UNION PUBLIC SERVICE COMMISSION

IN the HIGH COURT of Delhi at Newdelhi
WP (C). No. 5429 of 2008
D.D. 25.02.2009
Hon'ble Mr. Justice A.K.Sikri &
Hon'ble Mr. Justice Suresh Kait

Ravi Prakesh Gupta … Petitioner
Vs.
U.P.S.C & Ors. … Respondents

Visually Handicapped Persons:

Whether Union Public Service Commission is correct in its calculation of backlog vacancies in the light of OM bearing No.36035/2004 – Estt. (Res.) dated 29.12.2005 issued by Department of Personnel and Training, Government of India mandating carry forward of unutilized vacancies earmarked for visually handicapped persons and in earmarking only one vacancy in favour of such persons for recruitment to Indian Administrative Service for the year 2006? No. – Mandamus issued to calculate backlog vacancies meant for visually handicapped persons right from 1996 keeping in view O.M dated 29.12.2005 and to accommodate the petitioner in I.A.S. by issuing appropriate appointment letter within 6 weeks from date of judgment.

Held:

The order dated 07.04.2008 passed by the Central Administrative Tribunal is hereby set aside. Consequently, OA 1397/2007 preferred by the petitioner before the Tribunal stands allowed. Since clear vacancy is available to which the petitioner can be accommodated on the basis of his position in the merit list, Mandamus is issued to the respondents to offer him appointment to the said post by issuing appropriate appointment letter within six weeks from today.

In case the vacancies are filled up by diverting the same to the other categories, it will be for the respondents to carry out necessary exercise for restoring these vacancies in the category of visually handicapped persons and offer the petitioner appointment as such. The petitioner shall also be given his seniority along with his batch mates who took the examinations in the year 2006 and his pay shall be fixed notionally on that basis. However, the actual pay shall be given to him from the date he joins. The petitioner shall be entitled to costs of Rs.25000/- and respondent No.1 shall pay the costs to the petitioner."

Case referred:

1. L.Chandra Kumar Vs. Union of India and another, JT 1997 (3) SC 589.

JUDGMENT

A.K.Sikri.J. (Oral)

One blind person once asked Swami Vivekanand, "Is there anything worse than losing your eye sight". Swami Vivekanand replied, "Yes, losing your vision." This case exhorts the respondent to visualize the purpose and spirit of the enactment known as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which came into force w.e.f. 07.02.1996, and not to lose their vision. Rights guaranteed to the persons with disability under the aforesaid Act are repeatedly denied to them with the result that those persons who were supposed to be beneficiaries of the provisions of the said act are still struggling to extract those benefits notwithstanding the fact that it has now become their statutory right. We have also to bear in mind that rights of these persons suffering with disabilities are given the higher status of human rights by various UN conventions and even by Supreme Court of India through interpretative process of provisions of the Constitution including Articles 14, 19 & 21 in addition to the Directive Principles of State Policy.

The issue involved in this case is so simple that it hardly needs any elaborate discussion in answering the same. Unfortunately, the matter has dragged its feet only because of the adversarial posture adopted by the authorities, which is least expected in such cases. It is high time that wisdom dawns on such authorities and realizing their mistake they give the legitimate due to such persons rather than forcing them to go to the Court of law for enforcement of their rights.

The petitioner herein a visually handicapped person who suffers from almost 100% visual disability. He appeared in the Civil Services Examination conducted by Union Public Service Commission (UPSC) in the year 2006. An application for this purpose was made by him in May, 2006. After clearing the preliminary examination, he took Main Examinations in October, 2006. He was declared successful in the Main Examinations also and therefore vide letter dated 23.03.2007, the petitioner was called for the personality test i.e., interview which is scheduled for 01.05.2007. On that date he faced the Interview

Board. Thereafter, the result of the examination was released on 14.05.2007 as per which 474 candidates were selected.

In this list of successful candidates, the name of one blind candidate appeared. The petitioner herein was at serial No.5 in the merit list prepared for visually handicapped candidates who were successful. According to the petitioner, more than five vacancies were available for person in his category namely visually handicapped category and therefore he should have been given the appointment in Indian Administrative Services (IAS). However, the respondent offered only one post under this category.

After getting certain informations from the respondents under Right to Information Act, the petitioner filed writ petition being WP (C) No.5338/2007 in this court. However, as the exclusive jurisdiction to deal with such matters lies with the Central Administrative Tribunal in the first instance, as per the judgment of the Constitution Bench of the Supreme Court in the case of L.Chandra Kumar vs. UOI & Anr. JT 1997 (3) SC 589, the petitioner withdrew this writ petition with liberty to approach the Central Administrative Tribunal. Thereupon he filed the application under Section 19 of the Administrative Tribunal Act, which was registered as OA No.1397/2007. This OA has been dismissed by the learned Tribunal vide its judgment dated 07.04.2008 and the validity of this judgment is the subject matter of the present writ petition filed by the petitioner.

We may note at this stage that itself the primary reason given by the Tribunal rejecting the OA of the petitioner herein is that as per the information received by the petitioner himself under the Right to Information Act, there was no backlog of physically handicapped vacancies in the IAS and for the year 2006, in which the petitioner participated in the selection process, only one vacancy in this category was available which was given to the person who was at serial No.1 in the merit list in this category. We are constrained to point out that while holding this the Tribunal simply went by the distorted information given to the petitioner under the Right to Information Act by the respondents. It did not care to probe into the matter further, which it was suppose to do. We are making these

observations because of the reason that it was necessary for the Tribunal to find out as to what was the basis for the assertion of the respondent that there was no backlog of physically handicapped vacancies. It was supposed to find out whether all the vacancies meant for physically handicapped persons till the year 2005 were filled up amongst the persons belonging to that category or not. Neither this question was asked and naturally nor addressed by the Tribunal in the impugned judgment.

The main contention of learned counsel for the petitioner is that the Disability Act which came into force in the year 1996 provides a statutory provision mandating 3% reservations of posts for persons suffering from different kinds of disabilities. This provision is contained in Section 33 of the said Act and reads as under:-

> "33. Reservation of Posts:- Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of which one percent each shall be reserved for persons suffering from:-
>
> i. Blindness of low vision
> ii. Hearing impairment
> iii. Locomotor disability or cerebral palsy, in the posts identified for each disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

It is manifest from the bare reading of this Section that an obligation is cast upon every appropriate Government to reserve such percent of vacancies not less than 3% for persons or class of persons of disabilities. Three kinds of disabilities are stipulated in this provision:-

i. Blindness of low vision
ii. Hearing impairment &
iii. Locomotor disability or cerebral palsy

1% of posts are to be reserved in each of the aforesaid categories. Thus those persons who are placed in the category of blindness or low vision are entitled to 1% reservation of the vacancies to be advertised. This mandate was given in the year 1996 and therefore from the year 1996, the respondents were supposed to provide the reservation of all the posts filled in the manner indicated in Section 33 of the Act. It was in this context that the respondents were supposed to undertake the exercise as to how many total vacancies were filled up in the various Civil Services Examinations conducted from 1996 onwards. Depending upon the total number of vacancies in each year, 1% was to be earmarked for persons with visual disability. It is a matter of record, as would be noticed at the appropriate stage, discerned from the documents produced by the respondents themselves, that vacancies meant for visually handicapped persons were not filled from 1996 onwards.

From 1996 to 2000 not a single vacancy was reserved for physically handicapped person. In the year 2001 only 6 vacancies were reserved for visually handicapped persons and that too in the category of locomotor disability or hearing impairment. Even these are in other services and not in the IAS. Same position exits for the year 2002. In the year 2003, only one vacancy is given to physically handicapped person in IAS and this also in the category of Locomotor disability or Cerebral Palsy. In the year 2004 again no vacancy is filled up from amongst the disabled persons in so far as IAS is concerned. In the year 2005 one vacancy is filled up from the category of visually handicapped persons and one was given to the candidate suffering from hearing impairment. Thus from the year 1996 till 2005 only one vacancy form amongst the candidates suffering from visual disability was given in so far as IAS is concerned. The aforesaid statistics is quoted from the affidavit filed by the respondent No.2 itself namely Dy. Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pension, New Delhi.

The petitioner has place on record, along with its additional affidavit dated 16.10.2008, letter dated 27.11.2007 addressed by UPSC to one Sh.K.L.Gupta. This is the information received under Right to Information Act and relates to Civil Services Examination 1995 to 2006. As per this, following number of posts were to be filled in different Civil Services which is as under:-

S.No.	Name of the services	Year of Examination Year of Examination											
		95	**96**	**97**	**98**	**99**	**00**	**01**	**02**	**03**	**04**	**05**	**06**
1	Indian Administrative Services	80	75	55	55	56	59	59	70	89	91	87	89
2	Indian Foreign Services	16	14	16	10	08	18	16	10	18	20	20	20
3	Indian Post Telegraphs Accounts and Finance Services	07	08	40	13	07	06	03	02	02	01	01	02
4	Indian Ordinance Factories Services	10	06	15	10	10	10	20	06	04	03	03	06
5	Indian Postal Services	16	16	12	16	17	17	09	11	12	17	05	06
6	Indian Railways Accounts Services	12	26	27	27	24	24	16	05	05	05	23	09
7	Indian Railways Personnel Services	06	12	17	17	13	13	09	03	03	03	16	07
8	Indian Trade Services	-	03	-	-	-	-	03	-	-	01	02	05

In so far as IAS is concerned, 785 vacancies were filled from 1996 to 2006. thus during this period 8 number of vacancies were to be reserved for visually handicapped persons. As against it, only one person belonging to this category was given appointment in the year 2005, leaving 7 posts, which could be filled in the year 2006. However, in that year only one post from this category has been filled.

The petitioner was at serial No.5 and was a successful candidate. Thus when sufficient numbers of successful candidates were available against the said reserved posts, we fail to understand as to why requisition for filling up only one post was sent by the DOP & T to the UPSC.

It may be useful to take note of the Office Memorandum dated 26.04.2006 at this stage which deals with 'reservation for the persons with disabilities. It refers to DOPT's OM No.36035/3/2004 – Estt. (Res.) dated 29.12.2005, as per which the identification of post was done. It is clarified in the OM dated 26.04.2006 that as per OM dated 29.12.2005, the reservation for persons with disabilities are to be earmarked keeping in view the instructions contained in the said OM. Significantly, this OM states no uncertain terms, such reservation is to start from the year 1996. The relevant portion of this OM, in this behalf reads as under:-

> "The matter has been considered carefully and it has been decided that reservation for persons with disabilities should be implemented in right earnest and there should be no deviation from the scheme of reservation, particularly after the act came into effect. In order to achieve this objective, all the establishment should prepare the reservation roster registers as provided in this Department's OM No.36035/3/2004 – Estt. (Res.) dated 29.12.2005 starting from the year 1996 and reservation for persons with disabilities be earmarked as per instructions contained in that OM. If some or all the vacancies so earmarked had not been filled by reservation and were filled by able bodied persons either for the reason that points of reservation had not been earmarked properly at the appropriate time or persons with disabilities did not become available, such utilized reservation may be treated as having been carried forward to the first recruitment year occurring after issue of this OM and be filled as such. If it is not possible to fill up such reserved vacancies during the said recruitment year, reservation would be carried forward for further two years, where after it may be treated as lapsed."

Following position follows from the reading of this OM:

a) Reservation for persons with disabilities were to be earmarked from the year 1996.
b) If the vacancies so earmarked had not been filled up by reservation in the previous year, they had to be treated as having been carried forward to the first recruitment year occurring after the issue of the said OM and were to be filled as such.
c) Only if it was not possible to fill up such reserved vacancies during the following recruitment years and within a further period of two years thereafter, they were to be treated as lapsed.
d) The mandate of even this OM was to calculate the backlog from the year 1996 and fill up the same in the following year. The OM is dated 26.04.2006 and therefore, the vacancies which were to be filled up in the year 2007 were to be done in the aforesaid manner.

We have already noted above that the petitioner herein appeared in the Main Examination in October, 2006 and was called for interview in May, 2007, the results

whereof were declared in 2007. Thus in the year 2007, the entire backlog namely, 7 vacancies in this category were available to be filled. However, glossing over the said office memorandum, the respondents chose to fill only one vacancy.

We may note that the position contained in the aforesaid OM is again reiterated by the DOPT in its OM dated 10.12.2008.

In view of the aforesaid, this writ petition is allowed. The order dated 07.04.2008 passed by the Central Administrative Tribunal is hereby set aside. Consequently, OA 1397/2007 preferred by the petitioner before the Tribunal stands allowed. Since clear vacancy is available to which the petitioner can be accommodated on the basis of his position in the merit list, Mandamus is issued to the respondents to offer him appointment to the said post by issuing appropriate appointment letter within six weeks from today.

In case the vacancies are filled up by diverting the same to the other categories, it will be for the respondents to carry out necessary exercise for restoring these vacancies in the category of visually handicapped persons and offer the petitioner appointment as such. The petitioner shall also be given his seniority along with his batch mates who took the examinations in the year 2006 and his pay shall be fixed notionally on that basis. However, the actual pay shall be given to him from the date he joins. The petitioner shall be entitled to costs of Rs.25000/- and respondent No.1 shall pay the costs to the petitioner.

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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi
Original Application No.1079 of 2011
D.D. 21.03.2011
Hon'ble Mr. Justice V.K.Bali, Chairman &
Hon'ble Mr. L. K. Joshi, Vice-Chairman (A)

Bijendra Singh Rathore … Applicant
Vs.
Union of India through
Secretary & Ors. … Respondents

Civil Services Examination:

Imposition of restriction on number of attempts by general category candidates aspiring for Indian Administrative Service – Whether restriction imposed on number of attempts, by regulation 4 (iii– a) of 1955 Regulations, that general category candidates can avail only four attempts to appear for Civil Services Examination vis-à-vis OBC candidates with 7 chances/attempts and SC/ST candidates with unlimited chances/attempts, when no such restrictions are imposed in respect of other examinations conducted by U.P.S.C., amounts to hostile discrimination and thus infringement of fundamental rights? No. Whether Courts and Tribunals may, in exercise of their power of judicial review, interfere in such matters, if as a matter of policy, chances for appearing in Civil Services Examination are restricted, merely on ground that such restrictions are not applicable/imposed with regard to other examinations conducted by U.P.S.C.? No.

Held:

6. ……There are provisions in the Constitution for giving special or concessional treatment to persons of reserved categories, which, by now, also include OBCs. Providing more number of chances to OBC and SC/ST is a concession to reserved category candidates, for which enabling provisions are available in the Constitution of India. Different number of attempts provided to general category candidates and OBC and SC/ST candidates, is a case of classification; it cannot be said to be a case of discrimination.

7. ……..There may be unlimited chances for a candidate who may appear in another examination, but by policy, the Government may limit the chances for Civil Services Examination. If as a matter of policy, chances for appearing in the Civil Services Examination are thus restricted, which restriction is not applicable with regard to other examinations conducted by UPSC, the courts and tribunals would not interfere in the same."

O R D E R

Justice V. K. Bali, Chairman:

Brijendra Singh Rathore, an aspiring candidate for Civil Services Examination, the applicant herein, has challenged regulation 4(iii-a) of the 'Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955' (hereinafter to be referred as the Regulations of 1955), vide which chances to appear in the said examination for general category candidates have been restricted to four.

2. The facts as set out in the Application reveal that the respondent Union Public Service Commission (UPSC) conducts Civil Services Examinations for filling up vacant posts of Indian Administrative Service. The criteria for eligibility and procedure for appointment by competitive examination to the Service is prescribed under the Regulations aforesaid. It is the case of the applicant that regulation 4(iii-a) of the Regulations prescribes the maximum number of attempts by general category candidates for appearing in the Civil Services Examination as four, unless covered by any of the exceptions that may, from time to time, be notified by the Central Government in that behalf. Being aggrieved and perturbed by this system of hostile discrimination, it is pleaded, the applicant submitted an application under the Right to Information Act to Central Public Information Officer (DS E-I/EA), UPSC, seeking complete information in this regard. Vide letter dated 5.8.2008, Deputy Secretary & CPIO transferred the application of the applicant to Section Officer/CPIO, Ministry of Personnel, Public Grievances and Pensions (DOP&T). The applicant received incomplete information vide letter dated 22.8.2008, wherein, in a brief manner, it was mentioned that keeping in mind the socio economic and cultural factors, unlimited chances have been provided to SC/ST candidates. It was also mentioned that the CPIO would have no information as to why the above system is not being followed in other examinations conducted by UPSC. Unsatisfied by the information received, the applicant preferred an appeal under RTI Act. On 23.9.2008, his appeal was decided. Thereafter, the applicant made representations to various authorities, like, Chairman, UPSC; Minister of State, Ministry of Personnel, Public Grievances and Pensions; and Chairperson, National Human Rights Commission (NHRC). NHRC gave a reply vide letter dated 23.12.2009 that the complaint was not entertain able.

3. UPSC vide notification dated 2.1.2010 invited applications for approximately 965 vacancies in different streams of Civil Services. It is pleaded that at present the Commission follows the system of allowing a particular number of attempts in the Civil Services Examination and the examination for Indian Forest Service. The eligibility conditions would restrict the number of attempts by general category candidates up to maximum four. For OBC category candidates, the maximum number of attempts allowed is seven, whereas for SC/ST candidates, the number of attempts is unlimited. The applicant would have no grievance with regard to age relaxation, but he has a grievance as regards only four chances being given to general category candidates as compared to seven chances to OBC candidates and unlimited number of chances to SC/ST category candidates. The applicant applied for the vacancies by submitting his application form on 27.1.2010. That was to be the fifth attempt of the applicant. The applicant is 28 years of age and wants to pursue his career as an IAS officer. It is his case that because of the defective system of restriction on number of attempts by general category candidates, he has become a victim, and, therefore, has approached this Tribunal challenging the infringement of his fundamental right and the hostile discrimination meted out to him.

4. The applicant appeared in the examination conducted by UPSC on 23.5.2010 but was denied the result thereof on the premise of aforesaid eligibility restriction of limited number of attempts by general category candidates. The applicant, thereafter also made representations, but his case is that no heed was paid to the same. Aggrieved thus, he filed SB(C) writ petition no.2882/2010 before the High Court of Rajasthan at Jaipur, which was dismissed vide order dated 5.5.2010 with liberty to the applicant to approach the Central Administrative Tribunal. This order was challenged by the applicant in appeal before Division Bench, which passed a similar order. The applicant thereafter also continued making representations to various authorities and seeking information under RTI Act, and also filed an OA before the Jaipur Bench of this Tribunal, which he ultimately withdrew and filed the present OA for the relief as already indicated above.

5. The counsel representing the applicant has raised two-fold contentions. It is first urged by him that there may be relaxation in age insofar as OBC and SC/ST category

candidates are concerned, and, therefore, whereas the maximum age for a general category candidate may be 30, it may be 35 or more for OBC and SC/ST candidates, but different umber of chances provided to the applicant, who is a general category candidate, as compared to those belonging to OBC and SC/ST categories would be discriminatory, and, therefore, regulation 4 (iii-a) of the Regulations of 1955 would be violative of the provisions of the Constitution, and in particular, Articles 14 and 16 thereof. The other contention of the applicant is that once, there is no restriction on number of attempts to be made for other examinations being conducted by UPSC, there cannot be any restriction on the number of attempts by general category candidates in the Civil Services Examination.

6. We have heard the learned counsel representing the applicant and with his assistance examined the records of the case. It is no doubt true that by virtue of provisions contained in Article 14 of the Constitution, the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, and further, by virtue of provisions contained in Article 15, there cannot be any discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. There has also to be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State, in view of provisions contained in Article 16. However, in view of provisions contained in Article 16 (4) the State can make 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 it. In fact, by virtue of insertion of Article 16(4A), the State can make any provision for reservation in matters of promotion, with consequential seniority as well. There are provisions in the Constitution for giving special or concessional treatment to persons of reserved categories, which, by now, also include OBCs. Providing more number of chances to OBC and SC/ST is a concession to reserved category candidates, for which enabling provisions are available in the Constitution of India. Different number of attempts provided to general category candidates and OBC and SC/ST candidates, is a case of classification; it cannot be said to be a case of discrimination.

7. As regards the contention of the learned counsel that in other examinations conducted by UPSC there are no such restrictions in respect of number of attempts, as seen in the Civil Services Examination, we may only mention that the Government has discretion to make policy, in which there can be very little interference by way of judicial review. While framing policy, number of inputs come into consideration. It may be mentioned as an instance that for Civil Services Examination, the eligibility is graduation. Even though, by stages, the interest of the candidates evinced earlier to compete for Civil Services Examination is wearing away, but yet, it is a known fact that it is a Service for which many are desirous, and the eligibility being graduation, almost from any stream, be it science or commerce, number of candidates apply. If more than four chances are given to each candidate, it may create chaos and it may be very difficult to hold the examination by UPSC. As regards other examinations held by UPSC, the position may not be the same. For instance, if it is an examination to employ doctors, only limited number of candidates who have graduated in medical stream alone will be eligible. Therefore, there may be unlimited chances for a candidate who may appear in another examination, but by policy, the Government may limit the chances for Civil Services Examination. If as a matter of policy, chances for appearing in the Civil Services Examination are thus restricted, which restriction is not applicable with regard to other examinations conducted by UPSC, the courts and tribunals would not interfere in the same.

8. Finding no merit in this Original Application, we dismiss the same in limine.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No. 6349 OF 2011
(Arising out of S.L.P) No.11779 of 2011)
With
Interlocutory Application No.1
D.D. 05.08.2011
Hon'ble Dr. Justice Mukundakam Sharma &
Hon'ble Mr. Justice Anil R.Dave

Secretary, U.P.S.C. & Anr. … Appellants
Vs.
S. Krishna Chaitanya … Respondent

A. Candidature

Manner and method of submission of application form pertaining to Central Civil Services Examination – Respondent, candidate desirous of taking Central Civil Services Examination, 2010, was initially not issued with admit card to write the examination on ground of non-receipt of his application form by the Union Public Service Commission. However, because of intervention of Central Administrative Tribunal/High Court, respondent was permitted to appear for written exam as well as personality test by submitting second application. But his results were not declared – Contention of the respondent that he had sent in his application to UPSC through DTDC Courier and Cargo Ltd., on 28.01.2010 and the said courier had intimated that the application was delivered to appellant UPSC on 29.01.2010 itself – At no point of time respondent candidate adduced any evidence to the effect that the appellant had received the application form but for relying on the affidavit filed by the DTDC – Respondent did not enquire with UPSC authorities, when he did not receive acknowledgment card from UPSC affixed with its stamp having distinct numerical marks within 30 days from the date of dispatch of application form, as required under clause (7) of the advertisement inviting application, but only on 20.04.2010, after lapse of nearly two and a half months – Records maintained by appellant indicate that the system followed by them for receipt of application form is very comprehensive and flawless supporting the stand that the appellant has not received application form – Whether in the circumstances, can be inferred that it is because of lapse on part of appellant the respondent did not receive admit card and consequently directions should be issued to declare results of selection? No.

Held:

25. According to the respondent, he had forwarded his application form through the aforestated courier on 28th January, 2010. If the respondent did not receive any acknowledgement for a period of 30 days from the date on which he had forwarded his application form, he ought to have made necessary enquiry in the office of the appellants.

Even according to the case of the respondent, for the first time on 20th April, 2010, he made an enquiry about his application form as he had not received the acknowledgement card from the appellants. As stated in the aforestated clause no.7, as a prudent candidate, the respondent ought to have made enquiry latest b the end of February 2010, but for the reasons best known to the respondent, he waited upto 20th April, 2010 to make an enquiry whether his application form was received by the opponents. In our opinion, no vigilant student aspiring to become a responsible officer of the State would remain so indifferent so as not to make any enquiry for more than two months. It is also pertinent to note that the respondent was not taking the examination for the first time. According to him, he had taken the examination earlier also but unfortunately he was not successful. Thus, he was having experience about the way in which the application form is filled up, how that is to be submitted and the way in which acknowledgement card is sent by the appellants. In our opinion, this negligence on his part has resulted into his sufferance and he himself is only to be blamed for the events.

B. Interim relief

Grant of interim relief at interlocutory stage which virtually results in grant of final relief – By virtue of grant of interim relief by Central Administrative Tribunal as well as High Court on sympathetic ground, respondents appeared for written test (main) as well as personality test and the final results were retained in sealed cover, though the respondent had no right to take any of the examinations – Grant of interim order resulted in increased work load on Public Service Commission but also gave false hope to the candidates approaching the Court – Whether in the circumstance, Central Administrative Tribunal/ High Court can be said to be justified in granting interim relief? No.

Held:

"27. We may add here that this Court has observed time and again that an interim order should not be of such a nature that by virtue of which a petition or an application, as the case may be, is finally allowed or granted even at an interim stage. We reiterate that normally at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted. We, however, find that very often courts are becoming more sympathetic to the students and by interim orders authorities are directed to permit the students to take an examination without ascertaining whether the concerned candidate had a right to take the examination. For any special reason in an exceptional case, if such a direction is given, the court must dispose of the case finally on merits before declaration of the result. In the instant case, we have found that the respondent not only took the preliminary examination but also took the main examination and also appeared for the interview by virtue of interim orders though he had no right to take any of the examinations. In our opinion, grant of such interim orders should be avoided as they not only increase work of the institution which conducts examination but also give false hope to the candidates approaching the court."

J U D G M E N T

Anil R. Dave, J.

1. Leave granted.

2. Being aggrieved by the Judgment and Order dated 7.2.2001 passed in W.P. No.33367 of 2010 by the High Court of Andhra Pradesh at Hyderabad, confirming the Order dated 1st September, 2010, passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad, this appeal has been filed by the appellants - the Secretary and the Joint Secretary of Union Public Service Commission (UPSC).

3. According to the case of the respondent, being desirous of taking Civil Services Examination, 2010, he had filled up his application form and had sent the same to UPSC through DTDC Courier and Cargo Ltd. The respondent had handed over his application form to the above named courier on 28th January, 2010, and the courier had intimated to the respondent that the application form was delivered to UPSC on 29th January, 2010. Thus, according to the respondent, his application form had been duly received by UPSC and, therefore, he was expecting his admission certificate but as he had not received it even in the month of April, 2010, he had made a representation to the appellants on 20th April, 2010, making a grievance with regard to non-issuance of admission certificate to him. In pursuance of the aforestated representation made by the respondent, a letter dated 23rd April, 2010, was addressed to the respondent whereby he was informed that his application for Civil Services Examination (Preliminary), 2010 had not been received by the appellants and the respondent was also requested to furnish acknowledgment card duly stamped by UPSC to enable the appellants to take further action in the matter.

4. As the respondent had not received any acknowledgement card from the appellants, the respondent rushed to the Central Administrative Tribunal, Hyderabad, by filing O.A. No.470 of 2010 praying inter alia for an interim relief to the effect that the appellants be directed to furnish an admission certificate to the respondent so that the respondent can take the examination. By an interim order dated 12th May,

2010, the Central Administrative Tribunal directed the respondent to submit a copy of his application form to the appellants and directed the appellants to issue an admission certificate to the respondent so that the respondent can take the examination. It was clarified that the admission certificate would be subject to the final result of the said original application.

5. In pursuance of the aforestated interim order passed by the Central Administrative Tribunal (CAT), the respondent had filed another application form which was received by the appellants around 17th May, 2010 and in pursuance of the said application form, an admission certificate was issued to the respondent and he took the Civil Services Examination (Preliminary).

6. The aforestated original application was finally heard by the CAT and by an Order dated 1st September, 2010, the application was allowed, whereby the appellants were directed to declare result of the respondent and if he was found qualified, he should be permitted to take the Civil Services Examination (Mains), 2010. While allowing the application, the Tribunal had considered reply filed on behalf of the appellants. It was stated in the reply filed on behalf of the appellants that no application form from the respondent was received by the appellants. The respondent had specifically stated that his application form bearing No.37573985 had been submitted through the courier named hereinabove to the appellants on 29th January, 2010 at 4 p.m. The respondent had mainly relied upon an acknowledgement given to him by the courier to the effect that his application form had been delivered to the appellants on 29th January, 2010 at 4 p.m. and an affidavit had also been filed in support of the said averment by Shri V.S. Kumar Raju, Manager, Administration, Regional Office of DTDC, Hyderabad. The aforestated averments of the respondent were specifically denied by the deponent of an affidavit filed on behalf of the appellants. While passing the final order, the Tribunal had considered the above facts and had also observed about two possibilities - either the application form of the respondent was misplaced in the office of the appellants or the courier agency had failed to deliver the application form of the respondent to the appellants. The Tribunal did not come to the final conclusion

that the application form of the respondent was delivered to the appellants or the appellants in fact had received the application form of the respondent. Though the Tribunal observed in its order that it was difficult to come to a definite conclusion that the application form of the respondent was in fact received by the appellants, the Tribunal gave a final direction to the appellants to declare the result of the respondent and if he was found successful in the Civil Services Examination (Preliminary), he should also be permitted to take the Civil Services Examination (Mains) and should also be permitted to appear for interview. Thus, the application filed by the respondent was allowed by the Tribunal by the order dated 1st September, 2010.

7. The aforestated order of the Tribunal was challenged before the High Court by the appellants by filing Writ Petition No.33367 of 2010. After hearing the concerned advocates and after considering the above facts, the High Court disposed of the petition by observing that the respondent be permitted to take the Civil Services Examination (Mains) and should also be permitted to appear for the interview, if he is qualified in the Civil Services Examination (Mains). With the aforesaid observations, the petition was disposed of by the High Court.

8. It is pertinent to note that during the pendency of the aforesaid proceedings, the respondent took the Civil Services Examination (Mains) and also appeared for the oral interview. The final result has not been declared and it has been retained by the appellants in a sealed cover. Interlocutory Application No.1 has been filed by the respondent before this Court praying for directions to the appellants to declare the result of the respondent and keep a post vacant in a particular cadre so as to enable him to join the service. The said application is also pending for hearing.

9. Mr. Parag P. Tripathi, learned Additional Solicitor General appearing for the appellants submitted that the impugned order of the High Court confirming the order of the Tribunal is absolutely unjust and improper especially in view of the fact that neither the Tribunal nor the High Court had come to any final conclusion that the application form of the respondent was in fact submitted to the appellants.

10. The learned counsel apprised us of the procedure with regard to acceptance of application forms and he had also kept the entire relevant record pertaining to the application forms regarding the Civil Services Examination, 2010 in this Court. He explained to us as to how an application form was being received by the appellants. He submitted that as per normal practice of the appellants, whenever any application form pertaining to the Civil Services Examination is sent by post, the candidate sending it by post is supposed to enclose a self addressed acknowledgement card, with postal stamp affixed, along with the application form. The said acknowledgement card is returned by the appellants to the concerned candidate with a distinct numerical mark affixed thereon. The acknowledgement card is sent by post to the concerned candidate. If any application form is received by the appellants either through hand delivery or through a courier, the person who hands over the application form to a representative of the appellants at a particular counter, would be given an acknowledgement card after affixing a stamp having a distinct numerical mark.

11. He further stated that a facsimile of each stamp having distinct numerical mark is also retained by affixing it in a register maintained by the appellants so that in an event of any effort to forge the acknowledgement mark, fraud can be detected easily. The register containing such marks and record pertaining to the applications received on each day was placed before this Court for its perusal.

12. According to the leaned Additional Solicitor General, in view of the aforestated procedure, if the application form of the respondent bearing No.37573985 had been received by the appellants, an acknowledgment card ought to have been received by the courier's representative, who had personally handed over the application form to a representative of the appellants. He further submitted that according to the respondent, his application form was submitted on 29th January, 2010 at 4 p.m. A list of all applications, which had been received on 29th January, 2010, was shown to this Court but in the said list, there was no reference to the application form bearing

no.37573985, belonging to the respondent. He, therefore, submitted that in fact the application form of the respondent had not been received by the appellants.

13. The learned counsel for the appellants further submitted that 100 application forms and record pertaining thereto is retained in one separate packet and he also explained the system whereby all application forms are received and processed by the appellants. Even in the packets containing application forms received on 29th January, 2010, the respondent's form was not found.

14. The learned counsel further submitted that as the application form of the respondent had never been received by the appellants, it would not be proper to declare result of the respondent because as per the case of the appellants, the form of the respondent was never submitted to the appellants. In such an event, declaration of the result of the respondent would be absolutely unjust and would set a wrong precedent. He, therefore, submitted that the appeal be allowed and the judgment of the High Court confirming the order of the Tribunal be quashed and set aside.

15. On the other hand, Mr. L. Nageshwara Rao, learned senior counsel appearing for the respondent mainly submitted that the respondent had forwarded his application form through DTDC Courier and Cargo Ltd. and the courier had delivered the form to the appellants on 29th January, 2010. He also relied upon an affidavit filed by a responsible officer of the above named courier agency stating that the respondent's application form was delivered to U.P.S.C. on 29th January, 2010.

16. He further submitted that there was no reason for the respondent to make any false averment with regard to submission of the application form because the respondent was quite serious about the examination and in fact he had passed the Civil Services Examination (Preliminary) and the respondent was quite hopeful of even succeeding in the Civil Services Examination (Mains) and oral interview. He further submitted that there was no reason for the courier

agency not to deliver the application form of the respondent and there was no reason for a responsible officer of the courier agency to file a false affidavit supporting the respondent to the effect that his application form had been submitted to the appellants.

17. The learned counsel further submitted that by declaration of the result, there would be no harm to anyone because if the respondent is not declared successful, he would not get any benefit but if in fact he is found successful in the examination as well as in the oral interview and if he is not given benefit of doubt, career of a bright young person would be ruined. He, therefore, submitted that the judgment of the High Court confirming the order of the Tribunal is just and legal and, therefore, the appeal should be dismissed.

18. We have heard the learned counsel at length and have also meticulously gone through the relevant record produced before this Court by the learned Additional Solicitor General.

19. It is pertinent to note that the respondent, at no point of time, had adduced any evidence before the Tribunal or even before this Court to the effect that the appellants had received the application form of the respondent bearing no.37573985.

20. Right from the beginning i.e. the stage at which an original application was filed before the Tribunal, the respondent had relied upon an affidavit filed by the Manager Administration, Regional Office of the DTDC Courier and Cargo Ltd., having its branch office at Hyderabad. According to his affidavit, the respondent's application form had been delivered to the appellants on 29th January, 2010. The application form had not been delivered by him personally but it was delivered by an employee of the above named courier agency and so as to substantiate his say, he had relied upon the delivery Run Sheet No.12878919 dated 29th January, 2010. The said run sheet is a part of the record. Upon perusal of the run sheet, we do not find any acknowledgement given by any of the officers of the appellants to the effect that an application form of the respondent was received by the appellants. The said run sheet incorporates numbers of consignments which had been addressed to UPSC, Shahjahan Road, New Delhi. Beyond numbers of five different

consignments and name of UPSC, to whom the consignments were to be sent, there is no indication on the said run sheet that the said consignments were received on behalf of UPSC.

21. In our opinion, on the basis of the aforestated record, by no stretch of imagination one can say that the respondent's application form had been received by the appellants.

22. As the case involves a career of a young man, who can turn out to be a good civil servant, we had very meticulously gone through the record maintained by the appellants. Looking to the system which is being followed by the appellants, we find that the said system is very comprehensive and flawless. It is very clear that if the application form of the respondent had been received by the appellants in the manner provided, it would have been recorded somewhere. Even the eight digit number of the application form of the respondent has not been recorded anywhere. Receipt of an application form through a courier is treated as 'hand delivery' by the appellants. In case of receipt of an application by hand delivery, on the spot, an acknowledgement card stamped with a distinct numerical mark is handed over to the person who delivers the application form. If the application form had been delivered by a representative of the courier agency to the office of the appellants, there was no reason for the appellants not to give a duly stamped acknowledgement card bearing a distinct numerical mark. No such acknowledgment card, duly stamped, could be produced by the respondent or by the courier agency. Thus, on perusal of the record and looking the facts of the case, we come to a conclusion that no proof could be submitted by the respondent that the application form was received by the appellants.

23. It is pertinent to note here that while passing the final order, even the Tribunal was not sure whether the application form of the respondent was received by the appellants. The Tribunal, in para 8 of its final order dated 1st September, 2010, has observed as under:

> "8. .....It is quite possible that the applicant's application had been misplaced. It is also quite possible that the courier agency failed to deliver the application form of the applicant at the respondent's office.....".

Thus, even while giving final direction to the appellants with regard to permitting the respondent to take the Civil Services Examination, the Tribunal had not come to a definite finding and specific conclusion that the application form of the respondent was in fact received by the appellants but the same had been misplaced by the appellants. In our opinion, in such a set of circumstances, it would not be proper to direct the appellants to permit the respondent to take the examination especially when there was nothing on record to show that the respondent had submitted his application form to the appellants.

24. We also record that there was some negligence on the part of the respondent. The learned counsel appearing for the appellants had drawn our attention to the advertisement given by UPSC inviting applications from the candidates who were desirous of joining civil service and taking examination for that purpose. Clause 7 of the said advertisement relating to acknowledgement of application is reproduced herein below:

> "7. Acknowledgment of applications:
>
> Immediately on receipt of an application from a candidate, the Acknowledgment Card submitted by him/her along with the Application Form will be dispatched to him/her by the Commission's Office duly stamped in token of receipt of his/her Application. If a candidate does not receive the Acknowledgement Card within 30 days, he/she should at once contact the Commission by quoting his/her Application Form No.(8 digit) and name and year of examination. Candidates delivering the Application form in person at the Commission's Counter will be issued Acknowledgment Card at the Counter itself. The mere fact that a candidate's application has been acknowledged by the Commission does not mean that his/her candidature for the examination has been accepted by the Commission. Candidates will be informed at the earliest possible about their admission to the examination or rejection of their application."

25. According to the respondent, he had forwarded his application form through the aforestated courier on 28th January, 2010. If the respondent did not receive any

acknowledgment for a period of 30 days from the date on which he had forwarded his application form, he ought to have made necessary enquiry in the office of the appellants. Even according to the case of the respondent, for the first time on 20th April, 2010, he made an enquiry about his application form as he had not received the acknowledgment card from the appellants. As stated in the aforestated clause no.7, as a prudent candidate, the respondent ought to have made enquiry latest by the end of February, 2010, but for the reasons best known to the respondent, he waited upto 20th April, 2010 to make an enquiry whether his application form was received by the opponents. In our opinion, no vigilant student aspiring to become a responsible officer of the State would remain so indifferent so as not to make any enquiry for more than two months. It is also pertinent to note that the respondent was not taking the examination for the first time. According to him, he had taken the examination earlier also but unfortunately he was not successful. Thus, he was having experience about the way in which the application form is filled up, how that is to be submitted and the way in which acknowledgement card is sent by the appellants. In our opinion, this negligence on his part has resulted into his sufferance and he himself is only to be blamed for the events.

26. For the aforestated reasons, we are of the view that the appellants cannot be directed to declare the final result of the respondent, especially when his application form had not been received by the appellants within the period prescribed. We ignore the second application form which was submitted by him in pursuance of the direction given by the Tribunal.

27. We may add here that this Court has observed time and again that an interim order should not be of such a nature that by virtue of which a petition or an application, as the case may be, is finally allowed or granted even at an interim stage. We reiterate that normally at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted. We, however, find that very often courts are becoming more sympathetic to the students and by interim orders authorities are directed to permit the students

to take an examination without ascertaining whether the concerned candidate had a right to take the examination. For any special reason in an exceptional case, if such a direction is given, the court must dispose of the case finally on merits before declaration of the result. In the instant case, we have found that the respondent not only took the preliminary examination but also took the main examination and also appeared for the interview by virtue of interim orders though he had no right to take any of the examinations. In our opinion, grant of such interim orders should be avoided as they not only increase work of the institution which conducts examination but also give false hope to the candidates approaching the court.

28. For the reasons stated hereinabove, we allow the appeal by quashing and setting aside the judgment delivered by the High Court as well as the order of the Tribunal with no order as to costs. The Interlocutory Application filed by the respondent is also rejected.

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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction, Appellate Side
[Circuit Bench at Port Blair]
WPCT.NO.621 OF 2012
D.D. 08.02.2013
Hon'ble Mr. Justice Ashim Kumar Banerjee &
Hon'ble Mr. Justice Shukla Kabir Sinha

Dr.Nazma Begum … Petitioner
Vs.
The Union of India & Ors. … Respondents

Selection process

Challenge to selection process by unsuccessful candidates – Whether, unsuccessful candidates in selection process, merely on ground of possessing prescribed qualification, may challenge selection process without demonstrating that recruitment process was held in breach of recruitment rules or attributing mala fides? No.

Held:

"The court of law very often is burdened with ineffective litigations at the instance of the unsuccessful candidates in a selection process. The candidate would contend, he had a requisite qualification. He faired well. Hence, the authorities acted mala fide in not giving appointment to him. The executives conduct selection process in a public post as per the recruitment rules. Such act is exclusively within the domain of the executive and not amenable to judicial review. The court of law is only empowered to examine the decision making process, being the recruitment process, provided candidates would produce sufficient material to demonstrate apparent illegality, anything sort of that would prevent the court of law to entertain such petition. It is the human nature, the unsuccessful candidate would always say, he has done better than the others. He might be correct. The court of law would have no expertise to examine the veracity of such statement."

Cases referred:

1. Lila Dhar v. State of Rajasthan and others, (1981) Volume 4 SCC 159
2. Ajaya Kumar Das v. State of Orissa and others, (2011) Volume 11 SCC 136

JUDGMENT

Ashim Kumar Banerjee, J.

Dr.Nazma Begum, the petitioner was an ex-student of Jawaharlal Nehru Rajkeeya Mahavidyalaya, Port Blair. She was appointed as a Guest Lecturer in Hindi on a temporary

assignment till regular recruitment was made in favour of the private respondents Smt.Sebhani Das and Ms.N.Laxmi, Dr.Nazma also applied for the post. However, she became unsuccessful. She approached the Tribunal with the plea, although she did have the requisite qualification, she was ignored and appointment was given to the private respondents who did not have the requisite qualification. The Tribunal rejected her contention and dismissed the application. Hence, this petition before us.

We heard the petition on the above mentioned dates.

Ms.Shyamali Ganguly, learned counsel appearing for the petitioner contended as follows:

i. As per the advertisement, the post of Assistant Professor would require Post Graduate qualification as also NET clearance. However, the candidates having Ph.D. qualification were relieved of the obligation to clear NET. Nazma did have the Post Graduate qualification as also Ph.D. Hence, she was eligible for the said post. Neither Laxmi nor Sebhani Das did possess any Ph.D that would make them eligible for the post.

ii. The selection process was vitiated by illegality that would be apparent on the face of the record.

Elaborating her submission, Ms.Ganguly contended, Nazma applied under the Right to Information Act and obtained necessary information from the appropriate authorities that would reveal, Sebhani Das and Laxmi did not have the Ph.D qualification. They got M.Phil degree from the University Grants Commission. Hence, the authority should have ignored such M.Phil that too, obtained through Distance Education from an unrecognized institution. According to Ms.Ganguly, the M.Phil degree, even if accepted, would not permit a regular teacher to teach at the Post Graduate level. The authority, to cover up their misdeed gave appointment with the rider, the selected candidates would teach at the Under Graduate level only till they would obtain Ph.D or the NET clearance. In this regard, she referred to the orders of appointment appearing at pages 96 and 97 that would contain identical clause as referred to above. With regard to recognition of the M.Phil degree, Ms.Ganguly referred to the documents appearing at pages 150-161 of the petition wherein we find, the Union Public Service Commission informed her that in the selection process,

the Selection Committee did not prepare any minute. The University Grants Commission informed her, Hindi Prachar Sabha was not included in the list of University Grants Commission. It was a National Importance Institute under the Ministry of Human Resource Development, New Delhi. Dakshina Bharat Hindi Prachar Sabha, Madras asserted, it was an institute of National Importance. They were duly recognised. The Distance Education Directorate duly recognised them. However, the research programmes through Distance mode were postponed at the instance of the University Grants Commission.

She also referred to various paragraphs of the affidavit filed by the Union Public Service Commission before the Tribunal particularly paragraphs 12, 15, 22 and 23 to show, the UPSC miserably failed to justify their conduct. She lastly contended, this court vide order dated November 23, 2012, January 15, 2013 asked the authority to disclose the records pertaining to preparation of merit list. This court also directed, the University Grants Commission's letter dated December 5, 2011 should be replied by the MHRD before the next date of hearing. No such reply was produced before this Court.

Per contra, Mr.Krishna Rao appeared for the Administration and opposed the application. According to Mr.Rao, the petitioner was also considered for the post. She, however could not fair well, hence not selected. After participating in the selection process and becoming unsuccessful therein, she was not entitled to challenge the entire selection process. Moreover, there was no irregularity in giving appointment to the private respondents who did possess requisite qualification for the post. He referred to the decision in the case of **Lila Dhar – vs- State of Rajasthan and others** reported in **(1981) Volume 4 Supreme Court Cases page 159.**

Mr.Roshan George, learned counsel appearing for Sebhani Das and Laxmi also opposed the petition. According to Mr.George, the petitioner was not entitled to challenge their appointment after participating in the selection process and becoming unsuccessful therein. He referred to the recruitment rules appearing at page 85 and contended, the same was duly

followed. He would contend, University Grants Commission Regulation of 2009 relating to award of M.Phil and Ph.D was merely a circular and did not have statutory favour being by Article 309 of the Constitution. The recruitment rule would suggest, the candidates having M.Phil decree in the same subject would be exempted from NET for UG level teaching only. Unless and until such recruitment rule was challenged, the petition was not maintainable. He referred to the decision of the Apex Court in the case of Ajaya Kumar Das vs State of Orissa and others reported in (2011) Volume 11 Supreme Court Cases page 136.

The court of law very often is burdened with ineffective litigations at the instance of the unsuccessful candidates in a selection process. The candidate would contend, he had a requisite qualification. He faired well. Hence, the authorities acted mala fide not giving appointment to him. The executives conduct selection process in a public post as per the recruitment rules. Such act is exclusively within the domain of the executive and not amenable to judicial review. The court of law is only empowered to examine the decision making process, being the recruitment process, provided candidates would produce sufficient material to demonstrate apparent illegality, anything sort of that would prevent the court of law to entertain such petition. It is the human nature, the unsuccessful candidate would always say, he has done better than the others. He might be correct. The court of law would have no expertise to examine the veracity of such statement.

The Apex Court in case of Lila Dhar (utsupra) observed, "The criteria for the interview-test has been laid down by the Rules. It is for the interviewing body to take general decision whether to allocate marks under different heads or to award marks in a single lot……."

"It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, as we said, it is proven or obvious that the method of marking was chosen with oblique motive."

The rules at page 85 would permit the authority to recruit any teacher having M.Phil qualification without NET clearance at the UG level. The appointment given to the private respondents made it clear that their appointment was restricted to UG level only unless they would clear NET or obtain Ph.D decree to teach at the PG level. The petitioner might have Ph.D qualification. Qualification was not the only criteria for selection. The petitioner miserably failed to urge mala fide. The petitioner failed to demonstrate, the recruitment rule was performed in breach. In absence therein, the petitioner was not entitled to challenge the selection process or appointment given to the private respondents.

The Tribunal, in our view, approached the controversy in the right direction that would deserve no interference.

The petition, thus, fails and is hereby dismissed. There would be no order as to costs.

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SUPREM E COURT OF INDIA
Special Leave to Appeal (Civil) Nos.11977-11978/2012
D.D. 20.02.2013
Hon'ble Mr. Justice G.S.Singvi
Hon'ble Mr. Justice H.L. Gokhale &
Hon'ble Mrs. Justice Ranjana Prakash Desai

Prashant Ramesh Chakkarwar … Petitioner
Vs.
U.P.S.C. & Ors. … Respondents

A. Impleadment:

Quashing of entire selection process without impleading selected candidates – whether Higher Court committed any error by non-suiting petitioners on ground of non-impleadment of selected candidates as parties to original application and writ petitions, when methodology of moderation adopted in evaluation of answer sheets is challenged, which if allowed would result in quashing of entire selection process, without giving an opportunity of hearing to those who have been selected and appointed in different cadres? No. Held that impugned order of High Court does not suffer from any legal infirmity.

B. Evaluation of answer sheets:

Method of evaluation adopted for evaluation – Whether on mere fact that some of the candidates who cleared preliminary examination could not pass the main examination an inference could be drawn that method of moderation adopted for evaluation of answer sheets by UPSC is faulty, in absence of sufficient material to substantiate it? No.

Cases Referred:

1) Sanjay Singh v. U.P. Public Service Commission (2007) 3 SCC 720
2) U.P. Public Service Commission v. Subhash Chandra Dixit (2003) 12 SCC 701
3) Kamlesh Haribhai Goradia v. Union and India (1987) 1 GLR 157

JUDGMENT

I.A.Nos.7-8 and 13-14 of 2013 in SLP(C) Nos.11977-11978 of 2012

Ms.Veena Adwani, the applicant who has appeared in person, requests that she may be allowed to withdraw the applications for impleadment as party to SLP(C) Nos.11977-11978/2012 with liberty to avail appropriate remedy in the matter of destruction of her

answer sheets by filing a petition before the Central Administrative Tribunal (for short, 'the Tribunal').

The request of Ms.Adwani is accepted and the applications are dismissed as withdrawn with liberty in terms of the prayer made.

If the applicant files an application before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 (for short' 'the Act') within one month from today along with an application for condonation of delay under Section 21(3) of the Act, then the Tribunal shall entertain the prayer for condonation of delay and decide the O.A. on merits.

I.A.Nos.9-10 and 11-12 of 2013 in SLP(C)Nos.11977-11978 of 2012

Learned counsel for the applicants seeks permission to withdraw these applications.

The request of the learned counsel is accepted and the applications are dismissed as withdrawn.

SLP (C) No (s). 11977-11978/2012, SLP (C) NOs. 11979-11980/2012 and SLP (C) NO. 9333 of 2012

These petitions are directed against orders dated 5.10.2010 and 29.7.2011 passed by the Division Bench of the Delhi High Court in Writ Petition No.6586/2010 and batch and RP No.490/2010, respectively.

For the sake of convenience, we have briefly taken into consideration the factual matrix of SLP (C) Nos.11977-11978/2012.

