the Division Bench of the High Court would show that the entire case was referred to the Full Bench and, therefore, the Full Bench passed the orderdated 17.08.2011 [*Salil Sabhlok v. Union of India]* on all relevant aspects of the case. He cited the decision of this Court *in Kerala State Science & Technology Museum v. Rambal Co. [(2006) 6 SCC 258]* to argue that a reference can also be made of the entire case to a larger Bench and in such a case, the larger Bench has to decide the entire case and its jurisdiction is not limited to specific issues. He also referred to the Rules of the Punjab High Court to show that the Full Bench of the High Court can also be constituted to decide the entire case in important matters.

21. On the jurisdiction of the High Court to issue a writ for quashing the appointment of a Chairman of the Public Service Commission, Mr. Lalit cited the decision in *Dwarka Nath v. Income-tax Officer [AIR 1966 SC 81]* in which a three-Judge Bench of this Court has held that Article 226 of the Constitution is couched in comprehensive phraseology and it ex facie confers wide power on the High Court to reach injustice wherever it is found. He submitted that in this decision this Court has also explained that the High Court under Article 226 of the Constitution can issue writs in the nature of prerogative writs as understood in England and can also issue other directions, orders or writs. He vehemently submitted that the contention on behalf of the appellants that the High Court could not have issued a writ/order quashing the selection and appointment of Mr. Harish Dhanda is, therefore, not correct.

22. Mr. Lalit finally submitted that pursuant to the impugned orders of the Full Bench and the Division Bench of the High Court, the Search Committee was constituted by the Government for selection of the Chairman of the Punjab Public Service Commission and the Search Committee invited the names of eminent persons of impeccable integrity, caliber and administrative experience from all walks of life, to be considered for the post of the Chairman of Punjab Public Service Commission and thereafter the High Power Committee selected Lt. Gen. R.A. Sujlana (Retd.) who has been appointed by the State Government as the Chairman of the Punjab Public Service Commission in December, 2011 and he has been functioning as such since then. He submitted that the appointment of Lt. Gen. R.A. Sujlana is also not subject to orders passed by this Court and the news reports indicate that Lt. Gen. R.A. Sujlana has been an upright officer of the Indian Army and has wide administrative experience. He submitted that this is not a fit case in which this Court should interfere with the appointment of Lt. Gen. R.A. Sujlana as the Chairman of the Punjab Public Service Commission even if this Court finds infirmities in the impugned orders passed by the Full Bench and the Division Bench of the High Court.

23. Learned counsel for Mr. Harish Dhanda, adopted the arguments of Mr. P.P. Rao and also submitted that the order of the Central Administrative Tribunal in O.A. No.495/PB/2007 was filed before the Full Bench of the High Court on 01.08.2011 which was the last date of hearing. He submitted that Mr. Harish Dhanda, therefore, did not have any opportunity to reply beforethe Full Bench on the findings in the order of the Central Administrative Tribunal.

24. Mr. P.N. Misra, learned counsel appearing for the State of Haryana, adopted the arguments of Mr. P.P. Rao and further submitted that the Full Bench should not have added the State of Haryana as a party. He also submitted that the Full Bench should not have issued the directions in its order dated 17.08.2011 [*Salil Sabhlok v. Union of India]* to the State of Haryana to adopt the same procedurefor selection and appointment of the Chairman and Members of the Haryana Public Service Commission when the State of Haryana had nothing to do with the appointment of Mr. Harish Dhanda as Chairman of the Punjab Public Service Commission.

Findings of the Court:

25. The first question that I have to decide is whether the High Court was right in entertaining the writ petition as a public interest litigation at the instance of the respondent No.1.

26. I have perused the writ petition CWP No.11846 of 2011, which was filed before the High Court by the Respondent 1, and I find that in the first paragraph of the writ petition the Respondent 1 has stated that he was a public spirited person and that he had filed the writ petition for espousing the public interest and for the betterment of citizens of the State of Punjab. In the writ petition, the respondent No.1 has relied on the provisions of Articles 315, 316, 317, 318, 319 and 320 of the Constitution relating to Public Service Commissions to contend that the functions of the Public Service Commission are sensitive and important and it is very essential that a person, who is appointed as the Chairman of the Public Service Commission, must possess outstanding and high degree educational qualifications and a great amount of experience in the field of selection, administration and recruitment and he must also be a man of integrity and impartiality. The respondent No.1 has alleged in the writ petition that the State Government has not laid down any qualification for appointment to the post of Chairman of the Punjab Public Service Commission and is continuing to appoint persons to the post of Chairman of Public Service Commission on the basis of political affiliation.

27. In the writ petition, the respondent 1 has also given the example of Mr. Ravi Pal Singh Sidhu, who was appointed as the Chairman, Punjab Public Service Commission on the basis of political affiliation and the result was that during his period as the Chairman of the Punjab Public Service Commission, several cases of undeserving candidates being selected and appointed to the Public Service Commission in the State of Punjab came to light and investigations were carried out leading to filing of various criminal cases against the officials of the Public Service Commission as well Mr. Sidhu.

28. The Respondent 1 has further stated in the writ petition that he has filed the writ petition after he read a news report titled "*MLA Dhanda to be new PPSC*

Chairperson". He has stated in the writ petition that Mr. Harish Dhanda was an Advocate at Ludhiana before he ventured into politics and had unsuccessfully contested the Vidhan Sabha election before he was elected as MLA on the Shiromani Akali Dal ticket and that he had close political affiliation and affinity with high ups of the ruling party and that the ruling party in the State of Punjab has cleared his name for appointment as the Chairman of the Punjab Public Service Commission shortly. The Respondent No.1 has also alleged in the writ petition various irregularities and illegalities committed by Mr. Harish Dhanda. He has further stated in the writ petition that his colleague has even sent a representation to the Governor of Punjab and the Chief Minister of Punjab against the proposed appointment of Mr. Harish Dhanda. He has accordingly prayed in the writ petition for a mandamus to the State of Punjab to frame regulations governing the conditions of service and appointment of the Chairman and Members of the Punjab Public Service Commission and for an order restraining the State of Punjab from appointing Mr. Harish Dhanda as Chairman of the Punjab Public Service Commission.

29. On a reading of the entire writ petition filed by the Respondent 1 before the High Court, I have no doubt that the Respondent 1 has filed this writ petition for espousing the cause of the general public of the State of Punjab with a view to ensure that a person appointed as the Chairman of the Punjab Public Service Commission is a man of ability and integrity so that recruitment to public services in the State of Punjab are from the best available talents and are fair and is not influenced by politics and extraneous considerations. Considering the averments in the writ petition, I cannot hold that the writ petition is just a service matter in which only the aggrieved party has the locus to initiate a legal action in the court of law. The writ petition is a matter affecting interest of the general public in the State of Punjab and any member of the public could espouse the cause of the general public so long as his bonafides are not in doubt. Therefore, I do not accept the submission of Mr. P.P. Rao, learned senior counsel appearing for the State of Punjab, that the writ petition was a service matter and the High Court was not right in entertaining the writ petition as a Public Interest Litigation at the instance of the respondent No.1. The decisions cited by Mr. Rao were in cases where this Court found that the nature of the matter before the Court was essentially a service matter and this

Court accordingly held that in such service matters, the aggrieved party and not any third party can only initiate a legal action.

30. The next question that I have to decide is whether the Division Bench of the High Court, after having recorded a finding in its order dated 13.07.2011 *[Salil Sabhlok v. Union of India]* that the allegations of irregularities and illegalities against Mr. Harish Dhanda in the writ petition do not stand substantiated, should have made an academic reference to the Full Bench of the High Court.

31. As I have noticed, the Respondent 1 had, in the writ petition, relied on the constitutional provisions in Articles 315, 316, 317, 318, 319 and 320 of the Constitution to plead that the functions of the Public Service Commissions were of a sensitive and critical nature and hence the Chairman of the Public Service Commission must possess outstanding and high educational qualifications and a great amount of experience in the field of selection, administration and recruitment. The respondent No.1 has further pleaded in the writ petition that the State Government had on an earlier occasion made an appointment of a Chairman of the Punjab Public Service Commission on the basis of political affiliation and this has resulted in selection and appointment of undeserving persons to public service for extraneous considerations. Though respondent No.1 had alleged in the writ petition some irregularities and illegalities on the part of Mr. Harish Dhanda, who was proposed to be appointed as Chairman of the Public Service Commission by the State Government, the writ petition was not founded only on such irregularities and illegalities alleged against Mr. Harish Dhanda. In addition, the respondent No.1 had also alleged in the writ petition that Mr. Harish Dhanda was politically affiliated to the ruling party and was not selected for appointment as Chairman of the Public Service Commission on the basis of his qualifications, experience or ability which are necessary for the post of the Chairman of the Public Service Commission. Thus, even if the Division Bench had recorded a finding in the order dated 13.07.2011*[Salil Sabhlok v. Union of India]* that the irregularities and illegalities pointed out in the writ petition against Mr. Harish Dhanda do not stand substantiated, the writ petition could not be disposed of with the said finding only.

32. The Division Bench of the High Court, therefore, thought it necessary to make a reference to the Full Bench and has given its reasons for the reference to the Full Bench in Paragraphs 6 and 7 of its order dated 13.07.2011*[Salil Sabhlok v. Union of India]*, which are quoted herein below:

> "6. Even though, Article 316 of the Constitution does not prescribe any particular procedure, having regard to the purpose and nature of appointment, it cannot be assumed that power of appointment need not be regulated by any procedure. It is undisputed that person to be appointed must have competence and integrity. Reference may be made to judgments of the Hon'ble Supreme Court in *Ram Ashray Yadav*, In *re [(2000) 4 SCC 309 : 2000 SCC (L & S) 670], Ram Kumar Kashyap v. Union of India [(2009) 9 SCC 378 : (2009) 2 SCC (L & S) 603 : AIR 2010 SC 1151] and Mehar Singh Saini In re [(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]*.
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> 7. If it is so, question is how such persons are to be identified and selected and whether in the present case, procedure adopted is valid and if not, effect thereof. We are of the view that these questions need to be considered by a Bench of three Hon'ble Judges. Accordingly, we refer the matter to a Bench of three Hon'ble Judges."
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> It will be clear from the Paragraphs 6 and 7 of the order dated 13.07.2011 [*Salil Sabhlok v. Union of India]* quoted above that the Division Bench of the High Court found that Article 316 of the Constitution, which provides for appointment of the Chairman and other Members of the Public Service Commission by the Governor, does not prescribe any particular procedure and took the view that, having regard to the purpose and nature of appointment, it cannot be assumed that power of appointment need not be regulated by any procedure. The Division Bench of the High Court was of the further view that the persons to be appointed must have competence and integrity, but how such persons are to be identified and selected must be considered by a Bench of three Judges and accordingly referred the matter to the three Judges. The Division Bench also referred the question to the larger Bench of three Judges as to whether the procedure adopted in the present case for appointing Mr. Harish Dhanda as the Chairman of the Punjab Public Service Commission was valid and if not, what is the effect of not following the procedure. I do not, therefore, find any merit in the submission of Mr. Rao that the Division Bench of the High Court having found in its order dated 13.07.2011 *[Salil Sabhlok v. Union of India]* that the irregularities and illegalities pointed out in the writ petition against Mr. Harish Dhanda are unsubstantiated, should not have made an academic reference to the larger Bench of the High Court.

33. I may now consider the submission of Mr. Rao that this Court in the case of Mehar Singh Saini In Re [*(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]* had already declared

the law that it is for Parliament to frame the guidelines or parameters regarding the qualifications, experience or stature for appointment as Chairman/Members of the Public Service Commission and hence it was not necessary for the Division Bench to make a reference to a Full Bench on the very same question of law.

34. In Mehar Singh Saini In re *(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]*, this Court noticed that the provisions of Article 316 of the Constitution do not lay down any qualification, educational or otherwise, for appointment to the Commission as Chairman and Members and made the following observations in Para 85 of the judgment as reported in the SCC: (p.630)

> "85. 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 stature, if required to be specified, are for the appropriate Government to frame. This requires expertise in the field, data study and adoption of the best methodology by the Government concerned to make appointments to the Commission on merit, ability and integrity. Neither is such expertise 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 quarters concerned 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."

The observations of this Court in the aforesaid case of *Mehar Singh In re (2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]* relate to qualification and experience for appointment as Chairman/Members of the Commission and have nothing to do with the questions relating to the procedure for identifying persons of integrity and competence to be appointed as Chairman of the Public Service Commission, which were referred by the Division Bench of the High Court to the Full Bench by the order dated 13.07.2011 [*Salil*

Sabhlok v. Union of India]. Mr. Rao is, therefore, not right in his submission that in view of the law declared by this Court in Mehar Singh Saini, Chairman, HPSC In Re (supra), there was no necessity for the Division Bench to make a reference to the Full Bench by the order dated 13.07.2011 [*Salil Sabhlok v. Union of India]*.

35. I may next deal with the contention of Mr. Rao that the Full Bench exceeded its jurisdiction by enlarging the scope of reference and deciding matters which were not referred to it by the order dated 13.07.2011 [*Salil Sabhlok v. Union of India]* of the Division Bench. Rule 4 of the Punjab High Court Rules reads as follows:

> ***"4. All cases to be disposed of by a Bench of two Judges save as provided by law or these Rules.*** - Save as provided by law or by these rules or by special order of the Chief Justice, all cases shall be heard and disposed of by a Bench of two Judges."

36. I have perused Rules 6, 7, 8 and 9 of the Punjab High Court Rules which relate to Full Bench and I do not find therein any provision which provides what matters a Full Bench comprising three Judges of the High Court will decide. Hence, the Division Bench of the High Court has the jurisdiction to decide a case, unless otherwise provided by law or by a special order of the Chief Justice and the jurisdiction of a Full Bench to decide matters will flow either from the order of the Chief Justice of the High Court or from the order of the Division Bench which makes a reference to the Full Bench. In the present case, there is no order of the Chief Justice making a reference but only the order dated 13.07.2011[*Salil Sabhlok v. Union of India]* of the Division Bench of the High Court making a reference to the Full Bench of three Judges of the High Court. Thus, I have to look at the order dated 13.07.2011[*Salil Sabhlok v. Union of India]* of the Division Bench to find out whether the Division Bench referred only specific questions to the Full Bench as contended by Mr. Rao or referred the entire case to the Full Bench as contended by Mr. Lalit.

37. On a close scrutiny of Paragraphs 6 and 7 of the order dated 13.07.2011 [*Salil Sabhlok v. Union of India]* of the Division Bench of the High Court which are

extracted above (in para 32), I find that the Division Bench of the High Court has referred only specific questions to the Full Bench: how persons of competence and integrity are to be identified and selected for appointment as Chairman of the Public Service Commission and if the procedure adopted for such appointment in the present case was not valid, the effect thereof. The Division Bench of the High Court has made it clear in Para 7 of its order dated 13.07.2001[*Salil Sabhlok v. Union of India]* that "these questions need to be considered by a Bench of three Hon'ble Judges". I, therefore, do not agree with Mr. Lalit that the Division Bench referred the entire case to the Full Bench by the order dated 13.07.2011[*Salil Sabhlok v. Union of India]*. I further find that although the aforesaid specific questions relating to the procedure for identifying persons of competence and integrity for appointment as the Chairman of the Public Service Commission only were referred by the Division Bench of the High Court, the Full Bench, instead of deciding these specific questions referred to it, has given directions to the State of Punjab and the State of Haryana to follow a particular procedure for appointment of Members and Chairman of the Public Service Commission till such time a fair, rational, objective and transparent policy to meet the mandate of Article 14 of the Constitution is made. I, therefore, agree with Mr. Rao that the Full Bench of the High Court has decided issues which were not referred to it by the Division Bench of the High Court and the judgment dated 17.08.2011 [*Salil Sabhlok v. Union of India]* of the Full Bench of the High Court was without jurisdiction.

38. I may next consider the contention of Mr. Rao that as the Constitution has left it to the discretion of the State Government to select and appoint the Chairman and Members of a State Public Commission, the High Court cannot direct the Government to exercise its discretion by following a procedure prescribed by the High Court. Mr. Rao has relied on Article 316 of the Constitution and the decision of this Court in *Mohinder Singh Gill v. The Chief Election Commissioner [(1978) 1 SCC 405]*.

39. Article 316 of the Constitution of India is quoted herein below:

"316. Appointment and term of office of members.-

(1) The Chairman and other Members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint

Commission, by the President, and in the case of a State Commission, by the Governor of the State:

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

(1-A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some persons appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State in the case of a State Commission, may appoint for the purpose.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier: Provided that -

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

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

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office."

A reading of Article 316 of the Constitution would show that it confers power on the Governor of the State to appoint the Chairman and other Members of a Public Service Commission. It has been held by this Court in *Mohinder Singh Gill* v. *Chief Election Commissioner[(1978) 1 SCC 405]*, that an authority has implied powers to make

available and carry into effect powers expressly conferred on it. Thus, under Article 316 of the Constitution, the Governor of a State has not only the express power of appointing the Chairman and other Members of Public Service Commission but also the implied powers to lay down the procedure for appointment of Chairman and Members of the Public Service Commission and the High Court cannot under Article 226 of the Constitution usurp this constitutional power of the Government and lay down the procedure for appointment of the Chairman and other Members of the Public Service Commission. The Full Bench of the High Court, therefore, could not have laid down the procedure for appointment of the Chairman and Members of the Punjab Public Service Commission and the Haryana Public Service Commission by the impugned judgment dated 17.08.2011 [*Salil Sabhlok v. Union of India]*.

40. Having held that the Full Bench of the High Court has in its judgment dated 17.08.2011 [*Salil Sabhlok v. Union of India]* acted beyond its jurisdiction and has usurped the constitutional power of the Governor in laying down the procedure for appointment of the Chairman and Members of the Public Service Commission, I have to set aside the judgment dated 17.08.2011 [*Salil Sabhlok v. Union of India]* of the Full Bench of the High Court. Thereafter, either of the two courses are open to me: remand the matter to the High Court for disposal of the writ petition in accordance with law or decide the writ petition on merits. To cut short the litigation, I proceed to decide the writ petition on merits instead of remanding the matter to the High Court.

41. This Court has had the occasion to consider the qualities which a person should have for being appointed as Chairman and Member of Public Service Commission and has made observations after considering the nature of the functions entrusted to the Public Service Commissions under Article 320 of the Constitution. In *Ashok Kumar Yadav* v. *State of Haryana [(1985) 4 SCC 417 : 1986 SCC (L & S) 88]* , a Constitution Bench of this Court speaking through P.N.Bhagwati, J, observed: (SCC p.546, para 30)

> "30…. We would therefore like to strongly impress upon every State Government to take care to see that its Public Service Commission is manned by competent, honest and independent persons of outstanding ability

> and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merit."

42. In *Ram Ashray Yadav*, In re [*(2000) 4 SCC 309 : 2000 SCC (L & S) 670]*, Dr. A.S. Anand, C.J. speaking for a three Judge Bench, cautioned: (SCC p.321, para 34)

> "34. The credibility of the institution of a Public Service Commission is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that he society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and members of the Public Service Commission must forever remain vigilant and conscious of these necessary adjuncts."

43. Despite these observations of this Court, the State Government of Punjab appointed Mr. Ravi Pal Singh Sidhu as the Chairman of the Punjab Public Service Commission between 1996 to 2002 and as has been noted in the judgment of S.B. Sinha, J. of this Court in *Inderpreet Singh Kahlon* v. State of Punjab [*(2006) 11 SCC 356 : (2007) 1 SCC (L & S) 444],* allegations were made against him that he got a large number of persons appointed on extraneous considerations including monetary consideration during the period 1998 to 2001 and raids were conducted in his house on more that one occasion and a large sum of money was recovered from his custody and his relatives and FIRs were lodged and criminal cases initiated by the Vigilance Bureau of the State of Punjab. Writing a separate judgment in the aforesaid case, Dalveer Bhandari, J, had to comment: (SCC p.402, para 102)

> "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."

44. Considering this experience of the damage to recruitment to public services caused by appointing a person lacking in character as the Chairman of the Public Service Commission in the State of Punjab, when the Respondent 1 brought to the notice of the High Court through the writ petition that the State Government of Punjab proposed to appoint Mr. Harish Dhanda as the Chairman of the Public Service Commission, only because of his political affiliation, the Division Bench of the High Court rightly entertained the writ petition as a public interest litigation. The Division Bench of the High Court, however, found that no procedure for appointment of Chairman and Members of the Public Service Commission has been laid down in Article 316 of the Constitution and therefore posed the question in Paragraphs 6 and 7 of its order dated 13.07.2011 [*Salil Sabhlok v. Union of India]* as to what should be the procedure for identifying and selecting persons of integrity and competence for appointment of Chairman of the Public Service Commission and referred the question to a larger Bench of three Judges.

45. I have already held that it is for the Governor who is the appointing authority under Article 316 of the Constitution to lay down the procedure for appointment of the Chairman and Members of the Public Service Commission, but this is not to say that in the absence of any procedure laid down by the Governor for appointment of Chairman and Members of the Public Service Commission under Article 316 of the Constitution, the State Government would have absolute discretion in selecting and appointing any person as the Chairman of the State Public Service Commission. Even where a procedure has not been laid down by the Governor for appointment of Chairman and Members of the Public Service Commission, the State Government has to select only persons with integrity and competence for appointment as Chairman of the Public Service Commission, because the discretion vested in the State Government under Article 316

of the Constitution is impliedly limited by the purposes for which the discretion is vested and the purposes are discernible from the functions of the Public Service Commissions enumerated in Article 320 of the Constitution. Under clause (1) of Article 320 of the Constitution, the State Public Service Commission has the duty to conduct examinations for appointments to the services of the State. Under clause (3) of Article 320, the State Public Service Commission has to be consulted by the State Government on matters relating to recruitment and appointment to the civil services and civil posts in the State, on disciplinary matters affecting a person serving under the Government of a State in a civil capacity, on claims by and in respect of a person who is serving under the State Government towards costs of defending a legal proceeding, on claims for award of pension in respect of injuries sustained by a person while serving under the State Government and other matters. In such matters, the State Public Service Commission is expected to act with independence from the State Government and with fairness, besides competence and maturity acquired through knowledge and experience of public administration.

46. I, therefore, hold that even though Article 316 does not specify the aforesaid qualities of the Chairman of a Public Service Commission, these qualities are amongst the implied relevant factors which have to be taken into consideration by the Government while determining the competency of the person to be selected and appointed as Chairman of the Public Service Commission under Article 316 of the Constitution. Accordingly, if these relevant factors are not taken into consideration by the State Government while selecting and appointing the Chairman of the Public Service Commission, the Court can hold the selection and appointment as not in accordance with the Constitution. To quote *De Smith's Judicial Review*, 6th Edition:

> "If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations required to be taken into account (expressly or impliedly), a court will normally hold that the power has not been validly exercised. (Page 280)

> If the relevant factors are not specified (e.g. if the power is merely to grant or refuse a licence, or to attach such conditions as the competent authority thinks fit), it is for the courts to determine whether the permissible considerations are impliedly restricted, and, if so, to what extent (Page 282)"

In *Hochtief Gammon v. State of Orissa [(1975) 2 SCC 649 : 1975 SCC (L&S)362 : AIR 1975 SC 2226]*, A.Alagiriswamy writing the judgment for a three Judge Bench of this Court explained this limitation on the power of the Executive in the following words: (SCC p.659), para 13)

> "13. The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The Courts have power to see that the Executive acts lawfully".

47. Mr. Rao, however, relied on a decision of the Constitution Bench of this Court in E.P. Royappa v. State of Tamil Nadu & Anr. [*(1974) 4 SCC 3 : 1974 SCC (L & S) 165]* in which it was held that the post of Chief Secretary is a highly sensitive post and the Chief Secretary is a lynchpin in the administration and for smooth functioning of the administration, there should be complete rapport and understanding between the Chief Secretary and the Chief Minister and, therefore, it is only the person in whom the Chief Minister has complete confidence who can be appointed as Chief Secretary of the State and hence the Chief Secretary of a State cannot be displaced from his post on the ground that his appointment was arbitrary and violative of Articles 14 and 16 of the Constitution.

48. Mr. Rao also relied on the decision of a two-Judge Bench of this Court in *State of West Bengal v. Manas Kumar Chakraborty[(2003) 2 SCC 604*] in which it was similarly observed that the post of DG and IG Police was a selection post and it is not open to the courts to sit in appeal over the view taken by the appointing authority with regard to the choice of the officer to be appointed as DG and IG Police and for such selection, the Government of the State must play a predominant role. I am of the considered opinion that the Chairman of the Public Service Commission, who along

with its other members has to perform his duties under Article 320 of the Constitution with independence from the State Government cannot be equated with the Chief Secretary or the DG and IG Police, who are concerned solely with the administrative functions and have to work under the State Government. To ensure this independence of the Chairman and Members of the Public Service Commission, clause (3) of Article 316 of the Constitution provides that a person shall, on expiration of his term of office be ineligible for reappointment to that office.

49. Mr. Rao has also relied on the decision of this Court in *B.Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Association [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L & S) 548 (2)]* to argue that the High Court's jurisdiction to issue a writ of quo warranto is limited to only cases where the appointment to an office is contrary to the statutory rules. He also distinguished the decision of this *Court in Centre for PIL and Another v. Union of India [Centre for PIL v. Union of India]* cited by Mr. Lalit and submitted that in that case the Court had found that the appointment of the Central Vigilance Commissioner was in contravention of the statutory provisions of the Central Vigilance Commission Act, 2003 and for this reason, this Court quashed the appointment of the Central Vigilance Commissioner.

50. I have already held that besides express restrictions in a statute or the Constitution, there can be implied restrictions in a statute and the Constitution and the statutory or the constitutional authority cannot in breach of such implied restrictions exercise its discretionary power. Moreover, Article 226 of the Constitution vests in the High Court the power to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. The power of the High Court under Article 226 of the Constitution is, thus, not confined to only writ of quo warranto but to other directions, orders or writs.

51. In Dwarka Nath v. Income-tax Officer [*AIR 1966 SC 81]*, K. Subba Rao, J. speaking for a three-Judge Bench, has explained the wide scope of the powers of the High Court under Article 226 of the Constitution thus: (AIR pp. 84-85, para 4)

> "4. . .This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in T.C. Basappa v. Nagappa [AIR 1954 SC 440 : 1955-1 SCR 250] and P.J.Irani v. State of Madras AIR 1961 SC 1731 : 1962 (2) SCR 169."

52. Therefore, I hold that the High Court should not normally, in exercise of its power under Article 226 of the Constitution, interfere with the discretion of the State Government in selecting and appointing the Chairman of the State Public Service Commission, but in an exceptional case if it is shown that relevant factors implied from the very nature of the duties entrusted to Public Service Commissions under Article 320 of the Constitution have not been considered by the State Government in selecting and appointing the Chairman of the State Public Service Commission, the High Court can invoke its wide and extra-ordinary powers under Article 226 of the Constitution and quash the selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the Constitution.

53. Coming now to the facts of the present case, I find that the Division Bench of the High Court in its order dated 13.07.2011 [*Salil Sabhlok v. Union of India]* has already held that the irregularities and illegalities alleged against Mr. Harish Dhanda have not been substantiated. I must, however, enquire whether the State Government took into consideration the relevant factors relating to his competency to act as the Chairman of the State Public Service Commission. We had, therefore, passed orders on 01.08.2012 *[State of Punjab v. Salil Sabhlok]* calling upon the State of Punjab to produce before us the material referred to in para 69 of the judgment of the Full Bench of the High Court on the basis of which Mr. Harish Dhanda was selected for appointment as Chairman of the Punjab Public Service Commission. Pursuant to the order dated 01.08.2012 *[State of Punjab v. Salil Sabhlok]*, the State Government has produced the files in which the selection and appointment of Mr. Harish Dhanda was processed by the State Government. At page 26 of the file on the subject "Appointment of Chairman of P.P.S.C. – Mr. S.K. Sinha, IAS, Mr. Harish Rai Dhanda", I find that a bio-data in one sheet has been placed at page 41 of the file, which reads as under:

BIO DATA

Harish Rai Dhanda S/o Sh. Kulbhushan Rai
Resident: The Retreat, Ferozepur Road, Ludhiana
Date of Birth: 15th May, 1960
Attained Bachelor in Arts from SCD Government College, Ludhiana, Punjab University, (1979).

Attained Bachelor in Laws from Law College, Punjab University (1982).

Registered with Bar Council of Punjab and Haryana as Advocate in 1982.

Practiced Law at District Courts, Ludhiana from 1982 to 2007.

Elected as President of District Bar Association, Ludhiana for seven terms.

54. Besides the aforesaid bio-data, there is a certificate dated 06.07.2011 given by the Speaker, Punjab Vidhan Sabha, certifying that Mr. Harish Rai Dhanda, MLA, has

resigned from the membership of the 13th Punjab Legislative Assembly with effect from 06.07.2011 and that his resignation has been accepted by the Speaker. The aforesaid materials indicate that Mr. Harish Dhanda had B.A. and LL.B Degrees and was practicing as an Advocate at the District Courts in Ludhiana and had been elected as the President of the District Bar Association, Ludhiana for seven terms and has been member of the Legislative Assembly. These materials do not indicate that Mr. Harish Dhanda had any knowledge or experience whatsoever either in administration or in recruitment nor do these materials indicate that Mr. Harish Dhanda had the qualities to perform the duties as the Chairman of the State Public Service Commission under Article 320 of the Constitution which I have discussed in this judgment. No other information through affidavit has also been placed on record before us to show that Mr. Harish Dhanda has the positive qualities to perform the duties of the office of the Chairman of the State Pubic Service Commission under Article 320 of the Constitution. The decision of the State Government to appoint Mr. Harish Dhanda as the Chairman of the Punjab Public Service Commission was thus invalid for non-consideration of relevant factors implied from the very nature of the duties entrusted to the Public Service Commissions underArticle 320 of the Constitution.

55. In the result, I am not inclined to interfere with the impugned order of the Division Bench of the High Court dated 17.08.2011[*Salil Sabhlok v. Union of India]* quashing the selection and appointment of Mr. Harish Dhanda as Chairman of the Punjab Public Service Commission, but I set aside the judgment dated 17.08.2011 [*Salil Sabhlok v. Union of India]* of the Full Bench of the High Court. Considering, however, the fact that the State Government of Punjab has already selected and appointed Lt. Gen. R.A.Sujlana as the Chairman of the Punjab Public Service Commission, I am not inclined to disturb his appointment only on the ground that his appointment was consequential to the judgment dated 17.08.2011 [*Salil Sabhlok v. Union of India]* of the Full Bench of the High Court which I have set aside. The appeal of the State of Punjab is partly allowed and the appeal of the State of Haryana is allowed, but the appeal of Mr. Harish Dhanda is dismissed. The parties to bear their own costs.

Madan B. Lokur, J. (concurring) - While I entirely agree with Brother Patnaik, J. but given the seminal importance of the issues raised, I think it appropriate to separately express my views in the case.

57. The facts have been stated in detail by Brother Patnaik and it is not necessary to repeat them.

The issues:

58. The primary substantive issue that arises for consideration is whether the High Court could have – and if it could have, whether it ought to have - interfered in the appointment, by a notification published on 7th July 2011, of Mr. Harish Rai Dhanda as Chairperson of the Punjab Public Service Commission. In my opinion, the answer to both questions must be in the affirmative.

59. However, it must be clarified that even though a notification was issued of his appointment, Mr. Dhanda did not actually assume office or occupy the post of Chairperson of the Punjab Public Service Commission. Before he could do so, his appointment was challenged by Salil Sabhlok through a writ petition being Writ Petition (Civil) No.11848 of 2011 filed in the Punjab & Haryana High Court. When the writ petition was taken up for consideration, a Division Bench of the High Court observed in its order of 13-7-2011 [*Salil Sabhlok v. Union of India]* that his "oath ceremony" was fixed for the same day but learned counsel appearing for the State of Punjab stated that the ceremony would be deferred till the writ petition is decided. Thereafter, the statement was sought to be withdrawn on 1st August 2011. However, the Full Bench of the High Court, which had heard the matter in considerable detail, passed an order on that day retraining administering of the oath of office to Mr. Dhanda. As such, Mr. Dhanda did not take the oath of allegiance, of office and of secrecy as the Chairperson of the Punjab Public Service Commission. Later, since his appointment was quashed by the High Court, the question of his taking the oaths as above did not arise.

60. Another substantive issue raised is whether the High Court could have entertained a Public Interest Writ Petition in respect of a "service matter", namely, the appointment of Mr. Harish Rai Dhanda as Chairperson of the Punjab Public Service Commission. In my opinion, the appointment of the Chairperson of the Punjab Public Service Commission is not a "service matter" and so a Public Interest Litigation could have been entertained by the High Court.

61. A few procedural issues have also arisen for consideration and they relate to the desirability of making a reference by the Division Bench to the Full Bench of the High Court of issues said to have been settled by this Court; the framing of questions by the Full Bench of the High Court, over and above the questions referred to it; the necessity of impleadment of the State of Haryana in the proceedings before the Full Bench, even though it had no concern with the appointment of the Chairperson of the Punjab Public Service Commission; the validity of the direction given by the Full Bench to produce the advice tendered by the Chief Minister of the State of Punjab to the Governor of the State in respect of the appointment of the Chairperson of the Punjab Public Service Commission; the power of the Full Bench to frame guidelines for the appointment of the Chairperson of the Punjab Public Service Commission and of the Haryana Public Service Commission and a few other incidental issues.

Public Interest Writ Petition in respect of a "service matter":

62. At the outset, it is important to appreciate that the Chairperson of a Public Service Commission holds a constitutional position and not a statutory post. The significance of this is that the eligibility parameters or selection indicators for appointment to a statutory post are quite different and distinct from the parameters and indicators for appointment to a constitutional position.

63. The appointment of a Chairperson of a State Public Service Commission is in terms of Article 316 of the Constitution, which reads as follows:

"316. ***Appointment and term of office of Members*** — (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:

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

(1-A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier:

Provided that—

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

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

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office."

64. Two features clearly stand out from a bare reading of Article 316 of the Constitution, and these are:

(1) No qualification has been laid down for the appointment of the Chairperson of a State Public Service Commission. Theoretically therefore, the Chief Minister of a State can recommend to the Governor of a State to appoint any person walking on the street as the Chairperson of the State Public Service Commission.

(2) The Chairperson of the State Public Service Commission is provided security of tenure since the term of office is fixed at six years or until the age of 62 years, whichever is earlier.

65. The security of tenure is confirmed by the provision for removal of the Chairperson of the State Public Service Commission from office as provided for in Article 317 of the Constitution. This reads as follows:

"317. *Removal and suspension of a 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 there from 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."

66. An aspect that clearly stands out from a reading of Article 317 is that the Chairperson of the State Public Service Commission can be removed from office on the ground of misbehaviour only after an inquiry is held by this Court on a reference made by the President and that inquiry results in a report that he or she ought to be removed on such ground. The Governor of the State is not empowered to remove the Chairperson of the State Public Service Commission even though he or she is the appointing authority. There are, of course, other grounds mentioned in Article 317 of the Constitution but none of them are of any concern for the purposes of this case.

67. A reading of Article 316 and Article 317 of the Constitution makes it clear that to prevent the person walking on the street from being appointed as the Chairperson of a State Public Service Commission, the Constitution has provided that the appointment is required to be made by the Governor of the State, on advice. Additionally, the Chairperson has security of tenure to the extent that that person cannot be effortlessly removed from office even by the President as long as he or she is not guilty of proven misbehaviour, or is insolvent, or does not take up any employment or is not bodily or mentally infirm. There is, therefore, an in-built constitutional check on the arbitrary appointment of a Chairperson of a State Public Service Commission. The flip side is that if an arbitrary appointment is made, removal of the appointee is a difficult process.

68. If the person walking on the street is appointed in a God-forbid kind of situation, as the Chairperson of a State Public Service Commission, what remedy does an aggrieved citizen have? This question arises in a unique backdrop, in as much as no eligibility criterion has been prescribed for such an appointment and the suitability of a person to hold a post is subjective.

69. In this context, three submissions have been put forward by learned counsel supporting the appointment of Mr. Dhanda. If these submissions are accepted, then one would have to believe that a citizen aggrieved by such an appointment would have no remedy. The first submission is that a writ of quo warranto would not lie since there is no violation of a statute in the appointment – indeed, no statutory or other qualification or eligibility criterion has been laid down for the appointment. Therefore, a petition for a writ of quo warranto would not be maintainable. The second submission is that the appointment to a post is a "service matter". Therefore, a public interest litigation (or a PIL for short) would not be maintainable. The third submission is that the remedy in a "service matter" would lie with the Administrative Tribunal, but an application before the Tribunal would not be maintainable since the aggrieved citizen is not a candidate for the post and, therefore, would have no locus standii in the matter. It is necessary to consider the correctness of these submissions and the availability of a remedy, if any, to an aggrieved citizen.

Maintainability of a PIL:

i) A writ of quo warranto

70. Learned counsel supporting Mr. Dhanda are right that there is no violation of any statutory requirement in the appointment of Mr. Dhanda. This is because no statutory criterion or parameters have been laid for the appointment of the Chairperson of a Public Service Commission. Therefore, a petition for a writ of quo warranto would clearly not lie.

71. A couple of years ago, in Hari Bansh Lal v. Sahodar Prasad Mahto, [*16 (2010) 9 SCC 655 : 2010) 2 SCC (L&S) 771]* this Court considered the position at law and, after referring to several earlier decisions, including *R.K. Jain v. Union of India*, *[12 (1993) 4 SCC 119: SCC (L&S) 1128: (1993) 25 ATC 464]*, *Mor Modern Coop. Transport Society v. Govt. of Haryana, [36 (2002) 6 SCC 269], High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, [37 (2003) 4 SCC 712:2003 SCC (L&S) 565]* and *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association*, *[26 (2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)]* held that: Hari

Bansh Lal case [16 *(2010) 9 SCC 655 : (2010) 2 SCC (L & S) 771] , SCC p.662, para 19)*

> *"19.* even for issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules."

72. This principle was framed positively in Mahesh Chandra Gupta v. Union of India *[38 (2009) 8 SCC 273],* wherein it was said: (SCC p. 305, para 71)

> "*71*. In cases involving lack of "eligibility" writ of quo warranto would certainly lie."

ii) Is it a service matter?

73. Is the appointment of a person to a constitutional post a "service matter"? The expression "service matter" is generic in nature and has been specifically defined (as far as I am aware) only in the Administrative Tribunals Act, 1985. Section 3(q) of the Administrative Tribunals Act is relevant in this regard and it reads as follows:

> "***3. Definitions***.—In this Act, unless the context otherwise requires,—
>
> * * *
>
> ***q) "service matters",*** in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects—
>
> (i) remuneration (including allowances), pension and other retirement benefits;
>
> (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
>
> (iii) l eave of any kind;
>
> (iv) disciplinary matters; or
> (v) any other matter whatsoever;"

74. It cannot be said that the Chairperson of the Public Service Commission holds a post in connection with the affairs of the Union or the State. He or she is not a

Government servant, in the sense of there being a master and servant relationship between the Union or the State and the Chairperson. In view of the constitutional provisions pertaining to the security of tenure and the removal procedure of the Chairperson and members of the Public Service Commission, it can only be concluded that he or she holds a constitutional post. In this context, in Reference under Article 317(1) of the Constitution of India, In re,[39 (1990) 4 SCC 262 : 1990 SCC (L&S) 672: (1990) 14 ATC 883, it was held: (SCC p.269, para 9)

> "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."

75. Similarly, in Bihar Public Service Commission v. Shiv Jatan Thakur, *[40 1994 Supp. (3) SCC 220:1994 SCC (L&S)1247: (1994)* the Public Service Commission is referred to as a "constitutional institution" and its Chairperson and members as "constitutional functionaries".

76. In Ram Ashray Yadav , In re [*(2000) 4 SCC 309 : 2000 SCC (L & S) 670,]* a reference was made to the "constitutional duties and obligations" of the Public Service Commissions. It was also observed that the Chairperson of the Public Service Commission is in the position of a constitutional trustee.

77. In *Ram Kumar Kashyap v. Union of India*, (2009) 9 SCC 378*: (2009) 2 SCC (L & S) 603]* the obligations of the Public Service Commission were referred to as "constitutional obligations" and on a review of the case law, it was held that: (SCC p.383, para 16)

> "16 … 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."

78. Finally, in Mehar Singh Saini, Chairman, Haryana Public Service Commission, In re, *[4 (2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]* a distinction was made between service under the Government of India or a State Government and a constitutional body like a Public Service Commission. It was observed that: (SCC p.599, para 4)

> "4. A clear distinction has been drawn by the Framers [of our Constitution] 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 interdependence between the two, undoubtedly, points to the cause of Commission being free from any influence or limitation." A little later in the judgment, the Public Service Commission is described as a "constitutional body".

79. This being the position, it is not possible to say that the Chairperson of the Public Service Commission does not occupy a constitutional position or a constitutional post. To describe the appointment to a constitutional post generically or even specifically as a "service matter" would be most inappropriate, to say the least.

(iii) Functional test

80. The employment embargo laid down in the Constitution and the functions of a Public Service Commission also indicate that its Chairperson has a constitutional status.

81. Article 319 of the Constitution provides that on ceasing to hold office, the Chairperson of a State Public Service Commission cannot take up any other employment either under the Government of India or under the Government of a State, except as the Chairperson or member of the Union Public Service Commission or as the Chairperson of any other State Public Service Commission.

82. Among other things, the functions of the State Public Service Commission include, as mentioned in Article 320 of the Constitution, conducting examinations for appointments to the services of the State. The State Public Service Commission may also be consulted by the President or the Governor of the State, subject to regulations that may be made in that behalf, on all matters relating inter alia to methods of recruitment to civil services and for civil posts and on the principles to be followed in making appointments to civil services and posts.

83. Article 322 of the Constitution provides that the expenses of the State Public Service Commission, including salaries, allowances and pensions of its members shall be charged on the Consolidated Fund of the State. Article 323 of the Constitution requires the Public Service Commission to annually present a report of the work done by it to the Governor of the State.

84. All these are serious constitutional functions and obligations cast on the Chairperson and members of the Public Service Commission and to equate their appointment with a statutory appointment and slotting their appointment in the category of a "service matter" would be reducing the Constitution into just another statute, which it is not.

(iv) The remedy

85. What then is the remedy to a person aggrieved by an appointment to a constitutional position like the Chairperson of a Public Service Commission?

86. About twenty years ago, in a case relating to the appointment of the President of a statutory tribunal, this Court held in R.K. Jain v. Union of India, *[12 (1993) 4 SCC 119 : 1993 SCC (L & S) 1128 : (1993) 25 ATC 464]* that an aggrieved person – a "non-appointee" – would alone have the locus standi to challenge the offending action. A third party could seek a remedy only through a public law declaration. This is what was held: (SCC p.174, para 74)

> "74. ….In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending

> action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person."

This view was reiterated in *B. Srinivasa Reddy v. Karnataka Urban Water supply & Drianage Board Employees Assn., [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L & S) 548 (2)]*. Therefore, assuming the appointment of the Chairperson of a Public Service Commission is a "service matter", a third party and a complete stranger such as the writ petitioner cannot approach an Administrative Tribunal to challenge the appointment of Mr. Dhanda as Chairperson of the Punjab Public Service Commission.

87. However, as an aggrieved person he or she does have a public law remedy. But in a service matter the only available remedy is to ask for a writ of quo warranto. This is the opinion expressed by this Court in several cases. One of the more recent decisions in this context is Hari Bansh Lal wherein it was held that : (SCC p. 661, para 15)

> "15.…except for a writ of quo warranto, public interest litigation is not maintainable in service matters."

This view was referred to (and not disagreed with) in *Girjesh Shrivastava v. State of Madhya Pradesh*, [17 (2010) 10 SCC 707 *: (2011) 1 SCC (L & S) 192]* after referring to and relying on Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra (1998) 7 SCC 273, B. Srinivasa Reddy [26 *(2006) 11 SCC 731 (2) : (2007) 1 SCC (L & S) 548 (2)]*, Dattaraj Nathuji Thaware v. State of Maharashtra*, [14 (2005) 1 SCC 590],* Ashok Kumar Pandey v. State of W.B [15 (2004) 3 SCC 349 *: (2011) 1 SCC (Cri) 865]* and Hari Bansh Lal [16 *: (2010) 2 SCC (L & S) 771]*.

88. The significance of these decisions is that they prohibit a PIL in a service matter, except for the purposes of a writ of quo warranto. However, as I have concluded, the appointment of the Chairperson in a Public Service Commission does not fall in the category of a service matter. Therefore, a PIL for a writ of quo warranto in respect of an appointment to a constitutional position would not be barred on the basis of the judgments rendered by this Court and mentioned above.

89. However, in a unique situation like the present, where a writ of quo warranto may not be issued, it becomes necessary to mould the relief so that an aggrieved person is not left without any remedy, in the public interest. This Court has, therefore, fashioned a writ of declaration to deal with such cases. Way back, in T. C. Basappa v. T. Nagappa *[33 AIR 1954 SC 440 : [1955] 1 SCR 250]* it was said: (AIR p.443, para 6)

> "6. The language used in articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions of our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges".

90. More recently, such a writ was issued by this Court was in *Kumar Padma Prasad v. Union of India, [41 (1992) 2 SCC 428 : 1992 SCC (L&S) 561: (1992) 20 ATC 239]* when this Court declared that Mr. K.N. Srivastava was not qualified to be appointed a Judge of the Gauhati High Court even after a warrant for his appointment was issued by the President under his hand and seal. This Court, therefore, directed: (SCC p.457, para 41)

> "41. As a consequence, we quash his appointment as a Judge of the Gauhati High Court. We direct the Union of India and other respondents present before us not to administer oath or affirmation under Article 219 of the Constitution of India to K.N. Srivastava. We further restrain K.N.Srivastava from making and subscribing an oath or affirmation in terms of Article 219 of the Constitution of India and assuming office of the Judge of the High Court."

91. Similarly, in *N. Kannadasan v. Ajoy Khose*, *[42 (2009) 7 SCC 1 : (2009) 3 SCC (Civ)1]*, this Court held that Justice N. Kannadasan (retired) was ineligible to hold the post of the President of the State Consumer Redressal Forum. It was then concluded: (SCC p.68, para 163)

> "163……. (ii) The superior courts may not only issue a writ of quo warranto but also a writ in the nature of quo warranto. It is also entitled to issue a writ of declaration which would achieve the same purpose."

92. Finally and even more recently, in Centre for *PIL v. Union of India*, *[10 (2011) 4 SCC 1:(2011) 1 SCC (L & S) 609]* the recommendation of a High Powered Committee recommending the appointment of Mr. P.J. Thomas as the Central Vigilance Commissioner under the proviso to Section 4(1) of the Central Vigilance Commission Act, 2003 was held to be non est in law and his appointment asthe Central Vigilance Commissioner was quashed. This Court opined: (SCC p.25, para 53)

> "53. At the outset it may be stated that in the main writ petition the petitioner has prayed for issuance of any other writ, direction or order which this Court may deem fit and proper in the facts and circumstances of this case. Thus, nothing prevents this Court, if so satisfied, from issuing a writ of declaration."

Who may be appointed - views of this Court:

93. Having come to a conclusion that an aggrieved citizen has only very limited options available to him or her, is there no redress if an arbitrary appointment is made, such as of the person walking on the street. Before answering this question, it would be worth considering who may be appointed to a constitutional post such as the Chairperson of the Public Service Commission.

94. In *Ashok Kumar Yadav v. State of Haryana*, [27 (1985) 4 SCC 417*: 1986 SCC (L & S) 88],* this Court looked at the appointment of the Chairperson and members of the Public Service Commission from two different perspectives: firstly, from the perspective of the requirement to have able administrators in the country and secondly from the perspective of the requirement of the institution as such. In regard to the first requirement, it was said: (SCC p.456, para 30)

> "30…… It is absolutely essential that the best and finest talent should be drawn in the administration and administrative services must be composed of men who are honest, upright and independent and who are not swayed by the political winds blowing in the country. The selection of candidates for the administrative services must therefore be made strictly on merits, keeping in view various factors which go to make up a strong, efficient and people oriented administrator. This can be achieved only if the Chairman and members of the Public Service Commission are eminent men possessing a high degree of calibre, competence and integrity, who would inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them."

In regard to the second requirement, it was said: (SCC p. 456, para 30)

> "30…. We would therefore like to strongly impress upon every State Government to take care to see that its Public Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merit."

95. In *Ram Ashray Yadav*, In re [2 (2000) 4 SCC 309*: 2000 SCC (L & S) 670]* this Court considered the functional requirements of the Public Service Commission and what is expected of its members and held: (SCC p.312, para 4)

> "4. Keeping in line with the high expectations of 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 in turn are expected to be models themselves in their functioning. 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 and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and members of the Public Service Commissions."

96. With specific reference to the Chairperson of the Public Service Commission who is in the position of a "constitutional trustee", this Court said: (Ram Ashray Yadav case [2 *(2000) 4 SCC 309 : 2000 SCC (L & S) 670],* SCC p.312, para 5)

> "5. The Chairman of the Public Service Commission is in the position of a constitutional trustee and the morals of a constitutional trustee have to be tested in a much stricter sense than the morals of a common man in the marketplace. Most sensitive standard of behaviour is expected from such a constitutional trustee. His behaviour has to be exemplary, his actions transparent, his functioning has to be objective and in performance of all his duties he has to be fair, detached and impartial."

97. *Inderpreet Singh Kahlon v. State of Punjab*, [28 (2006) 11 SCC 356 *: (2007) 1 SCC (L & S) 444]* was decided in the backdrop of a Chairperson of the Punjab Public

Service Commission, "an important constitutional authority", being put behind bars, inter alia, for being caught red-handed accepting a bribe. This Court asserted the necessity of transparency in the appointment to such constitutional positions. It was said: (SCC p.402, para 102)

> "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."

98. Subsequently, in *State of Bihar v. Upendra Narayan Singh* [43 (2009) 5 SCC 65: (2009) 1 SCC (L&S) 1019] this Court expressed its anguish with the appointments generally made to the Public Service Commissions. It was observed: (SCC p.85, paras 42-43)

> "42….. The Public Service Commissions which have been given the status of constitutional authorities and which are supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoils system.
>
> "43…..In the beginning, people with the distinction in different fields of administration and social life were appointed as Chairman and members of the Public Service Commissions but with the passage of time appointment to these high offices became personal prerogatives of the political head of the Government and men with questionable background have been appointed to these coveted positions. Such appointees have, instead of making selections for appointment to higher echelons of services on merit, indulged in exhibition of faithfulness to their mentors totally unmindful of their constitutional responsibility."

99. While it is difficult to summarize the indicators laid down by this Court, it is possible to say that the two most important requirements are that personally the Chairperson of the Public Service Commission should be beyond reproach and his or her appointment should inspire confidence among the people in the institution. The first 'quality' can be ascertained through a meaningful deliberative process, while the second

'quality' can be determined by taking into account the constitutional, functional and institutional requirements necessary for the appointment.

Selection and appointment of Mr. Dhanda

100. Given the views expressed by this Court from time to time, learned counsel for the writ petitioner submitted that Mr. Dhanda ought not to have been appointed as the Chairperson of the Public Service Commission. Three reasons were given in this regard and all of them have been refuted by learned counsel supporting the cause of Mr. Dhanda. They are:

> 100. (1) There is a question mark about the character and conduct of Mr. Dhanda.
>
> 100. (2) Mr.Dhanda lacks the qualifications and stature to hold a constitutional position of the Chairperson of a Public Service Commission.
>
> 100. (3) The record shows that no meaningful and effective thought was given before appointing Mr. Dhanda as the Chairperson of the Public Service Commission.

101. As regards the first reason, certain allegations were made against Mr. Dhanda in the writ petition filed in the High Court. However, in its order dated 13-7-2011 [*Salil Sabhlok v. Union of India]* a Division Bench of the High Court held that: "As regards irregularities and illegalities pointed out in the petition, the same do not stand substantiated." This conclusion is strongly relied on by learned counsel supporting Mr. Dhanda.

102. However, the judgment under appeal records that the writ petitioner had alleged that Mr. Dhanda had used his political influence to effect the transfer of an officer and that the transfer was set aside by the Central Administrative Tribunal as being mala fide. In this context, during the hearing of this appeal, we were handed over a copy of the decision rendered by the Central Administrative Tribunal (Chandigarh Bench) in Original Application No. 495/PB/2007 decided on 15th November 2007. We were informed that this decision was placed before the High Court and that this decision has attained finality, not having been challenged by anybody.

103. A reading of the decision, particularly paragraph 12 thereof, does show that the applicant before the Central Administrative Tribunal was subjected to a transfer contrary to the policy decision relating to mid- term transfers. The relevant portion of paragraph 12 of the decision reads as follows:

> "Even though the Government decided not to allow use of the Rest house as a permanent residence of the Chief Parliamentary Secretary, yet the applicant, being a junior officer became the victim of the annoyance of Respondent No.3 [Mr. Dhanda] and with his political influence, the Forest Minister initiated the proposal for his transfer from Ropar, which was approved by the Chief Minister….. ….But a transfer made in this manner when the work and conduct of the officer is not only being appreciated by the Secretary, but also by the Finance Minister is unwarranted and also demoralizing. These are the situations when the courts have to interfere to prevent injustice to employees who are doing their duty according to rules."

104. While it may be that Mr. Dhanda was given a clean chit by the Division Bench when the case was first before it, the fact is that information subsequently came to the notice of the High Court which indicated that Mr. Dhanda was not above using his political influence to get his way. That Mr. Dhanda came in for an adverse comment in a judicial proceeding was certainly known to him, since he was a party to the case before the Central Administrative Tribunal. But he did not disclose this fact to the Chief Minister. In the deliberative process (or whatever little there was of it) the Chief Minister did not even bother to check whether or not Mr. Dhanda was an appropriate person to be appointed as the Chairperson of the Punjab Public Service Commission in the light of the adverse comment. The "thorough and meticulous inquiry and scrutiny" requirement mentioned in Inderpreet Singh Kahlon [28 *(2006) 11 SCC 356 : (2007) 1 SCC (L & S) 444]* was not at all carried out.

105. As regards the second reason, the qualifications of Mr. Dhanda are as mentioned in his bio-data contained in the official file and reproduced by the High Court in the judgment under appeal. The bio-data reads as follows:

> " - Harish Rai Dhanda son of Shri Kulbhushan Rai.
> - Resident: The Retreat, Ferozepur Road, Ludhiana.
> - Date of Birth: 15-5- 1960.

- Attained Bachelor in Arts from SCD Government College, Ludhiana, Panjab University, 1979.
- Attained Bachelor in Laws from Law College, Panjab University (1982).
- Registered with Bar Council of Punjab and Haryana as Advocate in 1982.
- Practiced Law at District Courts, Ludhiana from 1982 to 2007.
- Elected as President of District Bar Association, Ludhiana for seven terms.

106. The High Court noted that the official file shows that Mr. Dhanda resigned from the membership of the Punjab Legislative Assembly on 6-7-2011. The resignation was accepted the same day.

107. Mr. Dhanda had filed an affidavit in the High Court in which he disclosed that he was or had been the Vice President of the Shiromani Akali Dal and the President of its Legal Cell and its spokesperson.

108. In fairness to Mr. Dhanda it must be noted that his affidavit clearly mentions that he did not apply for or otherwise seek the post of Chairperson of the Punjab Public Service Commission. He was invited by the Chief Minister to submit his bio-data and to accept the post. The question is that with these qualifications, could it be said that Mr. Dhanda was eminently suited to holding the post of the Chairperson of the Public Service Commission? The answer to this must be in the negative if one is to agree with the expectations of this Court declared in various decisions. This is not to say that Mr. Dhanda lacks integrity or competence, but that he clearly has no administrative experience for holding a crucial constitutional position. Merely because Mr. Dhanda is an advocate having had electoral successes does not make him eminently suitable for holding a constitutional position of considerable importance and significance. It is more than apparent that Mr. Dhanda's political affiliation weighed over everything else in his appointment as the Chairperson of the Punjab Public Service Commission.

109. But, as pointed out in Mahesh Chandra Gupta v. Union of India, [38 (2009) 8 SCC 273] the suitability of a person to hold a post is a matter of opinion and this is also a peg on which learned counsel supporting Mr. Dhanda rest their case. The "suitability test" is said to be beyond the scope of judicial review.

110. The third reason is supported by the writ petitioner through the finding given by the High Court that the official file relating to the appointment of Mr. Dhanda as the Chairperson of the Punjab Public Service Commission contains only his bio-data, a certificate to the effect that he resigned from the membership of the Punjab Legislative Assembly on 6-7-2011 and his resignation was accepted the same day and the advice of the Chief Minister to the Governor apparently to appoint Mr. Dhanda as the Chairperson of the Punjab Public Service Commission. The advice was immediately acted upon and Mr. Dhanda was appointed as the Chairperson of the Punjab Public Service Commission by a notification published on 7-7-2011. In other words, the entire exercise relating to the appointment of the Chairperson of the Public Service Commission was completed in a day.

111. The learned counsel supporting the appointment of Mr. Dhanda submitted that no procedure is prescribed for the selection of the Chairperson of the Public Service Commission. Therefore, no fault can be found in the procedure adopted by the State Government. It was submitted, relying on Mohinder Singh Gill v. Chief Election Commissioner, [31 (1978) 1 SCC 405] that there is an implied power to adopt any appropriate procedure for making the selection and the State Government and the Governor cannot be hamstrung in this regard.

112. It is true that no parameters or guidelines have been laid down in Article 316 of the Constitution for selecting the Chairperson of the Public Service Commission and no law has been enacted on the subject with reference to Entry 41 of List II of the 7th Schedule of the Constitution. It is equally true that the State Government and the Governor have a wide discretion in the procedure to be followed. But, it is also true that *Mohinder Singh Gill* v. Chief Election Commr., [*(1978) 1 SCC 405]* refers to Lord Camden as having said that wide discretion is fraught with tyrannical potential even in high personages. Therefore, the jurisprudence of prudence demands a fairly high degree of circumspection in the selection and appointment to a constitutional position having important and significant ramifications.

113. Two factors that need to be jointly taken into account for the exercise of the power of judicial review are: the deliberative process and consideration of the institutional requirements.

114. As far as the deliberative process is concerned (or lack of effective consultation, as described in Mahesh Chandra Gupta v. Union of India, (2009) 8 SCC 273) it is quite apparent that the entire process of selection and appointment of Mr. Dhanda took place in about a day. There is nothing to show the need for a tearing hurry, though there was some urgency, in filling up the post following the demise of the then Chairperson of the Punjab Public Service Commission in the first week of May 2011. But, it is important to ask, since the post was lying vacant for a couple of months, was the urgency such that the appointment was required to be made without considering anybody other than Mr. Dhanda. There is nothing to show that any consideration whatsoever was given to appointing a person with adequate administrative experience who could achieve the constitutional purpose for which the Public Service Commission was created. There is nothing to show that any background check was carried out to ascertain whether Mr. Dhanda had come in for any adverse notice, either in a judicial proceeding or any police inquiry. It must be remembered that the appointment of Mr. Dhanda was to a constitutional post and the basics of deliberation before making the selection and appointment were imperative. In this case, clearly, there was no deliberative process, and if any semblance of it did exist, it was irredeemably flawed. The in- built constitutional checks had, unfortunately, broken down.

115. In Centre for PIL [*Centre for PIL v. Union of India, (2011) 4 SCC 1 : (2011) 1 SCC (L & S) 609]* this Court struck down the appointment of the Central Vigilance Commissioner while reaffirming the distinction between merit review pertaining to the eligibility or suitability of a selected candidate and judicial review pertaining to the recommendation making process. In that case, the selection of the Central Vigilance Commissioner was made under Section 4(1) of the Central Vigilance Commission Act, 2003 (for short the Act) which reads as follows:

> ***"4. Appointment of Central Vigilance Commissioner and Vigilance Commissioners*** — (1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:
>
> Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—
>
> (a) the Prime Minister — Chairperson;
>
> (b) the Minister of Home Affairs — Member;
>
> (c) the Leader of the Opposition in the House of the People — Member.
>
> Explanation.—For the purposes of this sub-section, 'the Leader of the Opposition in the House of the People' shall, when no such Leader has been so recognised, include the Leader of the single largest group in opposition of the Government in the House of the People."

As can be seen, only the establishment of a High Powered Committee (HPC) for making a recommendation is provided for - the procedure to be followed by the HPC is not detailed in the statute. This is not unusual since a statute cannot particularize every little procedure; otherwise it would become unmanageable and maybe unworkable. Moreover, some situations have to be dealt with in a common sense and pragmatic manner. Acknowledging this, this Court looked at the appointment of the Central Vigilance Commissioner not as a merit review of the integrity of the selected person, but as a judicial review of the recommendation making process relating to the integrity of the institution. It was made clear that while the personal integrity of the candidate cannot be discounted, institutional integrity is the primary consideration to be kept in mind while recommending a candidate. It was observed that while this Court cannot sit in appeal over the opinion of the HPC, it can certainly see whether relevant material and vital aspects having nexus with the objects of the Act are taken into account when a recommendation is made. This Court emphasized the overarching need to act for the good of the institution and in the public interest. Reference in this context was made to N. Kannadasan [42 N. Kannadasan v. Ajoy Khose (2009) 7 SCC 1 : (2009) 3 SCC (Civ)1].

116. Keeping in mind the law laid down and the facts as they appear from the record, it does appear that the constitutional, functional and institutional requirements of the

Punjab Public Service Commission were not kept in mind when Mr. Dhanda was recommended for appointment as its Chairperson.

A suitable appointee:

117. A submission was made by learned counsel supporting the appointment of Mr. Dhanda that ultimately it is for the State Government to decide who would be the most suitable person to be appointed as the Chairperson of the Public Service Commission.

118. In this regard, reliance was placed on three decisions.

118.1. In the first such decision, that is, E.P. Royappa v. State of Tamil Nadu, [(1974) 4 SCC 3 *: 1974 SCC (L & S) 165]* the post of the Chief Secretary of the State was under consideration. This Court observed that the post is a sensitive one. The post is one of confidence and the Chief Secretary is a lynchpin in the administration of the State. Therefore, the Chief Secretary and the Chief Minister of the State must have complete rapport and understanding between them. If the Chief Secretary forfeits the confidence of the Chief Minister, then he may be shifted to some other post in the larger interests of the administration, provided that no legal or constitutional right of the Chief Secretary is violated.

118.2. The second decision relied upon was State of W.B. v. Manas Kumar Chakraborty, [25 (2003) 2 SCC 604]. That case concerned itself with the post of the Director General and Inspector General of Police (DG&IP) in a State. This Court observed that the said post was of a very sensitive nature. It could only be filled up by a person in whom the State Government had confidence. Consequently, it was held that such a post need not be filled up only by seniority, but merit, credibility and confidence that the person can command with the State Government "must play a predominant role in selection of an incumbent to such a post."

118.3. Finally, in *Hari Bansh Lal [16 Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655 : (2010) 2 SCC (L & S) 771]*, a case concerning an appointment to a statutory post of Chairperson of a State Electricity Board, reference was made to State of Mysore v. Syed Mahmood, [*AIR 1968 SC 1113]*, Statesman (P) Ltd. v. H.R. Deb, [*AIR 1968 SC 1495]* and State Bank of India v. Mohd. Mynuddin, *[46 (1987) 4 SCC 486: 1987 SCC (L&S) 464: (1987) 5 ATC 59]* and it was held: *(Hari Bansh Lal case [16 Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655 : (2010) 2 SCC (L & S) 771], SCC p.663, para 22)*

> "22. It is clear from the above decisions, suitability or otherwise of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is contrary to the statutory provisions/rules."

119. These decisions are clearly distinguishable.

119.1. First of all, none of the cited decisions dealt with the appointment to a constitutional position such as the one that we are concerned with. A constitutional position such as that of the Chairperson of a Public Service Commission cannot be equated with a purely administrative position – it would be rather facetious to do so. While the Chief Secretary and the Director General of Police are at the top of the ladder, yet they are essentially administrative functionaries. Their duties and responsibilities, however onerous, cannot be judged against the duties and responsibilities of an important constitutional authority or a constitutional trustee, whose very appointment is not only expected to inspire confidence in the aspirational Indian but also project the credibility of the institution to which he or she belongs. I am, therefore, unable to accept the view that the suitability of an appointee to the post of Chairperson of a Public Service Commission should be evaluated on the same yardstick as the appointment of a senior administrative functionary.

119.2. Secondly, it may be necessary for a State Government or the Chief Minister of a State to appoint a "suitable" person as a Chief Secretary or the Director General of Police or perhaps to a statutory position, the connotation not being derogatory or disparaging, but because both the State Government or the Chief Minister and the appointee share a similar vision of the administrative goals and requirements of the State. The underlying premise also is that the State Government or the Chief Minister has confidence that the appointee will deliver the goods, as it were, and both are administratively quite compatible with each other. If there is a loss of confidence or the compatibility comes to an end, the appointee may simply be shifted out to some other assignment, provided no legal or constitutional right of the appointee is violated.

120. The question of the Chief Minister or the State Government having "confidence" (in the sense in which the word is used with reference to the Chief Secretary or the Director General of Police or any important statutory post) in the Chairperson of a State Public Service Commission simply does not arise, nor does the issue of compatibility. The Chairperson of a Public Service Commission does not function at the pleasure of the Chief Minister or the State Government. He or she has a fixed tenure of six years or till the age of sixty two years, whichever is earlier. Security of tenure is provided through a mechanism in our Constitution. The Chairperson of a State Public Service Commission, even though appointed by the Governor, may be removed only by the President on the ground of misbehaviour after an inquiry by this Court, or on other specified grounds of insolvency, or being engaged in any other paid employment or being unfit to continue in office by reason of infirmity of mind or body. There is no

question of the Chairperson of a Public Service Commission being shifted out if his views are not in sync with the views of the Chief Minister or the State Government.

121. The independence of the post of the Chairperson or the member of the Punjab Public Service Commission cannot be forgotten or overlooked. That independence is attached to the post is apparent from a reading of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 framed by the Governor of Punjab in exercise of power conferred by Article 318 of the Constitution.

122. Regulation 2(c) of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 defines "Member" as:

> "2. (c) 'Member' means a Member for the time being of the Commission and includes the Chairman thereof";

123. Regulation 4 of these Regulations provides that:

> "Every Member shall on appointment be required to take the oaths in the form laid down in Appendix 'A' to these regulations."

124. The oaths that a member (including the Chairperson) is required to take in the form laid down in Appendix 'A' are oaths of allegiance, of office and of secrecy. A Note given in Appendix 'A' states: "These oaths will be administered by the Governor in person in the presence of the Chief Secretary." The oaths read as follows:

"Form of Oath of Allegiance

> I _____, solemnly affirm that I will be faithful and bear true allegiance to India and to the Constitution of India as by law established and that I will loyally carry out the duties of my office."

* * *

"Form of Oath of Office

> I, _____, appointed a Member of the Punjab Public Service Commission do solemnly declare, that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

* * *

"Form of Oath of Secrecy

I, _____, solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Member of the Punjab Public Service Commission, except as may be required for due discharge of my duties as such Member or as may be specially permitted by the Governor."

125. There is, therefore, a great deal of solemnity attached to the post of the Chairperson of the Public Service Commission. The Chairperson takes the oath of allegiance to India and to the Constitution of India – not an oath of allegiance to the Chief Minister. An appointment to that position cannot be taken lightly or on considerations other than the public interest. Consequently, it is not possible to accept the contention that the Chief Minister or the State Government is entitled to act only on the perceived suitability of the appointee, over everything else, while advising the Governor to appoint the Chairperson of the Public Service Commission. If such a view is accepted, it will destroy the very fabric of the Public Service Commission.

Finding an appropriate Chairperson:

126. Taking all this into consideration, how can an appropriate person be searched out for appointment to the position of a Chairperson of a Public Service Commission? This question arises in the context of the guidelines framed by the High Court and which have been objected to by the State of Punjab and the State of Haryana.

127. This Court found itself helpless in resolving the dilemma in Mehar Singh Saini *[4 Mehar Singh Saini. In re, (2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]*. This Court pointed out the importance of the Public Service Commission vis-à-vis good governance and the "common man". In this regard, it was observed that: (SCC p.599, para 6)

> "6…….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 the State."

It was then noted that: (SCC p.600, para 8)

> "8. The conduct of the Chairman and members of the Commission, in discharge of their duties, has to be above board and beyond censure. The

credibility of the institution of the Public Service Commission is founded upon faith of the common man on its proper functioning."

128. In this background and in this perspective, this Court drew a distinction between the exercise of legislative power by Parliament and the executive power of the Government. It was held that laying down the qualifications and experience required for holding the office of Chairperson or member of the Public Service Commission is a legislative function. This is what this Court said: (Mehar Singh Saini case In re, *(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423], SCC p.630, para 85)*

> "85. Desirability, if any, of providing specific qualification or experience for appointment as Chairman/members of the Commission is a function of Parliament."

129. However, the necessary guidelines and parameters for holding such an office are within the executive power of the State. It was held by this Court: (Mehar Singh Saini case, *(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423], SCC p.630, para 85)*

> "85…… The guidelines or parameters, if any, including that of stature, if required to be specified are for the appropriate Government to frame. This requires expertise in the field, data study and adoption of the best methodology by the Government concerned to make appointments to the Commission on merit, ability and integrity."

130. On the "legislative front", this Court found itself quite helpless. This Court obviously could not read those qualifications into Article 316 of the Constitution which were not there, nor could it direct Parliament to enact a law. All that could be done (and which it did) was to draw the attention of Parliament to the prevailing situation in the light of

> "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." (Mehar Singh Saini case, *(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423], SCC p.630, para 85)*

It was also noted that : (*SCC p.630, para 85)*

> "85. "A large number of inquiries are pending before this Court which itself reflects that all is not well with the functioning of the Commissions."

131. Apart from this Court's inability to read qualifications into Article 316 of the Constitution, it was submitted by learned counsel supporting the cause of Mr. Dhanda that this Court cannot direct that legislation be enacted on the subject. Reference was made to Supreme Court Employees' Welfare Assn. v. Union of India, [20 (1989) 4 SCC 187:1989 SCC (L&S) 569] wherein it was held: (SCC p.219, para 51)

> 51. There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority."

A similar view was expressed in *Asif Hameed v. State of J & K,* [23 1989 Supp (2) SCC 364]. It was held in that decision that: (SCC p.375, para 21)

> "21….. The Constitution has laid down elaborate procedure for the legislature to act there under. The legislature is supreme in its own sphere under the Constitution. It is solely for the legislature to consider as to when and in respect of what subject-matter, the laws are to be enacted. No directions in this regard can be issued to the legislature by the courts."

132. In *Suresh Seth v. Commissioner, Indore Municipal Corpn.,* [21 (2005) 13 SCC 287], this Court referred to Supreme Court Employees' Welfare Assn. [20 *(1989) 4 SCC 187 : 1989 SCC (L & S) 569], SCC p.289, para 5)* and State of J&K v. A.R. Zakki [47 (1992 Supp (1) SCC 548: 1992 SCC (L&S) 427: (1992) 20 ATC 285] and held: (*Suresh Seth case* [21 (2005) 13 SCC 287], SCC p.289, para 5)

> "5….. this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation."

133. There is, therefore, no doubt that this Court can neither legislate on the subject nor issue any direction to Parliament or the State Legislature to enact a law on the subject.

134. On the "executive front", this Court expressed its helplessness in framing guidelines or parameters due to its lack of "expertise in the field, data study and adoption

of the best methodology". Keeping this in mind, the High Court was in error in framing the guidelines that it did in the absence of any expertise in the field, data study or knowledge of the best methodology for selecting the Chairperson of the Punjab Public Service Commission.

Options before this Court:

135. But, is this Court really helpless, broadly, in the matter of laying down appropriate guidelines or parameters for the appointment of a Chairperson or members of the Public Service Commission? If Mehar Singh Saini is understood in its correct perspective, the answer to this question would be in the negative.

135.1. First of all, this Court cannot overlook the administrative imperative. There was and still is a need for the Public Service Commission to deliver the goods, as it were. In this context, the Second Administrative Reform Commission in its 15th Report looked at the past, present and future of the Public Service Commission and observed:

> "2.5.3. In the early years of Independence, State Public Service Commissions throughout the country functioned well primarily on account of the fact that:
>
> (a) There was objectivity in selection of competent and experienced people as Chairman and Members of the Commission. The government treated the Public Service Commission as a sacrosanct institution and the Chairman and Members were either very senior government servants (drawn usually from the ICS) or academicians of high standing in their field.
>
> (b) The Commission enjoyed excellent reputation for objectivity, transparency and fairplay.
>
> "2.5.4 But in recent years, this Constitutional body has suffered extensive loss of reputation in many States, mainly on account of (a) charges of corruption, favouritism and nepotism in matters of recruitment and (b) use of archaic processes and procedures in its functioning which leads to inordinate delays. For example, the civil services examinations conducted by a State Public Service Commission take a minimum time period of one and half year to complete. In some cases, it may take even longer.
>
> * * *

> "2.5.6.6 The Commission is of the view that the intention behind creation of an autonomous Public Service Commission as a Constitutional authority was to create a body of achievers and ex-administrators who could select meritorious candidates for recruitment and promotion to various civil service positions under the State Government with utmost probity and transparency. There is need to take steps to ensure that only persons of high standing, intellectual ability and reputation are selected as Chairman and Members of the Public Service Commission."

In this context, the views of the Law Commission of India as contained in its 14th Report, which are at variance with the views of the Second Administrative Reform Commission contained in its 15th Report are worth highlighting, one of the reasons being that the luminaries who assisted the Law Commission reads like a veritable Who's Who from the legal firmament. This is what was said:

> "Having regard to the important part played by the Public Service Commission in the selection of the subordinate judiciary, we took care to examine as far as possible the Chairman and some of the members of the Public Service Commissions in the various States. We are constrained to state that the personnel of these Public Service Commissions in some of the States was not such as could inspire confidence, from the points of view of either efficiency or of impartiality. There appears to be little doubt that in some of the States appointments to these Commissions are made not on considerations of merit but on grounds of party and political affiliations. The evidence given by members of the Public Service Commissions in some of the States does create the feeling that they do not deserve to be in the responsible posts they occupy."

135.2. Secondly, the constitutional and more important imperative is that of good governance for the benefit of the aspirational Indian. For this, an appropriate person should be selected to fill up the position of a constitutional trustee.

136. In the light of the various decisions of this Court adverted to above, the administrative and constitutional imperative can be met only if the Government frames guidelines or parameters for the appointment of the Chairperson and members of the Punjab Public Service Commission. That it has failed to do so does not preclude this Court or any superior Court from giving a direction to the State Government to conduct the necessary exercise within a specified period. Only because it is left to the State Legislature to consider the desirability or otherwise of specifying the qualifications or experience for the appointment of a person to the position of Chairperson or member

of the Punjab Public Service Commission, does not imply that this Court cannot direct the Executive to frame guidelines and set the parameters. This Court can certainly issue appropriate directions in this regard, and in the light of the experience gained over the last several decades coupled with the views expressed by the Law Commission, the Second Administrative Reform Commission and the views expressed by this Court from time to time, it is imperative for good governance and better administration to issue directions to the Executive to frame appropriate guidelines and parameters based on the indicators mentioned by this Court. These guidelines can and should be binding on the State of Punjab till the State Legislature exercises its power.

Additional questions framed by the Full Bench

137. The learned counsel supporting the appointment of Mr. Dhanda submitted that the Full Bench could not expand the scope of the reference made to it by the Division Bench, nor could it frame additional questions.

138. Generally speaking, they are right in their contention, but it also depends on the reference made.

139. The law on the subject has crystallized through a long line of decisions and it need not be reiterated again and again.

139.1. The decisions include Kesho Nath Khurana v. Union of India, [18 (1981 Supp SCC 38*: 1981 SCC (Cri) 674]:* (SCC p.39, para 1)

> *"I*..... The Division Bench ought to have sent the appeal back to the Single Judge with the answer rendered by them to the question referred by the Single Judge and left it to the Single Judge to dispose of the second appeal according to law".

139.2. *Kerala State Science & Technology Museum v. Rambal Co*., [29 (2006) 6 SCC 258] (SCC p.262, para 8)

> "8. It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench i.e. Division Bench or Full Bench or Constitution Bench, as the case may be, the larger Bench cannot adjudicate upon an issue which is not the question referred to".

139.3. *T.A. Hameed v. M. Viswanathan, [48 (2008) 3 SCC 243*] (SCC p.245, para 12)

> "12. Since, only reference was made to the Full Bench, the Full Bench should have answered the question referred to it and remitted the matter to the Division Bench for deciding the revision petition on merits".

139.4. And more recently, *Saquib Abdul Hameed Nachan v. State of Maharashtra, [49 (2010) 9 SCC 93: (2010) 3 SCC (Cri) 1146]:* (SCC p.102, para 15)

> "15. …Normally, after answering the reference by the larger Bench, it is for the Reference Court to decide the issue on merits on the basis of the answers given by the larger Bench".

140. There is no bar shown whereby a Bench is precluded from referring the entire case for decision by a larger Bench - it depends entirely on the reference made. In any event, that issue does not arise in this appeal and so nothing more need be said on the subject.

141. What was the reference made by the Division Bench to the Full Bench and did that Bench frame additional questions? The answer to this is to be found in the judgment of the High Court. The reference has not been artistically drafted, but it reads as follows:

> "6. Even though, Article 316 of the Constitution does not prescribe any particular procedure, having regard to the purpose and nature of appointment, it cannot be assumed that power of appointment need not be regulated by any procedure. It is undisputed that person to be appointed must have competence and integrity. Reference may be made to the judgments of the Hon'ble Supreme Court in *Ram Ashray Yadav, In re (2000) 4 SCC 309: 2000 SCC (L & S) 670]*, Ram Kumar Kashyap v. Union of India, [3 *(2009) 9 SCC 378 : (2009) 2 SCC (L & S) 603]* and Mehar Singh Saini, In re [4 *(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]*.
>
> 7. If it is so, question is how such persons are to be identified and selected and whether in the present case, procedure adopted is valid and if not, effect thereof. We are of the view that these questions need to be considered by a Bench of three Hon'ble Judges. Accordingly, we refer the matter to a Bench of three Hon'ble Judges."

142. On the basis of the submissions made, the Full Bench reformulated the questions referred to it in the following words:

> "1. Whether the present petition is not maintainable as the questions raised are the concluded questions by the decisions of the Supreme Court?

2. Whether the present petition is public interest litigation in a service matter, and hence not maintainable on the said ground also?

3. Whether this Court can issue directions in the nature of guidelines for a transparent, fair and objective procedure to ensure that the persons of impeccable personal integrity, caliber and qualifications alone are appointed as the members / Chairman of State Public Service Commission?

4. Whether in exercise of power of judicial review, it could be stated that the decision making process leading to the appointment of Respondent No. 4 [Mr. Harish Rai Dhanda] as Chairman of Commission was arbitrary, capricious or violative of Article 14?"

143. The reformulation was explained by the Full Bench by stating that the first two questions were raised on behalf of the State of Punjab regarding the maintainability of the reference itself. In my opinion, the first two questions actually touch upon the maintainability of the writ petition itself. These issues should have been decided by the Division Bench and had it answered the questions in the negative, there would have been no need to make any reference to the Full Bench.

144. Much was sought to be made by learned counsel for the writ petitioner that the "matter" (that is the entire matter) was referred to the Full Bench. It is difficult to agree that the entire "matter" was referred to the Full Bench. Firstly, the word "matter" must take colour from the context in which it was used, which is with reference only to the two questions placed before the Full Bench. Secondly, even the Full Bench did not think that the entire matter was referred to it and that is why after answering the reference the "matter" was remitted to the Division Bench for disposal in accordance with law.

145. To this extent, learned counsel supporting the cause of Mr. Dhanda are right that the Full Bench overstepped its mandate. But where does this discussion lead us to? The two questions were fully argued in this Court for the purposes of obtaining a decision on them, and no suggestion was made that the decision of the Full Bench on these questions be set aside because of a jurisdictional error and the Division Bench be asked to decide them quite independently. Therefore, this issue is only of academic interest so far as this appeal is concerned notwithstanding the law that a larger Bench should decide only the questions referred to it. Of course, if a subsidiary question logically and

unavoidably arises, the larger Bench cannot be dogmatic and refuse to answer it. A common sense approach must be taken on such occasions.

146. So far as questions 3 and 4 formulated by the Full Bench are concerned, I am of the opinion that they merely articulate and focus on the issues that were not quite attractively phrased by the Division Bench. I am not in agreement that the Full Bench overstepped its jurisdiction in the reformulation of the issues before it.

147. It was then submitted that there was really no occasion for the Division Bench to make any reference to the Full Bench of the High Court on the question of framing guidelines or parameters for the appointment of the Chairperson of the Punjab Public Service Commission. This Court had already laid down the law in *Mehar Singh Saini* [4*(2010) 13 SCC 586 : (2011) 1 SCC (L & S) 423]* and the High Court was merely required to follow it. The argument puts the issue rather simplistically. The Division Bench was fully entitled to refer to the Full Bench the applicability of the decision of this Court to the facts of the case and for further follow up action, if necessary. This argument is mentioned only because it was raised and nothing really turns on it, except to the extent that it is another way of questioning the maintainability of the writ petition filed in the High Court.

Impleadment of the State of Haryana by the Full Bench

148. The justification given by the Full Bench for suo motu impleading the State of Haryana and the Haryana Public Service Commission is because "issues common in respect of the States of Punjab and Haryana, were likely to arise." I think this is hardly a reason for impleadment. The case concerned the appointment of the Chairperson of the Punjab Public Service Commission and it should have and could have been left at that without enlarging the scope of the controversy before it.

Production of the Chief Minister's advice:

149. Learned counsel for the State of Punjab submitted that the High Court could not have directed production of the advice tendered by the Chief Minister to the

Governor. The basis of this argument is the order dated 1-8-2011 [*Salil Sabhlok v. Union of India]* passed by the Full Bench. The relevant portion of the order reads as follows:

> "Mr. Jindal, Addl. Advocate General shall also produce the record relating to the appointment process of respondent No.4 [Mr. Dhanda]."

The grievance made by learned counsel in this regard is justified. It need only be pointed out that in State of Punjab v. Sodhi Sukhdev Singh, (1961) 2 SCR 371 this Court clearly held that: (AIR pp. 511-12, para 42)

> "42……. It is hardly necessary to recall that advice given by the Cabinet to the Rajpramukh or the Governor is expressly saved by Article 163, sub-article (3) of the Constitution; and in the case of such advice no further question need to be considered."

It is not necessary to say anything more on this subject.

Conclusion:

150. The appointment of the Chairperson of the Punjab Public Service Commission is an appointment to a constitutional position and is not a "service matter". A PIL challenging such an appointment is, therefore, maintainable both for the issuance of a writ of quo warranto and for a writ of declaration, as the case may be.

151. In a case for the issuance of a writ of declaration, exercise of the power of judicial review is presently limited to examining the deliberative process for the appointment not meeting the constitutional, functional and institutional requirements of the institution whose integrity and commitment needs to be maintained or the appointment for these reasons not being in public interest.

152. The circumstances of this case leave no room for doubt that the notification dated 7th July 2011 appointing Mr. Harish Rai Dhanda was deservedly quashed by the High Court since there was no deliberative process worth the name in making the appointment and also since the constitutional, functional and institutional requirements of the Punjab Public Service Commission were not met.

153. In the view that I have taken, there is a need for a word of caution to the High Courts. There is a likelihood of comparable challenges being made by trigger-happy litigants to appointments made to constitutional positions where no eligibility criterion or procedure has been laid down. The High Courts will do well to be extremely circumspect in even entertaining such petitions. It is necessary to keep in mind that sufficient elbow room must be given to the Executive to make constitutional appointments as long as the constitutional, functional and institutional requirements are met and the appointments are in conformity with the indicators given by this Court from time to time.

154. Given the experience in the making of such appointments, there is no doubt that until the State Legislature enacts an appropriate law, the State of Punjab must step in and take urgent steps to frame a memorandum of procedure and administrative guidelines for the selection and appointment of the Chairperson and members of the Punjab Public Service Commission, so that the possibility of arbitrary appointments is eliminated.

155. The Civil Appeals are disposed of as directed by Brother Patnaik, J.

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RAJASTHAN
PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR
SB Civil Writ Petition No.8786/2011 & Connected Cases
D.D: 04.07.2012
Hon'ble Mr. Justice MN Bhandari

Rewant Dan … Petitioner
Vs.
Rajasthan P.S.C. & Ors. … Respondents

A. Competitive examinations

Question paper setting/preparation for conduct of competitive examination for selection to posts under State Civil Service of Rajasthan State – Questions set out are alleged to be similar or having resemblance to questions found in particular guide/reference books – Whether merely on that ground selections made by Public Service Commission can be interfered with? No. – Guide books/reference books alleged to have been used for preparation of question papers, being not published for selection by Rajasthan Public Service Commission, and guide/reference books being bulky and one cannot be successful without merit, held that selections cannot be vitiated unless it is shown and proved that candidates were given impression to read a particular book to be successful in selection.

B. Question paper setting/preparation

Frequent allegations on preparation of question paper and answer key coming up before the High Court – Held that Commission cannot taken shelter under maintenance of secrecy for such mistakes - Directions issued to the Commission to come out with guidelines to paper setters to avoid mistakes in preparation of question papers

> "1. The Commission should set out a condition that in case of question/s not containing correct answer/s or a question is not having even a correct answer therein or such similar difficulty, the responsibility would be borne by the paper setter with imposition of penalty as due to wrong question or answer, it not only invite litigation but it delays the selection and if selection is set aside, then it entirely comes at the cost of the respondent RPSC. Unless serious conditions are set against the paper setter, repetition of the problems indicated cannot be avoided.
>
> 2. A condition should also be imposed on the paper setter that if it is found to be a case of copying questions and answers from one guide book so as to be termed to be leakage of paper as happened for the post of Teacher Gr.II (Urdu) then they would be liable for all consequences including lodging of criminal case and costs. On account of cancellation of selection to the post of Teacher Grade II (Urdu) the RPSC had to bear cost of the selection on account of misdeeds of the paper setter.

3. It should also be mentioned that as and when default would be found in setting out paper on any ground mentioned above, then the paper setter would not only be black listed but it should be communicated to all the Public Service Commission of the States and Union Territories and the UPSC so as to eliminate name of the said paper setter. Accordingly, while engaging a paper setter, it should be made clear that questions should be framed with his/her acumen and therein he should not taken questions and answers from any guide book. This would avoid problem of the type involved herein though may not have affected the selection but a slightest possibility of the nature of dispute raised herein should be avoided by the Commission.

In the present matter, for the post of Lecturer (Hindi), 19 questions had to be ignored on the recommendations of the committee. If out of 100, 19 questions are ignored, then merit is judged based on remaining 81 questions only. The RPSC, no doubt, true cannot look into the questions and answers before the selection thus as to whether questions and answers are correctly set or not can be revealed to the Commission on declaration of answer key or the result but then, at least paper setter is required to be imposed with heavy penalty in that eventuality. If such problems may not be eliminated then it may at least be minimized. The imposition of penalty may be in terms of money which should not be of an amount one can easily bear but should be an amount which may keep a person alive and alert about his responsibility and heavy cost.

The RPSC is given further direction to look into such similar issued and thereby set out new terms and conditions and affidavit may be taken from the paper setter accordingly. This will minimize litigation against RPSC and avoid delay in selection apart from costs, if selection is ultimately cancelled."

Cases referred:

1. Lalit Mohan Sharma and others v. RPSC and others, W.P.No.1042/2005 and connected cases, decided on 18.11.2005
2. Himachal Pradesh Public Service Commission v. Mukesh Thakur & another, 2010 SCC 759
3. Basavaiah (Dr) v. Dr. Ramesh and others, (2010) 8 SCC 372
4. Shyam Lal v. State of Rajasthan and another, Civil Special Appeal (Writ) No.1013/2011, decided on 27.9.2011

JUDGMENT

These writ petitions pertain to selection to various posts conducted by the Rajasthan Public Service Commission (for short 'the RPSC').

Advertisement for the post of Lecturer (Hindi) in College Education Department was issued on 21.9.2010 and for the post of Medical Officer (Dentistry) and Medical Officer (Homoeopathy) on 8.3.2011. All the petitioners along with others appeared in the selection. The controversy raised in these writ petitions pertains to the question papers set by the Commission as majority of questions are taken from book/ guide book/ reference book and are verbatim the same.

In the present matter, if a candidate prepared himself for selection by reading one book only from where majority of the questions set out then he will remain successful, hence selection aforesaid cannot be said to be fair and proper because it remains to the benefit of those who had referred one book only leaving others. It is urged that competitive examination should be conducted in the manner where question papers are set by the RPSC without copying it from any book or guide. Accordingly, a challenge to the selection to various posts of Lecturer, Medical Officer (Dentistry) and (Homoeopathy) has been made. The posts involved in these writ petitions are different thus brief facts of each writ petition/ s are given herein for ready reference.

CW No. 8786/2011, 9206/2011, 9225/2011, and 9223/2011 – Lecturer (Hindi), College Education Department -

Aforesaid writ petitions pertain to the post of Lecturer (Hindi), College Education. The allegation is that out of 100 questions, 52 questions were from one book only namely; "1000 Hindi Sahitya Prashnottari, author – Kumud Sharma, published by Prabhat Prakashan". It is submitted that the Commission had earlier cancelled selection for the post of Teacher Gr II (Urdu) where majority of the questions were taken from one guide book thus similar treatment should have been given to the present selection.

CW No. 9582/2011, Medical Officer (Dentistry) -

This writ petition pertains to appointment to the post of Medical Officer (Dentistry) where allegation is that out of total questions, 84 questions were taken from "Dental Pulse, publisher – Swapna Medical Publishers". Petitioners have given comparative statement to indicate as to from which pages of the aforesaid book, questions have been taken.

CW No.8829/2011 – Medical Officer (Homoeopathy)-

This matter pertains to appointment to the post of Medical Officer (Homoeopathy) for which 43 posts have been advertised. The allegation therein is in regard to 59 questions taken from a particular guide "UPSC & MD Entrance Examination (Homoeopathy) – Second Edition – by Dr VK Chauhan, MD (Hom) – published by B Jain Publishers (P) Ltd" and answers of the questions are in the same sequence as are given in the aforesaid guide book.

Learned counsel for petitioners submit that the way selection to the post referred to above has been conducted by the Commission cannot depose confidence as taking majority questions and answers from one and same book is nothing but stereo type working of the paper setter whereas the paper setting is assigned by Commission with instructions to the paper setter not to copy the questions or answers from any guide/reference book but to prepare it at his own. This is to get only meritorious candidates and not a candidate who may have prepared himself by one guide books and fortunately for him, majority of the questions were taken from it making his task to be easy to get selected not on the basis of his merit but due to luck. The responsibility of the Commission is not only to make selection by luck but it should be purely on merit. In the similar circumstances, when an issue was raised to the Commission in regard to selection to the post of Teacher Gr II (Urdu) pursuant to the advertisement of the year 2008, finding majority of the questions from one and same guide book, selection was cancelled thus similar view should have been taken by the Commission in the present matters also but in a discriminatory manner, they have failed to give similar treatment to the selection in dispute hence their action becomes illegal being violative of Articles 14 and 16 of the Constitution of India. Thus, while setting aside the selection for the aforesaid posts, respondents may be directed to conduct competitive examination afresh with a further direction that while setting out questions, paper setter should not be guided by any guide/ reference books.

Learned counsel for the Commission and the State Mr SN Kumawat contested the matter. It is stated that allegations made by the petitioners for setting out majority of the questions from one guide or reference book are not correct. The Commission conducts selection with utmost caution and fairness.

For the post of Lecturer (Hindi), College Education, certain complaints were received regarding questions and answers, accordingly, a committee was constituted by the Commission. The committee recommended to ignore 19 questions. Accordingly, marks were awarded ignoring 19 questions therein. The book “”1000 Hindi Sahitya Prashnottari, author – Kumud Sharma, published by Prabhat Prakashan” contains many questions but writer/author thereof has not been authorised by the Commission, rather, the guide book is not for selection of RPSC but is a guide book read by the candidates in general for all competitive examinations. It may be a co-incidence that certain questions may match from the aforesaid guide book but if the comparative statement is looked into, then similar questions exist in other reference/ guide books also. A subject cannot have indefinite number of questions thus whatever probable questions can be framed, such exercise is taken by all the writers/ authors. The questions alleged to have been taken from above guide book are available in other guide/ reference books also. Thereby, allegation made by the petitioners is not correct and, otherwise, it does not affect merit of the selection because the time given to sort out the answers is quite limited and can be done only by a candidate having proper knowledge and merit in him. If the case of petitioners is taken, then out of alleged similar questions, majority were attempted by them also and if they have merit in them, there is no reason not to get merit position. The writ petitions have been filed knowing it well that petitioners have not done well in the selection. Thus to overcome from their default and unsuccessfulness, these writ petitions have been filed. This is more so when majority of the questions for which dispute has been raised were correctly answered by few petitioners, details of which have been given in the additional affidavit filed in CW No.8786/2011 – Rewant Dan vs RPSC & ors. Learned Additional Advocate General has further given reference to other posts namely Medical Officer, Dentistry and Medical Officer, Homoeopathy.

Coming to the facts regarding cancellation of selection to the post of Teacher Gr II (Urdu), it is stated that therein out of 150 questions, 140 questions were taken from one book namely “Anshu Urdu Rehnuma” written by Shakeel Jaipuri for selection to the post referred to above by the Commission. Therein, it was found that the book was meant for RPSC selection and the paper was containing 140 questions out of the said book thereby

Commission, after examining and enquiring in the matter, taken it to be a case of 'paper leaked out' hence, cancelled the selection.

The cases in hand are not similar as the guide books from which majority of the alleged questions have been taken are not published for RPSC but applies to all selections which include even selection for UPSC. It is further stated that even questions set out by the UPSC or the RPSC are taken into consideration then certain questions would be from one or the other reference/ guide book.

Looking to the facts aforesaid, selections already made by the respondents may not be cancelled. This is more so when petitioners have not been deprived from their fundamental rights and case of discrimination in reference to the post of Teacher Gr II (Urdu) is not made out. To support the arguments, reference has been made to the Full Bench judgment in the case of "Lalit Mohan Sharma & ors versus RPSC & ors", in Writ Petition No.1042/2005 and connected cases, decided on 18.11.2005 at Jaipur Bench, wherein, similar controversy was examined by the Full Bench of this court. A reference of judgment of the Apex Court in the case of "Himachal Pradesh Public Service Commission versus Mukesh Thakur & anr", reported in (2010) 6 SCC 759 has also been given. The Hon'ble Apex Court decided same controversy in the case of "Basavaiah(Dr) versus Dr HL Ramesh & ors" reported in (2010) 8 SCC 372. Lastly, reference of the judgment of the Division Bench of this court in the case of "Shyam Lal versus State of Rajasthan & anr", DB Civil Special Appeal (Writ) No.1013/2011, decided on 27.9.2011 at Jaipur Bench has been given.

Learned counsel for private respondents/ intervener supported arguments of learned Additional Advocate General and prayed that writ petitions may be dismissed for want of merit therein.

I have considered rival submissions of learned counsel for parties and perused the record.

The only issue for my consideration is as to whether selection deserves to be cancelled as questions set out therein alleged to be similar or having resemblance to the questions in the guide/ reference book.

Facts aforesaid have been disputed by learned counsel for the RPSC Mr SN Kumawat though the reply and the affidavit filed indicate that many of the questions are verbatim the same from one guide/ reference book thus it cannot be said that question paper set for the posts in question do not contain same or similar questions with the answers given in the guide/ reference book so referred by the petitioners. Thus, on facts, petitioners could establish their cases.

The fact now remains is as to whether few or majority of the questions from one and the same guide/ reference book can affect selection wherein all the candidates have appeared. To answer the aforesaid question, it would be gainful to refer to the reply and affidavit filed by the Commission indicating that questions showing resemblance or similarity or verbatim the same can be found not only in one guide book but in various similar guide/ reference books.

For the aforesaid purpose, comparative statements of the questions were submitted by the Commission during the course of arguments. The facts aforesaid indicate that the questions set out by the Commission through paper setter may find place in one or the other guide book or even reference book.

The facts aforesaid show that the questions set for competitive examination can find place in one or the other guide book hence, if a selection is set aside on the aforesaid ground alone, then it would, if not impossible, then difficult to hold selection. But then it does not absolve the Commission from their responsibility. This court called upon the RPSC to indicate as to what terms and conditions are imposed on a paper setter. The terms and conditions are not found with required conditions. The aforesaid issue needs concern looking to the multiple litigation coming before this court of the nature aforesaid. Thus proper directions needs to be given by this court to avoid the same.

Again, coming to the facts of the present cases, I find that many of the questions set in the competitive examinations are verbatim the same from the guide book referred by the petitioners and few others are similar but fact remains that similarity of the questions exist in many guide book referred and detailed out by the respondent Commission. However, they cannot be compared with that of the selection to the post of Teacher Gr II (Urdu). In

the selection to the posts of Teacher Gr II (Urdu), out of 150 questions, 140 questions were from one and the same guide book and shown to be for competitive examination by the RPSC. The RPSC cancelled the selection taking it to be a case of 'leakage of paper'. The question is as to whether cases in hand can be said to be similar so as to treat action of the Commission to be discriminatory.

I find that the guide book or reference book were not published for selection by the RPSC but is applicable for all selections thus the cases in hand cannot be said to be similar to that of Teacher Gr II (Urdu). This is more so when guide books referred by the petitioners do not contain indication for selection by the RPSC. This court find guide book to be quite bulky hence it cannot be said that by reading one book containing thousands of questions, one can be successful without having merit. This is more so when time given to answer the questions is not much as the questions have to be sorted out quickly thereby a case of discrimination is not made out for that reason also.

This is apart from the fact that if cases of the petitioners are looked into, they have even attempted those questions which alleged to be from one particular guide book and few petitioners have answered majority of the questions correctly thus questions from one guide book has not affected selection in any manner, particularly in these cases. In totality of the circumstances, even if it is accepted that many of the questions may have similarity to the questions from one or the other guide book, selection conducted by the respondent Commission cannot vitiate only on that ground unless it is shown and proved that candidates were given impression to read a particular guide book to be successful in the selection. In that eventuality, particular book gets importance so as the writer/ author. However, no such circumstances are alleged herein other than that few writers were earlier paper setter for the RPSC but merely for that reason it cannot be termed that every candidate was knowing this fact so as to read a particular guide book. In the aforesaid circumstances, I am not convinced so far as merit of the cases is concerned to set aside the selection.

This court, however, cannot ignore certain facts which are seen while adjudicating these writ petitions as well as other similar writ petitions. The dispute in regard to certain selections conducted by the Commission come before this court, which are summarised as under -

1. Setting out questions out of syllabus, if syllabus is prescribed.
2. Setting out questions containing in-correct answers.
3. Questions are not correctly set out with proper answers.
4. Questions have more than one correct answers.
5. Questions may have correct answers but key published by the RPSC or recruitment agency contain wrong answers.
6. Questions are set from a guide book thereby application of mind of paper setter does not exist.

Aforesaid few problems are seen by the court in general and litigation on that count is multiplying. It is agreed by the Commission to take care of the aforesaid, however, learned Additional Advocate General submitted that when work is assigned to the paper setter, the questions and answers set therein cannot be opened by the Commission till completion of selection. This is to maintain secrecy thus even Commission can realise mistake indicated above only on completion of examination, when key is published or result is declared. They try to guide the paper setter with a direction to avoid aforesaid problems but, at times, mistakes are committed. Thus, the RPSC has shown its reasons for commission of the mistakes of the nature indicated above but it was expected from them to improve upon the system realising the difficulties. They cannot show their helplessness despite being expert body, rather a constitutional body.

It was however agreed by learned counsel for the RPSC that if directions are issued, they will set out new terms and conditions for the paper setter so as to avoid the issues as indicated above.

I find that the affidavit and the terms and conditions of paper setter are not sufficient to overcome with the difficulties thus they need to be changed so that such dispute may not be repeated and for the aforesaid purpose, following directions are issued to the RPSC-

1. The Commission should set out a condition that in case of question/s not containing correct answer/s or a question is not having even a correct answer therein or such similar difficulty, the responsibility would be borne by the paper setter with imposition of penalty as due to wrong question or answer, it not only invite litigation but it delays the selection and if selection is set aside, then it

entirely comes at the cost of the respondent RPSC. Unless serious conditions are set against the paper setter, repetition of the problems indicated cannot be avoided.

2. A condition should also be imposed on the paper setter that if it is found to be a case of copying questions and answers from one guide book so as to be termed to be leakage of paper as happened for the post of Teacher Gr II (Urdu) then they would be liable for all consequences including lodging of criminal case and costs. On account of cancellation of selection to the post of Teacher Gr II (Urdu) the RPSC had to bear cost of the selection on account of misdeeds of the paper setter.

3. It should also be mentioned that as and when default would be found in setting out paper on any ground mentioned above, then the paper setter would not only be black listed but it should be communicated to all the Public Service Commission of the States and Union Territories and the UPSC so as to eliminate name of the said paper setter. Accordingly, while engaging a paper setter, it should be made clear that questions should be framed with his/ her acumen and therein he should not take questions and answers from any guide book. This would avoid problem of the type involved herein though may not have affected the selection but a slightest possibility of the nature of dispute raised herein should be avoided by the Commission.

In the present matter, for the post of Lecturer (Hindi), 19 questions had to be ignored on the recommendations of the committee. If out of 100, 19 questions are ignored, then merit is judged based on remaining 81 questions only. The RPSC, no doubt, true cannot look into the questions and answers before the selection thus as to whether questions and answers are correctly set or not can be revealed to the Commission on declaration of answer key or the result but then, at least paper setter is required to be imposed with heavy penalty in that eventuality. If such problems may not be eliminated then it may at least be minimized. The imposition of penalty may be in terms of money which should not be of an amount one can easily bear but should be an amount which may keep a person alive and alert about his responsibility and heavy cost.

The RPSC is given further direction to look into such similar issues and thereby set out new terms and conditions and affidavit may be taken from the paper setter accordingly. This will minimize litigation against RPSC and avoid delay in selection apart from costs, if selection is ultimately cancelled.

Compliance of the above directions should be made within a period of two months from the date of receipt of copy of this order, with a copy of the compliance report to this court, to be submitted in the month of September, 2012.

With the aforesaid, all the writ petitions are disposed of so as the stay applications.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
SB Civil Writ Petition No.711/2012 & Connected cases
D.D:19.09.2012
Hon'ble Mr. Justice Govind Mathur

Giriraj Kumar Vyas & Ors. … Petitioners
Vs.
State of Rajasthan & Ors. … Respondents

Selection process

Cancellation of selection process – Whether cancellation of selection process can be sought on ground that question paper setter for examination conducted for selection to post of Assistant Public Prosecutor himself runs coaching institute to train candidates who appear for such examination and many of the questions that appeared in the examination were picked and chosen from his notes and persons who had taken coaching from him were in advantageous position in every possible way when records indicate that test was conducted in December 2011 but paper setter disassociated himself from the coaching institute in September 2011, and further he had no idea at the time of disassociating from coaching institute that he would be chosen as paper setter and no material on records were made available to establish that after 10.09.2011 paper setter was associated with coaching of aspirant candidates and no details of beneficiaries of malpractice furnished? – No. Held that the count of his acceptance as paper setter is not sufficient to arrive at the conclusion that the process of selection was not fair and vitiated.

Held:

To quash a process of selection on the count of malpractice or unfairness, the primary requirement is to have adequate material to arrive at a conclusion that some tactics were adopted to extend benefit to an individual or to a group of candidates. A heavy burden lies upon the persons making such allegations to impeach the process of selection. It is necessary to establish that the tactic was adopted with ulterior motive to gain benefit out of that. In the case in hand no details are given about the beneficiaries to whom may malpractice was adopted. The petitioners submit any representation to point out such wrongs."

JUDGMENT

For making recruitment to the post of Assistant Public Prosecutors, the Rajasthan Public Service Commission (hereinafter referred as "the Commission"), initiated process of selection under a notification dated 26.5.2011. A competitive test was conducted on

1.12.2011, wherein as per the petitioners, at least 40 questions were asked from the notes of Professor J.K.Malik, a former Teacher of the University of Rajasthan.

While seeking declaration to cancel the entire process of selection, the allegation of the petitioners is that - "petitioners also surprised and found themselves as discriminated after knowing the fact that more than typical forty questions of assistant public prosecutor grade II exam 2011 were asked from the notes of Professor J. K. Malik, Department of Law, University of Rajasthan Jaipur resulting in to a great resentment prevailing among aspirants. At this juncture it is also relevant to mention that Professor J. K. Malik teacher in a commercial coaching centre i.e. S. Vivekanand, Bapu Nagar, Jaipur which is well known in coaching for posts in legal field i.e. RJS, APP, LA, ADJ etc. Professor J. K. Malik teaches subject of IPC, CRPC & EVIDENCE in coaching institute for long years and also dictates his notes while coaching the aspirants. The bare perusal of notes dictated by Professor J. K. Malik while coaching vis-a-vis question paper of assistant public prosecutor grade II exam 2011, reveals that questions are asked from the notes of Professor J. K. Malik. A common prudent man arrives on the conclusion that either the question paper was settled by Professor J. K. Malik or questions were picked and choose from Professor J. K. Malik's notes after a bare perusal of the question paper vis-a-vis- the notes and analyzing the nature of the questions. For convenience, sign of '#' is marked on relevant questions on question booklet (Annex-5) and similarly serial number of relevant question of 'C' series of question booklet is also marked on the notes dictated by Professor J.K. Malik in S. Vivekanand private coaching institute. A copy of relevant part of Professor J.K. Malik's notes prepared in S. Vivekanand coaching institute with marking of serial number of relevant question of 'C' series of question booklet and commercial advertisements of coaching institute wherein name of professor J.K. Malik is shown as tutor are submitted here with and marked as ANNEXURE-8 7 9 respectively. With great respect, it is respectfully submitted that without prejudiced to the above, it is submitted that the a bare perusal of the question paper vis-a-vis the notes prepared by the S. Vivekanand institute clearly reveal that the respondent R.P.S.C. has failed to maintain the settled norms and the transparency for the purpose of settling of the question paper as in the present case, the question paper seems to be settled by the said Prof. J.K. Malik who cannot be said to be a person for the purpose of maintaining

confidentiality for his being engaged in the business of private coaching to the aspirants as is evidence from advertisement of S. Vivekanand institute had been published in the "Rajasthan Rojgar Sandesh" dated 1st June, 2011 (Annex-9) wherein the name of said Prof. J.K. Malik has been shown as a Teacher of the institution. In this view of the matter, over and above the matter requires consideration by this Hon'ble Court only from the point of view that it is to be followed strictly by the public agency like the respondent-RPSC that no person who is engaged in such a private practice of giving coaching etc. should not be authorized to settle paper and had there been so, then there would be every possibility of tempering of the confidentiality because by no stretch of imagination, it can be said that such a person engaged in such a business of providing private coaching would not take the benefit of the situation of his being a paper setter so as to see the persons who used to take coaching from him in advantageous position in every possible means."

The petitioners have also alleged that some questions asked in the test are either out of syllabi or wrong on several counts and that frustrates the purpose of having best available recruits on basis of merit.

In reply the stand of the Commission is that the question paper was not prepared only by Professor J.K.Malik but by consultation with several paper setters. The questions were asked from among the proposed papers given by short-listed examiners and from the question banks available with the Commission in the form of unsolved papers in earlier examination. It is admitted that 25 questions were picked up from the papers proposed by Professor J.K.Malik and out of those 18 are based on provisions of law, 5-6 pertains to leading case laws and two questions are based on reasonings. As per reply, the Commission took all necessary care to ensure fairness in the test and in the course of process undertakings were sought from paper setters that they are not engaged in coaching activities. An undertaking to this effect was given by Professor J.K.Malik also. An affidavit sworn-in by Professor J.K.Malik is also placed on record, contents of which are quoted below:-

> "1. That allegations made in para 8 of the writ petition that I have been running a commercial coaching centre at my residence and I am also a teacher in a commercial coaching centre i.e. H. Vivekanand, Bapu

Nagar, Jaipur at the relevant time i.e. even after my assignment as a paper setter is absolutely incorrect and all such suggestions and allegations are emphatically denied by me.