In response to the advertisements issued by the Union Public Service Commission (for short, 'the Commission'), petitioner Dr. Prashant Ramesh Chakkarwar submitted applications for recruitment to Indian Administrative Services and other Allied Services. He cleared the preliminary examinations held in 2007, 2008 and 2009 but did not succeed in the main examination (written test and interview). After seeking some information by invoking the provisions of the Right to Information Act, 2005, the petitioner filed an application under Section 19 of the Act and questioned the method of moderation adopted by the Commission and prayed as under:

"i) Direct the respondent to produce all the records relating to the case including attendance sheets/Proforma F containing details of supplements taken, the answer books of the Applicants in all the subject and verify the irregularities committed by the Respondent in the evaluation of the answer books; and

ii) Direct the respondent to produce attendance sheets/Proforma F Containing details of supplements used) of all applicants to verify the number of extra sheet used by them and verify the irregularities committed by the Respondent;

iii) Direct the respondent to produce raw and moderated marks of applicants and all other candidates in Civil Services (Main) Examination 2008 to verify justness of moderation system;

iv) To strike down the system of moderation/scaling applied by UPSC after asking UPSC to explain the system;

v) Direct the Respondent to bring uniformity on the system of awarding marks in personality test by reducing excessive subjectivity;

vi) Permit the Applicants to carry out the inspection of the answer books in the Court.

vii) Direct the respondent to reexamine and re-evaluate the answer books of the Applicants where the irregularities are found to be existing in the evaluation process of Civil Service (Main) Examination 2008; and

viii) Direct the Respondent to declare the Applicants pass in the Civil Service (Main) Examination 2008 if after revaluation and proper valuation they get more marks than the mark achieved by the last candidate in the result who was called for interview and consider them for appointment."

The Tribunal briefly adverted to the factual matrix of the case and dismissed the original application vide order dated 13.5.2010 by recording the following observations:

"4. Identical OAs raising identical issues and identical arguments, even citing the same examples of PSC's fallibility, have been considered by this Tribunal in the past. Some of the OAs are listed herein below:

(i) Ravi Jindal Vs. Union Public Service Commission and Another, OA number 133/2007 decided on 21.02.2007;

(ii) Kapil Malik Vs. Union Public Service Commission, OA number 1168/2007 decided on 18.07.2007;

(iii) Dr. Bikram Singh Gill Vs. UPSC and Another, OA number 1389/2007 decided on 18.07.2008;

(iv) Neeraj Kansal and others Vs. Union Public Service Commission, OA number 1747/2007 decided on 18.07.2008;

(v) Ms. Nimmakakayala Geeta Swapna Vs. Secretary (Personnel) and Another, OA number, 592/2008, decided on 26.03.2008; and

(vi) Sh. Sandeep Kumar Vs. Union Public Service Commission and Another, OA number 2570/2008, decided on 27.11.2008.

5. We had considered the judgement of the Honourable Supreme Court in Pramod Kumar Srivastava Vs. Chairman Bihar Public Service Commission, Patna and others, (2004) 6 SCC 714, in which, inter alia, it has been held that:

> "In the absence of any provision for re-evaluation of answer-book in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks."

This Tribunal has, after detailed examination of issues, held in the aforementioned OAs that the principle of moderation has-been followed by the UPSC since 1949 and that the method cannot be faulted as subjective or unscientific. We need not go into these issues again in the OA in hand."

The petitioner challenged the order of the Tribunal in Writ Petition No.6586/2010. He relied upon the judgment of this Court in Sanjay Singh v. U.P. Public Service Commission (2007) 3 SCC 720 and pleaded that the method adopted by the Commission for evaluating the answer sheets of the candidates was arbitrary, illegal and contrary to the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

The Division Bench of the High Court referred to the judgments of this Court - U.P. Public Service Commission v. Subhash Chandra Dixit (2003) 12 SCC 701, Sanjay Singh v. U.P. Public Service Commission (supra) as also the judgment of the Division Bench of the Gujarat High Court in Kamlesh Haribhai Goradia v. Union and India (1987) 1 GLR 157 and observed:

> "I Moderation and scaling of marks are two different techniques used by examining authorities for achieving common standard of assessment of marks.
>
> II UPSC does not apply the method of scaling of marks in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination and confines the application of the said method in evaluation of answer-sheets of the candidates pertaining to Civil Services (Preliminary) Examination.
>
> III The method of moderation of marks propounded by Supreme Court in Sanjay Singh's case (supra) is similar to the one applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination.
>
> IV The method of moderation of marks applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination has been approved by a learned Single Judge and a Division Bench of this Court.

V The method of moderation of marks applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination has been approved by a Division Bench of Gujarat High Court in Kamlesh Haribhai's case (supra), which decision has been impliedly approved by Supreme Court in Subhash Chandra's case (supra) and that the said aspect of Subhash Chandra's case has not been overruled in Sanjay Singh's case (supra).

VI The application of method of scaling of marks was held to be arbitrary and illegal by Supreme Court in Sanjay Singh's case only in respect of Civil Judge (Junior Division) Examination conducted by UPPSC. No opinion was expressed by Supreme Court regarding the legality of method of scaling of marks applied by UPSC in evaluating answer-sheets of the candidates pertaining to Civil Services (Preliminary) Examination."

The Division Bench of the High Court then considered the arguments made on behalf of the petitioner and rejected the same by observing that a few stray incidents of irregularities detected in the civil services examinations conducted in the past seven decades do not vitiate the sanctity of the procedure adopted by the Commission. The High Court also held that the writ petitioners are not entitled to relief because they had approached the Tribunal after a period of more than one year from the date of declaration of results and the selected candidates had not been made parties.

Shri K.T.S. Tulsi, learned senior counsel appearing for the petitioners strongly relied upon the judgment in Sanjay Singh's case (supra) and argued that in the garb of moderation the Commission had resorted to scaling of marks and this is legally impermissible. Learned counsel invited the Court's attention to the figures obtained by the petitioners from the Commission and argued that the entire selection should be quashed because 50% of the total selectees are always from the first 50,000 candidates. Shri Tulsi submitted that this could not have been possible without manipulations and the Court should direct the Commission to produce the original marks obtained by the petitioners and other candidates to find out whether the so-called moderation was resorted to with a view to eliminate more meritorious candidates. Learned senior counsel further submitted that the roll numbers are given to the candidates in such a manner that the favorites of the officers/officials of the Commission come within the first 50,000 candidates and in this manner the chances of their selection are considerably enhanced.

Ms.Binu Tamta, learned counsel for the Commission referred to the averments contained in paragraphs 1 to 6 of the counter affidavit filed before this Court and argued that the method of moderation adopted by the Commission cannot be faulted on the ground that the same is contrary to the judgment in Sanjay Singh's case (supra).

In the counter affidavit filed on behalf of the Commission, the entire methodology of conducting the examination and evaluation of answer scripts has been explained in the following words:

> "1. The UPSC conducts 14 structured examinations a year involving lakhs of candidates. Some of these such as the NDA and the CDS Examinations consist of Objective-type (multi-choice) Question papers with OMR answer sheets wherein candidate has to blacken the correct answer choice. Other examinations, including the Civil Services (Mains) have 'conventional' (essay-type) question-papers that require discursive handwritten answers.
>
> 2. While objective-type answer sheets are evaluated through a scanner and computer, conventional answer-books are evaluated manually by Examiners.
>
> 3. CIVIL SERVICES EXAMINATION:
>
> The written examination has two stages, an objective-type Preliminary Examination for which around 5 lakh candidates are admitted every year, and around 12000 are shortlisted for the Mains Examination. The Civil Services Mains written Examination consists entirely of 'conventional' or essay type Papers. Each candidate takes 9 Papers- 5 that are compulsory/common to all candidates and 4 that are optional papers. The 5 Compulsory papers are General Studies-I, General Studies-II, Essay, English (qualifying only) and an Indian Language (qualifying only) as per choice of the candidate.
>
> 4. There is a basket of 55 Optional Subjects. These include:
>
> (a) 30 Literature subjects- Arabic, Assamese, Bengali, Chinese, Dogri, English, French, German, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Oriya, Pali, Persian, Punjabi, Russian, Sanskrit, Santali, Sindhi(Arabic), Sindhi (Devanagari), Tamil, Telugu, Urdu; and
>
> (b) 25 non-literature subjects - Agriculture, Animal Husbandry & Veterinary Science, Anthropology, Botany, Chemistry, Civil Engineering, Commerce & Accountancy, Economics, Electrical Engineering, Geography, Geology, History, Law, Management, Mathematics, Mechanical Engineering, Medical Science, Philosophy, Physics, Political Science & International Relations, Psychology, Public Administration, Sociology, Statistics, Zoology.

5. Each of the above 55 subjects has two Papers- Paper-I & Paper-II. Therefore, total number of Optional papers are 110, out of which the candidate has to take 4 (2 subjects of 2 papers each). The number of candidates opting for Optional subjects varies widely. In the CS(Mains) Examination in 2011 for example, there was 1 candidate each in Arabic Literature, Bodo Literature, Dogri Literature, German Literature, Persian Literature and Russian Literature. Kashmiri Literature had 2 candidates, Assamese Literature, French Literature and Santali Literature had 3 each, and Bengali Literature had 5. On the other hand, Geography had about 3900 candidates and Public Administration had over 6000.

6. A) GENERAL PROCESS OF EVALUATION FOR 'CONVENTIONAL' (DISCURSIVE) TYPE PAPERS

(i) Head Examiner is called early (before the Examiners' meeting) and evaluates sample/ random answer-books for each Additional Examiner being called. All answer-books are coded with fictitious numbers prior to the start of the evaluation exercise.

(ii) The Examiners' meeting starts immediately after (i) above. Head Examiner and Additional Examiners discuss the question paper exhaustively and agree on assessment standards and evaluation yardsticks.

(iii) Each Examiner evaluates the specimen random answer-books allotted to him/her that have already been seen initially by the Head Examiner and indicates a tentative award. The answer-books are then scrutinized by the scrutiny staff for totaling errors, unevaluated portions etc. and where necessary, got revised by the Examiner.

(iv) After (iii) above, the Head Examiner meets each Additional Examiner, in turn, to compare evaluation standards based on marks awarded by each for the specimen random answer books. Reconciliation/recalibration of standards, wherever required, is done, and marks are accordingly finalized for the specimen answer books.

(v) Ideally, once standards are thus set as above, assessment should be uniform. In practice, however, assessment standards tend to vary during the course of evaluation- with some examiners being 'strict' and others 'liberal'.

(vi) To ensure uniformity therefore, the Head Examiner re-examines a certain number of each Additional Examiner's answer-books to check if the agreed standards of assessment have been followed. The Head Examiner may therefore, after this re-examination, either confirms the Additional Examiner's award or revises it and indicates the revised award on the answer-book. Based on this revision (wherever done), the quantum of moderation to be applied (upwards or downwards) on the remaining answer-books evaluated by the

Additional Examiner are determined. In extreme cases where the marking of the Additional Examiner is determined erratic based on the Head Examiner's check, all the answer-books evaluated by such an Examiner are re-examined by either the Head Examiner or by another Additional Examiner whose standards are seen to match those of the Head Examiner.

(vii) Based on (vi) above, inter-examiner moderation is carried out and applied to each candidate (identified only by the fictitious code number). Before this is done, however, each and every answer book is scrutinized by the scrutiny staff and totaling errors, unevaluated portions, credit awarded to answers exceeding the prescribed number of attempts etc. are rectified and revised awards indicated on the answer-books under the initial of the Examiner(s).

(viii) After evaluation of all subject-papers is over, the performance of candidates in each is looked at based on marks awarded at the end of inter-examiner (intra-subject) moderation above. Candidates for this Examination choose any two optional subjects (each subject having two Papers) from among a basket of 55 diverse optional subjects (30Literature and 25 non-Literature) - in effect, 4 Optional Papers from amongst 110. Apart from the differences in the scope and coverage of the syllabi; the difficulty level of the question-papers, and the standards of evaluation are therefore inevitably different and can vary from year to year across subjects/papers. Based on a holistic perspective, therefore, and with its decades of experience, the Commission applies upward or downward inter-subject moderation, wherever required. This is done to ensure a level playing field for all candidates. It is important to note that at this stage too, only statistics are taken into consideration with full anonymity as regards candidates' details.

(ix) Based on the inter-subject moderation, above, marks are finally awarded to each Paper of every candidate (as represented by the relevant fictitious code numbers). This final award subsumes all the earlier stages. It is only these final paper-wise awards that are then considered for preparing the common merit-list after decoding of the relevant fictitious numbers. In all subsequent processing, it is only the final (moderated) awards that are factored and the earlier stages are no longer relevant in this context.

B) PROBLEMS IN SHOWING EVALUATED ANSWER-BOOKS TO CANDIDATES

(i) Final awards subsume earlier stages of evaluation. Disclosing answer-books would reveal intermediate stages too, including the so-called 'raw marks' which would have negative implications for the integrity of the examination system, as detailed in Section (C) below.

(ii) The evaluation process involves several stages. Awards assigned initially by an examiner can be struck out and revised due to (a) Totaling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result of clerical scrutiny (b) The Examiner changing his own awards during the course of evaluation either because he/she marked it differently initially due to an inadvertent error or because he/she corrected himself/herself to be more in conformity with the accepted standards, after discussion with Head Examiner/colleague Examiners (c) Initial awards of the Additional Examiner being revised by the Head Examiner during the latter's check of the former's work (d) The Additional Examiner's work, having been found erratic by the Head Examiner, been re-checked entirely by another Examiner, with or without the Head Examiner again re-checking this work.

(iii) The corrections made in the answer-book would likely arouse doubt and perhaps even suspicion in the candidate's mind. Where such corrections lead to a lowering of earlier awards, this would not only breed representations/grievances, but would likely lead to litigation. In the only evaluated answer book that has so far been shown to a candidate (Shri Gaurav Gupta in WP 3683/2012) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging improper evaluation.

(iv) As relative merit and not absolute merit is the criterion here (unlike academic examinations), a feeling of the initial marks/revision made being considered harsh when looking at the particular answer-script in isolation could arise without appreciating that similar standards have been applied to all others in the field. Non-appreciation of this would lead to erosion of faith and credibility in the system and challenges to the integrity of the system, including through litigation.

(v) With the disclosure of evaluated answer-books, the danger of coaching-institutes collecting copies of these from candidates (after perhaps encouraging/inducing them to apply for copies of their answer- books under the RTI Act) is real, with all its attendant implications.

(vi) With disclosure of answer-books to candidates, it is likely that at least some of the relevant Examiners also get access to these. Their possible resentment at their initial awards (that they would probably recognize from the fictitious code numbers and/or their markings, especially for low-candidature subjects) having been superseded (either due to inter-examiner or inter-subject moderation) would lead to bad blood between Additional Examiners and the Head Examiner on the one hand, and between Examiners and the Commission, on the other hand. The free and frank manner in which Head Examiners, for

instance, review the work of their colleague Additional Examiners, would likely be impacted. Quality of assessment standards would suffer.

(vii) Some of the optional Papers have very low candidature (sometimes only one), especially the literature papers. Even if all Examiners' initials are masked (which too is difficult logistically, as each answer-book has several pages, and examiners often record their initials and comments on several pages-with revisions/corrections, where done, adding to the size of the problem), the way marks are awarded could itself be a give-away in revealing the examiner's identity. If the masking falters at any stage, then the examiner's identity is pitilessly exposed. The 'catchment area' of candidates and Examiners in some of these low-candidature Papers is known to be limited. Any such possibility of the Examiner's identity getting revealed in such a high-stakes examination would have serious implications-both for the integrity and fairness of the Examination system and for the security and safety of the Examiner. The matter is compounded by the fact that we have publicly stated in different contexts earlier that the Paper-setter is also generally the Head Examiner.

(viii) The UPSC is now able to get some of the best teachers and scholars in the country to be associated in its evaluation work. An important reason for this is no doubt the assurance of their anonymity, for which the Commission goes to great lengths. Once disclosure of answer-books starts and the inevitable challenges (including litigation) from disappointed candidates starts, it is only a matter of time before these Examiners who would be called upon to explain their assessment/award, decline to accept further assignments from the Commission. A resultant corollary would be that Examiners who then accept this assignment would be sorely tempted to play safe in their marking, neither awarding outstanding marks nor very low marks- even where these are deserved. Mediocrity would reign supreme and not only the prestige, but the very integrity of the system would be compromised markedly."

We have considered the respective arguments and scanned the voluminous papers produced by the petitioners. In our view, the High Court did not commit any error by non-suiting the petitioners on the ground of non-impleadment of the selected candidates as parties to the original applications and the writ petitions. If the methodology of moderation adopted by the Commission is faulted, the entire selection will have to be quashed and that is not possible without giving opportunity of hearing to those who have been selected and appointed in different cadres.

De hors the above conclusion, we are convinced that the impugned order does not suffer from any legal infirmity. In Sanjay Singh's case, the Court was called upon to decide the legality of the method of scaling adopted by the U.P. Public Service Commission for recruitment to the posts of Civil Judge (Junior Division). After examining various facets of the method adopted by the U.P. Public Service Commission and taking cognizance of the earlier judgment in U.P. Public Service Commission v. Subhash Chandra Dixit (supra), the three Judge Bench observed:

> "We cannot accept the contention of the petitioner that the words "marks awarded" or "marks obtained in the written papers" refer only to the actual marks awarded by the examiner. "Valuation" is a process which does not end on marks being awarded by an examiner. Award of marks by the examiner is only one stage of the process of valuation. Moderation when employed by the examining authority, becomes part of the process of valuation and the marks awarded on moderation become the final marks of the candidate. In fact Rule 20(3) specifically refers to the "marks finally awarded to each candidate in the written examination", thereby implying that the marks awarded by the examiner can be altered by moderation.
>
> 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 examiners 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 examiners 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-script 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 minimised. 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 is 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 suggests upward or downward 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 for one Head Examiner to assess the work of all the examiners. In such a situation, one more level of 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.

The Union Public Service Commission ("UPSC", for short) conducts the largest number of examinations providing choice of subjects. When assessing inter se merit, it takes recourse to scaling only in Civil Service Preliminary Examination where candidates have the choice to opt for any one paper out of 23 optional papers and where the question papers are of objective type and the answer-scripts are evaluated by computerised scanners. In regard to compulsory papers which are of descriptive (conventional) type, valuation is done manually and scaling is not resorted to. Like UPSC, most examining authorities appear to take the view that moderation is the appropriate method to bring about uniformity in valuation where several examiners manually evaluate answer-scripts of descriptive/conventional type question papers in regard to same subject; and that scaling should be resorted to only where a common merit list has to be prepared in regard to candidates who have taken examination in different subjects, in pursuance of an option given to them."

From the above extracted portion of the judgment in Sanjay Singh's case, it is clear that the three Judge Bench had approved the method of moderation adopted by the Commission.

The argument of Shri Tulsi that in the garb of moderation, the Commission has resorted to scaling of marks and thereby deprived more meritorious candidates of their legitimate right to be selected does not commend acceptance because no material has been placed before this Court to substantiate the same. The mere fact that some of the candidates like the petitioner who cleared the preliminary examinations but could not cross the hurdle of main examination cannot lead to an inference that the method of moderation adopted by the Commission is faulty.

The suggestive argument made by Shri Tulsi that the award of roll numbers was manipulated by the officers/officials of the Commission for ensuring selection of their favorites does not merit acceptance because the documents produced before the Court and the information obtained by the petitioner by making application under the Right to Information Act do not show that any candidate selected by the Commission had been deliberately given the particular roll number.

Equally meritless is the submission of the learned senior counsel that the selection of large number of candidates from the block of first 50000 should lead to an inference that the entire selection made by the Commission is tainted by mala fides. The table produced before this Court does not show that in each and every examination, 50% candidates were selected from those who were having Roll Nos.1 to 50000. That apart, in the absence of cogent evidence, the Court cannot accept such a spacious argument ignoring that between 4 to 5 lacs candidates appear in the annual examination conducted by the Commission for recruitment to Indian Administrative Services and other Allied Services.

In the result, the special leave petitions are dismissed.

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IN THE SUPREME COURT OF INDIA
Civil Appellate Jurisdiction
Civil Appeal No.6362 of 2013 & Connected cases
(Arising out of SLP (C) No.16870/2012)
D.D. 06.08.2013
Hon'ble Mr. Justice G.S.Singhvi &
Hon'ble Mr. Justice V.Gopala Gowda

UPSC … Petitioner
Vs.
Gourhari Kamila … Respondent

R.T.I.

Furnishing of personal information/details of competing third parties in selection process – Whether Chief Information Commission and High Court have committed serious illegality in directing Union Public Service Commission to furnish personal information/ details of third parties, i.e., candidates who competed with the applicants before the Chief Information Commission, which was held in fiduciary capacity, the disclosure of which does not serve any larger public interest? – Yes. – Respondent sought information from U.P.S.C. about candidates who had competed with him in the selection process on their experience, in the relevant field, xerox copies of experience certificates – U.P.S.C. rejected the said request. Respondents approached the Chief Information Commission for directions to UPSC to furnish information sought for by respondents. The UPSC challenged the said directions of Chief Information Commission before the High Court. The High Court by a cryptic order dismissed the appeal by observing that information sought cannot be treated as one which is exempted under Section 8(1)(e)(g) or (j) of the 2005 Act. The present appeal is against said order of High Court – By applying the ratio of the decision of the Apex Court in Central Board of Secondary Education and Another v. Aditya Bandopadhyay and others, reported in (2011) 8 SCC 497, held that Chief Information Commission and High Court have committed a serious illegality by directing to disclose information sought by the respondents as the information held with UPSC was in fiduciary capacity and the disclosure of which does not serve any larger public interest.

Case referred:

1. Central Board of Secondary Education and another v. Aditya Bandopadhyay and others, (2011) 8 SCC 497

JUDGMENT

Leave granted.

These appeals are directed against judgment dated 12.12.2011 of the Division Bench of the Delhi High Court whereby the letters patent appeals filed by appellant – Union

Public Service Commission (for short, 'the Commission') questioning the correctness of the orders passed by the learned Single Judge were dismissed and the directions given by the Chief Information Commissioner (CIC) to the Commission to provide information to the respondents about the candidates who had competed with them in the selection was upheld.

For the sake of convenience we may notice the facts from the appeal arising out of SLP (c) No.16870/2012.

In response to advertisement No.13 issued by the Commission, the respondent applied for recruitment as Deputy Director (Ballistics) in Central Forensic Science laboratory, Ballistic Division under the Directorate of Forensic Science, Ministry of Home Affairs. After the selection process was completed, the respondent submitted application dated 17.03.2010 under the Right to Information Act, 2005 (for short, 'the Act') for supply of following information/documents:

1. What are the criteria for the short-listing of the candidates?

2. How many candidates have been called for the interview?

3. Kindly provide the names of all the short listed candidates called for interview held on 16.03.2010.

4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.03.2010?

5. Kindly provide the certified Xerox copies of experience certificates of all the candidates called for the interview on 16.03.2010 who have claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl. No. 10(B) of Part-I of their application who are called for the interview held on 16.03.2010.

6. Kindly provide the certified Xerox copies of M.Sc. and B.Sc. degree certificates of all the candidates as per records available in the UPSC who are called for the interview held on 16.03.2010.

7. Kindly provide the certified Xerox copies of UGC guidelines and the Govt. of India Gazette notification regarding whether the Degree in M.Sc. Applied Mathematics and the Degree in M.Sc. Mathematics are equivalent or not as per available records in the UPSC.

8. Kindly provide the certified Xerox copies of UGC guidelines and the Govt. of India Gazette notification regarding whether the Degree in M.Sc. applied Physics and the Degree M.Sc. Physics are equivalent or not as per available records in the UPSC.

Deputy Secretary and Central Public Information Officer (CPIO) of the Commission send reply dated 16.04.2010, the relevant portions of which are reproduced below:

"Point 1 to 4: As the case is subjudice in Central Administrative Tribunal (Principal Bench), Hyderabad, hence the information cannot be provided.

Point 5 & 6: Photocopy of experience certificate and M.Sc. and B.Sc. degree certificates of called candidates cannot be given as the candidates have given their personal details to the Commission is a fiduciary relationship with expectation that this information will not be disclosed to others. Hence, disclosures of personal information of candidates held in a fiduciary capacity is exempted from disclosures under Section 8 (1) (e) of the RTI Act, 2005. Further disclosures of these details to another candidate is not likely to serve any public interest of activity and hence is exempted under Section 8 (1) (j) of the said Act.

Point 7 & 8: For copy of UGC Guidelines and Gazette notification, you may contact University Grant Commission, directly, as UGC is a district public authority."

The respondent challenged the aforesaid communication by filing an appeal under Section 19 (1) of the Act, which was partly allowed by the Appellate Authority and a direction was given to the Commission to provide information sought by the respondent under point Nos. 1 to 3 of the application.

The order of the Appellate Authority did not satisfy the respondent, who filed further appeal under Section 19 (3) of the Act. The CIC allowed the appeal and directed the Commission to supply the remaining information and the documents.

The Commission challenged the order of the CIC in Writ Petition Civil No.3365/2011, which was summarily dismissed by the learned Single Judge of the High Court by making a cryptic observation that he is not inclined to interfere with the order of the CIC because the information asked for cannot be treated as exempted under Section 8 (1), (g) or (j) of the Act. The letters patent appeal filed by the Commission was dismissed by the Division Bench of the High Court.

Ms.Binu Tamta, learned counsel for the Commission, relied upon the judgment in Central Board of Secondary Education and another v. Aditya Bandopadhyay and others (2011) 8 SCC 497 and argued that the CIC committed serious error by ordering supply of information and the documents relating to other candidates in violation of Section 8 of the Act which postulates exemption from disclosure of information made available to the Commission. She emphasized that relationship between the Commission and the candidates who applied for selection against the advertised post is based on trust and the Commission cannot be compelled to disclose the information and documents produced by the candidates more so because no public interest is involved in such disclosure. Ms.Tamta submitted that if view taken by the High Court is treated as correct, then it will become impossible for the Commission to function because lakhs of candidates submit their applications for different posts advertised by the Commission. She placed before the Court 62nd Annual Report of the Commission for the year 2011-12 to substantiate her statement.

We have considered the argument of the learned counsel and scrutinized the record. In furtherance of the liberty given by the Court on 01.03.2013, Ms.Neera Sharma, Under Secretary of the Commission filed affidavit dated 18.03.2013, paragraphs 2 and 3 of which read as under:

> "2. That this Hon'ble Court vide order dated 01.03.2013 was pleased to grant three weeks time to the petitioner to produce a statement containing the details of various examinations and the number of candidates who applied and/or appeared in the written examination and/or interviewed. In response thereto it is submitted that during the year 2011-12 the Commission conducted following examinations:

For Civil Services/Posts

a. Civil Services (Preliminary) Examination, 2011 (CSP)

b. Civil Services (Main) Examination, 2011 (CSM)

c. Indian Forest Service Examination, 2011 (IFo. S)

d. Engineering Services Examination, 2011 (ESE)

e. Indian Economic Service/Indian Statistical Service Examination, 2011 (IES/ISS)

f. Geologists Examination, 2011 (GEOL)

g. Special Class Railways Apprentices Examination, 2011 (SCRA)

h. Special Class Railways Apprentices Examination, 2011 (SCRA)

i. Central Police Forces (Assistant Commandants Examination, 2011 (CPF)

j. Central Industrial Security Force (Assistant Commandants) Limited Departmental Competitive Examination, 2010 & 2011 (CISF).

For Defence services

a. Two examinations for National Defence Academy and Naval Academy (NDA & NA) – National Defence Academy and Naval Academy Examination (I), 2011 and National Defence Academy and Naval Academy Examination (II), 2011.

b. Two examinations for Combined Defence Services (CDS) – Combined Defence Services Examination (II), 2011 and Combined Defence Services Examination (I), 2012.

3. That in case of recruitment by examination during the year 2011-12 the number of applications received by Union Public Service Commission (UPSC) was 21, 02, 131 and the number of candidate who appeared in the examination was 9, 59, 269. The number of candidates interviewed in 2011-12 was 9938. 6963 candidates were recommended for appointment during the said period."

Chapter 3 of the Annual Report of the Commission shows that during the years 2009-10, 2010-11 and 2011-12 lakhs of applications were received for various examinations conducted by the Commission. The particulars of these examinations and the figures of the applications are given below:

Exam	2009-10	2010-11	2011-12
Civil			
1. CS (P)	409110	547698	499120
2. CS (M)	11894	12271	11837
3. IfoS	43262	59530	67168
4. ESE	139751	157649	191869
5. IES/ISS	6989	7525	9799
6. SOLCE	-	2321	-
7. CMS	33420	33875	-
8. GEOL	4919	5262	6037
9. CPF	111261	135268	162393
10. CISF, LDCE	659	-	729
11. SCRA	135539	165038	197759 190165
Total Civil Defence	896804	1126437	1336876
1. NDA & NA (I)	277290	374497	317489
2. NDA & NA (II)	150514	193264	211082
3. CDS (II)	89604	99017	100043
4. CDS (I)	86575	99815	136641
Total Defence	603983	766593	765255
Grand Total	1500787	1893030	2102131

In Aditya Bandopadyay's case, this Court considered the question whether examining bodies, like, CBSE are entitled to seek exemption under Section 8 (1) (e) of the Act. After analyzing the provisions of the Act, the Court observed:

> "There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential

information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior of the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in Section 8 (1) (e) of the RTI Act in its normal and well recognized sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to "service" to a consumer, in Bihar School Examination Board v. Suresh Prasad Sinha (2009) 8 SCC 483 in the following manner:

"11. The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative.

12. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its 'service' to any candidate. Nor does

a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education and if so determine his position or rank or competence vis-à-vis other examinees. The process is not therefore, availment of a service by a student but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.

13. The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of mark sheets or certificates, there may be some negligence, omission or deficiency does not convert the Board into a service provider for a consideration, nor convert the examinee into a consumer."

It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer books are evaluated by the examining body.

We may next consider whether an examining body would be entitled to claim exemption under Section 8 (1) (e) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship. This would only mean that even if the relationship is fiduciary the exemption would operate in regard to giving access to the information held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself.

One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is about to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8 (1) (e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it." (Emphasis supplied)

By applying the ratio of the aforesaid judgment, we hold that the CIC committed a serious illegality by directing the Commission to disclose the information sought by the respondent at point Nos.4 and 5 and the High Court committed an error by approving his order.

We may add that neither the CIC nor the High Court came to the conclusion that disclosure of the information relating to other candidates was necessary in larger public interest, therefore, the present case is not covered by the exception carved out in Section 8(1) (e) of the Act.

Before concluding, we may observe that in the appeal arising out of SLP (c) No.16871/ 2012, respondent Naresh Kumar was a candidate for the post of Senior Scientific Officer (Biology) in Forensic Science Laboratory. He asked information about other three candidates who had competed with him and the nature of interviews. The appeal filed by him under Section 19 (3) was allowed by the CIC without assigning reasons. The writ petition filed by the Commission was dismissed by the learned Single Judge by recording a cryptic order and the letters patent appeal was dismissed by the Division Bench. In the appeal arising out of SLP (c) No.16872/2012, respondent Udaya Kumara was a candidate for the post of Deputy Government counsel in the Department of Legal Affairs, Ministry of Law and Justice. He sought information regarding all other candidates and orders similar to those passed in the other two cases were passed in his case as well. In the appeal arising out of SLP (c) No.16873/2012, respondent N. Sugathan (retired Biologist) sought information on various issues including the candidates recommended for appointment on the posts of Senior Instructor (Fishery Biology) and Senior Instructor (Craft and Gear) in the Central Institute of Fisheries, Nautical and Engineering Training. In his case also, similar orders were passed by the CIC, the learned Single Judge and the Division Bench of the High Court. Therefore, what we have observed qua the case of Gourhari Kamila would equally apply to the remaining three cases.

In the result, the appeals are allowed, the impugned judgment and the orders passed by the learned Single Judge and the CIC are set aside.

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IN THE SUPREME COURT OF INDIA
Civil Appellate Jurisdiction
Civil Appeal No.6707/2013
(Arising out of Special Leave Petition (Civil) No.26967/2011)
D.D. 12.08.2013
Hon'ble Mr. Justice Anil R.Dave &
Hon'ble Mr. Justice A.K.Sikri

Manoj Manu & Anr. … Appellants
Vs.
Union of India & Ors. … Respondents

Reserve list/Supplementary list

Recommending names of candidates from out of reserve list for appointment to fill up vacancies occurred on account of non-joining to duty by candidates selected for appointment in the main select list – Whether Union Public Service Commission was justified in recommending names of only 3 candidates from the reserve list for appointment as Section Officer in the Central Secretariat Service as against requisition of Department of Personnel and Training for recommending 6 candidates to fill up 6 vacancies that occurred on account of non-joining to duty by candidates selected in the main select list, even though requisition was made within 'reasonable time' and equally placed candidates in merit were available, on plea that as a convention followed as a policy decision reserve list has to be operated only in respect of repeat/common candidates, who are three in number, and not otherwise, when clause 4 (c) of O.M. dated 14.07.1967 pertaining to operation of reserve list mandating that reserve list has to be operated to fill up unfilled vacancies in the main list? No. Whether exclusion of name of appellant, who had secured same merit as that of last recommended candidate for appointment amounts to discrimination and therefore inappropriate? Yes. Appellant, who was fourth in the reserve list and had same merit as that of last recommended candidate for appointment challenged non-recommendation of his case for appointment against one of the vacancies that occurred on account of non-reporting to duty by candidates selected for appointment in the main select list, as UPSC had recommended only 3 candidates from out of reserve list as against requisition of Department of Personnel and Training form recommending 6 candidates, before the Principal Bench of Central Administrative Tribunal, New Delhi. Principal Bench of C.A.T. dismissed the O.A. upholding action of UPSC in restricting candidates to three only on basis of ACR. The High Court of Delhi also dismissed the appeal on accepting plea of UPSC that reserve list is operated only in respect of repeat/common candidates and not otherwise as per convention that followed as a policy decision, ignoring provisions of clause 4 (c) of O.M. dated 14.07.1967, issued for operating reserve list. Appellant challenged order of C.A.T. as well as decision of High Court on ground that as per clause 4 (c) of O.M. dated 14.07.1967 UPSC was bound to recommend names of candidates, which included his name also, to fill up 6 vacancies that occurred due to non-joining of candidates in the main select list, as requisitioned by Department of Personnel and Training. – Held that exclusion of appellant's name from recommendation resulted in

discrimination as he had secured 305 marks like that of the last recommended candidate and as vacancies were available to fill up them. Further, held that decision of UPSC in forwarding three names as against requisition of Department of Personnel and Training for recommending 6 names was inappropriate. Accordingly, decision of High Court as well as order of C.A.T. are set aside and mandamus issued to UPSC to forward names of next three candidates in the reserve list to Department of Personnel and Training for appointment to the post of Section Officer under Central Secretariat Service.

Cases referred:

1. Ms.Neelima Shangla v. State of Haryana, (1986) 3 SCR 785
2. State of Haryana v. Subhash Chander Marwah, (1972) IILLJ 266 SC
3. Sandeep Singh v. State of Haryana and another, (2002) 10 SCC 549
4. Virender S.Hooda and others v. State of Haryana and another, AIR 1999 SC 1701.

J U D G M E N T

A.K. SIKRI, J.

1. Leave granted.

2. This appeal has been preferred by the present appellants questioning the validity of the judgment and order dated May 16, 2011 passed by the High Court, in Writ Petition which was filed by the appellants questioning the validity of the order dated 29th March 2011, of the Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Principal Bench, New Delhi. The Tribunal had dismissed the Original Application preferred by the appellants herein under Section 19 of the Administrative Tribunal Act against their non-appointment to the post of Section Officer's Grade of the Central Secretariat Service. The said O.A. was dismissed by the Tribunal vide order dated 29th March 2011 which has been upheld by the High Court.

3. There is no dispute about the facts, which may be briefly recapitulated to understand the controversy that has arisen in these proceedings. The appellants were working as Assistants in the Central Secretariat Service (CSS) and appeared in Limited Departmental Competitive Examination for the next promotion to the post of Section Officer's Grade in that service. There are two channels of promotion: one by way of seniority and other fast track in the form of Limited Departmental Competitive Examination

(LDCE). The appellants appeared in the said LDCE 2005, which was conducted by the Union Public Service Commission (UPSC) on the requisition sent to it for 184 general category posts by the Department of Personnel and Training (DoP&T). After holding the examination the UPSC had recommended 184 candidates in two lots. First lot of 141 candidates who were found suitable candidates for the said post whereas in the second lot 43 successful candidates were recommended for appointment. Out of them 6 candidates did not join. The DoP&T thereafter vide its letter dated 20th November 2009 had requisitioned 6 general category vacancies. However, the UPSC recommended names of three candidates from out of reserve list maintained by it. These two appellants who were next in the merit list had secured 305 marks, same as secured by one Rajesh Kumar Yadav who was recommended by the UPSC in the supplementary list candidates.

4. The appellants felt aggrieved by their non-recommendation, thereby denying them the appointment to the post of Section Officer's Grade. Under these circumstances, these appellants filed the O.A. before the Tribunal alleging that the UPSC had acted in an arbitrary and discriminatory manner in contravention of Article 14 and 16 of the Constitution of India denying them the right to get the appointment to the post to which they were not only selected but equally placed as another candidate who was given the appointment.

5. The Tribunal dismissed the O.A. primarily on the ground that ACR's are also seen for determining merit position inter-se candidates who had secured same marks in written test and it was because of this reason that these two appellants were not placed before Shri Rajesh Kumar Yadav.

6. Before the High Court, the appellants submitted that they were not questioning the aforesaid reason given by the Tribunal determining inter-se merit position of the candidates who qualified the written test. Instead their argument was that the Tribunal lost sight of the actual plea taken viz. when there were sufficient vacancies available and even as per the letter sent by the DoP&T vide its letter dated 20th November 2009 names of 6 candidates were requisitioned, there was no reason not to forward the names of the appellants for the appointment. The appellants relied upon Clause 4(c) of the Office Memorandum dated 14th July 1967 in support of their aforesaid contention. This Clause is reproduced hereinbelow:

> "4(c) Once the results are published, additional persons should not normally be taken till the next examination. Nor should vacancies reported before declaration of the results, be ordinarily withdrawn after declaration of the results. If, however, some of the candidates recommended/allotted for appointment against the specific number of vacancies reported in respect of a particular examination do not become available for one reason or another, the Commission may be approached, within a reasonable time, with request for replacements from reserved, if available. When replacements may not be available, the vacancies that may remain unfilled should be reported to the Commission for being filled through the next examination."
>
> (Emphasis supplied)

7. The submission of the appellants before the High Court was that the aforequoted Clause specifically provides that the vacancies which are reported have not to be ordinarily withdrawn after the declaration of results. Therefore, when there were vacancies, and the appellants who had passed the LDCE were available, their names should have been recommended by the UPSC for appointment to ensure that vacancies do not go unfilled. It was also submitted that from the recommended/allotted candidates by the UPSC in case some of them are not available for whatever reason; the concerned department could approach the Commission, within a reasonable time with request for placement from reserved, if available. It was, thus, stressed that in the instant case when some of the persons did not join with the result that some vacancies were still available out of the vacancies reported and even requisition was made, the UPSC should have forwarded the names of 6 persons thereby including the appellants.

8. The stand of the UPSC, on the other hand, was that whether or not UPSC should accept the said requisition was not the subject matter of the aforesaid Office Memorandum. The UPSC pleaded that it was the convention, followed throughout as a policy decision, that supplementary list is not to be issued except in two categories of cases, namely, "repeat" or "common" candidates. Repeat candidates are those candidates, who have participated in the same category in two LDCE and are successful in the first examination and results have not declared when the second Departmental Competitive Examination was held. Common candidates are those candidates, who get selected in more than one category in the LDCE.

9. The High Court accepted the aforesaid contention of the UPSC with the observation that taking a different view would upset the policy or convention followed by UPSC and will create ambiguity which may also lead to confusion. The High Court observed that the examination in question was held for 196 vacancies as intimated by DoP&T and UPSC had nominated 184 candidates in two lots. 12 SC vacancies remained unfilled for want of suitable candidates. A supplementary list of three persons was also issued as three selected candidates were "common/repeat" candidates.

10. We are unable to agree with the approach of the High Court in the facts of the present case. It will be useful to point out that reason for sending the requisition by DoP&T for forwarding the names of persons in the reserve list was that some of the candidates whose names had been forwarded by the UPSC did not join the post for one or other reason. The DoP&T in its communication dated 20th November 2009 had itself stated so, giving the following reasons:

Sl.No.RollNo.	**Name(S/Shri)**	**Category**	**Reasons for the vacancies to arise**
1. 001147	Sanjay Bora	General	Already appointed as PS vide OM No.5/2/2009-SC.II dt.16.3.09
2. 000713	Ms.Kitty	General	Already appointed as PS vide OM No.5/2/2009-CS.II dt.16.3.09
3. 001823	Devjyoti	General	Technically resigned on 17th August 2007 i.e. prior to the declaration of the result. His lien is over on 17th August 2009.
4. 001604	Sanjeev Jain	General	He has opted for appointment against seniority quota, 2005instead of LDCE 2005.
5. 001376	Vishwajit Kalynai	General	He has given his undertaking to remain as Personal Secretary.
6. 001711	Jai Kishore	SC	Qualified in LDCE 2005 Exam., however pursuant to a court direction, he has been adjusted against SL 2000 (LDCE)

In respect of each of the aforesaid six candidates DoP&T had given the reasons as to why those six persons opted not to join the post of Section Officer's grade.

11. It can be clearly inferred from the reading of the aforesaid that it is not the case where any of these persons initially joined as Section Officer and thereafter resigned/left/ promoted etc. thereby creating the vacancies again. Had that been the situation viz. after the vacancy had been filled up, and caused again because of some subsequent event, position would have been different. In that eventuality the UPSC would be right in not forwarding the names from the list as there is culmination of the process with the exhaustion of the notified vacancies and vacancies arising thereafter have to be filled up by fresh examination. However, in the instant case, out of 184 persons recommended, six persons did not join at all. In these circumstances when the candidates in reserved list on the basis of examination already held, were available and DoP&T had approached UPSC "within a reasonable time" to send the names, we do not see any reason or justification on the part of the UPSC not to send the names.

12. We are conscious of the legal position that merely because the name of a candidate finds place in the select list, it would not give him/her indefeasible right to get appointment as well. It is always open to the Government not to fill up all vacancies. However, there has to be a valid reason for adopting such a course of action. This legal position has been narrated by this Court in Ms.Neelima Shangla vs. State of Haryana (1986) 3 SCR 785. In that case:

> "The appellant was the candidate for appointment to the post of Subordinate Judge in Haryana. Under the scheme of the Rules, the Public Service Commission was required to hold first a written test in subjects chosen by the High Court and next a viva voce test. Unless a candidate secures 45% of the marks in the written papers and 33% in the language paper, he will not be called for the viva voce test. All candidates securing 55% of the marks in the aggregate in the written and viva voce tests are considered as qualified for appointment. The appellant though secured 55% of the marks was not appointed as her name was not sent by the Public Service Commission to the Govt. The Supreme Court in such fact situation found that the Public Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the name of any qualified candidate. The duty of the Public Service Commission is to make available to the Govt., a complete list of qualified candidates arranged in order of merit. How should Govt., act is stated by the Supreme Court in the following words:

> "Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are then to be entered in the Register maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is, of course, open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that, though 55 per cent is the minimum qualifying mark, in the interests of higher standards, they would not appoint anyone who has obtained less than 60 per cent of the marks." (Emphasis supplied)

13. The Court after making reference to the decision of the Supreme Court in the case of State of Haryana vs. Subhash Chander Marwah reported in (1972) IILLJ266 SC further observed as under:

> "However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. There must be a conscious application of the mind of the Govt., and the High Court before the number of persons selected for appointment is restricted. Any other interpretation would make Rule 8 of Part D meaningless." (Emphasis supplied)

14. It is, thus, manifest that though a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once, it is found that the decision of the Government is based on some valid reason, the Court would not issue any Mandamus to Government to fill up the vacancies.

15. In the present case, however, we find that after the UPSC sent the list of 184 persons/recommended by it, to the Government for appointment six persons out of the said list did not join. It is not a case where the Government decided not to fill up further vacancies. On the contrary DoP&T sent requisition to the UPSC to send six names so that the remaining vacancies are also filled up. This shows that in so far as Government is concerned, it wanted to fill up all the notified vacancies. The requisition dated 20th November 2009 in this behalf was in consonance with its Clause 4(c) of O.M. dated 14th

July 1967. Even when the Government wanted to fill up the post, the UPSC chose to forward names of three candidates.

16. There is a sound logic, predicated on public interest, behind O.M. dated 14th July 1967. The intention is not to hold further selection for the post already advertised so as to save unnecessary public expenditure. At the same time, this very O.M. also stipulates that the Government should not fill up more vacancies than the vacancies which were advertised. The purpose behind this provision is to give chance to those who would have become eligible in the meantime. Thus, this OM dated 14th July 1967 strikes a proper balance between the interests of two groups of persons. In the present case since the requisition of the DoP&T contained in communication dated 20th November 2009 was within the permissible notified vacancies, the UPSC should have sent the names of six candidates instead of three.

17. This Court in Sandeep Singh vs. State of Haryana & Anr. (2002) 10 SCC 549 commended that the vacancies available should be filled up unless there is any statutory embargo for the same. In Virender S.Hooda & Ors. Vs. State of Haryana & Anr. AIR 1999 SC 1701, 12 posts for direct recruitment were available when the advertisement for recruitment was made which was held in the year 1991. Some of the selected candidates did not join in this batch almost similar to the present case, the Court held that the appellant's case ought to have been considered when some of the candidates for reasons of the non-appointment of some of the candidates and they ought to have been appointed if they come within the range of selection.

18. It is not the case of the UPSC that under no circumstances the names are sent by way of supplementary list, after sending the names of the candidates equal to the vacancies. As per the UPSC itself, names of "repeat/common" candidates are sent and in the present case itself, three names belonging to such category were sent. However, exclusion of the persons like the appellants has clearly resulted in discrimination as one of those three candidates Rajesh Kumar Yadav had also secured 305 marks and once he was appointed to the post in question, the appellants with same marks have been left out even when the vacancies were available.

19. We are, therefore, of the opinion in the facts of the present case, the decision of UPSC in forwarding three names against requisition of DoP&T for six vacancies was inappropriate. We, accordingly, allow the present appeal; set aside the order of the High Court as well as Tribunal and issue Mandamus to the UPSC to forward the names of the next three candidates to the DoP&T for appointment to the post of Section Officer's Grade. They shall get the seniority from the date when Rajesh Kumar Yadav was appointed to the said post. Their pay shall notionally be fixed, without any arrears of the pay and other allowances.

20. No costs.

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IN THE SUPREME COURT OF INDIA
Civil Appeal No. 8406 of 2013
(Arising out of SLP (C) No.27092 of 2011)
D.D. 20.09.2013
Hon'ble Mr. Justice G.S.Singhvi
Hon'ble Mr. Justice V.Gopala Gowda &
Hon'ble Mr. Justice C.Nagappan

U.P.S.C. … **Petitioner**
Vs.
Arun Kumar Sharma & Ors. … **Respondents**

Promotion

Promotion by selection to Indian Police Service – Assessment of relative merits of candidates in the zone of consideration by Selection Committee in so far as grading them as 'good', very good, outstanding, for purposes of recommending them for promotion – Powers and jurisdiction of Courts and Tribunals to re-assess relative merits of candidates already assessed by selection committee- The case of Respondent was considered by selection committee constituted for preparation of select list for promotion to Indian Police Service and graded him as 'very good' and private respondents as 'out standing' on basis of ACRs and other materials made available to it. Aggrieved by grading awarded to him by the selection committee the same was challenged before Calcutta Bench of C.A.T. on ground of discrimination. Tribunal after hearing the matter, took upon itself the task of re-assessment of relative merits of candidates and directed selection committee to re-assess their merits by re-convening selection committee – When the matter was taken up in appeal before Division Bench of High Court of Calcutta, it dismissed the appeal by a cryptic order by upholding decision of the Tribunal – Whether in the circumstance, in absence of mala fides or irregularity in the relative assessment made by Selection Committee, the Tribunal has jurisdiction and power to re-assess relative merit of respondent and other private respondents and to order for re-convening Selection Committee for re-assessment merits of respondents? No. Whether High Court of Calcutta was right in refusing to interfere with orders of Tribunal? No. – Apex Court, after referring to various decisions held that Tribunal committed jurisdictional error by directing appellant and official respondents to convene Review Selection Committee and the High Court also erred in dismissing writ petition filed by appellant.

Cases referred:

1. Harjeet Singh v. Union of India, 1980 3 SCC 205
2. Nutan Arvind v. Union of India, 1996 2 SCC 488
3. Durga Devi v. State of Himachal Pradesh, 1997 SCC (L&S) 982
4. UPSC v. H.L. Dev and others, AIR 1988 SC 1069
5. State of Madhya Pradesh v. Shri Shrikant Chapekhar, JT 1992 (5) SC 633
6. Anil Katiyar v. Union of India, 1997 (1) SLR 153
7. U.P.S.C. v. K. Rajaiah and others, 2005 10 SCC 15

8. M.V. Thimmaiah and others v. U.P.S.C. and others, 2008 2 SCC 119
9. R.S. Das v. Union of India, 1986 Supp SCC 617

JUDGMENT

Leave granted.

The questions which arise for consideration in this appeal filed against order dated 19.05.2011 passed by the Division Bench of the Calcutta High Court in WPCT No.831 of 2003 are whether Calcutta Bench of the Central Administrative Tribunal (for short, 'the Tribunal') had the jurisdiction to re-assess the relative merit of respondent No.1 and the private respondents and whether the Division Bench of the Calcutta High Court rightly refused to interfere with order dated 01.04.2003 passed by the Tribunal in O.A.No.1064 of 1996 for re-convening the Selection Committee for promotion to the Indian Police Service.