2. That I was Professor and Dean in the Faculty of Law, University of Rajasthan and soon after my retirement from the said post, I received a communication from the Rajasthan Public Service Commission to work as a paper setter for some recruitment conducted by it particularly for the A.P.P. examination. The said communication was received by me on 10-09-11.

3. That after receipt of said communication, I immediately stopped all coaching activities which I had undertaken soon after my retirement at my residence and also informed the institution where I was undertaking coaching work that now onwards I will not do any coaching work and I have never done any coaching after having been assigned the work of paper setter for A.P.P. Examination.

4. That it is absolutely malicious, false and fabrication to suggest that after having been assigned the work of paper setter, I circulated notes to the students at any coaching centre or any my residence. In fact, after receiving communication from the Rajasthan Public Service Commission for assignment of work as a paper settler, I gave declaration to the Rajasthan Public Service Commission that I am not undertaking any activity with regard to coaching privately or at any coaching centre and based on this declaration, the Rajasthan Public Service Commission assigned me the work of paper setter.

5. That it has been brought to my notice that in this writ petition, some allegations have been made against me that I undertook the work of coaching at my home and at a commercial coaching centre and also circulated some notes to the students. The allegation in this regard is absolutely fabricated and some notes sought to be placed on record are mere fabrication and appears to have been prepared after examination. I have perused these notes and these notes have not been prepared by me nor it was circulated by me at any point of time or dictated by me to any student and I have no role to play in prepare of these notes. Such concoction and fabrication have been made by unsuccessful students just to create confusion and to stall the recruitment sought to be made by Rajasthan Public Service Commission."

A reply to the writ petition is also filed on behalf of the State Government with assertion that all necessary care and caution was taken by the Commission while undertaking competitive test.

Heard learned counsel for the parties.

The first submission of counsel for the petitioners is about huge number of questions taken from the proposed question paper of Professor J.K.Malik, who at one point of time was associated with coaching students for law examinations including the competitive test for Public Prosecutors. It is the position admitted that 25 questions asked for were picked up from the question paper proposed by Professor J.K.Malik, thus, the entire process of selection deserves to be quashed.

I have considered the argument advanced from all the aspects relevant. True it is, Professor J.K.Malik was associated with a coaching centre when he was asked to render his services to the Commission as paper setter and proper course before him at that relevant time was to deny for the same, but in any case merely on the count of his acceptance as paper setter is not sufficient to arrive at the conclusion that the process of selection was not fair. As per the reply given by the respondent Commission and also the affidavit sworn-in by Professor J.K.Malik, he disassociated himself with coaching on receiving the offer for being a paper setter. The disassociation was made in the month of September, 2011. The test was conducted on 1.12.2011 and upto 10.9.2011 Professor Malik was not having any knowledge that he would be engaged as a paper setter, thus, whatever coaching or instruction imparted by him prior to that are not of much relevance. No allegation is there and even no material is available on record to establish that after 10.9.2011 Professor J.K.Malik in any manner was associated with the coaching of law students. To quash a process of selection on the count of malpractice or unfairness, the primary requirement is to have adequate material to arrive at a conclusion that some tactices were adopted to extend benefit to an individual or to a group of candidates. A heavy burden lies upon the persons making such allegations to impeach the process of selection. It is necessary to establish that the tactic was adopted with ulterior motive to gain benefit out of that. In the case in hand no details are given about the beneficiaries pertaining to whom any malpractice was adopted. The petitioners have also not pointed out the questions proposed by Professor J.K.Malik which were already available to some of the aspirants. From perusal of the entire question paper which is available on record, it reveals that the questions pertain to certain provisions of law and those are quite innocuous. On basis of such questions no

inference can be drawn about any malpractices as suggested on behalf of the petitioners. An allegation is made about putting some mark on specific questions, but the Commission in most unambiguous terms denied that. Nothing is available on record to point out such questions. A process of selection cannot be disturbed on basis of the allegations unless those are proved adequately with their effect and prejudice caused to the non-beneficiaries of the malpractice adopted to put forward few persons. In the instant matter I do not find any material adequate to accept the allegation of the petitioners that any prejudice was caused to any person and someone was gainer due to acceptance of Professor J.K.Malik as paper setter. The other argument, though not pressed into service with required vehemence, is that certain questions asked for are not part of syllabi and certain questions were suffering from error in their answers is concerned, suffice to mention here that those are required to be considered by the Commission at its own, through experts, if the petitioners submit any representation to point out such wrongs.

For the reasons given above, these petitions for writ are dismissed. However, the respondents shall consider the representations, if any submitted by the petitioners within a period of two weeks from today regarding their grievances pertaining to the questions out of syllabi and other errors in the question paper. The respondent State, if make any appointments on the post of Assistant Public Prosecutors on basis of the process of selection in question, then that shall be open for review, if any wrong is found with the question papers after considering representations submitted by the petitioners.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
S.B.W.P. (C) NO.12780 OF 2012
D.D. 04.12.2012
Hon'ble Mr. Justice Gopal Krishan Vyas

Praveen Singh & Ors.	**…**	**Petitioners**
Vs.		
State of Rajasthan & Ors.	**…**	**Respondents**

Selection process

Evaluation of question paper preparation and answer keys – Whether High Court can in exercise of jurisdiction under Art. 226 of the Constitution, by sitting in appeal over the assessment made by committee of experts interfere in selection process of the Commission? No. Rajasthan Public Service Commission, after conduct of examination for recruitment to post of Head Master (Secondary School), declared answer key and allowed candidates to have their say – Petitioners raised objections to some of the questions and key answer and to rectify them. R.P.S.C. referred those objections to committee of experts and on the basis of report of expert committee revised answer key was published. Not satisfied with revised key answers which are based on report of expert committee, petitioners are once again raising objection to key answers.

Held:

By following Full Bench decision in Lalith Mohan Sharma reported in 2006 (1) CDR 834 (Raj) held that High Court cannot sit as an appellate authority upon assessment of expert committee and upheld revised answer key and results based on it.

Case referred:

1. Lalith Mohan Sharma reported in 2006 (1) CDR 834 (Raj)

ORDER

In this writ petition, the petitioner has prayed for direction to the respondent Rajasthan Public Service Commission, Ajmer to re-determine the complete merit list/result for further selection process while making the necessary corrections in the revised answer-key issued on 19.11.2012 (Annex-7) which is issued by the Commission for the posts of Head master (Secondary School) and, further prayed that the respondents may be directed to give appointment to the petitioners on the posts of Head Master (Secondary School) in

pursuance of advertisement dated 17.02.2002 with all consequential benefits, if found selected in the revised merit.

As per facts of the case, the petitioner being eligible applied for appointment on the posts of Head Master (Secondary School) in pursuance of advertisement dated 17.02.2012 issued by the respondent Public Service Commission. The petitioners appeared in the competitive examination held on 15.05.2012 in two parts.

The respondent Commission declared the answer key against which the petitioners raised objections regarding some wrong question/answers and requested the Commission to correct and rectify wrong question/answers. The representation along with objections were considered by the respondent Commission and the Commission published a revised answer key.

Learned counsel for the petitioners submits that the revised answer key issued by the Commission is more erroneous, therefore, complete rectification is required. However, after publication of the answer key afresh the respondent Commission declared the final result for the posts of Head master (Secondary School) and declared the last cut-off marks in respective categories.

Learned counsel for the petitioners submits that after inspecting the revised answer key it has come to their knowledge that some of the questions in their respective series are again assessed wrongly because the Commission adopted wrong answers of the respective questions. Therefore, the petitioners personally approached and raised their grievance by filling representation with regard to wrong answers given in the key by the respondent Commission but, according to the petitioners, the respondent Commission did not give any heed upon their representation, therefore, preferred this writ petition direction to the respondent to correct the answer key and to quash the revised answer key to correct the answer key and to quash the revised answer key dated 19.11.2012 (Annex-7).

Learned counsel appearing on behalf of the Commission vehemently submits that ample opportunity has been granted to all the candidates to raise their objections with regard to

answer key issued after holding the examination and all the objections raised by the candidates have been considered by the expert committee constituted by the Rajasthan Public Service Commission before publishing revised answer key and this fact was brought to the notice of this Court in S.B. Civil Writ Petition No.6588/2012 and after consideration of above fact this Court passed an order on 09.10.2012. in which, permission was granted to the respondent Commission to publish the answer key on the web site of the Commission and invite objections from the candidates having any grievance with regard to answer key. In pursuance of the said order, the Rajasthan Public Service Commission invited objections from all the candidates with regard to their grievance of wrong answers on or before 05.11.2012 and it was ordered by this Court that no further opportunity for raising any objection will be granted to the candidates. Therefore, the Commission after considering all the objections raised by the candidates on or before 05.11.2012 now declared the fresh answer key but the petitioners are again challenging the revised answer key which is issued after due assessment by the expert committee.

Learned counsel for the respondent Commission vehemently argued that this Court cannot sit as an appellate authority to re-assess the assessment made by the expert committee after taking into consideration the objections raised by the candidates who appeared in the examination for the posts of Head Master (Secondary School). In support of his contention, learned counsel for the respondent invited attention of this Court towards judgment rendered by the Full Bench of this Court in Lalit Mohan Sharma's case, reported in 2006 (1) CDR 834 (Raj.) (FB) and submits that in view of the above judgment no interference is called for in the revised answer key which is said to be published on the basis of assessment made by the expert committee, therefore, this writ petition may be dismissed.

After hearing learned counsel for the parties, I have summoned the record of S.B. Civil Writ Petition No.6588/2012, in which on 09.10.2012 following order was passed.

> "Although an application under Article 226 (3) of the Constitution of India has been filed by the respondent Rajasthan Public Service Commission for vacating the interim order passed by this Court on 05.07.2012 but another

application has been filed by the respondent Commission for seeking permission to publish the answer key on its website to invite objections from the candidates having any grievance with regard to answer key. Learned counsel for the respondent – Commission submits that to resolve the controversy, it is felt necessary by the Commission to seek permission from the Court for the above purpose.

Learned counsel for the petitioner is not opposing the prayer made by the counsel for the respondent Commission but submits that after receiving the objections from the candidates, the matter may be examined by the expert committee and thereafter, the said report will be furnished to this Court. Therefore, sometime may be granted to complete the process.

After hearing learned counsel for the parties, I deem it proper to allow the application filed by the respondent Commission for seeking permission to publish answer key on website of the Commission and to invite objection from the candidates having any grievance with regard to answer key. Consequently, the application is allowed. The respondent Commission is hereby permitted to publish the answer key of the written examination conducted by the Rajasthan Public Service Commission for the post of Teacher Grade-II on the website and to seek objections from all the candidates with regard to their questions on or before 05.11.2012. It is made clear that while publishing the answer key on the website, it may also be informed to the candidates that no further opportunity for raising any objection shall be granted. The answer key may be published on the website but objections of the candidates may be invited through publication in the newspaper. The respondent Commission is directed to complete the process on or before 05.11.2012. The application is disposed of.

List on 06.11.2012. Interim order shall remain in force."

After passing the above order, another order was passed on 09.11.2012, in which, the respondent Commission was granted liberty to proceed with further selection process in accordance with law. The order dated 09.11.2012 is as follows:

"Heard learned counsel for the parties upon application filed under Article 226 (3) of the Constitution of India.

Learned counsel appearing or behalf of Rajasthan Public Service Commission submits that the grievance of the petitioners with regard to wrong questions and answers has been considered and assessed by the expert committee constituted by the Commission and report has been submitted by the Committee and Commission is going to re-assess the result on the basis of recommendations made by expert Committee. Therefore, while permitting the Commission to proceed further, the stay order granted by this Court may kindly be vacated.

> Learned counsel for the petitioners submits that Rajasthan Public Service Commission may proceed with the report of the expert committee but till final decision, five posts of Head Master, Secondary Education may be kept vacant.
>
> After hearing learned counsel for the parties, the stay application is disposed of with the direction to the Rajasthan Public Service Commission to assess the result of the post of Head Master, Secondary Education on the basis of recommendations made by the expert committee and the Rajasthan Public Service Commission will be at liberty to proceed with the further process of selection in accordance with law but till disposal of the writ petition, five posts of Head Master, Secondary Education shall be kept vacant.
>
> List on 05.12.2012. On that day, the report of the expert committee shall be produced before the Court."

It is worthwhile to observe here that the Rajasthan Public Service Commission is a body constitution under the provisions of the Constitution of India and main function of the Commission is to make recruitment for appointment on the various posts falling under its purview after selecting most suitable candidates while assessing their suitability. Here, in this case, the Commission granted opportunity to all the candidates to raise their grievance with regard to wrong questions/ answers of the answer key on or before 05.11.2012 and thereafter, the matter was examined by the expert committee of the respondent Commission and revised answer key was issued on 19.11.2012. In this writ petition, the petitioners are again raising their objections with regard to revised answer key while citing questions to be wrong.

In the opinion of this Court, in exercise of jurisdiction under Article 226 of the Constitution of India this Court cannot sit as an appellate authority upon assessment made by the expert committee of the respondent Commission. The Full Bench of this Court in Lalit Mohan Sharma's case (supra), this Court held that in the facts and circumstances of the case no occasion at all arises for the Court to probe the matter with regard to assessment made by the expert committee. Following adjudication is made by the Full Bench of this Court at Jaipur Bench while answering the reference in Lalit Mohan Sharma's case (S.B. Civil Writ Petition No.1042/2005), reported in 2006 (1) CDR 834 (Raj.) (FB).

> "19. It has specifically been averred in the written statement that out of disputed questions no question had an incorrect answer or contrary to the

correct answer given in the standard books as mentioned by the petitioners/ other candidates.

20. In the context of impressive array of facts

We are not inclines to accept the contention raised on behalf of the learned counsel appearing for the petitioners that the key-answers provided by the respondent – Commission for evaluating the answer – sheets of the petitioners were wrong or that despite there being a report by the Expert Committee the Court must take in hand the exercise of finding out as to whether the key-answers are correct or wrong. There is no need to go into the plea raised by the petitioners for examining the disputed questions and the authenticity of the answers provide by the respondent Commission in view of the report of the Expert Committee constituted for the purpose. Surely, the Court is not an expert in the field of education and the various subjects from which the question paper was settled. Expert Committee constituted for the purpose has given its report based upon recognized textbooks authored by persons of repute in the field. There is no allegation, whatsoever that the members constituting the Committee did not know or had no specialization in the concerned subjects nor is there any allegation of bias against them. In the facts and circumstances of the case, no occasion at all arises for the Court to further probe the matter. The contention of the learned counsel appearing for the petitioners needs thus no further comments. Suffice is it, however, to motion that while urging that the key-answers provided by the respondent Commission are wrong, all that is being urged is that in some of the recognized text book or books of repute, different answers of the concerned questions have been provided. Assuming what has been urged by the learned counsel appearing for the petitioners to be correct, it would neither be permissible nor just and proper to interfere and order re-evaluation of the answer sheets.

21. In all fairness, we must mention that the learned counsel representing petitions in support of their contention that where it is proved that the answers given by the student is correct and the key-answers is incorrect, the students are entitled to relief asked for, have relied upon the judgments of the Hon'ble Supreme Court in Kanpur University vs. State of U.P AIR 1983 SC 1230, Madhumohan vs. State of Kerala, 2000 (5) SLR 633, a Division Bench judgment of A.P. High Court in Govt. of A.P. vs. E.Sudha Rani 1999 (8) SLR 100 and some other judicial precedents. It is no doubt true that examinees are entitled to have their answer – sheets properly and correctly evaluated and arbitrary and capricious acts of the examiners are not immune from interference by the High Court u/Art. 227 of the Constitution of India but the law laid down by the Supreme Court, on facts of this case, is not at all applicable.

22. We may also mention that per contra, Mr.J.P.Joshi, learned counsel representing the Commission has relied upon a judgment of the Supreme Court in Subhash Chandra Verma & Ors. vs. State of Bihar & Ors., 1995 Suppl. (1)

SCC 325 and the same very judgment relied upon by the petitioners, in AIR 1983 SC 1230.

23. In Subhash Chandra Verma & Ors. vs. State of Bihar & Ors. (supra) it was held that where examination was of objective type and the key-answers had been settled by the paper setter, evaluation of answer sheets by the staff of the Public Service Commission, even though they had no knowledge of the subject, would be valid. Reliance placed by the learned counsel on Kanpur University vs. Samir Guta, AIR 1983 SC 1230 is on the basis of following observations of the Hon'ble Supreme Court:

"It is true that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by and inferential process of reasoning of by a process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct."

24. In view of this discussion made above, finding no merit in this petition, we dismiss the same. We however leave the parties to bear their own costs."

In view of above adjudication, no case is made out for interference because process of selection is required to be finalized for the purpose of education system of the State.

Hence, this writ petition is dismissed.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH
S.B. Civil Writ Petition No.15638/2012 & Connected cases
D.D: 15.12.2012
Hon'ble Mr. Justice M.N.Bhandari

Suresh Kumar & Ors. … Petitioners
Vs.
Rajasthan PSC & Ors. … Respondents

Examination

Question paper setting and key answers in respect of conduct of examination for selection to post of Teacher Grade-II – High Court observed repeated instances of framing wrong questions or incorrect options of answers in the answer key in the examination conducted by Rajasthan Public Service Commission and consequential increase in litigation before it – Besides this, it was also observed that even reports of Committee of experts by RPSC and High Courts were not consistent in respect of discrepancy in preparation of question papers and key answers. Ultimately, to set at rest dispute one more committee of experts as suggested by petitioners was appointed and on basis of its report result was announced – In order to avoid repetitions of such instances, Hon'ble High Court suggested mechanism in preparation of question papers and key answers.

"(i) After examination, they should publish answer key so that individual candidate may assess his performance and also to see as to whether answer key contains correct answer or not. It would be subject to rules, if it does not caste a bar for that purposes. Thereafter, call for objections in regard to answer key by giving reasonable time. If objections are received then for those questions having dispute, should be first got examined from the paper setter to find out the basis of the answer or even correctness of the question. The aforesaid should be taken in writing from paper setter so as to justify the question or the answer. If it is felt that report is required from the expert, they should send it to the independent expert of the subject.

(ii) In case of calling expert report, it should be with direction and indication that if question is wrongly set or answer is not correct then he would specify the reasons with supporting material. It should be after going through the reasons and material supplied by the paper setter to justify the question and answer. The exercise aforesaid may be applied, if there is no bar in the rules, thus, directions aforesaid would be applicable subject to rules. It is only to avoid litigation of the nature coming to the court every day and even looking to the judgment of the Hon'ble Supreme Court wherein correctness of the question and answer cannot be adjudged by the court, but has to be by the expert.

(iii) If the directions aforesaid are complied with by the RPSC or the authorities them litigation of nature coming before this court may be minimized, thus, it would

in the larger interest of public. The RPSC may accordingly issue instructions of the nature indicated above and while doing so, they may also take note of the direction of this court in the case Rewant Dan v. RPSC & others, S.B. Civil Writ Petition No.8786/2011 & five others, decided on 4th July 2012."

Case referred:

1. Rewant Dan v. RPSC & others, S.B. Civil Writ Petition No.8786/2011 & five others, decided on 4th July 2012

JUDGMENT

These writ petitions pertain to selection to the post of Teacher Gr.II (Social Science and Mathematics).

A dispute is raised regarding correctness of certain answers of the questions of Social Science, Mathematic and General Knowledge subjects. To cut short the controversy, a direction was earlier issued to the RPSC to seek expert report and pursuant to which, report was sought. The said report has been challenged by maintaining these writ petitions. Some of the questions for which expert report was sought, were looked into by the court to find correctness of the report with reasons given therein. After going through the reasons of the experts, report was not found to be logical, thus, as agreed by the parties, RPSC and petitioners suggested names of some experts to get their opinion in regard to disputed questions of three subjects named above and a specific order in that regard was passed by this court in the preceding dates. Names of experts have been suggested by the parties to seek their opinion and be treated it final so as to end litigation for finalization of selection.

Learned Additional Advocate General Shri Shri S.N. Kumawat, has produced the opinion of the experts, which shows that out of 22 questions, there exists change in regard to 12 questions. As per expert report either question is to be deleted being wrongly formulated or the answer is to be changed as options earlier given were not correct. 10 questions out of 22 needs no change. The petitioners have shown their satisfaction and prayed for declaration of result afresh.

Learned Counsel for petitioners at this stage submits that hard copy of OMR sheet has been destroyed by the respondents, thus, they are not in a position to inspect it to find out as to whether marking has been correctly made in their OMR sheet or not.

Learned AAG submits that OMR sheets are weeded out after specific period and in the instant case, the OMR sheets are available, but due to heavy rain and flooding of the basement during rain, where OMR sheets were kept, it is not readable. In any case, RPSC is having soft copy in the computer and if any change is effected in view of expert report, with command to the computer, change result will come, thus, even if hard copies of OMR sheets are not available, result can be declared with the change in regard to 12 questions.

Learned Counsel felt satisfaction with the aforesaid, but prayed to allow inspection of soft copy of the OMR sheet to which learned Counsel for respondents has not opposed.

In view of the facts narrated above and as agreed by the parties, respondent-RPSC is now directed to declare the result afresh after taking into consideration the expert report for the question in dispute. The result may, accordingly, be declared at the earliest so that appointment may be made as a consequence thereof. It is noticed that change in the paper of General Knowledge also exists which is common for the post of Teacher Gr.II for different subjects also. Accordingly, RPSC has agreed to change the result for other subjects also with a copy of select list to the State Government for appropriate action. It is informed that appointments to the post of Teacher Gr.II for other posts have already been made, thus, I am of the opinion that change in the marks in General Knowledge should not affect those persons who have already been appointed. However, if any of the petitioners get more marks than the candidates lastly appointed in their category then those would get appointment, if vacancies are available now or against the future vacancies.

Before parting with the judgment, it would necessary to make certain observations in regard to selection held by RPSC and other authorities. The litigation is coming before the court for framing of wrong questions or incorrect option of the answer. This Court is not interfering in those questions directly, but referring the matter to the RPSC or the authorities to get an expert report. In the case in hand, earlier expert report was taken, but was found with incorrect reasoning, thus, this court had to refer the matter to the second expert committee. This type of litigation is required to be curtailed and for that purpose, I am of

the opinion that RPSC or the appointing authorities may evolve following mechanism for selection:

(i) After examination, they should publish answer key so that individual candidate may assess his performance and also to see as to whether answer key contains correct answer or not. It would be subject to rules, if it does not caste a bar for that purposes. Thereafter, call for objections in regard to answer key by giving reasonable time. If objections are received then for those questions having dispute, should be first got examined from the paper setter to find out the basis of the answer or even correctness of the question. The aforesaid should be taken in writing from paper setter so as to justify the question or the answer. If it is felt that report is required from the expert, they should send it to the independent expert of the subject.

(ii) In case of calling expert report, it should be with direction and indication that if question is wrongly set or answer is not correct then he should specify the reasons with supporting material. It should be after going through the reasons and material supplied by the paper setter to justify the question and answer. The exercise aforesaid may be applied, if there is no bar in the rules, thus, directions aforesaid would be applicable subject to rules. It is only to avoid litigation of the nature coming to the court every day and even looking to the judgment of the Hon'ble Supreme Court wherein correctness of the question and answer cannot be adjudged by the court, but has to be by the expert.

(iii) If the directions aforesaid are complied with by the RPSC or the authorities then litigation of nature coming before this court may be minimized, thus, it would in the larger interest of public. The RPSC may accordingly issue instructions of the nature indicated above and while doing so, they may also take note of the direction of this court in the case Rewant Dan Vs. RPSC & Ors., S.B. Civil Writ Petition No.8786/2011 & five others, decided on 4th July, 2012.

It is with the assistance of the learned counsel for petitioner, the disputed questions were taken and sent for expert report, thus, it is agreed that further litigation in regard to the issue raised herein would not be raised and entertained. It is to end litigation and to finalize the selection.

With the aforesaid, all the writ petitions are disposed of. Stay applications are also disposed of.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
D.B. CIVIL SPECIAL APPEAL NO.1032 of 2012
D.D. 04.01.2013
Hon'ble Mr. Chief Justice Amitava Roy &
Hon'ble Mr. Justice Narendra Kumar Jain

Praveen Singh & Ors. … Petitioners
Vs.
State of Rajasthan & Ors. … Respondents

Selection process

Evaluation of question paper setting and answer key of examination conducted for selection to posts of Head Master (Secondary School) – Scope of interference of High Court in exercise of extraordinary jurisdiction under Article 226 of Constitution- Whether, in absence of allegation on members constituting committee of experts that they were lacking in specialization in the subject concerned or suffered from bias, merely on ground that different answers to questions are provided in some of the recognized text books or books of repute, Court may interfere in selection process in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution? No. After conduct of written examination, RPSC declared answer key for eliciting objections from candidates. Pursuant to that appellants submitted their representations pointing out wrong questions and answers. The Commission after considering their representations declared final results of examination on 18.11.2012. Being aggrieved by results published appellants approached single member bench of the High Court vide S.B. Civil W.P.No.6588/2012. Pursuant to directions of High Court, Public Service Commission again published answer key inviting objections. Thereafter, objections received were referred to committee of subject experts and on basis of assessment of committee of experts final results of examinations were published. Not satisfied with the results, appellants approached Division Bench of the High Court on purported ground of demonstrable errors in some questions and answer key.

"Essentially thus, the appellants to succeed in their present pursuit, need to demonstrate in unequivocal terms that the key answers to the questions referred to by them were either unmistakably wrong or the deletion of one or more of the questions by the Commission as highlighted was impermissible, thus vitiating the entire process.

Admittedly, the appellants had not been able to secure the cut-off marks in their respective categories to be selected for the post. There is no wrangle at the bar that the opportunity granted to the candidates to point out the mistakes in the questions and the key-answers had been availed by them. It is also a matter of record that while granting this relief, this Court by its order dated 09.10.2012 passed in Hanuman Ram Choudhary (supra) had made it clear that no further opportunity for raising any objection to the questions and the key answers would be granted. Neither any allegation of bias or mala fide nor that of any extraneous consideration has been made, qua the Commission or the expert committee. As alluded hereinabove, the instances cited by the appellants do not clinch the issue in their

favour and in our view, are also unconvincing to set at naught a participatory process of the kind involved, more particularly, after the final results thereof have been declared."

Case referred:

1. Hanuman Choudhary and others v. State of Rajasthan and others, S.B. Civil Writ petition No.6588/2012, decided on 09.10.2012.
2. Lalith Mohan Sharma & others v. R.P.S.C., Ajmer and another, reported in 2006 (1) CDR 834 (Raj)

ORDER

Amitava Roy, C.J.

In challenging is the judgment and order dated 04.12.2012 passed by the learned single judge in S.B. Civil Writ Petition No.12780/2012 negating the appellants request for a direction to the Rajasthan Public Service Commission (herein after referred to as the Commission) to redetermine the complete merit list, results pertaining to the selection for the post of Head Master, Secondary Education conducted by it pursuant to the relevant advertisement by effecting necessary corrections in the revised answer-key dated 19.11.2012 and also for the consequential relief of their appointment to the aforementioned post (s).

We have heard Dr.Pushpendra Singh Bhati, assisted by Dr.Nupur Bhati, Advocates for the appellants. For the order proposed to be passed, it is not considered essential to issue formal notice.

Briefly stated, the pleaded case of the appellants is that they are academically qualified and equipped with necessary experience as prescribed to be eligible for the post of Head Master Secondary Education Direct Recruitment Examination. They accordingly responded to the advertisement published by the Commission for recruitment to the aforementioned post in their respective categories. The competitive examination for such recruitment was held on 15.05.2012 in two parts i.e., Part-I (General Studies) and Part-II (General Awareness about Education and Educational Administration), in which objective type questions were formulated with multiple options. Subsequently, thereto the Commission

declared the answer key to the questions and also elicited objections thereto pursuant whereto, the appellants submitted their respective representation by which they pointed out the wrong question, registered their objections thereto and requested it (Commission) to effect necessary correction and also assimilate the right answers.

The respondent – Commission, thereafter, declared the final results on 18.11.2012 and it transpired there from that the appellants, for a very narrow margin, had missed the cut-off marks in their respective categories, as a consequence whereof, they had not been selected. Incidentally, on the very next day i.e., 19.11.2012, the Commission also issued the answer-key of the said examination on a scrutiny whereof, according to the appellants some of their questions in the respective series had been evaluated wrongly, as a result whereof, they were unfairly and illegally denied selection. Being aggrieved, they approached this Court seeking the above reliefs. Being unsuccessful in their endeavor, they seek redressal in the instant appeal.

The materials on record reveal that in S.B. Civil Writ Petition No.6588/2012 (Hanuman Ram Choudhary & Ors. vs. State of Raj. & Ors.) this Court vide its order dated 09.10.2012, on a permission being sought for by the Commission to that effect, had granted it the liberty to publish the answer-key pertaining to the same examination on its website to invite objections from the candidates having any grievance with regard thereto. Thereby, the Commission was permitted to publish answer key of the written examination conducted by it on its website and to seek objections from all the candidates with regard to their grievance of wrong answers on or before 05.11.2012. It was further made clear therein that while publishing the answer key on the website, it will also be intimated to the candidates that no further opportunity for raising any objection would be granted. To be precise, the operative portion of this order was in the following terms: -

> "After hearing learned counsel for the parties, I deem it proper to allow the application filed by the respondent Commission for seeking permission to publish answer key on website of the Commission and to invite objection from the candidates having any grievance with regard to answer key. Consequently, the application is allowed. The respondent Commission is hereby permitted to publish the answer key of the written examination conducted by the Rajasthan Public Service Commission for the post of Teacher Grade-II on the

website and to seek objections from all the candidates with regard to their grievance of wrong answers of the questions on or before 05.11.2012. It is made clear that while publishing the answer key on the website, it may also be informed to the candidates that no further opportunity for raising any objection shall be granted. The answer key may be published on the website but objections of the candidates may be invited through publication in the newspaper. The respondent Commission is directed to complete the process on or before 05.11.2012. The application is disposed of.

List on 06.11.2012, interim order shall remain in force".

By order dated 09.11.2012, this Court also permitted the Commission to proceed with the selection process in accordance with law. While according this relief, this Court recorded the submission advanced on behalf of the Commission that the grievance of the writ petitioners in Hanuman Ram Choudhary (supra) with regard to wrong questions and answers had been considered and assessed by the expert committee and that it would assess the results on the basis of the recommendations made by it (expert committee). By the aforementioned order dated 09.11.2012, this Court permitted the Commission to assess the results of the examination for the post of Head Master, Secondary Education on the basis of recommendations made by the expert committee and to proceed with the process of selection in accordance with law. The following extract form the order dated 09.11.2012 is of necessary relevance.

"After hearing learned counsel for the parties, the stay application is disposed of with the direction to the Rajasthan Public Service Commission to assess the result of the post of Head master Secondary Education on the basis of recommendation made by the expert committee and the Rajasthan Public Service Commission will be at liberty to proceed with the further process of selection in accordance with law but till disposal of the writ petition, five posts of Head Master, Secondary Education shall be kept vacant."

Understandably, the final results were declared thereafter culminating the process of selection traversing through these intervening stages.

The learned Single Judge on consideration of the singular facts as above and the progress of events preceding the declaration of the results, declined to intervene, in essence being of the view that this Court in the exercise of its jurisdiction under Article 226 of the

Constitution of India, ought not to act as an appellate authority over the exercise undertaken by the expert committee constituted by the Commission on the issue. In reaching this conclusion, reference was inter alia made of the determination by Full Bench of this Court in S.B. Civil Writ Petition No.1042/2005 (Lalit Mohan Sharma & Ors. Vs. RPSC, Ajmer & Anr.), reported in 2006 (1) CDR 834 (Raj.) (FB).

Dr. Bhati has emphatically urged, in the above- chequered back ground, that even assuming the constricted scope of scrutiny permissible in exercise of the power of judicial review by this Court, in view of the demonstrable errors in some of the questions and the key answers ensuring in a decisive impact on the final results of the appellants rendering Them unfit for selection, the conclusion of the learned Single Judge is unsustainable in law and on facts and that in the interest of fairness, objectivity and transparency in the process involved, they (appellants) be accorded the relief's sought for by them. To reinforce this plea, learned counsel for the appellants has referred, in particular, to three questions correlating the answers thereto collected by them and asserted to be correct, contra those accepted and acted upon by the Commission. Without prejudice to these, Dr.Bhati has urged that in the prevailing conspectus of facts, the appellants at least in all fairness, are entitled to a further opportunity to demonstrate before the Commission the correctness of their stand so as to facilitate reconsideration of their results, qua the selection process.

Noticeably, it was urged on behalf of the Commission in the writ proceedings, as the impugned judgment and order would demonstrate, that the candidates had been afforded an opportunity to point out the errors, if any, in the questions and the key answers as permitted by this Court by order dated 09.10.2012 rendered in Hanuman Ram Choudhary (supra), no further intervention was called for.

We have examined the pleaded facts and the documents available on record. We have analyzed as well the arguments advanced on behalf of the appellants. A Full Bench of this Court in Lalit Mohan Sharma (supra) being in seisin of an identical fact situation, had declined to accede to the plea of the petitioners therein to examine the disputed questions and the correctness of the answers provided by the Commission in the face of the report

of the expert committee constituted by it. As the text of the decision rendered therein would disclose, it was observed that the Court was not an expert in the field of education and the various subjects from which the questions were settled. That the expert committee constituted for the purpose had given its report based upon the recognized textbooks authored by persons of repute in the field was noted as well. Observing that there was no allegation whatsoever that the members constituting the Committee were lacking in specialization in the concerned subjects or suffered from bias, their Lordships concluded that no further probe in the matter was called for. That different answers to the questions provided in some of the recognized textbooks or books of repute would not, per se, be enough to interfere with the evaluation made by the Commission acting on the recommendations of the expert committee and to order redetermination of the answer scripts, was also recorded. The Full Bench relied as well on the decision of the Apex Court in Subhash Chandra Verma & Ors. vs. State of Bihar & Ors., 1995 Suppl (1) SCC 325 to the effect that where examination was of objective type and the key-answer had been settled by the paper setter, evaluation of answer sheets by the staff of the Public Service Commission, even though they had no knowledge of the subject, would be valid. Reliance was placed as well on the following observation from the decision of the Apex Court in Kanpur University Vs. Sami Gupta, AIR 1983 SC 1230"-

> "It is true that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct."

Essentially thus, the appellants to succeed in their present pursuit, need to demonstrate in unequivocal terms that the key answer to the questions referred to by them were either unmistakably wrong or the deleting of one or more of the questions by the Commission as highlighted was impermissible, thus vitiating the entire process. As referred to hereinabove, the three questions and the answers thereto adverted to on behalf of the appellants in course of the arguments, are as follows:-

"(A): Which one of the following states in India is a leading producer of Manganese?

1) Madhya Pradesh 2) Orissa
3) Karnataka 4) Rajasthan

That as per the RPSC the right option is (1) Madhya Pradesh.
That as per the authentic books the petitioners adopted the right option (2) Orissa

(B): In which year Rajasthan State Textbooks Board was constituted?

1) 1973 2) 1975
3) 1977 4) 1979

That as per the RPSC the question has been deleted.
That as per the authentic books the petitioners adopted the right option (1) 1973.

(C): Given below, except one, are laws of Heredity, Identify the one, which is not the law of Heredity?

1) Law of Similarity 2) Law of Variation
3) Law of Continuation 4) Law of regressions

That as per the RPSC the right option of this question is (3) Law of Constitution.

That as per the authentic books this question has to be deleted due to reason that all the options are not regarding to this question."

Whereas according to the appellants, in terms of the publication of the Publication Division, Ministry of Information & Broadcasting, Government of India, Rajasthan State Textbook Board and the book on Education Psychology by P.D.Pathak, the answers to these are (A) Orissa (B) 1973 and (C) None: the Commission had prescribed the right option to be (A) Madhya Pradesh (B) [Questions has been deleted] and (C) Law of Continuation.

A perusal of the afore-stated publication of the Ministry of Information & Broadcasting as above, would prima facie reveal that during 2003-04, Orissa had comparatively maximum production of Manganese. The same however is not an unimpeachable evidence of this accomplishment of production vis-a-vis the State in the current times. Our attention has not been drawn to any provision or norm debarring or prohibiting the Commission to delete a question if considered by it to be necessary. Further, such deletion would have an uniform bearing on the results of all the candidates. Vis-à-vis answer to question (C)

adopted by the Commission suffice it to state that the Laws (Principles) of Heredity as set out in the book titled as "Education Psychology by P.D.Pathak, in our view ipso facto does not render its (Commission's) stand irrefutable unacceptable.

To reiterate, the appellants endeavor to prove the answers adopted by the Commission or its action of deletion of a question to be unassailably wrong are, in the contextual facts, inadequate to warrant interference by this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, more particularly, in view of the unambiguous legal proposition laid down by Apex Court in Kanpur University (supra).

Admittedly, the appellants had not been able to secure the cut-off marks in their respective categories to be selected for the post. There is no wrangle at the bar that the opportunity granted to the candidates to point out the mistakes in the questions and the key-answers had been availed by them. It is also a matter of record that while granting this relief, this Court by its order dated 09.10.2012 passed in Hanuman Ram Choudhary (supra) had made it clear that no further opportunity for raising any objection to the questions and the key answers would be granted. Neither any allegation of bias or mala fide nor that of any extraneous consideration has been made, qua the Commission or the expert committee. As alluded hereinabove, the instances cited by the appellants do not clinch the issue in their favour and in our view, are also unconvincing to set at naught a participatory process of the kind involved, more particularly, after the final results thereof have been declared.

The appeal lacks in merit and is dismissed. The stay application is also dismissed. No costs.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH
S.B. Civil Writ Petition No.11119/2012 & Connected cases
D.D.15/03/2013
Hon'ble Mr. Justice M.N. Bhandari

Laxmi Kanwar & Anr. … Petitioners
Vs.
State & Ors. … Respondents

A. Reservation – Women candidates

Horizontal migration/transferability of reserve category women candidates to general/ open women category, in respect of 30% of vacancies earmarked under Article 15(3) of the Constitution as 'special provision' - Whether, earmarking of 30% of vacancies in favour of women candidates under Article 15(3) of the Constitution 'as special provision' can be equated with 'reservation' as provided under Art. 16(2) of the Constitution and consequently by applying principles of reservation, horizontal migration of reserve category women candidates to general/open women category is permissible? No. - Petitioners, applied for appointment to post of Teacher Grade-III. In the select list it was found that respondent Public Service Commission had migrated reserve category women to general women category based on their merit, even though women under reserve category were adequately represented in their respective category and this has resulted in selection of excess number of reserve category candidates to the detriment of general women category candidates.

Held:

There is no provision for reservation of women. To avoid conflict, whenever posts are kept for women, it should be considered to be a special provision instead of reservation. In that situation, posts meant for women would be filled category-wise without applying principle of reservation which permits migration.

In my opinion, judgment of the Hon'ble Apex Court in the case of P.B. Vijaykumar (supra) has to be read in reference to Rule 22A of the Rules referred therein. It was not to provide reservation to women, but preference to the extent of 30% posts. It was held that everything being equal, preference can be given to the women. In that event, it would not violate Article 16(2) of the Constitution of India, rather saved by Article 15(3) of the Constitution of India. It can be thus safely held that so far as earmarking certain posts for women are concerned it can be saved by Article 15(3), if considered special provision for women and not by reservation in the instant case 30% posts have been reserved for women, but to simplify the issue, it can be construed to be a special provision for women to earmark 30% posts for them. By giving aforesaid interpretation, obvious violation of Article 16(2) would be avoided to save provision for keeping 30% posts for women under Article 15(3)

of the Constitution of India without holding it to be reservation. Keeping 30% posts for women may result and be loudly construed to be reservation, but argument aforesaid can be nullified by holding that for 30% posts for women by special provision, principle as applicable to the reservation would not be applicable. The posts meant for women would be filled from the category it is meant, without inter changeability as women are vulnerable in each category as held in para 514 in the case of Indra Sawhney (supra). There keeping posts for women category-wise is made permissible. The obvious deviation from the general principle of reservation is regarding inter changeability. In reservation, open/ general category means every category but if it is construed to be special provision, it would not be required to be dealt with the same principle of inter changeability as applicable in reservation and while doing so, difference between reservation and special provision would come out and is required to be made otherwise there would be no difference in reservation and special provision. The special provision would provide post to each class separately as women are vulnerable in each category, whether general SC, ST and OBC.

In the background aforesaid, posts kept for women are looking to their vulnerable condition in their own category irrespective of caste and class. Hence, posts meant for each category are to be filled from an amongst said category alone and not by way of migration. If migration is permitted then virtually posts meant for women will turn out to be reservation not permissible under Article 16(2) of the Constitution of India. In the background aforesaid, even the definition of 'general/open category' as applicable in reservation would not apply herein otherwise there would be no difference between reservation and special provision. It is however necessary to clarify that keeping posts for women general without migration would not be a reservation in favour of general caste, but is an outcome of special provision.."

B. Reservation

Calculation of quota meant for widow and divorcees to extent of 8% and 2% - Whether it should be worked out on post meant for women candidates or on total number of posts? – Held that it has to be worked out on 30% of seats meant for women and not on total posts.

Cases referred:

1. Government of Andhra Pradesh v. P.B. Vijaykumar & Another, (1995) 4 SCC 520
2. Anil Kumar Gupta & others v. State of U.P. & Others, (1995) 5 SCC 173
3. Rajesh Kumar Daria v. Rajasthan Public Service Commission & Others, (2007) 8 SCC 785
4. Public Service Commission, Uttaranchal v. Mamta Bisht and Others, (2010) 12 SCC 204
5. Naresh Kumar v. State of Rajasthan, 2012 (1) WLC (Raj.) 538
6. Indra Sawhney etc. v. Union of India and others etc. etc., 1992 Supp (3) SCC 217
7. Union of India & Another v. Satya Prakash and others, 2006 (4) SCC 550
8. Union of India v. Ramesh Ram and others, 2010 (7) SCC 234

9. Sheik Mohd. Afzal & Another v. The State of Rajasthan and another, 2008(1) WLC (Raj.) 186
10. Vijay Lakshmi v. Punjab University and others, 2003 (8) SCC 40

ORDER

The legal question involved in these writ petitions is as to whether horizontal reservation permits inter transferability/migration of candidates from one category to another?

To address the aforesaid issue and for convenience, the facts of S.B. Civil Writ Petition No.11119/2012 (Laxmi Kanwar & Anr. Vs. State of Rajasthan & Ors), are taken.

The respondents issued an advertisement calling for applications for appointment on the post of Teacher Gr.III (Level I & II). In response to the advertisement, applications were submitted by the petitioners followed by selection test. The result of the selection was thereafter declared in the month of June, 2012. The respondents migrated reserve category women to general category based on their higher marks though many reserve category woman candidates availed relaxation/concession in selection thus not liable to be migrated to general category. It is apart from the fact that horizontal reservation does not permit migration from one category to another like vertical reservation. Prayer is accordingly to restrain the respondents to migrate reserve category woman candidates to general/open category women quota of 30%. Other writ petitions are for different posts but common question of law is involved.

Learned Counsel submit that equality in public employment is envisaged under Article 16 of the Constitution of India. The discrimination in public employment is prohibited only on the ground of religion, race, caste, sex, descent, place of birth, residence or any of them. Article 16(4) however carves out an exception to provide reservation in favour of any backward class of citizens not adequately represented in the services under the State. In view of Article 16 of the Constitution of India, a fundamental right exists in favour of every citizen to claim equal opportunity in public employment. The aforesaid Article does not permit discrimination on the ground of sex. Article 16(4) provides for reservation to

backward class, but it is subject to Article 16(2) i.e. no discrimination on the ground mentioned therein. The reservation to the women is thus in violation of Article 16(2) of the Constitution of India because by providing reservation, male and female do not stand on same pedestal rather discrimination is caused amongst them.

To overcome from the aforesaid problem and prohibition under Article 16(2), reservation to the women is taken under Article 15(3) of the Constitution though even Article 15(1) prohibits discrimination against citizen only on the grounds of religion, race, caste, sex, place of birth or any of them. Thus, Article 15(1) also reiterates what has been provided under Article 16(2) of the Constitution of India. Article 15(3) however permits State to make special provision for women and children. The aforesaid provision has been taken to save reservation in favour of women in ignorance of the fact that Article 15(3) does not speak about reservation but special provisions for women and children. If intention of framers of the Constitution would have been to provide reservation to women and children, then word "reservation" should have been used, instead special provision. Article 15(3) provides special provision for women and children thus reservation in favour of women becomes illegal and unconstitutional as discrimination on the ground of sex is prohibited under Article 15(1) and 16(2) of the Constitution of India.

It is only one part of the argument. If Article 15(3) allows State Government to make special provision for women and children, then question would be as to whether it can be reservation in public employment in ignorance of the prohibition under Article 16(2) of the Constitution of India where discrimination is prohibited on the ground of sex. The interpretation of Article 16(2) and Article 15(3) cannot be given in such a manner to keep conflict between two provisions of the Constitution. The subject of public employment is under Article 16 and is not subjected to overriding effect by any other Article like Article 15 which operates in different fields. In view of the above, what State Government can at the best do for women and children pursuant to Article 15(3) of the Constitution is to provide special provision as was done by Andhra Pradesh State Government when they provided preference in favour of woman candidates to the extent of 30% seats. The word "preference" was given interpretation by Hon'ble Apex Court in the case of Govt. of Andhra Pradesh Vs. P.B. Vijaykumar & Anr., reported in (1995) 4 SCC 520. The preference

is given when all things between male and female are equal. In ignorance of the aforesaid, the State Government has provided reservation for women.

If special provision can be provided in favour of women under Article 15(3) of the Constitution of India then it cannot be reservation because reservation in public employment can be under Article 16(4) of the Constitution of India but without discrimination on the ground of sex. If certain posts are kept for women by special provision under Article 15(3) of the Constitution of India then it should be without applying principle of reservation and in that eventuality, practice of migration of reserve category candidate to general category for the purpose of reservation is not to be made applicable. If certain percentage of posts are kept for women in view of Article 15(3) of the Constitution, it has to be filled strictly from the category of women to which it is notified. The rule notified by the Government also speaks about category-wise reservation and it has been clarified in the circular dated 24.06.2008. The issue therein has been dealt with in reference to vertical and horizontal reservation. The circular mandates for preparation of merit list category-wise. Contrary to the aforesaid, the respondents are migrating reserve caste women candidates on the post meant for general/open category women candidates by applying same principle as are provided for reservation. The use of words "reservation for women quota" is unconstitutional as it offends Article 16(2) of the Constitution of India thus wherever any provision or legislation exists to indicate reservation in favour of women, it should be treated as nullity or alternatively, it should be treated as special provision for female so as to make it in consonance to Article 15(3) of the Constitution and to avoid bar of Article 16(2). In the eventuality aforesaid, posts kept for women by special provision, migration of reserve category female candidates to general/open category would not be permissible.

Learned Counsel have given reference of judgment in the case of Anil Kumar Gupta Vs. State of U.P., reported in (1995) 5 SCC 173. In the aforesaid judgment, inter changeability of category in horizontal reservation is not allowed. A further reference of judgment of Hon'ble Supreme Court in the case of Rajesh Kumar Daria Vs. Rajasthan Public Service Commission, reported in (2007) 8 SCC 785 has been given wherein also migration of woman candidates from one category to another is not permitted.

Learned Counsel for petitioners have further given reference of judgments in the case of Public Service Commission, Uttaranchal Vs. Mamta Bisht and Ors., reported in (2010)12 SCC 204 and Naresh Kumar Vs. State of Rajasthan, reported in 2012 (1) WLC (Raj.) 538. It is accordingly prayed that migration of reserve caste woman candidates should not be permitted on the post meant for general/open category women rather these posts should be filled from general caste women being vulnerable in their own category.

The second issue is that quota meant for widow and divorcee to the extent of 8% and 2% respectively is to be on the posts meant for woman candidates and not on the total posts. The respondents are providing reservation in favour of widow and divorcee to the extent of 8% & 2% respectively on overall posts instead of 30% post meant for female. It is contrary to the notification providing reservation for widow and divorcee. The second issue is limited to the writ petitions pertaining to the posts of Teacher and not to other writ petitions thus direction in that regard would apply to the writ petitions pertaining to the appointment on the post of Teacher.

Learned Counsel for petitioners have not pressed any other issue.

Learned Additional Advocate General Shri S.N. Kumawat, opposing prayers of the petitioners, submits that counsel for petitioners have unnecessarily confused the issue in reference to Article 16(2) and Article 15(3) of the Constitution of India. The reservation in favour of women has already been held to be constitutional thus principle of horizontal reservation has rightly been applied to provide reservation to the woman candidates. Learned AAG submits that there exist broadly four categories whose merit list is prepared at the first instance namely; Open, OBC, SC & ST category. The further bifurcation is towards special reservation for woman, disabled person, etc. So far as open/general category is concerned, it consists of all categories. The merit list therein cannot be prepared from and amongst general caste candidates only, but has to be of all the categories and castes strictly as per merit. The Hon'ble Apex Court has already defined the words "general/open category" to include all the castes and categories subject to merit. Applying the aforesaid principle, quota meant for open/general category female has to be filled. It cannot be kept reserved only for general caste woman candidates. Applying the aforesaid,

migration of reserve category woman candidates is allowed to general/open category, if they have secured higher marks in comparison to general caste woman candidates.

It is further submitted that none of the judgments cited by learned counsel for petitioners address the issue raised in these petitions, rather issue has been raised for the first time as to whether migration of reserve caste woman candidates would be permissible to open/ general women category quota based on higher marks. The learned AAG has referred various judgments of Hon'ble Apex Court to support his arguments. First judgment referred is in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., reported in 1992 Supp (3) SCC 217. In the aforesaid judgment, difference was indicated between social reservation and special reservation. First reservation is vertical and other to be horizontal. Further reference of following judgments has been given in the case of Govt. of Andhra Pradesh Vs. P.B. Vijaykumar and another, reported in 1995 (4) SCC 520, Anil Kumar Gupta and Ors. Vs. State of U.P. and Ors., reported in 1995 (5) SCC 173, Union of India (UOI) and Anr. Vs. Satya Prakash and Ors., reported in 2006 (4) SCC 550, Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Ors., reported in 2007 (8) SCC 785, Union of India Vs. Ramesh Ram & others, reported in 2010 (7) SCC 234, Public Service Commission, Uttaranchal Vs. Mamta Bisht and Ors., reported in 2010 (12) SCC 204 and Sheikh Mohd. Afzal & Anr. Vs. The State of Rajasthan & Anr., reported in 2008 (1) WLC (Raj.) 186.

Learned AAG submits that judgments referred to above clarify that not only reservation in favour of female candidates is permissible but general principle of reservation would allow migration from one category to another. In that regard, much emphasis has been made on the judgment of Hon'ble Apex Court in the case of P.B. Vijaykumar (supra). Therein, issue in reference to women reservation was decided and in that regard a further reference of the judgment in the case of Vijay Lakshmi Vs. Punjab University and Ors., reported in 2003 (8) SCC 440 has been given. Referring to the judgment aforesaid, it is submitted that women can be provided reservation in reference to Article 15(3) of the Constitution of India and in doing so, Article 16(2) is not offended. If reservation in favour of women is permissible then principle of migration as applicable for reservation would obviously

apply. It is more so when open/general category does not indicate a reservation for general caste candidate, but a category open for all candidates whether general caste or reserve caste. The placement in the open/general category is strictly as per merit position obtained by the candidate. Accordingly, if a woman of reserve category has obtained higher marks to that of a general caste woman then she cannot be denied benefit of migration from reserve category to general/open category. In view of the above, first issue raised by learned counsel for petitioners may be answered against them.

Coming to the second issue, it is submitted that 8% and 2% reservation for widow and divorcee respectively is on the total posts meant for female and not on overall posts. Learned AAG has supported the arguments of the learned counsel for petitioners. It is clarified that 8% meant for widow and 2% for divorcee would be on the 30% seats meant for women and not on the total posts. If any Zila Parishad had acted and provided reservation to widow and divorcee on total posts and not on the posts meant for women, then necessary correction would be made. With the aforesaid prayer is made that while accepting second ground, first issue raised by petitioners may be rejected.

I have considered rival submissions of the parties and scanned the matter carefully.

To address the issue of vital importance, it would be necessary to refer certain provisions of Constitution of India. Article 16 of the Constitution of India gives right of equality in public employment, whereas Article 15 of Constitution of India prohibits discrimination on the ground of religion, race, caste, sex or place of birth. Learned counsel for the parties have referred both the provisions thus it would be gainful to quote both the provisions for ready reference:

> "15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
>
> (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—
>
> (a) Access to shops, public restaurants, hotels and places of public entertainment; or

(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."

"16. Equality of opportunity in matters of public employment.-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation 3[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year

> in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. Reservation on total number of vacancies of that year.
>
> (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

Perusal of Article 15 prohibits discrimination against any citizen on the ground of religion, race, caste, sex or place of birth. In view of the above, no discrimination on the ground of sex can be made amongst citizens. Article 15(3) however gives liberty to the State for making any special provision for women and children. A careful reading of the aforesaid provision does not show a liberty to the State to provide reservation in favour of women and children, but permits special provision for women and children. It seems to be nothing but a deliberate deviation from the provision which otherwise exists under Article 16(4) of the Constitution of India. It is further necessary to refer that so far as public employment is concerned, it is governed by Article 16 of the Constitution of India. It is special provision for public employment thus question would be as to whether any other provision of the Constitution can nullify or deviate from Article 16 pertaining to public employment? If Article 16(2) is looked into, discrimination in public employment on the ground of sex is prohibited. In view of specific prohibition of Article 16(2) of the Constitution of India, a citizen cannot be discriminated on the ground of religion, race, sex, caste, etc. in public employment. It was clarified by Hon'ble Apex Court in Indra Sawhney etc. etc Vs. Union of India (supra). Para 514 is quoted hereunder for ready reference:

> "514. It is necessary to add here a word about reservations for women. Clause (2) of Article 16 bars reservation in services on the ground of sex. Article 15(3) cannot save the situation since all reservations in the services under the State can only be made under Article 16. Further, women come from both backward and forward classes. If reservations are kept for women as a class under Article 16(1), the same inequitous phenomenon will emerge. The women from the advanced classes will secure all the posts, leaving those from the backward classes without any. It will amount to indirectly providing statutory reservations for the advanced classes as such, which is impermissible

> under any of the provisions of Article 16. However, there is no doubt that women are a vulnerable section of the society, whatever the strata to which they belong. They are more disadvantaged than men in their own social class. Hence reservations for them on that ground would be fully justified, if they are kept in the quota of the respective class, as for other categories of persons, as explained above. If that is done, there is no need to keep a special quota for women as such and whatever the percentage-limit on the reservations under Article 16, need not be exceeded."

The perusal of Constitutional Bench judgment reveals that Article 15(3) cannot save the situation as all the reservations are under Article 16. It however permitted quota for women if it is kept in respective class as women are vulnerable section of the society, whatever the strata to which they belong. They are more disadvantaged than men in their own social class. If reservation is provided in the respective class, it would be permissible. It should not be for advanced class only.

The question would still be as to whether there exists conflict between Article 16(2) and Article 15(3) of the Constitution of India if reservation to vulnerable class is provided? It is for the reason that Article 15(3) provides special provision for women and children and not reservation, whereas Article 16(2) prohibits discrimination in public employment on the ground of sex. It would be necessary to give harmonious interpretation to both the provisions so as to avoid conflict and mis-interpretation. It is required to find out as to whether women can be allowed reservation or be treated by special provision. In Para 514 quoted above, reservation for women is not saved by Article 15(3) and is barred by Article 16(2) but the last portion of the para aforesaid allows post for women in their respective class. The issue aforesaid is relevant to answer the question raised in these writ petitions.

To give harmonious interpretation of Article 15(3) and Article 16(2) of the Constitution of India, it can conveniently be held that Article 16(2) prohibits discrimination amongst citizens on the ground of race, sex, caste, etc. for public employment and reservation is permissible under Article 16(4) of the Constitution of India, but it is only for backward class of citizens without discrimination on the ground of sex, caste, etc. In view of the above, what can be meant for women is the special provision under Article 15(3) but not the

reservation as it would offend Article 16(2). The aforesaid has been clarified by Hon'ble Apex Court in the case of Indra Sawhney (supra) holding that women reservation cannot be under Article 15(3). It was however observed that women are vulnerable class thus be given reservation category-wise. The word "reservation" has been used in para 514 of the said judgment for women however in the earlier part of the said para, it is not saved by Art.15 (3) and held to be barred by Article 16(2). There is no provision for reservation of women. To avoid conflict, whenever posts are kept for women, it should be considered to be a special provision instead of reservation. In that situation, posts meant for women would be filled category-wise without applying principle of reservation which permits migration.

It would be relevant to refer the judgment cited by the parties in the case of P.B. Vijaykumar (supra). In the case aforesaid, the issue was raised in reference to Rule 22A (2) of Andhra Pradesh State and Subordinate Service Rules. The rule aforesaid was providing preference to the women to the extent of 30%. Relevant Paras 4, 5, 6, 7, 8, 9 & 10 are quoted hereunder for ready reference:

> "4. Article16(2) provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. The ambit of Article 16(2) is more limited in scope than Article 15(1) because it is confined to employment or office under the State. Article 15(1), on the other hand, covers the entire range of State activities. At the same time, the prohibited grounds of discrimination under Article16 (2) are somewhat wider than those under Article15 (2) because Article 16(2) prohibits discrimination on the additional grounds of descent and residence apart from religion, race, caste, sex and place of birth. For our purposes, however, both Articles 15(1) and 16(2) contain prohibition of discrimination on the ground of sex.

5. The respondent before us has submitted that if Article 16(2) is read with Article 16(4) it is clear that reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State is expressly permitted. But there is no such express provision in relation

to reservation of appointments or posts in favour of women under Article 16. Therefore, the respondent contends that the State cannot make any reservation in favour of women in relation to appointments or posts under the State. According to the respondent this would amount to discrimination on the ground of sex in public employment to posts under the State and would violate Article 16(2).

6. This argument ignores Article 15(3). The inter-relation between Articles 14, 15 and 16 has been considered in a number of cases by this Court. Article 15 deals with every kind of State action in relation to the citizens of this country. Every sphere of activity of the State is controlled by Article 15(1). There is, therefore, no reason to exclude from the ambit of Article 15(1) employment under the State. At the same time Article 15(3) permits special provisions for women. Both Articles 15(1) and15 (3) go together. In addition to Article 15(1) Article 16(1), however, places certain additional prohibitions in respect of a specific area of state activity viz. employment under the State. These are in addition to the grounds of prohibition enumerated under Article 15(1) which are also included under Article 16(2). There are, however, certain specific provisions in connection with employment under the State under Article 16. Article16(3) permits the State to prescribe a requirement of residence within the State or Union Territory by parliamentary legislation; while Article 16(4) permits reservation of posts in favour of backward classes. Article 16(5) permits a law which may require a person to profess a particular religion or may require him to belong to a particular religious denomination, if he is the incumbent of an office in connection with the affairs of the religious or denominational institution. Therefore, the prohibition against discrimination on the grounds set out in Article 16(2) in respect of any employment or office under the State is qualified by clauses (3), (4) and (5) of Article 16. Therefore, in dealing with employment under the State, it has to bear in mind both Articles 15 and 16 - the former being a more general provision and the latter, a more specific provision. Since Article 16 does not touch upon any special provision for women being made by the State, it cannot in any manner derogate from the power conferred upon the State in this connection under Article 15(3). This power conferred by Article15 (3) is wide enough to cover the entire range of State activity including employment under the State.

7. The insertion of Clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3) is not whittled down in any manner by Article 16.

8. What then is meant by "any special provision for women" in Article 15(3)? This "special provision", which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation. It is interesting to note that the same phraseology finds a place in Article 15(4) which deals with any special provision for the advancement of any socially or educationally backward class of citizens or Scheduled Castes or Scheduled Tribes. Article 15 as originally enacted did not contain Article 15(4). It was inserted by the Constitution First Amendment Act, 1951 as a result of the decision in the case of The State of Madras v. Champakam Dorairajan AIR 1951 SC 226 setting aside reservation of seats in educational institutions on the basis of caste and community. This Court observed that the Government's order was violative of Article 15 or Article 29(2). It said: -

> "Seeing however, that clause (4) was inserted in Article 16, the omission of such an express provision from Article 29 cannot but be regarded as significant."

9. In the light of these constitutional provisions, if we look at Rule 22-A (2) it is apparent that the Rule does make certain special provisions for women as contemplated under

Article 15(3). Rule 22-A (2) provides for preference being given to women to the extent of 30% of the posts, other things being equal. This is clearly not a reservation for women in the normal sense of the term. Reservation normally implies a separate quota which is reserved for a special category of persons. Within that category appointments to the reserved posts may be made in the order of merit. Nevertheless, the category for whose benefit a reservation is provided, is not required to compete on equal terms with the open category. Their selection and appointment to reserved posts is independently on their inter se merit and not as compared with the merit of candidates in the open category. The very purpose of reservation is to protect this weak category against competition from the open category candidates. In the case of Indra Sawhney while dealing with reservations, this Court has observed (at paragraph 836):-

> "It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognise that this much cost has to be paid, if the constitutional promise of social justice is to be redeemed."
>
> These remarks are qualified by observing that efficiency, competence and merit are not synonymous and that it is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed upon members of other classes. What is required is an opportunity to prove it. It is precisely a lack of opportunity which has led to social backwardness, not merely amongst what are commonly considered as the backward classes, but also amongst women. Reservation, therefore, is one of the constitutionally recognised methods of overcoming this type of backwardness. Such reservation is permissible under Article 15(3).

10. Rule 22-A (2), however, does not provide for this kind of reservation for women. It is a Rule for a very limited affirmative action. It operates, first of all, in respect of direct recruitment to posts for which men and women are equally suited. Secondly, it operates only when both men and women candidates are equally meritorious. This is an express condition of Rule 22-A (2), thus limiting its application. In other words, it contemplates a situation where, in the selection test - whether it is written or oral or both, a certain number of men and women candidates have got an equal number of marks. If the number of posts to which these equally situated men and women can be appointed are limited, and all of them cannot be appointed, then preference to the extent of 30% is required to be given to

women. This is clearly an affirmative action of preference to the extent of 30% for women. To give an illustration, supposing there are in the merit list, at a certain point in the order of merit, 20 candidates - men and women, who have secured equal marks. There are only ten posts which have to be distributed amongst these 20 candidates. In such a situation, 3 out of these 10 posts will be given to women while the remaining 7 posts will have to be allotted among the remaining 17 candidates. In such a situation if there are any departmental rules for giving preference they will operate. For example such rules at times provide that a person who is older in age will be preferred, all other thing being equal. This kind of preference may have nothing to do with merit. It may be merely an administrative guideline to select from amongst those who are equally meritorious. Sometimes educational qualifications are looked at to find out the marks obtained by the candidates in the examination. It could be that the examination taken by different candidates is of different institutions or universities and is taken at different times. Nevertheless, these marks are looked at to select some candidates out of a group of equally meritorious persons. These norms for selection out of equally meritorious persons, do not come into play under Rule 22-A (2) for giving preference to women. The phrase "other things being equal" does not refer to these other norms for choosing from out of equally meritorious persons. For example, it would be somewhat starting to find men and women who have not merely got the same number of marks in the selection test but are also born on the same day in the same year. It is not the intention of Rule 22-A (2) that it would apply only if all the candidates have not merely the same number of marks in the selection test but are also born on the same date, or have identical marks in the qualifying diploma or degree examination. The preference contemplated under Rule 22-A (2) will come into operation at the initial stage when in the selection test for the post in question, candidates obtain the same number of marks or are found to be equally meritorious. Rule 22-A (2) prescribes a minimum preference of 30% for women, clearly contemplating that for the remaining posts also, if women candidates are available and can be selected on the basis of other criteria of selection among equals which are applied to the remaining candidates, they can also be selected. The 30% rule is also not inflexible. In a situation where sufficient number of women are not available, preference that may be given to them could be less than 30%."

Perusal of paras quoted above reveals that Article 15(3) of the Constitution of India provides for affirmative action even in public employment. It may be even reservation in favour of women. The fact however cannot be ignored that Article 16(2) prohibits discrimination amongst citizens in public employment on the ground of sex and Article 16(4) does not provide reservation in favour of women. The Constitutional Bench judgment in the case of Indra Sawhney (supra) has not approved reservation for women under Article 15(3) rather it is barred under Article 16(2). I have no hesitation to observe that when specific provision exists in the Constitution to provide fundamental right to citizen in public employment, it cannot be subjected to other provision of the Constitution governing different field otherwise there would be conflict in two fundamental rights. The aforesaid view is supported by para 514 of Indra Sawhney's judgment (supra) where reservation for women is not saved by Article 15(3). It seems that relevant para of Constitutional Bench judgment was not brought to the notice of the Court in the case of P.B. Vijaykumar (supra). In any case, this court is to follow larger Bench judgment in case of conflict in two judgments.

In my opinion, judgment of the Hon'ble Apex Court in the case of P.B. Vijaykumar (supra) has to be read in reference to Rule 22A of the Rules referred therein. It was not to provide reservation to women, but preference to the extent of 30% posts. It was held that everything being equal, preference can be given to the women. In that event, it would not violate Article 16(2) of the Constitution of India, rather saved by Article 15(3) of the Constitution of India. It can be thus safely held that so far as earmarking certain posts for women are concerned, it can be saved by Article 15(3), if considered special provision for women and not by reservation. In the instant case, 30% posts have been reserved for women, but to simplify the issue, it can be construed to be a special provision for women to earmark 30% posts for them. By giving aforesaid interpretation, obvious violation of Article 16(2) would be avoided to save provision for keeping 30% posts for women under Article 15(3) of the Constitution of India without holding it to be reservation. Keeping 30% posts for women may result and be loudly construed to be reservation, but argument aforesaid can be nullified by holding that for 30% posts for women by special provision, principle as applicable to the reservation would not be applicable. The posts meant for

women would be filled from the category it is meant, without inter changeability as women are vulnerable in each category as held in para 514 in the case of Indra Sawhney (supra). There keeping posts for women category-wise is made permissible. The obvious deviation from the general principle of reservation is regarding inter changeability. In reservation, open/general category means every category but if it is construed to be special provision, it would not be required to be dealt with the same principle of inter changeability as applicable in reservation and while doing so, difference between reservation and special provision would come out and is required to be made otherwise there would be no difference in reservation and special provision. The special provision would provide post to each class separately as women are vulnerable in each category, whether general, SC, ST and OBC.

Learned AAG has cited several judgments, but I find those judgments either on an issue different than raised herein or if judgment is in reference of women reservation then it was not on interchangeability of woman candidates from one category to another. If the reservation in favour of women is saved under Article 15(3) then it would be in conflict with the judgment of Constitutional Bench in the case of Indra Sawhney (supra). What will prevail is the judgment of Constitutional Bench thus I am not required to discuss all the judgments referred by counsel for either of the parties other than relevant and referred in the earlier paras and judgments in conflict to Constitutional Bench judgment.

Coming to the facts of this case, it would be necessary to refer the relevant rule. It was brought by way of amendment. The relevant rule is quoted hereunder for ready reference. The rule was amended further to provide quota for widow and divorcee.

> "7B. Reservation of vacancies for woman candidates.- Reservation of vacancies for woman candidates shall be 30% category wise, in direct recruitment. In the event of non-availability of eligible and suitable woman candidates in a particular year, the vacancies so reserved for them shall be filled up by male candidates and such vacancies shall not be carried forward to the subsequent year and reservation shall be treated as horizontal reservation i.e. the reservation of woman candidates shall be adjusted proportionately in the respective category to which the woman candidates belong."

The rule aforesaid is applicable to all the services listed in the amendment. As per rule, posts meant for women should be filled from the category to which she belongs. The rule however used the word "reservation" in favour of women though it is not permissible under Article 16(2) of the Constitution of India and not saved by Article 15(3) in view of Constitutional Bench judgment in the case of Indra Sawhney (supra). The posts meant for female candidates can be saved only when it is termed to be special provision instead of reservation. The detailed discussion has already been made on the aforesaid issue. Thus, applying the principle laid down in this judgment and difference made between "reservation" and "special provision", migration of reserve category to open category, as is permissible in reservation, cannot apply. Interpretation of the rule has to be made in such a manner which may save the posts meant for female and at the same time, it remains in consonance to the constitutional mandate and ratio propounded by Hon'ble Apex Court in the case of Indra Sawhney (supra). Para 514 of the said judgment quoted earlier reveals that while reservation in favour of women is not saved under Article 15(3) yet looking to the vulnerable condition of female in each category, special provision can be made for general, SC/ST and OBC women. In the background aforesaid, posts kept for women are looking to their vulnerable condition in their own category irrespective of caste and class. Hence, posts meant for each category are to be filled from an amongst said category alone and not by way of migration. If migration is permitted then virtually posts meant for women will turn out to be reservation not permissible under Article 16(2) of the Constitution of India. In the background aforesaid, even the definition of "general/open category" as applicable in reservation would not apply herein otherwise there would be no difference between reservation and special provision. It is however necessary to clarify that keeping posts for women (general) without migration would not be a reservation in favour of general caste, but is an outcome of special provision in favour of women in all categories looking to their vulnerable condition. The upliftment of women is required in all the categories, whether general, SC, ST or OBC etc. In view of above discussion, the first question is answered in favour of the petitioners. The merit list of the respective posts may be prepared accordingly.

The time has now come to consider the pattern of reservation exists in the country. It should not be for the purpose to divide citizens on the basis of caste and at the same time

to see that a downtrodden citizen of any caste is given benefit of reservation so as to give true meaning to "backward class" used under Article 16(4) of the Constitution of India.

The question now comes regarding 8% and 2% posts meant for widow and divorcee. The issue aforesaid needs no discussion as it has been agreed by learned Additional Advocate General that calculation of 8% and 2% posts meant for widow and divorcee would be maintained on the posts earmarked for women and not on the total posts advertised for any category. The issue aforesaid is concluded by the aforesaid.

With the discussion made above, all the writ petitions are disposed of. This disposes of stay applications also.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR
DBSAW NO.1685/2012 & Connected Appeals
D.D:22.04.2013
Hon'ble Mr. Justice Ajay Rastogi &
Hon'ble Mr. Justice Arun Bhansali

Keshav Singh & Ors. … Petitioners
Vs.
RPSC & Ors. … Respondents

A. Examination

Evaluation of question papers setting and key answer of examination held for recruitment to post of Teacher Grade-II, under Rajasthan Educational Subordinate Services Rules, 1971 – Powers of judicial review of High Court – Rajasthan Public Service Commission conducted written examination for selection to posts of Teacher Grade-II by inviting applications under its notification dated 01.05.2011. After conduct of examination, on basis of results of examination, select list of candidates was published on 06.03.2012. The said select list was challenged before High Court inter alia on ground of discrepancy in preparation of question paper and key answers. On directions of High Court a committee of experts was constituted by RPSC to look into grievance of petitioners. On basis of report of committee of experts revised select list of candidates was prepared and published on 20.09.2012. The said select list was again challenged before the High Court. High Court not being satisfied with report of committee of experts, constituted its own committee of experts to look into the matter by quashing select list dated 20.09.2012. Thereafter RPSC on basis of report of committee of experts nominated by High Court again revised select list and published revised select list dated 25.12.2012 –- The RPSC being an expert body in matter of recruitment to post under State Civil Service, whether High Court in exercise of power judicial review, sit in judgment over decision taken by the Commission, and to substitute its judgment to that of RPSC? Whether RPSC has committed any error in accepting report of committee of experts and publishing revised select list dated 20.09.2012? No.

Held:

"In the instant case, subject experts have submitted their report indicating key answers available with the Commission duly supported with material and that was taken note of when the select list was initially published on 06.03.2012 but still after the general comments were made by the learned single Judge of this Court directing the parties to make representation having aggrieved by some of multiple choice questions. The Commission again constituted the subject expert committee and referred all 32 representations of subject Social Science and 13 representations of subject Maths and after the report from the subject expert was received revised select list was published on 20.09.2012 and obviously if there

is change of answer or deletion of a question the value of the existing question has to be changed which certainly affects the select list earlier published on 06.03.2012 but after the committee examined and revised the select list on 20.09.2012, there remains no further scope of judicial review to be interfered by this Court to issue writ of certiorari u/Art. Article 226 of the Constitution of India but as being referred to in the instant case, petitions were filed before the learned single Judge raising grievance that select list dated 20.09.2012 could not be revised without affording opportunity of hearing as their rights have been affected and OMR sheet were not made available to them and in absence of OMR sheet, result could not have been revised by the Commission and during the course of arguments some illustration have been pointed out regarding certain question and the learned single Judge taking note of one of the reports regarding question No.52 series D of paper General Knowledge which has been referred to in the order dated 03.12.2012 ordered to constitute committees of subject expert afresh once again vide order dated 05.12.2012 with the consent of parties and what is being referred to the Committee was not taken care of.

In the considered opinion of this Court there was no material available before the learned single Judge in giving its opinion for constituting committee again and to refer the matter afresh to be examined by subject experts as alleged pursuant to order dated 05.12.2012. Even the interim order dated 05.12.2012 does not indicate as to what was referred to the subject expert for examination as regard the subject Social Science and Maths. Such of the opinion expressed by learned Single Judge constituting in the absence of cogent material on record was against the settled principles laid down by the Apex Court referred to supra and cannot be approved by this Court more so when subject expert committee was earlier constituted by the Commission for both the subjects Social Science and Maths and report of subject expert was accepted by the Commission and accordingly was carried out and the list stood revised on 20.09.2012, at the same time, we would like to comment on the reports submitted to this Court of subject experts for sake of instance in the paper of Social Science Series A question No.89 the key answer was 3 and which was duly supported by the relevant material and the later committee constituted by the Commission also accepted answer 3 to question No.89 and approved by the committee but the committee constituted under the direction of this court proposed answer choice 4 for which there was no evidence to support but still that was carried out. However, at the same time, question No.108 of Social Science Series A choice 2 was the correct key answer which was accepted by the committees constituted initially by Commission duly supported with material by the committee which is constituted under the direction of this Court proposed both the answers 2 and 3 and on their recommendations it was deleted but there was no material to support it.

Simultaneously, we do not find any hesitation in holding that no fault was committed by the Public Service Commission in its action while accepting the report of the subject experts and revising the select list and published on 20.09.2012 of the selected candidates and if at all there remain a discrepancy in framing the question or evaluation of the answer it was for all the candidates who appeared in the written examination and not for the appellants alone and while revising the select list dated 20.09.2012 right of the individual applicant has not been defeated and thus no interference.

B. Examination

Weeding out answer sheets of examination conducted for recruitment to civil posts under the State – Whether RPSC is justified in weeding out answer sheets of examination conducted after three months from date of declaration of results, merely on ground that their regulation provides for weeding out/destruction of records of examination, when litigations are pending before courts challenging selection? No.

" At the same time, we would like to observe that in near future the regulation which has been referred to by the Commission for weeding out the answer sheets after three months from declaration of result may be available in the ordinary course but if the litigation comes to the court of law and brought to the notice prior thereto to the Commission it will not be justified to weed out the records in the light of their regulation and records could be weeded out or destroyed pending litigation only with the permission of the Court and not in the guise of the regulation which was taken as a shield by the Commission to support their action."

Cases referred:

1. State of Kerala v. Fathima Seethi, (1994) 6 SCC 651
2. Tata Cellular v. Union of India {(1994) 6 SCC 651}
3. Associated Provincial Picture Houses Ltd., v. Wednesbury Corporation, (1947) 2 All.ER 680
4. Janpur University v. Samir Gupta, AIR 1983 SC 1230
5. Mayank Bahadur v. State of M.P. (2010) 6 SCC 759

JUDGMENT

Ajay Rastogi,J.

Since in all these special appeals common question of fact and law are involved, with the consent of parties, the matters were analogously heard and are decided by this present order.

Brief facts culled out from DB Special Appeal no. 1685/2012 & 42/2013 are that the Rajasthan Public Service Commission ("The Commission") issued an advertisement dt. 1.5.2011 holding selection for the post of Teacher Grade II for subjects; Social Science, Mathematics, English, Hindi & Science; while the present controversy is confined to the post of Teacher Grade II (Social Science and Mathematics). Initially, 1494 vacancies against each subject are advertised but by corrigendum dt.24.2.2012, the vacancies, are

increased to 2373 for each subject and the appellants being eligible for the post of Teacher Grade II (Social Science/Maths) submitted their application and participated in the selection process. The written examination was conducted by the RPSC in December 2011 for all the five subjects of Teacher Grade II and the result was declared on 6.3.2012.

It has been alleged that names of the appellants found place in the select list published on 6.3.2012 in their respective categories on the basis of cut off marks declared by the RPSC in subjects Social Science and Maths.

Immediately, after declaration of result of written examination, certain writ petitions came to be filed before the learned Single Judge of this Court raising grievance that certain questions were having wrong answers or more than one and some questions were not properly framed and that has not been properly looked into by the RPSC and such of the writ petitions in relation to the post of Teacher Grade II to which the present controversy is concerned are CWP No. 12256/2012 Munna Meena Vs. RPSC & Others in regard to subject Social Science and CWP No. 12964/2012 Rajesh Kumar Vs. RPSC & Others in regard to subject mathematics.

By general order without examining merits all such writ petitions came to be disposed of by the learned Single Judge granting liberty to the writ petitioner to make representation to the respondent Commission giving out details of such questions/wrong answers if any duly supported with the relevant material in support thereof, at the same time, the Commission was directed to consider representations and if needed to constitute an independent Expert Subject Committee to examine the matter and decide such representation within the period of one month. Such stereotyped order was passed by the learned single Judge in all the subjects including Hindi, English, Science and made it open to the Commission to decide such representation, if made, by the expert committee, if so needed.

It reveals from the record that pursuant to such order passed by the learned single Judge disposing of the writ petitions as indicated above, the Commission sent all 32 representations in Social Science and 13 in Maths including objection regarding some question of paper general knowledge common for all the subjects including Social Science and Maths

received by that time to the subject expert committee constituted by the Commission and as per the expert committee's report in A Series questions no. 31, 39, 40 were deleted and the result of questions no. 57, 61, 110, 119, 124, 142 and 147 was changed in the final key, details of which was provided in the final key as Annexure R-1/1.

As regards, paper of General Knowledge, Expert Committee suggested to delete question no. 91, 95 and 100 and question no. 20 was deleted earlier itself. The copy of final key was published and placed on record as Annexure-R-1/2 and this was the mechanism adopted by the Commission.

The recommendations made by the Subject Expert Committee were approved by the Commission and revised select list was accordingly published on 20.9.2012 and some of the applicants who were shown to be selected by the Commission in the result initially declared on 6.3.2012 when their names did not find place in the revised select list dt. 20.9.2012, they raised their objections regarding change in the select list declared by the Commission on 20.9.2012.

It is relevant to record that before there could be a publication of second revised select list dt.20.9.2012 of candidates such of the candidates who appeared in the written examination filed writ petitions no. 13393/2012 and 12739/12 & like others before the Ld. Single Judge seeking permission for inspection of OMR sheet and answer key of the post of Teacher Grade II (Social Science/Maths) and all such like petitions were decided by the learned single Judge vide order dt.5.9.2012 and 28.8.2012 directing the Commission to allow inspection of OMR sheet and answer key to the candidates namely; Pushpa Choudhary & Rajendra Prasad Raiger & others respectively.

However, the Commission informed both the applicants that the OMR sheet was destroyed on 11.9.2012 of the post of Teacher Grade II (Social Science & Mathematics) as per regulation of the Commission answer sheets are to be weeded out within three months after declaration of final result. Indisputably, the result was declared on 6.3.2012 and accordingly as per relevant Regulation, OMR sheet was destroyed. However, the response copy was available in the computer and that could be taken note of if any objection was raised by the applicant at later point of time. It was further averred by the Commission

in Para 17 of the reply filed in CWP No. 15638/2012 that decision was taken to weed out the OMR sheets of the candidates for the post in question but since the OMR sheets were kept in the basement of the office of the Commission and due to heavy rains, the basement was flooded with water and all the OMR sheets and other records kept for the purpose of weeding out or destruction was sunk in the water. The paper sheets got stuck with each other and did not remain in good condition and it became difficult to separate the sheets from each other and also to identify and was in a destroyable position. All the answers sheets got mixed and destroyed due to water and there segregation, identification and examination are not possible to tie and it was not possible to tie out the same from the bundle.

The revised select list published on 20.9.2012 came to be assailed by filing various writ petitions by the petitioners and as regards subjects Social Science and Mathematics, the same can be noticed in CWP No. 15638/12 and 15647/2012 and their grievance essentially before the learned single Judge was that the revised select list dt.20.9.2012, could not be declared after the OMR sheet was destroyed and further for paper general knowledge being common for all the five subjects namely Science, Mathematics, Hindi, English & Social Science subject expert proposed changes in two questions but the revised list was published only for Social Science and Maths.

The bone of contention was that once appointments have been given by the Commission for subject Science, Hindi & English on the basis of the initial select list published on 6.3.2012 there cannot be any discrimination and different standards to be adopted for the subjects Social Science and Mathematics and opportunity of hearing was not afforded to the petitioners before the result could be revised and the answer key was published much after the revised select list was declared on 20.9.2012 and such action of the Commission was against the principles of natural justice as their legitimate right conferred on their names find place in the first select list published by the Commission on 6.3.2012 could not be divested in an arbitrary manner and the process adopted by the Commission after declaration of the first select list dt.6.3.2012 was in violation of Art. 14 of the Constitution of India.

It is pertinent to record that there was no such specific averment made in the writ petitions assailing the revised select list dt.20.9.2012 regarding error in the setting up of questions papers or either of multiple answer being incorrect and it was prayed that the revised select list published by the Commission dt. 20.9.2012 be quashed and set aside and appointments be made on the basis of first select list dt. 6.3.2012 for the subjects Social Science and Mathematics respectively and ancillary prayer was for publication of answer key and to make available the expert committees report etc.

The Commission in reply filed to the writ petitions categorically averred that in all 32 representations were received for subject Social Science and 13 representations for subject Mathematics and all such representations were referred to Expert Committee which was constituted to examine the complaints received and the validated final key of all questions was placed on record along with reply and as regards the inability to make available the OMR sheets averment was made in Para 17 of its reply which has been referred to above.

As already stated there was no objection in either of the writ petition filed for subject Social Science & Mathematics regarding formation of any question or the multiple choice answer was not correct in the bunch of petitions filed.

After reply came to be filed it appears that some objection was raised by the writ petitioners regarding some alleged disputed questions for subjects like Maths and Social Science & paper of General Knowledge. It will be appropriate to quote the order of the learned single Judge dt.7.11.2012 in CWP No. 15609/2012 which reads ad-infra.

> "Learned counsel for respondent-RPSC is directed to look into the dispute raised in questions of different subjects referred to above and would be at liberty to furnish material to justify the opinion of the Expert Committee or to justify their initial answer key. The respondent-RPSC, after going through the statement, if any question is found to be incorrect or having wrong answer, they would be at liberty to take appropriate decision either to delete question or correct answer so that dispute raised by petitioners can be narrow down before the next date of hearing".

However, when the matter came up before the Court on 3.12.2012, for instance, the learned single Judge expressed opinion regarding one of the question no. 52 of Series 'D'

of paper General Knowledge and it is relevant to quote the order passed by the learned single Judge dt. 3.12.2012:

> "There was dispute regarding answers of certain questions. The RPSC took expert opinion not on one occasion, but on two occasions and based on such opinion, questions have been deleted. This Court has taken note of the expert opinion to see as to whether it is eyewash or an independent opinion exists, which can depose confidence in the candidates. Without going into the details of each question, I took one of the questions and find that even as per logic given by the experts, it cannot be accepted. For illustration, question of General Knowledge at No. 52 of Series 'D'. The question is who is the writer of "Matters of Discussion"? The correct answer taken by RPSC is Mr. IK Gujaral. Learned counsel for petitioners show that name of the book is "Matters of Discretion". The expert committee has given its opinion admitting name of book as "Matters of Discretion", thus use of word "discussion", is wrong, however, it thereafter justified the answer taken by the RPSC on the ground that meaning of two words "discussion & discretion" is almost same. Such an opinion cannot depose trust on the experts because words "discussion" and discretion" cannot have same meaning in any manner. Thus, after touching one of the question of General Knowledge, learned Additional Advocate General, Shri Kumawat, was asked whether RPSC can suggest name of independent expert to get a quick and fresh report.

Learned Additional Advocate General, Shri Kumawat, prays for time to seek instruction in the matter.

Looking to the interim order, writ petitions are required to be decided at the earliest, thus same would be taken up on 5.12.2012 at 2.00 P.M. for completion of arguments and to get name of independent experts. In that regard even the petitioners may also suggest the name, but person of repute and credential in the subjects in question so that a proper report may come in regard to disputed questions. For that purpose and to show disputed questions, even a compilation was prepared, however, it is noticed that five questions have not been mentioned therein for the subjects of General Knowledge and Social Science, which may then be included so that all disputed questions and their answers may be sent to the expert. For all other questions, whatever decision has already been taken by the RPSC would be treated as final and no dispute in that regard would now be entertained. The expert would be for the papers of General Knowledge, Social Science and Maths. Accordingly, list this

case along with other connected matters on 5.12.2012 for completion of further directions and arguments.

However, by later order dt.5.12.2012 with the consent of parties, the learned single Judge constituted subject expert committee of different subjects to evaluate disputed questions. It will be appropriate to quote the order ad infra:

> "Mr. SN Kumawat, learned Additional Advocate General, has given names of experts of different subject for evaluation of disputed questions.
>
> Learned counsel for petitioners as well as respondents have also given their suggestion thereupon mutually agreed for following names to be expert of different subjects to evaluate disputed questions which has been formulated and given in the compilations supplied to the counsel for RPSC and five more questions in the case of Suresh Kumar:
>
> Dr. Pukhraj Arya, Associate Professor (Retd.), J.N.V. University, Jodhpur & Dr. Arvind Parihar, Associate Professor (Retd.), J.N.V. University, Jodhpur (HISTORY).
>
> Dr. Sarla Kalla, Rajasthan University, Jaipur & Prof. S.r. Vyas, M.L.S. University, Udaipur (PHILOSOPHY).
>
> Dr. VK Singh, Sr. Lecturer, Govt. College, Kota & Prof. P.D. Sharma, Ex-Head & Dean, Public Admn., University of Rajasthan (PUBLIC ADMINISTRATION)
>
> Dr. LC Verma, Principal (Rted.), Ajmer & Dr. V.S. Sharma, Ajmer (GEOGRAPHY).
>
> PROF. (Mrs.) Farida Shah, M.L.S. University, Udaipur & Dr. Deepak Mehra, Govt. College, Ajmer (ECONOMICS).
>
> Dr. B.L. Gupta, Professor (Retd.), University of Rajasthan, Jaipur, Prof. Mridula Shrivastava, Head & Dean of law College, Dr. Sudhir Bhargava, Professor (Retd.), D.A.V. College, Ajmer & Dr. S.P. Mathur, Associate Professor (Retd.), Ajmer (GENERAL KNOWLEDGE & CURRENT EVENTS)
>
> Dr. Narrotam Jaipal, P.G. Principal (Retd.), Beawar, Ajmer & Dr. Rashmi Jain, University of Rajasthan, Jaipur (SOCIOLOGY).
>
> Dr. Hardayal Singh Rathore, 4A/1, Opp. V.C. Bungalow, University, Jodhpur & Prof. Shushma Shood, University of Rajasthan, Political Science (POLITICAL SCIENCE).

Prof. S.P. Goyal, University of Rajasthan, Jaipur & Prof. R.N. Jat, Jaipur (MATHEMATICS).

Prof. Meenu Aggarwal, Keshwananand Teacher's Training Institute, Jaipur & Prof. Sharad Chand Prashad, Ex-Head & Dean, Department of Psychology (EDUCATIONAL PSYCHOLOGY).

The petitioners are directed to give fresh compilation to Shri SN Kumawat after adding five questions given in the rejoinder. It would thus consist of the questions earlier given in the compilation and five more questions out of rejoinder in the writ petition of Suresh Kumar. The compilation of aforesaid would then be sent to the above-named experts for their opinion as to whether out of many options given, whether any of them are correct or the question itself is not properly framed so as to delete it. The opinion of the experts may accordingly be given in respect of all the aspects raised in reference to the question given in the compilation. Looking to the interim order in the case of Rakesh Kumar, RPSC is directed to get experts' opinion at the earliest and preferably within a period of ten days.

List the case on 15.12.2012 along with connected matters".

As a matter of fact initially there was no dispute regarding other questions referred to and at initial stage after it was noticed by the subject expert committee particularly for Social Science and Maths for which the grievance was raised and according to subject expert's report, the result was revised on 20.9.2012 and still without any foundation the Ld. Single Judge was of the opinion that report of the Expert Committee constituted by RPSC is not acceptable and orders were passed for calling the name of subject Expert's and the learned single Judge vide order dt. 5.12.2012 after receiving the names of the subject Experts, referred the matter again for seeking their opinion and the matter was posted for 15.12.2012 and the Committee constituted by the learned single Judge to evaluate the alleged disputed questions, examined questions of subject Maths and Social Science and also of paper General Knowledge which is common for all subjects again and as it reveals that the committee constituted under order of the court submitted its report and taking note thereof all such writ petitions were disposed of by the learned single Judge under order impugned dt.15.12.2012 with the direction to the Commission to publish the revised list taking note of the expert's committee's recommendations but the details of the

disputed question and what was to be examined by the expert committee, no material was placed either before Ld. Single Judge or before us for perusal in this regard.

While disposing bunch of petitions for declaration of revised merit list of the candidates who have participated for the post of Teacher Grade II (Social Science & Maths) it was further directed by the learned single Judge that there should not be further litigation regarding issue raised and be entertained and it will be end of the litigation and to finalize the selection but still the litigation came to the Division Bench of this Court.

The revised select list pursuant to 3rd subject expert committee was published on 25.12.2012 and there was again a somersault and some of the applicants whose name find place in the first select list published on 6.3.2012 followed by second list published on 20.9.2012 but their names stood deleted from the third impugned select list published under the direction dt.25.12.2012. Such of the applicants who were not party before the learned single Judge filed their separate special appeal no. 42/13 and other special appeal also filed by such of the applicants with the leave of the Court, at the same time, those writ petitioners who assailed the second select list dt. 20.9.2012 before the learned single Judge and when their names did not find place in the third revised select list published on 25.12.2012 under the direction of the learned single Judge dt. 15.12.2012 they also filed special appeal and one of the special appeal which has been noticed by the Court is SAW 1685/2012 and those who were selected in first and the second list or find place in the third select list published on 25.12.2012 they also filed their applications for impleadment as respondent in these appeals and were permitted as intervener. The ultimate fact is that there could not be a satisfaction of the writ petitioners unless their name find place in the select list published by the Commission assailing expert's opinion until their ultimate goal of selection is achieved. The select dt.20.9.2012 was assailed while filing of the writ petitions.

Mr. Vigyan Shah, Advocate is representing such of the writ petitioners who initially filed writ petitions assailing second revised select list published by the Commission dt. 20.9.2012 and as their name did not find place in the third select list dt.25.12.2012 published by the Commission under the orders of the learned single Judge dt. 5.12.2012, filed special appeal as well.

Counsel submits that subject expert committee has made certain comments regarding two question of paper General Knowledge but without giving effect in other three subjects of Hindi, English and Science and appointments on the post of Teacher Gr. II are made in particular but different standards has been adopted by the Commission for subjects Social Science and Maths which according to them is in violation of Art. 14 of the Constitution and all appellants/petitioners are entitled to be considered for appointments on the basis of first select list published on 6.3.2012 as this has been carried out by the Commission for recommending such of the applicants and were considered for appointment in other subjects of Teacher Gr.II. More so, when the learned single Judge also in the order impugned dt. 15.12.2012 observed not to disturb such of the appointments made despite there being change in the paper of General Knowledge on the basis of expert committee's report.

Counsel further submits that the select list as a whole could not be revised and should have been confined qua petitioners based on the comments made by the subject experts on whose instance committee was constituted pursuant to the order of the Court dt.05.12.2012 and action carried out by the Commission pursuant to the order of the learned single Judge revising the select list in rem was not required and thus there is an apparent error committed by the respondent on revising the wholesome select list as alleged impugned herein dt. 25.12.2012.

Counsel further submits that once OMR sheet was destroyed there was no material available with the Commission to revise the select list published on 25.12.2012 it was incumbent upon the Commission to invite objections before issuing Model answer key and as the Commission failed to declare revised model answer key their legitimate right available under the law to question the same, has been denied and the response sheet could not be considered to be a substitute of OMR sheet or soft copy of the individual applicant, in absence whereof, no material was available with the Commission of the individual applicant which could be considered for revision of the select list pursuant to order of the learned single Judge and that requires to be interfered by this Court.

At the same time, special appeals have been preferred by such of the applicants who had participated in the selection process held by the Commission for the post of Teacher Grade II (Social Science and Maths) and whose name find place in the first list initially published on 6.3.2012 and also in the second list published on 20.9.2012 and who are not impleaded as intervener in the writ petitions and one of the special appeal filed by such of them and noticed is Special Appeal 42/2013 and after seeking leave of the Court they too have made submissions on merit.

Mr. RD Rastogi appearing for such of the appellants submitted that once their name find place in the 1st & 2nd select list published by the Commission, certainly legitimate right was conferred upon them and that could not have been denied by the learned single Judge without affording opportunity of hearing. He further submits that those who are permitted by learned single Judge to intervene in the proceedings as intervener could not be considered representing in a representative capacity on their behalf unless the procedure of O. 1 Rule 8 CPC could have been complied with, in absence whereof, one can only represent in his individual capacity and merely because few of them appeared as intervener that could not be considered of being representing the class of the applicants who had participated and find place in the select list originally published on 6.3.2012 and revised on 20.9.2012.

Counsel further submits that agreement of individual who were present before the learned single Judge could not be considered in rem for class of the candidates like the appellants who had participated and find place in the select list and if such consent is contrary to law that could not be binding upon the individual applicant and further submits that once the select list stood revised after the matter was referred to subject expert committee and their opinion was accepted by the Commission and accordingly changes were carried out and change was given effect to by publishing the select list on 20.9.2012 thereafter their appears no justification for constituting further committee of subject experts to examine alleged additional questions under the order of the learned single Judge and this is against the principle laid down by the Apex court and so also by this Court.

Counsel further submits that this Court has a very limited scope of judicial review in academic matters as held by catena of decisions of the Apex Court and consistent view is that in academic matters there should be least interference and what is being observed by the learned single Judge could not be made exception to rule of law laid down by the Apex Court.

Mr. Rajendra Soni appearing for few of the intervener submits that his clients are such applicants who were selected as Teacher Grade II in Social Science and Maths but because of interim order passed by the Court they have been deprived to seek their appointment. However, the fact is that his clients were never aggrieved when the first select or the second select list was published on 6.3.2012 & 20.9.2012 and was never assailed by either of the intervener being represented by Mr. Soni.

Mr. SN Kumawat appearing for the RPSC submits that there was no justification available in constituting fresh committee of experts as directed by the learned single Judge vide order dt. 5.12.2012, more so when the representations received by the Commission as regard subject Social Science and Maths were duly forwarded to the subject expert committee and after taking their report, the Commission accepted the same and accordingly revised select list was published on 20.9.2012 and that attained finality and further interference was unwarranted.

We have considered the submissions made by the respective parties and with their assistance also perused material on record.

The post of Teacher Grade II is included in the Schedule appended to Rajasthan Educational Subordinate Service Rules 1971 and it should be filled on the basis of qualifying written competitive examination.

The post of Teacher Grade II for all subjects such as Social Science, Maths, Hindi, English and Science were advertised by the Commission initially on 1.5.2011 and by later corrigendum dt.24.2.2012 vacancies were increased for subject Social Science and Maths

with which we are presently concerned. However, written examination was held for Teacher Gr. II for all the five subjects simultaneously in December 2011 and result of competitive examination was declared on 6.3.2012 and as per scheme of rules, list of the candidates selected is to be recommended by the Commission to the state govt. who has to carry out to offer appointment subject to fulfillment of other conditions of service required under the Scheme of Rules.

As per the advertisement either of the subject Social Science/Maths contained 150 multiple choice question and common paper General Knowledge contained 100 question and each question is of two marks and as it has been pointed out to this Court that the recommendation made by the subject expert Committee initially constituted and later committee constituted by the Commission under the earlier directions of the learned single Judge on general complaints made regarding wrong answers as alleged for subject Social Science/Maths and on recommendations of expert committee as proposed questions were deleted and change was given effect to and revised select list was published on 20.9.2012.

The Commission in its reply filed before the learned single Judge categorically pointed out that 32 representations were received in Social Science and 13 in Maths including some questions of paper of General Knowledge in both the sets of representation from the candidates was referred to the committee of the subject experts and after the acceptance of the report by the Commission it was given effect to as being reflected from the report along with final key submitted along with reply R-1/1 and R-1/2 respectively.

As regards non availability of OMR sheet, it has been averred in Para 17 of reply that apart from the fact that there is a regulation to meet out necessary weeding within three months of declaration of result, but because of unforeseen circumstance due to heavy rains, answer sheet which were being kept in the basement, on being flooded with the water, have completely been destroyed and it became impossible to segregate or identify such of the answer sheets as demanded by the individual applicant. But it has been informed that the response sheet which was available with the commission in their computers still was sufficient for giving effect to and even if the OMR sheet could not have been provided to the individual applicant as demanded there might have been some confusion in the mind

of individual applicant about the select list which stood revised but availability of response sheet with the Commission in the computer certainly was sufficient material for which the comments made by the subject expert in their report in deleting or change of particular question on the said material could be given effect to.

The writ petitions originally filed by the writ petitioners were in the nature for issue of a writ of certiorari assailing select list dt.20.9.2012 invoking Art. 14 of the Constitution of India.

Article 14 is anathema to arbitrary action and petitioners could succeed only if they show that the Commission have acted arbitrarily and unreasonably and in breach of the fundamental right guaranteed under Article 14 of the Constitution. In a challenge to action of the authorities in writ petition of this nature under Art. 226 invoking the high prerogative writ of certiorari, it is not the function of this Court to sit in judgment over the correctness of the administrative or executive action. However, the Court has to examine if the decision making process has been vitiated on account of illegality, arbitrariness and mala fides both legal and/actual. In absence of these factors, the Court must refrain from interfering with the decision taken by the administrative authority, whatever its personal predictions.

It has been observed by the Apex Court in State of Kerala Vs. Fathima Seethi (1994) 6 SCC 651 ad infra:

> "Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters, whether contractual or political in nature, or issues of social policy. Thus they are not essentially justifiable, hence, the need to remedy any unfairness. It is only such an unfairness which is set right by judicial review".

As regards scope of judicial review is concerned, it is not an appeal from a decision, but a review of the manner in which the decision was made and it is not the decision but the decision making process which is in question. Unless that restriction on the power of the Court is observed, the Court will under the guise of preventing abuse of power would itself, sometime be held guilty of usurping power and taking note of consistent view,

Hon'ble Apex Court in Tata Cellular V. Union of India (1994) 6 SCC 651 laid down certain guidelines binding duty of the Court in exercise of judicial review which is to be confined to the question of legality of state action & reads ad infra:

1) Whether a decision making authority exceeded its powers,

2) Committed an error of law;

3) Committed a breach of the rules natural justice;

4) Reached a decision which no reasonable tribunal would have reached or

5) Abused its powers"

The principle adopted by the Court of Appeal in Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation (1947) 2 All. ER 680 reiterated by the Court in England, was approved by the Supreme Court and applied in number of cases including Tata Cellular (supra). Wednesbury principle is simple "A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the Court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it".

Finally, the Supreme Court in Para 94 in Tata Cellular (supra) enunciated the deducible principles on the subject of judicial review as;

1) Modern trend points to judicial restraint in administrative action;

2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made;

3) The court does not have the expertise to correct the administrative decision. If review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible;

4) A fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness, but must be free from arbitrariness not affected by bias or actuated by mala fides;

5) Quashing decisions may impose heavy administrative burden on the administrative and lead to increased and unbudgeted expenditure."

As regards the system of 'Multiple Choice Objective-type test', Hon'ble the Supreme Court had an occasion to consider such situation in the judgment of Kanpur University V. Samir Gupta (AIR 1983 SC 1230). In that case, in a situation of multiple choice questions, there was challenge to the correctness of some of the answers which were said to be the key answers. The matter was decided by the Allahabad High Court by taking a particular view. While disposing of the appeal, the Supreme Court indicated in Paragraph 18 the principle to be adopted while dealing with such matter. The Supreme Court observed ad infra:

> "In a system of 'Multiple Choice Objective-type test, care must be taken to see that question having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leave no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and time decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it".

In a recent judgment in Mayank Bahadur Vs. State of MP (2010) 6 SCC 759, the Apex Court held as under:

> "In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like Pysics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court"

On the basis of these judgments, following principles can be culled out:-

(1) the key answer is correct unless proved to be wrong; (2) judicial review cannot be on the basis of inferential process or process of rationalization; (3) key answer must be clearly demonstrated to be wrong; (4) answer must be such

as no reasonable body of men well-versed in the particular subject would regard as correct; (5) the Court should not lightly interfere with the opinion expressed by the academic experts; (6) when there is no discrimination in awarding the marks and effective of alleged wrong answer is equally on all the candidates, no interference is warranted; (7) writ Court cannot sit in judgment over those findings and examine the material on record to arrive at its own conclusion as a Court of appeal.

The law is clear that if there is a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for the petitioners only, thus, no interference is required"

This has also been settled by the Apex Court that in academic matters, the court should be extremely reluctant to substitute its own view in preference to those formulated by professional persons possessing technical expertise and rich experience on the subject and the opinion of the expert ordinarily cannot be made subject of judicial scrutiny simply because some authors have expressed their views differently in their books or articles on the subject. Interference by the Court in such matters should be in rare and exceptional circumstances, if it is found beyond the realm of doubt that key answer published by the expert is incorrect. At the same time, even if in case there is doubt as to which of the answer is correct then too answer as accepted by the subject expert should be given preference and adhered to. This is necessary to keep the whole system of examination workable and intact and this Court always endeavor to see that examination system is not rendered unworkable by creating doubts and uncertainties.

In the instant case, subject experts have submitted their report indicating key answers available with the Commission duly supported with material and that was taken note of when the select list was initially published on 6.3.2012 but still after the general comments were made by the learned single Judge of this Court directing the parties to make representation having aggrieved by some of multiple choice questions. The Commission again constituted the subject expert committee and referred all 32 representations of subject Social Science and 13 representations of subject Maths and after the report from the subject expert was received revised select list was published on 20.9.2012 and obviously if there is change of answer or deletion of a question the value of the existing question has to be changed which certainly affects the select list earlier published on 6.3.2012 but after the

committee examined and revised the select list on 20.9.2912, there remains no further scope of judicial review to be interfered by this Court to issue writ of certiorari u/Art. Article 226 of the Constitution of India but as being referred to, in the instant case, petitions were filed before the learned single Judge raising grievance that select list dt.20.9.2012 could not be revised without affording opportunity of hearing as their rights have been affected and OMR sheet were not made available to them & in absence of OMR sheet, result could not have been revised by the Commission and during the course of arguments some illustration have been pointed out regarding certain question and the learned single Judge taking note of one of the report regarding question no. 52 Series D of paper General Knowledge which has been referred to in the order dt.3.12.2012 ordered to constitute committees of subject expert afresh once again vide order dt.5.12.2012 with the consent of parties and what is being referred to the Committee was not taken care of.

In the considered opinion of this Court there was no material available before the learned single Judge in giving its opinion for constituting committee again and to refer the matter afresh to be examined by subject experts as alleged pursuant to order dt. 5.12.2012. Even the interim order dt. 5.12.2012 does not indicate as to what was referred to the subject expert for examination as regard the subject Social Science and Maths. Such of the opinion expressed by learned single Judge constituting in the absence of cogent material on record was against the settled principles laid down by the Apex Court referred to supra and cannot be approved by this Court more so when subject expert committee was earlier constituted by the Commission for both the subjects Social Science and Maths and report of subject expert was accepted by the Commission and accordingly was carried out and the list stood revised on 20.9.2012, at the same time, we would like to comment on the reports submitted to this Court of subject experts for sake of instance in the paper of Social Science Series A question no. 89 the key answer was 3 and which was duly supported by the relevant material and the later committee constituted by the Commission also accepted answer 3 to question no. 89 and approved by the committee but the committee constituted under the direction of this Court proposed answer choice 4 for which there was no evidence to support but still that was carried out. However, at the same time, question no. 108 of Social Science Series A choice 2 was the correct key answer which was accepted by the committees

constituted initially by Commission duly supported with material but the Committee which is constituted under the direction of this Court proposed both the answers 2 and 3 and on their recommendations it was deleted but there was no material to support it.

Apart from the proposition of law which has already been discussed, even the expert committee constituted under the order of the Court without there being any evidence on record to support thereof gave its proposal either to delete or change the answer which was earlier proposed by the subject experts duly supported by the documentary evidence but still that was reconsidered by the committee constituted under the order of the Court. The counsel for the Commission also informed that as the selection process was already delayed, taking that impression in mind it accepted the opinion expressed by the Committee constituted under order of the Court and accordingly published the last and final select list as alleged on 25.12.2012.

As we have already discussed that the committee constituted by the learned single Judge to re-examine the matter afresh in totality of the subject Social Science and Maths was not in conformity with the law laid down by the Apex Court, and, in our considered opinion, such course adopted by the learned single Judge, was not permissible under the law and cannot be approved by this Court.

The submission made by Mr. Shah that in the absence of OMR sheet result could not be revised. Suffice it to say that OMR sheet is a hard copy but even if that was not available response sheet of the individual could be sufficient for giving effect to the change which Commission forwarded after acceptance of the report of the experts and the revised select list came to be published on 20.9.2012 and this Court does not find any fault in the decision making process adopted by the Commission in this regard.

As regards the submission made by counsel that after the list being initially published on 6.3.2012 and their name find place in the list, right was conferred to them, is of no substance for the reason that mere placement in the select list do not confer any right upon the incumbent and if the committee's report was accepted by the Commission and was given effect to certain changes that was bound to revise the select list in furtherance

thereof and unless right being conferred no opportunity of hearing to an individual was needed in the facts of the instant case, in our view, principles of natural justice has no role to play while the revised select list on acceptance of the report of the subject expert was published on 20.9.2012.

So far the judgment relied upon by Mr. Shah in support of his submissions reported in AIR 2012 SC 1811, is of no assistance for the reason that it was a case where the answer key of the written examination was destroyed within few days of declaration of result of the selection and that was held to be in violation of relevant regulations but that is not the situation in the instant case. At the same time, we would like to observe that in near future the regulation which has been referred to by the Commission for weeding out the answer sheets after three months from declaration of result may be available in the ordinary course but if the litigation comes to the Court of law and brought to the notice prior thereto to the Commission it will not be justified to weed out the records in the light of their regulation and records could be weeded out or destroyed pending litigation only with the permission of the Court and not in the guise of the regulation which was taken as a shield by the Commission to support their action.

Simultaneously, we do not find any hesitation in holding that no fault was committed by the Public Service Commission in its action while accepting the report of the subject experts and revising the select list and published on 20.9.2012 of the selected candidates and if at all there remain a discrepancy in framing the question or evaluation of the answer it was for all the candidates who appeared in the written examination and not for the appellants alone and while revising the select list dt.20.9.2012 right of the individual applicant has not been defeated and thus no interference.