Respondent No.1 joined the State Police Service on 09.06.1979. His case was considered by the Selection Committees constituted for preparation of the Select List for promotion of the State Police Service officers to the Indian Police Service against the vacancies of 1995 and 1996. for the year 1995, the State Government had reported two vacancies in the promotion quota which were required to be filled in accordance with the provisions contained in the Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short, 'the Regulation'). As per Regulation 5 (1) and (2), the size of the Select List was determined as four and the zone of consideration was fixed as twelve. In the eligibility list, respondent No.1 was placed at Sl.No.8. On an overall relative assessment for the record of eligible officers, the Selection Committee categorized respondent No.1 as 'Very Good' and his name was place at Sl.No.4 in the Select List. S/Shri Maharathi Adhikari and Daniel Tshering Lepcha, were categorized as 'Outstanding' and were placed at Sl.Nos.1 and 2. They were appointed to Indian Police Service by Promotion vide notification dated 20.12.1995. Subsequently, one vacancy become available on account of pre-mature retirement of one officer. Against that vacancy, Shri. Jyothi Prasad Roy, who was placed at Sl.NO.3 in the Select List, was appointed vide notification dated 08.02.1996.

For the year 1996, the State Government reported four vacancies in the promotion quota. In terms of Regulation 5(1), the size of the Select List was determined as six. The name of respondent No.1 was included in the eligibility list at Sl.No.5. On an overall relative assessment of his service record, the Select Committee categorised respondent No.1 as 'Very Good'. Four officers, namely, S/Shri Pasang Tshering Sherpa, Akil Kumar Roy, Binoy Kumar Chakraborty and Pankaj Kumar Dutta were categorized as 'outstanding'. Accordingly, they were appointed against the available promotion quota vacancies. The names of Shri.William Karketta and that of respondent No.1 were placed at Sl.Nos.5 and 6 respectively. Vide Government of India notifications dated 13.12.1996 and 03.03.1997 they were appointed against 2 unforeseen vacancies.

The minutes of the meeting of the Selection Committee held on 20.03.1996, of which Xerox copy was produced by the learned Additional Solicitor General, read as under:

"CONFIDENTIAL

U.P.S.C. FILE NO.7/21/96-AIS.

Minutes of the meeting of the Selection Committee constituted under Regulation 3 of the Indian Police Service (Appointed by Promotion) Regulations, 1995, for preparation of a list of such members of the State Police Service of West Bengal as are suitable for promotion to the Indian Police Service.

The Committee met at Calcutta on the 20th day of March, 1996 at 10:30 A.M.

The following were present:

Sl.No.	**Name (S/Shri)**	
1.	S.J.S.Chhatwal Member, UPSC	President
2.	N.Krishnamurthi Chief Secretary Govt. of West Bengal	Member
3.	Manish Gupta Principal Secretary & Home Secretary Govt. of West Bengal	Member

4.	R.K.Nigam D.G & I.G. of Police West Bengal	Member
5.	S.I.S. Ahmed D.I.G. of Police (HQ) West Bengal	Member

2. The Committee were informed that the maximum number of State Police Service Officers which can be included in the Select List is 6 (six). This number has been determined in pursuance of the provisions of Regulation 5 (1) of the Indian Police Service (Appointment by Promotion) Regulations, 1995.

3. It has also been brought to the notice of the Committee that disciplinary proceedings instituted against the following eligible officers are pending.

Sl.No.	**Name (S/Shri)**	**Sl.No. in the Eligibility list.**
1.	Sudhamoy Biswas	1.
2.	Barun Kumar Mallick	12.

4. The Committee examined the records of the officers (whose names are included in the Annexure), who fulfilled the conditions of eligibility, and assessed them as indicated against their names. The Committee did not take into consideration the adverse remarks in the ACRs of the officers which were not communicated to them, while assessing their suitability.

5. On the basis of the above assessment the Committee selected the officers whose names are mentioned below, as suitable in all respects for promotion to the Indian Police Service and placed them in the following order:

Sl.No.	**Name (S/Shri)**	**Date of Birth**
1	Pasaring Tshering Sherpa (ST)	02.02.52.
2	Akhil Kumar Roy	09.03.56
3	Benoy Kumar Chakraborty	01.01.54
4	Pankaj Kumar Dutta	03.12.51
5	William Kerketta (ST)	01.10.50
6	Arun Kumar Sharma	21.09.54

5. The Committee was satisfied from the remarks in the confidential reports of the officers, selected for inclusion in the list, that there was nothing against their integrity."

Respondent No.1 challenged the recommendations made by the Selection Committee for the year 1996 in OA.No.1064/1996. He pleaded that the assessment made by the Selection Committee was discriminatory and the resultant recommendations made by it were liable to be quashed on the ground of violation of Articles 14 and 16 of the Constitution.

The case set up by the appellant was that in terms of Regulation 5 (4), overall relative assessment is required to be made by the Selection Committee on the basis of the Annual Confidential Reports and other records and no illegality was committed in recommending respondent Nos.6 to 9 for promotion to the Indian Police Service (State Cadre). According to the appellant, the assessment made by the Selection Committee was correct and the Tribunal did not have the jurisdiction to interfere with the recommendations made by the Selection Committee, more so, because the applicant (respondent No.1) had not made any allegation of mala fide or arbitrary exercise of power.

The Tribunal ignored the plea taken by the appellant, re-assessed the record of respondent No.1 along with that of the private respondents and observed:

"It is the case of the respondents that overall relative assessment is done by the Selection Committee on the basis of the ACRs as provided under Regulation 5 (4). The learned counsel for the respondents relied upon the decision of the Supreme Court reported in AIR 1987 SC 593 for the proposition that Selection Committee need not record its reasons for its decision and that the principles of audi alteram partem is not applicable in making the selection. A perusal of the ACRs from 1990-91 to 1994-95 for the preceding five years in respect of the applicant and the respondents No.5 to 8 shows that respondents No.5 and 8 have been graded as "outstanding" in all the preceding five years and they deserved to be placed above the applicant in the select list of 1996. Hence the contention of the applicant that the placement of respondents No.5 and 8 above him in the select list of 1996 is not proper on the ground that they are juniors is not sustainable. However, a perusal of the ACRs of the applicant and the respondents No.6 and 7 for the year 1994-95 which were added at the time of preparation of 1996select list shows that the applicant and the respondents No.6 and 7 were graded "outstanding", and there is nothing to show that the performance and grading of the applicant has deteriorated after inclusion of his name in the select list of 1995. moreover, as per the provisions contained in the Regulation 5 (3), a member of the SPS whose name appears in the select list in force immediately before the date of the meeting of the committee shall be considered for inclusion in the fresh list,

to be prepared by the Committee. Admittedly, the name of the applicant was in the select list of 1995 and the Selection Committee which met on 20.03.96 ought to have considered the name of the applicant for inclusion in the select list of 1996 in accordance with the Regulation 5 (3) in view of the fact that the applicant had been graded as 'outstanding' in the ACR added at the time of the preparation of the select list of 1996.

10. On a perusal of the ACRs for the relevant period viz., 1990-91 to 1994-95 we find that the applicant and the respondents No.6 and 7 have been assessed as 'outstanding for four years and "very good" for one year/period. To be more specific, the applicant had been graded "very good" in the ACR for the year ending 31.03.91, 6th respondent had been graded "very good" in the ACR for the year 1992-93 and the 7th respondent had been graded "Very Good" for the ACRs for the period from 12.11.91 to 29.02.92, but the Selection Committee had graded respondents No.6 and 7 as "outstanding" and the applicant as "very good" in 1996. Since the applicant and the respondents No.6 and 7 each had four "outstanding' and one "very good", we do not see any valid reason or basis or material for grading respondents No.6 and 7 as "outstanding" and for grading applicant as "very good". Moreover, if the applicant and the respondents No.6 and 7 stand on equal footing on merit, the order of names interse between the applicant and the respondents No.6 and 7 should be in the order of their seniority in the SPS as provided under Regulation 5 (5) of the above Regulation. (Emphasis supplied)

The Tribunal then referred to the judgment of this Court in Harjeet Singh v. Union of India (1980) 3 SCC 205 and observed:

"It is not disputed that the applicant is senior to respondents No.6 and 7 in the State Police Service and hence placement of respondents No.6 and 7 above the applicant in the select list of 1996 does not appear to be correct in the light of the provision contained in Regulation 5(5) extracted above

. . . . . .

It is no doubt true that this Tribunal cannot sit in judgment over the decision of the Selection Committee, but the above decision of the Supreme Court makes it clear that the decision of the Selection Committee can be interfered with on the limited grounds such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved malafides affecting the selection etc. In the present case, (1) the Selection Committee has failed to consider the name of the applicant for inclusion in the select list of 1996 in accordance with the Regulation 5 (3), (2) the Selection Committee has committed a grading of the applicant and the respondents No.6 and 7 in the relevant ACRs and (3) the Selection Committee has also failed to follow the provisions of Regulation 5 (5) regarding the placement of the applicant and the respondents No.6 and 7 according to their seniority in the State Police Service. Under these circumstances, we are of the

view that the (not illegible) Selection Committee to review its decision dated 20.03.96 and consider and decide the correct placement of the applicant and the respondents No.6 and 7 in the select list of 1996 in the light of the provisions of Regulation 5 (5), within a period of four months from the date of receipt of the order."

The appellant challenged the order of the Tribunal in Writ Petition NO.831/2003. it relied upon the judgments of this Court in Nutan Arvind v. Union of India (1996) 2 SCC 488, Durga Devi v. State of Himachal Pradesh 1997 SCC (L & S) 982, UPSC v. H.L.Dev and others AIR 1988 SC 1069, State of Madhya Pradesh v. Shri Shrikant Chapekhar JT 1992 (5) SC 633, Smt.Anil Katiyar v. Union of India 1997 (1) SLR 153 and pleaded that the Tribunal committed a jurisdictional error by re-assessing the relative merit of the candidates.

The Division Bench of the High Court dismissed the writ petition by a rather cryptic order, the relevant portion of which is reproduced below:

"The Tribunal allowed the application and directed the Selection Committee to review its directed the Selection Committee to review its decision dated March 20, 1996 and consider and decide the correct placement of the applicant and the respondent Nos.6 &7 in the selection list of 1996. Even if, we accept the contention of Ms.Bhattacharyya that the promotional process was had on the basis of amended Rules, would find that no rationable was forthcoming as to how respondent No.1 could be superseded by respondent Nos.6 & 7. Ms.Bhattacharyya relies on a supplementary affidavit filed by UPSC affirmed on June 07, 2007. Perusal of the said affidavit, has not improved the situation. We are not at all satisfied as to how the respondent No.1 could be superseded. Even if we observe that the Tribunal erroneously relied on the pre-amended Rule, are would come to the same conclusion as we do not find any rationable supporting the decision of the petitioner."

We have heard Shri Gourab Banerji, learned Additional Solicitor General and perused the record. Regulations 3 (1) and 5 o the Regulations, which have bearing on the decision of this appeal read as under:

"3. Constitution of the Committee to make Selection: - (1) There shall be constituted for a State Cadre or Joint Cadre a Committee consisting of the Chairman of the Commission or where the Chairman is unable to attend, any other member of the Commission representing it and the following other members namely:-

a) For State other than Joint Cadre

(i) Chief Secretary

(ii) Officer not below the rank of Secretary to the Government Incharge of Home Department.

(iii) Director – General and Inspector General of Police.

Where no cadre post of Director General and Inspector General of Police exists, then the Inspector General of Police.

(iv) A member of the service not below the rank of Deputy Inspector General of Police, and

(v) A nominee of the Government of India not below the rank of Joint Secretary.

3(2) The Chairman or the member of the Commission shall preside at all meetings of the Committee at which he is present.

3(3) The absence of a member pother than the Chairman or member of the Commission shall not invalidate the proceedings of the Committee if more than half the member of the Committee had attend its meetings.

5. Preparation of a list of Suitable officers:-

5(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service as are held by them to the suitable for promotion to the service. The number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months, commencing fm the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules plus twenty percent of such number or two, whichever is greater.

Explanation: In case of Joint Cadres a separate select list shall be prepared in respect of each State Police Service, the size of each select list being determined in the manner indicated above.

5 (2) The Committee shall consider for inclusion in the said list, the cases of member of the State Police Service in the order of a seniority in that service of a number which is equal to three times the number referred in sub-regulation (1).

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the

maximum permissible size of the select list and in such a case the Committee shall consider all the eligible officers.

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded.

Provided also that the Committee shall not consider the case of a member of the State Police Service unless on the first day of April of the year in which it meets he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.

Explanation: The powers of the State Government under the third proviso to the Sub-regulation shall be exercised in relation to the members of the State Police Service of Constituent State by the Government of the State.

5 (2A): Deleted.

5 (3): The Committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of April of the year in which it meets:

Provided that a member of the State Police Service whose name appears in the Select List in force immediately before the date of the meeting of the committee shall be considered for inclusion in the fresh list to be prepared by the committee even if he has in the meanwhile attained the age of 54 years.

Provided further that a member of the State Police Service who has attained the age of fifty four years on the first day of April of the year in which the Committee meets shall be considered by the Committee, if he was eligible for consideration on the first day of "April of the year or any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years."

5 (4) The Selection Committee shall classify the eligible officers as "Outstanding", "Very Good", "Good" or "Unfit" as the case may be on an overall relative assessment of their service records.

5 (5) The list shall be prepared by including the required number of names first amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service.

> Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.
>
> Explanation I: The proceedings shall be treated as pending only if a charge sheet has actually been issued to the officer or filed in a Court as the case may be.
>
> Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the office and investigation thereof is essential."

5 (6) The list so prepared shall be reviewed and revised every year."

The aforesaid Regulations have been interpreted in large number of judgments. We may notice two of them – UPSC v. K.Rajaiah and others (2005) 10 SCC 15 and M.V. Thimmaiah and others v. UPSC and others (2008) 2 SCC 119. The factual matrix of K.Rajaiah's case was substantially similar to the present case. The respondent was considered for promotion to the Indian Police Service against the vacancies of 1998 and 1999, but was not selected. He failed in persuading the Tribunal to review the recommendations made by the Selection Committee. In the writ petition filed by him, the High Court of Andhra Pradesh took cognizance of the 'Outstanding' grading given in the ACRs of the respondent from 1994 to 1996 and directed the official respondents to constitute a fresh Selection Committee for review of the recommendations already made. This Court referred to additional affidavit dated 15.02.2005 filed on behalf of the appellant and observed:

> "We cannot also endorse the view taken by the High Court that consistent with the principle of fair play, the Selection Committee ought to have recorded reasons while giving a lesser grading to the first respondent. The High Court relied on the decision of this Court in National Institute of Mental Health & Neuro Sciences v. Dr.K.Kalyana Raman. Far from supporting the view taken by the High Court, the said decision laid down the proposition that the function of the Selection Committee being administrative in nature, it is under no obligation to record the reasons for its decision when there is no rule or regulation obligating the Selection Committee to record the reasons. This Court then observed:

"Even the principles of natural justice do not require an administrative authority or s Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R.S.Das v. Union of India."

In the next paragraph, the learned Judges indicated as to what is expected of the Selection Committee, in the following words:

"We may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness if the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration. But there is nothing on record to suggest that the Selection Committee did anything to the contrary."

That being the legal position, the Court should not have faulted the so-called down graduation of the first respondent for one of the years. Leally speaking, the term "down gradation" is an inappropriate expression. The power to classify as "outstanding", "very good", "good" and "unfit" is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt, the Committee is by and large guided by the classification adopted by the State Government but, for good reasons, the Selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs. That is what has been done in the instant case in respect of the year 1993-94. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of the State Government, it would be desirable to record reasons. But having regard to the nature of the function and the power confided to the Selection Committee under Regulation 5 (4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision. (Emphasis supplied)

The same issue was considered in M.V.Thimmaiah v. U.P.S.C. (supra) in the context of promotion to the All India Administrative Services. While refusing to review the recommendations made by the Selection Committee, this Court referred to a number of precedents including the judgments in R.S.Das v. Union of India 1986 Supp SCC 617, Anil Katiyar v. Union of India (1997) 1 SCC 280 and observed:

"Therefore, in view of a catena of cases, courts normally do not sit as a court of appeal to assess ACRs and much less the Tribunal can be give this power

to constitute an independent Selection Committee over the statutory Selection Committee. The guidelines have already been given by the Commission as to how ACRs to be assessed and how the marking has to be made. These guidelines take care of the proper scrutiny and not only by the Selection Committee but also the views of the State Government are obtained and ultimately the Commission after scrutiny prepares the final list which is sent to the Central Government for appointment. There also it is not binding on the Central Government to appoint all the persons as recommend and the Central Government can with hold the appointment of some persons so mentioned in the select list for reasons recorded. Therefore, if the assessment of ACRs in respect of Shri.S.Daya Shankar and Shri.R.Ramapriya should have been made as "outstanding" or "very good" it is within the domain of the Selection Committee and we cannot sit as a court of appeal to assess whether Shri.R.Ramapriya has been rightly assessed or Shri Daya Shankar has been wrongly assessed. The overall assessment of ACRs of both the officers were taken, one was found to be "outstanding" and the second one was found to be "very good". This assessment cannot be made subject of court's or Tribunal's scrutiny unless actuated by mala fide".

In view of the propositions laid down in the aforementioned judgments, we hold that the Tribunal committed a jurisdictional error by directing the appellant and the official respondents to convene Review Selection Committee and the High Court erred in dismissing the writ petition filed by the appellant.

In the result, the appeal is allowed, the impugned order as also the order passed by the Tribunal are set aside and the O.A.No.1064/1996 filed by respondent No.1 is dismissed.

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IN THE HIGH COURT OF DELHI AT NEWDELHI
W.P. (C) 5812/2010
D.D. 08.11.2013
Hon'ble Mr. Justice V.K.Jain

UPSC … Petitioner
Vs.
Pinki Ganeriwal … Respondent

R.T.I.

Disclosure of personal information such as date of birth, institution and year of passing graduation, field experience and caste of selected candidates – Whether Central Information Commission could direct UPSC for disclosure of personal information of candidates selected for appointment in absence of recording finding to the effect that it was in larger public interest to disclose such information and there being no claim in the application seeking information that larger public interest is involved in disclosing information sought for? No.

Held:

5. There is no finding by the Commission that it was in larger public interest to disclose the aforesaid personal information of the recommended candidates. Even in his application seeking information, the respondent did not claim that any larger public interest was involved in disclosing the aforesaid information. In the absence of such a claim in the application and a finding to this effect by the Commission, no direction for disclosure of the aforesaid personal information could have been given."

Case referred:

U.P.S.C. v. Mator Singh, W.P.(C)No.6508/2010

JUDGMENT

Vide application dated 12.09.2008, the respondent sought the following information from the CPIO of the petitioner-UPSC:-

"a) Subject matter of information:-
Selection list of eleven number of Dy Director of Mines Safety (Mining) by UPSC in pursuance of ref no of F.I./287/2006/R-VI contained in advertisement no 8/03 (Employment News 28 April-4May 2007)

(b) The period to which the information relates:-
Year 2008-09

(c) Specific details of information required:-
Please provide the seniority cum merit list of selected eleven number of Dy Director of Mines Safety (Mining) by UPSE in pursuance of ref no of F.I./287/2006/R-VI contained in advertisement no 08/03 (Employment News 28 April-4 May 2007) for appointment in Director General of Mines Safety, Dhanbad under Ministry of Labour and Employment, New Delhi. The list should contain the details of date of birth, institution & year of passing their graduation, field experience of company and marks obtained in interview and caste of the candidate.

2. The information (a) and (b) above has already been provided to the respondent. As regards information at (c) above, the petitioner has already provided the list of the recommended candidates along with their inter se seniority-cum-merit and the same is available at page 43 of the paper book. The petitioner, however, has declined to provide information such as date of birth, institution and year of passing graduation, field experience, marks obtained in interview and the caste of the selected candidates.

3. The Central Information Commission vide impugned order dated 07.06.2010, while dealing with the plea of the petitioner that being personal information of the selected candidates, the aforesaid information is exempt from disclosure under Section 8(1)(j) of the Right to Information Act, inter alia, held as under:-

"In this case although the information can arguably be treated as personal information, under no circumstances can information given for participation in a public activity like a public examination be deemed to have no relationship to such public activity.

Shri Kamal Bhagat, Jt. Secretary, has argued that it is not the practice in the UPSC to disclose interview results for those candidates as are not selected. In this case, however, appellant Ms. Pinki Ganeriwal has asked for information only regarding 'selected' candidates. This information which was not received by the appellant on the ground taken by the CPIO, UPSC, will now be provided to appellant Ms. Pinki Ganeriwal within 10 working days from the date of receipt of this decision notice. The appeal is thus allowed. There will be no costs, since appellant has not been compelled to travel to be heard, and the responses of CPIO, although held to be inadequate, were made according to the time mandated and as per CPIO's genuine understanding of the law, and therefore not liable to penalty."

4. A similar issue came up for consideration before this Court in W.P.(C) No. 6508/ 2010 titled UPSC vs. Mator Singh, where the respondent before this Court had inter alia sought information such as particulars (name, qualification and experience) of eligible applicants for appointment to 7 post of Principal (female) reserved for Scheduled Castes in response to UPSE special advertisement No. 52/2006. The CPIO declined to provide the aforesaid information and the first appeal filed by the respondent was also dismissed. In a second appeal filed by the respondent, the Central Information Commission directed disclosure of the aforesaid information. Setting aside the order passed by the Commission, this Court, inter alia, held as under:-

> "5. A similar issue came up for consideration before the Hon'ble Supreme Court in Union Public Service Commission Vs. Gourhari Kamila 2013 (10) SCALE 656. In the aforesaid case, the respondent before the Apex Court had sought inter alia the following information:
>
> "4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.3.2010?
>
> 5. Kindly provide the certified xerox copies of experience certificates of all the candidates called for the interview on 16.3.2010 who have claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl.No. 10(B) of Part-I of their application who are called for the interview held on 16.3.2010."
>
> The Central Information Commission directed the petitioner-UPSC to supply the aforesaid information. Being aggrieved from the direction given by the Commission, the petitioner filed WP (C) No.3365/2011 which came to be dismissed by a learned Single Judge of this Court. The appeal filed by the UPSC also came to be dismissed by a Division Bench of this Court. Being still aggrieved, the petitioner filed the aforesaid appeal by way of Special Leave. Allowing the appeal filed by the UPSC, the Apex Court inter alia held as under, relying upon its earlier decision in Bihar School Examination Board Vs. Suresh Prasad Sinha (2009) 8 SCC 483:
>
> "One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to

the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e)would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it."

The Apex Court held that the Commission committed a serious illegality by directing the UPSC to disclose the information at points 4 & 5 and the High Court also committed an error by approving the said order. It was noted that neither the CIC nor the High Court recorded a finding that disclosure of the aforesaid information relating to other candidates was necessary to larger public interest and, therefore, the case was not covered by the exception carved out in Section 8(1) (e) of the RTI Act.

6. In the case before this Court no finding has been recorded by the Commission that it was in the larger public interest to disclose the information with respect to the qualification and experience of other shortlisted candidates. In the absence of recording such a finding the Commission could not have directed disclosure of the aforesaid information to the respondent."

5. In the present case, the information such as date of birth, institution and year of passing graduation, field experience and caste is personal information of the selected candidates. There is no finding by the Commission that it was in larger public interest to disclose the aforesaid personal information of the recommended candidates. Even in his application seeking information, the respondent did not claim that any larger public interest was involved in disclosing the aforesaid information. In the absence of such a claim in the application and a finding to this effect by the Commission, no direction for disclosure of the aforesaid personal information could have been given.

6. For the reasons stated hereinabove, the impugned order dated 07.06.2010 passed by the Central Information Commission is hereby set aside.

The writ petition stands disposed of. No order as to costs.

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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi
O.A.No.1869/2011
D.D. 11.12.2013
Hon'ble Mr. George Paracken, Member (J) &
Hon'ble Mr. Shekhar Agarwal, Member (A)

Shri Rabinder Kumar Pattanayak … Applicant
Vs
Union of India & Ors. … Respondents

Deemed date of appointment and pay & allowances

Applicant could not join duty along with his batch mates, when they joined duty between 16.09.2003 and 04.12.2003 for no fault on his part but only on 17.10.2005 because of pendency of litigation before court connected with recruitment – Whether the applicant, in the circumstances, entitled for benefit of deemed date of appointment and consequential stepping up of pay and benefit of old pension rules? Yes.

Held:

9. It is seen that the applicant was denied appointment at the right time along with his batch mates only because of the pendency of the case filed by another candidate Ms. Sunita Anand before this Tribunal and it has reached up to the High Court of Delhi. There was no fault on his part. The maxim 'Actus Curiae neminem gravabit', which means that the act of the Court shall prejudice no-one followed by the Apex Court in the case of Kalabharati Advertising (supra) and relied upon by the coordinate Bench of this Tribunal in the case of Vijay Prakash and others (Supra) shall equally apply in this case also.

10. We, therefore, allow this OA and direct that the respondents shall treat the applicant at par with his batch mates for all consequential purposes except back wages. He shall, therefore, be treated as joined the ALC with effect from 16.09.2003, i.e., the date his junior has joined the said post. He will also be entitled for notional annual increments and fixation of pay accordingly. However, we make it clear that the applicant will not be entitled for any monetary benefits till 17.10.2005. Again, as a matter of consequence he is also entitled to be compliance of the aforesaid directions within a period of 2 months from the date of receipt of a copy of this order."

Cases referred:

1. Vijay Prakash and others v. The Chief Secretary, Govt. of NCT of Delhi and others, OA.No.1205/2012 decided on 23.11.2012
2. Amarjeet Singh and others v. Devi Ratan and others, 2010(1) SCC 417.

ORDER

By Hon'ble Mr. G. George Paracken, Member (J)

The main relief sought by the Applicant in this Original Application is for granting him proforma appointment/deemed appointment from the date his junior and similarly placed persons from the same panel have been appointed and consequently, to admit him to the benefits of CCS (Pension) Rules, 1972, as in their cases.

2. The brief facts of the case are that Applicant was a candidate for the post of Assistant Legislative Council ("ALC" for short) in the Legislative Department of Ministry of Law and Justice advertised by the Union Public Service Commission ("UPSC" for short) vide its advertisement No.14/2002. There were 4 posts, out of which, 3 were for general category candidates and one reserved for OBC candidate. The UPSC conducted the interview for the aforesaid post in the year 2003 and the Applicant was also duly interviewed. However, the UPSC did not consider one candidate, Ms. Sunita Anand, not suitable for the aforesaid post. She filed OA No.1379/2003 before this Tribunal challenging the aforesaid decision of the Respondent-UPSC. Vide order dated 27.05.2003, this Tribunal directed the Respondent-UPSC to provisionally interview her subject to the final outcome of the aforesaid OA. Thereafter, the Applicant was to be considered for the third general category post kept unfilled awaiting the decision of the aforesaid Original Application. However, the other two general category candidates and one reserved category candidate were given the appointments on 19.11.2003, 04.12.2003 and 16.09.2003 respectively. Finally, the OA filed by Ms. Sunita Anand was decided on 11.08.2003 and the Tribunal allowed her case. The UPSC challenged the aforesaid decision before the Hon'ble High Court of Delhi in Writ Petition No.6829/2003 and it was disposed of vide order dated 12.01.2006 as infructuous as Ms. Sunita Anand was not finally selected. Finally, the Applicant was given the offer of appointment for the aforesaid post of ALC vide the Respondents letter dated 04.10.2004 and asked him to communicate his acceptance in writing on or before 02.11.2004. Immediately on receipt of the aforesaid offer of appointment, he communicated his acceptance but the Respondents issued him the letter of appointment only on 23.06.2005. Since the Applicant was already working under the

State Government of Orissa, he sought extension of time up to 21.10.2005 to join duty and the Respondents, vide their letter dated 04.07.2005, allowed his request. Thereafter, he joined the post on 17.10.2005, i.e., within the prescribed time limit. As the Applicant was at No.3 in the select list of candidates appointed for the aforesaid post of ALC, the Respondents themselves have assigned him the seniority at Sl.No.3 which was above his junior belonging to the reserved category candidate who joined the post in 2003 itself.

3. Thereafter, he made a representation on 27.03.2009 to step up his pay with his batchmates and juniors and also to grant him also the pensionary benefits in terms of CCS (Pension) Rules, 1972 as in the case of his other batchmates. He has pointed out that he could not join as ALC at the time his batchmates have joined but he could join only on 17.10.2005 for none of his fault and it was entirely due to delay in recommending his name by the UPSC due to the pending litigation. He has, therefore, requested to treat him at par with all his other batchmates who joined in 2003, for all purposes including the benefits under the CCS (Pension) Rules, 1972.

4. The learned counsel for the Applicant has also relied upon an order of the co-ordinate Bench of this Tribunal in OA No.1205/2012 - Vijay Prakash and Others Vs. The Chief Secretary, Govt. of NCT of Delhi and Others decided on 23.11.2012 wherein it has been held that when the Applicant therein was denied appointment along with his batch mates for none of his fault he cannot be visited with any adverse effect on his career except the salary and allowances as he has not already worked for that period. The operative part of the said order reads as under:-

> "2. Respondents have filed reply denying the submissions of the applicants. However, the fact of the matter is that this Tribunal has already decided the issue involved in this case in OA No.1795/2011 - Lalit Kumar & others Versus Municipal Corporation of India & others through the Commissioner, Town Hall, Delhi vide order dated 01.08.2012. The operative part of the said order reads as under:-
>
> 5. We have heard the learned counsel for the applicant, Sh. H.D. Sharma and the learned counsel for the respondents Sh. Rahul Singh and Mrs. Sumedha Sharma. The undisputed fact in this case is that the DSSSB had advertised 2195 vacancies (consisting 421 vacancies for UR candidates, 465 vacancies

for OBC candidates, 647 vacancies for SC candidates and 662 vacancies for ST candidates). The applicants have qualified the competitive examination and they have been included in the merit list. But the DSSSB has declared the result of only 246 UR candidates who have qualified the examination vide its order dated 27.12.2002 and withheld the results of the SC/ST categories only on the ground that the dispute regarding their eligibility to get appointment was pending before the High Court of Delhi. However, the aforesaid dispute was settled by the Hon'ble High Court in favour of the SC/ST candidates vide its judgment dated 13.05.2005 referred above. It was thereafter that the applicants who belonged to the SC/ST categories have been given appointment in the MCD.

6. It is a well settled law that the seniority of the employees depends upon their respective positions in the merit list, which is common to all. The candidates who are appointed in terms of an earlier merit list will be treated enblock senior to the candidates who have been appointed on the basis of the merit list of a subsequent selection. However, the fact of the matter in the present case is that the applicants who belonged to the SC/ST category could not be appointed along with the general category candidates not because of any of their fault, rather it is also not because of any fault of the respondents. It was only due to the pendency of dispute before the Hon'ble High Court regarding the eligibility of the SC/ST candidates for appointment in the MCD, NDMC and GNCT of Delhi etc., which was beyond the control of both parties. Once that dispute has been settled in favaour of the applicants, the applicants should not be visited with any other adverse effects in their career. However, it is also a fact that the applicants have not worked from the date their counterparts belonging to the general category candidates who have been given appointment earlier have been working. Therefore, they cannot claim any salary and allowances for the period they have not worked but in all other respect they have to be treated at par with the general category candidates who secured their appointment earlier.

7. It is also a well settled position of law that because of the mere pendency of a case in a Court of Law, no litigant, whether the petitioner or the respondent, can BE deprived of any benefit unless otherwise ordered by the court itself. As a corollary of the said principle, no person needs to suffer for the act of the Court and in case an interim order has been passed, the petitioner can take advantage thereof. Rather, in such cases law permits promotion with retrospective effect. The aforesaid position of law has clearly been laid by the Apex Court in Kalabharati Advertising versus Hemant Vimalnath Narichania & others 2010 (9) SCC 437 and Amarjeet Singh & others versus Devi Ratan & Others 2010 (1) SCC 417. In Kalabharati Advertising (supra), the Apex Court has held as under:-

"15. No litigant can derive any benefit from the mere pendency of a case in a Court of Law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order

stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the Court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. (vide:Dr. A.R. Sircar v. State of Uttar Pradesh & Ors., 1993 Supp. (2) SCC 734; Shiv Shanker & Ors. v. Board of Directors, Uttar Pradesh State Road Transport Corporation & Anr., 1995 Supp. (2) SCC 726; the Committee of Management, Arya Inter College, Arya Nagar, Kanpur & Anr. v. Sree Kumar Tiwary & Anr., AIR 1997 SC 3071; GTC Industries Ltd. v. Union of India & Ors., AIR 1998 SC 1566; and Jaipur Municipal Corporation v. C.L. Mishra, (2005) 8 SCC 423)".

8. Again in Amarjeet Singh & Others, the Apex Court has held as under:-

"26. There is another aspect of the matter. The appellants and the respondents have been considered by the DPC held on 19.12.1998 to fill up 42 vacancies under the unamended rules. However, at the cost of repetition, it may be pertinent to mention here that only 30 candidates/appellants were found suitable by the DPC held on 19.12.1998 and had been promoted, under the unamended Rules on the criterion of "merit". The respondents had been promoted under the amended rules by carrying forward 12 vacancies, by another DPC held subsequently on 22.1.1999 on different criterion, i.e., "Seniority subject to rejection being unfit". Indisputably, these 12 officers/ respondents were found unsuitable for promotion under the unamended rules by the DPC held on 19.12.1998. Subsequent thereto, both set of officers had been promoted notionally from the back dates. The appellants had been given promotions as AEC against the vacancies for the year 1994-95 while the respondents were given notional promotions against the vacancies for the years 1996 and 1997. The seniority list dated 12.7.2000 was prepared accordingly. As the appellants had been given notional promotion w.e.f. 6.12.1995 and the respondents w.e.f. 28.2.1997 and 13.8.1997, their inter se seniority had rightly been determined while issuing seniority list dated 12.7.2000".

9. In the above facts and circumstances of the case, we allow this OA with the direction to the respondents to grant notional seniority to the applicant as per their respective positions in the merit list prepared by the DSSSB in the year 2002. They shall also be given appointments on notional basis from the dates the first general category official has joined duty. Consequently, they will be entitled for notional increments and fixation of pay and other benefits like GPF, Pension, etc. as admissible to their batch mates belonging to the

unreserved category. The respondents shall pass appropriate orders in this regard within two months from the date of receipt of a copy of this order. There shall be no order as to costs."

3. In view of the above position, learned counsel for the respondents Ms. Alka Sharma, fairly admitted that the aforesaid judgment squarely covers the present case also. We, therefore, allow this OA and direct the respondents to extend the same benefits to the applicants herein as given to the applicants in OA No.1795/2011 (Supra) within a period of two months from the date of receipt of a copy of this order.

4. There shall be no order as to costs".

5. The Respondents have referred the case of the Applicant to the Department of Pension and Pensioners Welfare for their advice. The Legislative Department requested the Department of Pension and Pensioners Welfare to clarify whether the benefit of deemed date of appointment and pay and allowances have been considered by the Department or not? If that has not been considered, the Department to intimate the reason why it has not been allowed/not allowed so that the question of applicability of the CCS (Pension) Rules, 1972 could be considered. After having received the advice from them, the Respondents, vide the impugned letter dated 28.02.2011, informed the Applicant that in accordance with the Rule 2 of the CCS (Pension) Rules, 1972, as amended vide Notification dated 30.12.2013, the CCS (Pension) Rules apply to Government servants appointed on or before 31st December, 2003. However, in the case of Applicant his date of appointment is in the year 2005 and since he has not been given the deemed date of appointment earlier on the date earlier than 01.01.2004, his request for admitting to the Old Pension Scheme cannot be accepted.

6. The Respondents also have filed their reply on the above lines. Their preliminary objection is that this is a time barred case as the Applicant has approached this Tribunal after 7 years, after he has joined as ALC on 17.10.2005. Therefore, he cannot claim any benefits of proforma fixation of his seniority or any benefits under the Old Pension Scheme at this belated stage.

7. The learned counsel for the Respondents has also submitted that Applicant's case is covered under FR 17 (1) which says that "(1) Subject to any exceptions specifically made

in this rules and to the provision of sub rule (2), an officer shall being to draw the pay and allowance attached to his tenure of the post with effect from the date when assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties". He has also submitted that there is no anomaly in his pay fixation so fixed and there is no question of any stepping up of his pay.

8. We have heard the learned counsel for the Applicant Shri Yogesh Sharma and the learned counsel for the Respondents Shri Rajesh Katyal and Shri J.B. Mudgil. It is an admitted fact that the Applicant was the batchmates of other three ALCs selected by the UPSC in the year 2002. Out of 4 vacancies, the dispute was with regard to the third post ear-marked for the general category candidate. Since there was no dispute with regard to the other vacancies, those three candidates recommended by the UPSC could join service on 19.11.2003, 04.12.2003 and 16.09.2003 respectively. The dispute with regard to the third post was resolved only on 12.01.2006 when the High Court has pronounced its judgment in that regard in W.P. No.6829/2013 (supra). The other contender of the said post Ms. Sunita Anand was accordingly declared not eligible for the said post. It was only thereafter on 28.09.2004 the UPSC recommended the Applicant for appointment to the said post to the Department only. The Respondent-Department has thereafter issued the offer of appointment on 04.10.2004. The Applicant immediately accepted the said offer. However, the Respondents issued appointment letter only on 23.06.2005 to join by 22.07.2005. As the Applicant was already working with the State Government, he sought three months time to join the duty and the Respondents, vide their letter dated 23.06.2005 allowed him to join by 21.10.2005. He joined well within the time on 17.10.2005. Thereafter, the Applicant has made a representation to the Respondents to grant him provisional appointment from the date his junior has been appointed with all consequential benefits including those under CCS (Pension) Rules, 1972. However, the Respondents, however, granted him only the seniority above the last selected candidate as in the order of merit in select list who joined the post on 16.09.2003 and nothing else.

9. It is seen that the Applicant was denied appointment at the right time along with his batch mates only because of the pendency of the case filed by another candidate Ms.

Sunita Anand before this Tribunal and it has reached up to the High Court of Delhi. There was no fault on his part. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one followed by the Apex Court in the case of Kalabharati Advertising (supra) and relied upon by the co-ordinate Bench of this Tribunal in the case of Vijay Prakash and Others (supra) shall equally apply in this case also.

10. We, therefore, allow this OA and direct that the Respondents shall treat the Applicant at par with his batchmates for all consequential purposes except back wages. He shall, therefore, be treated as joined the ALC with effect from 16.09.2003, i.e., the date his junior has joined the said post. He will also be entitled for notional annual increments and fixation of pay accordingly. However, we make it clear that the Applicant will not be entitled for any actual monetary benefits till 17.10.2005. Again, as a matter of consequence, he is also entitled to be governed by the Old Pension Scheme under the CCS (Pension) Rules, 1972. Respondents shall pass appropriate orders in compliance of the aforesaid directions within a period of 2 months from the date of receipt of a copy of this order.

11. There shall be no order as to costs.

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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi
O.A.No.681/2013
D.D. 17.12.2013
Hon'ble Mr. A.K. Bhardwaj, Member (J) &
Hon'ble Mr. Shekhar Agarwal, Member (A)

Kavita Gulati Batra … Applicant
Vs.
Union of India through its
Secretary & Ors. … Respondents

Candidature

Cancellation of candidature after allowing to participate in Limited Departmental Competitive Examination, without affording opportunity – Applicant applied for the post of Section Officer/Stenographer (Grade B/Grade-I) in the Central Secretariat Service, by submitting online application well before last date fixed for receipt of application. She also submitted signed printed application through HOD well in time – However, when she failed to receive admit card, it was found that her printed application was not forwarded to UPSC by the HOD by mistake. Thereafter, applicant forwarded duly signed application through the HOD and on accepting the same UPSC allowed her to participate in the written examination. But, after the examinations were over the applicant was issued with a communication informed that her candidature was cancelled as it was received late and without Departmental endorsement - Whether, UPSC having accepted the application and allowing the applicant to appear for written examination, though submitted belatedly, can at a later date endorse that her candidature has been rejected/cancelled on ground of delay in submission of application and for want of departmental endorsement, without giving her opportunity to have her say in the matter? No.

O R D E R (ORAL)

Mr. A.K. Bhardwaj, Member (J):

As can be gathered from the reply filed on behalf of respondent No.2, i.e., Union Public Service Commission (UPSC), certain vacancies of Section Officers /Stenographers (Grade-B/ Grade-I) to be filled up on the basis of Limited Departmental Competitive Examination 2009, 2010 and 2011 were notified on 15.9.2012. The candidates were required to submit online application for the said examination from 25th September to 15th October 2012 and to send a signed (print thereof) application endorsed through their Head of Department /Office by 29.10.2912, which was the last date of receipt of applications.

Admittedly, the applicant submitted her online application on 1.10.2012 and was allotted a registration ID No.11216000410 for the examination. When the applicant could not receive the admit card for the examination, she inquired from the concerned authorities in the Department about the reason for the same and could be informed that by mistake her application could not be forwarded to UPSC. Thereafter a duly signed application was forwarded by the Department on 6.12.2012 to the UPSC. Accepting the application, the UPSC allowed the applicant to download her e-admit card and accordingly she was allowed to participate in the examination held on 15th and 16th December 2012. Thereafter, the UPSC issued communication dated 19.12.2012 informing the applicant that her application for the examination for Section Officers /Stenographers (Grade-B/ Grade-I) Limited Departmental Competitive Examination 2009, 2010 and 2011 had been rejected for the reason that her second application, though being complete, was without departmental endorsement and received late by UPSC. Against the said decision, the applicant made representations dated 28.1.2013 and 4.2.2013 to the Commission, which were turned down in terms of the impugned order dated 8.2.2013, thus the applicant has filed the present Original Application praying therein:

> "(a) Quash the impugned order dated 19.12.2012 and 8.2.2013;
> (b) Direct the respondents i.e. UPSC to declare the result of the applicant after evaluation of the answer sheet along with the other candidates and if applicant comes in merits should be selected in accordance with the recruitment rules.
> (c) Pass any other order which this Hon'ble Tribunal may deems fit and proper."

2. Learned counsel for applicant submitted that in view of the Brief Notice dated 11.12.2012 published in the Times of India, once the applicant had submitted her application online, the respondents could not have rejected her candidature. He also submitted that subsequently the applicant had submitted a duly signed application, which was forwarded by respondent Nos. 1 and 3 (Union of India, Ministry of Defence) to respondent No.2 (UPSC) and once the applicant had been allowed to participate in the examination, her candidature could not have been cancelled afterwards.

3. On the other hand, Mr. Rajinder Nischal, learned counsel for respondent No.2 UPSC submitted that in the Notice of examination itself it was categorically mentioned that only those candidates whose printed copy of online application was forwarded by their Head of Department/ Office would be considered for admission to the examination. The Note below the said Notice dated 15.9.2012, referred to by learned counsel for respondent No.2, reads as under:

> "Note : Only those candidates whose printed copy of online application is forwarded by their Head of Department/Office will be considered for admission to this Examination. They should further note that the Commission will in no case be responsible for non-receipt of their application or any delay in receipt thereof on any account whatsoever. No application, received after the prescribed last date for receipt of printed copy of the application in the Commission through proper channel, will be entertained under any circumstances and all the late applications will be summarily rejected. They should, therefore, ensure that after verifying the relevant entries and completing the endorsement at the end of the application form, their applications are forwarded by their Department or Head of Office, so as to reach the Commissions Office on or before the prescribed last date."

4. Mr. Ashok Kumar, learned counsel for respondent Nos. 1 and 3 submitted that the said respondents have no objection to the prayer made in the Original Application. In the counter reply filed on their behalf, it is admitted that on 6.12.2012 the applicant submitted a letter to the Under Secretary, Ministry of Defence, requesting him to forward her application to UPSC. According to said respondents, acceding to the request of the applicant, they had forwarded the said application to UPSC. For easy reference, paragraph 4 of the reply filed on behalf of respondent Nos. 1 and 3 reads as follows:

> "4. On 6th December, 2012, Smt. Kavita Gulati Batra (Applicant) submitted zely on the same day, with the approval of Respondent No.3 (Annexure R-8). In the forwarding letter dated 6th December, 2012 (Annexure R-8), it was clearly mentioned that as the application form of Smt. Kavita Gulati Batra was not signed by her, the same could not be forwarded to UPSC alongwith application forms of other officials of Ministry of Defence, UPSC was requested to consider the application favourably as she had already applied online."
>
> Thus, she signed the application form only on 6th December, 2012 and, acceding to the request of the Applicant made vide her letter dated 6th

December, 2012 (Annexure R-7), the application of the Applicant was forwarded to the UPSC by Ministry of Defence immediately on the same day, with the approval of Respondent No.3 (Annexure R-8). In the forwarding letter dated 6th December, 2012 (Annexure R-8), it was clearly mentioned that as the application form of Smt. Kavita Gulati Batra was not signed by her, the same could not be forwarded to UPSC alongwith application forms of other officials of Ministry of Defence, UPSC was requested to consider the application favourably as she had already applied online."

5. We have heard the learned counsels for the parties and perused the records.

6. Normally in view of the terms of the Notice of examination only such candidates whose printed copy of online application was forwarded by their Head of Department/ Office could be considered for admission to the examination. In the present case, the applicant had taken the printout of her application and submitted to the competent authority in her Department to forward the same in terms of the conditionzzs of the Note. However, on account of sheer mistake, the application could not be forwarded within the specified time limit. When the applicant could not receive the admit card and inquired from the UPSC as also respondent Nos. 1 and 3 about the reason for the same, she could know that the Department committed a mistake in not forwarding her application. Respondent Nos. 1 and 3 could not put forth satisfactory explanation for not apprising the deficiency, if any, in the application of the applicant to be forwarded to UPSC. Once respondent Nos. 1 and 3 kept the application of the applicant pending in their record, did not point out any defect in the same and did not forward it to UPSC, the applicant cannot be made to suffer for their lapse. Even otherwise also, in the Note contained in Notice dated 15.9.2012, it is provided that the candidates, who printed out the copy online and got the same forwarded by the Head of Department / Office to UPSC, will be considered for admission to the examination. In the present case, the application put forth by the applicant on 6.12.2012 was duly forwarded by her employer to the UPSC and considering such application, the UPSC allowed her to download the admit card and participate in the examination. It was only after she participated in the examination on 15th and 16th September 2013 that her candidature was cancelled.

7. In our considered view, when the Head of Department had forwarded the application of the applicant and the UPSC had entertained it, in one way, they found the

conditions of the aforementioned Note satisfied or condoned the same. Even otherwise also, the object and intent of the Note mentioned in the Notice of examination dated 15.9.2012 regarding condition of forwarding of application by the Head of Department/ Office is only that the concerned Department should have no objection to the candidature of the applicant in the examination and there should be nothing adverse against him / her pending in the organization. In the detailed counter reply filed on behalf of respondent Nos. 1 and 3, it is nowhere mentioned that they ever had any objection to the candidature of the applicant for the examination or there is anything adverse pending against her in the department.

8. We are also of the view that having due regard to the principle of natural justice and fair play, before canceling the candidature of the applicant, the UPSC ought to have apprised her regarding the defect, if any, in the procedure followed by her in submitting the second application and also give her opportunity to cure such defects. Besides in Brief Notice dated 11.12.2012 published in the Times of India, it is specifically provided that the particulars of such candidates whose candidature was cancelled, were displayed at the official website of UPSC and once the name of the applicant did not figure in the list of rejected candidates, a presumption arises that the UPSC had considered and approved her candidature in all respects. For easy reference, the relevant excerpt of the said Brief Notice reads as under:-

"Brief Notice
Combined SOs/ Stenos (Grade 'B'/ Grade 'I')
Limited Departmental Competitive
Examination
2009, 2010 & 2011

Union Public Service Commission will be conducting the Combined SOs/ Stenos (Grade 'B'/Grade 'I') Limited Departmental Competitive Examination 2009, 2010 & 2011 commencing from 15.12.2012 to 17.12.2012 for all candidates and 17.12.2012 for stenography test only in Delhi. The Commission has uploaded the e-admit Cards for the convenience of the admitted candidate(s) as well as the reasons/ground for rejection of application on its website (http://www.upsc.gov.in). The candidates are advised to download their e-Admit Cards and take a printout thereof. The admitted candidates will have to produce the printout of their e-Admit Cards at the allotted venue for appearing in the examination. In case the photograph is not visible or available on the e-Admit

Cards candidates are advised to carry identical photographs (one photograph for each session) alongwith proof of identity such as Identity Card or Voter Identity Card or Passport or Driving License and the printout of e-Admit Card at the venue of the Examination. No proper Admit Card will be issued for this examination by the Commission.

The candidates are advised to take a printout of the e-Admit Card well in advance to avoid last minute rush. In the past cases have been noticed where some candidates have faced difficulty in accessing the server on the last day on account of server overload.

In case of any discrepancy in the e-Admit the same may be communicated to the Commission immediately by e-mail (e-mail ID usengg-upsc&nic.in) latest by 10.12.2012 to enable the Commission to take a decision in the matter.

Candidates are also advised to refer to the detailed instruction for the examination including those for the Stenography test as uploaded on the official website of the Commission i.e. http://www.upsc.gov.in.'

(emphasis supplied)

9. In view of the aforementioned, the impugned orders cannot be countenanced and are accordingly quashed. The Original Application stands allowed. No order as to costs.

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ANDHRA PRADESH
PUBLIC SERVICE COMMISSION

IN THE SUPREME COURT OF INDIA
Civil Appellate Jurisdiction
Civil Appeal No.9140 of 2013 & Connected matters
(Arising out of S.L.P. (Civil) No.25157 OF 2013)
D.D. 07.10.2013
Hon'ble Mr. Justice H.L.Gokhale &
Hon'ble Mr. Justice J.Chelameswar

Andhra Pradesh PSC … Appellant
Vs.
K.Prasad & Anr. … Respondents

Examination

Problematic questions and answers in preliminary examination – Hon'ble Apex Court observed that main examination for recruitment to Grade-I posts under Andhra Pradesh State Civil Service was conducted on basis of results of preliminary examination in which, even after scrutiny by expert committee, 6 out of 150 questions and their answers are found to be problematic – Held that it would be unfair to candidates whose results are decided on basis of said six questions – Directions issued to recount marks secured from the answer books written by all the candidates on basis of 144 questions after deleting 6 problematic questions and main examination conducted afresh on basis of results in the preliminary examination taking into consideration 144 questions only.

O R D E R

Leave granted.

1. Heard Mr.Shyam Divan learned senior counsel for the Andhra Pradesh Public Service Commission and learned counsel for original petitioners as well as the counsel for the interveners.

2. The original petitioners raised the dispute regarding examination conducted by the appellant Andhra Pradesh Public Service Commission for selection for the Grade-I Services in Andhra Pradesh. The examination was to be conducted in two parts, first the preliminary examination which was to be for 150 marks. The preliminary examination was of objective type wherein four choices were given and the candidates were to chose one of them and answer the same in OMR Sheet. Those who qualified in the first examination i.e., the preliminary examination were to be eligible to appear in the main examination.

3. After considering the reports of a couple of committees the High Court arrived at a decision wherein according to it the Andhra Pradesh Public Service Commission will have to revise the selection process in accordance with the answer arrived at by the expert committee, and issue proper orders. The High Court directed the Andhra Pradesh Public Service Commission to re-examine the whole issue, and consult U.P.S.C.

4. Being aggrieved, the Andhra Pradesh Public Service Commission filed this appeal. Even after whatever screening has been done earlier, we find the following six questions and their answers to be problematic. It is the specific case of the original petitioners that the key answers given by APPSC for six questions at Serial Nos.4, 43, 61, 62, 107 and 130 in "D" series are confusing. These questions did not have one clear answer and that being so it will be unfair to the candidates that the preliminary examination should be decided by including these six questions. By our order passed on the last date we asked Mr.Diwan to take instructions as to whether these problematic questions could be deleted.

5. Having heard learned counsel for the parties, we are of the view that these questions cannot be retained. That being so, the marks secured have to be recounted from the answer books written by all the candidates on the basis of 144 questions after deleting these six questions and their answers. Those who succeed after revaluation will be eligible for the main examination and the Andhra Pradesh Public Service Commission will hold the main examination de novo thereafter. On the basis of these 144 questions some new candidates may succeed or some candidates may fail. It will be the new list of candidates passing the examination of 144 marks who will take second main examination.

6. The appeals are allowed accordingly.

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ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION

GAUHATI HIGH COURT
W.P. (C) NO.238 (AP)/2008
D.D. 07.01.2009
Hon'ble Mr. Justice IA Ansari

Fagua Mepo & Ors. … Petitioners
Vs.
Arunachal Pradesh PSC & Ors. … Respondents

A. Qualification - Equivalence of qualification:

Whether Diploma qualification awarded by National Institute of Fashion Technology, in the year 2000-2003 & 2002-2005, prior to coming into force of the National Institute of Fashion Technology Act, 2006, which empowers it to grant Degree/Diploma/Certificates with effect from the date of coming into force of the Act, can be treated on par with Bachelor Degree in Textile/Handloom, on the basis of a certificate issued by the said institute dated 27.09.2007? No. Whether A.P.P.S.C. is justified in rejecting the candidature of petitioners on ground that the qualification possessed by them is not equivalent to qualification prescribed for the post? Yes. Petitioners applied for post of Assistant Director (Textile and Handicraft) in response to advertisement issued by APPSC Educational qualification prescribed for the said post being possession of Bachelor Degree in Textile/Handloom technology issued from a recognized University, candidature of petitioners was rejected on ground that they do not possess Bachelor degree in Textile/Handloom technology, as the certificates issued by National Institute of Fashion Technology pertains to the period prior to coming into force of National Institute of Fashion Technology Act, 2006 empowering it to grant degrees/diplomas/certificates and as such certificates issued by National Institute of Fashion Technology cannot be treated on par with degree qualification as prescribed under relevant recruitment rules.

Held:

5. What is, however, of immense important to note is that the provisions of Section 31 have come into force with effect from 01.01.2007. The petitioners have not been able to produce before this Court any material whatsoever to show that prior to coming into force of the NIFT Act, NIFT had the power to grant degrees or diploma, which could be treated equivalent to the degrees or diplomas as may be granted by any University, which is established or incorporated under an enactment. This apart, the educational qualification required for the post, as per the advertisement itself, was a Bachelor degree in the discipline of Textile/Handloom Technology/Fine Arts/Fashion & Design Technology/Fashion Management from a recognized University. The petitioners do not, admittedly, hold any bachelor degree in any of the disciplines, aforementioned, which is recognized by any University. What they have completed is 'graduate professional diploma program in Fashion Designing' from NIFT as it existed before the enforcement of the NIFT Act.

6. Coupled with the above, it can also be pointed out that the petitioner No.1 attended

the said programme from 1996-1999, petitioner No.3 attended the programme from 2000-03 and petitioner No.2 from 2002-05. Thus, the certificates of graduate professional diploma programme, which the petitioners have received, were all issued before the NIFT Act came into force on 01.01.2007. Above all, the petitioners do not hold any bachelor degree; what they held is a certificate of diploma."

B. Candidature

Rejection of candidature at advanced stage of selection on ground of non-possession of requisite educational qualification – Petitioners were initially allowed to participate in selection process held for selection to post of Assistant Director (Textile & Handicrafts) Technology on basis of information furnished by them. However, on detecting that they do not possess requisite qualification their candidature was rejected – Whether in the circumstances, the petitioners can be said to possess indefeasible right to demand that they must be treated as candidates, merely on ground they were allowed to participate in selection process,? No.

Held:

" 7. What surfaces from the above discussion is that the petitioners were not, in the light of the conditions of recruitment, as mentioned in the said advertisement, educationally qualified to apply for the said posts. The fact, that the petitioners were allowed to appear in the written test, cannot cloth the petitioners with any indefeasible right to demand that they must be treated as candidates, who were eligible to apply for the said posts. When the petitioners were, according to the advertisement, not eligible to apply for selection, their appearance in the written test did not vest in them any right to demand that they shall be treated as eligible candidates."

Case referred:

T. Jayakumar v A. Gopu and another, 2008 AIR SCW 6620

JUDGENT

The material facts, leading to this writ petition, are set out as under:

(i) The Arunachal Pradesh Public Service Commission (in short "the APPSC") invited application, on 08.12.2006, from Arunachal Pradesh Scheduled Tribe candidates for filling up of three posts of Assistant Director (Textile & Handicraft) under Textile & Handicraft Department, Government of Arunachal Pradesh. In terms of the advertisement, requisite educational qualification, for making appointment for the posts, were as follows:

"Educational Qualification:- Candidate applying for the post must possess Bachelor Degree in the discipline of Textile/Handloom Technology/Fine Arts/Fashion & Design Technology/Fashion Management from a recognized University."

(ii) All the three petitioners herein applied for selection and appointment to the said posts. The APPSC issued Admit Cards to the petitioners and, on the strength of the Admit Cards, so issued, the petitioners appeared in the written test held on 16th and 17th January 2007. Thereafter, some candidates as well as employees of the said Department who were diploma holders in various field related to textile and handicraft, filed a writ petition assailing the said advertisement on the ground that the said vacant posts shall be directed to be filled up as per the relevant Recruitment Rules of 1999 and not as per amended Recruitment Rules of 2006. This writ petition gave rise to WP (C) No.242 (AP) 2007. By judgment and order dated 05.03.2008, the said writ petition was dismissed by holding that the amended Recruitment Rules of 2006 would apply to the appointments to be made to the said three posts.

(iii) While the petitioners were awaiting their call for interview, each of them was served with letter dated 29.10.2008, issued to them by the Secretary, APPSC. In this letter, the APPSC informed the petitioners that while applying for the said posts, the certificates of educational qualification, which the petitioners had submitted was not in respect of decree/graduation as required for the said posts. By the letter dated 29.10.2008, aforementioned the petitioners were also directed to furnish degree or equivalent certificate of their eligibility within a period of 20 days from the date of issue of the letter aforementioned or else, their candidature would be rejected as they are merely diploma holders. The petitioners, then submitted certificates, dated 27.09.2007, issued by the Professor and the Head of the Department (Academic Affairs) National institute of Fashion Technology (in short "the NIFT") wherein it was stated as under:

> "NIFT has been recognized as the Institute of Excellence by the Indian Government vide an Act of Parliament, Government of India (NIFT Act 2006- No 28 of 2006, dated 13th July 2006) and given the status of a statutory body empowered to award degrees in the field of Fashion Design, Management and Technology.

> Mr.Kari Lombi, an alumnus of NIFT has passed her Graduate Professional Diploma program in Fashion Design in the year 2002-2005. This program may be considered at par with any graduate program of the discipline."

(iv) As the APPSC announced the result of the written test on 11.03.2008, the private respondents were invited for interview/viva voce and, thereafter, the private respondents were selected as per the official select list published on 16.04.2008, the petitioners came to this Court seeking, with the help of the present writ petition made under Article 226 of the Constitution of India, to get set aside and quashed, inter alia, the impugned select list, dated 16.04.2008, published by the APPSC, and also seeking directions to be issued to the respondents/authorities concerned to allow the petitioners to appear for viva voce test treating them eligible for applying for selection and appointment to the said three posts.

2. I have heard Mr.K.Ete, learned counsel for the petitioners, and Mr.R.H.Nabam, learned Senior Government Advocate, appearing on behalf of the state respondents. None has appeared on behalf of the respondent No.1 namely, APPSC. I have however heard Mr.M.Pertin learned counsel for the private respondents.

3. The controversy, raised in the present writ petition, is simple and precise, namely as to whether the petitioners were eligible to apply for selection to the posts, in question. While considering this question it needs to be pointed out that NIFT has been established as a body corporate under Section 31 of the National Institute of Fashion Technology Act, 2006 (in short "the NIFT Act"). The NIFT Act has admittedly, come into force with effect from 1st January 2007. Section 31 of the Act deals with the NIFT's power to grant degrees/ diplomas/certificates and other academic distinctions. As Section 31 is material, it is reproduced herein below:

> "31. The Institute shall have the power to grant degrees, diplomas, certificates and other academic distinctions under this Act, which shall be equivalent to such corresponding degrees, diplomas, certificates and other academic distinctions granted by any University or Institute established or incorporated under any other law for the time being in force."

4. A bare reading of the provisions, contained in Section 31, makes it clear that NIFT has the power to grant amongst others, degrees, which shall be equivalent to such degrees as are granted by any University or institute established or incorporated under any law in

force in India. Thus, NIFT is competent to grant degrees of fashion technology and such degrees would be equivalent to the degrees as may be granted in this regard by any University established under the law.

5. What is however of immense important to note is that the provisions of Section 31 have come into force with effect from 01.01.2007. The petitioners have not been able to produce before this Court any material whatsoever to show that prior to coming into force of the NIFT Act, NIFT had the power to grant degrees or diploma, which could be treated equivalent to the degrees or diplomas as may be granted by any University, which is established or incorporated under an enactment. This apart, the educational qualification required for the post, as per the advertisement itself, was a Bachelor Degree in the discipline of Textile/Handloom Technology/Fine Arts/Fashion & Design Technology/Fashion Management from a recognized University. The petitioners do not, admittedly, hold any bachelor degree in any of the disciplines aforementioned, which is recognized by any University. What they have completed is graduate professional diploma program in Fashion Designing from NIFT as it existed before the enforcement of the NIFT Act.

6. Coupled with the above, it can also be pointed out that the petitioner No.1 attended the said programme from 1996-1999, petitioner No.3 attended the programme from 2000-03 and petitioner No.2 from 2002-05. Thus, the certificates of graduate professional diploma programmed, which the petitioners have received were all issued before the NIFT Act came into force on 01.01.2007. Above all the petitioners do not hold any bachelor degree what they held is a certificate of diploma.

7. What surfaces from the above discussion is that the petitioners were not in the light of the Conditions of recruitment as mentioned in the said advertisement, educationally qualified to apply for the said posts. The fact, that the petitioners were allowed to appear in the written test, cannot cloth the petitioners with any indefeasible right to demand that they must be treated as candidates, who were eligible to apply for the said posts. When the petitioners were according to the advertisement, not eligible to apply for selection, their appearance in the written test did not vest in them any right to demand that they shall be treated as eligible candidates.

8. Though it has been contended by Mr.Ete that as the petitioners have been allowed to sit in the written test treating them as eligible candidates, they cannot be subsequently

denied opportunity to participate in the complete selection process, it is important to point out that when a candidate, who was ineligible to participate in a selection process, is allowed to participate by mistake or otherwise, he or she cannot be treated to have become eligible or his/her eligibility cannot be treated to have been waived merely because of the fact that he or she participated in the selection process. The mere fact, therefore, that the petitioners were allowed to appear in the written test will not vest, in them, the right to be treated as eligible candidates, when they are ex facie ineligible. A reference may in this regard, be made to the case of T.Jayakumar vs. A.Gopu & another, reported in 2008 AIR SCW 6620, wherein the Supreme Court has observed and held thus: "10. We are not aware of any principle of law under which once a candidate is allowed participation in the selection process the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light. It is surely open to the Tribunal to examine whether the reason assigned by the selection authority for holding a candidate ineligible for selection was valid or unreasonable and arbitrary. If the reason for excluding a candidate from the selection process is found to be unreasonable or arbitrary the Tribunal may certainly intervene but if the reason itself is valid the Tribunal cannot interfere simply because the candidate was allowed participation in the selection process by being called for interview. The principle of estoppel has no application in such a case."

9. The fall-out of the above discussion is that the petitioners, not being educationally qualified to apply for the posts, can neither demand that they be called for viva voce nor can they challenge the selection and appointment of the private respondents.

10. In the result and for the reasons discussed above this writ petition fails, the same is not admitted and shall accordingly stand dismissed.

11. No order as to costs.

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IN THE GAUHATI HIGH COURT
ITANAGAR PERMANENT BENCH
W.P. (C) NO.413 (AP)/2008
D.D. 16.06.2010
Hon'ble Mr. Justice P.K.Musahary

K.Sidhardhan … Petitioner
Vs.
Govt. of Arunachal Pradesh & Ors. … Respondents

Recruitment

Recruitment to post of Section Officer Arunachal Pradesh Secretariat Service by conduct of limited departmental competitive examination – Applicability of Government O.M. No.54/2006 dated 07.01.2008 to the effect that candidates securing minimum of 33% or more marks in each written paper and securing 45% marks in aggregate to be eligible for viva voce test for selection to post of Section Officer by direct recruitment – Arunachal Pradesh Public Service Commission published results of written examination conducted for recruitment to post of Section Officer on 15.09.2008 keeping in view Government O.M. dated 07.01.2008 in which petitioner was qualified for viva voce test, - However, the Commission revised the results of written test by lowering eligibility criteria without applying Government O.M. dated 07.01.2008 on ground that the said O.M. applies only to direct recruitment by open competition and not to recruitment based on 'Limited Departmental Competitive Examination' by which 3 more candidates were added to the eligibility list, who were not qualified as per the O.M. dated 07.01.2008, thereby chances of selection of petitioner diminished – Recruitment to post of Section Officer having been held under Arunachal Pradesh Secretariat Recruitment to the post of Section Officer Rules, 2004 wherein no power has been given to recruiting authority to fix any cut off marks for eligibility in respect of written test and O.M. dated 07.01.2008 which came into force prior to issue of notification dated 31.03.2008 inviting application for recruitment to said posts by implication fixed minimum cut off marks for eligibility for 'direct recruitment', under which posts of Section Officers are also covered - Whether in the circumstances APPSC justified in revising the eligibility list without applying O.M. dated 07.01.2008 which does not apply to recruitment under 'Limited Departmental Examination'? No.

Held:

18. After the matter was settled at the highest level, some unsuccessful candidates including private Respondent No.4 filed the representation for re-interpretation of O.M. dated 07.01.2008 and the aforesaid settled Government policy on cut-off marks i.e. minimum 33% of marks has been changed at the Deputy Secretary level of the AR department, which has been narrated earlier. In this regard, the Secretary, AR Department, made a note to the effect that no amendment can be made with retrospective date already given by the Commission. The Chief Secretary, however, did not agree with the Secretary

(AR) and ultimately, passed an order to the effect that minimum 33% of marks is applicable to the cases of direct recruitment only and since there is no mention about 33% minimum qualifying marks, the O.M. dated 07.01.2008 would not be applicable. The respondent Chief Secretary, while taking the aforesaid decision mis-directed himself by accepting that the recruitment to the post of Section Officer is not a direct recruitment without applying his mind to the fact that the Commission was entrusted to hold the written examination as well as viva-voce test in the light of O.M. dated 07.01.2008 requiring the candidates to secure 33% of marks in all the subjects and 45% of marks in aggregate in the written examination. The respondent Chief Secretary also remained oblivious to the fact that the advertisement for the post in question was issued on 31.03.2008 i.e. after the issue of O.M. dated 07.01.2008. The view expressed by the Secretary, AR Department, had bearing with the aforesaid facts, Government policy and purport of conducting written viva voce test by the Commission. In my considered view, the use of phrase 'Limited Departmental Examination' would not bring the recruitment of Section Officer out of purview of direct recruitment. The sphere of competition may be confined to the eligible candidates belonging to Civil Secretariat but they have to compete amongst themselves and the selection would be made on the basis of merit. The seniority in service amongst the candidates has no relevancy like the direct recruitment from open market. The appointment of Section Officer although required to be made through Limited Departmental Competitive Examination, is, therefore, should be made through direct recruitment amongst the eligible candidates of Civil Secretariat and as such, the same should be invariably conducted as per the procedure prescribed under the O.M. dated 07.01.2008."

Cases referred:

1. Kumari Anamica Mishra and another v. U.P. Public Service Commission, Allahabad and others, AIR 1990 SC 461
2. P. Mohanan Pillai v. State of Kerala, (2007) 9 SCC 497

JUDGMENT

Heard Mr.A.Apang, learned counsel for the writ petitioner. Also heard Mr.R.H.Nabam, learned Senior Govt. Advocate, Arunachal Pradesh, for State respondents, Mr.N.Tagia, learned standing counsel for respondent Arunachal Pradesh Public Service Commission (APPSC) and Mr.A.K.Singh, learned counsel for private Respondent No.4.

2. An advertisement was issued by the Arunachal Pradesh Public Service Commission (hereinafter referred to as 'Commission' in short) for filling up 2 posts of Section Officer, Gr-B (Gazetted) in the Arunachal Pradesh Secretariat through limited Departmental Competitive Examination. One post is reserved for Arunachal Pradesh Scheduled Tribe candidate (hereinafter referred to as 'APST candidate', in short) while the other post kept

unreserved for General Candidates. The Assistants of Arunachal Pradesh Civil Secretariat (hereinafter referred to as 'Secretariat' only) who have rendered 6 years of regular service in the grade are eligible to apply for the said post in prescribed format. The selections are to be made on the basis of marks secured in the written examination. The written test was held on 28th and 29th of June, 2008, and the result of the written test was published on 15.09.2008 wherein the petitioners name appeared at Serial No.2. The candidates who passed the written test were required to appear in the viva voce test scheduled to be held on 23.09.2008 which was postponed by a press release dated 23.09.2008 issued by the Commission. The Commission published another revised result by its notification dated 23.09.2008 indicating the date of viva-voce test to be held on 26.09.2008 by adding 3 more names in the list of General Category including the name of private Respondent No.4, Sri Roman Bora, whose name did not figure in the earlier notification dated 15.09.2008. The viva-voce test was held on 26.09.2008 and the result was declared on the same day. The petitioner also appeared in the said test. Thus, in the result notification dated 23.09.2008, as many as 6 candidates were recommended against one post in the unreserved/general category. The names of private Respondent No.4 and petitioner have been placed at Serial Nos.6 and 9 respectively.

3. The appointment to the post of Section Officer, Group-B (Gazetted), is governed by *"The Arunachal Pradesh Secretariat Recruitment to the post of Section Officer, Rules, 2004* (hereinafter referred to as 'Rules of 2004' in short). As per provisions there under, 50% percent of the posts is required to be filled up by promotion and the other 50% of the posts is required to be filled up by Limited Departmental Competitive Examination from amongst the Assistants of Arunachal Pradesh Secretariat who have rendered 6 years of regular service in the grade on the basis of merit adjusted from the subjects namely: - (a) *General Knowledge (b) General English/Noting/Drafting Essay writing (c) FRs/SR/GFRs/ Pension Rules/CCS (CCA) Rules/General Provident Fund Rules (100 marks in each subjects) and (d) viva voce (50 marks).*

4. The State Government issued an Office Memorandum No.54/2006 dated 07.01.2008 signed by the Secretary (AR), Government of Arunachal Pradesh, providing that candidates securing a minimum of 33% or more marks in each written paper and securing 45% of

marks out of aggregate total marks in the written examination papers, shall be eligible for viva-voce. It is specifically provided therein that candidates securing less than 33% of marks in any of the written examination paper, shall not be eligible for appearing in the viva-voce test. The respondent No.4 secured only 29 marks out of 100 marks in the written test in the Subject of FRs/SRs/GFRs/Pension Rules, etc., whereas the petitioner secured more than 33% in all the subjects of written examination. The Secretary to the Commission, before declaring the results, addressed a letter dated 26.08.2008 to the Secretary (AR) seeking clarification as to whether the Limited Departmental Examination conducted for the purpose of recruitment of Section Officer shall attract the provisions of Government O.M. dated 07.01.2008 under which a candidate is required to secure compulsory 33% of marks in all the subjects. To the aforesaid query, the Deputy Secretary (AR), vide letter dated 07.07.2008, clarified that 33% of marks in the minimum clarifying marks and the candidates securing less than 33% of marks do not deserve appointment in Government service. The AR Department by another letter dated 08.09.2008, signed by the Under Secretary, informed the Secretary to the Commission that the confusion has already been clarified vide earlier letter dated 07.07.2008. Thereafter, the Under Secretary (AR) by letter dated 22.09.2008 informed that the O.M. dated 07.01.2008 is actually meant for selection of candidates for viva-voce test in respect of direct recruitment examination and it does not apply to the Limited Departmental Competitive Examination and as such, the earlier communication dated 08.09.2008 has been withdrawn to enable the Commission for re-evaluation and re-declaration of result. On the basis of this letter, the Commission re-evaluated and re-declared the result of the candidates as stated earlier vide its notification dated 23.09.2008.

5. The propriety, authority and legality of the aforesaid actions of the State respondents are in question in this writ proceeding.

6. Mr.Apang, learned counsel for the petitioner, submits that although the Rules of 2004 do not prescribe the minimum percentage of marks to be obtained by the candidates in the written test, it is necessary for a candidate to obtain minimum 33% of marks in each subjects in the written examination as has been prescribed in the O.M. dated 07.01.2008 irrespective of written examination in the open competition or the Limited Departmental

Competitive Examination, conducted by the Commission. The AR Department initially took a right stand which was communicated through its letters dated 07.07.2008 and 08.09.2008 but due to some misrepresentation and mis-advice, it changed its stand and withdrew the aforesaid letters thereby providing that candidates securing less than 33% of marks in the Limited Departmental Competitive Examination would be eligible for appointment to the post of Section Officer.

7. Mr.Apang, learned counsel, referring to various office notings in the aforesaid matter which he received through Right to Information Act, 2005, submits that the so called letter dated 22.09.2008 withdrawing the earlier letters on the stand that a candidate must secure 33% of marks in all the subjects, is illegal and non-est is as much as the same was issued by a Under Secretary who has no authority to issue such letter without the approval of the Commissioner or Secretary to the Department concerned. According to him, the minimum marks of 33% in all the subjects as provide in O.M. dated 07.01.2008 was circulated as a matter of public policy which was approved by the State Cabinet and such a decision cannot be changed or amended even by the Commissioner/Secretary of the Department, not to speak of the Officer like the Under Secretary, who is at the bottom of the hierarchy. The decision was taken at the levels of Deputy Secretary and Under Secretary without the approval of the Commissioner or the Secretary of the Department with some vested interests in as much as the aforesaid Deputy Secretary and the Under Secretary took the initiative after receiving a representation from one Sri Marnya Angu who was a candidate for the said post but failed to obtain the minimum 33% of marks in all the subjects. The fact that the aforesaid Marnya Angu made a representation and the initiative was taken by the officers at the levels of Deputy Secretary and Under Secretary, according to Mr.Apang, learned counsel, reveals from the correspondences made between the Secretary and the Commission and the Secretary (AR), particularly from the Commission's letter dated 19.09.2008 (Annexure-IX to the writ petition). The entire exercise was done only to accommodate some candidates, particularly the private Respondent No.4, who could not secure 33% of marks in all the subjects in the written examination and to deprive the petitioner of the chance of the of appointment although he secured more than 33% of marks. The learned counsel relies on *Kumari Anamica Mishra & Anr. Vs. U.P. Public*

Service Commission, Allahabad & Ors., reported in AIR 1990 SC 461 wherein it is held, inter alia, that if no defect is pointed out in regard to the written examination and if the sole objection is confined to exclusion of a group of successful candidates in the written examination from the interview, it would not justify cancellation of the written part in the recruitment examination.

8. Countering the submissions advanced by Mr.Apang, learned counsel for the petitioner, it is argued by Mr.R.H.Nabam, learned Senior Govt. Advocate, that the O.M. dated 07.01.2008 is a procedure prescribed by the Government to regulate the direct recruitment examination in which a candidate must secure 33% of marks but in the instant cast, the appointment to the posts of Section Officer is required to be made on the basis of Limited Departmental Competitive Examination under separate rules namely the Rules of 2004. For recruitment to the posts in question, the O.M. dated 07.01.2008 has no application in as much as the said Rules of 2004 have prescribed separate method of recruitment, age limit and other qualifications and the said Rules do not prescribe minimum percentage of marks for being qualified in the written test. Even in the *Arunachal Pradesh Public Service Commission Competitive Examination Rules, 2001* (hereinafter referred to as 'Rules of 2001' in short) and the procedure prescribed there under for holding the competitive examination, no such minimum percentage of marks in each subject has been prescribed. The O.M. dated 07.01.2008 provides the minimum 33% marks for passing the written examination and for being declared eligible to appear in the viva-voce test.

9. As regards the allegation that the stand taken by the Department of AR on applicability of O.M. dated 07.01.2008 to the Limited Departmental Examination for recruitment to the post of Section Officer, it has been reiterated by Mr.R.H.Nabam, learned Senior Govt. Advocate, that the withdrawal letter was issued by the AR Department after thorough examination and interpretation of the provisions under Rules of 2004 and O.M. dated 07.01.2008 as well as Rules of 2001. He further submits that the purpose of conducting Limited Departmental Competitive Examination is to appoint qualified and eligible persons in the Secretariat service to the posts of Section Officer without involving candidates from the open market and as per the procedure of selection under O.M. dated

07.01.2008, it cannot be applied giving scope for some relaxation in the procedure for appointment to the posts in question. As regards the allegation of impropriety in the matter of giving approval by the Deputy Secretary/Under Secretary of the AR Department, it has been submitted that as per the manual of office procedure, the Secretary/Joint Secretary to the State Government are the administrative hierarchy of the Department and he is the principal advisor to the Chief Secretary/Ministers on all matters of policy and administration within his department and therefore, approval of a Joint Secretary to the withdrawal of a letter/communication or decision of the Department Secretary, would be followed if the Secretary to the department concerned was on leave or on tour. In the present case, the Secretary concerned was on tour at the relevant point of time and as such, the Joint Secretary became the immediate senior officer in the department and in his capacity as a Joint Secretary, approval was given by him and the same cannot be faulted with or termed as unauthorized or illegal.

10. Mr.A.K.Singh, learned counsel appearing for private Respondent No.4, submits that he would fully adapt the submissions made by Mr.R.H.Nabam, learned Senior Govt. Advocate, Arunachal Pradesh. The learned counsel, however, would like to add that the private Respondent No.4 submitted a representation to the Secretary of the Commission on 18.09.2008 (Annexure A to the counter affidavit filed by the Respondent No.4) praying for re-scrutiny of answer sheets of the Limited Departmental Competitive Examination for the post of Section Officer held on 28th and 29th of June, 2008, alleging that the Commission selected only two candidates one for APST and other for non-APST/unreserved category for viva-voce test against 2 posts due to wrong application of the guidelines issued by the AR Department vide O.M. dated 07.01.2008. On receipt of the aforesaid representation, the Commission sought clarification from the State Government and a decision was taken and communicated to the effect that minimum 33% of marks in all the subjects would not be required in the Limited Departmental competitive Examination and the aforesaid O.M. dated 07.01.2008 has application only to the open competitive examination.

11. From the pleadings and submission of the parties, the following indisputable position would emerge:

(i) The posts of Section Officer were sought to be filled up through a Limited Departmental Competitive Examination.

(ii) Initially, the Commission selected only 2 candidates namely Sri Sudharshanan B. and K.Sidhardhan (writ petitioner) against one post for unreserved category. The petitioner secure above 33% of marks in all the subjects with aggregate marks 170.16 while Sudarshanan B. could not secure 33% of marks in all the subjects with 164.5 total marks and he remained out of fray.

(iii) The private Respondent No.4 Sri Roman Bora secured only 29 marks out of 100 in the subjects FRs/SRs/GFRs/Pension Rules, etc., and 30.50 marks in viva-voce test and thereby, he could not secure the minimum 33% of marks in all the subjects although he secured in total 178.50 marks. The petitioner secured less marks in total than private Respondent No.4 but the petitioner admittedly secured above 33% of marks in all the subjects.

(iv) The Government O.M. dated 07.01.2008 provides minimum 33% of marks or more marks in each written examination paper and 45% of marks in aggregate total marks for being declared as eligible for viva-voce test with relaxation in the cut-off marks of 45% in case of non-availability of APST candidates securing the cut-off marks, and

(v) There is no provision for securing minimum 33% of marks or more marks under the Rules of 2004 although the Limited Departmental Competitive Examination should comprise written test in – (a) General Knowledge, (b) General English, notings, drafting, essay writing, and (c) FRs/SRs/GFRs/Pension Rules, etc., 100 marks each in total, and (d) 50 marks in viva-voce test.

12. The only question for determination of this court is whether the procedure laid down in O.M. dated 07.01.2008 should apply to the recruitment of Section Officer through Limited Departmental Competitive Examination and the respondent authorities committed illegality in recommending private Respondent No.4 for appointment to the post of Section Officer as he could not secure 33% of marks in all the subjects.

13. The Government, by its O.M. dated 07.01.2008, as it appears, wanted to streamline the procedure for conducting written test and viva-voce test for selection of candidates and emphasis has been given on securing minimum 33% of marks in each written examination papers and 45% marks out of aggregate total marks for being declared eligible for viva-voce test. The purport and intention of the Government could be better appreciated if the entire O.M. dated 07.01.2008 is extracted, which reads as follows:

"(TO BE PUBLISHED IN ARUNACHAL PRADESH GAZETTE)
GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF PERSONNEL, ADMINISTRATIVE REFORMS &
ADMINISTRATIVE TRAINING ADMINISTRATIVE REFORMS

No.OM-54/2006 *dated Itanagar, the 7th January, 2008*

OFFICE MEMORANDUM

Subject: Selection of candidates for appearing in viva-voce test on the basis of Recruitment Examination procedure thereof.

t has been brought to the notice of the Government that various appointing authorities are selecting candidates for viva-voce test on the basis of one or two subject of written examination ignoring other equally important papers and without following a uniform pattern. As a result, the ratio of candidates selected per vacancy varies from one examination to other without maintaining common practice on prescription of ratio or cut off marks even the candidates are selected in the ratio of 1:2:3. The issue was under examination of the Administrative Reforms Department and has found that no such procedure had been laid down earlier nor such procedure have been prescribed in the relevant Recruitment Rules.

After careful examination of the issue and in modification of point No.2 and 3 of the OM dated 28.08.2006, the Government of Arunachal Pradesh has decided to prescribe the following procedure for all direct recruitment examinations for appointment to Group-A, B & C posts/ services under the Government of Arunachal Pradesh: -

1) *For appearing in the viva-voce test, candidates shall be selected in the 'ratio' of 1:3 (meaning 3 candidates shall be selected for each vacancy or 3 (three) times of the number of vacancies) on the basis of written examination papers. However, ratio of 1:3 shall not apply in case the candidates appearing the written examination is less than 3 times of the number of vacancies. In case of the candidates appearing in the written examination is less than 3 times of the number of vacancies, all the candidates securing 33% of marks in each written examination papers shall be eligible for appearing viva-voce test.*

2) *The candidates securing a minimum of 33% or more marks in each written examination papers and has secured 45% of marks out of aggregate total marks in the written examination papers shall be eligible for viva-voce test. On the other, it will further mean that selection for viva-voce test shall be based on the aggregate total marks secured in the written examination papers and subject to ratio*

of 1:3. The candidates securing less than 33% of marks in any of written examination papers shall not be eligible for appearing in the viva-voce test.

3) The Selection Committee or Commission may lower the cut off marks of 45% to certain extent, in case of non-availability of Arunachal Pradesh Scheduled Tribe candidates securing the 'cut off marks'.

*Therefore, all the appointing authorities are requested to comply with the above guidelines while conducting recruitment examina*tion for appointment to Group 'A' 'B' & 'C' level of posts/services.

Sd/-
(Y.D.Thongchi)
Secretary (AR)
Government of Arunachal Pradesh"

14. The Government after exchange of various communications between the Commission and AR Department came to a conclusion that the aforesaid O.M. dated 07.01.2008 is not applicable to the selection of candidates through Limited Departmental Competitive Examination. The said decision was communicated vide F.No.AR-77/2008/693 dated 22.09.2008. The said letter is also reproduced for close examination and coming to a finding:

"F.No.AR-77/2008/693
GOVERNMENT OF ARUNACHAL PRADESH
MINISTRY OF PERSONNEL, ADMINSTRATIVE REFORMS& TRAINING
DEPARTMENT OF ADMINISTRATIVE REFORMS
CIVIL SECRETARIATE, BLOCK NO.18
ITANAGAR

Dated the September 22, 2008

To
The Secretary
Arunachal Pradesh Public Service Commission
Arunachal Pradesh
Itanagar

Subject: WITHDRAWAL OF CLARIFICATION DATED 08.09.2008.

Sir,

I am directed to refer to your letter No.PSC-D/4/2008 dated 19th September, 2008 on the subject mentioned above.

2. I am further directed to say that the procedure notified vide No.OM-54/2006 dated 07.01.2008 is actually meant for selection of candidates for viva

voce test in respect of Direct Recruitment Examination. The Limited Departmental Competitive Examination is for selection of candidates for out of turn promotion which is not based on their seniority but based on the performance in the Limited Departmental Competitive Examination.

3. Therefore, I am further directed to withdraw the letter communication of even number dated 8th September, 2008, forthwith to enable the Commission for re-evaluation and re-declaration of result, etc.,

With best regards Sir.

Your faithfully

Sd/-
(Mary Angu)
Under Secretary to the
Government of Arunachal Pradesh"

15. The post in question is not a promotional post in strict sense of service law. The post in question belongs to Group-B (Gazetted) as per Rules of 2004. The said post can be filled up by promotion as well as Limited Departmental Competitive Examination and from amongst the Assistants of Arunachal Pradesh Secretariat who have rendered 6 years of regular service in the grade on the basis of merit. The aforesaid Rules of 2004 provides for recruitment of 50% of post by promotion and 50% by Limited Departmental Competitive Examination. The Government admittedly initiated the recruitment process for filling up 2 posts of Section Officer, one for APST candidate and other for non-APST candidate. The Government entrusted the Commission for holding the written examination and viva voce test. The comparative marks obtained by the instant writ petitioner and Respondent No.4, would be seen from their respective mark sheets, which are reproduced, as under:

"PSC-D/10/2008
ARUNACHAL PRADESH
PUBLIC SERVICE COMMISSION
ITANAGAR

Dated Itanagar the3rd Oct., 2008

To

Shri /Smt K.Sidharadhan
Roll No.28.

Sub: - MARKS OBTAINED IN WRITTEN EXAMINAION/VIVA-VOCE TEST FOR THE POST OF SECTION OFFICER UNDER A.P. CIVIL SECRETARIATE, ITANAGAR.

Sir,

I am directed to refer to your application dated …… on the subject mentioned above and give below marks obtained by you in the written examination/viva-voce test for the post of Section Officer under Arunachal Pradesh Civil Secretariat, Itanagar.

Sl.No.	**SUBJECT**	**FULL MARKS**	**MARKS OBTAINED**
1	General Knowledge	100	54
2	General English/Noting/Drafting/ Essay Writing	100	49
3	FRs/SRs/GFRs/Pension Rules/CCS (CCA) Rules/General Provident Fund Rules	100	33.5
4	Viva-voce	50	33.66
	Total=	350	170.16

Yours faithfully
Sd/- (B.Koyu)
Under Secretary (R)"

"PSC-D/10/2008
ARUNACHAL PRADESH
PUBLIC SERVICE COMMISSION
ITANAGAR

Dated Itanagar the 10.10.2008

To

Shri /Smt Roman Bora
Roll No.23.

Sub:- MARKS OBTAINED IN WRITTEN EXAMINAION/VIVA-VOCE TEST FOR THE POST OF SECTION OFFICER UNDER A.P. CIVIL SECRETARIATE, ITNAGAR.

Sir,

I am directed to refer to your application dated 10.10.2008 on the subject mentioned above and give below marks obtained by you in the written examination/viva-voce test for the post of Section Officer under Arunachal Pradesh Civil Secretariat, Itanagar.

Sl.No.	SUBJECT	FULL MARKS	MARKS OBTAINED
1	General Knowledge	100	59
2	General English/Noting/Drafting/ Essay Writing	100	60
3	FRs/SRs/GFRs/Pension Rules/ CCS (CCA) Rules/General Provident Fund Rules	100	29
4	Viva-voce	50	30.50
	Total=	350	178.50

Yours faithfully
Sd/- (B.Koyu)
Under Secretary (R)"

16. The aforesaid position is not disputed. The Rules of 2004 provide for written examination and viva voce test. It has been termed as *'Limited Departmental Competitive Examination'*. It is not akin to procedure adopted for promotion to a higher post form amongst the eligible officers of a particular feeder post where either *'merit-cum-seniority'* or *'seniority-cum-merit'* basis is adopted by the Commission or the Departmental Promotion Committee (DPC) without any written examination. In the aforesaid context, the written examination conducted by the Commission for recruitment to the post in question would fall under direct recruitment examination limited amongst the eligible candidates in the Civil Secretariat of Arunachal Pradesh.

17. I have gone through the Civil Secretariat File No.AR-77/2008 as maintained by the AR Department and produced by Mr.R.H.Nabam, learned Senior Govt. Advocate. It is seen that when the matter was endorsed to the Chief Secretary to the Government of Arunachal Pradesh, he opined firmly that "33% is the minimum qualifying marks. There is no question of relaxation. Anybody securing less than 33% of marks is unfit to be in government service. Please inform APPSC". Subsequently, when the File was again endorsed by the Under Secretary to the Commissioner, AR Department, it was further clarified that:-

"If the advertisement for Limited Department Examination was published before notification of the procedure mentioned above, it shall not come under the purview of notification dated 07.01.2008.

However, if the advertisement was issued after 07.01.2008, then it shall come under it.

No relaxation below 33% can be made by the recruiting agency.

We may inform the Commission as at Paras 27, 32, 33 and 34 above."

From the above notes in the Secretariat File, it is found that the Government intended to follow the O.M. dated 07.01.2008 as the advertisement for the post in question, was issued subsequent to publication of aforesaid O.M. dated 07.01.2008.

18. After the matter was settled at the highest level, some unsuccessful candidates including private Respondent No.4 filed the representation for re-interpretation of O.M. dated 07.01.2008 and the aforesaid settled Government policy on cut-off marks i.e. minimum 33% of marks has been changed at the Deputy Secretary level of the AR department, which has been narrated earlier. In this regard, the Secretary, AR Department, made a not to the effect that no amendment can be made with retrospective date already given by the Commission. The Chief Secretary, however, did not agree with the Secretary (AR) and ultimately, passed an order to the effect that minimum 33% of marks is applicable to the cases of direct recruitment only and since there is no mention about 33% minimum qualifying marks, the O.M. dated 07.01.2008 would not be applicable. The respondent Chief Secretary, while taking the aforesaid decision mis-directed himself by accepting that the recruitment to the post of Section officer is not a direct recruitment without applying his mind to the fact that the Commission was entrusted to hold the written examination as well as viva-voce test in the light of O.M. dated 07.01.2008 requiring the candidates to secure 33% of marks in all the subjects and 45% of marks in aggregate in the written examination. The respondent Chief Secretary also remained oblivious to the fact that the advertisement for the post in question was issued on 31.03.2008 i.e. after the issue of O.M. dated 07.01.2008. The view expressed by the Secretary, AR Department, had bearing with the aforesaid facts, Government policy and purport of conducting written/viva-voce test

by the Commission. In my considered view, the use of phrase *"Limited Departmental Examination"* would not bring the recruitment of Section Officer out of purview of direct recruitment. The sphere of competition may be confined to the eligible candidates belonging to Civil Secretariat but they have to compete amongst themselves and the selection would be made on the basis of merit. The seniority in service amongst the candidates has no relevancy like the direct recruitment from open market. The appointment of Section Officer although required to be made through Limited Departmental Competitive Examination, is, therefore, should be made through direct recruitment amongst the eligible candidates of Civil Secretariat and as such, the same should be invariably conducted as per the procedure prescribed under the O.M. dated 07.01.2008.

19. The post of Section Officer attaches higher responsibility in the Civil Secretariat and it is therefore, expected that comparatively more meritorious person from amongst the Secretariat staff should be brought into service. Here in this case, the private Respondent No.4 admittedly failed to show his better merit in as much as he could not even secure minimum 33% of marks out of 100 marks in the subjects – FRs/SRs/GFRs/Pension Rules, etc., which are important subjects in the day-to-day administration but he has been preferred over the petitioner who had at least secured the minimum required cut-off marks in all the subjects. It must be noted that no authority has been given to the recruitment agency/authority under Rules of 2004 to fix any cut-off marks in the written examination/ viva-voce test. The Rules of 2004 provides only power to hold written examination/viva-voce test in certain subjects with total marks for each subject without prescribing any minimum cut-off marks. It is, therefore, implied that the minimum cut-off marks as prescribed in O.M. dated 07.01.2008 should rule the field. The aforesaid O.M. dated 07.01.2008 is a supplement to the Rules of 2004. The general principle of law is that if the competent authority has no power to do certain act, it has no power to act otherwise. There is a total absence of application of mind by the respondent Chief Secretary in changing his earlier stand on O.M. dated 07.01.2008 in as much as he has given no valid reason for it and such change of stand has given scope for accommodating an undeserving candidate like the private Respondent No.4. He also failed to appreciate that appointment

of such undeserving candidate would affect the efficiency of administration in the Civil Secretariat. It would naturally drive any reasonable person to draw an inference of doing an act by the authority concerned in an unauthorized manner at the behest of vested interests by using his power and authority for unauthorized purpose. The settled law is that when a power is exercised for an unauthorized purpose, the same would amount to malice in law and such unauthorized action for unauthorized purpose is liable to be interfered with by the court in judicial review. This has been held so in several decisions of the Apex Court, the latest being *P.Mohanan Pillai vs. State of Kerala*, reported in *(2007) 9 SCC 497*.

20. The above decisions and reasoning would lead this court to hold that the O.M. Dated 07.01.2008 is applicable to the recruitment through Limited Departmental Competitive Examination and the petitioner has been able to make out a case for interference with the impugned letter of withdrawal of clarification dated 22.09.2008 vide F.No.AR-77/2008/693, impugned re-notification of revised result dated 23.09.2008 vide No.PSC-D/4/2008 and impugned recommendation dated 23.09.2008 vide order No.PSC-D/4/2008 and the same are, accordingly, set aside and quashed. The respondent authorities are directed to declare results in question as per result notification dated 15.09.2008 vide No.PSC-D/4/2008 strictly in terms of Government O.M dated 07.01.2008, as expeditiously as possible, preferably, within 1 (one) month from the date of receipt of a certified copy of this order.

21. With the above observations and directions, this writ petition stands allowed and disposed of.

22. There shall be no order as to costs.

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IN THE GAUHATI HIGH COURT, ITANAGAR BENCH
W.P.NO.235 (AP)/2009
D.D. 23.07.2010
Hon'ble Mr. Justice A.C.Upadyay

Hage Tabyo … **Petitioner**
Vs.
State of Arunachal Pradesh & Ors. … **Respondents**

Selection

Physically handicapped category candidates – In response to notification dated 24.09.2007 of Arunachal Pradesh Public Service Commission, petitioner, physically handicapped person, applied for recruitment to Group A post under State Civil Service, though there was no indication in the advertisement that posts have been reserved in favour of physically handicapped category but for clause (7) of the advertisement indicating that physically handicapped candidates are required to produce certificate from the District Magistrate. Petitioner was not considered for selection as there was no reservation in favour of physically handicapped persons. Petitioner challenged non-consideration of his case for selection under physically handicapped category on ground that as per provisions of Disabilities Act, 1995 and O.M. issued from time to time his case should have been considered for selection under physically handicapped category – In absence of clear indication of reservation of vacancies in favour of physically handicapped category in the notification inviting applications, whether merely on ground there is mandatory provision in Disabilities Act 1995 for recruitment of physically handicapped persons, and clause No.(7) of the advertisement indicating that physically handicapped persons are required to produce certificate issued by District Magistrate, and select list indicating R-24 has been considered for appointment against physically handicapped quota, can the application submitted by the petitioner be construed to have been made for selection to any of the posts meant for physically handicapped persons? No.

Held:

27. In view of the above observation of the Hon'ble Supreme Court in Secretary, State of Karnataka v. Uma Devi, reported (supra), without a proper advertisement for selection of physically disabled candidates, any direction by this Court to select and appoint a disabled candidate would not be legal. Such appointments would defeat the very Constitutional scheme of public employment. Such direction for appointment would perpetuate illegalities, irregularities or improprieties by scuttling the complete scheme of public employment. Further, in the event of any direction by this Court for accommodation of the petitioner in any of the posts meant for physically disabled person, would deprive all such other physically disabled candidate, who would have applied for the posts and also would have participated in the selection process had there been indication in the advertisement regarding reservation of 3% quota for the physically disabled persons. Therefore, proposition for appointment of the petitioner in the terms of the impugned advertisement is not acceptable.

28. The petitioner applied for the post in terms of the advertisement issued by the Arunachal Pradesh Public Service Commission, but such application submitted by the petitioner cannot be deemed to have been made for selection to any of the posts meant for physically disabled person, as there was no indication in the advertisement, for reservation of 3% quota for physically handicapped persons."

Cases referred:

1. K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395
2. Sadananda Halo & others v. Momtaz Ali Sheikh and others, (2008) 4 SCC 619
3. K.A. Nagmani v. India Airlines, (2009) 5 SCC 515 (para 54)
4. Nikilesh Das v. State of Tripura, 2007 (2) GLT 754 (para 15)
5. Secretary, State of Karnataka v. Uma Devi, (2006) 4 SCC 1

JUDGMENT

The writ petitioner, who is a physically challenged person, has questioned the selection and appointment of candidates by the State respondents in terms of the advertisement No.PSC-R/21/07, dated 24.09.2007 ignoring the rights of the petitioner guaranteed under the persons with Disabilities (Equal opportunities, protection of Rights and Full Participation) Act, 1995 (hereinafter referred to the Disability Act, 1995). The petitioner has prayed for including him among the successful candidates and also to allow him to participate in the viva-voce test.

2. The facts, leading to the filling of this writ petition, may be stated in brief, as follows:

The Arunachal Pradesh Public Service Commission, Itanagar (hereinafter referred to APPSC), on 24.09.2007 issued advertisement No.PSC-R/21/07, for recruitment to the Group-A posts in the Government Departments. It has been also mentioned in the said advertisement that 80% of the posts shall be reserved for Arunachal Pradesh Scheduled Tribe candidates. However, reservation of 3% of the posts in terms of the Disabilities Act, 1995, was not indicated in the advertisement for the physically disabled/handicapped persons, as per existing law and so per the reservation policy adopted by the Government of Arunachal Pradesh. However, in clause 7 of the impugned advertisement, for a

physically handicapped candidate requirement of a certificate from the District Magistrate, was indicated.

3. The petitioner in response to the advertisement submitted application in the prescribed form by enclosing all the required documents together with his disability certificate, plainly believing that there is reservation for disabled candidates, in terms of the Disability Act, 1995. Accordingly, the petitioner was called for the written test examination by the respondent authority. Accordingly, the result of the written test examination was published on 29.05.2009, by showing only the Roll Numbers of the successful candidates. However, the petitioner was not selected. Since the petitioner was not selected in the written test examination, he made an enquiry and came to learn that 3% of posts were not kept reserved for the disabled/handicapped persons, as per the provision of Section 33 of the Disability Act, 1995 and other existing office Memorandum issued by the Government of Arunachal Pradesh from time to time.

4. The petitioner states that the Government of India, Ministry of Personal, Public Grievances and Pensions Department of Personal and Training, New Delhi, issued Office Memorandum No.26035/16/98-Estt. (Res.) dated 13.07.1999, through the Director (Res.), directing to all the Ministry/Departments in Union and States in India to keep reservation of posts/services for disabled/handicapped person, as per the provision of the Disability Act 1995. Further another notification was issued by the Government of India vide Office D.O. No.16/25/99-NI-I (PWD), dated 14.12.1999 addressed to the Secretary, Social Welfare, Government of Arunachal Pradesh, Itanagar, suggesting implementation of the provision of Section 33 of the Disability Act, 1995.

5. It is stated on behalf of the petitioner that on some occasions, when the APPSC failed to clearly spell out reservation from handicapped/disabled quota, the State Commissioner, for Physically Handicapped Persons, Government of Arunachal Pradesh, Itanagar vide Office Memo No.SW-0289/98/999 dated 24.01.2003, had requested the Secretary, APPSC to comply with the office Memo No.OM/15/97 (Pt-I) dated 20.02.2002 issued by the Commissioner, Department of Personal Administrative Reform and Training

Government of Arunachal Pradesh by taking necessary steps for reservation of posts/ service, for physically handicapped persons under the Disability Act, 1995.

6. It has been further stated on behalf of the petitioner that the Government of Arunachal Pradesh has already adopted the Disability Act, 1995, by its Office Memo No.OM-15/97(Pt-I) dated 20.02.2002 and 22.01.2002, whereby all the Ministries/ Departments have been directed to keep 3% of the Group-A, B, C and D posts reserved for the Arunachal Pradesh Scheduled Tribe handicapped persons under the Government of Arunachal Pradesh. It is alleged by the petitioner that in spite of having mandatory provision for reservation of posts for handicapped persons in Arunachal Pradesh, the petitioner has been deprived or his legitimate right to be selected in the recruitment process. It is submitted on behalf of the petitioner that in view of the specific provision in the Disability Act, 1995 and the Office memorandum issued by the Government of Arunachal Pradesh from time to time, 3% of vacancies advertised for the aforesaid posts should be considered to have been reserved for physically handicapped persons. It is further submitted on behalf of the petitioner that since the respondent APPSC, knew the reservation policy adopted by the Government of Arunachal Pradesh, it ought to have reserved 3% of the combined posts under the aforesaid advertisement for disabled and handicapped persons.