However, before parting with the judgment this Court would like to observe:

That in future the P.S.C. should act and conduct itself more professionally. Mistakes of such kind generates unnecessary litigation and heart burning amongst candidates and loss of faith in the P.S.C. In an objective type test, multiple choice is given to the candidates,

it is necessary in such cases to take extreme care to see that questions are not ambiguous. This kind of examination system merely involves the provision of marking a tick ( ) to the correct answer. There is no room for any reasoning or argument. The answer of candidate is 'yes' or 'no'. In that situation, the question has to be clear and unequivocal. It is also necessary to cure the defect in question papers or key answers promptly or timely so that candidates are not put to jeopardy and inconvenience. Therefore, all care should be taken in future so that such mistakes do not occur.

We hope that these observations are kept in mind for future examinations conducted by the Commission.

In the result the special appeal no. 42/2013 Raj Kumar Vs State & alike others stands allowed and the order of the learned single Judge dt.15.12.2012 and the select list dt.25.12.2012 published pursuant thereto are hereby quashed & set aside.

The special appeal no. 1685/2012 & alike stands dismissed and the respondents are directed to make appointments of Teacher Gr.II (Social Science & Maths) strictly in terms of select list published on 20.9.2012 subject to fulfillment of other conditions referred to under the Scheme of Rules within the period of one month. No cost.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR
D.B. SPECIAL APPEAL (WRIT) NO.101/2013 & Connected cases
D.D. 16.05.2013

Hon'ble Mr. Justice Mohammad Rafiq &
Hon'ble Dr. Justice Smt. Meena V.Gomber

Renu Sharma & Anr.	**…**	**Petitioners**
Vs.		
Rajasthan P.S.C. & Ors.	**…**	**Respondents**

Reservation

Reservation in favour of widow/divorcee/deserted women – Computation of quota of 8% & 2% respectively earmarked in favour of widows and divorcees – Whether such quota has to be worked out on 30% quota earmarked for women or by taking into consideration total number of posts advertised for recruitment? Held that such quota has to be worked out on total number of vacancies and not on 30% vacancies reserved for women.

Held:

In the instant case, when the rule afore quoted is interpreted on the plain language employed by the rule making authority, what is evident is that 8% and 2% quota respectively for widows and divorcee/deserted has been earmarked and that quota is to be worked out of the total number of vacancies not just on 30%of vacancies reserved for women. Contention that such quota should be computed on the quota that may be earmarked for women candidates and not total number of vacancies."

Cases referred:

1. Bansal Wire Industries Limited and another v. State of Uttar Pradesh and others, (2011) 6 SCC 545
2. Union of India v. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323
3. Commissioner of Central Excise, Mumbai v. M/s. Fiat India (P) Ltd., and another, (2012) 9 SCC 332

JUDGMENT

Service of notice on respondents in Special Appeal No.101/2013 is taken to be complete as Shri Vigyan Shah has put in appearance on behalf of respondents no.4 to 6, who were

the petitioners in Writ Petition No.19733/2012. Respondents No.1 to 3 are duly represented by the Additional Advocate General.

Suvidhya Yadav filed Writ Petition No.20299/2012 and Shri Vigyan Shah was her counsel. She is respondent no.1 in Special Appeal No.366/2013, therefore, on the askance of the court, Shri Vigyan Shah accepts notice on her behalf. Respondents no.2 and 3 are the State and its functionary and therefore Shri S.N. Kumawat, Additional Advocate General, accepts notices on their behalf. Hence, service is complete.

Service of notice on respondents in Special Appeal No.248/2013 is also taken to be complete as Shri Vigyan Shah has put in appearance on behalf of respondents no.1 to 3, who were the petitioners in Writ Petition No.19733/2012. Respondents No.4 and 5 are duly represented by the Additional Advocate General.

All these matters are taken up for final disposal at admission stage.

Shri Tanveer Ahmed, learned counsel for the appellants has argued that in clause 5.4 of the advertisement notification issued by the Rajasthan Public Service Commission, Ajmer, dated 17.02.2012, there was a clear stipulation to the effect that out of the posts reserved for female candidates, 8% would be reserved for widow candidates and 2% would be reserved for deserted female candidates. This was based on the Notification dated 24.01.2011, whereby the Government promulgated the Rajasthan Various Service (Amendment) Rules, 2011, inserting an omnibus amendment in as many as 106 Service Rules of the State. The Notification also contained a Schedule and the substitution was made in the existing rules as mentioned in Column No.3 against each of the Service Rules as mentioned in Column No.2 of the Schedule.

Shri S.N. Kumawat, learned Additional Advocate General, argued that in all the aforesaid three, namely, advertisement as well as English and Hindi version of the amended Rules, it is clearly mentioned that reservation of vacancies for women candidates shall be

30% category-wise in direct recruitment, out of which 8% shall be for widows and 2% for divorcee/deserted women candidates. The learned Single Judge has also at page 3 of the impugned judgment mentioned that reservation to the extent of 8% and 2% to the widow and divorcee respectively would be out of 30% reservation meant for female candidates and not on overall number of vacancies meant for any of the category, yet in the operative part of the judgment, the learned Single Judge has directed that calculation of 8% and 2% reservation for widow and divorcee/deserted respectively would not be made on total posts advertised for each category but would be on 30% posts reserved for female candidates alone.

Shri Vigyan Shah, learned counsel for petitioners-respondents has cited a judgment of Single Bench of this Court dated 15.03.2013 in Writ Petition No.11119/2012, wherein the learned Single Judge has noted the admission of the learned Additional Advocate General that he has supported the argument of the petitioner therein on the aspect of computation of the aforesaid quota by 8% and 2% reservation for the widows and divorcee, respectively, on 30% posts reserved for them and not on the total number of posts. Learned counsel, therefore, submitted that the view taken by the learned Single Judge is perfectly justified.

Shri S.N. Kumawat, learned Additional Advocate General, submitted that what he contended before the learned Single Judge was that the reservation has been provided strictly as per the amended Notification dated 24.01.2011, which envisages 8% and 2% reservation for the widows and divorcee/deserted women candidates respectively.

Substitution by amendment inserted in Column 2 of Schedule to various Rules vide Notification dated 24.01.2011 is reproduced here below:-

> "Reservation of vacancies for women.- Reservation of vacancies for women candidates shall be 30% category wise in direct recruitment out of which 8% shall be for widows and 2% for divorced women candidates. In the event of non-availability of eligible and suitable widows and divorced women candidates in a particular year, the vacancies so reserved for widow and divorced women candidates shall be filled by other women candidates and in

the event of non-availability of eligible and suitable women candidates, the vacancies so reserved for them shall be filled up by male candidates and such vacancies shall not be carried forward to the subsequent year and the reservation shall be treated as horizontal reservation i.e. the reservation of women candidates shall be adjusted proportionately in the respective category to which the women candidates belong.

Explanation:- In the case of widow, she will have to furnish a certificate of death of her husband from the competent Authority and in case of divorcee she will have to furnish the proof of divorce."

Similarly, Hindi version of the said amendment is reproduced here below:-

Omitted as it is in Hindi

A clarification has been issued by the Government in response to the query by the Rajasthan Public Service Commission as to the manner of computation of the aforesaid quota that it would be on overall number of posts and not just on the posts of 30% reserved, out of that for the women candidates. Clarificatory letter was sent by the State Government to the Rajasthan Public Service Commission on 08.04.2011, mention of which is made at Page 7 of Special Appeal No.248/2013. The said clarificatory letter is reproduced for ready reference:-

"I have to say that the reservation have been provided for women candidate as per Department of Personnel (A-2) Notification No.F.7(2)DOP/A-II/88/Pt.I dated 24.01.2011, 30% reservation for women candidates out of which 8% is reserved for widows and 2% for divorced women candidates.

It is clarified that there will be category-wise 10% (8%+2%=10%) reservation for widows and divorced women candidates respectively and rest of 20% will be for other women candidates. Total reservation for all women candidates will be 30%."

On perusal of the language of amended rule, both in English as well as Hindi as also Clause 5.4 of the advertisement and in view of clarification of the Government, we are not persuaded to concur with the view expressed by the learned Single Judge because in our considered view, the only interpretation that can be placed on the aforesaid quota rule is that computation has to be made on overall number of vacancies and not just on 30% of

the vacancies reserved for women candidates, which is what has been expressly stated therein that reservation of vacancies for women candidates shall be 30% category wise in direct recruitment, out of which 8% shall be for widows and 2% for divorcee/deserted women candidates.

It is basic principle of interpretation of statute that when meaning and language of the statute is clear and unambiguous, nothing should be added thereto. Courts should interpret the statute in the light of what is clear and explicit. Courts cannot imply, which is not expressed and it cannot interpret the provisions in statute, which is to apply and assumes deficiencies.

Supreme Court in Bansal Wire Industries Limited and another Vs. State of Uttar Pradesh and others : (2011) 6 SCC 545 observed that the words used in the Section, rule or notification should not be rendered redundant and should be given effect to it so, when the language of the statute is plain and unambiguous, the court must give effect to the words used in the statute.

In Union of India Vs. Deoki Nandan Aggarwal : 1992 Supp (1) SCC 323, their lordships of Supreme Court in para 14 observed, as under:-

> "14. ....It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there."

The Supreme Court in Commissioner of Central Excise, Mumbai Vs. M/s. Fiat India (P) Ltd. and Another – (2012) 9 SCC 332, held that the words used by the legislature are generally a safe guide to its intention. Whenever the legislature uses certain terms or expressions of well-known legal significance or connotations, the courts must interpret them as used or understood in the popular sense if they are not defined under the Act or the Rules framed there under.

In the instant case, when the rule afore quoted is interpreted on the plain language employed by the rule making authority, what is evident is that 8% and 2% quota respectively for widows and divorcee/deserted has been earmarked and that quota is to be worked out of the total number of vacancies not just on 30% of vacancies reserved for women. Contention that such quota should be computed on the quota that may be earmarked for women candidates and not total number of vacancies as the same was agreed to by the learned Additional Advocate General during argument in Writ Petition No.20299/2012. In the first place, even if we ignore the disputation by Shri S.N. Kumawat, learned Additional Advocate General regarding the same, law is well settled that there can be no estoppel against the statute and any such concession does not bind the courts when matter is not before it for true interpretation of any statute or the rule. The Government has a policy of reservation and thereby decided to grant 8% reservation to widow and 2% to divorcee/dwerted women, this court would not be justified in scuttling that policy of the Government by placing such interpretation of the Rule, which is not warranted on plain reading of the Rules.

In the result, all the three special appeals succeed and are hereby allowed. The impugned judgments dated 15.12.2012 in Writ Petition No.19733/2012 and dated 17.12.2012 in Writ Petition No.20299/2012, are set aside. The computation of reservation would be made as mentioned above. The issue whether or not the females who belong to Schedule Castes/ Schedule Tribes/Other Backward Classes can migrate to open category on the ground of their having secured more marks than cut-off in general, would be open to be decided in appeals pending against judgment of the Single Bench dated 15.03.2013 in Writ Petition No.11119/2012.

This also disposes of stay applications.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR
S.B. Civil Writ Petition No.2142/2013 & Connected cases
D.D.31.05.2013
Hon'ble Mr. Justice Mohammad Rafiq

Kamlesh Kumar Sharma & Ors. … Petitioners
Vs.
State of Rajasthan & Anr. … Respondents

A. Selection process

Discrepancy in framing of questions and evaluation of answers of Screening test held for recruitment to post of Assistant Public Prosecutor Grade-II – Because of discrepancy in question paper setting and key answers, objections raised by candidates were referred to expert committee for not less than six time – Information disclosed by RPSC reveals that when result was for the first time revised with deletion of one question and the result was published 74 additional candidates were called to face interview and out of them 12 were selected – When, for the second time result was revised with deletion of two questions and the result was published 96 candidates had to be again called for interview and 19 candidates were selected out of them. Had simultaneous exclusion been made at time of first revision of results 9 candidates were liable to be excluded and in the second revision 31 candidates were liable to be excluded. Had, as per its rules, RPSC applied ratio of 1:3 for interview only 544 candidates could have been called for interview instead of 672 candidates. Out of 672 candidates 125 were such, who otherwise would not have been eligible for interview and out of those 125 ineligible candidates 23 candidates have been selected out of 159 notified vacancies – Whether in the peculiar facts and circumstances of the case, despite the fact that scope of judicial review in academic matter being very limited, evaluation of question paper and answer key by Court itself by stepping in to shoes of expert committee may be said to be contrary to well established principles of judicial review? No.

Whether, taking into consideration totality of circumstances and in order to do full justice, directions for cancellation of results of examination and ordering for conduct of examination is without jurisdiction? No.

Held:

Contention that RPSC in its 'full commission' has taken a decision that minimum three time candidates of number of vacancies shall be called for interview but there is no maximum limit, therefore, even if it has called four-and-a-half times candidates of number of vacancies for interview, that would not affect the fairness the process of selection, deserves to be rejected for the reasons to be stated presently. Merit of a candidate in any written examination and for that matter in a competitive examination, is determined on the

basis of his performance in such written examination. If the candidates are subjected to examination on the basis of wrong answer-key, it is bound to prejudice them affecting fairness of the process of selection. Selection in the instant case though is entirely based on interview but converse of it is also true that those who fail to secure high merit in written examination, would have no chance to get selected. The chance to appear in interview is solely dependent on the position one secures in the merit prepared on the basis of written examination, even if it is styled as the screening test for the purpose of short listing the candidates. More the number of candidates appearing for interview, lesser the chances of one getting selected. If the rule to call candidates three times the number of vacancies is strictly adhered to, probabilities of the candidates falling within that limit, would be much higher as compared to the situation when four-and-a-half times candidates of the number of vacancies are called for interview. Taking the words fact scenario, if the principle on which RPSC has called all the candidates, by not excluding those from the list who were already interviewed and calling additional number of candidates each time, after the result was revised, is again applied while implementing this judgment, total number of candidates interviewed/to be interviewed, might go upto 1000. Doing so would frustrate the very purpose of screening test, which is intended to shortlist the candidates. This would amount to treating un-equals as equals and would be discriminatory qua the more meritorious candidates, who despite securing better merit would have significantly reduced chances of selection, with number of interviews so high. Chances of selection of more meritorious candidates would thus be substantially diminished. There being no weightage of the written examination, they will be treated at par with those who may have figured much below in the merit of the written examination than them. Their selection in such a situation would depend on the subjective evaluation of their merit by members of the interviewing board, thus giving them the leverage to eliminate more meritorious candidates as against those with lesser merit. Interpretation placed by RPSC on its rule is thus bound to create an anomalous situation leading to absurd consequences. The screening test in the name of short listing can be justified only if the rule as originally prescribed by RPSC is strictly adhered to.

In view of the aforesaid discussion, all these writ petitions are allowed and impugned select list dated 02.02.2013 (Annexure-5 to Writ Petition No.2142/2013) is set aside, with following directions.

(1) That RPSC shall make fresh evaluation of the answer sheets of the candidates by deleting questions No.13, 18, 25 and 43 and changing answer to question no.77, by taking option (1) as correct, all of C-series, and corresponding questions in A-series, B-series and D-series and on that basis prepare fresh merit list;

(2) That RPSC shall on that basis prepare a list of candidates, who fall within three times the number of vacancies plus applying the bunching principle;

(3) That RPSC shall thereafter conduct interviews of such candidates in that list, who have already not been interviewed;

(4) That RPSC shall thereafter prepare a combined select list of the candidates, who were already interviewed and those who are interviewed pursuant to this judgment in the order of merit, and forward the same to be government for appointment;

(5) That such exercise shall be undertaken and completed by RPSC within three months from the date copy of this order is received by them."

B. Estoppel – Promissory estoppel

Contention that some of the petitioners not only appeared in written exam but also participated in interview and approached Court after they failed to be selected and therefore estopped from challenging selection – Petitioners appeared for interview on basis of first result in first lot and thereafter RPSC revised results two times and called few more candidates to face interview. Petitioners were not sure and visualize that after declaration of their results and even after appearance in interview RPSC would decide to bring few more candidates to face interview by extending zone of consideration resulting in reducing their chances of selection – In the peculiar circumstances of the case held that plea of estoppel not available to RPSC and it is rejected.

Cases referred:

1. Giriraj Kumar Vyas & others v. State and others, S.B.Civil Writ Petition No.711/2012
2. Manish Ujwal and others v. Maharishi Dayanand Saraswati University and others, (2005) 13 SCC 744
3. Rajesh Kumar and others v. State of Bihar and others in Civil Appeal Nos.2525-2516/2013 out of S.L.P. (Civil) Noos.5752-53/2008
4. Kanpur University and others v. Samir Gupta and others, AIR 1983 SC 1230
5. Praveen Singh v. State of Punjab and others, (2000) 8 SCC 633
6. University of Mysore v. Govinda Rao and another, AIR 1965 SC 491
7. Dr. J.P. Kulshreshtha and others v. Chancellor, Allahabad, (1980) 3 SCC 418
8. Osmani University v. Abdul Rayees Khan and another, (1997) 3 SCC 124
9. N. Lokanadham v. Chairman, Telecom Commissioner and another, (2008) 5 SCC 155
10. Himachal Pradesh Public Service Commission v. Mukesh Thakur and another, (2010) 6 SCC 759
11. Subash Chandra Verma and others v. State of Bihar and others, 1995 Suppl (1) SCC 325
12. Lalit Mohan Sharma and others v. RPSC and others, CW No.1042/2005 and connected writ petitions, decided on 18.11.2005
13. Ashok Kumar Yadav v. State of Haryana (1985) 4 SCC 417
14. Ramesh Chandra Shah and others v. Anil Joshi and others – Manu/SC/0317/2013 decided on 03.04.2013
15. Virendra Kumar Verma v. Public Service Commission, Uttarakhand and others, (2011) 1 SCC 150
16. Pratap Singh v. High Court of Judicature for Rajasthan through its Registrar, (2001) 2 WLC page 1
17. Joga Ram Choudhary and others v. State of Rajasthan and others, D.B. Civil Special Appeal No.38/2013 decided on 10.01.2013

18. Gunjan Sinha Jain v. Registrar General, High Court of Delhi, W.P. (C) No.449/2012
19. Sooraj Devi v. Pyare Lal, (1981) 1 SCC 500
20. Hari Singh Mann v. harbhajan Singh Bajwa and others, AIR 2001 SC 43
21. State of Punjab v. Devendra Pal Singh Bhullar, AIR 2012 SC 364
22. C.B.I. v. Anupam Kulkarni, (1992) 3 SCC 141

ORDER

All these writ petitions have been filed by those who applied for appointment on the post of Assistant Public Prosecutor Gr.II in response to advertisement No.6/11-12, dated 26.05.2011, issued by respondent Rajasthan Public Service Commission and remained unsuccessful. Rajasthan Public Service Commission (for short, 'RPSC') in the aforesaid advertisement invited application for appointment against 159 posts of Assistant Public Prosecutor Gr.II (for short, 'APP Gr.II'). RPSC received a total of 15776 applications. In the scheme of the Rajasthan Public Subordinate Service Rules, 1978, appointment to the post of APP Gr.II is based entirely on interview. Discretion has been given to RPSC to conduct screening test for the purpose of short listing the candidates. It was for that purpose that RPSC conducted a written examination on 01.12.2011 for all 15776 candidates, who applied. Actually, however, only 9191 candidates appeared for this screening test.

All the candidates were subjected to written examinations on a question booklet covering relevant subjects to test their knowledge of law, which consisted of 100 objective type questions. Four options were given against each question requiring the candidates to select one of them. Question booklets were supplied in different series, namely, A, B, C and D, wherein though the questions were same but in the changed order. It was notified in the instructions supplied therewith that 1/3rd part of the mark of each correct question will be deducted for each wrong answer and that in the event of any ambiguity/mistake, the English version will be treated as standard.

Soon after examination, number of representations were received by RPSC disputing 19 questions. RPSC sent all such representations to an expert committee which recommended for deletion of 9 questions; being Questions No.6, 22, 23, 27, 25, 64, 73,

78 and 80 of A-series. RPSC therefore deleted these nine questions and decided to spread 100 marks into 91 questions. Thus, value of each question was increased from 1 mark to 1.09 marks.

Result of the screening test was for the first time declared by RPSC on 03.02.2012 (for short, 'the first result'). 502 candidates were declared pass. Three writ petitions were filed before the Principal Seat of this Court at Jodhpur alleging irregularities in the examination and further alleging that 40 questions out of total hundred, were picked up from the notes prepared by one Prof. J.K. Malik, Department of Law, University of Rajasthan, Jaipur, who has been giving his services to a Commercial Coaching Institute i.e. Swami Vivekanand Coaching Centre, Bapu Nagar, Jaipur. He used to teach subjects of IPC, Cr.P.C. and Evidence Act to aspirants for appointment in the services like Assistant Public Prosecutor and Rajasthan Judicial Service etc. Stand of RPSC before the High Court was that number of paper setters were consulted including Prof. J.K. Malik. However, only 25 questions were taken from the papers proposed by him. A written undertaking was obtained from him and all other paper setters that they were not working with any coaching institute. An affidavit sworn in by Prof. J.K. Malik was also filed, who refuted such allegations. The argument that the process of examination stood vitiated because of allegations against Prof. J.K. Malik was rejected and the writ petition was dismissed. The learned Single Judge in the aforesaid writ petition, however, directed that if the petitioners submit any representation disputing correctness of answer key or showing any question out of syllabus, RPSC may examine the same at its own level after taking opinion of the experts. If any appointments are made in the meantime, the same would be open to review if any wrong is found with the question papers after considering representation of the petitioners.

Those writ petitioners submitted representation disputing correctness of 27 questions and/or options and also alleging that some of them were out of syllabus. All the representations with regard of those questions were referred to an expert committee, which consisted of Mrs. Vijay Sharma, Professor (Retd.), Faculty of Law, J.N.U. University, Jodhpur, Shri Radheyshyam Agarwal, Assistant Principal (Retd.), Government Law College, Ajmer, and Dr. M. Tariq, Lecturer (Selection Grade), N.M. Law P.G. College, Hanumangarh. This committee made following recommendations:-

1. (Question No.34 in A-series) There is a mistake in Hindi version of 'Abhivak' for plea-bargaining, which word has been indicated as 'Abhibhavak'.
2. Hindi version of Choice 4 of Question 34 is incomplete.
3. Citations mentioned in the options against questions no.23, 27, 29, 44, and 45 are incomplete.

All the members of RPSC in the 'full commission' on 30.10.2012, did not accept the report of the said expert committee in respect of any of the questions referred to above, though it is also significant that the expert committee also did not straightaway recommend deletion of any of those questions. However, RPSC referred the matter to yet another committee comprising of two senior Professors viz., Prof. S.S. Suthar and Prof. Satish Shastri and on their recommendation, decided to delete question no.98 (A-series) on the premise that two options out of four given against that question, namely, options no.1 and 3, were out of syllabus. A revised result was thereafter declared with RPSC deciding not to exclude any candidate declared pass earlier but declared 74 additional candidates pass, who secured equal or more marks than the last of 502 candidates originally declared pass. This raised the total number of candidates to be called for interview to 576 (502+74), (this result shall hereinafter be referred to as 'second result'). With the deletion of one more mark, value of each mark was increased and was now 1.10 mark.

Yet another writ petition was filed by one Kaushal Singh being S.B. Civil Writ Petition No.18845/2012 before the Single Bench of this court at Jaipur. The said writ petition was decided vide judgment dated 24.11.2012 with liberty to the petitioner to make representation to RPSC giving details of the questions having wrong answers and also producing the material in support thereof. It was directed that RPSC shall consider the same on its own and if need be, by constituting an independent expert committee to examine the matter. Kaushal Singh in his representation to RPSC objecting to the correctness of options given to six questions viz. questions no.4, 21, 26, 50, 69 and 70 of A-series. Matter was again referred to an expert committee and its opinion was obtained. The committee recommended for deletion of questions no.21 and 26, which was accepted by RPSC. Thus, there remained only 89 questions. Result was once again revised without disturbing the candidates who

were declared pass earlier. Result of second revision was declared on 30.10.2012, thus taking total number of candidates to be called for interview to 672 (502+74+96), (for short, 'third result').

In the meantime, number of writ petitions were filed before this court, wherein interim orders were passed directing RPSC to provisionally permit the petitioners therein to appear for interview. 96 candidates were in this manner permitted to appear for interview, who are petitioners in different ten writ petitions, which was lastly conducted upto 16.01.2013. Thereafter also, 273 more candidates approached RPSC with interim orders passed by this court in various writ petitions, but they have not been interviewed. RPSC finally declared the result of selection by publication of merit list in the newspapers on 03.02.2013, with however a note that this result was provisional and was subject to various writ petitions pending before this court and therefore revisable as per the judgment that may be passed therein. But, RPSC did not declare result of those candidates, who were provisionally permitted for interview under the order of this court as per stipulation in such orders.

It is against the backdrop of these facts that present writ petitions have been filed by petitioners on various grounds and also objecting to as many as 21 more questions in the question booklet prepared by RPSC in written examination meant to shortlist the candidates, with the prayer that entire process of selection and select list prepared pursuant thereto be quashed and set aside.

Number of Advocates appeared on behalf of petitioners but the arguments on their behalf were led by Shri Ashok Gaur, learned Senior Advocate, Shri K.N. Sharma, Shri Girraj Prasad Sharma and Shri Tanveer Ahmed.

Shri Ashok Gaur, learned Senior Advocate, argued that there were number of defects in the setting of the question papers, as a result of which examination conducted by RPSC for the purpose of short listing of the candidates stood vitiated. RPSC on its own in the first scrutiny deleted 9 questions on the basis of recommendations of the expert committee

and declared 502 candidates pass. Following judgment of this court at Principal Seat, Jodhpur, in Giriraj Kumar Vyas & Others Vs. State and others (S.B. Civil Writ Petition No.711/2012), objections were received, RPSC constituted a Committee of three experts, who opined that there were two errors in the Hindi version of the question no.34 of A series and citations given in the options 23, 27, 29, 44 and 45 of the same series were incomplete. RPSC did not take any decision on the said recommendation of the committee, and rather decided to delete only question no.98 (A-series) on recommendation of yet another expert committee. Learned Senior Advocate submitted that once RPSC entrusted the matter to the expert committee, there was no escape for it except to accept its recommendation. Therefore those six questions ought to have been deleted. Deletion of question no.98 led to 74 additional candidates being called for interview. Thereafter, when third exercise was undertaken by RPSC on consideration of representation by Kaushal Singh following judgment of this court, supra, RPSC decided to delete two more questions being questions no.21 and 26 of A series, whereas objections were raised by him with regard to questions no.4, 50, 69 and 70 also. Deletion of two questions led to addition of 96 more candidates. As per the original decision of RPSC, candidates only three times the number of vacancies were to be called for interview, therefore in the first instance, it declared only 502 candidates pass but eventually 672 candidates were called to appear in interview, as against 159 advertised vacancies. RPSC selected 148 candidates out of those 672 (502+74+96) candidates. 19 of the selected candidates are such who were neither included in the list declared by RPSC at the time of declaration of the first result on 03.02.2012 nor in second result declared on 30.10.2012. They were those who were declared pass in third result, whereas 12 candidates were selected out of 74 candidates, who were declared pass in the second result. It is argued that RPSC in this case from beginning to end referred the matter for evaluation of the correctness of the answer-key to the experts on as many as six occasions. Even after so much of exercise undertaken by RPSC, 21 questions were still such, which had multiple number of correct options or which were not properly framed, or were out of syllabus. This was besides six questions, deletion of which was recommended by third expert committee following consideration of representations in compliance of the judgment of this court in Giriraj Kumar Vyas, supra.

Shri Ashok Gaur, learned Senior Advocate, referring to the provisions for direct recruitment contained in Part IV of the Rajasthan Prosecution Subordinate Service Rules, 1978 (for short, 'the Rules of 1978') argued that though Rule 21 of the said Rules empowers the Commission to scrutinize the applications and requires as many candidates as seems to them desirable to appear for interview but that Rule has not been properly followed by RPSC while conducting screening test. Only those candidates who were graduate and possessed the degree of LL.B. with experience of two years at the time were required to apply but no weightage was given for such eligibility qualification or the experience either. Though no weightage has been given to the marks of the written examination, none-the-less selection for appointment is solely dependent on the chance one might get to appear for interview. Weightage ought to be given to the marks in the written examination. When second result was declared by including 74 candidates, 9 candidates were liable to be excluded but they were not excluded. Similarly when third result was declared and 96 more candidates were called to face interview, 31 candidates were such who were liable to be excluded. Those who did not deserve to be called for interview, were thus called for interview.

Learned Senior Advocate argued that the Rule 21 and 26 of the Rules of 1978 do not confer arbitrary and unbridled power upon RPSC. It has acted in most unfair and arbitrary manner. The whole procedure adopted by RPSC was shrouded in doubts and there was total lack of transparency. This court in matters like these, in exercise of its power of judicial review, has wide jurisdiction to examine whether or not the questions have been properly formulated, they are within the syllabus or carry multiple number of correct answers. Question paper being pertaining to subject of law, there should be no impediment in doing so. Learned Senior Advocate relied on the judgment of Supreme Court in Manish Ujwal And Others Vs. Maharishi Dayanand Saraswati University And Others, (2005) 13 SCC 744, and argued that the Supreme Court held therein that in the case of multiple choice in objective test, the concerned authorities have to be very careful and keep in view the paramount consideration of the students. A wrong key answer may result in merit being made a causality. Learned senior counsel also cited recent judgment of the Supreme Court in Rajesh Kumar and Others Vs. State of Bihar and Others in Civil Appeal Nos.2525-2516

of 2013 arising out of S.L.P. (Civil) Nos.5752-53 of 2008, decided on 13.03.2013, upholding judgment of the Patna High Court in somewhat similar controversy. Learned senior counsel also cited the Supreme Court judgment in Kanpur University and Others Vs. Samir Gupta and Others, AIR 1983 SC 1230, in which it was held that when the answer given by the students is proved to be correct and key answer incorrect, the students are entitled to the relief asked for.

Shri Giriraj Prasad Sharma, also appearing for the petitioners, submitted that as per the normal procedure adopted by RPSC, the answer key is published in the newspapers and/ or displayed on its website on the very next day of the examination. In the present case, it was not done until the declaration of the second result on 30.10.2012 on which date simultaneously the answer key was published. Representation was submitted on 05.11.2012 (Annexure-14 to the writ petition) by various candidates including Anjali Kumar Sharma in Writ Petition No.2638/2012 raising objections about number of questions of which only two questions were deleted and on that basis third result was declared. But no decision was taken with regard to questions No.1, 5, 7, 12, 13, 16, 25, 30, 38, 42, 43, 58, 66, 74, 75, 77, 78, 83, 90 and 93, all of C-series. Learned counsel has addressed the court with regard to all these objections, which shall be dealt with at the appropriate place hereinafter.

Learned counsel argued that Prof. J.K. Malik was one of the paper setters. He has sworn in a false affidavit before this court in the writ petition decided at Principal Seat. In that affidavit, he has merely stated that he has left teaching in the said Institute but admitted that he used to teach in the concerned coaching center. He stopped coaching only after receipt of communication from RPSC on 10.09.2011 to accept the assignment of paper setter. Most of the questions were picked up from the notes of Prof. J.K. Malik, which were circulated amongst the students of private coaching centres. In this connection, reference is made to Annexure-8 and his hand written notes placed on record of the Writ Petition No.3638/2012. This has affected impartiality and fairness of the examination and credibility of RPSC. When this court required RPSC to produce the question paper drafted by Prof. J.K. Malik, instead of producing the same, an affidavit was filed on behalf of RPSC that it was made available to the then Chairman Shri B.M. Sharma, who demitted office

on 21.08.2012 and on enquiry from him, it transpired that relevant material of question papers were destroyed after examination. In the affidavit, however, it was admitted that 25 questions were taken from the paper drafted by him. But if the draft paper has been destroyed, how can RPSC claim that more questions were not picked up from his paper.

Learned counsel submitted that the Supreme Court has time and again held that interview should not be the only method of assessing merit of the candidates though its significance cannot be denied. However, appointment based totally on interview raises the scope of manipulation and arbitrariness. In support this argument, learned counsel has relied on the judgment of the Supreme Court in Praveen Singh Vs. State of Punjab and Others - (2000) 8 SCC 633.

Shri K.N. Sharma, learned counsel for petitioners in Writ Petition No.8725/2012, also submitted that interviews alone do not decide the fate of the candidates because once a candidate is eliminated in the written examination, he will not be able to appear in interview, thus loosing chance to get selected. It is argued that even in the absence of challenge to the validity of the Rules, this court can mould the relief and direct for giving appropriate weightage to the marks of written examination.

Shri S.R. Choudhary, learned counsel for petitioner in Writ Petition No.617/2013, contended that cut-off marks for general category was 59 in the written examination. His client would have secured 60 marks if options to answers to questions no.1, 4, 34 and 69 of A-series given by him were accepted as correct. Wrong options were treated as correct answers. Despite interim order passed by this court, the petitioner has not been allowed to appear in interview.

Shri Tanveer Ahmed, learned counsel for petitioners in Writ Petition No.19813/2012 and few others, argued that candidates not more than three times the number of vacancies, should have been called for interview but in this case, RPSC has actually called 672 candidates thus taking the total to almost four-and-a-half times. This has diminished the chances of selection of his clients. Petitioner has appeared in the waiting list because 31 candidates were selected from 170 (74+96) candidates, who were declared pass later.

Per contra, Shri G.S. Bapna, learned Advocate General appearing on behalf of the State opposed the writ petition and relying on the judgment of constitution bench of the Supreme Court in the University of Mysore vs. Govinda Rao & Anr-AIR 1965 SC 491 submitted that selection can be questioned only on the limited ground of there being violation of a provision of law or proven allegations of mala fide against the selection body. Whenever any dispute arises with regard to academic matters, this Court should be loath to interfere and matter should be referred to the experts in the subject, which exercise has already been undertaken by RPSC. Scope of jurisdiction that this Court has under Article 226 of the Constitution of India is thus very limited and quite restricted.

Learned Advocate General argued that the Supreme Court has in umpteen number of cases held that such disputes ought to be best left to be resolved by the academic bodies, rather than the Court interfering therewith. Reliance in this connection is placed on the judgments in Dr. J.P. Kulshreshtha and Ors. vs Chancellor, Allahabad - (1980) 3 SCC 418, Osmani University vs. Abdul Rayees Khan & Another - (1997) 3 SCC 124, and N. Lokanadham vs. Chairman, Telecom Commissioner & Another - (2008) 5 SCC 155.

Shri S.N. Kumawat, learned Additional Advocate General appearing for RPSC argued that immediately after the examination was held, RPSC published a press note inviting objections from all concerned as to the correctness of the key answers. Number of representations were received, all of which were sent to the expert committee. RPSC in fairness to all candidates decided to accept the recommendation of such expert committee and deleted 9 questions. There thus remained only 91 questions as against 100 questions in the paper, thereby increasing the value of each question. Candidates three times the number of vacancies were to be called to face interview but, 502 candidates in all were called by applying bunching principle because of tie in the marks and the last candidate was found to secure 59.52%. The marks were rounded off to full to 60% and all those who could secure marks upto 60% were called to appear in the interview. Regarding inclusion of the questions suggested by Prof. J.K. Malik, it was suggested that he was merely asked to contribute the questions and in the like manner, others were also called upon to contribute the questions. The final paper was prepared at the level of the Chairman of RPSC with the

help of moderators. This was done in absolute secrecy and manuscripts of the questions contributed by different experts were destroyed as per the prevalent practice of RPSC. Learned Additional Advocate General submits that Prof. J.K. Malik denied all the allegations on oath before this court in the writ petition of Girraj Kumar Vyas, supra. He denied the allegations that after accepting the assignment of paper setter, he circulated notes to any student at any coaching center or at his residence. This Court accepting the explanation of Prof. J.K. Malik rejected the objection and that issue has since attained finality. In response to a query by the court, Shri S.N. Kumawat, learned Additional Advocate General, has given written answer contending that if RPSC, at the end of third result, were to apply the ratio of 1:3+bunching principle, then only 544 candidates would have been called for interview instead of 672 candidates (502+74+96). This would have resulted in exclusion of 128 candidates (672-544) and in case three candidates, who were ineligible, are excluded, then this number would come to 125, out of which only 23 candidates have been selected, which has not materially affected the ultimate result of selection. In other words, what the learned Additional Advocate General seeks to convey is that even if the entire result is revised on that formula, only 125 would stand excluded out of 672 candidates. It is submitted that the Commission in exercise of its powers as per Rule 21 of the Rules of 1998 devised the method of holding written examination for the purpose of short listing. There is a resolution by all members of the Commission in 'Full Commission' to call candidates minimum three times the number of vacancies, for interview, but no maximum limit is prescribed. Therefore, RPSC acted well within its jurisdiction even if it called candidates slightly more than four times the number of vacancies.

Shri S.N. Kumawat, learned Additional Advocate submits that validity of Rules of 1978 has not been challenged in any of the writ petitions, therefore, it is not open for the petitioners to contend that selection cannot be based entirely on interview. In fact, in one writ petition bearing no.8725/2012, Dilip Singh Yadav & Ors., petitioners challenged the validity of Rule, but challenge to the validity of the Rule was not pressed.

Learned Additional Advocate General cited the Supreme Court judgment in Himachal Pradesh Public Service Commissioner vs. Mukesh Thakur & Another - (2010) 6 SCC 759

wherein it was held that the courts cannot take upon itself the task of Examiner or Selection Board and examine discrepancies and inconsistencies in question paper and evaluation thereof. Reliance is placed on the judgment of Supreme Court in Subash Chandra Verma & ors. vs. State of Bihar & Others - 1995 Suppl (1) SCC 325 and it is argued that Supreme Court in that case held that when there are objections regarding questions in the examination held by PSC, intervention of the High Court on the ground of confusion or controversial nature of questions, without appointing any expert body and obtaining its opinion thereabout, is unjustified. Learned counsel also relied on the Full Bench decision of this Court in Lalit Mohan Sharma & Ors. vs. RPSC & Ors., CW No.1042/05 and connected writ petitions decided vide judgment dated 18.11.2005 and submitted that decision of RPSC based on expert committee constituted for the purpose to get the authenticity of key answers evaluated and declare the result on that basis, is not open to challenge.

Shri A.K. Sharma, learned Senior Advocate appearing for the selected candidates argued that the written examination was held by RPSC only for the purpose of short listing and already RPSC has undertaken exercise thrice to weed out questions, which are having multiple number of correct options or are incorrectly framed or are out of syllabus. This only reflects fairness of its working. This Court can interfere with the process of selection, only if it is found to be arbitrary or mala fide. There is no allegation of mala fide and the grounds of writ petitions do not even make out a case of arbitrary exercise of power by RPSC. It is argued that result was twice revised by RPSC following acceptance of the recommendations of expert committees in compliance of the judgment of this Court, therefore, the decision of RPSC to include additional 170 (74+96) candidates cannot be said to be arbitrary or mala fide and even otherwise, is not open to challenge.

Shri A.K. Sharma, learned Senior Advocate submitted that mere increase in the number of candidates to four-and-a-half times the number of vacancies, does not violate the selection. Reliance in support of this argument is placed on the Supreme Court judgment in Ashok Kumar Yadav vs. State of Haryana-(1985) 4 SCC 417. It is further argued that the petitioners having appeared in the written examination without any murmur or protest,

cannot now be permitted to challenge its correctness and also cannot be allowed to contend that the selection was unfair because, it was based on interview alone. Some of the candidates are such, who have joined as petitioners in this batch of matters. In this connection, reference is made to the case of Kamlesh Kumar & others, CW No.2142/2013, Anjani Kumar Sharma and others, CW No.2638/12 and Harphool Singh Devenda & Ors., CW No.2025/2013. In para 9 of the case of Harphool Singh Devenda and in para 8 of the case of Kamlesh Kumar, the petitioners have pleaded that even though they appeared in the interview, but were not selected. Having failed to qualify, the writ petitioners are estopped from challenging the same. Learned counsel in support of this argument relied on the judgment of Supreme Court in Ramesh Chandra Shah and Ors. vs. Anil Joshi & Ors.-MANU/SC/0317/2013 decided on 3.4.2013, Virendra Kumar Verma vs. Public Service Commission, Uttarakhand & Ors.-(2011) 1 SCC 150 and Pratap Singh vs. High Court of Judicature for Rajasthan through its Registrar-(2001) 2 WLC page 1.

Shri A.K. Sharma, learned Senior Advocate extensively referred to each of the objections in respect of 21 questions in the affidavit of petitioner-Anjani Kumar Sharma and explained how the option chosen as correct by RPSC in the key answer, was correct. The arguments made in that behalf shall be considered simultaneously with the objections of the petitioners at the appropriate place hereinafter.

Shri S.C. Gupta, learned counsel appearing for the intervener submitted that examination was held only for the purpose of short listing the candidates in the nature of screening test. Result of written examination did not form basis for preparation of the merit list. Petitioners and for that matter, all other candidates only had a right of consideration for appointment and they were granted such right the moment they were permitted to appear in the examination. But mere appearance in the examination does not guarantee their selection. The writ petitions have been filed on the basis of remote possibility of selection of the petitioners, whereas, in fact, most of them were not even able to qualify the cut off marks set by RPSC for the purpose of short listing. Many of them having cleared the written examination faced interviews and then failed. It was argued that minor inaccuracies in the question papers would not lead to affecting fairness of entire process of selection. Whole

selection cannot be set aside on that basis. It is therefore prayed that the writ petitions be dismissed.

I have given my anxious consideration to rival submissions, perused the material on record and respectfully studied the cited case law.

Before adverting to objections raised with regard to different questions on variety of grounds, it would be appropriate to deal with the arguments on the scope of interference by this Court in the realm of judicial review in matters like the present one. Earliest judgment cited at the Bar regarding this is that of the Supreme Court in Kanpur University & Ors. vs. Samit Gupta & Others, supra. Their Lordships held therein that if a paper-setter commits an error while indicating the correct answer to a question set by him, the students, who answer that question correctly cannot be failed for that reason. It is true that the key answer should be assumed to be correct unless it is proved to be wrong and it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. Where it is proved that the answer given by the students is correct and the key answer is incorrect, the students are entitled to relief asked for. In case of doubt, unquestionably the key answer has to be preferred. But if the matter is beyond the realm of doubt, it would be unfair to penalize the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.

In Himachal Pradesh Public Service Commission, supra, dispute was raised with regard to framing of two questions and in evaluation of answers thereof. The Supreme Court held that the Court cannot take upon itself task of statutory authority. If there was a discrepancy in framing of questions and evaluation of answers, it would be so for all the candidates appearing in the examination and not for the respondents alone.

In Manish Ujwal & Others vs. Maharishi Dayanand Saraswati University & Others - (2005) 13 SCC 744, the matter was pertaining to admission to medical and dental course. The candidates appearing for the common entrance test, approached the Court with the allegation that answers to six questions given in the answer key are erroneous and incorrect

and thus a wrong and erroneous ranking was prepared. The High Court refused to interfere. The Supreme Court reversed the judgment of the High Court observing as under:-

> "10. The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to the six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or interveners or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reason. We mention few of those; first and paramount reason being the welfare of the student as a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answer; the second reason is that the courts are slow in interfering in educational matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answers is adopted by the persons concerned, directions may have to be issued for taking appropriate action, including disciplinary action, against those responsible for wrong and demonstrably erroneous key answers, but we refrain from issuing such directions in the present case."

A Full Bench of this Court in Lalit Mohan Sharma, supra while holding that if the expert committee is constituted for the purpose has given its report based on recognized text books and there is no allegation that the member constituted the Committee did not know or have specialization in the subject, nor there is any allegation of bias against them, no occasion arises for the Court to interfere further in the matter.

Similar view has been expressed in Division Bench judgments of this Court at Principal Seat, Jodhpur in Joga Ram Choudhary & Ors. vs. State of Rajasthan & Ors., D.B. Civil Special Appeal No.38/2013 decided on 10.01.2013 and those delivered at Jaipur Bench in Praveen Singh & Ors. vs. State & Ors., D.B. Civil Special Appeal No.1032/2012 on

4.1.2013 and in the case of Keshav Singh & Ors. vs. RPSC & Ors., D.B. Civil Special Appeal (Writ) No.1685/2012 delivered on 22.4.2013. It is informed at the Bar that operation of last of these judgments has been stayed in the Special Leave to Petition filed by the affected parties.

Division Bench of Delhi High Court in a judgment recently delivered on 09.04.2012 in Gunjan Sinha Jain vs. Registrar General, High Court of Delhi, W.P. (C) No.449/2012 has dealt with a similar issue. That was a dispute pertaining to the preliminary examination conducted for recruitment to Delhi Judicial Service. The High Court on examination of the disputed questions directed that 12 such questions should be removed from the purview of examination and 7 questions would require corrections in the answer keys whereas objections relating to answer key to 7 other questions was rejected.

In a recent judgment in Rajesh Kumar & Ors. Etc. vs. State of Bihar & Ors. Etc., Civil Appeal Nos.2525-2516/2013 decided on 13.3.2013, the Supreme Court upheld judgment of Patna High Court observing that "given the nature of the defect in the answer key, the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof." The Single Bench of the High Court based on the report of two experts held that 41 model answers out of 100 were wrong. While 2 questions were wrong, 2 other questions were repeated. The single bench thus held that the entire examination stood vitiated, therefore, directed that the same be cancelled and so also the appointment made on that basis. The division bench of the High Court, however, while partly allowing the appeal held that the entire examination need not be cancelled because there was no allegation of any corrupt motive or malpractice in regard to the other question papers. A fresh examination in Civil Engineering Paper only was, according to the division bench, sufficient to rectify the defect and prevent injustice to any candidate. The division bench further held that while those appointed on the basis of the impugned selection shall be allowed to continue until publication of the fresh result, anyone of them who failed to make the grade on the basis of the fresh examination shall be given a chance to appear in another examination to be conducted by the Staff Selection Commission. In those facts, their Lordships of the Supreme Court observed as under:

> "16. The submissions made by Mr. Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case."

In the just cited case, though the Supreme Court, while finally deciding the matter, moulded the relief by saving the appointments already made, but at the same time directed evaluation on the basis of correct key prepared by an expert committee and further directed appointment of those qualifying the merit from the date when the appellants were first appointed with continuity of service for the purpose of seniority but without any back wages.

A reference at this juncture may be made to the Supreme Court in Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad - 1980(3) SCC 418 cited by learned Advocate General, which is also a case relating to recruitment based entirely on interview. The Supreme Court speaking through Justice V.R. Krishna Ayer held therein that "while there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the Court keeps its hands off, but where a provision of law has to be read and understood, it is not fair to keep the court out. (Emphasis supplied).

What is disturbing to note is that despite involvement of several so-called experts in one after another committees on as many as six occasions, RPSC has not being able to completely weed out the doubtful questions having multiple wrong answers. In the facts

peculiar to this case, therefore, sending the matter again to a seventh committee is not considered appropriate. Questions being pertaining to subject of law, this court deems it appropriate to evaluate the correctness of options and also examine whether some of the questions are out of syllabus and not being properly framed.

Being, therefore, fully conscious of the limitations of its jurisdiction, this Court with the assistance of learned counsel appearing on both the sides, deem it appropriate to evaluate the correctness of questions primarily with a view to finding out whether there are plural number of correct options given by PSC against any question, though at the same time keeping in mind the dicta laid down by the Supreme Court in Subhash Chandra Verma, supra that "candidates are required to tick mark the answers which is most appropriate out of plurality of answers" and that even if the answers could be more than one, "the candidates will have to select the one, which is more correct than the alternative answers."

I shall now proceed to examine the objections with regard to 21 questions detailed in the affidavit of Anjani Kumar Sharma, which covers the disputes raised in all the writ petitions.

Question No.1 of C-series (Question No.28 of A-series):-

Q. The foundation of Investigation under Code of Criminal Procedure 1973 is:
(1) Complaint
(2) Report or information by a third person for commission of offence
(3) First Information Report
(4) News paper's report

Objection about this question is that there is no provision in the Code of Criminal Procedure describing foundation of investigation. Options no.2 and 3 are correct answers and paper setter has wrongly treated option no.3 as correct answer. The first information report is a sine qua non for commencement of any investigation, whether on report of information by a third person for commission of offence directly given to Officer-in-charge of Police Station or otherwise received by him on the basis of complaint through the court under Section 156(3). In every situation, this is required to be registered as a first

information report. In plurality of the answers, therefore the option no.3 is "most appropriate" and "more correct out of the alternative answers". Therefore, option no.3 has rightly been taken as correct answer by RPSC.

Question No.5 of C-series (Question No.32 of A-series):-

Q. The police-diary under Section 172 of the Code of Criminal Procedure 1973 is used for which of the following things?

(1) For collection of evidences
(2) For recording of statements of witnesses
(3) For aid in enquiry or trial to the court
(4) For aid in investigation to the police.

Objection about this question is that it carries multiple number of correct options because case-diary can be used for collecting evidence as also for recording statement of witnesses and also for helping the police investigation. This objection is without any substance in view of the provisions contained in sub-section (2) of Section 172 of the Cr.P.C., which inter-alia provides that any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Therefore, option no.3 has rightly been taken as correct answer by RPSC.

Question No.7 of C-series (Question No.34 of A-series):-

Q. For application of the provision of plea-bargaining, under Code of Criminal Procedure, 1973 the most important thing which is required is that it should relate with the offences:

(1) Punishable with less than 7 years imprisonment and accused should not be previously convicted.
(2) Punishable with death but not against women.
(3) Punishable with life imprisonment but not against child below the age of 14 years.
(4) Punishable with death, life imprisonment, more than 7 years imprisonment, against women, socioeconomic conditions of the country, or child below 14 years.

Objection about this question is that there is variance between English and Hindi version and Hindi version carries incorrect translation of the word "plea-bargaining". Further objection is that framing of the question was itself incorrect as none of the four

options are incorrect. As regards the first objection, reference be made to instruction No.10 mentioned in the beginning of the question question-booklet, which provides that "if there is any sort of ambiguity/mistake either of printing or factual nature then out of Hindi and English Version of the question, the English Version will be treated as standard." As it is, "plea-bargaining", is a legal terminology. Whoever appears in a competitive examination for appointment on the post of APP Gr.II, should be aware of the same. Second objection also is not sustainable because reading of Section 265-A of Chapter XXIA of the Cr.P.C., relating to plea-bargaining, makes it clear that "plea-bargaining" shall apply in respect of an accused against whom charge-sheet has been filed under Section 173 Cr.P.C. alleging that an offence has been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years. In other words, if the punishment exceeds 7 years, the provisions relating to plea-bargaining would not be applicable. Option no.1 has thus rightly been taken as correct by RPSC, which becomes further clear from the later part of the objection that the accused should not be previously convicted, which is what has also been provided by sub-section (2) of Section 265B of the Cr.P.C.

Question No.12 of C-series (Question No.39 of A-series):-

Q. Death sentence of an accused may be commuted to fine also by the appropriate government under which provision of law

(1) Under Section 54 of the Indian Penal Code, 1860.
(2) Under Article 72 and 161 of the Constitution.
(3) According to Section 53 of the Indian Penal Code 1860 and Section 433(A) of the Code of Criminal Procedure 1973.
(4) Under Section 432 of the Code of Criminal Procedure 1973.

There are two objections about this question. Firstly, that option no.3 should be correct answer as per Section 433A of the Cr.P.C. and secondly that option no.2 is beyond the nature of question as well as outside the syllabus. Question refers to power of the appropriate Government to commute the death sentence. Section 433A of the Cr.P.C. places restriction on release of a convict sentenced to life imprisonment for offence for which death is also a penalty, before he completes at least fourteen years of imprisonment. Option (1) has rightly been chosen as correct option because Section 54 of the IPC refers to power of the

appropriate Government to commute a death sentence. This question pertains to commutation of death sentence, which power also vests with the President of India by virtue of Article 72 of the Constitution of India and the Governor of a State vide Article 161 of the Constitution of India. Therefore, it cannot be said that the option (2) is beyond the nature of question. As regards the syllabus, even if the Constitution of India was not notified as part of the syllabus and RPSC has deleted one of the questions being the outside the syllabus, a candidate is required to give the correct answer in the examination and tick mark the correct option. There is no compulsion for the paper setters or for that matter, RPSC that even though one of the options given amongst four is correct, incorrect option should also necessarily be falling within the syllabus. If a candidate is unable to locate the correct answer amongst multiple options, that really is a test of his ability to figure out the correct one from many options.

At this juncture, it would be necessary to deal with the argument advanced on behalf of the petitioners that since RPSC has deleted question no.98 of A-series on the basis of expert opinion that options no.1 and 3 are out of syllabus, therefore, whichever question has one or more options from outside the syllabus, should be deleted. This argument is noted to be rejected only, because if RPSC has for the reason best known to it, taken erroneous decision, that would not bind this court. When the matter is before the court, it has to decide the same as per the law applicable on the subject. There is no law that requires that even the wrong options/incorrect answers, which are joined with correct answer/ option, should necessarily be from within the syllabus, although one would be justified in complaining so if the question itself is outside the syllabus. That argument of the petitioners in this behalf is therefore rejected.

Question No.13 of C-series (Question No.40 of A-series):-

Q. While exercising inherent powers under Section 482 of the Code of Criminal Procedure 1973, even the High Court cannot do which of the following things:

(1) To give police-custody from judicial custody.
(2) To convert itself into a court of appeal when legislature has not authorized it expressly or indirectly.
(3) To review its own judgment or order
(4) All the above things.