7. It has been further pointed on behalf of the petitioner that in terms of the Disability Act, 1995, the reserved vacancy for the physically handicapped has to be filled up from among the eligible candidates with disabilities and in doing so, candidates lower in merit than the last candidate in doing so, candidates lower in merit than the last candidate in the merit list, but otherwise fit for appointment should be considered for appointment, and if necessary, such adjustment should be carried out by relaxing prescribed standard.

8. Mr.D.Pangging, learned counsel for the petitioner, specifically pointed out that the impugned advertisement issued by the APPSC clearly indicated in the column "method of selection" at Clause-7 that a physically handicapped candidate has to submit a certificate from the District Magistrate. Such indication in the impugned advertisement gives implicit

approval of the fact that among the posts advertised by the APPSC, some posts have been reserved for physically handicapped persons.

9. Learned counsel for the petitioner, submitted that the State Government by issuing Memorandum dated 17.12.2007, directed all the departments to reserve vacancies in Group-A, B, C and D posts/service, for physically handicapped persons in terms of the 100 point Roster, showing the position of the physically handicapped person clearly as per the Roster, so circulated by the Government of Arunachal Pradesh, where the first position among the reserved category has to be kept reserved for the physically handicapped person. Only in case of non-availability of handicapped persons among the candidates, the vacancy shall be de-reserved to fill up candidates from other category and the reservation of handicapped shall be treated as backlog and it is carried forward to the next year.

10. Drawing the attention of this Court to paragraph 2 of the Office Memorandum dated 07.01.2008 issued by the Government of Arunachal Pradesh, Department of Personnel, Administrative Reforms & Training, Administrative Reforms, Mr.K.Ete, learned counsel for the respondent No.24 pointed out that a candidate must secure minimum of 33% or more marks, in each paper, in the written examination and the aggregate total marks in the written examination has to be 45% or above for being eligible for viva-voce test. Mr.K.Ete, the learned counsel for the respondent No.24 submitted that in Civil Engineering Section-B the petitioner obtained only 24 marks out of 100 and thus he did not qualify in the written test examination in terms of the above Office Memorandum, therefore, the petitioner did not qualify for viva-voce.

11. The petitioner by filling an additional affidavit, placed on record the letter issued by the Under Secretary, APPSC, Itanagar indicating the marks obtained by the petitioner in the written test examination held by the APPSC in terms of the advertisement aforesaid, which may be reproduced below: -

"PSC-R/21/97
ARUNACHAL PRADESH PUBLIC SERVICE
COMMISSION, ITANAGAR

Dated, Itanagar, the 15.06.2009.

To,
Hage Tabyo,
Roll No.00118

Subject: MARKS OBTAINED IN THE RECRUITMENT
EXAMINATION OF A.E. (Civil) 2008-09.

Sir,

I am direct to refer to your application dated 15.06.09 on the subject mentioned above and to give below marks obtained by you in the written combined Examination of A.E. (Civil).

Sl.No.	Subject	Full Marks	Marks obtained
1	General English	100	64
2	General Knowledge	100	51
3	Civil EngineeringSection –A	100	68
4	Civil EngineeringSection –B	100	24
	Total	400	207

Yours faithfully,
Sd/-
(B.Koya)
Under Secretary

12. In reply to the above submission, he learned counsel for the petitioner drew the attention of this court to the advertisement dated 24.09.2007, where, in the column Method of Selection among the subjects for written examination, Civil Engineering carried 200 marks in total and there was no indication in the advertisement regarding Civil Engineering Section-A and Section-B, which was subsequently shown in the mark sheet issued by the APPSC. In the mark sheet issued by the APPSC also, the marks obtained by the petitioner in Civil Engineering Section-A and Civil Engineering Section-B has been added up and the total mark has been shown as 92 marks, out of 200 marks allotted for the subject, which is 46% of total 200 marks allotted for the subject. Therefore, it clearly transpires that total 200 mark was allotted for Civil Engineering/Agricultural Engineering and it was treated

as one subject with 200 marks, and as such, 92% marks secured by the petitioner out of 200 marks is far above the 33% marks required to qualify in the examination in terms of the guidelines. The petitioner secured more than 45% in aggregate, therefore there is no reason of the petitioner being disqualified.

Therefore, the issue here is not that the petitioner had qualified for the viva-voce test or not, but it is the eligibility of the petitioner as a handicapped candidate in the posts, in terms of the impugned advertisement.

13. It is not in dispute that the Government of Arunachal Pradesh by its Notification dated 21.05.2007, identified 3% reservation, for physically handicapped persons by specifically indicating the designation of the post, Department/Office, Group/Service, physical requirement, for performing the job and categories of disabled persons suitable for such jobs.

14. The Government of Arunachal Pradesh by issuing letter of instruction to the Senior Government Advocate, Gauhati High Court, Itanagar Bench has categorically indicated that the Office Memorandum, which was circulated on 17.12.2007 instructing the different departments in respect of the reservation of the posts made for the physically handicapped persons having been issued after the impugned advertisement, requisition for reservation could not be made to the APPSC, before the impugned advertisement was issued. Learned senior Government Advocate has submitted that since the roster position No.1 is required to be filled up by appointing a physically handicapped person, decision has been taken by the Government of Arunachal Pradesh to henceforth reserve the next vacancies for physically handicapped candidates as backlog.

15. Mr.K.Ete, learned counsel for the respondent No.24 submitted that the petitioner, who failed to secure pass mark in the written test examination cannot turn around to challenge the selection process after having been disqualified in the written test examination. In support of his submission, the learned counsel for the petitioner has relied on the following decisions:"

K.H.Siraj – vs- High Court of Kerala, (2006) 6 SCC 395

Sadananda Halo & Others – vs- Momtaz Ali sheikh & Others (2008) 4 SCC 619

K.A.Nagmani – vs- Indian Airlines, (2009) 5 SCC 515 (para 54) and

Nikhilesh Das – vs- State of Tripura, 2007 (2) GLT 754 (para 15).

Hon'ble Supreme Court in Sadananda Halo & Others -vs- Momtaz Ali Sheikh & Others (2008) 4 SCC 619 held as follows:

> It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India & Ors. v. S.Vinod Kumar & Ors (2007) 8 SCC 100 where oone of us (Sinha,J.) was a party. This was a case where different cut off marks were fixed for the unreserved candidates and the Scheduled Caste and Scheduled Tribes candidates. This Court in para 10 of its judgment endorsed the action and recorded a finding that there was a power in the employer to fix the cut off marks which power was neither denied nor disputed and further that the cut off marks were fixed on a rationale basis and therefore, no exception could be taken. The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla & Ors.[(1986) Supp. SCC 285] where it has been held specifically that when a candidate appears in the examination without protest and subsequently found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise. The Court further made observations in para 34 of the judgment to the effect:
>
> "There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.
>
> In Para 20 this Court further observed that there are certain exceptions to the aforementioned rule. However, the court did not go into those exceptions since the same were not material."

In K.A.Nagmani –VS- Indian Airlines (supra) also Hon'ble Supreme Court held as follows:

> That the appellant admittedly had participated in the similar selection process for erstwhile grade 15 and 16, Manager (Maintenance/Systems) and Senior Manager (Maintenance/Systems) respectively. The Corporation had given adequate opportunity to the appellant to compete with all other eligible candidates at the selection for consideration of the case of all eligible candidates to the post in question. The Corporation did not violate the right

> to equality guaranteed under Articles 14 and 16 of the Constitution. The appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the promotion. In Madan Lal & Ors. Vs. State of J & K Ors. [(1995) 3 SCC 486] this Court observed: "It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair: Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful." Reference may also be made to the decision of this Court in Chandra Prakash Tiwari Vs. Shakunatala Shukla [(2002) 6 SCC 127].

The petitioner, who appeared in the examination, sincerely thought that Cluase-7 in the advertisement, which indicated requirement of certificate from the District Magistrate, for physically disabled person, meant indication of reservations for physically disabled persons. However, in the facts and circumstance discussed above, since the petitioner has challenged non-selection of a disabled candidate in terms of the impugned advertisement, the ratio of the cases cited above may not have any application in the instant case. Therefore, the petitioner cannot be said to have turned around to challenge the process after having been unsuccessful in the written test as well as interview conducted in terms of the advertisement.

17. However, very interestingly, the respondent No.24, who was selected for appointment as a general category candidate, was appointed in a post meant for disabled candidate. If a post identified for disabled candidate was not advertised, question arises, as to how the respondent No.24, was appointed and adjusted in the said reserved post by the state respondent. If post meant for disabled candidate was advertised, question arises as to why the petitioner was not considered for selection. There is no answer to the above situation.

18. Mr.N.Tagia, learned counsel for the Arunachal Pradesh Public Service Commission (APPSC) submitted that the APPSC is not a position to initiate the process of recruitment of a particular category of candidate without receiving appropriate requisition/instruction for such selection and recruitment from the concerned department of the Government. Learned counsel for APPSC further pointed out that since there was no requisition for 3%

reservation and/or selection for physically handicapped candidates in terms of the Disability Act, 1995, from the concerned Department, neither it could indicated in the impugned advertisement issued by the APPSC, nor the petitioner could be considered as a physically disabled candidates under 35 reservation in terms of the Disability act, 1995, by the APPSC for the purpose of selection.

19. It would be pertinent to mention here that by an interim order dated 31.07.2009 passed in MC No.81 (AP) of 2009, one post of Assistant Engineer (Civil) identified for physically disabled person, was ordered to be kept vacant by an order of this Court till disposal of the writ petition. However, the interim order aforesaid was vacated in M.C. (WP) 128/09 vide order dated 24.11.09 of this Court on condition that if any appointment is made in favour of respondent No.24 in the post identified for physically handicapped person, the same shall be subject to result of the writ petition. Accordingly, respondent No.24 was appointed in the post meant for physically handicapped person by the State respondent.

20. Mr.K.Ete, learned counsel appearing on behalf of the respondent No.24 submitted that the petitioner, who is a physically handicapped with one leg, is not entitled to be accommodated/appointed in the Public Works Department since the post of Assistant Engineer in the Public Works Department is vacant for physically handicapped person with one arm, partially deaf and partially blind.

21. The learned counsel for the respondent No.24 further submitted that the present petitioner is a physically handicapped with one leg and, as such he is not entitled to be accommodated in the Public Works Department and at the most he could be appointed in the Urban Department, where a post for orthopedically handicapped person may have been created.

22. On perusal of the Government Notification NO.SW-13/2007 (PIL) dated 21st May, 2007 it transpires that the posts meant for physically disabled persons have been identified in different departments of the Government, in terms of the requirement of Disability Act, 1995. The State Government counsel has indicated at the time of hearing of this case by

drawing attention of this court to a written instruction received by the counsel, that State Government would take all necessary steps for accommodating physically disable persons in all subsequent selections.

23. It has not been disputed that the State-respondents did not direct the APPSC to select candidates in any of the posts identified for the purpose of appointment of physically handicapped person nor it was indicated in the impugned advertisement issued by the APPSC. It also appears from the affidavit submitted by the State respondents and the Arunachal Pradesh Public Service Commission (APPSC) that no advertisement was made for selection of physically disabled candidates in any of the posts indicated in the advertisement. The Arunachal Pradesh Public Service Commission further clarified in its affidavit that when reservation is required to be made for a particular reserved category, the State Government usually makes requisition. Therefore, the Public Service Commission did not take the exercise of selecting the special category candidates, such as, physically disabled candidate, for having not received any requisition to that effect. The impugned advertisement issued by the Arunachal Pradesh Public Service Commission, for recruitment to various posts indicated in the advertisement, neither did specify reservation of 3% quota for physically disabled persons no did indicate the posts in which they would be accommodated. Therefore, it can safely be held that the State respondents did not advertise any such post, which was identified to be filled up by physically disabled persons in terms of the provision of the Disability Act, 1995 in the impugned advertisement.

On the basis of the impugned advertisement made by the Arunachal Pradesh Public Service Commission, on completion of the selection process a select list of candidate was provided to the State Government. The State Government being the appointing authority has to follow the list of candidates selected by the Public Service Commission for the purpose of issuing appointments.

24. There is no justification in picking up a post meant for disabled candidate to accommodate a general category candidate. More so, when the Government made no requisition to the APPSC for selection of disabled candidate and no advertisement was issued by the APPSC to that effect. Therefore, in view of the above discussions, arguments

advanced by Mr.K.Ete, learned counsel to justify appointment of respondent No.24 in the post identified for disabled candidate cannot be accepted.

25. Now the question, which arises for consideration, is whether the petitioner can be directed to be appointed in a post meant for physically handicapped candidate when the post was not advertised.

26. Hon'ble Supreme Court in Secretary, State of Karnataka Vs Uma Devi, reported in (2006) 4 SCC 1, observed as follows:-

> "A class of employment which can only be called litigious employment has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian equal rights protection should be forgotten.
>
> 27. This Court has also on occasions issued directions, which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at timed, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements."

27. In view of the above observation of the Hon'ble Supreme Court in Secretary, State of Karnataka Vs Uma Devi, reported (supra), without a proper advertisement for selection of physically disabled candidates, any direction by this Court to select and appoint a disabled candidate would not be legal. Such appointments would defeat the very Constitutional scheme of public employment. Such direction for appointment would perpetuate illegalities, irregularities or improprieties by scuttling the complete scheme of public employment. Further, in the event of any direction by this Court for accommodation of the petitioner in any of the posts meant for physically disabled person, would deprive all such other physically disabled candidate, who would have applied for the posts and also would have participated in the selection process had there been indication in the advertisement regarding reservation of 3% quota for the physically disabled persons. Therefore, proposition for appointment of the petitioner in the terms of the impugned advertisement is not acceptable.

28. The petitioner applied for the post in terms of the advertisement issued by the Arunachal Pradesh Public Service Commission, but such application submitted by the petitioner cannot be deemed to have been made for selection to any of the posts meant for physically disabled person, as there was no indication in the advertisement, for reservation of 3% quota for physically handicapped persons.

29. There is no explanation from the side of the State Government as to what was the intrinsic reason for keeping the clause 7 in the advertisement aforesaid. But apparently, such a clause in the advertisement would only serve the purpose of assessing the extent of disability of the candidate for his accommodation in the post meant for general category candidates and not for selection of physically disabled candidate.

30. Now, in view of the discussions, the petitioner, who is a physically disabled candidate, was not selected in the normal course, as such, he can be accommodated in the select list in terms of the reservation policy adopted by the State Government as per provision of Disability Act, 1995, since no advertisement was made to that effect. Further such a litigious appointment as has been observed by the Hon'ble Supreme Court in Uma Devi (supra), would not be in consonance with the constitutional mandate as provided under Article 14 and 16 of the Constitution of India.

31. Fact remains, without having made appropriate advertisement, for the purpose of selection of physically disabled persons the Government also cannot accommodate any general category candidate in a reserve post identified for physically disabled persons. Therefore, any accommodation made by the State Government in a post reserved for Disabled candidate by a physically fit person, shall have to be treated as a backlog for the next recruitment. Since appointment has been given to respondent No.24, who is selected candidate, accordingly, adjustment shall be made in respect of the post by treating it to be a backlog for disabled candidates. The State respondent is directed to take appropriated measure to undo the irregular exercise without wastage of time by treating one post as a backlog post, meant for physically disabled candidate (not visible)

direction indicated above. However, the relief sought for on behalf of the petitioner for consideration of his selection and appointment in terms of the, in the facts and circumstances of the case is rejected. Consequently, the State respondents are directed to take immediate necessary steps for selection and appointment of the candidates to the posts identified for physically disabled persons issuing necessary advertisement in accordance with law by. This exercise shall be completed by the State respondents within a span of three months from the date of receipt of certified copy of this judgment and order.

35. With the above observations and directions, this writ petition stands disposed of. However, I pass no order as to costs.

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IN THE HIGH COURT OF ITNAGAR, ITANAGAR BENCH
W.P. (C) NO.127 OF 2011
D.D. 04.04.2011
Hon'ble Mr. Justice K.Meruno

Pinky Lego	**...**	**Petitioner**
Vs.		
State of Arunachal Pradesh & Anr.	**…**	**Respondents**

Selection process

Production of original documents and certificates - Petitioner was permitted to take part in selection process i.e., written examination on basis of marks sheet, grade report and provisional degree pass certificate issued by Dean of the College, but denied permission to participate in viva voce test on ground of non-production of original degree certificate – Viva voce test being held on 07.04.2011 and original degree certificate is scheduled to be issued at University Convocation to be held in the month of July 2011, whether, Public Service Commission, having allowed the petitioner to participate in various stages of selection process, justified in refusing her to participate in viva voce merely on ground of non-production of original degree certificate? No.

Directions issued to allow petitioner to participate in viva voce test on basis of provisional certificates, subject to production of originals after convocation.

JUDGMENT

Heard Mr.Tonning Pertin, learned counsel appearing on behalf of the petitioner, Mr.N.Tagia, learned Standing Counsel appearing on behalf of the respondent APPSC and Mr.R.H.Nabam, learned Sr. GA appearing for the Stat respondent No.1.

On 01.04.2011, this Court after hearing the parties directed the matter to be listed to-day i.e., 04.04.2011 and Mr.N.Tagia, learned Standing Counsel for the APPSC, to obtain and produce necessary instructions, Mr.N.Tagia as directed aforesaid has produced the necessary instructions, which has been received by him from the Arunachal Pradesh Public Service Commission (for short "APPSC).

Issue notice of Motion calling upon the respondents to show cause as to why a Rule, as prayed for, should not be issued or why such further or other order (s) as to this Court may deem fit and proper should not be passed.

Notice is returnable within 3 (three) weeks.

Since the learned respective counsel have entered appearance and accepted notice on behalf of their respective respondents, no further notice is required.

With regards to the interim prayer, after hearing the learned counsel for the parties, it emerges that the petitioner was nominated by the Government of Arunachal Pradesh in the year 2005 to pursue BE (Mech.) in the SANT GRADE BABA AMRAVATI UNIVERSITY, MAHARASTRA under State sponsored sheet/quota. Accordingly, she completed her B.E (Mech.) Degree Course in the year 2010 but the Mark Sheets, Grade Report and Provisional Degree passed certificate were issued by the Dean (Academic) of the aforementioned college/university. The original degree passed certificate will be forwarded by the University after the Convocation, which is scheduled to be held in the month of July, 2011. In support of this statement, the petitioner has filed a Provisional Degree Certificate (Bachelor of Technology) issued by the Dean (Academic) No.0477 dated 27.05.2010, which is annexed as Annexure-7 to the writ petition.

In response to the advertisement issued by the Arunachal Pradesh Service Commission (APPSC) of dated 04.05.2010 for recruitment to the 3 (three) posts of Assistant Engineer (Electrical) under Power Department, the petitioner also submitted her application with all relevant documents. Accordingly, the petitioner appeared the written test held on 11.09.2010 and 12.09.2010 vide Roll No.0224. In the result notified on 09.03.2011 and 04 (four) candidates including the petitioner have been declared qualified. In the call letter for the viva voce test scheduled to be held on 07.04.2011, the Commission has directed to produce the Original Degree Certificate where as the Original Degree Certificate of the petitioner will be awarded by the University at the Convocation to be held in the month of July, 2011.

The petitioner appraised the matter to the Secretary, APPSC and requested him to allow her to sit in the Personality Test/Viva Voce Test to be held on 07.04.2011 on the strength of the provisional Degree certificate issued by the said autonomous College by submitting a representation on 21.03.2011. The petitioner is informed by the office of the Commission that her representation is not considered by the Secretary, APPSC.

From the certificate dated 27.05.2010, the Provisional Degree Certificate has been issued however from the said Certificate, it is revealed that the actual degree will be issued only after the Convocation of the said College/University is held in the year 2011. Therefore, the petitioner is not in a position to produce the said Original Degree Certificate during the viva-voce test scheduled to be held on 07.04.2011. From the facts, revealed above, and also the documents, it is not disputed that the petitioner has not appeared and passed the Degree examination. However, the unable explanation by the petitioner and the Certificate dated 27.05.2010 is abundantly cleared that at the time of the viva-voce which is scheduled to be held on 07.04.2011, the petitioner will not be able to produce the said document and she will not be allowed to sit for the said viva-voce test which will deprive her of being selected for the said recruitment. The petitioner has also been allowed to participate in all the stages of the interview for recruitment to the said post and only because of her inability to produce the said document in original, she will be deprived of the opportunity of being selected. Therefore, without prejudice to the respondents, it would not be fair and justify not to allow her to sit for the viva-voce test scheduled to be held on 07.04.2011. after considering all aspects of the matter in its totality, I am of the view that the respondents will allow the petitioner to sit in the personality test/viva-voce test with regards to the petitioner shall be kept in a sealed cover and shall be opened only when the petitioner produces the original Certificates after the Convocation is held in the month of July, 2011. this Interim order shall not be a bar to the respondents from conducting the viva-voce test with regards to the other participants and also declare the results of the other participants in the said personality test/viva-voce test to be held on 07.04.2011 and shall also declare the result of the said personality test excepting the petitioner which will be kept under sealed cover and shall be opened only when she produces the said documents after the Convocation is held in the month of July, 2011.

List this case on 25.04.2011.

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IN THE GAUHATI HIGH COURT
W.P. (C) NO.291 (AP) OF 2012
D.D. 17.10.2012
Hon'ble Mr. Justice P.K.Saikia

Aviram Lamrah Dolo & Anr. … Petitioners
Vs.
Arunachal Pradesh PSC & Anr. … Respondents

Appointment

Duty and obligation of Public Service Commission to recommend candidates for appointment to posts under State Civil Service – Whether action of Arunachal Pradesh Public Service Commission in recommending only 27 candidates as against requisition made for recommending 29 candidates for appointment as Assistant Engineer (Civil), when eligible and qualified candidates are available, can be said to be approved by Constitution of India? No. – Government of Arunachal Pradesh, initially requested A.P.P.S.C. to recommend 22 candidates for appointment to the posts of Assistant Engineer (Civil). Thereafter number of vacancies were increased to 27. After publication of results of written examination held for recruitment, Government requisitioned A.P.P.S.C. to recommend two more names for appointment through the ongoing recruitment process. However, A.P.P.S.C. recommended only names of 27 candidates even though sufficient number of eligible and qualified candidates were available on ground that Government has not made clear the reservational status of the said two posts. Thereafter, even though Government clarified the reservational status of the said two posts A.P.P.S.C. refused to recommend names of eligible candidates. – Held that by refusing to recommend two more suitable candidates, the Commission acted in a way not approved by the Constitution of India. Hence, directions issued to Public Service Commission to recommend two more suitable and eligible candidates for appointment.

JUDGMENT

This proceeding has been initiated by the petitioners herein seeking inter-alia the following relief:

> *"In the premises aforesaid, it is respectfully prayed that Your Lordship would be pleased to admit this petition, call for records and issue Rule calling upon the respondents to show cause as to why a writ of mandamus or certiorari and/or any other appropriate writ, order or direction of like nature should not be issued, directing the respondent No.1to consider the case of the petitioners for recommendation for filling up the 2 (two) vacant posts of AE (Civil) in the Department of PHE & WS, Govt. of Arunachal Pradesh which was requisitioned vide its letter No.PHE/SECTT-09/2000/573 dated 15.07.2011 (Annexure-5)*

and upon cause or causes that may be shown and after hearing the parties, be pleased to make the rule absolute and/or pass other order or orders as Your Lordship may deem fit and proper."

2. Heard Mr.N.Ratan, learned counsel for the petitioners and Mr.N.Tagia, learned Standing Counsel APPSC. Also heard Mr.K.Ete, Addl.A.G. for the Respondent No.2.

3. The facts necessary for disposal of this present proceeding, in short, are that the petitioner no.1 & 2 herein are M.Tech (Civil) and B.Tech (Civil) degree holders respectively. As such, they are qualified for being considered for being appointment as Assistant Engineer (Civil) or any equivalent post in any Engineering Department in the Govt. of Arunachal Pradesh.

4. Vide No.PSC-R/24/2009, dated 08.12.2010, the Arunachal Pradesh Public Service Commission (in short 'APPSC') issued an advertisement dated 08.12.2010 calling for applications from the qualified candidates for filling up 22 posts of Assistant Engineer (Civil) in various departments and also for filling up 4 posts of Urban programme officer (in short 'UPO') in UD & Housing Department.

5. Thereafter, vide Corrigendum No.PSC-R/24/2009 dated 10.12.2010, it has again been informed that number of vacancies so notified through advertisement dated 08.12.2010 have been increased to 27 due to one more post fell vacant in the Department of PHE & WS. The petitioners, being qualified to offer candidature appointment against any of those vacancies, duly applied for the same.

6. In the meantime, the results of written examination, held on 02.06.2011 and 03.06.2011, were declared on 23.11.2011. the Department of PHE & WS, Govt. of Arunachal Pradesh issued a requisition letter No.PHE/SECTT-09/2000/573 dated 15.07.2011 to the Secretary, APPSC (respondent No.1) requesting the APPSC to make recommendation for filling up two more posts of Assistant Engineer (Civil) in that Department through the ongoing recruitment process.

7. The examination for the recruitment of the aforesaid posts was held on 02.06.2011 and 03.06.2011 and the results thereof were declared on 23.11.2011, wherein the

petitioners qualified for appearing in the viva-voce/interview. It needs to be mentioned here that in the advertisement dated 08.12.2010, it has been specifically mentioned that the vacancy position is subject to variation.

8. The viva-voce/interview was conducted on 10.01.2012 and the final result was declared on the same day. Unfortunately, the APPSC has recommended only 27 candidates, though on the date on which the result was declared, as many as 29 posts were lying vacant in the Engineering Departments under the Govt. of Arunachal Pradesh.

9. The petitioners are the next eligible qualified candidates as per the merit list of successful candidates, which was declared on 10.01.2012. it has also been contended in the writ petition that all the candidates so selected including the petitioners were APST candidates and as such, the petitioners to expect to be appointed the two posts for which the examination aforesaid was conducted.

10. However, it is learnt that the APPSC was not recommending the name of the petitioners who are the next eligible candidates only on the ground that the Department of PHE & WS did not specify whether the two posts of Assistant Engineer (Civil) in the PHE & WS, Govt. of Arunachal Pradesh for which the APPSC was requested to make recommendation were reserved or not as per the reservation policy which declares that posts in the Govt. Department are to be reserved at the ratio of 80:20.

11. It has been stated that such a query is immaterial in the face of the fact that all the candidates who were declared to be successful were all genuine APST candidates. In view of above, this writ petition has been filed against the APPSC and the Secretary, PHE & WS, Govt. of Arunachal Pradesh arraying them as respondents No.1 & 2 respectively and seeking relief as stated above.

12. On the allegation that in not recommending the name of the next eligible candidates/petitioners, the respondents, particularly, the respondent No.1have acted in an arbitrary, whimsically and un-rational way and as such a direction as aforesaid was prayed for requiring the respondent No.1to recommend the next successful candidates.

13. The respondent No.1 & 2 have entered appearance on being served with notice and they filed counter affidavit as well. In their counter affidavit, the respondent No.1 (APPSC) has admitted the claim of the petitioners but contends that they cannot be recommended that due to some obscurities in the requisition made by the respondent No.2 regarding the status of posts which are sought for to be filled up through the ongoing recruitment process.

14. In that connection, it has been pointed out that the Govt. of Arunachal Pradesh has been following the reservation policy of 80:20 ratio meaning there by out of 100 vacancy posts, 80 posts are to be reserved for APST candidates. Since it is not clear from the requisition, made by the respondent No.2, as to whether the aforesaid two posts are reserved or not hence, the respondent No.1 has sought for some clarification from the requisition Department on the status of two posts vis-a-vis reservation.

15. It is also been contended that the recruitment process which was initiated vide the advertisement dated 08.12.2010 was modified on 10.12.2010 and same came to an end with the declaration of the result on 10.01.2012 when the Commission recommended as many as 27 candidates off course without making any recommendation against two posts in the PHE & WS, Govt. of Arunachal Pradesh for which the recruitment process had been initiated at that belated stage. Being so, now there is nothing left for the Commission to act upon on the requisition aforesaid.

16. On the other hand, the respondent No.2 having filed counter affidavit has admitted most of the claims made in the writ petition with further information that the Commission vide its letter No.PSC-R024/2009 dated 06.02.2012 recommended only one candidate against the three vacancy posts of Assistant Engineer (Civil) including one post of Assistant Engineer (Civil) against 3% quota reserved for Physically Handicapped candidates although requisition was made for filling up as many as three posts to be filled up through ongoing direct recruitment process.

17. On the recommendation of the Commission, Department appointed Shri.Tung Sonu to the post of Assistant Engineer (Civil) and again requested the respondent No.1 through letter No.PHE/Sectt.09/2000/801 dated 03.05.2012 to recommend suitable candidates as per its earlier requisition letters dated 15.07.2010 and 26.10.2010 for filling up the remaining two posts of Assistant Engineer (Civil).

18. However, the respondent No.2 through the letter No.PSC-R/24/2009 dated 17.07.2012 came to know that the Commission could not recommend the candidates for filling up of remaining two posts of Assistant Engineer (Civil) due to non-furnishing of report regarding the status of those two vacant posts vis-a-vis reservation.

19. Being so informed, the respondent No.2 reply the Commission that the said posts were reserved and to be filled up from direct recruitment quota. However, the Department could not be able to fill up those two posts for not getting appropriate recommendation from the respondent No.1.

20. In the meantime, the petitioners have filed affidavit-in-reply reaffirming its contention made in the writ petition and also contending that the Commission (respondent No.1) was duty bound to recommend the next two successful candidates from the list published on 01.10.2012 as per requisition for filling up three posts under the respondent No.2 since such requisitions were made when the aforesaid process was in progress.

21. It is also been contended that the clarification sought for has already been made available to the respondent No.1 by the respondent No.2 vide its letter No.PHE/Sectt.09/2000 dated 03.08.2012. But even after the clarification was furnished, the respondent No.1 did not make any recommendation to fill up the aforesaid posts, which is violative of the provisions under Article 14 & 16 of the Constitution of India.

22. I have carefully perused the pleadings of the parties keeping in view the arguments advanced by the learned counsel for the respective parties. On perusal of the record, it appears clear that vide advertisement dated 08.12.2010, applications were called for filling up of 26 posts in different Departments under the Govt. of Arunachal Pradesh.

23. Soon thereafter, i.e., 10.12.2012 by its Corrigendum, it has been stated that the number of posts for which advertisement aforesaid has increased to 27 posts due to one more post falling vacancy in the Department of PHE & WS. It has also been stated in the advertisement that the vacancy position is subject to variation.

24. On further perusal of the record, I have found that while the aforesaid process for selection of candidates against the 27 posts was in progress, the PHE & WS Department has made requisition for filling up two more posts of Assistant Engineer (Civil) through

the ongoing recruitment process. It is also found apparent that vide the selection list dated 10.01.2012, 49 candidates were put on the select list and the petitioners, herein having secured 197.5 marks in total, said to have occupied the position at Sl.No.31 & 32.

25. It is also evident there-from that one Rajen Mudang, who secured 30th position with 198 marks was the last candidate recommended by the Commission for appointment against the posts so advertised aforesaid. It is also found that vide documents attached as Annexure-11 series, all the candidates who were so selected, are found to be APST candidates meaning thereby that they are all belonging to the reserved categories.

26. In view of above, this Court is of the opinion that the Commission is duty bound to recommend two more suitable candidates against two remaining vacant posts of Assistant Engineer (Civil) for filling up of which necessary requisition was made to the Commission while process for recruitment against as many as 27 posts of Assistant Engineer (Civil) was in progress.

27. Even if some lapses had occurred owing to which the Commission could not recommend two more suitable candidates against the two vacancies in the Department of PHE & WS in the Govt. of Arunachal Pradesh, the candidates aspiring for the said posts, if they are otherwise found suitable, should not be allowed to suffer for no fault of their own.

28. Consequently, this Court is of the opinion that refusing to recommend two more suitable candidates as aforesaid, Commission acted in a way not approved by the Constitution of India and as such, this court is pleased to call upon the respondent No.1 to recommend for appointment two more suitable candidates from the select list which is said to have been prepared on the basis of performance of the candidates in the written examination as well as viva voce and which is said to have been declared on 10.01.2012.

29. The respondent No.1 is also called upon to complete the process at the earliest preferably within a period of two months from the date of receipt of certified copy of this judgment.

30. With the above directions and observations, this writ petition stands disposed of.

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IN THE GUAHATI HIGH COURT AT ITANAGAR BENCH
W.P. (C) NO.268 OF 2012
D.D. 18.10.2012
Hon'ble Justice Dr. (Mrs.) I.Shah

Happy Yaying … Petitioner
Vs.
State of Arunachal Pradesh & Ors. … Respondents

Selection

Preference/option for selection of service/post – Arunachal Pradesh Public Service Commission prepared final select list of successful candidates on basis of merit obtained by candidates in the combined competitive examination held for selection ignoring the option/preference exercised by candidates for particular posts – Whether, in absence of provision in Rules, for selection on basis of option/preference exercised by candidates, preparation of select list on basis of merit of candidates can be found fault with? No.

Case referred:

1. Kirli Padu v. State of Arunachal Pradesh, 2010(1) GLT 323

JUDGMENT

Heard Mr.Muk Pertin, learned counsel for the petitioner. Also heard Mr.Nani Tagia, learned standing counsel for Respondent No.2 and 3 and Mr.R.B.Yadav, learned counsel for private Respondent No.4.

The petitioner, in this case, has prayed for a direction to the respondent authorities to select and recommend the name of the petitioner who is eligible for government service under the State of Arunachal Pradesh.

The petitioner appeared in the examination conducted by the Arunachal Pradesh Public Service Commission (APPSC) on the basis of an advertisement issued on 29.04.2011. In her application form, the petitioner had given option to all the advertised posts including Group-A and Group-B posts. The result of the Examination was declared and the merit list from Sl.No.1 up to Sl.No.25 was published. Serial No.26 was meant for the PWD

quota. The petitioner sought the final seniority list from Sl.No.1-3 and from the information furnished to her, she came to know that she stands at Sl.No.26 of the merit list. The private Respondent No.4 Sri.Honjom Perme, who was in Sl.No.15 of the merit list, has been declared qualified to the post for which he had never opted. The said Respondent No.4 is a Group-A officer presently serving, as Veterinary Officer and he did not give any option for CDPO post for which he has been declared to be qualified and selected. For the selection of private Respondent No.4, the chance and opportunity of the petitioner to get selected for the post, has been deprived.

The private Respondent No.4, in his counter affidavit, has admitted that he never gave any preference or option for the post of CDPO and other allied posts. The Arunachal Pradesh Public Service Commission (APPSC) have selected and recommended the name of private Respondent No.4 to the post of CDPO on the basis of marks obtained by him without looking into the preference and option given by him.

The Respondents No.2 and 3, in their joint counter affidavit have averred that the selection of private Respondent No.4 to the post was made by the Commission on the basis of his merit position although he did not opt for the post of CDPO. According to them, as per the Arunachal Pradesh Public Service Commission Conduct of Examination Rules 2010, the Commission will recommend a candidate against a vacancy in the order of merit position, which means that merit has to be considered, and then preference will follow.

In a similar case of Kirli Padu -vs- State of Arunachal Pradesh reported in 2010 (1) GLT 323, this Court has observed that the procedure of Arunachal Pradesh Public Service Combined Competitive Examination 2001, including the procedure contained in the Schedule and the provision to the said Rules, do not indicate that in preparing the final select list of successful candidates, the option for a particular service/services by a candidate, in order of priority, can be ignored, by the Commission.

Learned Counsel for private Respondent No.4, has further stated that since the Respondent No.4 has not opted for the post therefore, he has neither joined the service nor he is intending to join the said service, in near or distant future.

In this view of the matter, the writ petition filed by the petitioner is hereby allowed.

Resultantly, the writ petitioner Miss Happy Yaying is entitled for service against the existing vacancy. The entire exercise of appointment of the petitioner, above mentioned, to the existing vacancy, shall be done within a period of 30 days from the date of receipt of a certified copy of this order.

With the above directions, this writ petition stands disposed of.

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ARUNAHAL PRADESH INFORMATION COMMISSION
UNDER SECTION 19(1) OF RTI ACT, 2005
CASE NO.APIC-526/2012 & Connected matters
D.D. 27.05.2013
Hon'ble Mr.Y.D.Thongchi, State Chief Information Commissioner

Lissing Perme … Appellant
Vs.
Shri Taket Jerang,
IPO cum Joint Secretary,
Arunachal Pradesh PSC … Respondent

R.T.I.

Furnishing copies of answer scripts and mark sheets of third parties pertaining to competitive examination conducted by Public Service Commission – Whether Arunachal Pradesh Public Service Commission is justified in denying copies of answer scripts and mark sheets of other candidates on ground that information sought for is purely personal information and there exists fiduciary relationship between candidates appearing for competitive exam and APPSC and hence exempted from disclosure under Section 8(1)(e) & 8(1)(j) of R.T.I. Act 2005? No.

Held:

The relationship in between a candidate of a competitive recruitment examination and the authority who conducts such examination cannot be equaled with that of the relationship in between a solicitor and client or a Doctor with patient. Moreover disclosure of such information cannot be barred as it is the duty of the Public Service Commission to maintain fairness and impartiality in the selection process of the duty. Dealing with the issue of 'Fiduciary relationship in civil appeal No.6454 of 2011 (PIL filed by the Human Rights Law Network (HRLN) in the Hon'ble Supreme Court explained in detail and held that the examining conducting bodies cannot refrain the evaluated answer sheets under any fiduciary capacity. Hence the Hon'ble Supreme Court held that the exemption under section 8(1)(e) will not apply in the case of disclosure of answer sheets.

All the activities undertaken by the examining bodies, examiner etc., are all paid from public money and so evaluated answer scripts Award sheets are public document. Hence asking inspection of the answer script of the successful candidates the appellants are not asking for personal information but public documents as they have right to see whether conduct of the examining body and evaluator were free and fair or whether marks were awarded arbitrarily.

The Division Bench of Hon'ble Delhi High Court in LPP-797/2011, Union Public Service Commission v. N. Sugathan, LPA-802/2011, Union Public Service Commission v. Naresh Kumar and LPA-803/2011 Union Public Service Commission v. Udaya Kumar

held that the information which comprised the very basis of the public post can't be personal information and confidential and there can't be any fiduciary relation between examine and examining body."

Cases referred:

1. Bristol and West Building Society v. Mother, (1998) Ch 1
2. Civil Appeal No.6454 of 2011 (PIL filed by the Human Rights Law Network (HRLN)
3. Union Public Service Commission v. N. Sugathan LPP-797/2011
4. Union Public Service Commission v. Naresh Kumar, LPA-802/2011
5. Union Public Service Commission v. Udaya Kumar, LPA-803/2011

FACTS OF THE CASE

Shri Lissing Perme, the appellant submitted u/s – 6(1) of the RTI Act, 2005, an application on 21/05/2012 to the PIO, seeking following informations-

i. Evaluated Answer script of General Studies Paper-I and general studies Paper-II in APPSCCE (Mains) – 2011-12.
ii. The marks squared by all Selected Candidates in their General Studies Paper-I and Paper-II.
iii. The Cut-off marks for qualifying viva-voce i.e. lowest total marks up to which candidates is selected for viva-voce.

He again submitted another application on 06/06/2012 to same PIO, Seeking further information which reads as follows:-

i. Inspection and photography of original and evaluated answer scripts of General Studies Paper-I and General Studies –II of all successful candidates in APPSCCE (Mains) 2011-12. Further after inspection I would like to take certified copies of any answer scripts thereof, if I feel needed.
ii. Marks Statements of last 15 successful candidates in merit order.

In response to his application dated 21/05/2012, the appellant received the evaluated answer script of himself, vide forwarding letter F/NO.PSC/RTI-05/2012, dated 12/06/12 but no response in respect of other selected candidates and cut of mark for qualifying viva-voce test. In response to his second application dated 06/06/2012, he was informed vide F/NO.PSC/RTI-03/2011 dated 02/06/2012, that the inspection and photography of original and evaluated scripts of the General Studies Paper-I and Paper-II of all successful candidates in APPSCCE (Main) 2011-12 cannot be disclosed to him as per Commission's decisions.

Aggrieved after denial of information, the appellant Shri Lissing Perme, filed first appeals to the Secretary, Arunachal Pradesh Public Service Commission on 06/07/2012, and this time also the Fist Appellate Authority denied to furnish other informations on following ground after conducting a hearing on the 2nd August 2012 in presence of the appellant, and intimated to him vide NO.PSC/RTI-5/2011, dated 3rd August 2012 which reads inter alia as follows:-

Quote.

"The SL.N.II of application dt.21.05.2012 and SL.No.1 of application dt.06.06.2012, the Commission find that in case of evaluated answer papers, the information, available with the public authority is in his fiduciary relationship, the disclosure of which is exempted under section 8 (1) (e). The evaluated answer papers, either of his-her own or others, are purely a personal information, the disclosure of which has no relation to any Public interest or activity, which of such a situation is covered under section 8 (1) (i) of this act.

In regard to Public examination conducted by institution established by the Constitution like UPSC or institutions established by any enactment by the Parliament or Rules made there under like CBSE, Staff Selection Commission, Universities, etc, the function of which is mainly to conduct examinations and which have an established system as fool-proof as that can be, and which by their own rules or regulations prohibit disclosure of evaluated answer sheets or where the disclosure of evaluated answer sheets would result in rendering the system unworkable in practice the Commission decided to put at rest the matter of disclosure of answer sheets and therefore decided that in such cases, a citizen cannot seek disclosure of the evaluated answer sheets under the RTI Act, 2005 and as per decision of the CIC Case No.ICPB/A-2/CIC/2006". (Unquote)

Aggrieved with the decision, Shri Lissing Perme filed two appeals to the Commission.

Bharat Saring also applied on 02/07/2012 seeking following information from the P.I.O. of the APPSC-

1) Paper –I General English
(1) S.K.Mize
(2) T.P.Monpa

(3) Mino Tayeng
(4) Bharat Sarin

2) Paper-IV
(a) S.K.Mize
(b) Mino Tayeng
(c) Bharat Saring
(d) H.Nabam

The P.I.O. T.Jerang, Under Secretary vide his letter NO.PSC/RTI-24/2012, dated. 16/07/12, directed the appellant to deposit a sum of Rs.580/- (Rupees five hundred eighty) only for supply of the information and accordingly the appellant deposited the required fee on 07/07/12. Thereafter on same date the Public Information Officer forwarded certified copies of answer script along with award sheet of General English and General Studies Paper-I of APPSCCE (Mains) exam 2012 in respect of Shri Barat Saring, Roll No.100560 vide forwarded letter NO.PSC/RTI-24/2012, dated. 17th July 2012.

Having denied the marked sheets of other candidates who's mark sheets were sought by the appellant Shri Bharat Saring, he appealed to the Secretary, APPSC-cum-First Appellate Authority u/s-19 (1) of the RTI Act, 2005 on 19/07/12, requesting to furnish rest of the informations. The FAA Shri.T.Taba issued a notice of hearing vide F/NO.PSC/RTI-24/2011, dated 27th July, 2012 directing the appellant Shri Bharat Saring to be present during hearing on 13.08.12 at 11:00AM. The hearing was held on 13th August 2012 where the appellant was also present, and on next day, the FAA issued his decision stating same ground.

The case of Lissing Perme and Bharat Saring were heard on separate days, but since the cases of both appellant rests on similar matter, it is found a fit case to deliver order by single judgment.

In both the cases, the reason of denying the full information sought by the appellants is i.e., to furnish the answer scripts of the other candidates by the P.I.O. and the First Appellate Authority is that "these documents (i.e., Answer script of other candidates) are barred from disclosure as per Commissions decision." In this regard the P.I.O. submitted a copy of minutes of the Commissions meeting held on 22nd May, 2012 which related to

the similar request made by one Shri Dani Rissang where in the Arunachal Pradesh Public Service Commission took decision to decline to provide the information on the reasons given below-

1. That, the office Guidelines of APPSC contains all process, procedures and confidentialities that governed the conduct of various recruitment examinations.
2. That, revelation of the information sought for by the appellant would certainly compromise with the confidential nature of work of Public Service Commission which is the very essence of conduct of recruitment examinations.
3. That revelation of the information sought for would lay bare all the sensitive information before the public domain after which the APPSC would not be able to conduct any recruitment examination in a free and fair manner, which may also disrupt the very smooth functioning of the Commission.
4. And that, providing of this information would also allow public to access over the overall process of recruitment examinations. Consequently, the very meaning of competitive examination for selection of the best candidate would wither away.

Therefore, considering the above points, the Commission decided not to provide the information to the appellant as sought for. The Commission further decided not to issue any RTI related documents such as Answer script, Mark statement, award sheet of a candidates (s) etc. to any third party except to the concerned candidate (unquote)

The Arunachal Pradesh Public Service Commission has framed the APPSE Rules and Procedure and Conduct of Examination guidelines 2012. The Rules 45-Access to Mark sheet of said rule is quoted as below-

45. Access to Mark Sheet-

i. Mark sheets of all candidates will be available up to 6 months from the date of result notification on payment of Rs.25/- in the form of IPO. Subsequently candidates can obtain record of their marks in the written examination and viva-voce through RTI on payment of requisite fee.

ii. However, in no case will any documents/s pertaining to recruitment examination be made available to any candidate/petitioner before the completion of the examination process from the time of written

examination until the completion of the entire process to the final stage and notification of results.

iii. No photography/videography of office/confidential documents will be permitted. Records and documents/evaluated answer scripts will only be available to a candidate applying in person for his/her answer scripts and this will be photocopied authenticated by the Commission.

Another order on which the decision of the FAA had relied is Notification NO.PSC-07/ 2007, dated 29/09/2008, classifying the category of secret documents which cannot be disclosed and which can be disclosed. Following is the quote of said notification-

Quote-

In exercise of the powers as vested upon the Commission, the Arunachal Pradesh Public Service Commission, Itanagar in order to bring about transparency in its working system and having regards to the provision of the RTI Act, 2005, the following rules concerning the documents of recruitment examinations are framed which shall come into force with immediate effect.

1. CATEGORY 'A' TOP SECRET: The document/items failing in this category shall not be issued/allowed to inspect/video graphed/Xeroxed even if anyone applies on the strength of RTI Act.

(a) Name (s) of the question paper setters.
(b) Name (s) of the answer script/answer booklet evaluators.
(c) Name (s) of moderators of question paper/answer scripts.
(d) Marks awarded by any individual member in any interview (viva-voce) Test.
(e) Name of the Firm, if ever outsourced.

2. CATEGORY 'B' SECRET: The following documents under this category shall be made available to the applicant subject to the completion of the recruitment examination and on payment of required fees as rates fixed by the Govt. the recruitment examination shall be deemed to have completed on publication of the result and recommendation of the names of the selected candidates to the Govt. for appointment.

(a) The marks secured by any individual candidate in the Written examination
(b) The total aggregate marks (after adding marks awarded by all embers)
(c) Cut off marks as would be decided by the Commission in absence of a clear cut Govt. instruction/Recruitment Rules etc.

(d) The original answer script being office documents shall NOT be issue except for inspection/Xeroxing and video graphing at the expense of the applicant (s)

3. CATEGORY 'C' CONFIDENTIAL: The documents failing under this category shall be issued/allowed to Xerox/Vidoegraphed:

(a) Select list with marks secured.
(b) Recommendation letter.
(c) Correspondence with the Govt. such as requisition letter/latest R/R etc.
(d) Cut of mark, if any
(e) No. of applicants.
(f) No. of candidates called for viva-voce test.
(g) All other documents not specifically mentioned in the Category 'A' and 'B'
(h) Videography of any item other than the SECRET items classified under category 'A' and 'B' TOP SECRET and SECRET and SECRET shall be allowed at the expense of the applicant in the Commission's office complex.
(i) All other documents which are not mentioned herein will be issued to the applicants as per procedure laid down and on payment of fees.

Another reason for denial to furnish the copy of Answer script of other candidates, as mentioned in the letter of FAA is on the basis of the decision of CIC Case NO.ICPB/A-2/CIC/2006.

Points to be decided-

1) Whether revelation of information that is the Answer scripts of the other candidates will render the system of conduct of the Competitive examination unworkable in practice?
2) Whether there is Fiduciary relationship in between the Arunachal Pradesh Public Service Commission and Candidates appearing for Competitive Examination for recruitment to Public office, and hence exempted from disclosure under Section 8 (1) (E) of the RTI Act?
3) Whether evaluated answer Papers of the candidates of the competitive Examination are purely a personal information and disclosure of which has no relation to any

Public interest or activity and exempted from disclosures u/s 8 (1) (j) of the RTI Act?

Decisions-

The very object of the Right to Information Act, 2005 is to promote transparency and accountability of every public authority and the citizens are provided right to seek information that are not exempted under various clauses of section 8. On the pretext of secrecy and confidentiality, no public authority can hide the information sought by the citizens, the overriding effect of the RTI Act if provided in section 22 of the RTI Act, which lays down-

Section 22-Act to have overriding effect- The provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

The Arunachal Pradesh Public Service Commission to deny certified copies of Answer scripts on the pretext of confidentiality after all process of examination is completed, and when there is no further scope to vitiate the process of free and fair conduct of the examination is not tenable in the eye of law. The conduct of the Competitive competition for selection to fill up top official post needs valuation of answer scripts and awarding of marks during conduct of viva-voce with utmost care and impartiality to avoid doubts on the minds of the public and maintain transparency. The Arunachal Pradesh Public Service Commission have already formulated the APPSC Regulation and guidelines for conduct of examinations and after coming into effect of the RTI Act, 2005, have notified rules categorising Top Secret, Secret and confidential, detailing guidelines information on which are to be issued and which are not to be issued, under RTI Act. The information sought by the appellant Shri Lissing Perme and Shri Bharat Saring falls within the category 'B' and according to said rule such recruitment examination. Clause (d) of Serial 2 of said notification clearly indicates that the original answer script being office document shall

NOT be issued except for inspection/Xeroxing and video graphing at the expenses of the applicant (s).

> So by denying the appellants not making available the certified copies of Answer scripts of other candidates and not allowing to inspect and photograph the original answer script, the P.I.O. have contradicted and violated the policies framed by the APPSC itself, and therefore no bearing to render the system of conduct of recruitment examination unworkable in practice.

The second objection raised by the FFA and PIO of the APPSC is that there existed a Fiduciary relationship in between the APPSC and candidates appearing for the recruitment examination and hence exempted the disclosure of information under section 8 (1) (e) of RTI Act, 2005.

Another reason for denial to furnish the copy of Answer script of other candidates. As mentioned in the letter of FFA is on the basis of the decision of CICI case NO.ICPB/A-2/CIC/2006.

The Section 8 (1) (e) of RTI act reads as follow-

8. Exemption from discloser of Information:-

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen-

(e) Information available to a person I his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

The section 2 of the RTI Act, 2005 is silent about what 'Fiduciary Relationship' means and to understand the meaning of Fiduciary Relationship we have to go to plethora of other sources including the definitions arrived by various judicial courts, meaning found in dictionary and other sources.

As per Dictionary of law of Reader's Digest Fiduciary relationship means 'Relationship involving a special element of trust in which a person has powers and rights, which he must exercise in good faith and special case for the benefit of another, e.g. trustee and beneficiary, solicitor and client.

The Fiduciary as per tradition is person who occupies a position of trust in relation to someone else, therefore requiring him to act for the laters benefit within the scope of that relationship existing in between Advocate and client, Doctor and patient, a Landlord and Reyot, who perform specific duties or role. The different court had broadened the definition of Fiduciary, that included the term Fiduciary used in Section 8 (1) (e). in this regard the best example can be quoted from the High Delhi Court, taken from Bristol and west Building Society Vs Mother (1998) Ch 1, wherein it was held that, 'A Fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.'

The argument offered in favour of the disclosure of Answer script is that there does not exist any Fiduciary relationship in between the Public Service Commission and candidate in the competitive examination as the candidates do not handed over the answer scripts in trust, rather it a compulsive requirement of the recruitment process, and that it becomes property of the Arunachal Pradesh Public Service Commission. The relationship in between a candidate of a competitive recruitment examination and the authority who conducts such examination cannot be equaled with that of the relationship in between a solicitor and client or a Doctor with Patient. Moreover disclosure of such information cannot be barred as it is the duty of the public Service Commission to maintaining fairness and impartiality in the selection process of the candidates who would be responsible Public authority to discharge important public duty. Dealing with the issue of "Fiduciary relationship in **Civil Appeal** No.6454 of 2011 (PIL filed by the Human Right Law Network (HRLN) in the Hon'ble Supreme Courts explained in detail and held that the examining conducting bodies cannot refrain the evaluated answer-sheets under any fiduciary capacity. Hence, the Hon'ble Supreme Court held that the exemption under section 8 (1) (e) will not apply in the case of disclosure of answer sheets.

In view of the ruling of the Apex Court in India, all the decisions of other courts and Central Commission and other State Commission including Arunachal Pradesh State Commissions earlier decision stands over-ruled and is no longer applicable.

In respect of the third context that the evaluated answer paper of the candidates of the Competitive examination are purely a Personal information and hence exempted from disclosure u/s 8 (i) (j) of RTI Act as it has no relationship with any Public interest and activity, the counter argument offered by Shri Lessing Perme and Shri Bharat Saring is that

the evaluated answer scripts Award sheet are not created or supplied voluntarily by candidates, these are the outcome of the Public activities of examining bodies, examiner, invigilator and candidates and so it is a public document. All the activities undertaken by the examining bodies, examiner etc. are all paid from public money and so evaluated answer scripts Award sheets are public document. Hence asking inspection of the answer script of the successful candidates the appellants are not asking for personal information but public documents as they have right to see whether conduct of the examining body and evaluator were free and fair or whether marks were awarded arbitrarily.

The Division Bench of Hon'ble Delhi High Court in LPP-797/2011, Union Public Service Commission Vs. N.Sugthan, LPA-802/2011, Union Public Service Commission Vs. Naresh Kumar and LPA-803/2011 Union Public Service Commission Vs. Udaya Kumar held that the information which comprised the very basis of the public post can't be personnel information and confidential and there can't be any fiduciary relation between examine and examining body. The relevant Para of said judgment is quoted below.

6. *The information submitted by an applicant seeking a public post, and which information comprises the basis of his selection to the said post, cannot be said to be in private domain or confidential. We are unable to appreciate the plea of any secrecy there around. An applicant for a public post participate in a Competitive process where his eligibility/suitability for a public post is weighted/compared vis-à-vis other applicants. The appointing/recommending authorities as the UPSC, in the matter of such selection, are required and expected to act objectively and to select the best. Such selection process remains subject to judicial review."*

In view of the Hon'ble Delhi High Courts judgment the answer scripts Award sheets sought by both appellant cannot be denied from disclosure by treating same as personal information and confidential.

ORDER

1. The Arunachal Pradesh Public Service Commission shall allow Shri Lissing Perme to inspect the original answer scripts of General studies Paper-I and II of all successful candidates in APPSC (Mains) 2011-12 and after inspection would

issue certified copies of any answer script if he ask same. Since shri lissing Perme is allowed to inspect and photographs the evaluated answer scripts and take certified copies if he feel needed, hence his request for evaluated answer script of all candidates need not be supplied.

2. The Arunachal Pradesh Public Service Commission shall issue certified copies of answer scripts Award sheets of General English Paper-I of S.K.Mize, T.P.Monpa, Mino Tayeng and certified copies of Paper-IV of S.K.Mize, Mino candidates and last three selected candidates free of cost to Shri Bharat Saring.

3. The Arunachal Pradesh Public service Commission shall make available the marks squared by all selected candidates in their General Studies Paper-I & II and cut of mark for qualifying viva-voce, i.e., lowest total marks up to which candidates are selected to Shri Lissing Perme free of cost.

4. The Arunachal Pradesh Public Service Commission shall not destroy or weed out all the records sought by the appellant if any appeal would be filed again till disposal of that appeal by the court of law.

5. Since the PIO and First Appellate Authority, i.e., the Under Secretary and the secretary of the Arunachal Pradesh Public Service Commission have not acted malafidly to deny the information to appellants, but acted as per rules framed by the APPSC, hence, request for payment compensation by appellant shri Lissing Perme is rejected.

With above directions case stands disposed off and consigned to record.
Order issued under my hand and seal on this 27th day of May 2013.

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ASSAM
PUBLIC SERVICE COMMISSION

IN THE GAUHATI HIGH COURT
W.P. (C) NO.392 OF 2013
D.D. 01.04.2013
Hon'ble Mr. Justice Ujjal Bhuyan

Sekh Abdul Hamid & Ors. … Petitioners
Vs.
State of Assam & Ors. … Respondents

Interview

Ratio of candidates to be invited for personality test – Assam Public Service Commission conducted written test for recruitment to 280 vacancies for Assam Civil Services and Allied Services as per A.P.S.C. Combined Competitive Examination Rules, 1989. Thereafter, shortlisted 582 candidates for personality test on basis of performance of candidates in written exam, which roughly works out in the ratio of 1:2. Petitioners, who failed to come within 582 candidates selected for personality test, challenged the said ratio fixed contending that it should be in the ratio of 1:4 as done in the recruitment held during 2006 – In absence of specific provision in 1989 Rules, about ratio of candidates to be called for interview, APSC in its meeting held on 07.03.2013 decided to fix ratio of 1:2 by taking into consideration provisions of Assam Fiscal Responsibility and Budget Management Act, 2005 and practice in vogue in Union Public Service Commission, other State Public Service Commissions with a view to select best candidates by having lesser pool of candidates – Whether such decision of APSC, in the circumstances, in limiting candidates for interview in the ratio of 1:2 can be said to be unreasonable and unjustified? No.

Held:

16. This Court finds no infirmity in the decision of the APSC. In the absence of any statutory requirement, APSC has decided to limit the number of candidates in the interview segment in the ratio of 1:2, which appears reasonable and justified. Having a large pool of candidates may result in losing of the competitive edge in the final round of selection."

Case referred:

1. Ratul Kumar Das & others v. State of Assam and others, WP(C) No.2755/2009

JUDGMENT

By this petition under Article 226 of the Constitution of India, the four petitioners seek a direction to the respondents to call 1120 candidates for the viva-voce test of the Combined Competitive Examination, 2009, being four times the number of advertised vacancies i.e.

280 of Assam Civil Service and other Allied Services to be filled up through the said examination.

2. Assam Public Service Commission (APSC) issued advertisement on 16.02.2009 for a total of 122 posts of Assam Civil Service and other Allied Services to be filled up through the Combined Competitive Examination, 2009. Thereafter, by addendum dated 20.05.2009 and 24.12.2009, additional 75 and 83 posts respectively were included within the purview of the Combined Competitive Examination, 2009. Thus, a total of 280 posts of Assam Civil Service and other Allied Services were advertised to be filled up through the Combined Competitive Examination, 2009.

3. Petitioners applied pursuant to the said advertisement. Preliminary examination was held on 11.12.2011. Petitioners came out successful in the said examination. Thereafter, they were admitted to the written (main) examination held from 27.05.2012 to 24.06.2012. According to the petitioners, they performed well in the said examination.

4. Notification dated 31.12.2012 was issued by Principal Controller of Examination, APSC (Respondent No. 5) declaring the result of the main (written) examination. A total of 582 candidates were called to appear in the viva-voce test to be held from 18.01.2013 to 14.02.2013. But the petitioners were not included in the list of 582 candidates.

5. According to the petitioners, the number of candidates called for the interview would be in the ratio of 1:2 or slightly more whereas in the earlier examinations, APSC had followed the ratio of 1:4. Petitioners have further contended that in an affidavit filed by APSC in WP(C) No. 2755/2009 (Ratul Kumar Das & Ors -vs- State of Assam& Ors), APSC had taken the stand that for the viva-voce test relating to Combined Competitive Examination, 2006 conducted by the APSC for filling up 116 posts of Assam Civil Service and other Allied Services, though it had called 600 candidates, it ought to have interviewed 464 candidates being in the ratio of 1:4. Accordingly, petitioners have contended that four times the number of vacancies should be called for the interview, in which case, there is a reasonable possibility of them being included in the short-listed candidates for the interview.

6. Considering the subject matter of the writ petition, this Court by order dated 07.02.2013 directed the learned Standing counsel, APSC to file affidavit at the motion stage itself. He was also directed to produce before the Court in sealed cover the cut off marks of the different categories of candidates who were called for the interview and the marks obtained by the four petitioners in the written (main) examination.

7. APSC has filed affidavit on 19.02.2013. Stand taken in the said affidavit is that APSC had conducted the process of selection for filling up a total of 280 posts in the Assam Civil Service and other Allied Services through the Combined Competitive Examination, 2009. After result of written (main) examination was declared on 31.12.2012, a total of 582 candidates were called to appear in the interview against 280 posts in the ratio of 1:2 or slightly higher under the provisions of APSC Combined Competitive Examination Rules, 1989 (1989 Rules) framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. For the written (main) examination and the interview, the procedure followed is that candidates who obtain minimum qualifying marks in the written test as may be fixed by the APSC shall be called for the interview. The number of candidates to be called for the interview will be about twice the number of vacancies to be filled up, having regard to the provisions of Assam Scheduled Caste and Scheduled Tribe (Reservation of Vacancies in Services and Posts) Act, 1978. The interview segment carries 200 marks with no qualifying marks. Accordingly, a total of 582 candidates were called for the interview against 280 posts which was slightly higher than the ratio of 1:2 as some candidates had secured equal marks. Interview programme started from 18.01.2013 and was completed on 14.02.2013. APSC has stated that though it had called candidates for interview for recruitment to Assam Civil Service and other Allied Services through the Combined Competitive Examination, 2006 in the ratio of 1:4, the same was not in accordance with the 1989 Rules. It was a mistake on the part of the APSC which the APSC would not like to repeat in the present examination.

8. APSC has filed additional counter affidavit on 12.03.2013. It is stated that a meeting of APSC was held on 07.03.2013 which once again perused the minutes of the APSC meeting held on 29.12.2012 and 31.12.2012. APSC noted that the APSC (Procedure

and Conduct of Business) Rules, 1986, particularly Rule 38 thereof, lays down necessary guidelines as to how many candidates may be considered for being admitted to viva-voce interview. Though the provision of the 1989 Rules were discussed, those were not mentioned in the minutes but through inadvertence reference was made to APSC (Procedure and Conduct of Business) Rules, 2010 (2010 Rules). It is stated that this error occurred as because in conducting the day to day business, reference is frequently made to the 2010 Rules. As per the 1989 Rules, selection of candidates for the main examination from the preliminary examination was taken in the ratio of 1:11-12 against the number of vacancies. Though the Rule is silent about the number of candidates to be selected for the viva-voce interview, a formula / ratio was incorporated in the first advertisement issued on the basis of the aforesaid 1989 Rules where the ratio was 1:2. APSC also perused the Assam Fiscal Responsibility and Budget Management Act, 2005 which provides for making recommendation for appointment in the ratio of 1:1. Though previously the number of candidates called for interview was more than the ratio of 1:2 and the number of candidates recommended for appointment was also more than the ratio of 1:1, but in view of the aforesaid Act now in force, APSC decided to call candidates for viva-voce test in the ratio of 1:2. APSC also perused the pattern followed by Union Public Service Commission (UPSC) and a few Public Service Commissions of other States. It was found that most Public Service Commissions follow the ratio of 1:2. Rule 38 of the 1986 Rules provides that as soon as tabulation is complete and submitted to the APSC, it will decide as to how many candidates are considered fit for being admitted to personality test / interview. Accordingly, in the present case, APSC decided to call candidates in the ratio of 1:2. APSC has stated that going by past experience, it is desirable to limit the interview segment to only the best candidates and not to have a large pool of candidates.

9. Petitioners have filed rejoinder affidavit. They have contended that no such ratio or procedure as contended by the respondents are prescribed in the 1989 Rules. Therefore, decision of APSC not to invite candidates for viva-voce test in the ratio of 1:4 is unjustified and illegal. In the rejoinder affidavit, petitioners have raised a few new grounds. One such ground is that 3 out of the 4 APSC members are not qualified as per Regulation 4 of the APSC Regulations, 1951 as they did not hold office under the Government of India or under

the Government of Assam for at least 10 years. Therefore, on 29.12.2012 and 31.12.2012, when the APSC met and finalized the candidates for the interview, it was not properly constituted as per mandate of Regulation 4 of the APSC Regulations, 1951. It is further contended that the total strength of APSC is 7 members including its Chairman as per Rule 5 of the APSC (Procedure and Conduct of Business) Rules, 1986. Two-third of the total strength i.e. 5 members would form the quorum. As APSC had only 4 members including the Chairman on 29.12.2012 and 31.12.2012, there was no quorum and, consequently, there was no valid meeting of APSC on those two dates.

10. Mr. P.D. Nair, learned counsel for the petitioners submits that recommendation of candidates for the interview in the ratio of 1:2 is neither reasonable nor justified. APSC has made departure from past practice without any reasonable basis, causing prejudice to the petitioners as in the event of a higher ratio, perhaps the petitioners would have been included in the short-listed candidates for the interview. He also submits that there was no valid meeting of APSC on 29.12.2012 and 31.12.2012 and, therefore, the notification issued on 31.12.2012 notifying 582 candidates for the interview would be of no legal consequence.

11. Mr. C. Baruah, learned Standing counsel, APSC submits that APSC has acted in accordance with law and in a fair manner. The process of selection has been completed and now only the results are to be declared.

12. Mr. H.K. Mahanta, learned counsel appearing for the Personnel Department, Government of Assam submits that there is no merit in the writ petition. APSC has conducted itself as per Rules.

13. Submissions made have been considered.

14. Short point for consideration is whether APSC committed any illegality in calling candidates in the ratio of 1:2 for the interview.

15. The explanation given by the APSC for calling candidates for the interview in the ratio of 1:2 does not appear to be unreasonable or arbitrary. The views of the APSC is

reflected in the minutes of the meeting held on 07.03.2013. The relevant portion of the minutes is as under:-

"The Commission recalls the reasons for considerations of fixing the ratio at 1:2. The C.C. Examination is conducted as per provision of the Assam Public Services Combined Competitive Examination Rules 1989. The Rule provides for selection of candidates for the Main examination from the Preliminary examination at the ratio of 1:11-12 against the number of vacancies which the Commission adhered to. But the Rule is silent about the number of candidates to be selected for the viva voce interview. However, a formula/ratio was incorporated in the first advertisement issued on the basis of the aforesaid Rule which tantamounts to have become a part and parcel of the Rules framed as aforesaid. It is almost identical to the ratio of 1:2.

The Commission has also gone through the provisions of the AFRBM Act, 2005 which envisages for making recommendation for appointment at the ratio of 1:1. Previously, the number of candidates called for viva voce interview from the written part of the C.C. (Main) Examination was more than the ratio of 1:2. Also the number of candidates recommended for appointment was more than the ratio of 1:1. But in view of the AFRBM Act, 2005 now in force, it was considered justified to call candidates for viva voce interview in the ratio of 1:2.

The Commission also perused the pattern of UPSC and few more State PSCs in the matter of selection of candidates for viva-voce interview. UPSC selects at the rate of 1:2, Andhra Pradesh PSC selects at the rate of 1:2. In case of Arunachal Pradesh PSC, the rule provides for selection at the rate between 1:2 and 1:3. In case of Tamil Nadu Judicial Service, the ratio is 1:2.

The Commission sincerely desired that only the best of the best candidates figure in the viva-voce interview and selected for the premier services of the State Government. If the no of candidates is very high, there will be a huge gap between the marks obtained by the topper and the last position holder. It may so happen that hypothetically even if the entire 200 marks meant for viva-voce interview is awarded to such candidates, the candidates will not even come up to the level of only the written marks of the candidates in the front line. In WP(C) No. 2755/2009 before the Hon'ble Gauhati High Court, one of the contentions of a respondent was that though the UPSC follows the ratio of 1:2 while calling candidates for interview, the APSC had called four times the number of posts. The Hon'ble Court held that calling of such excess candidates would be an empty formality even if they are given full credit in interview. The Commission considered that enhancing the No. of candidates, would not only be futile exercise but also cause mental commotion to hundreds of young candidates who would have appeared the viva-voce interview in expectation but without any prospect for selection.

In view of above, the Commission justifies its decision of calling candidates for the viva voce interview from the written part of C.C. (Main) Examination in the ratio of 1:2."

16. This Court finds no infirmity in the decision of the APSC. In the absence of any statutory requirement, APSC has decided to limit the number of candidates in the interview segment in the ratio of 1:2, which appears reasonable and justified. Having a large pool of candidates may result in losing of the competitive edge in the final round of selection.

17. Regarding the other grounds raised by the petitioners in the rejoinder affidavit, the Court would not like to enter into an examination of the same. Firstly, those grounds have not been pleaded in the writ petition but raised in the rejoinder affidavit for the first time. Secondly, petitioners had appeared in the preliminary examination as well as in the written examination knowing fully well about the composition of the APSC. They took a calculated chance. Had they qualified for the interview, this issue perhaps might not have been raised, that too, in the rejoinder affidavit without amending the main writ petition. Petitioners could not qualify in the written test as can be seen from the marks obtained by them as furnished by the learned Standing counsel, APSC in sealed cover. The Court is therefore of the view that aforesaid grounds need not be gone into at the instance of the petitioners, who are unsuccessful candidates.

18. For the aforesaid reasons, this Court finds no merit in the writ petition, which is accordingly dismissed.

19. The sealed cover, which was opened, is re-sealed and returned back to Mr. C. Baruah, learned Standing counsel, APSC.

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BIHAR
PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9569 of 2013 & Connected matters
D.D. 03.01.2014
Hon'ble the Chief Justice &
Hon'ble Mr. Justice Ashwani Kumar Singh

Prem Kumar Bhakta & Ors. … Petitioners
Vs.
State of Bihar & Ors. … Respondents

Examination

Evaluation of answer scripts of combined competitive examination conducted for recruitment to posts under State Civil Services – Methods of evaluation to be adopted to avoid anomalies arising out of selection of different optional subjects (scoring/non-scoring) for writing examination and evaluation of answer scripts by different evaluators – Whether scaling down or moderation method? Whether Courts may, in exercise of its power of judicial review, weigh desirability of adoption of one or the other method of evaluation adopted by examining authority? No. Held that Courts will not sit in appeal over method adopted by Commission/examining authority to ascertain its efficacy. Public Service Commission being constitutional authority it has to take necessary steps to bring itself abreast of prevalent system to make the system of evaluation transparent, uniform, effective and continuous.

Cases referred:

1. Sanjay Singh and another v. U.P. Public Service Commission, Allahabad and another (2007) 3 SCC 720
2. Prashant Ramesh Chakkarwar, {Petition(s) for Special Leave to Appeal (Civil) Nos.11977-11978/2012 decided on 20th February 2013}
3. Rakesh Kumar v. State of Bihar, C.W.J.C. No.19127/2013, decided on 03.12.2013.

JUDGMENT

(Per: Hon'ble the Chief Justice) :

Under order dated 15th July 2013 made by the learned single Judge this group of writ petitions filed under Article 226 of the Constitution are referred to the Division bench and are notified before us.

The writ petitioners in each writ petition are the aspirants for selection and appointment to various cadres (19 in number) in class II service under the State of Bihar. The petitioners

have challenged the result of the 53rd to 55th Combined (Mains) Competitive Examination, 2011 (hereinafter referred to as "the Competitive Examination, 2011") given by the Bihar Public Service Commission in the months of May-June 2012. The challenge is to the method of evaluation of the answer sheets and the marks given to each examinee.

According to the writ petitioners, the State of Bihar is required to make appointment to the various cadres in the State service by appointment of the persons recommended by the Bihar Public Service Commission (hereinafter referred to as "the Commission"). Although, the recruitment is made for various cadres in the State service, the Commission holds a common selection process known as Combined Competitive Examination for appointment to the cadres where the minimum qualification required for appointment is a graduate degree. The very nature of the examination offers a variety of subjects for examination. Some subjects are common to all while for other subjects the options are offered to the applicants amongst wide variety of optional subjects. Some subjects like Maths are scoring subjects while some subjects like languages are not that scoring. Thus, the examinees who opt for scoring subjects easily steal a march over the other examinees. Further, several lakh persons make attempt at the said examination. Their answer papers are sent to the examiners who do not have the same standard of examining the answer-sheets. Thus, anomaly in the results arises. Some examiners may be liberal in giving marks whereas other may not be that liberal. The result is thus skewed up on account of the aforesaid anomalies. With a view to removing such anomalies arising from fortuitous circumstances of selecting a particular optional subject and of answer sheets being examined by a particular examiner, the examining bodies like universities and Public Service Commissions have evolved a system of scaling down or moderation to bring the parity in the results. Both these methods are accepted and adopted by the universities worldwide. Having regard to the nature of examination and the variety of the optional subjects, the Commission also is required to moderate or scale down the results. In the present case, the Commission has failed to take necessary exercise to bring about a fair result. The petitioners, therefore, have challenged the result of the Competitive Examination 2011 and have prayed for a direction to prepare the results afresh after scaling down the results.

The petitions are contested by the Commission. According to the Commission, the Commission has indeed undertaken necessary exercise to bring uniformity in the results

call its scaling down or moderation. In view of the exercise undertaken by the Commission, no further action is required at the end of the Commission.

Learned counsels Mr. Y.V. Giri and Mr. Vinod Kumar Kanth and the learned advocates Mr. Kumar Kaushik and Mr. Vivek Prasad have appeared for the writ petitioners. Learned counsels have explained the meaning of the process of scaling down and moderation, how do they function and why they are necessary. Mr. Y.V. Giri and Mr. Vinod Kumar Kanth have vehemently submitted that the action or steps taken by the Commission are not adequate. They have relied upon the judgment of Hon'ble Supreme Court in the matter of Sanjay Singh & Anr. Vs. U.P. Public Service Commission, Allahabad & Anr. [(2007) 3 SCC 720] to buttress their submission that in the case before us the uniformity in the results could have been brought about only by scaling down the results. Mr. Kumar Kaushik has submitted that whatever efforts are made by the Commission are based on random checking and are not adequate. He has submitted that each answer sheet is required to be moderated.

Learned counsels have relied upon the judgment of this Court in the matter of 53rd-55th Combined Competitive Examination Candidates Association (C.W.J.C. No. 3892 of 2011 decided on 26th August 2011) in the same subject. In the submission of the learned counsels under the above referred judgment, this Court had issued a categorical direction to the Commission to make necessary amendment to the rules to make moderation/scaling down a matter of course. This court had also directed the Commission to act in accordance with the principles laid down by the Hon'ble Supreme Court in the matter of Sanjay Singh (Supra). Nevertheless, the Commission has in utter disregard of the aforesaid directions, declared result of the aforesaid mains examination nor the Commission considered the judgment of the Supreme Court in the matter of Sanjay Singh (Supra). The reliance is also placed on the judgment of Hon'ble Supreme Court in the matter of Prashant Ramesh Chakkarwar [Petition(s) for Special Leave to Appeal (Civil) Nos. 11977-11978/2012 decided on 20th February 2013].

It cannot be gainsaid that this is the second attempt of the writ petitioners to challenge the result of the Competitive Examination, 2011. Earlier, the petitioners approached this Court in C.W.J.C. No. 3892 of 2011 in the form of an association through one Pankaj Tiwari, the petitioner no.1 in C.W.J.C. No. 8331 of 2013. This Court (Coram: Hon'ble Mr. Justice S.K. Katriar & Hon'ble Mr. Justice Ahsanuddin Amanullah) did accept similar

contentions raised in the said writ petition and did record a finding that with a view to bringing uniformity in the results depending upon the nature of the examination, scaling down or moderation was a necessity. In the matter of Prashant Ramesh Chakkarwar (supra) also, the Hon'ble Court did record the necessity of pruning the results of competitive examinations. The Hon'ble Court recorded that the examining authorities prefer moderation where several examiners manually evaluate answer sheets of descriptive/ conventional type question papers and the scaling is resorted to only where a common merit-list has to be prepared. Court observed, "Like UPSC, most examining authorities appear to take the view that moderation is the appropriate method to bring about uniformity in valuation where several examiners manually evaluate answer-scripts of descriptive/ conventional type question papers in regard to same subject; and that scaling should be resorted to only where a common merit list has to be prepared in regard to candidates who have taken examination in different subjects, in pursuance of an option given to them."

In the matter of Sanjay Singh & Anr. (supra), a similar issue was raised in respect of the result of the competitive examination conducted by the Uttar Pradesh Public Service Commission for recruitment for the post of Civil Judge (Junior Division). The Hon'ble Court considered the process of moderation or scaling down of the evaluation and the procedure evolved by the U.P. Public Service Commission. The Court consulted the authoritative study "Research on Examinations in India" by A. Edwin Harper Jr. and V. Vidya Sagar Misra. Court held, "The moderation procedure referred to in the earlier para will solve only the problem of examiner variability, where the examiners are many, but valuation of answer scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects." In respect of the examination in question, the Court held, "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." In view of the above finding, the Hon'ble Court issued specific direction to moderate the results in the manner indicated in the direction.

Learned Principal Additional Advocate General, Mr. Lalit Kishor has appeared for the Bihar Public Service Commission. He has contested the writ petitions. Mr. Lalit Kishor has relied upon the counter affidavit and the supplementary affidavit made by the Commission. He has submitted that pursuant to the directions issued by this Court in C.W.J.C. No. 3892 of 2011, the Commission, after examining the process adopted by the Union Public Service Commission and some State Public Service Commissions, did evolve a system for moderation of the results. The said exercise has benefited some 35 of the writ petitioners in so far as their marks were enhanced, whereas in some 12 cases, the moderation brought down the marks earlier allotted.

We have given our anxious consideration to the matter at issue and the method adopted by the Commission as indicated in the counter affidavit. Pursuant to the public advertisement, more than two lakhs applications were received by the Commission. All applicants were allowed to take the Preliminary Competitive Examination. At the Preliminary Competitive Examination nearly 1,34,000 applicants appeared and took the examination. Out of 1,34,000 applicants who took the Preliminary examination, some 15,000 and odd applicants qualified for the Competitive Examination. More than 5,000 applicants were allowed to take the Competitive Examination pursuant to the direction issued by this Court in C.W.J.C. No. 13022 of 2011. Thus around 20,500 applicants were permitted to appear at the Competitive Examination. The successful candidates were called for interview. The interviews are conducted and the result is notified on 10th April 2013.

Mr. Lalit Kishor has submitted that the process of recruitment had started in 2011 and has been completed in 2013. Although, the petitioners are aware that the result has been notified, the selected candidates have not been impleaded in the present group of writ petitions. The persons selected are the necessary parties. In absence of the selected candidates, the petition should fail for non-joinder of necessary parties.

The State Public Service Commissions are the constitutional authorities vested with the power to make recruitment for Civil Services under the concerned State. It is the duty of the Public Service Commission to select the best brains for Civil Services of the State. The Public Service Commissions are thus authorities specialised in making recruitment for Civil Services. For that purpose they are armed with the required expertise and the man power. With the rising magnitude of their responsibilities, the Public Service Commissions

have to keep abreast of the recent studies and developments. Combined with their experience the Public Service Commissions ought to be able to resolve the problems they face and to answer their calling.

We are alive to the anxiety suffered by the writ petitioners. We also agree that having regard to the large number of examinees; the large number of examiners; variety of optional subjects, it is next to impossible to maintain a uniform standard. If in the circumstances, the examining authorities have developed the schemes of scaling down the results or to moderate the evaluation, that be so. The Court, exercising power of judicial review, will not weigh the desirability of one or the other method adopted by the examining authority. We do understand, with this magnitude of work, it is next to impossible to maintain an absolute parity but the efforts should be made to remove the disparity as far as possible. In the present case, in view of the directions issued in C.W.J.C. No. 3892 of 2011, the Commission has undertaken the exercise of moderating the evaluation as reflected in its counter affidavits and the instructions issued pursuant to the decision taken by the Commission on 15th January 2013. We, as a court of law, will not sit in appeal over the method adopted by the Commission to ascertain its accuracy. Suffice that the Commission has taken steps to bring itself abreast of the prevalent systems and we do trust that the Commission will come out with appropriate rules to make the system uniform, transparent, effective and continuous.

We do agree with Mr. Lalit Kishor that the results having been declared and the selections having been notified, the persons selected are necessary parties to the present group of writ petitions. In absence of the selected candidates, the writ petitions should fail also for non-joinder of necessary parties.

For the aforesaid reasons, all these Petitions are dismissed.

Interlocutory Applications are disposed of.

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CHHATISGARH
PUBLIC SERVICE COMMISSION

HIGH COURT OF CHATTISGARH AT BILASPUR
Writ Petition (S) No. 4856 of 2009
D.D 25.03.2010
Hon'ble Mr. Justice Dhirendra Mishra &
Hon'ble Mr. Justice R.N.Chandrakar

Hemanad Mani Tripathi & Ors. ... Petitioners
Vs.
State of Chhattisgarh and Ors. ... Respondents

A. Age limit

Modification/alteration in eligibility criteria during selection process – Whether modification/alteration made in respect of maximum age limit by issue of fresh notification dated 20.09.2008 cancelling earlier notification issued on 03.09.2008 can be said to be change of eligibility criteria during process of selection? No. – Petitioners, non-domiciles of Chhattisgarh, applied for posts under Chhattisgarh State Civil Services in response to notification dated 03.09.2008, under which maximum age limit prescribed was 35 years – Government by circular dated 16.09.2008 reduced maximum age limit prescribed to 30 years. On 20.09.2008 Chhattisgarh Public Service Commission, by canceling its earlier notification dated 03.09.2008, issued a fresh notification fixing maximum age limit of 30 years to non-domiciles of Chhattisgarh – Consequently, petitioners who had already crossed age of 30 years were disqualified from appearing for examination and challenged their disqualification on ground of modification of eligibility criteria in the midst of selection process.

Held:

Recruitment process having been commenced afresh by notification dated 20.09.2008, by canceling earlier notification dated 03.09.2008 held that the eligibility criteria was not modified amidst recruitment process.

B. Age limit

Prescription of different eligibility criteria on ground of domicile – Whether prescription of upper age limit of 35 years to candidates belonging to State of Chhatisgarh and 30 years to rest of the candidates in so far as recruitment to post under State Civil Service discriminative attracting Article 16(2) of the Constitution? No. – By referring to various decisions of Apex Court reported in (2006) SCC 671, AIR (38) 1951 Madras 120 and prescription of different age limit having not solely based on ground of domicile and relaxation in upper age limit has been given under special circumstances held that it is not discriminative and violative of Article 16(2) of the Constitution.

Cases referred:

1. Kendriya Vidyalaya Sangathan and others v. Sajal Kumar Roy and others
2. Union of India and others v. Sanjay Pant and others
3. Srimathi Champakam Dorairajan and another v. State of Madras
4. Welfare Association, A.R.P., Maharashtra and another v. Ranjit P. Gohil and others
5. Thimmappa and others v. Chairman, Central Board of Directors, SBI and another
6. Kailash Chand Sharma v. State of Rajasthan and others
7. Jitendra Kumar Singh and another v. State of U.P. and others

JUDGEMENT

Dhirendra Mishra.J

1. The petitioners have prayed for quashing of Circular dated: 16th September, 2008 (Annexure P/1) issued by the General Administration Department of the State of Chhattisgarh prescribing maximum age limit for direct recruitment on services/posts of the State Govt. as also for quashing of advertisement dated 20th September, 2008 (Annexure P/2). Whereby applications have been invited from eligible candidates for State Services Examination. 2008 by the Chhattisgarh Public Service Commission (in short 'PSC).

2. Briefly stated facts of the case are that the State Government vide its Circular dated 2nd June, 2008 gave relaxation of two years (30+2 years) in upper age limit to all the candidates participating in PSC examination. The relaxation was to be valid till 31st May, 2009. PSC issued an advertisement on 3rd September, 2008 and invited applications for various civil posts in the State. The State Govt. vide its Circular dated 16th September, 2008 (Annexure P/1) modified its earlier circulars and prescribed upper age limit of 30 years and allowed relaxation of five years to local residents of the State. PSC issued fresh advertisement for recruitment superseding its earlier advertisement dated 3rd September, 2008 and the age criteria in the subsequent advertisement was fixed as per Circular dated 16th September, 2008 i.e., maximum age limit of 30 years with relaxation of five years for the local residents of the State of Chhattisgarh. The petitioners submitted their applications in response to the advertisement and successfully participated in the preliminary examination held on 2nd February, 2009. They were informed about the result by the Examination Controller vide its Memo dated 18th May, 2009. The petitioners were called

upon to deposit requisite fee along with application for appearing in PSC Main Examination. The petitioners submitted their applications with requisite fee. However, PSC declared the petitioners ineligible for Main Examination, 2008 on the ground of overage vide Annexure P/9.

3. Shri Awadh Tripathi, learned counsel for the petitioners argued that the petitioners submitted their applications in response to the advertisement dated 3rd September 2008 and successfully participated in the preliminary examination. They were not aware about the subsequent advertisement issued on 20th September, 2008. They submitted their applications for Main Examination as directed by PSC vide their communication dated 18th May, 2009. However, after commencing selection process vide advertisement dated 3rd September, 2008, the eligibility criteria with respect to age was changed and the maximum age was reduced from 37 years to 30 years vide Circular dated 16th September, 2008 (Annexure P/1) which discriminates between the candidates, who are permanent residents of State of Chhattisgarh and the candidates out of the State of Chhattisgarh and the same is illegal unconstitutional and in violation of sub-clause (2) of Article 16 as also Articles 14 & 15 of the Constitution of India. The local residents of Chhattisgarh are entitled for relaxation of seven years in the upper age limit whereas the petitioners who are otherwise eligible as per advertisement dated 3rd September, 2008 were declared ineligible on the basis of Circular dated 16th September, 2008. The Circular of Annexure P/1 according relaxation to the local residents has not been issued with the prior concurrence of the Parliament and as such ultra vires Article 16 (2) of the Constitution.

4. Reliance is placed on the judgments in the matters of ***Kendriya Vidyalaya Sangathan and others Vs. Sajal Kumar Roy and others and Union of India and Others Vs. Sanjay Pant and Others.***

5. Shri U.N.S Deo learned Govt. Advocate appearing for the State/ respondents No.1 & 3 would argue that the circular of Annexure P/1 or the advertisement (Annexure P/2) issued on the basis of Circular of Annexure P/1 does not bar any citizen of India from participating in the recruitment process, provided the fulfills the eligibility criteria as prescribed in the advertisement, which has been issued in accordance with the relevant

rules and circulars of the State Govt. Article 16 (2) of the Constitution prohibits discrimination only on the ground of religion, race, caste, sex descent, place of birth and residence in respect of any employment or office under the State. In the instant case, the petitioners being the residents of other States and not conforming to the eligibility criteria with respect to maximum age under the Rules have been held to be ineligible not only on the ground that they belong to other States but also on the ground that they are overage and the same cannot be termed to be in violation of Article 16 (2) of the Constitution.

It was further argued that the action of the State in extending relaxation in upper age limit to the bonafide residents of the State of Chhattisgarh in the matters of employment cannot be termed to be arbitrary or discriminatory as the candidates belonging to State of Chhattisgarh are class apart from the candidates belonging to other States. The State of Chhattisgarh, keeping in view the special circumstances that PSC examination for civil services could not be held annually in the past in the State of Chhattisgarh as after 2000, examinations were held only in 2003, 2005 and 2008 with a purpose to address the difficulties faced by the unemployed youths of the State, provided age relaxation to the candidates who are bonafide residents of Chhattisgarh, which is an affirmative action of the State.

6. Reliance is place on the judgments in the matter of ***Srimathi champakam Dorairajan and another Vs. State of Madras Welfare Association, A.R.P., Maharashra and another Vs. Ranjit P.Gohil and others and K.Thimmappa and others Vs. Chairman, Central Bd., of Dirs, SBI and another.***

7. Advancing similar arguments Shri Sanjay.K.Agarwal with Shri Abhishek Sinha learned counsel appearing for PSC & Shri Mateen Siddiqui, learned counsel for respondent No.5 would argue that recruitment for State civil Service Posts is made by State Services Examination, which is held annually by PSC. The State of Chhattisgarh published the state Services Examination Rules (in short "Examination Rules") dated 22nd September, 2008 Rule 5 provides for eligibility conditions. Rule 5 (c) prescribes that a candidate must have attained the age of 21 years and must not have attained the age of 30 years on 1st January next following the date of advertisement. The relaxation in age is provided under Rule

5 (c) (b), according to which relaxation of five year in upper age limit is allowed to a candidate domiciled in the State of Chhattisgarh Rule 5 (c) (b) clearly provides that the age limit shall be applicable as per Circular dated 16th September, 2008 issued by the Govt. of Chhattisgarh. The State Govt. vide its Circular dated 16th September, 2008 fixed the upper age limit at 30 years with relaxation of five years to the local residents of Chhattisgarh PSC superseding its earlier advertisement dated 3rd September, 2008 issued fresh advertisement on 20th September, 2008 fixing age criteria in accordance with Circular of the State Govt. dated 16th September, 2008. Thus, the petitioners in response to the above advertisement issued by PSC having participated in the recruitment process cannot be permitted to challenge the same including age criteria on the ground of discrimination.

8. Repelling the argument that the candidates belonging to other States have been discriminated as against the candidates domiciled in the State of Chhattisgarh, it was argued that through advertisement dated 20th September, 2008, PSC invited applications from all eligible candidates who fulfilled the eligibility criteria as prescribed in the advertisement, no candidate has been declared ineligible on the ground of place of residence. Relaxation in age to the permanent residents of the State of Chhattisgarh is in the public interest and not violative of Article 16 (2) of the Constitution and there is no discrimination by granting relaxation of age to the local residents of Chhattisgarh. The petitioners having participated in the recruitment process on the basis of advertisement dated 20th September, 2008, which clearly prescribes maximum age limit for the candidates of State of Chhattisgarh and other candidates, without any demur or protest, cannot now be permitted to challenge the aforesaid condition in the advertisement on any ground whatsoever, Referring to additional affidavit filed on behalf of the PSC dated 20th January, 2001, it was argued that out of 7609 candidates, who qualified for Main Examination, 1494 candidates are residents of the States other than Chhattisgarh.

9. Reliance is placed on the judgments in the matters of ***Kailash Chand Sharma Vs. State of Rajasthan & Others and Jitendra Kumar Singh and another Vs. State of U.P and others***

10. We have heard learned counsel for the parties and perused the material available on record.

11. On the basis of averments of the respective parties and arguments advanced the following questions emerge for decision of this writ petition.

> "1. Whether the respondent/PSC after commencing recruitment process vide advertisement dated 3rd September, 2008 was justified in altering the eligibility criteria and lowering the upper age limit from 35 years to 30 years for the candidates belonging to the States other than the State of Chhattisgarh by issuing fresh advertisement dated 20th September, 2008 (Annexure P/2) on the basis of Circular dated 16th September, 2008 (Annexure P/1) issued by the State?"
>
> 2. Whether prescribing different upper age limits i.e., 35 years for the candidates belonging to the State of Chhattisgarh and 30 years for the rest, is an act of discrimination in the matters of employment as contemplated under Article 16 (2) of the Constitution?
>
> 3. Whether providing different upper age limits for the candidates belonging to the State of Chhattisgarh and other States in the matters of employment is arbitrary and discriminatory and in violation of Articles 14 & 15 of the Constitution?
>
> I. Whether the respondent/PSC after commencing recruitment ..... issued by the State?

12. So far as the first issue is concerned, PSC vide its advertisement dated 3rd September, 2008 issued on the basis of earlier circulars and Examination Rules framed by the State, invited applications for PSC Examination to be held under the Examination Rules for civil services in the State of Chhattisgarh, in which any candidate whose age was between 21 to 37 years could apply for the posts, other than the post of Dy. Superintendent of Police. Category of candidates, who were entitled for relaxation in age was to be provided subject to maximum age limit of 45 years. The State Govt. vide its Circular dated 16th September, 2008 (Annexure P/1) superseding all its earlier circulars regarding maximum age limit for direct recruitment, prescribed maximum age limit for the candidates of Chhattisgarh as 35 years and for others 30 others. In pursuance of the aforesaid circular, PSC canceling the earlier advertisement dated 3rd September, 2008 (Annexure P/3), issued fresh advertisement dated 20th September, 2008 and prescribed maximum age limit of 35 years for the candidates who are bonafide residents of

Chhattisgarh and 30 years for the candidates of other States. The last date for receiving the applications was fixed as 3rd November, 2008. Thus, recruitment process was commenced afresh vide advertisement dated 20th September, 2008 and therefore, contention of the petitioners that the eligibility criteria was changed in the midst of selection process to the detriment of the candidates is without any substance.

> II) Whether prescribing different age. ……under Article 16 (2) of the Constitution?

13. As to the second question, indisputably, direct recruitment to various civil posts of the State is made by combined competitive examination – State Services Examination, which is conducted under the Examination Rules. Rule 5 of the Examination Rules deals with eligibility conditions. Rule 5 (c) prescribes minimum and maximum age limit of the candidates, who may be eligible to participate in the recruitment process. It confers power upon the State Government to vary the lower and upper age limit for any of the services included in the Examination Rules looking to the exigencies of services.

The State Government vide its Circular dated 16th September, 2008 superseding its earlier circulars regarding maximum age limit prescribed maximum age limit of 30 years for all the candidates other than the State of Chhattisgarh and 35 years for the candidates, who are local residents of State of Chhattisgarh. The Examination Rules have been accordingly amended and notified on 22nd September, 2008 and it has been specifically clarified that the age limit shall be applicable as per Circular dated 16th September, 2008 of the Govt. of Chhattisgarh, General Administration Department.

14. Article 16 of the Constitution guarantees equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State. Sub-clause (2) of Article 16 reads as under:

> "(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"

15. In *Kendriya Vidyalaya*, pursuant to the advertisement issued by the appellant-Sangathan for recruitment to the post of Lower Division Clerk (LDC), the respondents

applied for appointment to the post of LDC. They were permitted to appear at the examination and typing test even though they were overage, in contravention of the relevant recruitment rules. The age limit prescribed therefore was 18 to 25 years as on the appointed date, which was however, relaxable. The higher authorities of the school were moved for cancellation of the recruitment of LDCs. The Central Administrative Tribunal directed the appellant-Sangathan to relax the age of the candidates. On appeal by the Sangathan against the order of the Tribunal, the High Court held that the Tribunal could not have directed for relaxation of age from appointment of the private respondents until and unless the appointing authority exercises the power of relaxation of age-limit and directed the appointing authority to consider the case of the respondents for relaxation of age-limit, include their names in the select list and thereafter, issue appointment orders to them in accordance with law on the basis of merits of the candidates.

On further appeal by the Santathan, the Supreme Court held that recruitment rules as well as advertisement provides for age limit for 25 years for appointment to the post of LDC. Relaxation could also be granted in favour of those, who fall within the descriptions given in second part of Article 45 of the Education Code for Kendriya Vidyalayas in deserving cases. Since the appellants were bound by the rules, the discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. Since the respondents do not come within the purview of the exception contained in Article 45 of the Education Code, the Tribunal or the High Court could not issue any direction regarding relaxation of age.

16. In the matter of Sanjay Pant, the respondent was granted scholarship for prosecuting his studies by the Andaman Nicobar Administration. He had to execute a personal bond to serve Andaman and Nicobar Administration for a minimum period of three years. The respondent appeared before the interview board for selection to the post of Statistical Assistant. However, he was not selected on the ground that he did not have 10 years continuous education in Andaman and Nicobar Islands and since he was not a local candidate, he was not offered a regular appointment. The Tribunal allowed appeal of the respondent on the ground that requirement of residence in a particular territory is opposed to Article 16 (2) of the Constitution, such restrictions could be imposed only by a law made

by Parliament under Article 16 (3) of the Constitution dismissing the appeal of the Sangathan, the Supreme Court confirmed the order of the Tribunal.

17. In the matter of *Kailash Chand Sharma*, the Hon'ble Supreme Court interpreting the use of word "only" in Article 16 (2) held thus:

> "An analysis of Article 16 indicates two things firstly, discrimination only on the ground of residence (or place of birth) insofar as public employment is concerned, is prohibited, secondly, Parliament is empowered to make the law prescribing residential requirement within a State or Union Territory, as the case may be in relation to a class or classes of employment. That means, in the absence of a parliamentary law, even the prescription of requirement as to residence within the State is a taboo. However, the prohibitory mandate under Article 16 (2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This, in effect, is the import of the expression "only".

18. In the matter of Srimathi Champakam Dorairajan, Government's order in the matter of admission in the Madras University was questioned on the ground that it was inconsistent with Article 15 & 29 (2) of the Constitution as it constitutes discrimination on the consideration of religion, race, caste, language etc. The Full Bench of the Madras High Court, interpreting Articles 15 (1) and 29 (2) of the Constitution, held that the aforesaid Articles would apply only if the persons of a particular religion, race or caste, but would not apply when no person of any religion, race or caste is denied admission as such.

Hon'ble Shri Somasundaram J. in his concurring judgment, interpreting the word "only" occurring in Article 15 (1) and 29 (2) held that any action of the State would be prohibited under the aforesaid provisions only when discrimination or denial is solely on the ground of religion, race caste or language etc. It follows therefore that one of the grounds of discrimination or denial may be on the basis of religion, race, caste, language, but it should not be the sole ground.

19. If we examine the facts of the present case in the light of above principles of law laid down, we find that in the instant case, discrimination in prescribing maximum age limit for recruitment to the State Civil Services is not based solely on the ground of place of

residence. The candidates of other States are also eligible to apply for the posts advertised, provided they conform to the eligibility criteria prescribed under the Examination Rules. The candidates of Chhattisgarh have been given relaxation in upper age limit under the special circumstances. It has been contended by the respondents and not disputed by the petitioners that 1494 candidates of other States have been found to be eligible to participate in the Main Examination after result of the Preliminary Examination and therefore, we are unable to accept the challenge to the Circular or Annexure P/1 and fresh advertisement dated 20th September, 2008 issued on the basis of Circular of Annexure P/1 on the ground that it is violative of Article 16 (2) of the Constitution.

III. Whether providing different upper age ..... violation of Articles 14 & 15 of the Constitution?

20. In the matter of *Jitendra Kumar Sing* a dispute between the petitioners and the respondents revolved around the issue of reservation of posts for Backward Classes, Scheduled Cates, Scheduled Tribes, Women candidates and Sports Persons. Under the relevant rules, provisions for relaxation in fee and upper age limit of five years to OBC etc. candidates were made the Supreme Court considering that all the candidates i.e., candidates belonging to Women and OBC etc. categories as also the General category were required to appear for Preliminary Written and Physical Test and Main Written Examination and interview, held that these were merely eligibility conditions for being permitted to participate in the selection process. Thereafter, the candidates had to appear in the Preliminary Written Test and after being successful to undergo Physical Test. A candidate was also required to secure 50% or more marks. It was only hose candidates who qualified in the preliminary written test and the physical test became eligible to appear in the main written test and only such candidates, who secured 40% or above would be declared successful and only after being successful in interview, final merit list was to be prepared on the basis of marks secured in the main written test and the interview and thus, it is quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in age did not in any manner till the balance in favour of the reserved category candidates, in the preparation of final merit/select list. It is permissible for the State in view of Article

14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes.

Article 14 does not bar rationale classification. It permits reasonable classification for the purpose of legislation and prohibits class legislation. A legislation intended to apply or benefit a 'well defined class" is not open to challenge by reference to Article 14 of the Constitution on the ground that the same does not extend a similar benefit or protection to other persons, as has been held in Welfare Association, A.R.P., Maharashtra.

21. In K.Thimmappa, while considering the prohibition under Article 14 of the Constitution, the Hon'ble Supreme Court held that Article 14 prohibits class legislation and not reasonable classification for the purpose of legislation. If the rule Making Authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well-defined class, then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled.

(a) That the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from other left out of the group and

(b) That the differentia must have a rational relation to the object sought to be achieved by the statute in question.