Objection about this question is that the very framing of question is contrary to the provisions of Section 482 Cr.P.C., and the options given are also incorrect. Similar question given in the competitive examination conducted for Rajasthan Judicial Services, 2011 was deleted by this court. According to RPSC, this question was though similarly worded as question no.56 in A-series of the preliminary examination of RJS but option no.4 of this question was given as option no.2 in that examination paper, option no.1 was mentioned as option no.4 and option no.2 as also option no.3 and option no.3 as option no.1. Thus, the options in RJS preliminary examination were arranged in entirely different order. Fourth option of the question herein was mentioned as option no.2 in that examination. Therefore, RPSC on its own deleted it and Division Bench of this court upheld. This court has to analyze the question in the light of the provisions of Cr.P.C. Section 362 of the Cr.P.C. provides that no court shall alter or review its judgment or final order disposing of a case except to correct a clerical or arithmetical error. Though this Section in its saving clause provides that "Save as otherwise provide by this Code or by any other law for the time being in force, ...", the Supreme Court in Sooraj Devi Vs. Pyare Lal – (1981) 1 SCC 500 held that the inherent power of the Court is not contemplated by the saving provision contained in section 362. The Supreme Court in Hari Singh Mann Vs. Harbhajan Singh Bajwa and Others – AIR 2001 SC 43 and State of Punjab Vs. Devendra Pal Singh Bhullar – AIR 2012 SC 364 also held that inherent power under Section 482 Cr.P.C. cannot be exercised to review a judgment or final order in a criminal case which is expressly barred by the Code of Criminal Procedure. Second option that Section 482 Cr.P.C. empowers the High Court to convert itself into a court of appeal, whereas legislature has not authorized it expressly or indirectly, also does not appear to be legally sound. Section 482 Cr.P.C. empowers the High Court to exercise its inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of law or otherwise, to secure the ends of justice. It is trite that such power has to be exercised sparingly and with caution. The High Court can exercise power on application as also suo-motu but only when there is no remedy available to litigant within the parameters of the Code. But to say that this provision even entitles the High Court to convert itself into the court of appeal whereas legislature has not provided so, may not be legally correct.

There is no specific provision contained in Section 167 Cr.P.C. but in exceptional circumstances the High Court, if approached even by the State, may give police custody of an accused from judicial custody {See C.B.I. Vs. Anupam Kulkarni – (1992) 3 SCC 141} . However, since two of the options in this question are apparently incorrect and demonstrably erroneous, wrong and misleading, which no reasonable law knowing person would accept to be correct, therefore this question deserves to be deleted.

Besides, when this question was given in RJS Pre Examination 2011 as question no.56 of A-series, the option no.2 given therefore, was indicated that all the options are correct and since all the mentioned options were not correct (question and three options given therein were exactly same) therefore RPSC rightly deleted the question, which deletion was upheld by the High Court. Obviously there being no distinction between two questions and all the above answers and if in that examination, RPSC accepted that all the three options are not correct, it cannot insist on their correctness now in this examination.

Question No.16 of C-series (Question No.43 of A-series):-

Q. Facts showing existence of state of mind or body or bodily feelings of a person are relevant under which of the following Acts?

(1) Under Section 280 of the Code of Criminal Procedure 1973.
(2) Under Order 18 Rule 12 of the Code of Civil Procedure 1908.
(3) Under Section 14 of the Indian Evidence Act, 1872.
(4) Under all the above Sections and Acts.

The objection regarding this question is that since it pertains to CPC, which is not included in the syllabus of APP Gr.II examination, therefore, this is out of syllabus and further that framing of the question is not in conformity with Section 14 of the Indian Evidence Act, therefore option no.3 has wrongly been taken as correct by RPSC.

The provisions of the Indian Evidence Act especially its Section 14 also applies to the criminal trials under the Code of Criminal Procedure. The objection that it should apply only to proceedings in Code of Civil Procedure is therefore rejected. Moreover the question is straightway lifted from the main provision of Section 14 as evident from caption of Section 14, which reads thus - “Facts showing existence of state of mind, or of body, of bodily feeling”. Therefore option no.3 has rightly been taken as the correct option by RPSC.

Question No.18 of C-series which Question No.45 of A-series:-

Q. Which of the following case was decided on the basis of "tears from eyes" evidence of a women, namely?

(1) State of Rajasthan Vs. Smt. Kanuri Devi, 1998 Rajasthan
(2) Shamim Rehamni Vs. State of U.P., 1975 S.C.
(3) K.M. Nanawati Vs. State of Maharashtra, 1961 S.C.
(4) Palvinder Koer Vs. State of Punjab, 1952 S.C.

Objection of the petitioners about this question is that it has not been properly framed inasmuch as there is no decision delivered on the basis of "tears from eyes". Evidence of a woman on the basis of "tears from eyes" is not envisaged in law. The correct option accepted by RPSC is option no.1. State of Rajasthan Vs. Kanoori – RLW 1998 (1) Raj. 582, was a case in which accused Kanoori was charged for offence of murder of her husband. In Para 16 of the judgment, the court made reference to number of witnesses in whose presence she confessed having committed murder of her husband. Statement of Poona Ram (PW-7) was to the effect that initially the accused had shown her ignorance about the murder of Gumana Ram but when she was asked twice or thrice, she confessed her guilt. He further stated that when two Sarpanchas Amana Ram and Bhoma Ram asked the accused about foot prints, she told that she had killed her husband and she had committed mistake. This witness further stated that accused did not weep and there were no tears in her eyes. There are three Head Notes of the judgment given in the said report, none of which refers to 'tears from eyes'. The court only intended to indicate demeanour of the accused with reference to the statement of witnesses, who rather stated that there were 'no tears in her eyes', that means that she had no repentance.

The objection of the petitioners is that the case was not decided on the basis of 'tears from eyes' evidence of a woman, which implies presence of 'tears in the eyes' of the women, whereas the judgment refers to absence of 'tears in the eyes'. In the question, reference is made 'women' thus suggesting multiple number of woman, whereas the judgment which has been taken as the correct option refers to conviction of single accused, who was a 'woman'. Therefore even if one does not go into the wisdom of the paper setter in giving such a strange question, this question is liable to be deleted for these factual errors.

Question No.25 of C-series (Question No.52 of A-series):-

Q. Which of the following section is considered as the spinal cord of the civil litigation in India:

(1) Section 105 of the Indian Evidence Act, 1872
(2) Section 91 of the Indian Evidence Act, 1872
(3) Section 92 provisions 1 to 6 of the Indian Evidence Act, 1872
(4) Section 104 of the Indian Evidence Act, 1872

Objection about this question is that each single provision referred to in all four options has equal importance in civil litigation in India. The respondents have sought to justify framing of this question by producing the question paper of Law of Evidence (First Paper of LL.B. (Part III) Examination, 2012, conducted by the University of Rajasthan, Jaipur. Question No.7 in that paper was "Why exceptions of Section 92 of Indian Evidence Act, 1872 are considered as spinal cord of civil litigation? Explain the statement and mention its exception." Similarly worded question is also mentioned as Question No.16 at page 67 of the Babel Law Series (25 Question & Answer on the Law of Evidence) written by Dr. Basanti Lal Babel. This question and the question in Examination Paper of LL.B. Third year, were worded entirely differently. But here, this question in the Examination was rather framed in a strange way by asking the candidates as to which Sections in of the options, is considered as the spinal cord of Civil Litigation in India. In law, there is no concept like spinal cord. It is only a way of expression to underline importance of a given thing. This would be a subjective opinion of each student of law. One may be entitled to hold the opinion that Sections 91 (about evidence of terms of contracts, grants and other dispositions of property reduced to form of documents), or 104 (about burden of proving fact to be proved to make evidence admissible) or 105 (burden of proving that case of accused comes within exceptions) of the Indian evidence Act, 1872, are as much important as Section 92 (about exclusion of evidence of oral agreement), of the Indian Evidence Act for civil litigation in India. The question, therefore, was highly misleading and confusing and the option no.3 given in response to this question therefore cannot be saved even on the analogy that it was "most appropriate" and "more correct out of the alternative options". Therefore, this question is also liable to be deleted.

Question No.30 of C-series (Question No.57 of A-series):-

Q. A witness cannot be converted into an accused person, though may be compelled to answer questions relating to an offence. Under which section of the Indian Evidence Act, 1872, this immunity is granted to a witness?

(1) Under Section 148
(2) Under Section 163
(3) Under Section 131
(4) Under Section 132

Objection about this question is that all four options given therein are correct, whereas, according to RPSC, option no.4 i.e. "Under Section 132" of the Indian Evidence Act, is the correct answer. Section 132 provides that "A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind." This is subject to proviso which indicates that "..no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer." This is the direct and nearest provision and Sections 131, 148 and 163, respectively, given in other options, are nowhere nearer the problem posed in the question. The objection to this question is therefore liable to be rejected.

Question No.38 of C-series (Question No.65 of A-series):-

Q. Which provision of the Code of Criminal Procedure 1973 empowers the presiding officer to dispense with the personal attendance of an accused at the time of recording of statement of witnesses?

(1) Section 299
(2) Section 273
(3) Section 205
(4) Section 285

Objection about this question is that Section 273 cannot be taken as the only correct answer. Section 205 of the Cr.P.C. also empowers a Magistrate to dispense with personal attendance of accused. Section 205 of-course empowers a magistrate to dispense with

personal attendance of accused but the question is not only this much. The question covers the complete provision of Section 273 of the Cr.P.C. which, inter-alia, provides that all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader, which is what has been put in the question as a problem. This objection is also therefore liable to be rejected.

Question No.42 of C-series (Question No.69 of A-series):-

Q. Who of the following is competent to disqualify from holding a driving license or revoke such license under Motor Vehicle Act, 1988 namely?
(1) Licensing Authority
(2) Court
(3) Governor and President
(4) Licensing Authority and Court

According to petitioners, both options no.2 and 4 are correct answer to the question, as per Sections 19 and 20 of the Motor Vehicles Act, 1989, whereas RPSC has taken only option no.1 as correct answer. The question presupposes one authority competent to disqualify a person from holding a driving license as well as revoke such license. Sub-section (1) of Section 19 of the Motor Vehicles Act, 1988, after clauses (a) to (h), refers to both and provides that if a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard as enumerated in clauses (a) to (h), may, for the reasons to be recorded in writing, disqualify that person for a specified period for holding or obtaining any driving licence, or revoke any such licence. Section 20 refers to power of the court to declare a person disqualified from holding any driving licence and does not empower the court to revoke the licence in that provision. This objection is therefore liable to be rejected.

Question No.43 of C-series (Question No.70 of A-series):-

Q. When any person is injured or property of a third party is damaged as a result of an accident the duty of the driver, according to Section 134 of Motor Vehicle Act, 1988 is
(1) Firstly to inform to the police about the accident
(2) To take the injured person to nearest hospital for medical treatment

(3) To inform to the family members or relative of the victim of accident
(3) To take injured immediately for medical help to nearest hospital or registered medical practitioner and then inform to police about the accident

RPSC has, for this question, treated option no.2 as the correct answer, whereas, according to the petitioners, option no.4 is also the correct answer. Sub-section (b) of Section 134 of the Motor Vehicles Act provides that when any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence, and as per sub-section (c) give the required information in writing to the insurer. A perusal of Section 134 therefore makes it clear that option no.1, which inter-alia, provides that firstly the driver shall inform to the police about the incident, may not be the only correct answer, but the option no.2 as well as option no.4 would be both correct. Question is not thus as to what should be the first duty of the driver in the event of an accident resulting into injury to any person or damage to any property of a third party, but is rather simple and is based on the provision of Section 134, supra. Had the paper setter used the 'firstly' in the body of question itself {when is used in option (1)}, then perhaps what RPSC is contending would be correct. Therefore, this objection is liable to be upheld and the question is liable to be deleted.

Question No.58 of C-series (Question No.85 of A-series):-

Q. Search and seizure under the Arms Act, 1959 can be carried out by
(1) Magistrate
(2) Superintendent of Police
(3) Officer in Charge of the Police Station
(4) Superintendent of C.B.I.

Objection about this question is that all four options given therein are correct according to Sections 22 and 23 of the Arms Act, 1989, whereas according to RPSC Section 22 of the Arms Act empowers only the Magistrate to make search and seizure and therefore that

is the only correct answer. Section 23 is confined to search of vessels, vehicles or other means of conveyance and seize any arms or ammunition that may be found therein. Section 24A (d) also refers to the search and seizure by an officer subordinate to the Central or the State Government authorized by the notification of the Central Government to search and seize any person or premises etc, within the notified disturbed area. Section 24B(1)(c) also refers to the authorization by the Central Government by notification in favour of the officer subordinate to the Central Government or a State Government. Contention that Section 23 which also refers to authorization of Magistrate and police officer and any other officer specially empowered by the Central Government is only confined to search and seizure of any vessels, vehicles and other means of conveyance and seize any arms or ammunition that may be found in the area. Therefore, option no.1 should be taken to be the only correct answer because all other provisions, namely Sections 23, 24A and 24B, refer to authorization by the Central Government as the condition precedent for search and seizure by such officer. In the circumstances, the option no.1 i.e. "Magistrate", who can carry search and seizure under the Arms Act, without the requirement of anything more has to be accepted as the correct option on the analogy being "most appropriate" and "more correct out of the alternative answers".

Question No.66 of C-series (Question No.93 of A-series):-

Q. Which one of the following is not a condition which can be imposed by State Government for transport and export of excisable goods, under Rajasthan Excise Act, 1950, unless?

(1) Fee fixed under Section 28 is paid
(2) Undertaking for payment of fee under Section 28 has been given
(3) Payment made to the manufacturer
(4) Special permission from State Government has been taken

According to the petitioners, this question carries two correct options, being options no.3 and 4, as per Sections 11 and 12 of the Rajasthan Excise Act, 1950. According to RPSC, however, the question is based on Section 12. A combined reading of Sections 12 and 13 makes it clear that while they refer to other three options, but none of these provisions provides that payment made to the manufacturer would be the condition precedent for transportation or export of excisable goods. Payment made to the manufacturer

is something which would depend on the mutual agreement between the parties. Thus, option no.3 is the correct answer. The objection is therefore liable to be rejected.

Question No.74 of C-series (Question No.1 of A-series):-

Q. Who among of the following is not a "public servant" according to Section 21 of the Indian Penal Code 1860?
(1) Chief Minister and Prime Minister
(2) Judge and Magistrate
(3) Government servant appointed on deputation
(4) Principal of Government College

As per the petitioners, all four options given below this question are correct, whereas, according to RPSC, option no.3 is the correct answer because a government servant while on deputation would not be a public servant. To bring home their point, the respondents have cited a judgment of the Supreme Court in S.S. Dhanoa vs Municipal Corporation, Delhi and Others – AIR 1981 SC 1395, wherein it has been held that a civil servant working on deputation with a cooperative society would not be a public servant and therefore sanction for his prosecution would not be necessary. Whenever a government servant is working on deputation against a non-government post, he would be as per the ratio of aforesaid judgment is not a public servant. This can be best understood with reference to Explanation 2 given below Section 21 of the IPC providing that "Whenever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation." What is therefore important to decide the character of a public servant is that he should be in actual possession of the situation of a public servant. The option indicated as correct choice by RPSC is therefore the nearest correct answer. The objection of the petitioners is therefore rejected.

Question No.75 of C-series (Question No.2 of A-series):-

Q. In which Section of the Indian Penal Code, 1860, the principle of "Expiatory theory" of punishment has been incorporated?
(1) Section 70
(2) Section 71

(3) Section 75
(4) Section 73 & 74

According to the petitioners, this question is out of syllabus because theory of expiatory is provided in the subject of criminology and criminal administration and option no.4 cannot be correct because it pertains to solitary confinement of a convict, which cannot be treated as part of expiatory theory. RPSC has in support of its stand, relied on the Book of IPC authored by Prof. Tridivesh Bhattacharya, published by the Central Law Agency, Allahabad, in its 6th edition, author of which while discussing principle of expiatory, has referred to solitary confinement as one of the methods of expiatory theory to instill feeling of repentance in the accused. It being the subject relating to criminology, cannot be said to be outside the syllabus. That option has to be therefore accepted as correct on the analogy of being nearest answer.

Question No.77 of C-series (Question No.4 of A-series):-

Q. "A" soldier fires on the silent mob, by order of his superior officer in conformity with the commands of the law, due to which "C" dies. Here "A"
(1) Will not be liable according to Section 76 of the Indian Penal Code 1860
(2) Will not to be liable according to Section 79 of the Indian Penal Code 1860
(3) Will be liable under Section 304 of the Indian Penal Code 1860
(4) Will be liable under Section 307 of the Indian Penal Code 1860

Objection about this question is that it has not been properly framed and the given instance would not constitute offence of Section 304 IPC. According to Section 76, option no.1 should the correct answer. According to RPSC, however, in the case of soldiers, the IPC does not recognize the duty of blind obedience for orders of superiors as sufficient to protect him from the penal consequences of his act. However, the act done by such soldier in the illustrations will fall in exception (3) to Section 300 IPC and therefore, he would be liable to punishment under Section 304 IPC. Illustration (a) given below Section 76 of the IPC reads as under,

> "(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence."

The question thus appears to have been straightway lifted from the illustration with insertion of word 'silent' immediately before the word 'mob'. The illustration given in

question can hardly fall within the Exception.3 to Section 300 IPC, which inter-alia provides that culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law and causes death by doing an act which he in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused. What is missing in Exception.3 is the command by a superior officer and this Exception refers to either a public servant or an offender aiding a public servant, both, acting for advancement of public justice; then postulates that one of them exceeds the powers given to him by law and thereby causes death in good faith believing it to be lawful and necessary for the due discharge of his duty.

Section 76 segregates such exception to fall in two categories, namely (i) nothing is the offence which is done by a person bound, or by mistake of fact believing himself bound, by law; (ii) nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be, bound by law to do it. What is significant is that 'A', the soldier, in the given illustration believes in good faith that he has to follow the command of his superior officer, asking him to fire on the mob. Question postulates that he fires on the mob by the orders of his superior officer in conformity with the command of law. This will squarely fall in the exceptions carved out in Section 76. Such exception would also extend to the firing by a soldier on a silent mob on the order of his superior officer, which is in conformity with the commands of law because in that event also this would be covered by later part of Section 76, namely, "who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it." Objection with regard to this question is therefore upheld. Option (1) alone should be treated as correct answer.

Question No.78 of C-series (Question No.5 of A-series):-

Q. In which of the following offences the benefit of Section 85 of the Indian Penal Code 1860 will not be given to the accused person, namely, offences under?

(1) Section 323, 325, 340 and 355
(2) Section 272, 279, 292 and 294
(3) Section 312, 300, 376, 497, 498 & 361
(4) Section 295, 296, 297 and 298

As per the objections of the petitioners this question has been framed contrary to Section 85 of the IPC, whereas, according to the respondents, option no.2 is correct answer because of the offences mentioned therein requires theory of strict liability applicable to each one of those offences and there is no requirement of 'mens rea'. Section 85 IPC is a general exception providing that nothing is an offence, which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law. This is subject to providing that the thing which intoxicated him was administered to him without his knowledge or against his will. But there are certain offences in which the theory of strict liability applies. Office under Section 272 IPC refers to adulteration of food or drink intended for sale. Section 279 makes rash driving or riding on a public way, as offence. Section 292 IPC makes sales of obscene books, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, as offence. Section 293 IPC makes sale, distribution, exhibition, circulation etc. of obscene objects to young person under the age of twenty years, an offence. The respondents have relied on a book on IPC by Prof. Surya Narayan Misra, according to whom, in common law there are three recognized exceptions to the general principle of mens rea, which are (i) public nuisance, (ii) criminal libel, and (iii) contempt of court. Offences enumerated in second option which is chosen as correct by RPSC would clearly fall first within two exceptions, thus making the theory of strict liability applicable. Objection in this regard to this question is therefore rejected.

Question No.83 of C-series (Question No.10 of A-series):-

Q. A person may be responsible for the theft of his own property under Section 379 of the Indian Penal Code 1860, when he has given his property to other as a -

(1) Bailment and use
(2) Gift and trust
(3) Security
(4) Bailment, gift, repair & use

Objection about this question is that it contains two correct options. According to RPSC, option no.3 is the correct answer, whereas according to the petitioners, option no.1 is also correct answer. The question is based on illustration (J) given below Section 378

IPC, according to which option no.3 is the correct answer. Therefore, the objection raised by the petitioners is liable to be rejected.

Question No.90 of C-series (Question No.17 of A-series):-

Q. 'A' with the intention of murdering 'B' instigates 'C' a lunatic to give poison to 'B', 'C' instead of giving it to 'B' takes poison himself. Here, in this case

(1) 'A' is not guilty as 'B' a lunatic cannot be an offender in the eyes of law
(2) 'A' is guilty of causing death of lunatic only
(3) 'A' is guilty of abetment
(4) None of the above

According to the objection raised by the petitioners that option no.2 is correct answer whereas, according to RPSC, option no.3 is the correct answer. In the given illustration, the option no.3 would be the nearest correct answer as 'A' would be guilty of abetting 'C' who is lunatic, to give poison to 'B', but incidentally 'C' has consumed it himself. He cannot be held guilty of causing death of 'C'. Option selected by RPSC should therefore be accepted correct being nearest correct answer.

Question No.93 of C-series (Question No.20 of A-series):-

Q. The offence of "trespass" under the Indian Penal Code 1860 basically is an offence against the -

(1) Ownership
(2) Possession
(3) Reputation
(4) Privacy and Possession

As per the petitioners, the option no.4 is the correct answer, whereas, according to RPSC, option no.2 is the correct answer. Definition of 'criminal trespass' is given under Section 441 IPC, according to which, offence of criminal trespass is said to have caused when someone enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. It is therefore the offence against possession. Option no.2 has rightly been taken to be the correct answer. Privacy given in option no.4 has nothing to do with the offence of criminal trespass.

A close scrutiny of the questions vis-a-vis options given there under clearly proves that questions no.13, 18, 25 and 43 and option no.(3) of question no.77 of C-series, are "clearly demonstrated to be wrong", which "no reasonable body of men well versed" in the subject of law would regard as correct.

Adverting now to the objection of estoppel, contention that some of the candidates who not only appeared in the written examination, but also appeared in the interview, and approached this Court after they failed, would be estopped from challenging the selection and their writ petition should be dismissed applying the doctrine of estoppel, has to be viewed in the light of what these candidates have asserted that they appeared for the interview on the basis of first result in the first lot. It was thereafter that RPSC twice revised the result and called certain other candidates in subsequent lots to face interview. Date of interviews was extended upto 16.1.2013. If that is the case, the petitioners obviously could not have visualized that after declaration of their result and even after their appearance in the interview, RPSC would decide to bring in many other candidates to face interview by extending the zone of consideration. Expansion of the zone of consideration has certainly resulted in reducing the chance of their selection. Fact that 31 candidates out of 170 candidates have been finally selected, substantiate their this contention. In view of these facts, therefore, the plea of estoppel may not be available to the respondents. This plea is therefore rejected.

Taking up now the objections with regard to involvement of Prof. J.K. Malik, it would be suffice to observe this such objection has already been rejected by a coordinate bench of this court after considering the affidavit filed by him, in which Prof. J.K. Malik denied allegations on oath and allegations being disputed on fact, were not taken as proved by this court. That judgment of this court in the case of Girraj Kumar Vyas, supra, has attained finality. Issues raised, considered and rejected therein therefore are not open to be agitated again. The objection so raised is therefore rejected.

Contention that since RPSC has deleted questions no.23 and 27 of A-series (questions no.96 and 100 of C-series) at the time of declaring first result on the premise that the options there under carried incorrect citations and therefore questions no.29, 44 and 45 of A-series

should also be deleted because the options given there under also carries incorrect citations and the expert committee constituted in compliance of the judgment of this court in Giriraj Kumar Vyas, supra, had recommended so, is noticed to be rejected. Perusal of the record produced by RPSC indicates that the questions no.23 and 27, deletion of which was recommended by the said expert committee, had already been deleted by RPSC even before declaration of the first result. Though the said expert committee also therewith recommended deletion of questions no.29, 44 and 45 of A-series but perusal of those questions and the options given there under do not indicate that anyone of them was from outside the syllabus. There was no necessity for the paper setter to give complete citations because in all the four options given to each of these questions, title of the case, year of the judgment and name of the court; being the Supreme Court or names of the High Courts, have been given. That would mean that the judgments delivered in those years by such courts with title given in different options, would have to be related to the questions. The candidates were required to find out as to in which of the judgments by which court and in which year, the principle of law referred to in the questions, was decided, and that rather made the questions easier for the candidates because a leading judgment might be reported in multiple number of law journals, with no law journal having been specifically indicated in options of any of the three questions. Though this court cannot make out a new case on behalf of any of the parties because no one has questioned deletion of two similar questions. But, if RPSC has taken an erroneous decision for the reasons best known to it, that would not be binding on this court and the matter before this court would have to be decided on its own merits. Besides, as per the stand of RPSC, its 'full commission' did not approve the recommendation of the said committee.

Having held that four questions should be deleted and answer key in respect of one should be changed, this court has to now decide what should be the fate of the examination held by RPSC. The Supreme Court in number of cases has held that even if there are inaccuracies in framing of certain questions and there are multiple number of correct options in respect to any or some of the questions, the courts should try to save the process of selection so that the efforts made and exercise undertaken by the examining body as well as the candidates appearing therein, do not go waste. This is settled proposition of law that

the examination should not be ordered to be cancelled and fresh examination should not be ordered unless there are compelling reasons for directing so, particularly when there is no allegation of any malpractice, fraud or corrupt practice. But the core question is as to in what forum the present competitive examination conducted by RPSC should be saved. This would require certain deeper analysis of the situation, which may emerge following the conclusion reached by this court about five questions, referred to above.

Figures disclosed by RPSC reveal that when the result was for the first time revised with deletion of one question and second result was declared, 74 additional candidates were called to face interview and 12 out of them, were selected finally. When second time the result was revised with deletion of two questions and third result was declared, 96 candidates had to be again called for interview, 19 candidates out of them were selected. Thus, 31 (12+19) candidates were selected out of 170 (74+96), who were called to face interview following revision of result on two different occasions. As per RPSC, if simultaneous exclusion was made at the time of first revision of result, 9 candidates were liable to be excluded and at the time of second revision, 31 candidates were liable to be excluded. Had RPSC applied the ratio of three times the available vacancies plus bunching principle, then only 544 candidates could have been called for interview as against which it actually called 672 candidates, three of whom were ineligible and thus out of 669 candidates who were interviewed, 125 were such, who otherwise did not deserve to be called for interview on that formula. Out of these 125 candidates, 23 candidates have been selected as against total 159 vacancies. Since those figures have been furnished by RPSC, they have to be accepted as correct. In view of the analysis that has been made above with regard to correctness of questions and the options given there under, while questions no.13, 18, 25 and 43 of C-series are liable to be deleted, answer key with respect to question 77 (C-series) has be changed. On the figures of earlier two revisions consequent upon deletion of three (1+2) questions, it can easily be visualized that the said exercise is likely to bring about drastic changes in the result that may be ultimately declared.

Since RPSC has not excluded any candidate, who were already interviewed, number of such candidates being 125. As it is, this would always be a surplus number, contrary to its own rule to call only the candidates three times of available number of vacancies. If

above referred to four questions are deleted and answer of one question is changed, number of candidates liable to excluded would also substantially increase and at the same time, number of candidates, who will have to be additionally called to face interview, would also be enormously high. If one were to make a reasonable assessment in the given facts situation, such figure might exceed 200 candidates and could be anywhere between 200 to 300 candidates. If the decision of RPSC that those who have already been interviewed should not be excluded, is not interfered with, the total figure of such candidates plus those who might be required to face interview if the result is so revised, is likely to go in the vicinity of 1000. Considering that only 159 vacancies were notified, despite the provisions of calling of candidates only three times the number of available vacancies, the RPSC would be required to interview candidates more than six times such number of vacancies. In this projected scenario, ultimate picture that is likely to emerge would be quite disturbing, in which those selected may be deselected and many new candidates might get selected.

Contention that RPSC in its 'full commission' has taken a decision that minimum three times candidates of number of vacancies shall be called for interview but there is no maximum limit, therefore, even if it has called four-and-a-half times candidates of number of vacancies for interview, that would not affect the fairness the process of selection, deserves to be rejected for the reasons to be stated presently. Merit of a candidate in any written examination and for that matter in a competitive examination, is determined on the basis of his performance in such written examination. If the candidates are subjected to examination on the basis of wrong answer-key, it is bound to prejudice them affecting fairness of the process of selection. Selection in the instant case though is entirely based on interview but converse of it is also true that those who fail to secure high merit in written examination, would have no chance to get selected. The chance to appear in interview is solely dependent on the position one secures in the merit prepared on the basis of written examination, even if it is styled as the screening test for the purpose of short listing the candidates. More the number of candidates appearing for interview, lesser the chances of one getting selected. If the rule to call candidates three times the number of vacancies is strictly adhered to, probabilities of the candidates falling within that limit, would be much

higher as compared to the situation when four-and-a-half times candidates of the number of vacancies are called for interview. Taking the worst fact scenario, if the principle on which RPSC has called all the candidates, by not excluding those from the list who were already interviewed and calling additional number of candidates each time, after the result was revised, is again applied while implementing this judgment, total number of candidates interviewed/to be interviewed, might go upto 1000. Doing so would frustrate the very purpose of screening test, which is intended to shortlist the candidates. This would amount to treating unequals as equals and would be discriminatory qua the more meritorious candidates, who despite securing better merit would have significantly reduced chances of selection, with number of interviewees so high. Chances of selection of more meritorious candidates would thus be substantially diminished. There being no weightage of the written examination, they will be treated at par with those who may have figured much below in the merit of the written examination than them. Their selection in such a situation would depend on the subjective evaluation of their merit by members of the interviewing board, thus giving them the leverage to eliminate more meritorious candidates as against those with lesser merit. Interpretation placed by RPSC on its rule is thus bound to create an anomalous situation leading to absurd consequences. The screening test in the name of short listing can be justified only if the rule as originally prescribed by RPSC is strictly adhered to.

In view of the aforesaid discussion, all these writ petitions are allowed and impugned select list dated 02.02.2013 (Annexure-5 to Writ Petition No.2142/2013) is set-aside, with following directions:-

(1) That RPSC shall make fresh evaluation of the answer-sheets of the candidates by deleting questions no.13, 18, 25 and 43 and changing answer to question no.77, by taking option (1) as correct, all of C-series, and corresponding questions in A-series, B-series and D-series and on that basis prepare fresh merit list;
(2) That RPSC shall on that basis prepare a list of candidates, who fall within three times the number of vacancies plus applying the bunching principle;
(3) That RPSC shall thereafter conduct interviews of such candidates in that list, who have already not been interviewed;
(4) That RPSC shall thereafter prepare a combined select list of the

candidates, who were already interviewed and those who are interviewed pursuant to this judgment in the order of merit, and forward the same to the government for appointment;

(5) That such exercise shall be undertaken and completed by RPSC within three months from the date copy of this order is received by them. This also disposes of stay applications.

As this judgment comes to a close, it is deemed appropriate to briefly deal with the arguments advanced on behalf of the petitioners placing reliance on the judgment of the Supreme Court in Praveen Singh's case, supra, that interview should not be the only basis for selection and that wherever appointments are entirely based on interview, there is always a room for suspicion for the common appointments. There may be high level selection post where a person may be selected on the basis of interview alone. Reliance was placed on judgment of the Supreme Court in Dr. J.P. Kulshreshtha's case, supra, wherein their Lordships recognized the undetectable manipulation of results being achieved by remote control tacits masked as viva-voce test resulting in sabotage of the purity of proceedings. In Praveen Singh's case, supra, their Lordships held that interviews as such are not bad but polluting it to attain illegitimate ends is bad. The Supreme Court in Para 9 and 10 of the judgment of Praveen Singh, supra, held as under:-

9. What does Kulshreshthas case (supra) depict? Does it say that interview should be only method of assessment of the merits of the candidates? The answer obviously cannot be in the affirmative. The vice of manipulation, we are afraid cannot be ruled out. Though interview undoubtedly a significant factor in the matter of appointments. It plays a strategic role but it also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon only may lead to a sabotage of the purity of the proceedings. A long catena of decisions of this Court have been noted by the High Court in the judgment but we need not dilate thereon neither we even wish to sound a contra note. In Ashok Kumars case [Ashok Kumar Yadav v. State of Haryana : (1985) 4 SCC 417, this Court however in no uncertain terms observed:

"There can therefore be no doubt that the viva voce test performs a very useful function in assessing the personal characteristics and traits and in fact tests the man himself and is therefore regarded as an important tool along with the written examination. (Emphasis supplied).

10. The situation envisaged by Chinnappa Reddy, J. in Lila Dhars case (Lila Dhar v. State of Rajasthan - AIR 1981 SC 1777) on which strong reliance was placed is totally different from the contextual facts and the reliance thereon is

> also totally misplaced. Chinnappa Reddy, J. discussed about the case of services to which recruitment has necessarily been made from persons of mature personality and it is in that perspective it was held that interview test may be the only way subject to basic and essential academic and professional requirements being satisfied. The facts in the present context deal with Block Development Officers at the Panchayat level. Neither the job requires mature personality nor the recruitment should be on the basis of interview only, having regard to the nature and requirement of the concerned jobs. In any event, the Service Commission itself has recognised a written test as also viva voce test. The issue therefore pertains as to whether on a proper interpretation of the rules read with the instructions note, the written examination can be deemed to be a mere qualifying examination and the appointment can only be given through viva voce test - a plain reading of the same however would negate the question as posed."

Although, the Rules of 1978 in so far as they provide for the interview as the only criteria for selection, are not under challenge in these writ petitions, therefore, I shall refrain from going into their validity. But what has transpired in the present matter is indeed makes out a case for review of the rules by the rule-making-authority. Assistant Public Prosecutor is an important post, holder of which is required to assist the court at lowest ladder of judiciary, where he represents the State. His merit or for that matter, lack of it, is bound to affect working of such courts. Interview as the only criteria for appointment may have been a valid consideration at the time when the Rules were framed but in the present times, when the rate of unemployment is so high, an objective test to judge ability of the candidates to find out if actually they possess the knowledge of the subjects of law, which a Public prosecutor would be required to deal with in discharge his duties, should always be preferred being a better method of assessing comparative merit. No doubt, this is a matter of policy for the State to decide but considering the intense cut-throat competition and the immense number of aspirants, it is high time that the State Government revisits the rules so as to prescribe written examination as a necessary component of the process of selection with due weightage to it along side interview. The selection based entirely on the interview may be justified where, as observed by the Supreme Court in Praveen Singh's case, supra, job requires a mature personality. In the present case, fresh law graduates, who have been in practice for only two years, are being treated eligible. There is no reason why weightage should not be given to written examination for the purpose of their selection. This is purest form of selection, which shall eliminate the element of arbitrariness and

subjective choice that may creep in an entirely interview based selection. Even fresh law graduates, who appear for selection for judicial service are required to attempt a two-stage written examination and thereafter only such candidates who appear high enough in the merit are called for interview. RPSC, as it is, has been undertaking the protracted exercise of written examination, though presently styled as a screening examination, for the purpose of short listing. The same amount of exercise may take a different form, which may suffice the purpose. This court therefore deems it appropriate to direct that a Committee consisting of Chief Secretary to the Government of Rajasthan, Principal Secretary to the Government in its Department of Personnel and Principal Secretary to the Government in its Department of Law and Legal Affairs, shall within four months, review the Rules of 1978 so as to consider and decide whether or not, to have written examination along-with interview as the basis for selection to service under the Rules of 1978 for future selections.

And last but not the least, this court is constrained to observe that almost all the selections by RPSC in the recent past have been marred by similar deficiencies. Despite this court repeatedly requiring it to improve its working, things have not changed for better. RPSC needs to improve not only its own working but also the selection of its choice of the examiners, paper-setter and the experts. The answer-keys should be thoroughly checked before the actual examinations. RPSC will do well to itself and lacks of unemployed youths, who look upon it as their saviour that it sets its house in order and take immediate corrective measures to restore its lost glory.

A copy of this order be sent to the Chief Secretary to the Government of Rajasthan, Jaipur, for needful.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR
D.B. Civil Writ Petition No.11708/2013
D.D. 08.07.2013
Hon'ble the Chief Justice Mr. Amitava Roy &
Hon'ble Mr. Justice Veerendr Singh Siradhana

Shanu Goyal ... Petitioner
Vs.
State of Rajasthan & Ors. ... Respondents

Selection process

Furnishing of copies of question paper booklets and answer booklets when process of selection is in progress – Whether RPSC was justified in rejecting request for furnishing copies of question paper booklets and answer booklets, on ground that if her request is granted it would undermine confidentiality of the exercise underway apart from affecting third party rights? Yes. Petitioner, an unsuccessful candidate in the examination conducted for selection to post under Rajasthan Judicial Service, requested R.P.S.C. to furnish copies of question paper booklets and answer booklets of the examination held, so as to enable her to make correct assessment of her performance, when the second leg of selection, i.e., interview was in process. Her request was rejected by R.P.S.C. - Held that as revelation of information under the R.T.I., admidst the selection process was in progress is in conflict with public interest, non-furnishing information as sought for held, justified.

"In view of the emphatic enunciation and the legal proposition as above, we are of the unhesitant opinion that considering the nature of the ongoing selection process as stipulated by the Rules and the bearing of the results of the written examination on the eventual selection of the candidates, the request of the petitioner, as made in the instant petition, ought not to be entertained at this stage. This request, we construe, if allowed, would undermine the confidentiality of the exercise underway, apart from affecting the third party rights. Besides, the very basis of the relief sought for by the petitioner is speculative, i.e., her perception that her performance has not been correctly evaluated for which there is no tangible basis for the Court to act upon."

Cases referred:

1. Central Board of Secondary Education & another v. Aditya Bandopadhyay and others, (2011) 8 SCC 497
2. Institute of Chartered Accountants of India v. Shaunak H. Satya and others, (2011) 8 SCC 781

ORDER

Heard Ms.Nidhi Khandelwal, learned counsel for the petitioner.

For the order proposed to be passed, it is not considered necessary to issue formal notice.

The pleaded version of the petitioner, in short, is that in response to the advertisement for recruitment to the Rajasthan Judicial Service, the petitioner being eligible in terms thereof, offered her candidature where after, the Rajasthan Public Service Commission (for short, hereinafter referred to as 'the Commission') allowed her to participate in the related written examination conducted from 21.3.2013 to 24.3.2013. The petitioner was issued the admit card with Roll No.200184 and she duly took the said examination. The results were declared on 14.6.2013, which disclosed that she was unsuccessful, having scored 150 marks out of 300 marks.

She was declared to have failed in the examination for not having been able to secure minimum qualifying marks as prescribed by the relevant Rules. According to the petitioner, she has been grossly under evaluated, as she had performed very well in the examination.

Thus, being aggrieved, she submitted an application with the Commission for providing her the question paper booklets and her answer booklets in all the four papers so as to enable her to make correct assessment of her performance and evaluation thereof. Her grievance is that her request has not been acceded to, and instead, interview of the successful candidates has been scheduled to be held on 10.7.2013. The petitioner thus seeks judicial intervention for direction to the respondents to provide her the question paper booklets and her answer booklets in all the subjects. A further direction has also been sought for that in case there is any discrepancy in the matter of evaluation of her answers, her performance may be reevaluated and thereafter, her results be declared afresh and she be allowed to participate in the interview to be held on 10.7.2013.

The learned counsel for the petitioner, while reiterating the above, has sought to rely on the decision of the Hon'ble Apex Court in Central Board of Secondary Education & Anr.Vs. Aditya Bandopadhyay & Ors. (2011) 8 SCC 497.

We have duly considered the pleaded averments and the submissions in endorsement thereof.

In terms of the Rajasthan Judicial Service Rules, 2010 (as amended upto 2012) (for short, hereinafter referred to as 'the Rules'), the process of recruitment to the Rajasthan Judicial Service, as involved herein, has two broad segments, namely, written examination followed by interview of the successful candidates. Both these processes of evaluation of the candidates constitute the selection process as a whole and cannot be segregated. The process of selection thus, gets completed only after the interview is conducted and the candidates are selected on the basis of their overall performance for recruitment.

The Hon'ble Apex Court in Central Board of Secondary Education & Anr.Vs. Aditya Bandopadhyay & Ors. (supra), had observed, in the context of the Right to Information Act, 2005, that revelation of information there under should not be in conflict with other public interests, which include efficient operation of the Government, optimum use of limited fiscal resources and preservation of confidential and sensitive information.

In *Institute of Chartered Accountants of India Vs. Shaunak H.Satya & Ors., (2011) 8 SCC 781,* the Hon'ble Apex Court also, with reference to the said enactment, had held that informations relating to intellectual property, question papers, solutions/model answers and instructions, in regard to any particular examination cannot be disclosed before the examination is held as it would harm competitive position of innumerable third parties taking the same. It was clearly underlined as well that the examining body is not liable to give any citizen any such information relating to any particular examination before the date thereof.

In view of the emphatic enunciation and the legal proposition as above, we are of the unhesitant opinion that considering the nature of the ongoing selection process as stipulated by the Rules and the bearing of the results of the written examination on the eventual selection of the candidates, the request of the petitioner, as made in the instant petition, ought not to be entertained at this stage. This request, we construe, if allowed, would undermine the confidentiality of the exercise underway, apart from affecting the third party rights. Besides, the very basis of the relief sought for by the petitioner is speculative i.e. her perception that her performance has not been correctly evaluated for which there is no tangible basis for this Court to act upon.

The petition therefore, lacks in merit and is rejected. The stay application is also dismissed.

***

TAMIL NADU
PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Writ Petition No.6430 of 2013
D.D. 13.06.2013
Hon'ble Mr.Justice V.Ramasubramanian

Mrs.S.Yasmine ... Petitioner
Vs
The Secretary, Tamil Nadu PSC & Anr. … Respondents

Reservation

Caste/Social status – Conversion from Christian Nadar, a backward community, to Islam, a community coming under other communities – Whether Tamil Nadu Public Service Commission is right in rejecting application of petitioner, a Nadar Christian by birth, coming under backward community who had converted herself to Islam coming under 'other communities' considering her case under 'other communities' for purposes of benefit of maximum age limit, as she has crossed 30 years of age? Yes. By relying on judgment of Apex Court in Kailash Sonkar v. Smt. Mayadevi reported in (1984) 2 SCC 91, held that petitioner upon her conversion to Islam has lost her community by status as belonging to 'backward community' and the benefits available to that community. Tamil Nadu Public Service Commission is right in rejecting her application on ground of crossing upper age limit.

Cases referred:

1. W.P.No.21864/2010, decided on 20.01.2011
2. Kailash Sonkar v. Smt. Mayadevi, (1984) 2 SCC 91
3. Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram, AIR 1954 SC 236
4. S. Rajagopal v. C.M. Arumugum, AIR 1969 SC 101
5. S. G.M. Arumugam v. S. Rajagopal, AIR 1976 SC 939
6. S. Anbalagan v. B. Devarajan, AIR 1984 SC 411
7. G. Michael v. S. Venkateswaran, 1952 (1) MLJ 239

ORDER

The petitioner was born to a couple belonging to Christian Nadar community classified as backward community. It appears that she converted herself to Islam and married a Muslim gentleman.

2. In response to the Notification issued by the Tamil Nadu Public Service Commission calling for applications for selection to Group IV Services in the State of Tamil Nadu, issued

in April 2012, the petitioner applied. She was successful in the written examination conducted on 7.7.2012 and hence, by a communication dated 30.11.2012, she was invited for counseling and verification of certificates held on 26.12.2012.

3. At the time of counseling, the petitioner was informed that since she converted herself from Christianity to Islam, she will be treated as a candidate belonging to 'other communities' not entitled to any reservation. Subsequently, the same was also confirmed by the Public Information Officer of the Tamil Nadu Public Service Commission by a communication dated 11.2.2013, holding that the candidature of the petitioner stood rejected, as she had crossed the upper age limit of 30 years, which was fixed for open category candidates. The upper age limit fixed for backward communities was 35 and the petitioner had completed 31 years 2 months and 9 days on the crucial date. Therefore, challenging the said communication, the petitioner has come up with the above writ petition seeking issue of a Writ of Mandamus to direct the respondents to treat her as a candidate belonging to backward community (Muslim).

4. I have heard Ms.Sudarshana Sundar, learned counsel for the petitioner and Ms.C.N.G.Niraimathi, learned counsel appearing for the respondents.

5. There are no disputes on facts. The fact that the petitioner hailed from a family of Christian Nadars categorised as a backward class community, the fact that she got converted to Islam and married a Muslim gentleman and the fact that she had crossed the age of 30 years are all admitted on both sides. If the petitioner is treated as a candidate belonging to backward communities, she would have been treated as within the upper age limit for recruitment. Her candidature is today rejected only on the ground that she is treated as a candidate belonging to 'other categories', for whom, the upper age limit is fixed only as 30.

6. The stand taken by the respondents is:-

(i) That once a person gets converted from one religion to another religion, the community status that he or she originally had would stand eclipsed during the period of continuance in the converted religion; and

(ii) That by converting into another religion, a person cannot acquire a social status of backwardness.

7. In the light of such a stand, two questions arise for consideration namely

a) Whether a person, upon conversion from one religion to another, can claim the social status of backwardness enjoyed by persons, belonging to such sects in that religion? and

(b) Whether, upon conversion from one religion to another religion, the convert would lose out of the social status enjoyed before conversion?

8. A similar issue came up before me in two writ petitions W.P.Nos.9150 and 10859 of 2012, while sitting in Madurai Bench of Madras High Court. In that case also, the writ petitioners earlier belonged to Hindu Nadar community and had got converted into Islam. Without going into the merits of the issues in detail, I allowed both the writ petitions by an order dated 10.1.2013, following a judgment rendered by Vinod K.Sharma, J on 20.1.2011 in W.P.No.21864 of 2010. Apart from following the decision of Vinod K.Sharma, J, I pointed out one more thing, namely

(i) That the right of a person to profess any religion, which includes a right to get converted, is a Fundamental Right; and

(ii) That when such conversion is genuine and not created as a make belief affair for the purpose of getting some benefit, the benefits that go along with conversion cannot be deprived.

9. In the light of the decision that I had already taken at Madurai, the writ petition was taken up even at the stage of admission on the impression that it is a case covered by a precedent. But, in the course of hearing, it was demonstrated by the learned Standing Counsel for the respondents that the issue raised in the writ petition is not as simple as I had presumed it to be at Madurai. Therefore, I heard the learned counsel on both sides at length.

Question No.1:

10. As pointed out earlier, the first question that arises for consideration is as to whether a person, upon conversion from one religion to another, would acquire the status of

backwardness, as available to the others, who are born in that religion. This question does not pose any great difficulty. No person can acquire backwardness or most backwardness socially, upon conversion from one religion to another. Backwardness is determined by birth and not by conversion. Today, a person, who belongs to a community, which is a forward community, cannot get converted to Islam and suddenly become eligible to claim the benefit of reservation available to backward class (Muslim). If this is permitted, the yardstick for determining social backwardness will be left entirely to the will of the individual. Therefore, on the first question, there can be only one answer namely that by conversion, a person cannot acquire the social status that is normally available to persons already professing that religion.

Question No.2:

11. The second question that arises for consideration is as to whether a person professing a particular religion and belonging to a backward or most backward or scheduled caste community, would lose even that status merely by getting converted into another religion or not. This question appears to be a little tricky and is actually on a slippery slope, as evidenced by my own decision at Madurai.

12. Ms.C.N.G.Niraimathi, learned counsel for the respondents relies upon the decision of the Supreme Court in Kailash Sonkdar Vs. Smt.Mayadevi [1984 (2) SCC 91]. The questions that came up for consideration before the Supreme Court in that case were

(i) As to what happens if a member of the scheduled caste or scheduled tribe leaves his present fold, namely Hinduism and embraces Christianity or Islam?
(ii) As to whether it would amount to a complete loss of the original caste, to which, he belonged forever? and
(iii) As to whether there would be revival of the original caste, if he or his children subsequently choose to abjure the new religion and get re-converted to the old religion?

13. In paragraph 12 of its decision, the Supreme Court posed the following questions to itself:

(i) Is membership in a caste or tribe to be determined solely by birth or by allegiance or by the opinion of its members or of the neighborhood? and

(ii) Does one lose his caste on conversion or by ex-communication?

14. To find out an answer to these questions, the Supreme Court referred to the triple test laid down in Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram (AIR 1954 SC 236). The triple test is (i) the reactions of the old body; (ii) the intentions of the individual; and (iii) the rules of the new order. If the old order is tolerant of the new faith and seems no reason to out-cast or ex-communicate the convert and the individual himself desires or intends to retain his old social and political ties, the conversion is only nominal for all practical purposes. It was further pointed out by the Supreme Court in Jasani, which was cited with approval in Kailash Sonkar that if a convert had shown, by his conduct and dealings that his break from the old order is so complete and final, that he no longer regards himself as a member of the old body and there is reconversion and re-admittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advantages, which are special to the old order.

15. In Kailash Sonkar, the Supreme Court referred to the decision in S.Rajagopal Vs. C.M.Arumugam (AIR 1969 SC 101), to point out that the question as to what happens after the reconversion was left undecided in Arumugam. The Court then referred to the latter decision in G.M.Arumugam Vs.S.Rajagopal (AIR 1976 SC 939) and to the subsequent decision in S.Anbalagan Vs. B.Devarajan (AIR 1984 SC 411).

16. After analysing the import of all these decisions, the Supreme Court held in paragraph 27 that "the caste to which a Hindu belongs, is essentially determined by birth and that if a Hindu is converted to Christianity or another religion, which does not recognise caste, the conversion amounts to a loss of the said caste."

17. Despite clinching the issue as such in paragraph 27, the Supreme Court added something more in paragraph 34, which is as follows:

> "In our opinion, when a person is converted to Christianity or some other religion, the original caste remains under eclipse and as soon as during his/her life time, the person is reconverted to the original religion, the eclipse disappears and the caste automatically revives."

18. Therefore, it appears clearly from the decision in Kailash Sonkar that even the original caste, to which the petitioner belonged namely Christian Nadar community categorised as a backward class is now eclipsed due to the conversion to Islam. But, this aspect was not noted either by me or by Vinod K.Sharma,J, when we allowed a couple of writ petitions there.

19. It is interesting to note that even 30 years before Kailash Sonkar was decided by the Supreme Court, a Division Bench of this Court decided similar issue in G.Michael Vs. S.Venkateswaran [1952 (1) MLJ 239]. It was held by the Division Bench therein as follows:

> "Christianity and Islam are religions prevalent not only in India but also in other countries in the world. We know that in other countries these religions do not recognise a system of castes as an integral part of their creed or tenets. Is it different in India? Mr. Venkatasubramania Aiyar frankly confessed that so far as Islam is concerned there is no question that it does not tolerate any difference based on caste distinction. A member of one of the castes of sub-castes when he is converted to Islam ceases to be a member of any caste. He becomes just a Mussalman and his place in Muslim society is not determined by the caste to which he belonged before his conversion. Learned counsel also conceded that generally this is so even when there has been a conversion to Christianity. But he said that there were several cases in which a member of one of the lower castes who has been converted to Christianity has continued not only to consider himself as still being a member of the caste, but has also been considered so by other members of the caste who had not been converted. I am prepared to accept that instances can be found in which in spite of conversion, the caste distinctions might continue. This is somewhat analogous to cases in which even after conversion certain families and groups continue to be governed by the law by which they were governed before they became converts. But these are all cases of exception and the general rule is conversion operates as an expulsion from the caste; in other words, a convert ceases to have any caste."

20. Therefore, the inevitable conclusion of the above discussion appears to be that upon conversion, the petitioner lost her community status as belonging to a backward community. It is more pronounced in the case of the writ petitioner, since she got converted from Christianity to Islam, both of which are more rigid in their denial of the division of the society into castes and communities. Hence, the respondents were right in treating the

category, to which the petitioner belongs, as ‘other communities’. The decision rendered by me in W.P.Nos.9150 and 10859 of 2012 dated 10.1.2013 does not appear to represent the correct position in law.

21. Therefore, the writ petition is dismissed. No costs.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
W.P. (MD) No.18623 of 2013 &
M.P (MD) Nos. 1 and 2 of 2013
D.D. 21.11.2013
The Hon'ble Mr. Justice S.Nagamuthu

K.Kannan ... Petitioner
Vs.
The Controller of Examn.
Tamil Nadu PSC ... Respondent

Examination

Invalidation of answer sheets – Petitioner, Diploma holder in Mechanical Engineering applied for post of Motor Vehicle Inspector Grade-II, for which qualification prescribed being possession of Diploma in, either Mechanical Engineer or Automobile Engineering, but wrote examination in Automobile Engineering subject contrary to note (i) of para (6) of Notification dated 25.06.2012, inviting applications which require writing of examination only in the subject in which qualification has been obtained by the candidate – On noticing that the petitioner had written examination in Automobile Engineering, the subject in which he did not possess qualification, his answer sheets were invalidated – Whether in the circumstances action of Tamil Nadu Public Service Commission in invalidating answer sheets of written examination can be said to be illegal despite the fact that Diploma in Mechanical Engineering is equivalent to Diploma in Automobile Engineering? No.

Held that as per prospectus, when the candidate possess qualification in Mechanical Engineering, he should write the examination in the subject in which he has got qualification – Petitioner is bound by the prospectus and the conditions contained in the notification inviting application – Invalidation of answer sheet in the circumstance cannot be said to be illegal.

ORDER

The Tamil Nadu Public Service Commission had invited applications from eligible candidates for direct recruitment to the vacancies in the post of Motor Vehicle inspector Grade-II under the Tamil Nadu Transport Subordinate Service, as per Notification No.24/ 2012 dated 25.06.2012. The petitioner is a Diploma Holder in Mechanical Engineering one of the qualification prescribed is diploma in Mechanical Engineering or Diploma in Automobile Engineering. The petitioner duly submitted his application. He wrote the examination. Finally, the Controller of Examinations, Tamil Nadu Public Service

Commission, by proceedings in Memorandum No.5020/APD-H/MVI Grade II/2012 dated 30.09.2012, has invalidated the answer sheet of the petitioner relating to the written examination held on 26.08.2012 for the reason that he had violated Note (1) of Para –6 of the Notification. Challenging the same, the petitioner is before this Court with this writ petition.

2. This writ petition has come up today for admission. I have heard the learned counsel for the petitioner and also perused the records carefully.

3. The learned counsel for the petitioner would submit that Diploma in Mechanical Engineering is equivalent to Diploma in Automobile Engineering and therefore, the petitioner was right in choosing to write examination in the subject Automobile Engineering. Thus, according to the learned counsel for the petitioner, invalidation of his answer sheet is illegal.

4. I have heard the above submissions. As I have already pointed out, as per the prospectus, the qualification prescribed for the said post is either Diploma in Automobile Engineering or Diploma in Mechanical Engineering. But Para –6 of the prospectus speaks of Scheme of written examination. In Note (1), it is stated as follows:

> "Candidates should specify in the application, the subject in which they wish to be examined. They should choose only the subject in which they have obtained the prescribed qualification."