22. If we examine the facts of the present case in the light or law laid down by the Supreme Court in the aforesaid judgments, we find that relaxation of five years in the upper age limit was extended to the local residents of the State of Chhattisgarh, vide Circular of Annexure P/1, in the peculiar circumstances that PSC examination could not be convened annually in the last nine years. Relaxation of age only enabled certain candidates belonging to the State of Chhattisgarh to fall within the zone of consideration. The concession in age does not in any manner, favour the candidates of Chhattisgarh in preparation of final merit list as they are also required to participate in the preliminary examination and only those candidates, who are successful in the preliminary examination, participate in the main examination together with the successful candidates of other States. They are also to face

interview after being successful in the main examination. In these circumstances, we are of the opinion that it is permissible for the State to make provision in the relevant rules keeping in view the interest of the candidates belonging to the State and the same cannot be termed arbitrary, discriminatory or in violation of Articles 14 & 15 of the Constitution of India.

23. In the result, the instant petition being without any substance deserves to be dismissed and is hereby dismissed.

No order as to costs.

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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)
W.P. (S) NO.944 OF 2009 & Connected cases
D.D. 03.05.2010
Hon'ble Shri Justice Satish K.Agnihotri

Vinay Kumar Nanda & Ors.	**…**	**Petitioners**
Vs.		
State of Chhattisgarh & Ors.	**…**	**Respondents**

Necessary parties

Non-joinder of parties – Writ petitioners, unsuccessful candidates in examination conducted for selection to posts of ADPO, challenged select list of candidates in written examination, inter alia on ground of discrepancy in question paper setting and answer key without arraigning successful candidates in select list. When writ petitioners were afforded opportunity to implead successful candidates, they decline to do so on ground that final results for issuing appointment order has not been released, after conduct of personality test, and, therefore, they cannot be held to be necessary parties – In the circumstances whether may it be said that successful candidates in written examination are not necessary parties and in their absence writ petitions can be decided? No. - Challenge in the present writ petition being to select list of candidates in written examination, which was prepared in spite of discrepancies as alleged, any adverse decision taken at the back of successful candidates would substantially affect them and therefore held they are necessary parties – Writ petition, dismissed for non-joinder of necessary parties.

Cases referred:

1. Subhash Chandra Verma and others v. State of Bihar and others, 1995 Supp(1) SCC 325
2. Kanpur University, through Vice Chancellor and others v. Samir Gupta and others, (1983) 4 SCC 309
3. All India SC & ST Employees Association and another v. A. Arthur Jeen and others, (2001) 6 SCC 380
4. Chandra Prakash Tiwari and others v. Shakuntala Shukla and others, (2002) 6 SCC 127
5. K.H. Siraj v. High Court of Kerala and others, (2006) 6 SCC 395
6. Pankaj Sharma v. State of Jammu and Kashmir and others, (2008) 4 SCC 273

JUDGMENT

1. The Writ Petition (S) Nos. 6383 & 6675 of 2008 and W.P. (S) Nos.288 & 944 of 2009 involve common facts and common question of law, thus the said petitions are being considered and disposed of together.

2. W.P. (S) No.6383 of 2008 : By this petition, the petitioner seeks a direction to include the name of the petitioner in the select list of written test conducted by the Chhattisgarh Public Service Commission (for short 'the PSC") for selection and appointment on the post of Assistant District Public Prosecution Officer (for short "ADPO"), further the PSC may be directed to permit the petitioner to participate in the interview and the answers in the amended model answer in respect of questions no.30, 32 & 64 from question paper set-A may be directed to be corrected by the PSC as per the first model answer sheet.

3. W.P. (S) No.6675 of 2008 **:** By this petition, the petitioner seeks quashment of the selection list dated 21.10.2008 (Annexure-P/1) and further prays that the PSC may be directed to prepare fresh selection list on the basis of correct answers based on facts.

4. W.P. (S) No. 288 of 2009**:** By this petition, the petitioner seeks quashment of the entire selection process including the written test dated 07.03.2008 and to conduct fresh selection process.

5. W.P. (S) No. 944 of 2009: By this petition, the petitioner seeks quashment of the selection list dated 21.10.2008 (Annexure-P/1) and further prays that the PSC may be directed to prepare fresh selection list on the basis of correct answers based on facts.

6. In W.P. (S) No.6383 of 2008, question No.30 (set-A) was deleted Question No.32 reads as under:

> "32. 'A' finds a ring lying on the highway, not in the possession of any person 'A' by taking it commits:
> (A) Criminal misappropriation
> (B) No offence
> (C) Theft
> (D) Criminal breach of trust"

The answer to the question No.32 (set-A) as per the amended model answer sheet is 'B'. Question No.32 in set-A is same to that of question No.2 in set-D.

Question No.64 in set-A reads as under:

"Which of the following is not an example of public document?
(A) Letters between authorities
(B) Electoral list
(C) Insurance policy
(D) Order sheet in a case

The answer to the question No.64 (set-A) as per the amended model answer sheet is 'A'. According to the learned counsel the correct answer is 'C' not 'A'. Question No.64 in set-A is same to that of question No.34 in set-D.

7. In W.P. (S) No.6675 of 2008, the petitioner has not pointed out any specific question wherein some mistake was noticed except general statement that the PSC has changed 9 answers instead of 6 answers and 1 question was deleted.

8. In W.P. (S) No.288 of 2009 it is submitted by the petitioner that question No.8 in set-D is not correct. Question No.9 is also not correct, as the answer in amended mode answer sheet is 'A' i.e., Supreme Court. According to the petitioner, the Supreme Court cannot be treated as the last criminal court. The last criminal court is Court of Sessions. Correct answer to question to question No.20 is 'A' whereas in the answer sheets the answer has been mentioned as 'D' Question No.22 is not a legal question, but it is a general Question No.33 is doubtful. With regard to question No.34 in the amended model answer sheet the answer has been shown as 'A' whereas the correct answer is 'C' i.e., Insurance Policy. Question No.52 the correct is answer is 'A', but in the model answer sheets has been shown as 'D'. Questions No.58 & 79 is the question of general knowledge, not of law. According to the petitioner, with regard to question No.90 the correct answer is 'B', but in the amended model answer sheet it has been shown as 'C'. Questions No. 4, 26, 27, 28, 31, 72, 73, 76 and 100 are general questions with regard to leading cases, which may be treated as out of syllabus.

9. In W.P (S) No. 944 of 2009, the petitioner has not pointed out any specific question wherein some mistake was noticed except general statement that the PSC committed certain irregularities in conducting the examination.

10. The facts, in nutshell, for adjudication of these case, are that by publication of the advertisement dated 12.03.2008 (Annexure-P/1 to W.P. (S) No.6383 of 2008), the PSC invited applications for selection and recruitment on 74 posts of ADPO. The written examination for the post of ADPO was held on 24.08.2008. Thereafter, the model answer sheet was published by the PSC vide press release dated 20.08.2008 (Annexure P/4 to W.P. (S) No.6383 of 2008). After receipt of the objections from the candidates again the amended model answer sheet was published (Annexure – P/6 to W.P. (S) No.6383 of 2008 page No.87), which were different from the earlier model answer sheets. In the amended model answer sheet the question No.30 has been deleted and the answers of question Nos.32 & 64 have been changed, as a result of which the petitioners could not qualify in the written examination. The result of the examination was declared on 21.10.2008 (Annexure-P/6 to W.P. (S) No.6383 of 2008 page no.86). Thus, these petitions.

11. Learned counsel appearing for the petitioners would submit that rules do not confer power on the PSC to delete any question from the paper after completion of examination process. The PSC ought to have got the question papers examined by the experts before conducting the written examination. The answer of the question Nos. 32 & 64 have also been changed without assigning any cogent and sufficient reasons. In the written examination some questions have been given out of syllabus. Learned counsel would further submit that in a competitive examination, even one mark can make a huge difference. Without considering the objections raised by the candidates in its letter and spirit and without giving any intimation to the candidates the result was declared.

12. Per contra, Shri Murthy, learned Dy. Advocate General appearing for the State and Shri Sinha, learned counsel appearing for the PSC would submit that to maintain purity and transparency, the PSC issued a model answer sheet and after receipt of the objections from the candidates, the PSC consulted the experts and as per their advise the objections were decided and the amended/corrected model answer sheets were issued, thus, the said action of the PSC cannot be termed as illegal or bad. The objections were considered by the experts with seriousness and due diligence. There was no arbitrariness in decision making process. Thus, there was no irregularity or illegality in the process of decision and, as such, this Court may not interfere under Article 226 of the Constitution of India.

13. Shri Sinha, learned counsel appearing for the PSC, would further submit that the petitioners after participating in the written test and on being found unsuccessful in the test, may not be permitted to approach this Court. Even otherwise, the petitioners have not impleaded the successful candidates in the written test as party respondents. Shri Sinha would next submit that there is no specific prayer for quashment of the revised model answers, which are based on the recommendations of the subject-experts. It was further urged that the respondent PSC received objections in respect of 34 questions. All the questions were referred to the subject experts and on the basis of their recommendations and opinion, it was found that 10 questions were found incorrect out of that one question was recommended for deletion i.e., question No.30 in set – A, 20 in set-B, 10 in set-C and 100 in set-D and the maximum mark was allotted to the candidates. The petitioners have no right to question the answers, as in normal circumstances they are not allowed to have the model answers, but in order to maintain transparency model answers were published to invite objections. On receipt of objections, necessary corrections mere wade in the answer sheet and some questions were also deleted.

14. I have heard leaned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

15. The petitioner in W.P. (S) No. 6383 of 2008 has pointed out 3 defects in the answer sheet i.e., question No.30, 32 & 64 (set-A). Out of those 3 questions, question No.30 has been deleted. The amended model answer to question No.32 seems to be correct and the answer to question No.64 seems to be doubtful wherein the petitioner is required to give an answer, which is more correct than others.

16. In W.P. (S) No.288 of 2009 the question raised by the petitioner that several questions were out of syllabus, as in the advertisement it was provided that the questions shall be from the Constitution on India, Indian Penal Code, Criminal Procedure Code, Indian Evidence Act, Chhattisgarh Excise Act, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the Narcotics Drugs and Psychotropic Substances Act, Arms Act, Prevention of Food Adulteration Act. Protection of Human Right Act, Right to

Information Act and Legal Aid Tribunal Act. There are certain questions, which are according to the petitioner, are of general knowledge, but they are touching the above state subjects. Even otherwise, the examination being a competitive examination cannot be prescribed in particular syllabus, however, the prescription given in clause 2 of schedule 1 to the advertisement is of general nature and there is no question, which is out of the legal subjects. Some of the questions may be doubtful, but on the said basis the entire examination cannot be declared as vitiated.

17. In **Subash Chandra Verma and Others Vs. State of Bihar and Others,** the Supreme Court observed that "even if the answers could be more than one, the candidates will have to select the one which is more correct out of the alternative answers. In any event this is a difficulty felt by all the candidates." Thus, this difficulty was felt by all the candidates, who participated in the process and on this basis it cannot be held as vitiated.

18. The Supreme Court in **Kanpur University, through Vice Chancellor and others Vs. Samir Gupta and others,** while considering the error and correct answers in an objective type test whereas multiple choice of answers are available observed as under:

> "**15**. The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper-setter and an examiner, that the key answer furnished by the paper-setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unraveled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.
>
> **16**. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree 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 rationalisation. 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. The contention of the University is falsified in this case by a large number of acknowledged test books, which are commonly read by students in U.P. Those test books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."

19. In **Subash Chandra Verma** (supra), the Supreme Court observed as under:

"**25**….. (3) Several controversial questions are set and in relation to some questions, there could be more than one answer. In an objective type of test, more than one answer are given. The candidates are required to tick mark the answer which is the most appropriate out of the plurality of answers. The questions and answers were prescribed by the experts in the field with reference to standard books. Therefore, it is incorrect to say that a question will have more than one correct answer. Even if the answers could be more than one, the candidates will have to select the one which is more correct out of the alternative answers. In any event, this is a difficulty felt by all the candidates.

Mr.Kamla Kant Tripathi in his counter-affidavit talks of only two questions. The High Court had come to the conclusion that 24% questions are confusing and controversial and do not adhere to the multiple type of questions.

Mr.M.L.Verma, leaned counsel relying on Kanpur University Vs. Samir Gupta would submit that the finding of the High Court on this aspect is fully justified.

We are unable to uphold this contention. Normally speaking, the High Court should have appointed an expert body and obtained its opinion about the confusing or controversial nature of questions. For reasons best known, it was not done. It has merely chosen to accept the version of the writ petitioners before it. The reason why this Court has repeatedly pointed out such matters being referred to an expert body and its opinion sought, its that in academic matters like this, courts do not have the necessary expertise. In Kanpur University case relied upon by Mr.M.L.Verma, the following observations occur at pp.81-82. (SCC p 316, paras 16 and 17).

> "We agree 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 rationalisation. 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. The contention

> of the University is falsified in this case by a large number of acknowledged textbooks, which are commonly read by students in U.P. Those textbooks leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.
>
> Students who have passed their Intermediate Board Examination are eligible appear for the entrance test for admission to the Medical Colleges in U.P. certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those textbooks. Those textbooks support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise 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"

That is not the position here.

In Shantanu Singh (Dr.) Vs. State of U.P. it is stated at page 87 as under:

> "In proceedings under Article 226 of the Constitution it is not possible for this Court to further probe into the matter and on the basis of affidavits and documents on record it has not been established that more than 6 questions had dual correct answers resulting in any disadvantage to the candidates who attempted the said questions. The University has directed that no negative marking on the disputed 6 questions should be done and as such no prejudice has been caused to the students who appeared in the examination. It is noteworthy that the University suo-motu examined this aspect after the examinations were over and constituted a Committee of Experts to ensure that the students did not suffer on this score."
>
> In the circumstances quoted above, the question of appointment of a Committee of Experts suo motu by the Commission did not arise.
>
> It requires further to be noted that the Commission had given clear instructions to the evaluators to award full marks to the candidates in cases where (a) candidate has put tick mark against the correct answer and has also put correct answer in the box, (b) candidate has put only tick mark against the correct answer but has not written anything in the box, and (c) the candidate has written answer in the box but has not put any tick mark against the correct answers. No candidate was put to any disadvantage in awarding marks because of any discrepancy, ambiguity or duplicity. Moreover, there being no negative marking, no disadvantage was caused to any candidate on this account…"

20. There is no dispute that a list of selected candidates on the basis of written examination was published. The interview is to be conducted on the basis of successful candidates. In the select list of written examination, according to the PSC, total posts

initially advertised were 74, which were subsequently revised and enhanced to 99. The total candidates called for interview were 327, who have been found qualified in the written examination. Thus, the contention of the leaned counsel appearing for the petitioners that since the final result for issuing appointment orders has not been release, the so called selected candidates cannot be held as necessary parties is erroneous. The result of written examination was published and some candidates were declared as qualified for interview that if the second leg of recruitment process. If at the back of the successful candidates in the written examination any decision adverse to them is taken the same would affect substantially to the successful candidates in the written examination.

21. The petitioners, even after affording an opportunity to implead the successful candidates as party/respondents, declined to do the same on the ground that they are not relevant parties, as the final select list has not been published. In this regard the law is well settled that in that situation the writ petitions fail for non-joinder of necessary parties also. In the cases on hand, number of successful candidates were not so much, as it was not possible for impleading them as parties. Even the petitioners have knowingly taken the stand that impleadment of successful candidates in the written examination is not necessary. Thus, the writ petitions deserve to be dismissed on this ground alone.

22. The Supreme Court in **All India SC & ST Employees Association and Another Vs. A.Arthur Jeen and Others,** while considering the effect of not joining of the successful candidates as a party to the litigation wherein selection process and result thereof involved observed as under:

> "13. Although the candidates included in the panel showing their provisional selection do not get vested right to appointment, they will be surely interested in protecting and defending the select list. It is an admitted position that before the Tribunal the successful candidates whose names were included in the panel of selection were not made parties. The argument of the learned counsel that since the names and particulars of the successful candidates included in the panel were not given, they could not be made parties, has no force. The applicants before the Tribunal could have made efforts to get the particulars, at least they ought to have impleaded some of the successful candidates, maybe, in a representative capacity, if the large number of candidates were there and if there was any difficulty in service of notices on them, they could

have taken appropriate steps to serve them by any one of the modes permissible in law with the leave of the Tribunal. This Court in Prabodh Verma Vs. State of U.P. has held that in writ petitions filed against the State questioning the validity of recruitment of a large number of persons in service could not be proceeded with to hear and take decision adverse to those affected persons without getting them or their representatives impleaded as parties. In para 50 of the said judgment, summarizing the conclusions this Court in regard to impleading of the respondents has stated that: (SCC pp. 288-89)

"A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

23. In **Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others,** the Supreme Court observed as under:

"32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance promoting the assured to alter his position or status – the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/ selection. It is a remedy which stands barred and it is in this perspective in Om Prakash Shukla Vs. Akhilesh Kumar Shukla a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise."

24. The Supreme Court in **K.H.Siraj Vs. High Court of Kerala and Others,** observed as under:

"75. The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellant-petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total rearrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates

in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded, namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That rule can be applied only when very large number of candidates are involved and it may not be able to pinpoint those candidates with details. In our view, the writ petitions have to fail for non-joinder of necessary parties also."

25. In **Pankaj Sharma Vs. State of Jammu and Kashmir and Others,** the Supreme Court observed as under:

> **"52.** In the present case, certain corrective steps were taken by the Commission suo motu on the basis of expert opinions. Again, when the High Court felt that some more actions were required and issued certain directions, the Commission accepted the order passed and directions issued by the learned Single Judge and did not challenge it. In our opinion, the approach adopted by the Commission cannot be said to be unreasonable or irrational. In fact, in such a situation, appropriate remedial measures can always be taken by a court of law."

26. Applying the well settled principles of law to the facts of the cases on hand and for the reasons state herein above, the writ petitions fail on merits as well as on account of non-joinder of necessary parties. Thus, the writ petitions are dismissed.

27. There shall be no order as to costs.

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)
Writ Petition No. 1545 OF 2008
D.D. 18.11.2010
Hon'ble Mr. Justice Pritinker Diwaker

Narendra Kunjam ... Petitioner
Vs.
State of Chhattisgarh & Ors. ... Respondents

Documents and Certificates

Submission of incorrect documents/certificate along with application for appointment - Imposition of penalty of debarring petitioners for 10 years from participating in selection – Petitioner, candidate for appointment to post of Ayurvedic Medical Officer submitted certificate on completion of compulsory rotational internship issued by the Principal of Autonomous Government Ayurvedic College and Hospital to the effect that he had completed the said internship from 25.10.2005 to 26.10.2006 – On verification it was found that the petitioner had completed the said course from 25.10.2005 – 06.11.2006 and for which lapse after conducting enquiry, as was necessary, he was debarred for a period of 10 years from appearing in any examination conducted by Chhattisgarh Public Service Commission – Documents/Certificate submitted by the petitioner being neither fake nor forged but only incorrect one, whether quantum of punishment imposed can be said to be commensurate with lapse on part of the petitioner? No – Whether it calls for interference? Yes – Order imposing penalty modified and reduced to two years – Order imposing penalty treated as non-stigmatic.

ORDER

Challenge in this petition is to the order dated 20.2.2008 (Annexure P-13) issued by respondent No.2 by which the petitioner has been debarred from appearing in any of the examinations conducted by the Chhattisgarh Public Service Commission for a period of 10 years.

2. Facts of the case in brief are that on 20.9.2006 an advertisement (Annexure P-3) was issued by the Chhattisgarh Public Service Commission for the post of Ayurvedic Medical Officer to clear the backlog vacancies from amongst scheduled caste and scheduled tribe categories. As per the advertisement, one of the essential qualifications was that a candidate should have possessed the degree of BAMS before the last date of submission of application form i.e. 28.10.2006. The petitioner who was a student

of BAMS in Auto Government Ayurvedic College and Hospital, Gwalior, M.P. falling within the Jiwaji University, Gwalior, had submitted his application form along with internship certificate (Annexure P-2) showing the fact that he had undertaken compulsory rotatory internship from 25.10.2005 to 26.10.2006. On the basis of application form and the internship certificate, call letter (Annexure P-4) was issued to the petitioner by the Chhattisgarh Public Service Commission and based on that he had appeared in the interview. At the time of interview after scrutinizing the documents it was found by the Chhattisgarh Public Service Commission that the petitioner had completed his compulsory rotatory internship of one year from 25.10.2005 to 6.11.2006 and not from 25.10.2005 to 26.10.2006 as stated by the petitioner. The Chhattisgarh Public Service Commission has obtained the actual internship certificate of the petitioner Annexure R/2-3 from the university in which it has been categorically mentioned about the internship period of the petitioner. Thereafter, the petitioner was issued a show cause notice (Annexure P-7) on 9.10.2007 which was replied to by the petitioner on 18.10.2007 (Annexure P-8). Being dis-satisfied with the reply of the petitioner, the order impugned (Annexure p-13) has been passed by the Chhattisgarh Public Service Commission debarring the petitioner for a period of 10 years from appearing in any of the examinations conducted by it.

3. Counsel for the petitioner submits that the petitioner has not produced any forged document showing the completion of his internship. He submits that internship certificate (Annexure P-2) dated 26.10.2006 has been issued by the Principal of the Auto Government Ayurvedic College and Hospital, Gwalior, M.P. and even before this Court the Principal has not denied the factum of issuance of said certificate. He submits that internship of the petitioner had started on 25.10.2006 and based on that he had applied before the Principal and internship certificate was issued to him. He submits that the order impugned debarring the petitioner for a period of 10 years from appearing in any of the examinations conducted by the Chhattisgarh Public Service Commission is just to harass him and if the same is allowed to stand, a meritorious student like the petitioner would suffer an irreparable loss in getting employment in the State of Chhattisgarh. He submits that the petitioner is a resident of Chhattisgarh and looking to the hardship likely to be

caused to the petitioner, the order impugned is required to be suitably modified. He submits that on the date of issuance of the order impugned the petitioner had attained the age of 25 years and if a period of ten years' debarment is further added to it, he would not be in a position to appear in any of the examinations conducted by the Chhattisgarh Public Service Commission because the maximum age limit for such examinations is 35 years.

4. Counsel for respondents 2 and 3 submits that the petitioner was sent for internship with about eight days delay and therefore the question of his completion of one year internship on 26.10.2006 does not arise. He referred to the reply to the show cause notice (Annexure P-8) given by the petitioner in which it has been stated by him that there was eight days delay in commencement of the internship. He submits that a detailed enquiry was conducted by the Chhattisgarh Public Service Commission in respect of issuance of internship certificate Annexure P-2 and during the said enquiry Annexure R/2-3 has been issued by the Principal, Auto Government Ayurvedic College and Hospital, Gwalior, M.P. indicating the correct dates of the internship undergone by the petitioner. During the course of argument counsel for respondents 2 and 3 took this Court through the enquiry papers of the petitioner which show that a detailed enquiry was conducted by the Chhattisgarh Public Service Commission. He submits that the principal of Auto Government Ayurvedic College and Hospital, Gwalior, M.P. Ought not to have issued the certificate of completion of internship of the petitioner. He referred to paragraphs 13 A (4), 13 A (5), 13 A (6), 13 A (10), 14 A and 14 B of the advertisement empowering the Chhattisgarh Public Service Commission to take appropriate steps in the case of submission of any forged document. He submits that the action has been taken against the petitioner after giving due opportunity of hearing to him and after verifying the facts and circumstances of the case and therefore the action of the Chhattisgarh Public Service Commission cannot be interfered with.

5. Counsel for respondent No.5 who had issued the certificate of completion of internship to the petitioner submits that Annexure P-2 was issued by respondent No.5 under the bona fide impression that when the petitioner had started internship on 25.10.2005, in normal course he would complete the same on 26.10.2006.

6. Heard counsel for the parties and perused the documents available on record.

7. From the record it is clear that the petitioner had started his internship on 25.10.2005 but in between there was eight days delay in sending the petitioner for second training of nine months and instead of 25.1.2006, the petitioner was sent on 3.2.2006 and ultimately on account of this eight days delay he could complete his internship only on 6.11.2006. From the documents it is also clear that the petitioner was required to have the academic qualification before 28.10.2006 but he obtained the same on 6.11.2006 and in these circumstances the Chhattisgarh Public Service Commission was fully justified in rejecting the candidature of the petitioner. It is also not disputed that Chhattisgarh Public Service Commission is empowered to issue the order impugned punishing the students like the petitioner in the event of submission of any forged document. However, in the present case there was some bona fide difficulty with the petitioner to complete his internship which in fact commenced on 25.10.2005 but instead of 26.10.2006, it came to be completed on 6.11.2006. Apparently, the document (Annexure P-2) submitted by the petitioner appears to be an incorrect one but to term the same as fake or forged would be a too harsh terminology for the petitioner especially when the respondent No.5 admits that the same was issued by him under the bona fide impression that as the petitioner had started his internship on 25.10.2005, he would complete the same on 26.10.2006. It is no longer in dispute that the petitioner has acquired the qualification of BAMS and also undergone one year compulsory rotatory internship on 6.11.2006.

8. Considering the facts and circumstances of the case and keeping in view the future prospects of the petitioner, this Court is of the considered opinion that the order impugned debarring the petitioner for a period of 10 years from appearing in any of the examinations conducted by the Chhattisgarh Public Service Commission is shockingly disproportionate and thus needs certain modification. Accordingly, the petition is partly allowed. The order impugned is modified to the extent that debarment of the petitioner for a period of ten years as imposed by the Chhattisgarh Public Service Commission is reduced to that of two years. At this stage, counsel for the petitioner submits that the petitioner apprehends that in future, Chhattisgarh Public Service Commission may

treat the order impugned as stigmatic against the petitioner. Needles to say that when the punishment of debarment of the petitioner from appearing in any of the examinations conducted by the Chhattisgarh Public Service Commission itself has been reduced from ten years to two years, the same cannot be treated as a stigmatic against the petitioner.

9. Petition thus partly succeeds.

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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR
W.P. (S) No.2457 OF 2009 & Connected cases
D.D. 07.12.2011
Hon'ble Mr. Justice Pritinker Diwaker

Sanjay Tiwari & Ors.	**…**	**Petitioners**
Vs.		
Chhattisgarh Public Service Commission	**…**	**Respondent**

Examination

Defective questions in question paper set for conduct of preliminary examination for recruitment to posts under Chhattisgarh State Civil Service – Awarding of pro rata marks to unsuccessful candidates in respect of defective questions – Whether steps taken by Chhattisgarh Public service Commission in deleting defective question from question paper and allotting pro-rata marks to unsuccessful candidates, on basis of report of expert committee constituted in relation to disputed questions, is just and reasonable? Yes. Petitioners, unsuccessful candidates in the preliminary examination, challenged the results of examination inter alia on ground that the question paper contained defective questions and therefore they were in disadvantageous position to answer them and secure marks. A committee of subject experts constituted on directions of High Court submitted its report stating that Question No.16 was defective. Public Service Commission, on basis of report of expert committee, deleted the disputed question and awarded pro rata marks to all unsuccessful candidates and redone the select list.

Held:

By following decision of Hon'ble Apex Court in Pankaj Sharma v. State of Jammu & Kashmir held that the step taken by the Public Service Commission is just and reasonable.

Cases referred:

1. M.C. Mehta v. Union of India and others v. Inder Mohan Bensiwal Re: with Bharat Petroleum Corporation Ltd. Re., AIR 1999 SC 2583
2. Canara Bank v. V.K. Awasthy, AIR 2005 SC 2090
3. Ashok Kumar Sonkar v. Union of India and others, (2007) 4 SCC 54
4. State of Manipur and others v. Y. Token Singh and others, (2007) 5 SCC 65
5. Subhash Chandra Verma and others v. State of Bihar and others, 1995 Supp (1) SCC 325
6. Kanpur University v. Samir Gupta, (1983) 4 SCC 309
7. State of Madhya Pradesh v. Narmada Bachao Andolan and another; Narmada Hydro Electric Development Corporation Ltd., v. Narmada Bachao Andolan and another; State of Madhya Pradesh v. Narmada Bachao Andolan and another; Narmada Bachao Andolan v. State of Madhya Pradesh and another and Narmada

Hydro-Development Corporation v. Narmada Bachao Andolan and others, (2001) 7 SCC 639
8. K.H. Siraj v. High Court of Kerala and others, (2006) 6 SCC 395
9. B.S.N. Joshi & sons Ltd., v. Nair Coal Services Ltd., and others, (2006) 11 SCC 548
10. Pankaj Sharma v. State of Jammu & Kashmir and others; Avneesh Chander Suri and others v. State of Jammu & Kashmir and others; Amit Abrol v. State of Jammu & Kashmir and others; Sudhir Jamwal v. State of Jammu & Kashmir and others, (2008) 4 SCC 273
11. Basavaiah (Dr.) v. Dr. H.L. Ramesh and others with Manjunath (Dr.) v. Dr. H.L. Ramesh and others, (2010) 8 SCC 372
12. Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupeshkumar Sheth and others, (1984) 4 SCC 27
13. Rajasthan Pradesh V.S. Sardarshahar and another v. Union of India and others, JT 2010 (6) SC 306

JUDGMENT

As the issue to be adjudicated upon is one and the same, all the aforesaid petitions are disposed of by this common order.

2. In all these petitions, the petitioners have called in question the impugned result of the State Services (Preliminary) examination for selection of the candidates appearing in the main examination for various posts.

3. Facts of the case in brief are that on 03.11.2008 advertisement No.09/2008 was published by the C.G. Public Service Commission, Raipur inviting applications to participate in the preliminary examination for appointment on various posts prescribed under Rule 1 of the CG State Service Commission Examination Rules (herein after referred to as Examination Rules). Pursuant to the said advertisement, various candidates filed-in their forms and participated in the preliminary examination which was conducted on 01.02.2009.

4. For convenience, it would be appropriate to mention the reliefs sought for in all these cases which are enumerated as under:

5. In W.P. (s) No.2457/2009 (Sanjay Tiwari & Others Vs. CGPSC & Another), the petitioners seek the following reliefs:

10.2 That this Hon'ble Court may kindly be pleased to issue a writ or certiorari, thereby quashing the result of preliminary examination 2008, published in Rojga Aur Niyojan on 06.05.2009, by the respondent PSC and direct the respondent to declare fresh result on the basis of proper calculation based on correct questions and answers in accordance with law.

10.3 That this Hon'ble Court may kindly be pleased to direct the respondent to declare the fresh merit list of selected candidates bearing name and roll number and position obtained in the overall merit, as well as category wise merit, in view of fairness and transparency in selection process.

According to the petitioners, in question Nos.13, 16, 25, 39, 52, 58, 81 & 82 of Set 'D', there are some defects.

6. In W.P. (s) No.2807/2009 (Narendra Kumar Dhiwar & Others Vs. CGPSC & Another), the petitioners have sought for the following reliefs.

10.2 This Hon'ble Court may graciously be pleased to issue a writ/order/ direction in the nature of certiorari, for quashing the result of State Service (pre) Examination 2008, held on 01.02.2009 published vide Rojgar Aur Niyojan dated 06.05.2009 (Annexure P/1) issued by the respondent.

10.3 The Hon'ble Court may graciously be pleased to command the respondent to reassess the marks of candidates along with petitioners on the basis of proper calculation based on correct questions and answers and declare fresh result accordingly.

According to the petitioners, questions Nos.2, 24, 27, 50, 86, 87 & 88 of Set 'A', were wrong and in relation to Q.No.10, two options i.e., answers 'A' & 'C' are correct.

In respect of question No.65, according to the petitioners, the correct answer is 'A' whereas the model answer is 'C'.

7. In W.P. (S) No.3202/2009 (Anant Verma & Another Vs.CGPSC & Others), the petitioners have prayed for the following reliefs:

10.2 This Hon'ble Court may kindly be pleased to issue an appropriate writ in the nature of certiorari quashing and setting aside advertisement dated 22.09.2008 for selection to the public service to the extent it relates to the posts of Assistant Director, Department of Public Relations, and Excise Sub-Inspector, Sales Tax (Excise) Department.

10.3 This Hon'ble Court may kindly be pleased to issue an appropriate writ in the nature of certiorari quashing the impugned select list for the qualified candidates in the Preliminary Examination 2009, published in the Rojgar Aur Niyojan on 06.05.2009, by respondent No.2.

10.4 This Hon'ble Court may kindly be pleased to issue an appropriate writ in the nature of mandamus directing respondent no.2 to issue fresh result of the said Preliminary Examination 2009 on the basis of proper calculation based on correct questions and answers, in accordance with law.

10.5 This Hon'ble Court may kindly be pleased to issue an appropriate writ in the nature of mandamus directing respondent no.2 to declare the fresh merit list of selected candidates bearing name and roll number and position obtained in the overall merit, as well as category wise merit list, for maintaining the transparency in the selection process.

According to the petitioners, in question Nos.2, 10, 24, 27, 50, 61, 65, 66, 86, 87 & 88 of Set 'A', there are some defects

Further in this petition the petitioners have challenged the examination on the basis of reservation roster adopted by the PSC, however, after seeing reply of the PSC and the State Government during the course of arguments, the petitioners have not pressed this petition so far as it relates to the reservation roster.

8. In W.P. (s) No.4141/2009, (Abhishek Kumar Pandey Vs. State of C.G & Others), the petitioners have prayed for the following relief:

10.1 That this Hon'ble Court may kindly be pleased directed to the respondents to re-conduct the Preliminary examination of Public Service Commission State Services for the year 2008.

10.2 That this Hon'ble Court may kindly be pleased directed R/2 & R/3 to be correctly evaluate the answer sheets of candidates with fairly and honestly under the guidance.

10.3 That this Hon'ble Court may kindly be pleased directed to the respondents not to be followed next step of means examination on 12th & 13th September, 2009 till the disposal of the writ petition.

10.4 That this Hon'ble Court may kindly be pleased directed to the respondents that the pre-exam 2008 should be cancelled or to allow to appear the petitioner in the mains exam which fixed for 12th & 13th September, 2009.

According to the petitioners, in question Nos.2, 9, 17, 20, 24, 32 & 96 of Set 'C', there are some defects.

Counsel for the petitioners have further pointed out that the objection raised by the petitioners on 18.02.2009 (Annexure P/5) were duly received by the PSC and the acknowledgement was also given to the petitioners on 18.02.2009. In this petition also the petitioners have challenged the validity of the examination on the ground of excessive selection to the outsider candidates however during arguments the petitioners have not pressed this point as they were satisfied with the reply submitted by the PSC and the State Government.

9. In W.P. (s) No.5074/2009 (Sambhu Kumar Gupta Vs. The State of C.G. & Others), the petitioner has prayed for the following relief.

> 10.1 The Hon'ble Court may kindly be pleased to quash/set aside the result of Preliminary Examination 2008 dated 06.05.2009 by the Respondent No.2 & 3 and directed the respondent to declare fresh result on the proper calculation of marks after giving the correct answer of the question of 16, 21, 52 & 58 in the D-set.
>
> 10.2 Or in alternative the Hon'ble Court may kindly be pleased to direct the respondent No.2 & 3 to conduct the fresh Preliminary Exams.

According to the petitioner, in questions Nos. 16, 21, 52 and 58 of Set 'D' there are some defects.

10. According to the petitioners, 1, 28, 152 candidates appeared in the preliminary examination. On 05.02.2009, model answers of 98 questions were published in the website of the C.G. Public Service Commission in which it was mentioned that two questions and answers have been deleted by the Public Service Commission. On 05.02.2009 itself, notice was published by the C.G. Public Service Commission inviting objections in respect of the model answers within 15 days there-from. On 06.05.2009, result was declared by the C.G. Public Service Commission (for short the PSC) on the basis of evaluation of 94 questions because according to the PSC after receiving objections from various candidates the PSC has further decided to delete four more questions.

11. As per the return filed by the respondent/PSC these questions which were deleted by it i.e., two at the time of declaration of model answers and four after receiving objections. In respect of 6 questions, pro-rata marks were awarded to the candidates. Further undisputed facts are that in the preliminary examination, the candidates were required to answer all the questions 100 in number, each carrying 3 marks and preliminary examination was merely a screening test for the main examination followed by the interview. It is further not disputed that the marks obtained by the candidates in the preliminary examination were not to be counted for any further examination. It is further not disputed that the preliminary examination was related to general knowledge and mental ability of the candidates. As per the pattern of PSC examination, four sets i.e., A, B, C & D were given to the candidates containing 100 common questions and answers in different serial numbers.

12. Challenge in all these petitions is to the legality and validity of certain questions and answers which were asked from the candidates and according to the petitioners, some of the questions have wrongly been deleted by the PSC through they were correct and in respect of some of the questions though objections were raised by the candidates but they have not been correctly decided by the PSC as either the question or the question and answer both are wrong and that wary the final outcome would carry variation in the result. In different writ petitions the petitioners have challenged the legality and validity of various questions. However, during arguments counsel appearing for the petitioners after due deliberation have submitted that they are confining their argument in respect of only five questions and they have also given the gist of these questions containing various sets and for ready reference, these five common questions are being taken from set 'D' i.e., Q 16, Q 21, Q 52, Q 58 & Q 64.

13. Question No.16 of set D (Q.65 in set 'A', Q.23 in set B and Q.2 in set 'C') reads as under:

Assertion (A) - The weight of human being on the moon is 1/6 in comparison to earth

Reason (R) – The moon does not have gravity like earth

Select the answer from the following codes-

a) Both A and R are true and R is the correct explanation of A.

b) Both A and R are true, but R is not the correct explanation of A.
c) A is true, but R is false.
d) A is false, but R is true.

According to respondent/CGPSC, the model answer of the above question is 'C' which is correct whereas according to the petitioners the model answer is not correct. Petitioners' further assertion is that none of the answers (ABCD) is correct. In relation to this question it is further argued on behalf of the PSC that model answer and correct answer is 'C' in Set – D and as per the opinion of the expert of physics subject reason has not been given whether the gravitational force in moon is less and more in the earth.

14. Q.No.21 of set D 9 (Q.70 in set 'A', Q.28 in set B and Q.7 in set 'C' reads as under.
Match list 1 (Scientists) and list 2 (inventions) on the basis of list1

1.	Rutherford	A. Power loom
2.	Alfred Nobel	B. Telephone
3.	Cartwright	C. Dynamite
4.	Graham Bell	D. Atom Bomb
a)	1-C, 2-A, 3-B, 4-D	b) 1-D, 2-C, 3-A, 4-B
c)	1-A, 2-B, 3-D, 4-C	d) 1-B, 2-D, 3-C, 4-A

According to respondent/CGPSC, the model answer of the above question is 'B' which is correct whereas according to the petitioners this question itself is wrong and no answer is correct. According to the model answer of the PSC Rutherford had invented atom bomb whereas according to the petitioners. Rutherford had only invented Theory of Atom and not Atom Bomb. In W.P. (s) No.5074/2009, the petitioner has filed documents showing that Atom Bomb was invented by Auto Han. In relation to this question it is further argued by the counsel for the PSC that there was no objection by any of the candidates and therefore this question was not considered by the PSC. However, the record shows that this petitioner of WP (s) 4141/2009 had raised an objection within time which was duly received by the PSC vide Annexure P-5. However, the objection with regard to the said question has not been considered by the PSC.

15. Q.No.52 of set D (Q.10 in set 'A', Q.59 in set B and Q.24 in set 'C' reads as under:

Which prize was instituted by K.K.Birla Foundation in 1992 for outstanding contribution in literature?

a) Saraswati Samman
b) Acharya Tulsi Samman
c) Vyas Samman
d) Yati Yatanlal Samman

According to respondent/CGPSC, the model answer of the above question is 'A' which is correct whereas according to the petitioners this question itself is wrong and no answer is correct as Saraswati Samman as well Vyas Samman were instituted in the year 1991 by Birla Foundation whereas in the question it was related to the year 1992. In relation to this question it is further argued on behalf of the PSC that model answer and correct answer is "A" because the expert opinion was that K.K.Birla Foundation was instituted in the year 1991. According to him, the main object of the question is to be seen and the year of its institution whether 1991 or 1992 is immaterial.

16. Q.No.58 of set D (Q.02 in set 'A', Q.44 in set B and Q.09 in set 'C' reads as under: Which of the following elements are included in stainless steel?

a) Chrominum, Nickel and Iron
b) Nickel, Iron and Carbon
c) Iron, Carbon and Copper
d) Iron, Chromium and Carbon

According to respondent/CGPSC, the model and correct answer is 'D' whereas as per the petitioners, the correct answer is 'A' because in stainless steel elements are included i.e., Chromium, Nickel and Iron. In support of this, the petitioners have filed relevant document in W.P. (S) 2437/2009 (Annexure P-19). In relation to this question it is further argued that expert opinion was taken from the expert of chemistry subject and the model and correct answer is 'D' because the stainless steel is a low carbon steel in which presence of chromium is a must and therefore most suitable answer is 'D'.

17. Q.No.64 of set D (Q.50 in set 'A', Q.36 in set B and Q.57 in set 'C' reads as under: Which dance is performed by male?

a) Mohini Attam
b) Odissi
c) Kathakali
d) Manipuri

According to respondent/ CGPSC model answer and correct answer is 'C' whereas as per the petitioners this question itself is wrong and no answer is correct. In support of this, the petitioners have filed relevant document in W.P. (s) No.3202/2009 (Annexure P-13). In relation to this question the expert opinion was taken from the retired professor of History subject and according to which model and correct answer is 'C'. Reasoning which

has been given by the expert is that though women also participate in Kathakali dance yet it is a male dominated dance and in most of the presentations male are shown to be the dancers. Expert further says that in the question itself the word "only" should not have been used rather it should have been used as 'male dominated".

18. It is submitted by the counsel for the petitioners that as per the examination plan published by the Public Service Commission along-with the advertisement (Annexure P-2) it was made clear that question paper of preliminary examination would be objective type, each question will have four probable answers grouped under A, B, C & D of which only one will be correct answer. The examination plan further says that the candidate was required to record in the answer book only A, B, C or D as may be adjudged by him/her to be the correct answer. Counsel for the petitioners further submit that there is no mention in the examination plan that the candidate can give the nearest possible answer or can he/she say that the question or answer is defective and therefore, according to him, it was the duty of PSC not to put ambiguous question to the candidates. Counsel for the petitioners further submit that respondent/PSC is required to correct the model answers in relation to the aforesaid five questions and then evaluate the model answer are defective, the panel of experts in the concerned subject should be appointed to give its report and then based on the said report this court may proceed further. According to the counsel for the petitioners it was expected from the PSC to be fair and honest while conducting the most important examination of the State and should have taken due care before moderating the question paper and publishing the model answers. According to him, apart from six questions which have already been deleted by the PSC they should have corrected the aforesaid five questions along-with their answers after taking the opinion from the panel of experts in the subject concerned and not on the basis of so-called one expert appointed by them. Counsel for the petitioners submit that in their return respondent/PSC have not even bothered to controvert the questions and answers as pointed out by the petitioners and that their return is silent to this effect. It is argued that the petitioners have submitted the required literature to substantiate their pleadings relating to the aforementioned five questions with answers whereas the respondents have not filed even a single document to show that the model answer given by them is correct. It is argued by counsel for the

petitioners that from the beginning itself the conduct of the respondent/PSC was as such where it was not only negligent in conducting the examination but it did not act in a transparent manner. According to the counsel for the petitioners immediately after the examination there was unrest amongst the candidates who had appeared in the examination and just to subside the same, the respondent/PSC invited objection from the candidates in relation to the model answers published by it but thereafter it has taken a decision in a closed cordon without disclosing to the candidates as to how it has proceeded and what method had been adopted by it. It is further argued by the counsel for the petitioners that after inviting objections it was the duty of the respondent/PSC to consider the same in an objective manner and then again publish the correct model answers so that the candidates could have come to know whether their objections have rightly been decided by the PSC or not. Counsel for the petitioners further submits that when the matter is of public importance and future of lakhs of candidates is involved, minor technicalities in pleadings should not come in the way of the petitioners. According to them, the petitioners may not have made very appropriate prayer as to what they want from this Court but from the prayer made in other petitions it is apparent that they are interested to get their questions and answers checked correctly and not as per the whims and fancies of the respondent/PSC. They further submit that the matter relates only to preliminary examination and till date no right has accrued in favour of any candidate and therefore the eligible candidates are not necessary party. According to them, till date names of the eligible candidates have not been published by the PSC either in the newspaper or website and therefore question of impleading them is literally impossible. They submit that it is not clear as to who is going to be affected if fresh evaluation is done on the basis of correct answers and therefore it is difficult for the petitioners to pinpoint the private individuals. They submit that PSC and the State of Chhattisgarh are protecting the interest of the eligible candidates for the main examination and therefore also they are not necessary party. According to them, what has been argued by the PSC and the State of Chhattisgarh, could have best argued by the eligible candidates and on this count as well they are not the necessary party. According to the petitioners each question carrying three marks is very important in the competitive examination and even a single mark has a great value as thousands of candidates participate in the examination. According to the petitioners, in the case in hand if five questions and

their answers are taken to be incorrect then there would be variation of 15 marks and thus result of the examination would be largely affected.

In support of their submission, counsel for the petitioners placed reliance on the decisions of the Supreme Court in the matter of M.C.Mehta Vs. Union of India and others v. Inder Mohan Bensiwal Re: with Bharat Petroleum Coprn. Ltd Re. reported in AIR 1999 SC 2583, in the matter of Canara Bank v. V.K.Awasthy reported in AIR 2005 SC 2090, in the matter of Ashok Kumar Sonkar v. Union of India and others reported in (2007) 4 SCC 54, in the matter of State of Manipur and others. V. Y.Token Singh and others reported in (2007) 5 SCC 65, in the matter of Subhash Chandra Verma and others v. State of Bihar and others reported in 1995 Supp (1) SCC 325 and in the matter of Kanpur University v. Samir Gupta reported in (1983) 4 SCC 309.

19. Replying to the arguments advanced by the counsel for the petitioners, it has been submitted by the counsel for the respondent/PSC that the present petition has been filed at a belated stage as according to him the examination was conducted on 01.02.2009, model answers were published on 05.02.2009, result was declared on 06.05.2009 and the petitioners should not have waited for publication of the result and should have approached this Court immediately after the examination. It is argued by the counsel for the respondent/PSC that this Court being not an expert in the subject concerned cannot decide the authenticity or veracity of the questions and answers given by the PSC. According to the counsel for the respondent/PSC, the petitioners having participated in the examination process and having been declared unsuccessful in the examination have filed these petitions with an intention to dislodge the entire examination for their personal scores and thus according to him the petition is not maintainable. Counsel for the respondent/PSC further argued that ultimately the examination has to achieve finality at some point of time and therefore even if there are some ambiguous questions, they should be ignored. It is argued that if there was some confusion in the questions and answers, the candidate was required to give nearest possible answer and based thereon the evaluation done by the respondent/PSC is in accordance with law. It is further argued that though respondent/PSC was not obliged to invite objection in relation to the model answers, to show transparency

on the part of it, a decision was taken to publish the model answers and immediately after publication of the same objections were invited and all those objections made in accordance with law have been considered by the respondent/PSC after taking opinion of the expert. It is argued that some of the petitioners have never raised any objection before the respondent/PSC questioning the validity of the questions and answers but yet they have approached this court at a belated stage raising the point that the questions and answers are not correct. According to the counsel for the respondent/PSC self assessment made by the petitioners would not help them and the assessment has rightly been made by the PSC after conducting examination in a fair and transparent manner. It is argued that in a very transparent manner the PSC in its meeting has taken a decision to constitute a committee of experts and each question was put before the said expert committee and after taking the opinion of the experts the final decision was taken by the PSC relating to model answers and correctness of the questions. It is argued that there is no challenge to the decision taken by the experts and so to the deletion of so-called questions and answers. It is further argued that the pleadings in all the writ petitioners are very vague and therefore unless specific pleadings are made, the petitioners are not entitled for the reliefs prayed for. According to the counsel for the respondents, the opinion given by the expert committee is not challenged nor any mala fide has been attributed against the experts or any member of the PSC. According to the counsel for the respondents, in the return itself it was made clear that opinion was taken from the expert of the subject concerned but yet there is no rejoinder by the petitioners disputing the contention of the respondents made in the return nor have they bothered to allege any mala fide. According to the counsel for the respondents, when the respondents have taken opinion of the experts there is no need for constituting any further expert committee and inviting its report. Lastly, it is argued that eligible candidates have not been arrayed as respondents and in their absence before the Court the petitioners cannot claim any relief against them because ultimately it is the eligible candidates who are going to be affected by any order passed by this Court. In support of their contention, counsel for the respondents placed their reliance on the decisions of the Supreme Court in the matter of State of Madhya Pradesh v. Narmada Bachao Andolan and another, Narmada Hydro Electric Development Corporation Lt. V. Narmada Bachao Andolan and another, State of Madhya Pradesh v. Narmada Bachao

Andolan and another, Narmada Bachao Andolan v. State of Madhya Pradesh and another and Narmada Hydro-Development Corporation v. Narmada Bachao Andolan and others reported in (2001) 7 SCC 639, in the matter of K.H.Siraj v. High Court of Kerala and others reported in (2006) 6 SCC 395, in the matter of B.S.N.Joshi & Sons Ltd. v. Nair Coal Services Ltd. And others reported in (2006) 11 SCC 548, in the matter of Pankaj Sharma v. State of Jammu and Kashmir and others, Avneesh Chander Suri and others v. State of Jammu and Kashmir and others, Amit Abrol v. State of Jammu and Kashmir and others, Sudhir Jamwal v. State of Jammu and Kashmir and others reported in (2008) 4 SCC 273, in the matte of Basavaiah (Dr.) v. Dr.H.L.Ramesh and others with Manjunath (Dr.) v. Dr. H.L. Ramesh and others reported in (2010) 8 SCC 372, in the matter of Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupeshkumar Sheth and others reported in (1984) 4 SCC 27 and in the matter of Rajasthan Pradesh V.S Sardarshahar & another v. Union of India and others reported in JT 2010 (6) SC 306.

20. Countering the arguments of the counsel for the respondents, it has been submitted by the counsel for the petitioners that in the return, the respondents have not raised any objections which have been raised during argument. They submits that there is no delay in filing the writ petition and there was no occasion for the petitioners to make allegation of mala fides against the expert in the subject concerned because neither in the return nor by way of publication the PSC has made it clear that any expert in the subject concerned was appointed or their opinion was invited. According to the counsel for the petitioners, it is during the course of arguments only the petitioners came to know about the process of appointment of expert in the concerned subject. They submit that the appointment of so-called subject experts has been made at the whims and fancies of the respondent/PSC without even calling the names from the reputed institutions. According to them, the record also does not make it clear as to on what basis the appointment of so-called subject experts has been made. It is thus argued that in all fairness, the respondent/PSC should have appointed at least three experts in each subject and then should have proceeded further. According to the counsel for the petitioners, as per the report of the subject experts itself, there are ambiguities in certain questions and the expert has not opined in an authentic manner but on the basis of probabilities.