5. Referring to the above Note only the petitioner's answer sheet has been invalidated, because the petitioner has written the examination in Automobile Engineering instead of witting the same in Mechanical Engineering, which is the subject in which he has obtained the qualification. Though Diploma in Automobile Engineering as well as Diploma in Mechanical Engineering are the qualifications for making application and to write the examination, as per the prospectus, when the candidate choose to write the examination, he should do it in the subject in which he has got qualification. Thus, the petitioner is bound by the prospectus. But the learned counsel for the petitioner would submit that the above

Note itself is challenged in this writ petition. In my considered opinion, it is too late in the day for the petitioner to challenge the same, because, accepting the terms and conditions of the prospectus, the petitioner submitted his application and wrote the examination. Having done so, it is open for the petitioner at this length of time to question the terms and conditions of the prospectus. In such view of the matter, I do not find any merit in this writ petition.

6. In the result the writ petition fails and accordingly the same is dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

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UTTARANCHAL
PUBLIC SERVICE COMMISSION

IN THE SUPREME COURT OF INDIA
Civil Appellate Jurisdiction
Civil Appeal No.3034 OF 2007 & Connected matter
D.D: 03.03.2014
Hon'ble Justice Sri Surinder Singh Nijjar &
Hon'ble Justice Sri. Prakash Desai

Uttaranchal P.S.C. … Appellant
Vs.
Jagdish Chandra Singh Bora & Anr. … Respondents

Recruitment

Awarding of weightage of bonus marks to trained apprentice candidates in recruitment to post of Junior Engineers – Whether High Court of Uttaranchal committed an error of jurisdiction, in directing Uttaranchal Public Service Commission to prepare select list of Junior Engineers by adding ten bonus marks to marks obtained in written examination and personality test in respect of trained apprentice candidates, by construing that Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) (First Amendment) Rules, 2003, which provides for adding weightage of 10 bonus marks in the recruitment held to the post of Junior Engineer, has been issued amending Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) Rules, 2001 which became ineffective with effect from 11.11.2002? Yes.

As an emergency measure recruitment to the post of Junior Engineers was entrusted to the Uttaranchal Public Service Commission as per provisions of Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) Rules, 2001. As per provisions of 2001 Rules it had one year life and was to become ineffective after process of recruitment was completed as an one time measure. Accordingly life of the 2001 Rules ended on 11.11.2002. However, Government by issue of Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) (First Amendment) Rules, 2003, substituted Rule 5(4)(iv) of 2001 Rules, providing for awarding 10 bonus marks in favour of trained apprentice candidates who applied for recruitment to the post of Junior Engineers. Uttaranchal Public Service Commission though sought clarification from Government about applicability of 2003 Rules to the recruitment in progress, without taking into consideration the said 2003 Rules prepared the select list of Junior Engineers. Unsuccessful trained apprentice candidates approached the High Court of Uttaranchal for directions to Uttaranchal Public Service Commission to redo the select list by adding weightage of 10 bonus marks to them. High Court of Uttaranchal, without taking into consideration that by the time amendment was issued for 2003 Rules, the life of 2001 Rules has already been expired and became ineffective, directed Uttaranchal P.S.C. to re-do the select list by adding 10 bonus marks in respect of trained apprentice candidates. Aggrieved by the said directions, Uttaranchal Public Service Commission has challenged the said direction on ground that the High Court has erred in issuing such directions.

Held:

25. We may also point out that even if the 2003 Rules have been framed on the directions of the High Court, the rules came into force on 31st July 2003. Therefore, by no stretch of imagination can it be said that the aforesaid rules were applicable to the selection which was governed under the 2001 Rules and the advertisement dated 11th November, 2001. Candidates had applied on the basis of the aforesaid advertisement. As noticed earlier, the advertisement in this case was issued on 27th November, 2001. It had set out the criteria of selection laid down in the 2001 Rules which were notified on 12th November, 2001. Written examination in respect of aforesaid advertisement was held by IIT, Roorkee on 12th January 2002.

In such circumstances, it would be wholly impermissible to alter the selection criteria which was advertised on 27th November, 2001. Since no preference had been given to the trained apprentices, many eligible candidates in that category may not have applied. This would lead to a clear infraction of Article 14 of the Constitution of India.

27. For the reasons which are not made clear in the pleadings or by the learned counsel for any of the parties, the 2003 Rules were framed and enforced with effect from 31st July, 2003. Consequently, when the interviews were being conducted, the PSCU was faced with the 'amendment rules' of 2003. Therefore, the PSCU by a letter dated 5th April, 2004 sought clarification as to whether 2001 Rules would be applicable or Rules of 2003 would be applicable, to the selection process. In these circumstances, the State Government wrote to the PSCU on 29th April 2004, on the basis of legal advice that preference to the trained apprentices is to be given only if the two candidates secured equal marks. The legal opinion clarified that the amended rules of 2003 would not be applicable to the selection process which had already stated. Therefore, the selection process under the 2001 Rules was excluded."

Cases referred:

1. U.P. State Road Transport Corporation & Another v. U.P. Parivahan Nigam Shishukhs Berozgar Sangh & others (1)
2. U.P. Rajya Vidyut Parishad Apprentice Welfare Association & Another v. State of U.P. & Others (2)
3. N.T. Devind Katti & others v. Karnataka Public Service Commission & others (3)
4. P. Mahendran & others v. State of Karnataka & others (4)
5. Sonia v. Oriental Insurance Co. Ltd., and others (5)
6. Chandra Prakash Tiwari and others v. Shakuntala Shukla and others (6)
7. Manish Kumar Shahi v. State of Bihar and others (7)
8. Ramji Purshottam (dead) by Lrs. And others v. Laxmanbhai D. Kurlawala (dead) by Lrs. And another (8)

J U D G M E N T

Surinder Singh Nijjar, J.

1. These appeals have been filed by the Public Service Commission, Uttaranchal, Haridwar (hereinafter referred to as 'PSCU') challenging the judgment dated 2nd March, 2006 of the High Court of Uttaranchal at Nainital rendered in Writ Petition Nos. 149, 129, 135, 136, 137, 147, 148, 162, 169, 255, 302, 186, and 300 of 2004. By the aforesaid judgment, the High Court has given a direction to the appellant to give weightage of 10 bonus marks to the trained apprentice candidates as per the "Uttaranchal Subordinate Service [Emergency Direct Recruitment (First Amendment)] Rules, 2003" in the selection held by UPSC; and after adding 10 marks, merit list of the selected candidates be prepared and recommended for the appointment to the Government. It has also been directed that all the successful candidates shall be given appointment in the remaining vacancies of the Junior Engineers in the various departments of the Government and the instrumentalities of the State according to the merit list of apprentices selected in the merit list. It has been further directed that the aforesaid order shall survive for one year from the date of its publication.

2. Civil Appeal No.3036 of 2007 impugns the judgment of the High Court of Uttaranchal at Nainital dated 31st March, 2006 wherein the High Court has allowed the Writ Petition Nos. 446 of 2006, 275 of 2004, 166 of 2004, 138 of 2006, 333 of 2004 and 775 of 2006 in terms of the earlier judgment dated 2nd March, 2006 which is subject matter of Civil Appeal No.3034 of 2007.

3. In the year 2001, large number of vacancies of Junior Engineers existed in various departments of the State of Uttaranchal. Therefore, a proposal was sent by the State Government on 2nd November, 2001 to the PSCU for conducting a written examination. The written examination had to be conducted by IIT, Roorkee as the PSCU did not have the necessary infrastructure. The PSCU had been established in May, 2001 soon after the State of Uttaranchal came into existence on 9th November, 2000. On 12th November, 2001, the Government of Uttaranchal framed Uttaranchal Subordinate

Engineering Service (Emergency Direct Recruitment) Rules, 2001 under proviso to Article 309 of the Constitution of India. These rules were notified vide Gazette Notification No.1973/One-2001 dated 12th November, 2001. It appears that these rules were framed only for filling up large number of post of Junior Engineers which became available upon the creation of State of Uttaranchal. Therefore, the rules specifically provided as follows:-

> "The Rules shall become ineffective after the process of Recruitment is completed as it has never been promulgated. Candidates selected on the basis of Rules shall be governed by Service Rules and G.Os. as applicable before in the Govt."

4. Rule 5 which dealt with the manner in which the candidate was to be selected and the merit list was to be prepared reads as under:-

> "4. Conduct method of Examination
>
> (1) Appointing authorities shall inform the no. of SC, ST and OBC vacancies in all the categories and decide the vacancies to Dept. of Personnel of State Govt. who will publish the same in the newspapers.
>
> (2) The application for selection shall be invited in prescribed format of the Govt. for consideration.
>
> (3) Even if the relevant Service Rules regarding the issue or Govt. Orders are contrary, then also with the permission of IIT Roorkee shall conduct the examination for the Direct Recruitment of Senior Engineers for the candidates.
>
> (4) The marks of interview to be added to marks of the written examination for selection.
>
> (5) Written examination shall be conducted by the IIT Roorkee according to Rules Prescribed by the State Govt.
>
> (6) Marks for the interview shall be determined by the State Govt. which shall not be more than 12.5"/o of the written examination.
>
> (7) Question papers of the written examination shall be printed both in Hindi and English languages.
>
> (8) Written examination shall be conducted at place on time as decided by IIT Roorkee.

(9) IIT Roorkee shall prepare list on the basis of written examination and shall make it available to the Public Service Commission, Uttaranchal.

(10) Commission shall call the candidates for interview on the basis of minimum qualifying marks in the written examination.

(11) Commission shall prepare the merit list as shown in the written examination and interview. If two or more candidates score equal marks their the candidate scoring more marks in written exam shall be preferred. If marks in written exam are also equal the candidate of more age shall be preferred and to be kept in merit list accordingly. The names of candidates in merit list shall not be more than 25% of the total no. of vacancies.

(12) Commission shall forward the merit list to the Department of Personnel."

5. On 27th November, 2001, the State issued an advertisement for filling up the vacancies of Junior Engineers, which was accompanied by a prescribed format of the application form. The terms and conditions of the advertisement were strictly in conformity with the 2001 rules. The written examination was held by the IIT Roorkee on 12th January, 2002. The result of the written examination was declared on 10th July, 2003.

6. It appears that a notification was issued on 31st July, 2003, superseding all the existing rules and regulations of selection process in regard to direct recruitment of Junior Engineer in various departments. The notification reads as under:

"Govt. of Uttaranchal
Department of Personnel
Notification Misc.
Dated 31.07.2003

No. 1097/one-2 2003 Hon'ble Governor under Article 309 Constitution of India for different Engineering Departments the effective Services Rules are encroached once and Rules framed for direct recruitment of Junior Engineers as follows:

Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) (First Amendment) Rules 2003.

3. Brief name, Start and application/effect

(i) The Rules shall be called Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) (First Amendment) Rules 2003.

(ii) The Rules shall be applicable-with immediate effect.

(iii) Substitution of Rule 5 (4)

(iv) Rule 5(4) given in column 1 to be substituted by Rule given in column 2 in Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) Rules 2001.

Present Rule	**Substituted Rule**
5(4) The marks of interview to be added to marks of the written examination for selection.	5(4) for selection marks scored by the candidate in written exam and interview to be added but for the preparation of merit list such candidates who had completed apprenticeship in the concerned department to be given bonus of 10 marks in the total marks scored in written exam and interview.

7. The candidates who had cleared the written examination were called for interview from 18th December, 2003 to 22nd December, 2003. In the notification dated 31st July, 2003, Rule 5(4) provided that for the purpose of selection, the marks obtained in the written examination would be added in the marks obtained in the interview, but for preparing the final merit list, the candidates who had completed apprenticeship would be given extra 10 marks in addition to the marks obtained by them in the written examination and interview. However, by letter dated 29th April, 2004, it was clarified that 10 marks were to be added to the total marks obtained by the candidates who had completed apprenticeship, only where the direct recruit candidate and the apprentice candidate stood on equal footing. Thereafter, the selected list of the successful candidates was prepared and forwarded to the State Government on 15th May, 2004.

8. Aggrieved by the non-grant of additional 10 marks, large number of unsuccessful candidates in the apprenticeship category filed a number of petitions, seeking a writ in the nature of mandamus directing the appellant to make a selection after giving benefit

of 10 additional marks to all the candidates who had completed apprenticeship. In the writ petition filed before the High Court, the petitioners had claimed that the preference had to be given to the trained apprentices in view of the directions by this Court in the case of U.P. State Road Transport Corporation & Anr. Vs. U.P. arivahan Nigam Shishukhs Berozgar Sangh & Ors.[1] In the aforesaid judgment, the following directions were given :-

> "(1) other things being equal, a trained apprentice should be given preference over direct recruits.
>
> (2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v. N. Hargopal would permit this.
>
> (3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.
>
> (4) The training institute concerned would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

9. These directions were reiterated by this Court in U.P. Rajya Vidyut Parishad Apprentice Welfare Association & Anr. Vs. State of U.P. & Ors.[2]

10. On the basis of the aforesaid judgments, the trained apprentices claimed to be a class apart. It was claimed that the classification between the apprentices and others would not be only for the purpose of giving preferential treatment in the selection but also for giving relaxation in upper age limit, relaxation in the matter of getting their names sponsored by the employment exchange.

11. The High Court has allowed the writ petition solely on the ground that the clarification dated 29th April, 2004 could not have the effect of amending the statutory rules framed under Article 309 on 31st July, 2003. It is held that the direction issued on 29th April, 2004 related to the same selection to which the amended rules of 2003

were applicable. Therefore, the G.O. dated 29th April, 2004 being in the nature of executive instructions could not supplant the statutory rules but could only supplement the statutory rules. With this reasoning, the High Court issued a writ in the nature of mandamus directing the PSCU to give weightage of additional 10 marks to the apprentices by adding the same to the total marks secured by them in the written examination and the interview.

12. We have heard the learned counsel for the parties.

13. Mr. Vijay Hansaria, learned counsel appearing for the appellant, has submitted that the High Court has misread the directions issued by this Court in the case of U.P. State Road Transport Corporation & Anr. (supra). He further submitted that the selection was governed by the 2001 rules which had been framed only for making selection on the large number of posts that have become available on the creation of Uttaranchal. He submits that the 2001 Rules specifically provided that it shall be applicable only for the direct recruitment in the year 2002. The process for this recruitment had commenced when the advertisement was issued in the year 2001. All the respondents had applied pursuant to the aforesaid advertisement. Under these rules, no preference was given to the trained apprenticeship. Even the advertisement did not indicate any preference to the trained apprentices. Learned senior counsel pointed out that 2001 rules became ineffective with effect from 11th November, 2002 as provided in Rule 6 thereof. Mr. Hansaria further submits that the 2003 rules have been wrongly read by the High Court to be an amendment of the 2001 rules. After making a reference to the 2003 Rules, learned senior counsel pointed out that the 2003 Rules came into force on 31st July, 2003. Therefore, the High Court has erred in treating the same to be as amendment of the 2001 rules, which no longer existed.

14. Learned senior counsel further submitted that 2003 rules cannot be given retrospective effect as no such express provision has been made to that effect. He relies on the judgment in N.T.Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors.[3] P.Mahendran & Ors. Vs. State of Karnataka & Ors.[4] and Sonia Vs. Oriental Insurance Co. Ltd. & Ors.[5] He also submits that all the respondents having participated

in the selection process cannot be permitted to challenge the same. He submitted that the final select list was published on 15th May, 2004. Only when the respondents did not get selected on merit, they filed the writ petitions in June, 2004. He relies on the judgments in Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors.[6] and Manish Kumar Shahi Vs. State of Bihar & Ors. [7]

15. Mr. Hansaria further pointed out that 841 posts had been advertised on 27th November, 2001. All the posts have been duly filled up soon after selection. Therefore, the High Court committed an error of jurisdiction in issuing the directions to prepare the merit list after adding 10 marks to the marks obtained by the trained apprentices. He submitted that in any event, all the vacancies having been filled up immediately after the publication of the select list, the mandamus issued by the High Court cannot possibly be implemented.

16. Mr. C.U. Singh, appearing for the respondents submitted that vested rights of the respondents under 2003 Rules could not have been taken away by issuance of executive instruments issued on 29th April, 2004. He further submitted that in this case no retrospective effect is being given to the 2003 Rules as these Rules were framed in respect of antecedent facts. He relies on the judgment of this Court in Ramji Purshottam (dead) by Lrs. & Ors. Vs. Laxmanbhai D. Kurlawala (dead) by Lrs. & Anr.[8]

17. We have considered the submissions made by the learned counsel for the parties.

18. In our opinion, it is not at all necessary to examine all the submissions made by the learned counsel for the parties. The 2001Rules were specifically framed to cater for an emergency as the State of Uttaranchal came into existence on 9th November, 2000. The State sent a letter/request on 2nd November, 2001 to PSCU to hold a written examination to fill up large number of posts which have become available on creation of the new State. On 27th November, 2001, the State Government advertised 841 posts of Jr.Engineers in different departments throughout the State. There was such an urgent need for recruitment that since the infrastructure of the PSCU was not in existence, a request was made that the posts be taken out of the purview of the PSCU on this one

occasion, and the written examination be conducted by IIT, Roorkee. PSCU agreed to such procedure but limited only to the holding of the written examination. The interviews were still to be held by the PSCU. The Rules of 2001 were specifically framed for making the selection of the candidates, who would have applied for the available posts.

19. The Rules were notified on 12th November, 2001. Within two weeks, the necessary advertisement was issued on 27th November, 2001. The 2001 Rules specifically provided as under:-

1. Brief name, Start and application/effect

(i) The Rules shall be called Service (Emergency Direct Recruitment) Rules, 2001.

(ii) The Rules shall be applicable with immediate effect.

(iii) The Rules shall be applicable only for the direct recruitment in the year 2002 for Subordinate Engineering Services.

(iv) The Rules shall be applicable to all the Department for Direct Recruitment of Junior Engineers.

(v) The rules shall have over riding effect on all the applicable service Rules for the purpose of Direct Recruitment of Junior Engineer for once only.

20. A perusal of the aforesaid would clearly show that all the candidates including the respondents, who applied in response to the advertisement dated 27th November, 2001 were governed by the 2001 Rules. Rule 4 provides comprehensive criteria for making a selection to the post of Jr. Engineer. The written examination was to be conducted by the IIT, Roorkee. The selection was to be made on the basis of the total marks obtained by the candidates in the written examination and the interview. The list of successful candidates of the written examination was to be made available by IIT, Roorkee to PSCU. Thereafter, the PSCU was to call the candidates for interview on the basis of minimum qualifying marks in the written examination. Section 4(11) provides that the PSCU shall prepare a merit list by adding marks obtained by the candidates in the written examination and the interview. If two or more candidates secured equal marks, the candidates securing more marks in the written examination shall be preferred. In case, the marks obtained by two candidates in written examination are also equal, the older

candidate shall be preferred to the younger. Therefore, it is evident that consciously the State had not provided for any preference to be given to the trained apprentices under the Rules. Keeping in view the provisions contained in the Rules, the State Government issued an advertisement on 27th November, 2001. The advertisement also did not provide for any weightage to be given to the trained apprentices. All the candidates including the respondents participated in the selection process, being fully aware that no preference will be given to the trained apprentices. This was inspite of the directions issued by this Court in UPSRTC's case (supra). Therefore, it cannot be said that any accrued or vested right had accrued to the trained apprentices, under the 2001 Rules.

21. The result of the written examination was declared on 10th July, 2003. The interview was conducted by the PSCU from 18th December, 2003 to 22nd December, 2003. Thereafter, only the result was to be declared and the appointments were to be made on the basis of merit obtained by the candidates in the selection process.

22. As noticed earlier, the 2001 Rules specifically provided that the Rules are applicable only for the direct recruitment in the year 2002 for subordinate engineering service. The Rules also make it clear that the same shall become ineffective after the process of recruitment is completed. Thereafter, the selected candidates shall be governed by the Service Rules and the Government Orders applicable in the Government. This makes it abundantly clear that on 12th November, 2002, the 2001 Rules ceased to exist.

23. However, on 31st July, 2003, the 2003 Rules were framed. A bare perusal of the title of the Rules would show that the Rules came into force on 31st July, 2003. The Rules supersede all existing Rules but Rule 5(4) of 2001 Rules is transposed by Rule 5(4) of the 2003 Rules. Rule 5(4) of the 2001 Rules provided that marks of interview shall be added to the marks of written examination for selection. But Rule 5(4) of the 2003 Rules provides that the marks obtained in the written examination and the marks obtained in the interview shall be increased by 10 extra marks in case of trained apprentices. In our opinion, the respondents could have taken no advantage of these Rules. The Selection process was under the 2001 Rules. The Rules of 2001 as well as advertisement did not provide for any additional marks/weightage to be given to the trained apprentices. The Rules of 2003 came

into force on 31st July, 2003. No retrospective effect can be given to the same without any express provision to that effect being made in the Rules. This apart, the 2001 Rules that were said to be amended were, in fact, non-existent. The 2001 Rules expired on 11th November, 2001 in terms of Rule 6 thereof. The High Court, in our opinion, was in error in holding that 2003 Rules were applicable to the process of selection which had commenced in 2001 under the 2001 Rules.

24. In our opinion, the High Court has wrongly concluded that as the 2003 Rules had been framed in obedience to the directions issued by a Single Judge of the Uttaranchal High Court in Writ Petition No.44 (SB) of 2002 titled Subhash Chandra Vs. State of Uttaranchal, they would relate to the selection which was governed by the 2001 Rules and the advertisement issued by the State on 27th November, 2001. We have already earlier concluded that although 2003 Rules are titled as 'First Amendment Rules', the same is a misnomer. The 2003 Rules could not have the effect of amending the 2001 Rules which had already ceased to exist in terms of Rule 6 thereof with effect from 11th November, 2001. The respondents, therefore, cannot claim that any accrued or vested right of the trained apprentices has been taken away by the 2004 clarification, in relation to the selection governed by the 2001 rules, and advertisement dated 11th November, 2001.

25. Furthermore, the High Court in Subhash Chandra's case (supra) had only reiterated the directions which have been given by this Court in the case of UPSRTC (supra). Inspite of those directions being in existence, no preference had been provided to the trained apprentices in the 2001 Rules. We had earlier also noticed that the respondents, unsuccessful candidates who were trained apprentices, woke up only after the select list was published by the PSCU. We may also point out that even if the 2003 Rules have been framed on the directions of the High Court, the rules came into force on 31st July, 2003. Therefore, by no stretch of imagination can it be said that the aforesaid rules were applicable to the selection which was governed under the 2001 Rules and the advertisement dated 11th November, 2001. Candidates had applied on the basis of the aforesaid advertisement. As noticed earlier, the advertisement in this case was issued on 27th November, 2001. It had set out the criteria of selection laid down in the 2001

Rules which were notified on 12th November, 2001. Written examination in respect of aforesaid advertisement was held by IIT, Roorkee on 12th January, 2002. The result of the written examination was declared on 10th July, 2003. The 2003 Rules were notified on 31st July, 2003. The interviews were conducted between 18th December, 2003 to 22nd December, 2003. Under the 2001 Rules, the marks to be given for the interview could not be more than 12.5% of the written examination. Under the 2001 Rules, there was no provision for adding 10 marks to the total marks of written test and interview in the category of trained apprentices. This was sought to be introduced by the 2003 Rules which came into force on 31st July, 2003. In such circumstances, it would be wholly impermissible to alter the selection criteria which was advertised on 27th November, 2001. Since no preference had been given to the trained apprentices, many eligible candidates in that category may not have applied. This would lead to a clear infraction of Article 14 of the Constitution of India. To this extent, we accept the submission made by Mr.Hansaria. Selection procedure cannot be altered after the process of selection had been completed. [See: K. Manjusree Vs. State of Andhra Pradesh & Anr. (2008) 3 SCC 512 (para 27)].

26. We are not able to accept the submission of Mr.Hansaria that the benefit of 10 additional marks to the trained apprentices is limited only to those trained apprentices who have secured equal marks with one or more candidates in the category of direct recruits. The learned senior counsel seeks to support the aforesaid submission from the directions issued by this Court in the case of UPSRTC (supra) which was as follows:

> "Other things being equal, a trained apprentice should be given preference over direct recruits."

The only natural meaning of the aforesaid phrase 'other things being equal' is that all the candidates must have been subjected to the same selection process, i.e., same written test and interview. Further that their inter-se merit is determined on the same criteria, applicable to both categories. In this case, it is the aggregate of the marks secured by the candidate in the written test and the interview. The additional 10 marks are given to the apprentices as they are generally expected to secure lesser marks than the direct

recruits in the written examination. Thus, by adding 10 marks to the total of the written examination of the trained apprentices, they are sought to be put at par with the direct recruits. Therefore, necessarily this preference is to be given to all the trained apprentices across the board. It cannot be restricted only to those trained apprentices who fortuitously happen to secure the same marks as one or more of the direct recruits.

In case the additional 10 marks are restricted only to such trained apprentice candidates, it would result in hostile discrimination. This can be best demonstrated by giving an illustration. Assume there are ten candidates belonging to trained apprentices category. Let us say that candidate No.1 secures 50% total marks on the basis of the marks obtained in the written test plus interview, whilst candidates No.2 to 10 secure total marks ranging from 51 to 59. But candidate No.1 has secured total marks identical to a direct recruit, i.e., 50%; whereas candidates No.2 to 10 have not secured marks at par with any direct recruit candidate. On the basis of the clarification dated 29th April, 2004, candidate No.1 will get the benefit of 10% weightage and candidates No.2 to 10 will not. Therefore, after weightage is given to candidate No.1, his/her total marks would be 60%. This would put him/her over and above, all other candidates, i.e., candidates No.2 to 10 who have secured higher marks than candidate No.1 who actually has lesser marks, if no weightage is given to his/her. Therefore, candidate Nos. 2 to 10 securing higher marks would be shown at a lower rank to candidate No.1 in the inter-se merit. In such a situation, a trained apprentice candidate securing lesser marks than his colleague would not only steal a march over the direct recruits but also over candidates who got more marks within his own category. Such an interpretation would lead to absurd consequences. This is not the intention of giving the preference to the trained apprentices. The interpretation sought to be placed by Mr. Hansaria would, in fact, create a sub-classification within the class of trained apprentice candidates. Such a sub-classification would have no rationale nexus, with the object sought to be achieved. The object of the preference is to give weightage to the apprentices so that the State does not lose the benefit of the training given to them, at the State expense. This would be a clear breach of Article 14 of the Constitution of India.

27. The only direction issued by this Court in UPSTRC's case (supra) was to give preference to the trained apprentices over direct recruits. No direction is given in the

judgment as to how the preference is to be given. It was left entirely to the discretion of the Government to make the necessary provision in the statutory rules. In that case, number of candidates who had successfully completed apprenticeship under the Apprenticeship Act, 1961 claimed appointment upon completion. In support of their claim, the candidates relied on number of Government Orders, which according to them held out a promise that on successful completion of apprenticeship, they would be given employment. The High Court issued a writ in the nature of Mandamus directing that such candidate should be given employment. In such circumstances, UPSRTC came before this Court and submitted that there was no obligation on the State Government to ensure employment to any trained apprentices. This Court analyzed the various Government Circulars and came to the conclusion that there is no promise held out for the candidates of definite employment. However, in order to ensure that the training given to the apprentices at the State expense is utilized, certain directions were issued, which have been reproduced earlier. As noticed earlier, inspite of the aforesaid directions, no preference was given to the trained apprentices in the selection process which was governed by the 2001Rules, and the advertisement dated 27th November, 2001. Whilst the process of selection was still in progress, the High Court rendered its judgment in the case of Subhash Chandra (supra). For the reasons which are not made clear in the pleadings or by the learned counsel for any of the parties, the 2003 Rules were framed and enforced with effect from 31st July, 2003. Consequently, when the interviews were being conducted, the PSCU was faced with the 'amendment rules' of 2003. Therefore, the PSCU by a letter dated 5th April, 2004 sought clarification as to whether 2001 rules would be applicable or Rules of 2003 would be applicable, to the selection process. In these circumstances, the State Government wrote to the PSCU on 29th April, 2004, on the basis of legal advice that preference to the trained apprentices is to be given only if the two candidates secured equal marks. The legal opinion clarified that the amended rules of 2003 would not be applicable to the selection process which had already started. Therefore, the selection process under the 2001 Rules was excluded.

28. However, we find substance in the submission made by Mr. C.U. Singh that 2004 clarification would not have the effect of amending 2003 Rules. Undoubtedly, 2004

clarification is only an executive order. It is settled proposition of law that the executive orders cannot supplant the rules framed under the proviso to Article 309 of the Constitution of India. Such executive orders/instructions can only supplement the rules framed under the proviso to Article 309 of the Constitution of India. Inspite of accepting the submission of Mr. C.U. Singh that clarification dated 29th April, 2004 would not have the effect of superseding, amending or altering the 2003 Rules; it would not be possible to give any relief to the respondents. The criteria under the 2003 Rules governs all future recruitments. We have earlier already concluded that no vested right had accrued to the respondents, the trained apprentices, under the 2001 Rules. We do not accept the submission of Mr.C.U.Singh that the claim of the respondents (trained apprentices) would be covered under the 2001 Rules by virtue of the so called amendment made by 2003 Rules. We are of the opinion that the High Court committed an error, firstly, in holding that the 2003 rules are applicable, and secondly, not taking into consideration that all the posts had been filled up by the time the decision had been rendered.

29. For the reasons stated above, we are of the opinion that the judgment rendered by the High Court is unsustainable in law and the same is hereby set aside. The appeals are allowed with no order as to costs.

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UTTARKHAND
PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition No. 244 OF 2010 (S/S) & connected cases
D.D. 05.05.2010
Hon'ble Mr. Justice Tarun Agarwala

Km. Shalini Dadar & Ors. … Petitioners
Vs.
Uttarakhand PSC … Respondent

Reservation

Reservation under Uttaranchal Female category – Petitioners, in response to advertisement inviting applications to recruit to posts of Review/Assistant Review Officers, filled in OMR application forms. Against column (6) & (8) meant for furnishing general information it was mentioned as Female, and domicile of Uttaranchal respectively. However, as against column (12) and its sub-columns meant for claiming horizontal reservation, nothing was mentioned and left blank. Consequently, petitioners were not given the benefit under Scheduled Caste Uttaranchal female category and were not selected to take main examination even though less meritorious candidates under SC Uttaranchal Female category were selected – Whether in the circumstances, can it be said that Uttaranchal Public Service Commission has committed an error in not giving benefit of reservation to petitioners under SC Uttaranchal Female category? No. –

Held that column No.9(2) & (3) of the advertisement clearly indicating that candidates were required to fill up reservation column and its sub-columns in order to avail benefit of reservation, and petitioner not having filled the said column have to blame themselves. Uttaranchal Public Service Commission has committed no error in not granting benefit of reservation.

ORDER

This group of petitions raises a common controversy and is being decided together. For facility, the facts of writ petition No.244 of 2010 (S/S) is taken into consideration.

The Uttarakhand Public Service Commission issued an advertisement inviting applications for the post of Review Officer/Assistant Review Officer. The petitioner applied for the said post. The petitioner filled the OMR form (known as Optical Marks Reader) in order to sit for the preliminary examination to be followed by the written examination in the event the petitioner was found to be successful in the preliminary examination. In this OMR form, the petitioner disclosed in column No.6 that she belongs to the female gender. In column No.8, the petitioner showed herself as a candidate belonging to the domicile of Uttaranchal. Column No.12 and the sub-columns refers to the

reservation category. In the first column, the petitioner showed herself as belonging to a Scheduled Castes category. The 2nd sub column of column No.12 indicated the reservation in the horizontal category, namely, as to whether the applicant was a dependant of freedom fighter or was a skilled player or was a working government servant of Uttaranchal or was a Uttaranchal female. The 3rd sub column of column No. 12 also related to horizontal reservation, namely, as to whether the candidate belongs to a physically handicap category. In column No.12, the petitioner showed herself as belonging to a Scheduled Castes category and did not claim the horizontal reservation nor marked the column relating to Uttaranchal female.

The petitioner appeared in the preliminary examination. The results were declared on 11th March, 2010 which was published in the local dailies on 12th March, 2010. The petitioner's name did not figure in the aforesaid result. The petitioner made an inquiry under the Right to Information Act and found that she had scored 87 marks and that she could not qualify for the written examination as the cut off marks in the Scheduled Castes category was 112 marks. The petitioner also came to know that the cut off marks in the category of the Scheduled Castes for Uttaranchal female was 82 marks.

The petitioner accordingly filed the present writ petition claiming that since she is a domicile of Uttaranchal and is a female and that she is entitled to be given the horizontal reservation as an Uttaranchal female. The petitioner contended that since the cut off marks for Uttaranchal female in the Scheduled Castes category is 82 marks and the petitioner has obtained 87 marks, consequently, the petitioner is entitled to be treated as qualified to appear in the written examination.

Similar is the position in other connected writ petitions and the petitioners contend that they are entitled to be given the horizontal reservation as an Uttaranchal female and that they have more marks than the cut off marks in that category.

Heard Shri Narendra Bali, Shri Bhagwat Mehra, holding the brief of Shri Kamlesh Tiwari and Shri Sandeep Tiwari, the learned counsel for the petitioners and Shri B.D. Kandpal, the learned counsel for the respondents.

Admittedly, the petitioners did not claim the horizontal reservation as an Uttaranchal female while filling column No.12 of the OMR form. The petitioners contend that filling the sub-category of Uttaranchal female in column No.12 was a repetition, in much as, in column No.6 the petitioners had shown themselves to be a female and in column No.8 the petitioner had shown themselves as a domicile of Uttarakhand. The learned counsel, consequently, submitted that the aforesaid facts are easily discernable in the OMR form and, consequently, even though, the petitioners had not filled up the reservation category for Uttaranchal female in column No.12, nonetheless, the petitioners were entitled to be treated as an Uttaranchal female and should be given the reservation of Uttaranchal female under column No.12.

On the other hand, the learned counsel for the Uttarakhand Public Services Commission contended that item No.9 (2) and (3) of the advertisement clearly indicated that a candidate was required to fill up the reservation column and its sub-column in order to avail the benefit of reservation of a particular category. The learned counsel submitted that since the petitioner did not opt for the reservation category of an Uttaranchal female in column No. 12, the benefit of Uttaranchal female could not be given to them.

Having heard the learned counsel for the parties at some length, this Court is of the opinion that the petitioners are not entitled for any relief. Column No.6 and column No.8 has no relation with column No.12. Column No.6 only relates to the gender of the applicant. Column No.8 is confined as to whether the candidate was a domicile of Uttaranchal or not. Even though, the petitioner had filled column No.6 and 8 indicating that the petitioner is a female and is a domicile of Uttaranchal, it does not mean that the benefit of an Uttaranchal female would necessarily be passed on to her. Each and every candidate is required to claim or not to claim the benefit of reservation. If the candidate claims a benefit of reservation under column No.12, the said benefit would be granted failing which the petitioner would not be given the benefit of reservation.

In the present case, the petitioners did not fill up the column relating to Uttaranchal female in column No.12 and, consequently, the horizontal benefit of Uttaranchal female was not granted to them. The petitioners themselves chose not to seek the benefit as an

Uttarakhand female. The respondents, consequently, did not grant them the said benefit. To that extent, there is no error on the part of the respondents in not granting the benefit of Uttarakhand female to the petitioners. In view of the aforesaid, this Court finds that the petitioners are not entitled to be given the horizontal benefit of a female candidate belonging to Uttarakhand since the petitioners did not fill up the category for availing the benefit of Uttarakhand female in column No.12.

In view of the aforesaid, the writ petition fails and is dismissed. In the circumstances there shall be no order as to cost. Let a copy of the order be placed in the connected writ petitions.

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IN THE SUPREME COURT OF INDIA
Civil Appellate Jurisdiction
Civil Appeal No.8861 of 2010
[Arising out of SLP (C) Nos. 12787-12788 of 2008]
D.D. 08.10.2010
Hon'ble Mr. Justice Dr. Mukundakam Sharma &
Hon'ble Mr. Justice Anil R.Dave

Malik Mazahar Sultan & Ors. … Appellant
Vs.
Uttarakhand PSC & Ors. … Respondents

Estoppel

Whether appellant, candidate for selection to post of Civil Judge (Junior Division), who participated in the selection process knowing fully well that possession of basic knowledge in computer operation is a must, as contained in rules of recruitment, advertisement inviting applications and notification publishing results of successful candidates in written examination and the interview call letter may turn around and challenge his non-selection contending that bench mark provided for judging suitability of persons in computer operation is vague there being no proper guidelines for judging the said competency and suitability? No.

Held that appellant is estopped and precluded from questioning his non-selection

Cases referred:

1. K. Manjusree v. State of Andhra Pradesh and amp; another, (2008) 3 SCC 512
2. Hemani Malhotra v. High Court of Delhi, (2008) 7 SCC 11
3. Ramesh Kumar v. High Court of Delhi & another, (2010) 3 SCC 104
4. Dr. G. Sarana v. University of Lucknow &amp others, (1976) 3 SCC 585
5. P.S. Gopinathan v. State of Kerala and others, (2008) 7 SCC 70
6. Union of India and others v. S. Vinodh Kumar and others, (2007) 8 SCC 100
7. K.H. Siraj v. High Court of Kerala and others, (2006) 6 SCC 395

JUDGMENT

Dr. Mukundakam Sharma, J.

1. By passing an order on 15.9.2010, we dismissed SLP(C) No.12787 of 2008 which was connected with SLP(C) No.12788 of 2008. SLP(C) No.12787 of 2008 was dismissed as not pressed.

2. SLP(C) No. 12788 of 2008 was filed by the petitioners namely Shri Vijendra Kumar Verma and Shri Harendra Kumar Ozha. But so far as Shri H.K. Ozha is concerned, on his behalf a prayer was made to withdraw his name from the petition as he was appointed as a judicial officer in the State of Uttar Pradesh. By an order passed on the same day i.e. 15.9.2010, we removed his name as petitioner from the said petition with a further direction that the aforesaid petition would be considered only so far as Shri Vijendra Kumar Verma is concerned.

3. After passing the aforesaid order, we proceeded to hear the learned counsel appearing for the parties and after hearing the parties at length, we reserved our orders.

4. Leave granted.

5. By this common judgment and order, we now propose to dispose of the appeal in terms of our discussion and reasons recorded herein. The selection of judicial officers for Uttaranchal Judicial Service is governed by a set of rules called the Uttaranchal Judicial Service Rules, 2005. The Rules deal with the procedure and mode of selection, recruitment and appointment in the Uttaranchal Judicial Service comprising group A and B posts. In Uttaranchal Judicial Service, there is a post called Civil Judge (Junior Division). Rule 8 of the said Rules lays down the eligibility criterion that a candidate for direct recruitment to the service apart from holding qualification of Bachelor of Law must possess a thorough knowledge of Hindi in Devnagari script as well as the basic knowledge of computer operation.

6. Rule 8 reads as follows:-

"8. A candidate for direct recruitment to the Service must be -

(a) A bachelor of Law from a University established by law in Uttaranchal or any other University of India recognized for this purpose by the Governor.

(b) Must possess thorough knowledge of Hindi in Devnagri script.

(c) Basic knowledge of Computer operation."

7. Rule 14 of the said Rules lays down that the examination may be conducted at such time and on such dates as may be notified by the Commission and the same

would consist of a written examination on such legal and allied subjects in the syllabus prescribed under Rule 17, an examination to test the knowledge of the candidate in Hindi and in English and an interview for assessing the merit of the candidates.

8. Rule 17 provides that the syllabus and the Rules relating to the competitive examination shall be such as given in Appendix II. The said Appendix II contains the syllabus as well as the individual aggregate marks to be allocated against individual papers.

9. Rule 18 of the said Rules speaks of the manner and mode of the preparation of the final list of the selected candidates in order of their proficiency as disclosed by the aggregate of marks finally awarded to such candidates in the written examination and interview whereas Rule 19 makes a provision as to how on submission of the final list of the candidates prepared by the Commission, appointment is to be made to the Post of Civil Judge (Junior Division). It provides that on receipt of the list of candidates submitted by the Commission, the Governor shall make appointment to the post of Civil Judge (Junior Division) in the order in which their names are given in the list.

10. An advertisement was issued on 16.2.2006 inviting applications from eligible candidates for filling up 50 posts of Civil Judge (Junior Division). The appellant herein submitted his application for one of the aforesaid posts. The appellant appeared in the preliminary examination and he was declared successful in the said examination on 16.9.2006.

11. Thereafter, he was called for the Viva Voce examination also, but despite his appearance in the viva voce examination and doing reasonably well according to his own estimation, he was not selected and his name did not appear in the final list of selected candidates. The appellant, however, came to know that he received total of 576 marks together in written examination and in viva voce examination and on the basis thereof in his estimation he should have been selected as persons getting total marks of 568 were inducted into the service. The

appellant submitted that to his knowledge and information he was not selected because according to the respondents the appellant did not have basic knowledge of computer operation. The reason for non-selection of the appellant was also disclosed in the counter affidavit filed on behalf of Respondent No.1 against the writ petition filed by the appellant. In the said counter affidavit, it was stated that the appellant was to put to test for determining and ascertaining as to whether he possessed the basic knowledge of computer operation. It is also stated in the said affidavit that an expert in the field of computer was associated for determining, assessing and ascertaining the aforesaid fact and it was found that the appellant did not possess basic knowledge in computer operation. Therefore, he was not selected.

12. The aforesaid writ petition was filed by the appellant praying for declaration that since the respondents have introduced a new selection criterion during the midstream of the selection, therefore, the selection process was vitiated. It was also submitted that the action of the respondents in failing the appellant only on the ground that he did not have basic knowledge in computer operation should be set aside and quashed and that the appellant should now be inducted into the service.

13. The aforesaid writ petition was heard by the Division Bench of the Uttarakhand High Court and finally by the impugned judgment and order dated 28.3.2008, the writ petition was dismissed with certain observations contained in the said judgment.

14. Being aggrieved by the aforesaid judgment and order, the present appeal is filed by the appellant on which we heard the learned counsel appearing for the parties.

15. Mr. Shyam Diwan, the learned senior counsel appearing for the appellant submitted before us that no syllabus was ever prescribed by the respondents for judging and ascertaining the basic knowledge of the candidate in computer operation either before the selection process was initiated or even at the time when the advertisement was issued and therefore such a syllabus could not have been introduced by the respondents in the midstream of such selection process and therefore, the action

of the respondent, in introducing a benchmark at a subsequent stage is without jurisdiction and the same is required to be set aside.

16. It was also submitted by the learned counsel for the appellant that the benchmark provided for judging the suitability of the person in computer operation being vague and there being no proper guidelines for adjudging the said competence and suitability, failing the appellant only on the ground that he did not have sufficient knowledge in basic computer operation was uncalled for and unjustified and therefore the appellant should be declared to have passed the examination as he had passed even in the viva voce examination as he scored more than the minimum marks obtained by the successful candidates.

17. The aforesaid submissions of the learned counsel appearing for the appellant were refuted by the learned counsel appearing for the respondents who has taken us through the records and on the basis of which he submitted that the respondents have all along spelt out that the candidate desiring to be appointed to the aforesaid post of Civil Judge (Junior Division) must have the basic knowledge of computer operation and therefore the same was a part and parcel of the syllabus which was known to each one of the candidates including the appellant and therefore no grievance could be raised in that regard.

18. It was also submitted by him that the appellant having participated in the entire selection process and having specific knowledge that he would be required to have basic knowledge in computer operation and then having taken a chance therein by appearing in the viva voce and facing the questions of the expert on the computer operation, he cannot now turn back and take a stand that the said selection process is vitiated.

19. In the light of the aforesaid submissions of the learned counsel appearing for the parties, we have considered the records. The advertisement inviting applications from eligible candidates for filling up the posts was published in a newspaper on 16.2.2006. In the said advertisement, conditions of eligibility have also been

mentioned in clause 4 wherein the essential qualifications were prescribed. In clause 4(c), it was specifically mentioned that the candidate should have basic knowledge of computer operation. In clause 9 of the aforesaid advertisement, it was stated that the candidate desiring to apply should read the advertisement carefully and apply only if he is satisfied regarding eligibility according to the conditions of advertisement. In paragraph 12(4), it was also mentioned that only those candidates would be called for interview who would be declared successful on the basis of main examination (written examination).

20. The candidates were thereafter called for the written examination which was held from 17.1.2007 to 19.1.2007 and a list of successful candidates in the written examination was published by the Uttarakhand Public Service Commission on 26.4.2007. In the aforesaid notification which was published, it was also mentioned that the aforesaid successful candidates in the written competitive examination will have to establish that they have sufficient knowledge of Hindi in Devnagari script and basic knowledge of computer operation. It was further stated that with regard to the basic knowledge of computer operations, the candidates should have the knowledge of Microsoft Operating System and Microsoft Office operation. Interview letters were thereafter issued and in so far as the appellant is concerned, his interview letter was dated 21.5.2007. In the said call letter for the interview also, it was specifically mentioned that basic knowledge of the computer operation would be essential to the candidate and in connection with the basic knowledge of the computer operation, knowledge of Microsoft Operating System and Microsoft Office Operation would be essential to the candidate and the said knowledge of the candidate would be examined at the time of interview. Therefore, the appellant knowing fully well about the requirement of having basic knowledge of computer operation went for his viva voce examination and gave the said test without any protest or demur of the kind that is being raised in the writ petition and before us.

21. The basic knowledge of the appellant in computer operation was tested at the time of his interview by an expert who was sitting with the interview members conducting the interview. The said expert after testing the knowledge,

the suitability of the appellant and his basic knowledge in computer operation gave his opinion that the appellant did not possess the basic knowledge of computer operation. Since possession of such knowledge of computer operation was one of the eligibility criteria for being selected for the aforesaid post of Civil Judge and as the appellant was not found suitable and lacking in basic knowledge of computer operation, he was not selected. The issue is whether such a course adopted by the respondent could be said to be illegal, without jurisdiction and unheard of.

22. In support of his contention, the learned counsel appearing for the appellant relied upon the decisions of the Supreme Court in K. Manjusree Vs. State of Andhra Pradesh & Anr. reported in (2008) 3 SCC 512. In paragraph 25 and 27 of the said judgment, it was said that introducing minimum marks for interview in the midstream of the selection process is illegal.

23. The counsel for the appellant also relied upon a judgment of this Court in Hemani Malhotra Vs. High Court of Delhi reported in (2008) 7 SCC 11 and Ramesh Kumar Vs. High Court of Delhi & Anr. reported in (2010) 3 SCC 104 in support of the contention that minimum benchmark provided for selection during the midstream of the selection process is without jurisdiction.

24. In our considered opinion, the reliance on the aforesaid judgments by the counsel appearing for the appellant was misplaced as in the present case the requirement and the necessity for having basic knowledge of computer operation as one of the eligibility criteria and conditions for selection is prescribed in Rule 8 itself. The said clause was also specifically mentioned in the advertisement issued making it clear to all the intending candidates that they must have basic knowledge of computer operation.

25. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System

and Microsoft Office Operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office Operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.

26. In this connection, we may refer to the decision of the Supreme Court in Dr. G. Sarana Vs. University of Lucknow & amp; Ors. reported in (1976) 3 SCC 585 wherein also a similar stand was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus:-

> "15.... He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee."

27. In P.S. Gopinathan Vs. State of Kerala and Others reported in (2008) 7 SCC 70, this Court relying on the above principle held thus;

> "44. .....Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion,

> rightly held that the appellant is estopped and precluded from questioning the said order dated 14-1-1992. The application of principles of estoppel, waiver and acquiescence has been considered by us in many cases, one of them being G. Sarana (Dr.) v. University of Lucknow....."

28. In Union of India and Others vs. S. Vinodh Kumar and Others reported in (2007) 8 SCC 100 at paragraph 18 it was held that it is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. Besides, in K.H. Siraj vs. High Court of Kerala and Others reported in (2006) 6 SCC 395 in paragraph 72 and 74 it was held that candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel.

29. Now, while deciding the submission of the counsel appearing for the appellant that judging the suitability of the candidate by laying down the benchmark of basic knowledge of computer operation being sufficient or insufficient is vague, we are of the opinion that possessing of basic knowledge of computer operation is one of the criteria for selection and in order to judge such knowledge, an expert on the subject was available at the time when the candidate was facing the Interview Board. In order to ascertain the candidate's knowledge of computer operation, he put questions and thereafter he gave remarks that the candidate has sufficient knowledge or that he does not have sufficient knowledge.

30. It is also to be considered that the Indian judiciary is taking steps to apply e-governance for efficient management of courts. In the near future, all the courts in the country will be computerized. In that respect, the new judges who are being appointed are expected to have basic knowledge of the computer operation. It will be unfair to overlook basic knowledge of computer operation to be an essential condition for being a judge in view of the recent development being adopted. Therefore, we are of the considered opinion that requirement of having basic

knowledge of computer operation should not be diluted. We also deem fit not to comment over the standard applied by the expert in judging the said knowledge as the same is his subjective satisfaction. However directions can be recommended to make the procedure more transparent. The directions in respect of same have already been given by the High Court we do not think proper to prescribe the directions for the same separately.

31. The aforesaid procedure for testing the knowledge may not be foolproof but at the same time it cannot be said that the same was not reasonable or that it was arbitrary. Therefore, after giving very thoughtful consideration to the issues, we are of the opinion that the appellant has failed to make out any case before us for interference with the orders passed by the High Court. We find no merit in this appeal and the same is dismissed.

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HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition No. 84 of 2009 (S/B) with
Writ Petition No. 46 of 2009 (S/B)
D.D. 29.10.2010
Hon'ble Mr. Chief Justice Barin Ghosh &
Hon'ble Justice V.K. Bist

Mrs. Jyotsana & Anr.	**...**	**Petitioners**
Vs.		
State of Uttrarakhand & Ors.	**...**	**Respondents**

Caste and Category

Whether a women who belongs to Scheduled Caste category by birth, merely on ground of her marriage with a forward caste man, looses her Scheduled Caste category tag? No.

Domicile

Whether petitioner, whose father belongs to undivided Uttar Pradesh and after its bifurcation allotted to Uttarakhand State, can be said to be domicile of Uttarakhand? Yes.

"16. Having considered the submissions of the learned Counsel for the parties and having carefully examining the record, the court finds that the father of Mrs. Jyotsana was finally allotted to State of Uttarakhand. Therefore, in our view, it cannot be said that he migrated to State of Uttarakhand. In fact, by virtue of final allocation, he acquired domicile of State of Uttarakhand. Ms. Jyotsana, being his daughter, also automatically acquired domicile of State of Uttarakhand and is entitled for caste certificate. As per the Government Order dated 29.03.2003 a Caste Certificate shall be issued to those persons who are residing or taken birth in the area, thus for the purpose of issuing Caste Certificate, existing either of two ingredients would be sufficient for issuance of such certificate. Undisputedly, Mr. Jyotsana became a permanent resident and a permanent domicile of Uttarakhand by virtue of her marriage to a permanent resident of Uttarakhand and the petitioner belongs to Jatay caste, which is recognized Schedule Caste in the State of Uttarakhand. The cumulative effect, therefore, is that the petitioner being a domicile of Uttarakhand by virtue of her having married a permanent resident of Uttarakhand State, cannot be deprived of the benefit available to a Scheduled Caste of the State on the ground that she indeed is a Scheduled Caste belonging to Jatay Caste. Another argument of the learned Senior Counsel Sri Manoj Tewari, that in view of withdrawing the Writ Petition No.44 of 2009 (S/B), the petitioner Smt. Jyotsana relinquished the claim and no relief can be granted in her favour, is not at all convincing in view of liberty given by the Court to her to approach the Court again. Withdrawal of Writ petition No.44 of 2009 (S/B) with the permission of Court, cannot be used against her on the ground of technicality."

ORDER

Hon'ble V.K. Bist, J.

We have heard the learned counsel for the parties and perused the entire material available on record.

2. Since in both these writ petitions, common question of law is involved to be decided by this Court, therefore, both the petitions have been consolidated and are being decided by a common judgment. Writ petition no. 84 of 2009 (S/B) shall be the leading case.

3. Uttarakhand Public Service Commission (hereinafter referred to as the Commission) issued 2 advertisement no. A-7/E-1/07-08 dated 21.04.2008 notifying 33 vacancies on the post of Civil Judge (Junior Division), out of which 5 were reserved for candidates belonging to Scheduled Caste Category, who are residents of the Uttarakhand State. It was provided that horizontal reservation shall be applicable, as per relevant Government Orders. After having applied, the petitioners appeared for the post of Civil Judge (Jr. Div.) in Civil Judge (Jr. Div.) Examination, 2008. The petitioners asserted that the petitioners were declared selected by virtue of select list issued by respondent no.2. Mrs. Jyotsana as well as Ms. Shalini Dadar had obtained 489 marks in aggregate but Mrs. Jyotsana was placed higher in order of merit by virtue of the fact that she had obtained higher marks in the written examination.

4. Despite the fact that Mrs. Jyotsana's name had appeared at serial no. 17 in the select list and vacancies were available but she not having been appointed by the State Govt., she filed Writ Petition no.44 of 2009 in this Court, in which the following prayers were made:-

i. "Issue a writ, order or direction in the nature of mandamus commanding the respondent to include the name of petitioner in the Appointment Order No. 327/30-1-2009-25 (16) 2004 T.C.-1 Dehradun dated 19.3.2009 and to allocate here posting in pursuance to her selection for the post of Civil Judge (J.D.) in the examination of Civil Judge (J.D.) Examination of 2008.

ii. Issue a writ, order or direction in the nature of mandamus commanding the respondent to take an appropriation action on the petitioner's representation dated 17.3.2009 (annexure no.12 to the writ petition).

iii. Issue a writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case,

iv. Award the cost of the petition."

5. While the aforesaid writ petition was pending in this Court an order came to be passed by the State Govt. on 25th April 2009. In this order making a reference to the Scheduled Caste certificate issued in Mrs. Jyotsana's favour on 14th June 2002, State Govt. directed District Magistrate, Bageshwar to constitute a scrutiny committee to find out as to whether the aforesaid certificate dated 14th June 2002 was correctly issued or not? The scrutiny committee upon an inquiry came to the conclusion that she should not be given the benefit of reservation in Scheduled Caste category based upon the aforesaid certificate dated 14th June 2002. The State Govt. accordingly came to the conclusion in the aforesaid order dated 25th April 2002 that it was in agreement with the report and finding of the scrutiny committee.

6. A subsequent, consequential order was passed by the State Govt. on 6th May 2009, in which after making a mention of the aforesaid fact, it took two decisions; firstly, that Mrs. Jyotsana was not entitled to the benefit of reservation as a Scheduled Caste candidate on the basis of the certificate dated 14th June, 2002 and secondly to cancel the said certificate.

7. The aforesaid two orders were passed by the State Govt. on 25th April 2009 and 6th May 2009 respectively during the pendency of W.P. No. 44 of 2009 filed by Mrs. Jyotsana. W.P. No. 44 of 2009 came up for consideration in the Court on 8th May 2009 when the following order was passed:-

"As the arguments were in progress, Mr. Sharad Sharma, learned counsel appearing for the petitioner submitted that the petitioner be permitted to withdraw this petition, in the process the petitioner also relinquishing her claim vis-à-vis the caste certificate issued on 14th June 2002 in her favour but with liberty to the petitioner to apply afresh for the grant of a caste certificate in her favour to the effect that she belongs to a Scheduled Caste (Jatav). According to Mr. Sharad Sharma, the fact of the petitioner being married to a domicile of Uttarakhand in the year 2005, apart from her now having become a domicile of Uttarakhand State on the strength of her marriage with a domicile of

Uttarakhand State, her belonging to Jatav caste, which is a recognized Scheduled Caste in Uttarakhand and she would be entitled to be granted the caste certificate by a Competent/Prescribed Authority.

Mr. Sharad Sharma prays that the petitioner be permitted to withdraw this petition with liberty to apply to Competent/ Prescribed Authority for the grant of caste certificate in the light of the submission made and recorded herein above.

Writ petition is dismissed as withdrawn. Liberty prayed for is allowed.

If the petitioner applies to the Competent/ Prescribed Authority for the grant of a fresh caste certificate in her favour in the light of the submissions recorded herein above, before 4:00 p.m. by or before 12th May, 2009, the Competent/ Prescribed Authority is directed to receive and process the petitioner's said application and pass final order thereupon before 20th May 2009. The petitioner shall be entitled to a personal hearing also before Prescribed/ Competent Authority. Time shall not be extended and if the final order is not passed before 20th May 2009, action shall be initiated against the Prescribed/ Competent Authority for disobeying the Court's order. While passing final order, the Prescribed/Competent Authority shall not be, in any manner, influenced by any earlier order passed on the subject by any Authority or the Government.

Depending upon the order to be passed upon petitioner's aforesaid application and the result thereof, the State Govt. is directed to take consequential action before 27th May 2009. Till 27th May, 2009 the existing vacancy in the Scheduled Caste (Women) category shall not be filled.

The order to be passed shall be communicated to the petitioner the same evening by personally serving the same upon her.

The petitioner shall have the liberty to approach this Court again if a fresh cause of action accrues to her.

Petition disposed of finally. No order as to costs."

8. After withdrawing the aforesaid writ petition, Mrs. Jyotsana applied to Tehsildar, Haridwar for issuance of caste certificate, who rejected the same vide order dated 19.05.2009 taking support of the judgment of Hon'ble the Supreme Court in 'Anjan Kumar vs. Union of India', reported in AIR 2006 SC, page-117. This order of Tehsildar, Haridwar is under challenge in Writ Petition No. 84 of 2009 (S/B) filed by Mrs. Jyotsana. Further prayer has been made for direction to the respondents to include her name in the appointment order dated 19.03.2009 and allocate her posting. Ms. Shalini Dadar filed Writ

Petition No.46 of 2009 (S/B) for direction to the respondents to issue appropriate orders regarding her appointment to the post of Civil Judge (Junior Division), in the light of her ranking in the select list, from due date with all consequential benefits.

9. Division Bench of this Court, vide order dated 17.06.2009 passed interim order directing respondent no.3 to issue a formal Caste Certificate to Mrs. Jyotsana with further direction to respondent no.1 to issue appointment order in her favour. The Court also observed that the interim arrangement with respect to the issuance of the certificate as well as the appointment would be subject to the final result of the writ petition. Consequently, the petitioner-Mrs. Jyotsana has been provided appointment on the post of Civil Judge (Jr. Div.) and she is continuing by virtue of the interim order passed by this Court.

10. The respondent no.3-Tehsildar, Haridwar, in his counter affidavit, has stated that on the basis of the application of petitioner-Mrs. Jyotsana for issuance of Caste Certificate, a report was called for. She, in the affidavit filed in support of her application, had shown her birth place at District Shahjahannpur, Uttar Pradesh and had also annexed a Scheduled Caste Certificate dated 04.08.1992 issued by Tehsildar Shahjahanpur, U.P., but she did not aver that Caste Certificate dated 04.08.1992 has been cancelled after her marriage. Hence, taking into account the facts of the case and having regard to the principle laid down by Hon'ble the Apex Court, the application for issuance of Caste Certificate filed by the petitioner-Mrs. Jyotsana was rejected. Respondent no. 2-Commission in their counter affidavit have submitted that granting, issuing, verifying and cancelling the permanent residence certificate, Caste Certificate and any other certificate issued by the competent authority, is not within the domain of respondent no.2. The respondent no.1-State of Uttarakhand filed its counter affidavit wherein it is stated that petitioner's father belongs to District Shahjahanpur in Uttar Pradesh. The petitioner was born in Uttar Pradesh and obtained Caste Certificate in Uttar Pradesh. After creation of State of Uttarakhand, the petitioner's father was allocated to the State of Uttarakhand. The petitioner obtained Caste Certificate in District Bageshwar on 14th June, 2002 and on the basis of this Caste Certificate, she claimed the benefit of reserve category in the examination conducted by the Commission in the year 2008. In earlier writ petition no.44 of 2009 (S/B), on 8th May,

2009, she submitted that she may be permitted to withdraw the same and in process she also relinquished her claim vis-à-vis the Caste Certificate issued on 14th June, 2002 in her favour.

11. Ms. Shalini Dadar, petitioner in connected Writ Petition No. 46 of 2009 (S/B), who is also the intervener in the leading petition, has come up with the assertion that she belongs to 'Balmiki' caste. She is permanent resident of State of Uttarakhand, her family is permanently settled at Dehradun since last more than 50 years, she was born and brought up at Dehradun and she also received her entire education at Dehradun. Vide notification dated 02.10.2008, the respondent no.2 had issued a select list in respect of Uttarakhand Judicial Services Civil Judge (Jr. Div.) Examination, 2008. Out of three Scheduled Caste Woman Category candidates, who were declared successful, the petitioners-Ms. Shalini Dadar and Mrs. Jyotsana both had scored 489 aggregate marks out of 950. Mrs. Jyotsana, could not be granted caste certificate, therefore, she having secured highest marks amongst SC women candidates, is entitled for appointment.

12. Mr. Sharad Sharma, Senior Advocate appearing for Mrs. Jyotsana contended that Govt. Order dated 29.03.2003 issued by the State Govt. lays down that a Caste Certificate would be issued by the Authorities, to those persons 'who are residing' or taken birth in the area. Therefore, for the purpose of issuing such certificate, as stipulated in Govt. Order dated 29.03.2003, existing either of two ingredients, would be sufficient to issue a Caste Certificate. Further a SC woman would remain SC even after marriage with a man not of Scheduled Caste, thus the order dated 19.05.2009 rejecting the application for issuance of a Caste Certificate, is misconceived and erroneous, as the petitioner had applied for her own Caste Certificate and nor for her children. He contended that the respondent no.3, while rejecting application for issuance of Caste Certificate, has taken helm of the principle laid down by Hon'ble the Apex Court in the case of 'Anjan Kumar vs. Union of India', reported in AIR 2006 SC, page-117, observing that the offshoots of wedlock of a tribal woman married to a non-tribal husband-Forward Class, cannot claim Scheduled Tribe status. The reason being such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any disability. Mr. Sharad Sharma, Senior Advocate further contended that at the point of time when the petitioner-Mrs. Jyotsana was unmarried, she

was residing under the guardianship of her father, at Bageshwar, where her father was posted in the capacity of District Judge, Bageshwar and a residential accommodation was officially allotted to her father and, at that juncture, the petitioner was issued a Caste Certificate by the Authority concerned, but thereafter, since Mrs. Jyotsana solemnized marriage with Mr. Rohit Kumar Sikhola, who is a permanent resident/domicile of State of Uttarakhand, she acquired the domicile of her husband. Mr. Sharda Sharma, Senior Advocate further contended that in view of Section 15 read with Section 16 of the Indian Succession Act, 1925, in the light of the judgment rendered by the Division Bench in Jyoti Bala's case, which stands confirmed by the Apex Court, Smt. Jyotsana, after her marriage on 14.12.2005, ensues to be the domicile of State of Uttarakhand and since the petitioner belongs to Scheduled Caste (Jatav), hence the petitioner is entitled to grant of Caste Certificate. Emphasizing upon the Govt. Order No. 22/39/1982 dated 17.05.1984, Mr. Sharma, Senior Advocate submitted that this Govt. Order deals with the issue as to what would be the effect of inter-caste marriages and adoption and the benefits accruing to a Scheduled Caste or a Scheduled Tribe, after the marriage and adoption, as the said Govt. Order in para-1 provided that a female who is SC or ST, marries an Upper Class male, will continue to derive the benefit of reservation, even after the marriage with a male of Upper Class. He also submitted that Mrs. Jyotsana had appeared in earlier examination held by the Commission in the year 2002 and 2004 as SC candidate and, similarly in 2008 examination also she is entitled to appear as SC candidate.

13. On the contrary, Mr. Manoj Tewari, Senior Advocate appearing for Ms. Shalini Dadar, has argued that Ms. Shalini Dadar and Mrs. Jyotsana, both belong to SC category and both had scored 489 aggregate marks out of 950 in the process of selection for the post of Civil Judge (Jr. Div.). However, Ms. Shalini Dadar was placed at Sl. No. 18 while Mrs. Jyotsana was placed at Sl. No. 17 in the select list. He submitted that Mrs. Jyotsana managed to obtain Caste Certificate from District Bageshwar through deceitful means. Thus, Ms. Shalini Dadar preferred writ petition no. 46 of 2009 (S/B) seeking direction to the State Govt. to provide her appointment in view of her ranking in the select list. He contended that after the Caste Scrutiny Committee did not find favour of Mrs. Jyotsana for being appointed on the post in dispute, as such, rights of Ms. Shalini Dadar got

crystallized and she became entitled for appointment against the post reserved for SC woman category. He contended that in earlier phase of litigation, bearing writ petition no. 44 of 2009 (S/B) Mrs. Jyotsana had concealed that Caste Scrutiny Committee has taken a decision against her. Moreover, on 25.04.2009, the State Government passed an order, after recording its concurrence with the Caste Scrutiny Committee, that Mrs. Jyotsana cannot be given benefit of reservation in the State of Uttarakhand. Thereafter, on 06.05.2009 the State Govt. passed another order, whereby the Caste Certificate issued to Mrs. Jyotsana from Bageshwar District was directed to be cancelled. Mrs. Jyotsana neither challenged the report of Caste Scrutiny Committee nor did she challenge the order of cancellation of her Caste Certificate in her writ petition, however, during the course of arguments, in Writ Petition No. 44 of 2009 (S/B), she not only gave up her challenge to these two orders, but she also sought permission to withdraw the writ petition itself, thus she relinquished all her rights and claims vis-à-vis the Caste Certificate issued on 14.06.2002 from Bageshwar. Mr. Manoj Tewari, Senior Advocate drew our attention to paragraph no.13 of the parawise reply of respondent no.1 wherein it is asserted that until the controversy with respect to Mrs. Jyotsana is resolved, Ms. Shalini Dadar's case for appointment cannot be considered. He vehemently argued that only one Caste Certificate was issued in favour of Mr. Jyotsana from Bageshwar District on 14.06.2002. Based on this Caste Certificate, she had claimed benefit of reservation in Uttarakhand State. He, in the course of advancing arguments, submitted that advertisement for the post in question was published on 30.03.2008 and as per the condition stipulated in para-5 (2) read with para-16 of the advertisement, a candidate claiming benefit of reservation, must possess a valid Caste Certificate on the date of submitting the application. Further in para-2 read with para-12 (1) of the advertisement, it is mentioned that only domicile/ permanent residents of Uttarakhand State will be entitled to reservation. On this background, he further argued that Mrs. Jyotsana cannot claim any benefit out of the judgment of the Division Bench of this Court in Smt. Jyoti Bala's case, rendered in writ petition no. 297 of 2008 (S/B) wherein this Court emphasized that a woman, after marriage, is considered to be of the same domicile as well as caste as that of her husband. He contended that, this observation is very significant, which makes the said judgment inapplicable in the case of Mrs. Jyotsana, as she is married to a person belonging to General Category, though resident of District

Haridwar, inasmuch as, her subsequent marriage to a domicile of Uttarakhand in the year 2005, cannot validate the Caste Certificate, which is void-abinitio. He further contended that the judgment rendered in the case of Smt. Jyoti Bala, needs reconsideration because Section 4 of Indian Succession Act, 1925 was not considered therein. In order to persuade us, Mr. Manoj Tewari, Senior Advocate stated that Mr. Jyotsana is relying upon her marriage to a domicile of Uttarakhand for the purpose of claiming benefit of reservation in Uttarakhand, but this benefit is not available to her on three counts, first, her husband belongs to a Forward Class, therefore, the judgment rendered in Jyoti Bala's case, is distinguishable on facts, inasmuch as, the ratio of Jyoti Bala's case does not apply to her; secondly, according to Mrs. Jyotsana, her marriage was solemnized in a temple and she could not produce any proof of her marriage, as is apparent from the report dated 07.02.2009 given by District Magistrate, Haridwar and thirdly, Smt. Jyoti Bala (petitioner in writ petition no. 297 (S/B) 2008) married to a domicile of Uttarakhand before reorganization of the State and Caste Certificate was also issued in her favour from Kashipur, immediately after her marriage.

14. It is the contention of the learned Senior Advocate for Ms. Shalini Dadar that it is well settled principle of law that domiciles of a particular State are entitled to the benefit of reservation in that State and on migration, they are not entitled to the benefit of reservation in the new State, thus domicile becomes salient factor in cases, like the case in hand. The case of Mrs. Jyotsana is out of purview of the domicile policy contained in Govt. Order dated 20.11.2001, hence, it suffice to infer that rejection of her application for Caste Certificate was justified and the challenge made by her to the rejection order dated 19.05.2009 is without any substance. He further contended that reliance placed by Mrs. Jyotsana upon Govt. Order dated 29.03.2003 is misplaced, as it only deals with the Competent Authority, who may issue the Caste Certificate. The averment made to the effect that Mrs. Jyotsana had appeared in the earlier examinations held by the Commission in the year 2002 and 2005 as SC Woman Category candidate, but said plea is unsustainable for the reasons that enquiry/verification regarding Caste Certificate is made only after completion of selection process and in her case, after due enquiry, her caste certificate was cancelled.

15. Placing reliance on the judgment of the Hon'ble Apex Court, rendered in (2009) 2 SCC-109, Mr. Manoj Tewari, Senior Advocate argued that a member of O.B.C. will not get benefit of reservation after migration to another State, even if the State, to which he migrated, contains entry of the caste to which he belongs, in the list of O.B.C. He argued that finding of fraud has been detected by the Caste Scrutiny Committee against Mrs. Jyotsana, therefore, she is not entitled to any equitable relief under Article 226 of the Constitution of India, as very foundation of selection and appointment has collapsed as fraud and collusion, vitiate even the most solemn proceedings, as held by Hon'ble Supreme Court in the case rendered in (2005) 7 SCC-690. He contended that for giving benefit of reservation to a particular caste in a particular State, the disadvantages suffered by that community, are considered by the Caste Scrutiny Committee. Further, in view of the two orders passed by the State Govt. on 25.04.2009 and 06.05.2009 and in view of withdrawal of challenge to these orders by Mrs. Jyotsana, it can suffice be inferred that she was not having any valid Caste Certificate at the time when she applied for the post in question, as it is the settled principle of law that a candidate must possess all eligibility condition on or before the last date of submitting application. Hence, even if any new Caste Certificate was issued by the Competent Authority in the year 2009, pursuant to this Court's order dated 08.05.2009, it will operate prospectively and will not cure the legal effect in the candidature of Mrs. Jyotsana for the post in question. Reliance was placed in (2005) 9 SCC-779.

16. Having considered the submissions of the learned counsel for the parties and having carefully examining the record, the Court finds that the father of Mrs. Jyotsana was finally allocated to State of Uttarakhand. Therefore, in our view, it cannot be said that he migrated to State of Uttarakhand. In fact, by virtue of final allocation, he acquired domicile of State of Uttarakhand. Mrs. Jyotsana, being his daughter, also automatically acquired domicile of State of Uttarakhand and is entitled for caste certificate. As per the Govt. Order dated 29.03.2003 a Caste Certificate shall be issued to those persons 'who are residing' or taken birth in the area, thus for the purpose of issuing Caste Certificate, existing either of two ingredients would be sufficient for issuance of such certificate. Undisputedly, Mrs. Jyotsana became a permanent resident and a permanent domicile of Uttarakhand by virtue

of her marriage to a permanent resident of Uttarakhand and the petitioner belongs to 'Jatav' caste, which is recognized Schedule Caste in the State of Uttarakhand. The cumulative effect, therefore, is that the petitioner being a domicile of Uttarakhand by virtue of her having married a permanent resident of Uttarakhand State, cannot be deprived of the benefit available to a Schedule Caste of the State on the ground that she indeed is a Scheduled Caste belonging to 'Jatav' Caste. Another argument of the learned Senior Counsel, Shri Manoj Tewari, that in view of withdrawing the Writ Petition No. 44 of 2009 (S/B), the petitioner Smt. Jyotsana relinquished the claim and no relief can be granted in her favour, is not, at all, convincing in view of liberty given by the Court to her to approach the Court again. Withdrawal of Writ Petition No. 44 of 2009 (S/B) with the permission of Court, cannot be used against her on the ground of technicality.

17. For the forgoing reasons, the Writ Petition No.84 of 2009 (S/B) is allowed. Impugned order dated 19.05.2009 passed by respondent no.3 is set-aside. Since, the petitioner Mrs. Jyotsana has been appointed on the post of Civil Judge (Jr. Div.) vide Notification dated 19.03.2009, no further direction is required to be passed. The Writ Petition No. 46 of 2009 (S/B) is dismissed. Costs easy.

18. Let certified copy of this judgment be placed in the connected writ petition.

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition (S/B) No. 184 of 2011 & Connected Cases
D.D. 22.03.2012
Hon'ble Mr. Chief Justice Barin Ghosh &
Hon'ble Mr. Justice U.C. Dhyani

Dr. Kapil Sharma & Ors. … Petitioners
Vs.
State of Uttarakhand & Ors … Respondents

A. Recruitment process

Withdrawal of posts notified for recruitment on substantive basis to accommodate contractual candidates on adhoc basis without due publicity – Government of Uttarakhand requested Uttarakhand Public Service Commission to set in motion recruitment process for appointment to 564 post of Ayurvedic Chikitsaks on substantive basis. Accordingly UPSC issued notification inviting application to fill up 564 posts of Ayurvedic Chikitsaks. However, subsequently, Government on 04.11.2010 took a decision to withdraw 227 posts of Ayurvedic Chikitsaks from the purview of Uttarakhand Public Service Commission in order to utilize those vacancies to accommodate contractual Ayurvedic Chikitsaks on adhoc basis, without giving any publicity to the decision taken in the behalf – As per provisions of Uttarakhand Ayush (Ayurvedic & Unani) Department Group 'B' Services Rules, 2010, appointment to post of Ayurvedic Chikitsaks being by direct recruitment on substantive basis, whether decision of Government of Uttarakhand, in withdrawing 227 posts of Ayurvedic Chikitsaks from purview of UPSC, which were notified for recruitment, for utilizing them to accommodate contractual Ayurvedic Chikitsaks as adhoc Ayurvedic Chikitsaks, that too, without giving publicity can be said to be in public interest? No. – Whether such a decision is sustainable in law? No.

Held:

7. In the event, the State Government, who is the trustee of the people of the State, does anything surreptitiously without letting the people know that it is doing so, the same tantamount to defrauding the people. In the instant case, the State Government by taking the decision dated 4th November 2010 breached its obligation towards the people of the State and, in particular, to those, who were and are otherwise entitled to be considered for appointment in the posts of Ayurvedic Chikitsaks entitled to draw salary on the pay scale, as provided in the Rules. The State Government by taking the decision dated 4th November, 2010 refused equal opportunity to the people and thereby breached the provisions of Articles 14 and 16 of the Constitution of India. While taking a decision under Article 162 of the Constitution of India, the State Government is required by the mandate of the Constitution of India to comply with the provisions contained in Part –III of the Constitution of India read with Par – IV of the Constitution of India. While taking the decision dated 4th November, 2010, the State Government breached its obligations contained in Articles 14 and 16 of the Constitution of India, which are part of Part –III of the Constitution of India. It has not been brought to our notice which provision of Part

– IV of the Constitution of India has been achieved by the said decision. Accordingly, question of balancing in between Directive Principles of the State Policy and Fundamental Rights does not arise in the instant case.

8. Conclusion therefore would be that the said decision of the Government dated 4th November, 2010 withdrawing 227 posts from the purview of appointment through the Commission and permitting those to be occupied by contractual Ayurvedic Chikitsaks in adhoc capacity, is not sustainable in law. The same is quashed. Therefore, there is now no decision dated 4th November 2010 and, accordingly, question of giving any contractual Ayurvedic Chikitsaks an adhoc status will not arise. Therefore, a number of petitions, where it is being contended that the petitioners have not been accorded adhoc status, have now become infructuous."

JUDGMENT

BARIN GHOSH, C. J. (Oral)

These matters although do not address the same issue, but they address issues, which, in the facts and circumstances of the case, are required to be decided together in order to avoid confusion.

2. In these writ petitions, we are concerned with appointment of Ayurvedic Chikitsaks. Since 3rd December, 1990, appointment of Ayurvedic Chikitsaks were governed by the Uttar Pradesh Medical (Ayurvedic and Unani) Service Rules, 1990 (hereinafter referred to as 'the 1990 Rules'). The said Rules made it absolutely clear that 'substantive appointment' means an appointment not being an adhoc on the post in the cadre of the service made after selection in accordance with the Rules and if there were no Rules, in accordance with the procedure prescribed for the time being by executive instructions issued by the Government. In terms of the said Rules, Ayurvedic Chikitsaks could only be appointed by direct recruitment. The said Rules made it clear that such direct recruitment shall be made on the recommendation to be made by the Public Service Commission (hereinafter referred to as 'the Commission') upon completion of selection in the manner as was prescribed there under. In 2000, State of Uttar Pradesh was bifurcated by and under the provisions of Uttar Pradesh Re-organisation Act, 2000. By reason of Section 86 of the said Act, the 1990 Rules continued to remain in force in the bifurcated territory of the State of Uttar Pradesh, which became the State of Uttarakhand.

In terms of the provisions contained in Section 87 of the Act, State of Uttarakhand adopted the 1990 Rules on 7th November, 2002. Thus, Rules for recruitment of Ayurvedic Chikitsaks were available in full force in the State of Uttarakhand, at the time, when the State of Uttarakhand decided to recruit Ayurvedic Chikitsaks on contractual basis. It appears, such contractual appointments were given first in 2005, then in 2007 and, thereafter in 2008. It also appears that even subsequent to 2008, giving of such contractual appointments continued. There is no dispute that prior to these contractual appointments were given, advertisements were published inviting application; where it was clearly held out that such contractual appointments will come to an end no sooner people are recruited in accordance with the Rules. As it appears from the affidavits filed by the State in between 2005 and 2008, 247 Ayurvedic Chikitsaks were appointed on contractual basis by the State. Subsequent thereto, until 25th August, 2010, 78 more contractual Ayurvedic Chikitsaks were appointed by the State. In the meantime, on 10th March, 2010, the State of Uttarakhand made the Uttarakhand Ayush (Ayurvedic and Unani) Department Group "B" Service Rules, 2010 (hereinafter referred to as 'the 2010 Rules') and, thereby, provided for recruitment of Ayurvedic Chikitsaks by direct recruitment through the Commission. In the said Rules, it was also made clear that 'substantive appointment' means an appointment, not being an adhoc appointment, on a post in the cadre of the Service, made after selection in accordance with Rules, if there were no Rules, in accordance with the procedure prescribed for the time being, by executive instructions issued by the Government. The said Rules, therefore, dealt with only substantive appointment and did not provide for any adhoc appointment. Rule 8 of the 2010 Rules prescribes the age limit of a candidate for direct recruitment. The second proviso thereto permitted the Governor, on the recommendation of the Commission, to relax the upper age limit in favour of any candidate or class of candidates, if he considers the same necessary in the interest of fair dealing or in the public interest. Subsequent thereto, on 20th July, 2010 the State Government gave a requisition to the Commission indicating that 564 posts of Ayurvedic Chikitsaks are available for recruitment. Acting on the said requisition, the Commission published an advertisement on 25th August, 2010, inviting applications from eligible candidates to supply the vacancies in the said 564 posts of Ayurvedic Chikitsaks. After the said advertisement was published, on 4th November, 2010 the Government of Uttarakhand took a decision to

withdraw 227 posts from the purview of the recruitment process, which was commenced on the basis of the said requisition followed by advertisement and directed that those 227 posts would be supplied by contractual appointees, appointed upto 2008 and who are below the age of 50 years in their capacity as adhoc Ayurvedic Chikitsaks, who shall be entitled to the salaries payable in the pay scale of Ayurvedic Chikitsak directly recruited under the Rules. According to the State, 227 Ayurvedic Contractual Chikitsaks fit the description of people dealt with in the said Government decision. This Cabinet decision dated 4th November, 2010 was not brought to the notice of the public either by issuing a notification or by taking any other step. Despite the Commission being informed that requisition for 564 posts stands reduced by 227 posts, the Commission did not issue any corrigendum to the advertisement, as was published by it, nor did it bring to the notice of the people reduction of the advertised posts, as above. According to the 2010 Rules, year of recruitment means a period 12 months commencing from the 1st day of July of a calendar year. The advertisement was published on 20th July, 2010 and, accordingly, the recruitment year must be deemed to be 2009-2010, whereas the selection year should be deemed to be 2010-2011. On 11th July, 2011 by amending the 2010 Rules, the second proviso to Rule 8 thereof was substituted. The substituted proviso provided that for the selection year 2010-2011, such Ayurvedic Chikitsaks, who are working as contractual Ayurvedic Chikitsaks in the Department of Ayurvedic and Unani under the State Government continuously for one year or more than one year shall be eligible for maximum ten years relaxation in the upper age limit. Each of the aforesaid Rules, namely, the 1990 Rules, 2010 Rules as well as the amendment thereof were made in exercise of power conferred by the proviso to Article 209 of the Constitution of India. Inasmuch as, the power of the Governor to grant relaxation of upper age limit, on the recommendation of the Commission, was taken away and a one-time relaxation for the selection year 2010-2011 was given by the aforementioned amendment effected to the 2010 Rules and since the same was not done with the concurrence of the Commission, the Commission did not issue a corrigendum to the advertisement dated 25th August, 2010 and thereby refused to permit ten years upper age relaxation to those who became entitled to the same. It is the contention of the Commission that since under Article 320 (3) of the Constitution of India, it was obligatory on the part of the State to consult the Commission and since the Commission was not consulted, before

the said amendment was effected, the Commission was not bound to act on the basis of the said amendment. A look at Article 320(3) of the Constitution of India will make it clear that the State Government is required to consult the Commission in the matter of method of selection and not in regard to eligibility of a candidate to be selected. The power of the State Government, as granted by Article 309 of the Constitution of India, includes power to fix eligibility of an employee to be recruited to serve the Government. The same suggests that the State Government alone is entitled to fix eligibility of a person to be appointed by the State Government. Age is a matter of eligibility and not a method of selection.

3. In the circumstances, the contention on the part of the Commission that the said amendment was required to be effected after consultation with the Commission has no substance at all. The said Rules, being Statutory Rules, were equally binding upon the Commission and, accordingly, the Commission was duty bound to adhere to said Rules and, as such, was obliged to issue a corrigendum permitting the people to know that, in law, such a relaxation is available. In view of these facts, these writ petitions have been filed.

4. In some of these writ petitions, petitioners have contended that decision dated 4th November, 2010 of the State Government, withdrawing 227 posts of Ayurvedic Chikitsaks from the purview of selection and giving those 227 posts to existing contractual Ayurvedic Chikitsaks on adhoc basis, is not permissible. In some of the writ petitions, it has been contended that only 227 contractual Ayurvedic Chikitsaks have been given the adhoc status and the remaining have not been given the same status for no just reason. There are some other writ petitions, where it has been contended that the Commission is bound to give those petitioners, benefit of the decision of the Government as reflected in the amendment effected to the Rules.

5. In the circumstances, we have decided that in the fitness of the things and in order to avoid all future anomalies, these writ petitions should be addressed and decided together.

6. The basic contention appears to be that though the decision of the Government dated 4th November, 2010 is a decision taken under Article 162 of the Constitution of India,

but the said decision is violative of Articles 14 and 16 of the Constitution of India. It has been contended that in the event, the said decision dated 4th November, 2010 is permitted to stand, the same would encourage backdoor entry. In course of hearing, we have not been shown any provision made by the State Government either by way of legislative or executive action denoting the mode and method of recruitment of adhoc employees or of status of adhoc employees. The fact remains that when those 325 adhoc Ayurvedic Chikitsaks were appointed, in the advertisements published it was made clear that the contractual appointees will continue only till such time duly selected people are available. Those contractual appointees were given contractual remuneration and not remuneration in pay scales. Some of them served in such capacity until the decision was taken on 4th November, 2010 for 5 years, some for 3 years and some for 2 years. Neither in the advertisements, which resulted in appointment of contractual Ayurvedic Chikitsaks, nor by any Rules or by any notification or publication, it was ever held out that such contractual Ayurvedic Chikitsaks may, at one point of time, become adhoc Ayurvedic Chikitsaks entitled to remuneration on a pay scale. Why those contractual Ayurvedic Chikitsaks were made adhoc Ayurvedic Chikitsaks has not been attempted to be explained, except stating that they were appointed to serve people residing in remote parts of the State, but the fact remains that they were transferred from time to time from one place to the other. Many other people having eligibility did not show any inclination to be appointed, as such, contractual Ayurvedic Chikitsaks, because those were contractual appointments and not either permanent or temporary. Surreptitiously, the status was altered by the decision dated 4th November, 2010 and, accordingly, people who were to be appointed and were waiting to be appointed entailing remuneration on pay scale, as was advertised while recruiting those contractual Ayurvedic Chikitsaks, were cheated. In the voluminous pleadings filed, not a single whisper has been made highlighting any public interest in converting those contractual Ayurvedic Chikitsaks into adhoc Ayurvedic Chikitsaks and thereby giving them benefit of payment of remuneration on a pay scale, which they were not entitled in terms of their appointment letters and on the basis of the terms held out in the advertisement published, before they were appointed.

7. As aforesaid, some of those Ayurvedic Chikitsaks worked for 5 years, some for 3 years and some for 2 years of their own volition and being told what they would be entitled

to for having been appointed, as such. In the event, the State Government, who is the trustee of the people of the State, does anything surreptitiously without letting the people know that it is doing so, the same tantamount to defrauding the people. In the instant case, the State Government by taking the decision dated 4th November, 2010 breached its obligation towards the people of the State and, in particular, to those, who were and are otherwise entitled to be considered for appointment in the posts of Ayurvedic Chikitsaks entitled to draw salary on the pay scale, as provided in the Rules. The State Government by taking the decision dated 4th November, 2010 refused equal opportunity to the people and thereby breached the provisions of Articles 14 and 16 of the Constitution of India. While taking a decision under Article 162 of the Constitution of India, the State Government is required by the mandate of the Constitution of India to comply with the provisions contained in Part – III of the Constitution of India read with Part – IV of the Constitution of India. While taking the decision dated 4th November, 2010, the State Government breached its obligations contained in Articles 14 and 16 of the Constitution of India, which are part of Part – III of the Constitution of India. It has not been brought to our notice which provision of Part – IV of the Constitution of India has been achieved by the said decision. Accordingly, question of balancing in between Directive Principles of the State Policy and Fundamental Rights does not arise in the instant case.

8. Conclusion therefore would be that the said decision of the Government dated 4th November, 2010 withdrawing 227 posts from the purview of appointment through the Commission and permitting those to be occupied by contractual Ayurvedic Chikitsaks in adhoc capacity, is not sustainable in law. The same is quashed. Therefore, there is now no decision dated 4th November, 2010 and, accordingly, question of giving any contractual Ayurvedic Chikitsaks an adhoc status will not arise. Therefore, a number of petitions, where it is being contended that the petitioners have not been accorded adhoc status, have now become infructuous.

9. As aforesaid, Rule 8 of the 2010 Rules has been amended and thereby 10 years age relaxation has been given to serving contractual Ayurvedic Chikitsaks. We have already pronounced that in the matter of effecting amendment to Rule 8 of the 2010 Rules, the State Government was not required to consult the Commission. We have already said that the

said Rules, being Statutory Rules, are equally binding on the Commission. The State Government, in exercise of its statutory power, has affected the said amendment. The rationale of the said amendment is not under challenge in any of these writ petitions. A look at the amendment will amply make it clear that the said one-time age relaxation was given by the State Government in order to give an opportunity to each contractual Ayurvedic Chikitsak working with the State Government, so that they can compete and, if selected, appointed in those 564 advertised posts. There was no just reason for the Commission not to act on the basis thereof. We, accordingly, direct the Commission to publish a corrigendum to the advertisement dated 25th August, 2010 and thereby inform all and sundry that 10 years' age relaxation for the selection year 2010-2011 is available for such Ayurvedic Chikitsaks, who are working as contractual Ayurvedic Chikitsaks in the Department of Ayurvedic and Unani under the State Government continuously for one or more than one year, and that, such relaxation is available in respect of those 564 advertised posts. We make it clear that in the corrigendum, it must be mentioned that any of such Chikitsak, who was within the advertised age, after adding 10 years of age, in between 1st July, 2010 and 30th June, 2011, will be eligible to respond to the said advertisement.

10. Corrigendum must be published as quickly as possible, but not later than one month from today. It is also made clear that selection process completed need not be reopened. The Commission shall be at liberty to undertake selection process of only those eligible people, who would be responding after corrigendum is published. It is also made clear that after such selection process is over, on the basis of combined merit of the persons already interviewed and the persons to be interviewed would be recommended for appointment.

11. We make it clear that we have not gone into the question, as such question has not arisen in these writ petitions, as to whether it shall be obligatory on the part of the State Government to appoint 564 persons, even if 564 persons are recommended by the Commission for being appointed.

12. With the direction as above, we dispose of all these writ petitions.

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition (S/B) No. 474 of 2012 & Connected case
D.D. 30.04.2013
Hon'ble Barin Ghosh, C.J. &
Hon'ble Servesh Kumar Gupta, J.

Dr. Ritu Singh & Ors. … Petitioners
Vs.
Uttarakhand PSC & Ors. … Respondents

A. Interview – Selection by interview

Prescription of minimum cut off marks of 45% for general merit candidates and 35% for reserved category candidates in interview for selection to posts of Medical Officer (Ayurvedic) – Whether in absence of specific provision for fixation of cut off marks in interview in the Procedure and Conduct of Business Rules, 2007, can Commission in exercise of its residuary powers under 2007 Rules to fix cut off marks for interviews? Yes. – Held that it is well within domain of selectors to prescribe minimum cut off marks. Only restriction is that it should be done well before commencement of process of selection.

B. Interview Procedure for awarding of marks in interview

Whether procedure of signing marks sheet containing marks obtained by candidates by Chairman of the board of selection and not by all members constituting board, good and a fair practice? No. Held that it is obligatory on part of members of the board to sign marks sheet in order to show that not only justice has been done but it is ensured that the same has been shown and established.

C. Interview

Whether fixation of interview as sole criteria for selection for adjudging merit or eligibility of candidates can be said to be fair and just method of selection? No. – Directions issued to alter selection criteria for awarding of chances of arbitrariness and favouritism in selection by interview as sole criteria.

Held:

3. We feel, may be selection by interview only is permissible, but when a large number of people are to be recruited, at the bottom of the cadre or as the only members of the cadre, it would not be just to select them only on the basis of interview. Such a selection cannot be said to be fair and just. There is no inherent mechanism forwarding of chances of arbitrariness and favouritism in such selection process. It would be desirable, therefore, to alter the criteria for selection. We would, therefore, request the State Government to alter the selection criteria. At the same time, we request the Commission to lay down such parameters to be followed by the members of the board for ascertaining inter se merit of

people to be interviewed so that the chances of arbitrariness and favouritism are minimized."

Case referred:

1. K. Manjusree v. State of Andhra Pradesh and another, 2008(3) SCC 512

JUDGMENT

BARIN GHOSH, C.J. (Oral)

Selection pursuant to an advertisement is the subject matter of challenge in the present writ petitions. The purpose of the selection was to enable appointment of Medical Officers (Ayurvedic). The appointments are available in the posts created by the State under the Uttarakhand Medical (Ayurvedic and Unani) Group 'B' Service Rules, 2010. The said Rules provide, amongst others, that recruitment to the post in the service shall be made by direct recruitment through Commission. In terms of the said Rules, Commission means 'Uttarakhand Public Service Commission'. The said Rules direct that the method of selection shall be interview, where marks are to be allocated to the candidates to be interviewed. There is no dispute that, in the instant case, interviews were held by the Commission. Petitioners are seeking to contend that marks were not allocated at the interview. It is the contention of the Commission that marks were allocated to each person, who was interviewed. It is the specific case of the Commission that after having had interviewed all those candidates, who had been invited at the interview, on the basis of merit, recommendation for recruitment was made. It is the contention that whereas the Commission made recommendation for many a categories, but not all categories, as it could not find people suitable in those categories for being recommended as they did not get the required cut off mark. One of the petitioners in these writ petitions is an OBC candidate. It is contended that the cut off mark, as was fixed, as claimed by the Commission, was not applicable to Medical Officers firstly and in any event, the same was not notified and, accordingly, recourse thereto could not be taken. It is, therefore, the contention of that petitioner that because of fixation of cut off mark, he has lost an opportunity of being appointed. The fact remains that the Procedure and Conduct of Business Rules, 2007 authorises the Commission to deal in such manner as the Commission deems fit with any

matter not specifically provided for in those Rules. It is the contention of the Commission that since those Rules have not dealt with cut off mark, the same could be dealt with by the Commission in exercise of its residuary power and the same was exercised as far back as on 19th October, 2007, i.e. much before steps were taken to commence selection. It was contended that on 19October, 2007, a decision was taken that in future, selections for all posts, the cut off mark for general candidates in the interview shall be 45 per cent, whereas for reserved candidates, the same will be 35 per cent. The learned counsel for the petitioners, for our assistance, have produced a judgment of a three-Judge Bench of the Hon'ble Supreme Court rendered in the case of **K. Manjusree versus State of Andhra Pradesh and another**, reported in 2008 (3) SCC, 512. The learned counsel also drew our attention to paragraph 33 of the said judgment. The same is as follows:-

> "The Resolution dated 30-11-2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."

2. A perusal of the above observation of the Hon'ble Supreme Court would make is abundantly clear that it is well within the domain of the selectors to prescribe minimum cut off mark. The only restriction is that they should do it before the process of selection has started. We would add the reason behind the said logic. We think that the selectors before selecting must know that a minimum is required for a person to qualify. Unless the

selectors know that to be the standard in the matter of assessment, there is likelihood of their making assessment without focusing the ability of the person to acquire the minimum recruitment and, accordingly, if the same is not fixed at the time before the selection started, but the same is inserted later, there is possibility of a candidate suffering prejudice, inasmuch as, at the time of interview, the members of the interview board did not apply their mind whether he is good enough to cross the eligibility. This paragraph of the judgment, while uphold the authority of the selectors to prescribe cut off/minimum marks at interview, did not speak that the same is required to be notified. / In the circumstances, we cannot hold in favour of that OBC writ petitioner, who has secured less than the cut off mark of 35 per cent, fixed for reserved category and, accordingly, has not been recommended for being appointed. The ultimate contention is, whether marks were given to the candidates or not? That the marks were given to the candidates, was sought to be established by the Commission by producing the mark-sheets of each interview boards. It is the contention of the petitioners that the mark-sheets, thus produced, suggest that more than one person constituted the interview board, but the mark-sheets contain the signature of only one person said to be a member of the interview board. It is the contention of the petitioners that the marks, thus reflected in those mark-sheets, were the marks, in fact, given by the members of the board, is not evidenced by the mark-sheets themselves. It is the contention of the Commission that at the interview board, members of the board decided, after interviewing each candidate, what marks he is entitled to and that is reflected in the mark-sheet and at the end of the interview, the same is signed by the Chairman of the board. It is the contention of the Commission that the said system is in vogue since the creation of the Commission. It has been contended that many of the people, who were members of those Boards, have filed affidavits and, therein, they have indicated that the mark-sheets reflect the collective decision of the members of the boards. Petitioners have contended that while originally the Commission had indicated that assistance of 66 experts was taken, later, the figure was altered to 57 and on counting the members, who manned the different boards, it will appear that 60 experts had participated. It was contended that in some of the mark-sheets, only the number of experts had been mentioned, but their names had not been furnished. It was contended that in two of the boards, there were at least one member, who was seeking election and accordingly, was disqualified to be a part of the interview

board. This only creates suspicion, but suspicion cannot take the place of evidence. A writ court, in the matter of upholding legal right of a writ petitioner which will deny a legal right accrued in favour of the respondents to the writ petition, cannot take recourse to either doubt or to suspicion. It has to come to a conclusion that the legal right sought to be enforced is existing and that the same is enforceable and because the same is existing and enforceable, the legal right said to have accrued in favour of the respondents dissipates. We feel that justice is not only to be done, but is also required to be shown to have been done. In the instant case, the members of the boards of interview were doing justice inter se those candidates who had appeared before them for being selected. In the present writ petitions, there is no material on the basis whereof we can pronounce that justice was not done while awarding marks to each of the candidates, who appeared before the boards, but the fact remains that such justice was, in fact, done was not shown or reflected in the mark-sheets. It appears that almost all the boards were comprised of more than one person. The mark-sheets contain the signature of one. If a person, who has signed, alters the mark-sheet subsequent thereto, the person who has not signed will not be able to do justice to the person, who has lost by reason of such alteration. It was, therefore, obligatory on the part of all the members of the boards to sign the mark-sheets in order to show that not only justice has been done by them but they have also ensured that the same has been shown and established. There is another aspect of the matter. By rules framed under proviso to Article 309 of the Constitution of India, the criterion for selection has been mandated to be interview where marks are to be given. As aforesaid, the Commission is to hold the interview and to give marks, is also the mandate of the rules. Commission has done so and, accordingly, has discharged its obligation. Petitioners are contending that selection pursuant to interview alone is not proper. They are contending that when selection pursuant to interview is the one and the only mode, then it is a requirement of law to lay down what are the factors to be taken into account at the interview and what marks would be allocated for those factors. It was contended that the same having not been done in the instant case, the selection is otherwise interferable. We think that having had taken chance before the interview boards, knowing fully well that the criterion for selection is only interview and no parameter for assessment of merit at the interview has been prescribed, it is not

permissible for the court, at the instance of the petitioners, to hold that for fixation of interview as the sole criterion for selection or for non-laying down of parameters for adjudging merit or eligibility, there can be any interference with the selection, which stands concluded and by virtue whereof, people have acquired some right based on the merit adjudged at the interview.

3. We, accordingly, refuse to interfere with these writ petitions. They are dismissed, but at the same time, we direct the Commission to henceforth ensure that each member of the interview board signify under his signature either the marks given by him individually or marks given by all the members of the board collectively. We feel, may be selection by interview only is permissible, but when a large number of people are to be recruited, at the bottom of the cadre or as the only members of the cadre, it would not be just to select them only on the basis of interview. Such a selection cannot be said to be fair and just. There is no inherent mechanism forwarding of chances of arbitrariness and favouritism in such selection process. It would be desirable, therefore, to alter the criteria for selection. We would, therefore, request the State Government to alter the selection criteria. At the same time, we request the Commission to lay down such parameters to be followed by the members of the board for ascertaining inter se merit of people to be interviewed so that the chances of arbitrariness and favouritism are minimized.

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition No. 1235 of 2010 (S/S) & Connected cases
D.D. 23.12.2013
Hon'ble Mr. Justice Alok Singh

Basanti Rautela & Ors. … Petitioners
Vs.
Uttarakhand PSC & Anr. … Respondents

Qualification

Date of fulfillment of eligibility criteria of possession of prescribed qualification – Whether it should be on last date fixed for filing applications or on date of declaration of results of selection? Held that one must possess requisite qualification on the last date for submission of application form. Uttarakhand Public Service Commission invited application for the post of Lecturer in Hindi fixing last date for receipt of submission of application as 30.06.2009. Petitioner, on submission of application, was permitted to appear for written examination as well as personality test and were declared selected on basis of results of examination published on 20.07.2010. However, they were not issued with appointment orders on ground that they did not possess requisite qualification on last date fixed for receipt of applications, but only on 10.09.2009 – Petitioners, who did not possess the requisite prescribed qualification as on 30.06.2009 appeared for examination come out successful in the examination held in the month of July 2009 the result of which were declared on 10.09.2009 contend that as per Rule 8 of Uttarakhand Special Subordinate Education (Lecturers Grade) Service Rules, 2008, which reads to the effect that a candidate for recruitment to the post must possess the qualification specified against each post on the date of recruitment and by reading Rule (8) of 2008 Rules and condition (11) of the advertisement together it should be construed that it is sufficient if one possess prescribed qualification on or before date of declaration of results of selection and therefore they should be treated to have fulfilled prescribed education qualification and appointment order issued – High Court by following the decision of Hon'ble Apex Court in Prafulla Kumar Swain v. Prakash Chandra Misra and others reported in 1993 (1) SLR 565 wherein the term 'recruitment' interpreted to signify enlistment, acceptance, selection or approval for appointment, come to the conclusion that process of recruitment starts with enlistment i.e., submission of application form and therefore it should mean one must possess requisite qualification on the last date for submission of application form. In the circumstances, refusal to issue appointment orders held neither arbitrary nor illegal or unjustified.

Cases referred:

1. Prafulla Kumar Swain v. Prakash Chandra Misra and others, 1993 (1) SLR 565
2. U.P. Public Service Commission U.P. Allahabad and another v. Alpana, (1994) 2 SCC 723
3. Smt. Ranjana Kumar v. State of Uttaranchal and another, W.P.No.297/2007 (S/B) decided on 29.08.2011

ORDER

All these writ petitions involve identical question of law, therefore, with the consent of the learned counsel for the parties, all the petitions were heard together and are being disposed of with common judgment.

To decide and understand the controversy involved in these petitions, facts of Writ Petition No. 1235 of 2010 (S/S), Basanti Rautela v. Uttarakhand Public Service Commission and another, are being taken and summarized as under:

Uttarakhand Public Service Commission, respondent no. 1, invited applications for the post of Lecturers in different colleges vide advertisement dated 30.5.2009. As per advertisement, requisite qualification for the post of Lecturer (Hindi) was Post Graduation in Hindi, Graduation with Sanskrit Subject or certificate of Shastri issued by Sanskrit Vishvavidyalaya, Varanasi with L.T. Diploma or B.Ed. Meaning thereby, the requisite qualification was Post Graduate and Sanskrit should be one of the subjects in Graduation plus either L.T. Diploma or B.Ed. degree.

As per condition no. 11 of the advertisement, candidate must possess requisite qualification on or before the date of submission of application form and must indicate that on the date of submission of application form, all the requisite qualifications possessed by the candidate. Last date of submission of application for was 30.6.2009. Petitioner submitted her application form for the post of Lecturer (Hindi) within time stipulated in the advertisement. Petitioner was postgraduate in Hindi, however, she earlier did her graduation without Sanskrit subject, therefore, she was undergoing once again graduation course in Sanskrit subject and examinations of B.A. (Sanskrit) were held in the month of July, 2009 and result thereof was declared on 10.9.2009. Petitioner was permitted to appear in the written test and result thereof was declared on 20.7.2010. Thereafter, petitioner was interviewed, however, despite the fact that she was shown selected, she was not appointed saying that she was not having requisite qualification of graduation with Sanskrit subject on or before the last date of submission of application form dated 30.6.2009.

Mr. Sharad Sharma, learned Senior Counsel appearing for the petitioner vehemently argued that as per Rule 8 of Uttarakhand Special Subordinate Education (Lecturers Grade)

Service Rules, 2008, a candidate for recruitment to the post must possess the qualification specified against each post in Appendix A. It means, on the date of recruitment candidate must possess qualification and not before it. Further contends that since the petitioner had acquired graduation degree in Sanskrit subject on or before the written examination, therefore, petitioner must be considered qualified for appointment and her candidature was wrongly rejected.

The next argument of Mr. Sharad Sharma, learned Senior Counsel appearing for the petitioner is that since as per Rule 8, candidate must possess requisite qualification on the date of recruitment, therefore, condition no. 11 of the advertisement inviting application should be read along with Rule 8 to understand and say that those who have acquired requisite qualification on or before the date of recruitment were eligible.

On the other hand, Mr. B.D. Kandpal, learned counsel appearing for Uttarakhand Public Service Commission submits that none of the petitioners challenged the advertisement inviting applications and participated in the recruitment process pursuant to the advertisement and now thereafter, it would not be open to the petitioner to say that condition No. 11 should be read along with Rule 8 and should be understood to mean that the qualification must be possessed on the date of recruitment.

Hon'ble Apex Court in the case of Prafulla Kumar Swain v. Prakash Chandra Misra and others reported in 1993 (1) SLR 565 had occasioned to deal the definition of "recruitment" and "appointment". Hon'ble Apex Court in paragraph no. 28 has held as under:

> "28. At this stage, we will proceed to decide as to the meaning and effect of the words "recruitment" and "appointment". The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradistinction the word "appointment" means an actual act of posting a person to a particular office."

Having read para 28 of the judgment, this Court has no hesitation to hold that process of recruitment starts with enlistment, acceptance, selection and approval for appointment. In the further opinion of this Court, recruitment process starts with the submission of application form, therefore, the condition No. 11 of the advertisement, even if read with

Rule 8, could be understood to mean that on the date process of recruitment starts i.e. the last date of submission of application form, candidate must possess requisite qualification.

In another case, Hon'ble Apex Court had occasioned to deal with the same question in the case of U.P. Public Service Commission U.P., Allahabad and another v. Alpana reported in (1994) 2 SCC 723, wherein also it has been held that as per condition stipulated in the advertisement, a candidate must possess requisite qualification on or before the date of submission of application form.

Division Bench of this Court in Smt. Ranjana Kumar v. State of Uttaranchal and another (Writ Petition No.297 of 2007 (S/B) decided on 29.8.2011 also held that on the last date of submission of application form, candidate must possess requisite qualification.

Moreover, since none of the petitioners challenged condition No. 11 of the advertisement at initial stage and have submitted their respective application form after understanding the terms and conditions of the advertisement, therefore, petitioners in view of principle of estoppel at the subsequent stage should not be permitted to challenge condition No. 11.

Consequently, it is held that none of the petitioners was having requisite qualification on or before the last date of submission of application form i.e. 30.6.2009.

Mr. M.C. Pant, Mr. D.C.S. Rawat and Mr. Bhupesh Kandpal, learned counsel appearing for the petitioners contended that petitioners of Writ Petition No. 1092 of 2011 (S/S) & Writ Petition No. 1093 of 2011 (S/S), Writ Petition No. 599 of 2011 (S/S) and Writ Petition No. 1046 of 2011 (S/S), had appeared in the examination held by the University prior to the issuance of the advertisement, however, for no fault of them, result was declared after expiry of last date of submission of application form. The Commission sought clarification from the University and the University has submitted that for the examination held prior to the publication of the advertisement and declaration of result thereafter would relate back to the date of examination, therefore, they were having requisite qualification on or before the last date of submission of application form.

Argument so advanced cannot be accepted for the simple reason that on the last date of submission of application form i.e. 30.6.2009, none of them were having requisite degree in their hand.

At this stage, Mr. Sharad Sharma, learned Senior Counsel contends that Madhurani Nautiyal, Shina Rai, Sanjeev Kumar and Guman Lal Bairwan as shown in final select list at Serial Nos. 98, 119,124 & 145 respectively were also not having requisite qualification on or before 30.6.2009 i.e. the last date of submission of application form and acquired the requisite qualification at the subsequent stage and they have been selected and given appointment.

Mr. B.D. Kandpal, learned counsel appearing for Public Service Commission submits that appointment of Shina Rai has already been revoked/cancelled the moment it came to the knowledge of the authorities that she was not having requisite qualification on or before 30.6.2009. He further contends that now cases of other candidates as mentioned by Mr. Sharad Sharma, learned Senior Counsel shall also be examined and if it is found that their selection and appointment is per se illegal, appropriate steps shall be taken by the appropriate authorities for the cancellation/revocation of appointment/termination of their services.

Since question of legality of appointment of these persons as pointed out by Mr. Sharad Sharma, learned Senior Counsel is not involved in these petitions, therefore, this Court need not interfere in the question of legality of their appointment and this matter ends here in view of the statement made by Mr. B.D. Kandpal, learned counsel appearing for the Public Service Commission.

Therefore, rejection of candidature of the petitioners cannot be held to be arbitrary, illegal and unjustified. Consequently, all the writ petitions fail and are hereby dismissed.

Considering the peculiar facts and circumstances of the case, no order as to costs.

CLMA Nos. 5494 of 2011, 10940 of 2010, 8353 of 2011, 8766 of 2011, 8767 of 2011, 10084 of 2011, 10481 of 2011, 10492 of 2011, 13984 of 2011, 2849 of 2011, 6168 of 2011, 7530 of 2012 also stand disposed of accordingly.

Let a copy of the judgment be placed in all the connected petitions.

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