21. On 17.10.2011 after hearing the arguments advanced by the counsel for the parties, this court had directed the Chhattisgarh Public Service Commission to constitute a committee of three experts in each subject and examine the correctness of the five disputed questions pointed out by the petitioners. On 04.11.2011 the Chhattisgarh Public Service Commission submitted the report given by the committee of three experts in each subject. Copy of this report has been duly supplied to all the petitioners. The committee so constituted comprises as follows:

"Omitted as the matter is in Hindi"

22. In relation to question No.16 of set-D (Q.65 in set-A, Q.23 in set-B and Q.2 in set-C) according to the opinion given by the expert committee of the subject concerned correct answer to this question if "B" whereas according to PSC the model answer to this question is "C". The explanation offered of these experts in support of this answer is as under"

> "The correct answer of above question is B (i.e. Both A and R are true, but R is not the correct explanation of A)"

23. In relation to question No.21 of set-D (Q.70 in set-A, Q.28 in set-B and Q.07 in set-C) the expert committee of the subject concerned has given its opinion as under"

> "Three matchings of Scientists and inventions are correct, but one invention i.e. Atom bomb is not matching with any scientist given in list 1 of scientists. Thus the model answer is nearly correct."

24. In relation to question No.52 of set-D (Q.10 in set-A, Q.59 in set-B and Q.24 in set-C) according to the opinion given by the expert committee of the subject concerned correct answer to this question is 'A". According to PSC the model answer to this question is also 'A'. The explanation offered of these experts in support of this answer is as under:

"Omitted as the matter is in Hindi"

22. In relation to question No.58 of set – D (Q.02 in set – a, Q.44 in set-B and Q.09 in set-C) according to the opinion given by the expert committee of the subject concerned correct answer to this question is "D". According to PSC the model answer to this question

is also "D". No specific explanation in support of the correct answer is however given by the expert committee.

23. In relation to question No.64 of set – D (Q.50 in set – A, Q.36 in set-B and Q.57 in set – C) according to the opinion given by the expert committee of the subject concerned correct answer to this question is "C". According to PSC the model answer to this question is also "C". The following explanation in support of the correct answer has been given by the expert committee:

"Omitted as the matter is in Hindi"

24. Thus according to the expert committee of the subject concerned so constituted by the PSC only one model answer to Q.No.16 has been found to be incorrect. During the course of argument, learned counsel appearing for the PSC, on instructions, very fairly submitted that PSC is willing to award pro rata marks with respect to this question to all the candidates who have not been selected for the main examination irrespective of the fact whether they have approached this court or not. It is further submitted on behalf of the PSC that though this question was carrying three marks, as pro rata marks are being given every unsuccessful candidate would get 3.1915 marks against this question and as per the rough calculation of the PSC as many as 230 candidates would be benefited if such pro rata marks are awarded and they would be entitled to appear in the main examination. Counsel for the PSC further informed this court that earlier 7609 candidates were declared successful for the main examination and now if these 238 candidates are added in the said figure, it will rise to 7,847. He submits that if these candidates are permitted to appear in the main examination, interest of everyone i.e. the petitioners herein, the candidates who could not approach this court as also the selected candidates who have not been made party before this court, would be protected. This proposition made by the PSC has been seriously opposed by the counsel for the petitioners submitting that the revaluation of the all the answer sheets should be done and all the candidates be awarded marks accordingly. According to the counsel for the petitioners, if some of the selected candidates have not given the correct answer in relation to question No.16, after revaluation three marks be deducted and the candidates who could not be selected but they have given the correct

answer to this question, three marks may be added to the marks scored by them and then the entire merit list should be prepared afresh. It is further argued that in relation to question No.21 of set – D where it has been opined by the expert committee that model answer is nearly correct, the said question is liable to be deleted because there is no concept like "nearly correct" in the examination process. According to the counsel for the petitioners, by deleting the question No.21, the PSC should award pro rata marks to all the candidates irrespective of the fact whether they have been selected or not after revaluation of the answer sheet in respect of the disputed questions. In relation to remaining three questions i.e. Q.Nos.52, 58 and 64 of set – D, the petitioners have accepted the report given by the expert committee and have not put forth any further claim in relation thereto.

25. Heard counsel for the parties and perused the documents available on record.

26. This Court finds no force in the argument of the counsel for the petitioners that in relation to deletion of question No.21 and awarding pro rata marks to all the candidates i.e. successful or unsuccessful. The experts have opined that the model answer "B" is nearly correct. In the case of Subhash Chandra Verma and others v. State of Bihar and others reported in 1995 Supp (1) SCC 325, it has been held by the Apex Court as under:

> "Several controversial questions were set and in relation to some questions, there could be more than one answer: In an objective type of test, more than one answer are given. The candidates are required to tick mark the answer which is the most appropriate out of the plurality of answers. The questions and answers were prescribed by the experts in the field with reference to standard books. Therefore, it is incorrect to say that a question will have more than one correct answer. Even if the answers could be more than one, the candidates will have to select the one which is more correct out of the alternative answers. In any event, this is a difficulty felt by all the candidates."

Thus it cannot be said that pro rata marks, as argued on behalf of the petitioners should be awarded to each candidate after deleting this question and after doing the revaluation. True it is that in the examination plan there was no mention of giving a nearest possible answer but in view of the above judicial pronouncement of the Supreme Court this Court is of the firm opinion that the stand taken by the PSC in respect of this question appears to be correct.

27. As pursuant to the interim order passed by this Court, the PSC has appointed three experts in each subject in relation to the five disputed questions and the report submitted by it has been partly accepted by the petitioners also, this Court is not required to go into the arguments of the advanced on behalf of the petitioners in detail in relation to the earlier report given by the experts of the PSC.

28. This Court finds no force in the argument of the PSC that the present petition has been filed at a belated stage and therefore no interference is called for in the impugned result. Examination was conducted on 01.02.2009, model answers were published on 05.02.2009, result of the examination was declared on 06.05.2009 and the present petitions have been filed before this court on or about 08.05.2009. Unless and until result is declared a candidate is not aware whether he is selected or not and merely on the basis of question papers he/she could not have filed the writ petition before this Court. From the fact it is apparent that immediately after declaration of the result, the petitioners have approached this Court and thus it cannot be said that there is any delay in filing the petitions.

29. This Court further finds no force in the argument of the PSC that once the petitioners have participated in the examination and have been declared unsuccessful, they cannot file the writ petition. In the present case, the petitioners have not assailed the procedure of the examination but they are aggrieved with the subsequent act of the PSC where after conducting the examination model answers were published and then only the petitioners came to know about the alleged defects in the model answers. There was no occasion for the petitioners to file this petition before participating in the examination because by that time they were not aware as to what questions were going to be put in the examination and what would be the model answers to the same. Thus in the facts and circumstances of the case, it cannot be said that the petitioners have no right to file the present petitions.

30. This Court further finds no force in the argument of the PSC that ultimately the examination has to achieve finality at some point of time and therefore the petitions deserve to be dismissed. If the PSC does not conduct the examination in a proper way, model answers are found defective, then the candidate has every right to challenge the same and

they cannot be stopped from filing the petition challenging the action of the PSC merely on the ground of finality of the examination being achieved immediately.

31. This Court finds no force in the argument of the petitioners that entire revaluation of the successful candidates should be done in relation to question Nos.16 and 21 and then a fresh merit list be prepared. As successful candidates are not before this Court and when without disturbing them justice can be done to the unsuccessful candidates in relation to question No.16, it would not be proper for this Court to dwell on this point.

32. Deletion of defective question and allotment of pro rata marks for that has been duly approved by Hon'ble the Apex Court in the case of Pankaj Sharma v. State of Jammu and Kashmir (supra) holding this exercise to be not arbitrary or irrational. Thus considering the arguments raised by the counsel for the respective parties and the report of the expert committee in relation to five disputed question, this Court is of the considered opinion that proposition made by the PSC for allotting pro rata marks in relation to question No.16 to all the unsuccessful candidates including the petitioners appears to be just and reasonable. Accordingly, PSC is directed to award pro rata marks in relation to question No.16 to all the unsuccessful candidates including the petitioners and prepare the merit list again. If after allotting pro rata marks the candidate gets more marks equivalent to the last selected candidate, they should also be permitted to participate in the main examination.

33. Judicial pronouncements of the Apex Court taken support of by the counsel for the petitioners i.e. in the matter of M.C. Mehta v. Union of India and others v. Inder Mohan Bensiwal Re: with Bharat Petroleum Corpn. Lt Re. (supra), in the matter of Canara Bank v. V.K.Awasthy (supra), in the matter of Ashok Kumar Sonkar v. Union of India and others (supra) and in the matter of State of Manipur and others v. Y.Token Singh and others (supra) being not exactly on the same point as in the case in hand are of no help to the petitioners.

34. In the light of the observations and directions made above, all the aforesaid petitions disposed of.

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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR
W.P. (S) No.4868 of 2009 & Connected cases
D.D. 08.12.2011
Hon'ble Mr. Justice Pritinker Diwaker

Rajendra Kumar Dohare … Petitioner
Vs.
State of Chhattisgarh & Anr. … Respondents

Age limit

Relaxation in maximum age limit for appointment to posts under Chhattisgarh State Services Examination Rules – Whether maximum age limit of 38 years prescribed for recruitment to posts under Rule (1) of Chhattisgarh State Civil Services Examination Rules, which is framed under proviso to Article 309 of the Constitution of India, having statutory force, can be relaxed by another 8 years as per provisions of rules framed under Article 162 of the Constitution of India by exercising general executive power in so far as Government servants are concerned? No. Petitioners, Government servants, who sought recruitment against posts under Chhattisgarh State Civil Services Examination Rules, were declared successful in State Civil Services (Preliminary) Examination. However, they were declared ineligible for taking part in main examination on ground of being over aged as they have crossed 38 years. Contention of the petitioners is that they are entitled for age relaxation by another 8 years in view of Rule (c) (b)(xv) of State Services Examination Rules framed under Article 162 of the Constitution of India in exercise of executive powers and therefore they should be declared to be eligible to appear for main examination.

Held:

Recruitment to posts under reference having been made by statutory rules framed under proviso to Article 309 of the Constitution which prescribes maximum age limit of 38 years, held that relaxation in maximum age limit by another 8 years as provided in rules framed under Article 162 of the Constitution in exercise of executive power cannot supersede or super impose on the statutory rules, thus under no circumstances even a Government servant can be permitted to participate in examination after attaining the age of 38 years and in this way petitioners are not entitled for 8 years relaxation over and above the age of 37 years as has been claimed by them.

Cases referred:

1. A.B. Krishna and others v. State of Karnataka and others, (1998) 3 SCC 496
2. Union of India and others v. Somasundaram Viswanath and others, (1989) 1 SCC 175
3. Paluru Ramkrishnaiah and others v. Union of India and another, (1989) 2 SCC 541
4. Distt. Registrar, Palghat and others v. M.B. Koyakutty and others, (1979) 2 SCC 150

5. S.L. Sachdev and another v. Union of India and others, (1980) 4 SCC 562
6. A.K. Bhatnagar and others v. Union of India and others, (1991) 1 SCC 544

JUDGMENT

As the point involved in all the aforesaid petitions, six in number is quite similar they are disposed of by this common order.

2. Facts of the case in brief are that on 22.09.2008 advertisement No.10/2008 was published by the Chhattisgarh Public Service Commission, Raipur inviting applications to participate in the preliminary examination for appointment on various posts prescribed under Rule 1 of Chhattisgarh State Service Examination Rules (herein after referred to as "Examination Rules" for convenience). Pursuant to the said advertisement various candidates filled in their forms, participated in the preliminary examination which was conducted on 01.02.2009 and declared successful in the same. However, their candidature for the main examination has been rejected by the respondent/PSC on the ground of their being over age.

3. W.P (s) 5199 of 2009: In this petition, the petitioner appeared in the State Civil Services (Preliminary) Examination and was declared successful for the main examination and an application form for this purposed was also sent to him. However, vide Annexure P-10, he was declared ineligible for the main examination on the ground of being over age in spite of being a government servant. According to the petitioner, he is working as Excise Sub Inspector with the State Government and therefore entitled for 8 year relaxation over and above the otherwise maximum age limit of 37 years which has been fixed for the residents of State of Chhattisgarh.

4. W.P (s) 4579 of 2009: In this petition, the petitioner appeared in the Sate Civil Services (Preliminary) Examination and were declared successful for the main examination and an application form for this purpose was also sent to them. However, vide Annexure P-1, they were declared ineligible for the main examination of the ground of being over

age in spite of being government servant. Petitioner No.1 is working as Assistant Veterinary Surgeon whereas petitioner No.2 as Patwari with the State Government and therefore they are entitled for 8 year relaxation over and above the otherwise maximum age limit of 37 years which has been fixed for the residents of State of Chhattisgarh.

5. W.P. (s) 4829 of 2009: In this petition, the petitioner appeared in the State Civil Services (Preliminary) examination and was declared successful for the main examination and an application form for this purpose was also sent to him. However, vide Annexure P-5, he was declared ineligible for the main examination on the ground of being over age in spite of being a government servant. According to the petitioner, he is working as Lecturer with the State Government and therefore entitled for 8 year relaxation over and above the otherwise maximum age limit of 37 years which has been fixed for the residents of State of Chhattisgarh.

6. W.P (s) 4868 of 2009**:** In this petition, the petitioner appeared in the State Civil Services (Preliminary) Examination and was declared successful for the main examination and an application form for this purpose was also sent to him. However, vide Annexure P-1, he was declared ineligible for the main examination on the ground of being over age in spite of being a government servant. According to the petitioner, he is working as Chief Municipal Officer with the State Government and therefore entitled for 8 year relaxation over and above the otherwise maximum age limit of 37 years which has been fixed for the residents of State of Chhattisgarh.

7. W.P. (s) 5004 of 2009: In this petition, the petitioner appeared in the State Civil Services (Preliminary) Examination and was declared successful for the main examination and an application form for this purpose was also sent to him. However, vide Annexure P-4 he was declared ineligible for the main examination on the ground of being over age in spite of being a government servant. According to the petitioner, he is working as Assistant Teacher with the State Government and therefore entitled for 8 year relaxation over and above the otherwise maximum age limit of 37 years which has been fixed for the residents of State of Chhattisgarh.

8. W.P. (s) 4691 of 2009**:** In this petition, the petitioner appeared in the State Civil Services (Preliminary) Examination and was declared successful for the main examination and an application form for this purpose was also sent to him. However, vide Annexure P-8, he was declared ineligible for the main examination on the ground of being over age in spite of being a government servant and handicapped as he had completed the age of 45 years. According to the petitioner, he is working as Manager, Sahkari and Vipnan Prakriya Sanstha (Krishan Rice Mill) Kurud, and therefore entitled for age relaxation up to the age of 47 years over and above the otherwise maximum age limit of 37 years which has been fixed for the residents of State of Chhattisgarh.

9. With respect to the petitioner in W.P (S) 4691/2009 it has been argued by the counsel for the petitioner that the petitioner has crossed the age of 45 years but as per clause 2 of the advertisement the petitioner is entitled for 10 years age relaxation on the upper age limit (37 plus 10 = 47).

10. Pursuant to the advertisement issued by the Chhattisgarh PSC all the petitioners who are the government employees appeared in the preliminary examination and passed the same. Petitioners filed in the form for the main examination however they have been declared ineligible on account of being over age.

11. Shri P.K.Verma learned Sr. Advocate appearing for the petitioners submits that under the State Service Examination Rules initially the age has been provided from 21 to 30 years with the power to the government to extend the same. He submits that in exercise of the said power the upper age limit has been extended from time to time and ultimately vide Annexure P-2 i.e. letter issued by the State Government dated 16.09.2008 the age limit has been extended up to 37 years for the permanent resident of State of Chhattisgarh. He submits that State Service Examination Rule 5 (c) (b) (xv) provides for 8 year age relaxation to the government employees of the State of Chhattisgarh or the State Government undertaking. He further submits that this relaxation as provided to the employees of Chhattisgarh State should be over and above the age of 37 years which has been fixed for the residents of State of Chhattisgarh because all the petitioners are residents

of State of Chhattisgarh. He submits that once the State Government has framed the State Service Examination Rules, the petitioners would be covered under the said Rule and therefore they can apply till the age of 45 years (37 plus 8) which is the maximum age limit fixed under the State Service Examination Rules as provided in the document of Annexure P-2. According to him, action of the PSC declaring the petitioners ineligible for the main examination is contrary to the law and therefore writ may be issued to the respondent/PSC to permit them to appear in the main examination. He submits that as per clause 18, the Shiksha Karmis have been granted the maximum age limit as 45 years on the basis of circular and therefore the petitioners should also have been given the same benefit applying the same analogy and thereby permitted to participate in the examination up to the age of 45 years. It is submitted that when according to the State Government only the statutory Rules would prevail and govern the entire examination process then the State Service Examination Rules become ineffective and if they are to be given effect it has to be as a whole and no pick and choose method can be adopted.

12. State Counsel submits that the issue involved in the case is different and the petitioners argument is beyond their pleadings and scope of writ petition which is not permissible in law.

13. Replying to the arguments of the petitioners, it is argued by Shri Sanjay K.Agrawal, amicus curiae that the State Service Examination Rules appear to have been framed in exercise of the executive power Article 162 of the Constitution of India and these rules are merely executive Rules and non statutory in character. He submits that for different posts statutory Rules under the proviso to Article 309 of the Constitution of India have been framed by the competent authority/Governor and in all those Rules maximum age prescribed for the government servants is up to 38 years. Counsel for the respondent/PSC further submits that the Rules which have been framed under the proviso to Article 309 of the Constitution of India with regard to the post covered under the advertisement are statutory and legislative in character and therefore the same would prevail over the State Service Examination Rules. He submits that in view of the conflict between the two rules made under the proviso to Article 309 would prevail. He submits that maximum age limit

for the government employees which has to be granted is up to the age of 38 years and they cannot be claim the benefit of 8 years counting their age from 37 years.

14. So far as the point raised by the petitioner that for the Shiksha Karmis maximum age limit has been given as 45 years, it is submitted by the respondent/PSC that as no such pleading is there in the writ petition, this argument is not available to them. According to him, Shiksha Karmis have been taken as a different class by a policy decision and therefore the State Government cannot be compelled to take the same policy decision in respect of the petitioners.

15. In W.P. (S) 4691/2009 it has been submitted on behalf of the State and the PSC that the petitioner cannot seek a writ of mandamus against the Rules and that in the Rules maximum age is provided as 45 years and under no circumstances the petitioner can be permitted to appear in the main examination when he has already completed the age of 45 years. According to them, relaxation cannot be claimed as a matter of right.

16. Heard counsel for the parties and perused the documents available on record.

17. The question that falls for consideration of this Court is whether for the posts advertised, the age as provided in the State Service Examination Rules read with circular dated 16.09.2008 would be applicable or whether the age as provided in the service rules framed by his Excellency, the Governor in exercise of proviso to Article 309 of the Constitution of India would be applicable? It is no longer re Integra that the Rules framed by the Governor in exercise of power conferred under proviso to Article 309 of the Constitution of India is statutory in nature and legislative in character and have the same force as an act passed by appropriate legislative whereas the Rules framed by executive under Article 162 of the constitution of India in its general executive power, is non-statutory in nature. The Apex Court in the matter of **A.B.Krishna and others v. State of Karnataka and others** reported in **(1998) 3 SCC 496** has held as under:

> "4. It is contended by the learned counsel for the appellants that the Karnataka Civil Services (General Recruitment) Rules, 1971 were amended in 1977 by Rules made by the Government under Article 309 of the

Constitution and therefore, the Mysore Fire Force (Cadre Recruitment) Rules, 1971 shall be deemed to have been superseded at least to the extent that they make provision for an examination to be passed before promotion which under the General Rules, has to be made on the basis of seniority alone and therefore, the promotion of the appellants made on the basis of seniority could not have been set aside. It is contended, in the alternative that Rules made under Section 39 of the Act have been made by the Government and not by the legislature and therefore, if any rule is made by the Government under Article 309 of the Constitution, it will positively displace the Rule made under Section 39 of the same authority, namely the Government and therefore, those Rules be deemed to have been impliedly superseded.

5. Rule – making power, so far as services under the Union or any State, are concerned are vested in the President or the Governor, as the case may be under Article 309 of the Constitution which provides as under:

"309. Recruitment and conditions of service of persons serving the Union or a State – Subject to the provisions of this Constitution, Acts of the appropriate legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article and any rules so made shall have effect subject to the provision of any such Act".

6. It is primarily the legislature, namely, Parliament or the State Legislative Assembly, in whom power to make law regulating the recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State, is vested. The legislative field indicated in this article is the same as is indicated in Entry 71 of list I of the Seventh Schedule or Entry 41 of list II of that Schedule. The proviso, however, gives power to the President or the Governor to make Service Rules but this is only a transitional provision as the power under the proviso can be exercise only so long as the legislature does not make an Act whereby recruitment to public posts as also other conditions of service relating to that post are laid down.

7. The rule-making function under the proviso to Article 309 is a legislative function. Since Article 309 has to operate subject to other provisions of the Constitution, it is obvious that whether it is an Act made by Parliament or the State Legislature which lays down the conditions of service or it is a rule made

by the President or the Governor under the proviso to that article, it has to be in conformity with the other provision of the Constitution specially Articles 14, 16, 310 and 311.

8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section 39 of the Act that the State government made Service Rules regulating the conditions of the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions Validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displace on the principle of "doctrine of occupied field". If however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make rule under Article 309 in respect of that matter.

9. It is no doubt true that rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely the Government (to be precise the Governor under Article 309 and the Government under section 39), but the two jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is occupied. In that situation, rules can be made under the law so made by the legislature and not under Article 309. It has also to be notified that rules made in exercise of the rule-making power given under an Act constitute delegated or subordinate legislation, but the rules under Article 309 cannot be treated to fall in that category and therefore, on the principle of "occupied filed" the rules under Article 309 cannot supersede the rules made by the legislature".

18. It is well settled that in case of conflict between the Rules framed under proviso to Article 309 of the Constitution of India and Rules framed under Article 162 of the Constitution of India, the Rules framed under proviso to Article 309 of the Constitution of India would prevail. In the case of Union of India and others v. Somasundaram Vishwanath and others reported in (1989) 1 SCC 175 it has been held by the Supreme Court as under:

"6. It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law

made by the appropriate legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India would prevail, and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate legislature, the law made by the appropriate legislature prevails. The question for consideration is whether in the instant case there is any conflict between the Rules and the Office Memorandum dated December 30, 1976, referred to above. We have already notice that there are different rules framed under the proviso to Article 309 of the Constitution of India for making recruitments to services in the different departments and provisions have been made in them for the constitution of Departmental Promotion Committees for purposes of making recommendations with regard to promotions of officers from a lower cadre to a higher cadre. But these rules are to some extent skeletal in character. No provision has been made in any of them with regard to the procedure to be followed by the Departmental Promotion Committees and their various functions and also to the quorum of the Departmental Promotion Committees, as matter of practice, were laid down prior to December 30, 1976 by the Government of India in the form of Office Memoranda issued from time to time and that on December 30, 1976 a consolidated Office Memorandum was issued containing instructions with regard to such details which were applicable to all Departmental Promotion Committees of the various Ministries/Departments in the Government of India. The said office Memorandum deals with several topics, such as, functions of the Departmental Promotion Committees, frequency at which Departmental Promotion Committee should meet, matters to be put up for consideration by the Departmental promotion Committees, the procedure to be observed by the Departmental promotion Committees, the procedure to be followed in the case of an officer under suspension whose conduct is under investigation or against whom disciplinary proceedings are initiated or about to be initiated, validity of the proceedings of the Departmental Promotion Committees when a member is absent, the need for consultation with the Union Public Service Commission, the procedure to be followed when the appointing authority does not agree with the recommendations of a Departmental Promotion Committee, with implementation of the Departmental Promotion Committees, ad hoc promotions, period of validity of panels etc. The Office Memorandum dated December 30, 1976, therefore, is in the nature of a complete code with regard to the topics dealt with by it, unless there is anything in the Rules made under the proviso to Article 309 of the Constitution of India, which is repugnant to the instructions contained in the Office Memorandum, the Office Memorandum which is apparently issued under Article 73 of the Constitution of India is entitled to be treated as valid and binding on all concerned. In the instant case the Rules do not contain any of these details

except indicating who are all the persons who constitute the Departmental Promotion Committee. We do not, therefore, find any repugnancy between the Rules and the Office Memorandum. In the circumstances we feel that the plea raised by respondent 1 in his additional affidavit dated May 13, 1988 (page 132 of the paper book) that the Office Memorandum is ineffective cannot be upheld. We do not agree with the decision of the Central Administrative Tribunal that in the instant case the proceedings of the Departmental Promotion Committee on August 7, 1986 have been vitiated " solely on account of this reason viz., that Secretary, Ministry of Defence, one of its members was not present'. We hold that the proceedings of the Departmental Promotion Committee at its meeting held on August 7, 1986 are not invalid for the above reason".

19. In the case of PALURU RAMKRISHNAIAH AND OTHERS V. UNION OF INDIA AND ANOTHER reported in (1989) 2 SCC 541 it has been held by the Supreme Court as under:

"10. Having heard learned counsel for the parties we find substance in the submission made by the learned counsel for the respondents. Relying on two earlier decisions in B.N.Nagarajan v. State of Mysore and Sant Ram Sharma v. State of Rajasthan it was held by a Constitution Bench of this Court in Ramachandra a Constitution Bench of this Court in Ramachandra Shankar Deodhar v. State of Maharashtra that in the absence of legislative rules it was competent to the State Government to take a decision in the exercise of its executive power under Article 162 of the Constitution. The matter has been considered in a recent decision of this Court in the case of Union of India v. Somasundaram Vishwanath wherein it has been held: (SCC p. 180, para 6)

It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under the proviso to Article 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate legislature, the law made by the appropriate legislature prevails".

20. I find sufficient force in the argument of amicus curiae as also the counsel appearing for the PSC that the administrative instruction can be read to supplement statutory rules

only if there is existing gap or wide in the rules on particular matter, not otherwise and that they cannot supersede or superimpose on the statutory rules. In the matter of *THE DISTT. REGISTRAR, PALGHAT AND OTHERS V. M.B.KOYAKUTTY AND OTHRES* reported in (1979) 2 SCC 150 the Supreme Court has held as under:

> "22. There can be no quarrel with the proposition that if the statutory rules framed by the Governor or any law enacted by the State Legislature under Article 309 is silent on any particular point, the Government can fill up that gap and supplement the rule by issuing administrative instructions not inconsistent with the statutory provisions already framed or enacted. The Executive instructions in order to be valid must run subservient to the statutory provisions. In the instant case, however, it could not be said that there was a gap or a void in the statutory provisions in the matter of promotion from the cadre of Lower Division Clerks to that of Upper Division Clerks.
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> 26. It will be seen that Triloki Nath case, is distinguishable from the one before us, at least, in three important aspects. Firstly, in that case, the statutory rule in question did not make any discrimination in relation to the source of recruitment, it simply provided that graduates alone shall go into the higher cadre of Executive Engineers, irrespective of whether they were appointed as Assistant Engineers directly or by promotion. In the present case, the impugned notification prescribes a qualifying test for promotion, not for all but only for one category of persons with reference to the manner in which they initially entered service. Secondly, in Triloki Nath case the post of the Executive Engineer carried higher responsibility and duties of a supervisory character requiring higher mental equipment and administrative skill. Thus, there the classification rested on intelligible differentia having a direct nexus to the object (viz., administrative efficiency), to be achieved. In the instant case, there is nothing on record to show that the duties discharged by the clerks of the Upper Division are substantially different from those in the Lower Division. Thirdly, in the instant case the statutory rule does not warrant the classification made by the impugned Government order. The primary criterion for promotion to the Upper Division prescribed by Rule 28 (b) (ii) is seniority if the person concerned is otherwise not unfit. The impugned Government Order impinges upon that statutory Rule in as much as it lays down that even if a lower division clerk who entered service as result of exemption from possessing minimum education qualification, satisfied the criterion of seniority cum fitness prescribed by this Rules he shall not be considered for promotion unless he qualifies the test.
>
> 30. The last point for consideration is, whether it was proper for the High Court to issue a positive direction requiring the appellant to promote the respondent to the Upper Division and thereafter to determine his rank in the cadre of Upper Division Clerks. Ordinarily, the Court does not issue a direction in such positive terms, but the peculiar feature of this case is that it has been

disputed that Koyakutty respondent satisfies the two-fold criterion for promotion laid down in the statutory rule 28 (b) (ii). Indeed, the District Registrar, palghat, who was impleaded as respondent 3 in the writ petition, expressly admitted in paragraph 8 of his counter-affidavit filed before the High Court, "that the seniority of service is the basis of promotion from the ranks of Lower Division Clerks to the ranks of Upper Division Clerks provided they are fully qualified by passing the departmental tests for the purpose". It was never the case of the Registrar that Koyakutty was not otherwise fit for promotion. Indeed, even in the grounds of appeal to this Court, incorporated in the Special Leave Petition, it is not alleged that Koyakutty did not satisfy the criterion of seniority-cum fitness prescribed by Rule 28 (b)(ii). The position taken by the appellant, throughout, was that this rule should be deemed to have been "supplemented" by the impugned Government Notification. It is not correct that the impugned notification merely "supplements" or fills up a gap in the statutory rules. It tends to super-add or super impose by an Executive fiat on the statutory rules something inconsistent with the same. Since the existence of both the criteria viz., seniority and fitness for promotion to the Upper Division prescribed by the statutory Rule 28 (b) (ii), in the case of Koyakutty was not disputed, the High Court was justified in issuing the direction, it did/ "

21. Further in the matter of S.L.Sachdev and another v. Union of India and others reported in (1980) 4 SCC 562 it has been held by the Apex Court as under:

"13. Apart from this consideration, we are unable to understand how the Director General could issue any directive which is inconsistent with the Recruitment Rules of 1969 framed by the President in the exercise of his powers under Article 309 of the Constitution. Those Rules do not provide for the kind of classification which is made by the Director General by his letters to the Heads of respective Circles of the new organization. Any directive which goes beyond it and superimposes a new criterion on the Rules will be bad as lacking in jurisdiction. No one can issue a direction which, in substance and effect, amounts to an amendment of the Rules made by the President under Article 309. This is elementary. We are unable to accept the learned Attorney-General's submission that the directive of the Director General is aimed at further and better implementation of the Recruitment Rules. Clearly, it introduces an amendment to the Rules by prescribing one more test for determining whether UDCs drawn from the Audit offices are eligible for promotion to the selection Grade/Head Clerks Cadre."

22. Further in the matter of A.K.Bhatnagar and others v. Union of India and others reporte

d in (1991) 1 SCC 544 it has been held by the Apex court as under:

"13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise

of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take not of this position and refrain from acting in a manner not contemplated by their own rules. There shall no order as to costs."

23. In the case in hand,, the advertisement was issued for various posts and for all those posts statutory rules have been framed under the proviso to Article 309 of the Constitution of India according to which the maximum age limit prescribed for the government servants is up to 38 years. Thus under no circumstances, even a government servant can be permitted to participate in the examination after attaining the age of 38 years and in this way the petitioners are not entitled for 8 year relaxation over and above the age of 37 years as has been claimed by them.

24. So far as the argument of the petitioners that Shiksha Karmis have been allowed to participate up to the age of 45 years is concerned, as there is no such specific pleading in the writ petitions, this Court if not required to answer this question at this stage because collateral challenge cannot be made by the petitioners without there being any pleading with respect thereto. However, the petitioners will have the liberty to raise this point at the appropriate stage, if they so desire.

25. In view of the aforesaid discussion, according to the considered opinion of this Court the petitioners have no case at all and accordingly the aforementioned petitions are dismissed.

26. Before parting with the case, this Court appreciates the valuable assistance rendered by amicus curiae Shri Sanjay K.Agrawal.

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GUJARAT
PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 1962 of 2011
D.D. 16.03.2011
Hon'ble Smt. Justice Abhilasha Kumari

Mulabhai Harchandji Patel … Petitioner
Vs.
State of Gujarat & Anr. … Respondents

Interview

Debarring/Disqualifying from participating in interview for post of Deputy Director (Class-I) Tribal Development Department for non-possession of requisite experience of three years in field of social work – Petitioner was disqualified from participating in interview by the Gujarat Public Service Commission on ground that certificates, documents and credentials submitted do not disclose anything to support that he possess requisite experience of three years in the field of social work, but only 1 year 11 months and 14 days – If the Gujarat Public Service Commission arrives at the said decision, on scrutiny of documents furnished by the petitioner, that he does not fulfill requisite eligibility criteria of possession of experience of three years in the field of social work, and disqualified him from participating in interview, can it be said that the decision of Public Service Commission suffers from vice of illegality, irregularity or arbitrariness so as to warrant interference of Court in exercise of its power of judicial review? No.

Held:

"11. In the considered view of this Court, the very purpose and requirement of submission of certificates credentials and documents is to enable the recruiting body, in this case the GPSC, to come to a conclusion regarding the eligibility of the candidate and to form an opinion on the basis of the same, whether the candidate possesses the eligibility criteria as prescribed by the Rules and as stipulated in the advertisement. What is not clearly stated in the documents and credentials of the petitioner cannot be inferred by the GPSC. For the purpose of evaluating whether the petitioner possesses three years experience in the field of Social Work, he was required to submit documents that makes this aspect clear on bare perusal of the same. To infer, by a long drawn our process of reasoning and speculation whether the duties performed by the petitioner involve experience in the field of Social Work or not, would bring in an undesirable element of subjectivity, which is to be avoided in matters of public employment, through a process of direct selection. The GPSC, which is the recruiting body, has to maintain objectivity and impartiality in order to satisfy itself regarding the aspect whether the candidate fulfills all the necessary eligibility criteria prescribed by Rules, for the post. This can only be done by scrutiny of certificates, credentials and documents and only if it is found that the candidates fulfills all the necessary eligibility criteria for the post in question, is he to be called for the interview. The documents should speak for themselves and in this case, looking to the material on record, it cannot be said that the decision of the GPSC, debarring the petitioner from appearing in the interview, suffers from any illegality, irregularity or

arbitrariness, so as to warrant interference from this Court in exercise of its power of judicial review."

Case referred:

Jayantilal Dwarkadas Patel v. State of Gujarat and another, (1986) 1 GLR 254

JUDGMENT

1. Rule. Mr.Maulik G. Nanavati, learned Assistant Government Pleader waives service of notice of Rule for respondent No.1. Mr.D.G.Shukla, learned counsel waives service of notice of Rule on behalf of respondent No.2. On the facts and in the circumstances of the case and with the consent of the learned counsel for the respective parties, the petition is being heard and finally decided, today.

2. This petition under Article 226 of the Constitution of India has been filed with a prayer to issue a writ of Mandamus or an appropriate writ or direction, quashing and setting aside the impugned order dated 27.10.2010 (Annexure-D) issued by respondent No.2, whereby the petitioner has been debarred from participating in the interview for the post of Deputy Director (Class-I), Tribal Development Department, Government of Gujarat, on the ground that he does not hold the requisite experience, as prescribed by the Rules. There is a further prayer to direct respondent No.2 to issue a call letter to the petitioner for participation in the interview for the said post.

3. Briefly stated, the relevant facts of the case are that, advertisement No.164/2006-07 dated 15.8.2006, was issued by respondent No.2 – Gujarat Public Service Commission ("GPSC", for short), inviting applications for the post of Deputy Director (Class-I), Tribal Development Department from amongst the candidates possessing the requisite eligibility criteria as stipulated. Two posts were advertised, out of which one post was reserved for a candidate belonging to the Schedule Caste Category and the other post was meant for a candidate belonging to the Unreserved (General) Category. The petitioner belongs to the Socially and Educationally Backward Class (S.E.B.C.) Category. He submitted his application, along with copies of certificates regarding his educational qualifications and

other credentials, and was permitted to appear in the Preliminary Test conducted by respondent No.2, on 29.11.2008. The petitioner cleared the said Preliminary Test with the requisite qualifying norms but as, according to the GPSC, he did not possess the required experience for the post, he was not called for the personal interview which was to be held on 15.3.2011. The said decision was conveyed to the petitioner by the impugned communication dated 27.10.2010. Aggrieved thereby, the petitioner has approached this Court by filing this petition.

4. Mr.H.S.Munshaw, learned counsel for the petitioner has submitted:

(A) That the petitioner is highly qualified and is holding a degree in Bachelor of Rural Studies, with First Class. The petitioner has also obtained the qualification of Masters of Social Work (M.S.W.) with First Class. Thereafter, the petitioner was selected and appointed by Aga Khan Rural Support Programme (India), as a Community Organizer, with effect from 31.5.1996. The petitioner was later promoted to the post of Member Secretary in the said organization, which post he is presently holding.

(B) That apart from the above qualifications, the petitioner has vast experience in Rural Development Programmes and Activities, since 1996. The requisite experience as per the advertisement is three years of Social Work, as against which the petitioner is holding the experience of more than ten years.

(C) That the impugned decision of respondent No.2 in holding that the petitioner is not qualified as he does not possess the necessary experience in Social Work is baseless, unjust and arbitrary, apart from being contrary to the evidence on record. No cogent reason has been assigned by respondent No.2 for holding that the petitioner lacks the requisite experience, therefore, the impugned decision may be quashed and set aside and the petition allowed.

5. The petition has been contested by Mr.D.G.Shukla, learned counsel for respondent No.2 by filing an affidavit-in-reply, and submitting that though the petitioner possesses the requisite educational qualifications, he does not possess the necessary experience as prescribed for the post in question as per the Deputy Director, Project Officer, Assistant Commissioner of Tribal Development, Vigilance Officer, District Backward Class Welfare Officer, Class-I Recruitment Rules, 2002 ("the Recruitment Rules", for short). It is further submitted that as per the certificates submitted by the petitioner, he had joined as

Community Organizer with effect from 31.5.1996 with Aga Khan Rural Support Programme (India) and thereafter he was promoted to the post of Member Secretary with effect from 1.10.2004. The experience of the petitioner as Member Secretary was for the period from 1.10.2004 till 14.9.2006, that is, 1 year, 11 months and 14 days, whereas as per the Recruitment Rules and the stipulation in the advertisement, the candidate must possess the requisite experience of Social Work for a period of three years. As the petitioner does not possess the requisite experience in the field of Social Work, his candidature has been rejected. It is further urged that even if the case of the petitioner is considered in the pay scale upto two stages below the Class-II post, he does not fulfill the necessary criteria of experience in the field of Social Work, therefore, the decision of the respondent – GPSC is in conformity with the Rules and the stipulation in the advertisement, and may be held to be just, legal and proper. Lastly, it is contended that no legal or fundamental right of the petitioner has been infringed, therefore, the prayer made by him for issuance of writ of Mandamus may not be granted. In this regard, reliance has been placed on a decision of this Court in **Jayantilal Dwarkadas Patel Vs. State of Gujarat & Anr. reported in (1986) 1 GLR 254**. On the strength of the above submissions, it is prayed that the petition be dismissed.

6. Mr.Maulik G. Nanavati, learned Assistant Government Pleader has submitted that the decision whether the petitioner fulfills the requisite qualifications regarding experience is to be taken by the GPSC, who has prescribed the said qualification on the basis of the Recruitment Rules. The decision of not calling the petitioner for the interview has been taken on the basis of certificates submitted by the petitioner and as those certificates do not disclose, upon a bare reading, that the petitioner possesses the necessary experience in the field of Social Work, for a period of three years. Therefore, no fault can be found in the decision of not calling him for the interview. It is further contended that in the absence of any allegation regarding malafides or procedural irregularity, this Court would not exercise the power of judicial review, to interfere in a decision taken as per Rules.

7. I have heard the learned counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record.

8. The issue involved in the petition lies in a narrow compass, and that is, whether the petitioner, who admittedly possesses the requisite educational qualifications, has the necessary experience of three years in related field of Social Work as prescribed by the Rules, and stated in the advertisement. The petitioner has submitted his certificates, documents and credentials in support of his educational qualifications and experience to the respondent – GPSC, on the basis of which the said respondent has arrived at the decision that, though he possesses the necessary educational qualifications, he lacks the experience of three years in the field of Social Work. The relevant Recruitment Rules is Rule 4(b), which is reproduced herein below:

> "4. To be eligible for appointment by direct selection to the post mentioned in rule 3 a candidate shall –
>
> (a) xxxxxxxxxx
> Provided xxxxxxxxxxx
>
> (b) Possesses —
>
> (i) Second Class Bachelor's Degree in Arts, Science, Commerce, Law or Agriculture obtained from a University established by law in India or from deemed University under University Grant Commission Act, 1956 and have a Diploma in Social Work, Social Welfare or Social Service Administration obtained from University or from an Institution, established by law in India, or;
>
> (ii) Second Class post graduate degree in Social Welfare obtained from a University established by Law in India or from a deemed University under University Grant Commission Act, 1956 or from an Institution established by law in India;
>
> (iii) About three years experience in related field of Social Work after obtaining above referred educational qualification:
> Provided that preference may be given to a candidate who Possess higher educational qualification or administrative experience in a responsible position :
> Provided further that the upper age limit may be relaxed in favour of a candidate who possess exceptionally good qualification or experience or both;
>
> (c) xxxxxxxxxx"

9. From the above Rules, it is clear that apart from the educational qualifications mentioned therein, one of the necessary criterion for eligibility for the post in question is

that the candidate must possess three years experience in a related field of Social Work, **after** obtaining the above referred educational qualifications. This requirement has been clearly stipulated in the advertisement. The Rule provides that the experience of three years in the field of Social Work is necessary, in addition to the educational qualifications of a candidate. From the documents annexed to the petition, it appears that the petitioner had initially joined Aga Khan Rural Support Programme (India) as Community Organizer with effect from 31.5.1996 and thereafter was promoted as Member Secretary, with effect from 1.10.2004. The petitioner has the experience of being Member Secretary only for a period of 1 year, 11 months and 14 days. The duties performed by the petitioner as Member Secretary are related to team management and leadership in the Rural Development field. According to the certificate dated 1.9.2006 given by the Aga Khan Rural Support Programme (India), annexed at running page No.18 of the paper-book, the petitioner is engaged in management, monitoring and evaluation of various rural development related projects such as community management of natural resources with tribal community (Soil & Water conservation, Water resource development renewable source of energy, Forestry & Agriculture extension), livelihood enhancement of poor tribal community (Community Institutions, Micro finance, Income generation activity, leadership development), management to multi disciplinary team, liaison with different Government agencies and Non Government agencies. Essentially, the duties performed by the petitioner appear to be administrative in nature, as has been concluded by the GPSC, from perusal of the certificates submitted by the petitioner.

10. There does not appear to be any certificate on record stating that the petitioner has the requisite experience of three years in the field of Social Work. Though the learned counsel for the petitioner has submitted that the activities carried on by the petitioner are in the nature of social work, according to the GPSC this aspect is not evident from the documents supplied by the petitioner.

11. In the considered view of this Court, the very purpose and requirement of submission of certificates, credentials and documents is to enable the recruiting body, in this case the GPSC, to come to a conclusion regarding the eligibility of the candidate and

to form an opinion on the basis of the same, whether the candidate possesses the eligibility criteria as prescribed by the Rules and as stipulated in the advertisement. What is not clearly stated in the documents and credentials of the petitioner cannot be inferred by the GPSC. For the purpose of evaluating whether the petitioner possesses three years' experience in the field of Social Work, he was required to submit documents that makes this aspect clear on bare perusal of the same. To infer, by a long drawn out process of reasoning and speculation whether the duties performed by the petitioner involve experience in the field of Social Work or not, would bring in an undesirable element of subjectivity, which is to be avoided in matters of public employment, through a process of direct selection. The GPSC, which is the recruiting body, has to maintain objectivity and impartiality in order to satisfy itself regarding the aspect whether the candidate fulfills all the necessary eligibility criteria prescribed by Rules, for the post. This can only be done by scrutiny of certificates, credentials and documents and only if it is found that the candidate fulfills all the necessary eligibility criteria for the post in question, is he to be called for the interview. The documents should speak for themselves and in this case, looking to the material on record, it cannot be said that the decision of the GPSC, debarring the petitioner from appearing in the interview, suffers from any illegality, irregularity or arbitrariness, so as to warrant interference from this Court in exercise of its power of judicial review.

12. It may be true that the petitioner possesses the necessary educational qualifications but in addition to the same the Rule mandates that he should also possess three years experience in the related field of Social Work. As the petitioner has been found lacking in the criterion of experience in the field of Social Work, it cannot be said that any legal or vested right of the petitioner has been infringed by the impugned decision of the GPSC.

13. The learned counsel for respondent No.2 has placed reliance upon Jayantilal Dwarkadas Patel Vs. State of Gujarat & Anr. (Supra.), wherein this Court has observed as under:

> "7. Secondly, relaxation which is also provided in the General Rules can only be granted by the State Government if the same is in public interest. But this is also discretionary power of the State Government, and for which this Court cannot issue a writ of mandamus. It is the settled law that for issuance

of a writ of mandamus, (1) the applicant must show that he has legal right of the performance of a legal duty (not discretionary) by the party against whom mandamus is sought, and such right is subsisting, and (2) the duty enjoined by mandamus may be one imposed by Constitution, a statute, common law or by rules or orders having the force of law (AIR 1954 SC 592). No such right exists in favour of the petitioner nor any corresponding duty to the authority. Since the petitioner was not eligible at the date when he made the application, one cannot find any fault on the part of the Commission when it has not called the petitioner for viva voce test though he had several other merits."

14. This decision would squarely apply to the facts of the present case. As per the settled position of law, even a candidate whose name appears in the select list has no right to appointment. In the present case, the petitioner having been found to be ineligible due to lack of the requisite experience, can claim no right to be called for the interview.

15. As a result of the aforesaid discussion, as no legal, fundamental or indefeasible right of the petitioner has been violated, and as the impugned decision of the GPSC in debarring the petitioner from appearing in the interview suffers from no legal infirmity, the petition fails. It is, therefore, rejected.

16. Rule is discharged. There shall be no orders as to costs.

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 12632 of 1993
D.D. 01.05.2012
Hon'ble Mr. Justice C.L. Soni

Subodhchandra Ghelabhai Desai … Petitioner
Vs.
State of Gujarat & Ors. … Respondents

Promotion

Proceedings of Departmental Promotion Committee for promotion to cadre of Chief Engineer (Civil) under Chief Engineer (Civil) in the Gujarat Service of Engineer Class-1 Recruitment Rules, 1991 – D.P.C., on comparative merits of candidates, on basis of material available before it, if finds that officers who were recommended for promotion were more meritorious, than others and if petitioner fails to point out any error apparent on face of records so as to establish that grading given by D.P.C. to officers under consideration for recommendation was contrary to statutory rules, whether merely on ground that juniors of petitioner were recommended for promotion by itself vitiates D.P.C. proceedings warranting judicial interference? No.

Held:

" 18. When the provisional select list was to be made of 7 officers against 7 posts, it was obvious that DPC had to include the names of those 7 officers who were found to be more meritorious as per the comparative grading of the candidates. Therefore, even if grading of 'good' of the petitioner for a particular year was not communicated to the petitioner and was to be ignored, then also, in absence of any error apparent on the face of the record of the DPC, it is not open to this Court to sit in appeal over the decision arrived at by the DPC. In view of the above, decisions relied by learned Advocate Mr. Trivedi will be of no held to the petitioner.

21. Under the statutory rules for promotion, as per Rule 2, appointment by promotion is to be on the basis of selectivity from amongst the persons who entered into zone of consideration irrespective of their seniority. The petitioner had already entered in the zone of consideration with other 20 persons. After the petitioner entered in the zone of consideration, DPC was required to compare the merits of the candidates irrespective of seniority and DPC has considered the merits of the candidates including the petitioner. Therefore, the petitioner cannot contend that his juniors were allowed to march over him in the matter of recommending the names for promotion. In any case, even if name of respondent No.3 was not required to be recommended, that will never be a ground to hold that the petitioner was entitled to be included in the list of selected candidates for recommendation."

Case referred:

M.V. Thimmaiah and others v. Union Public Service Commission and others, (2008) 2 SCC 119.

JUDGMENT

1. This petition under Article 226 of the Constitution of India is filed for the following reliefs:-

> "17(A) to call for the Annual Confidential Reports of the petitioner as well the respondent Nos.3 to 7 herein for the perusal of this Hon'ble Court;
>
> (B) to direct the respondent No.1 herein to produce the norms and procedure adopted by the Departmental Promotion committee in the year 1993 for the purpose of selection of Chief Engineers (Civil) and also to produce the norms and procedure adopted by the Departmental Promotion Committee in the past for the purpose of selecting Chief Engineer (Civil);
>
> (C) to quash and set aside the promotions of the respondent Nos.3, 4 and 5 herein and the action of placing the names of the respondent Nos.6 and 7 in the select-list prepared for the purpose of giving promotion to the post of Chief Engineer (Civil) and to direct the respondent No.1 herein to promote the petitioner to the post of Chief Engineer (Civil);
>
> (D) Pending notice, admission and final disposal of this petition to direct the respondent No.1 not to operate the select -list prepared for the purpose of giving promotions to the post of Chief Engineer (Civil) any further;
>
> (E) To grant such other and further relief as may be deemed just and proper;
>
> (F) To provide for the costs of this petition."

2. The case of the petitioner is that he is working as Superintending Engineer, Panchayat Roads and Buildings, Baroda Circle at Baroda. He joined the service of respondent No.1 State in the year 1960 as Junior Engineer and during his tenure of service, he received promotions on account of his satisfactory performance. The petitioner has put in more than 3 years of service as Superintending Engineer and therefore, eligible for being considered for promotion to the post of Chief Engineer (Civil) as per the Recruitment Rules. The petitioner has averred that for the purpose of appointment to the post of Chief Engineer (Civil), respondent No.1- State has framed rules known as Chief Engineer (Civil)

in the Gujarat Service of Engineer Class-I Recruitment Rules 1991. It is the case of the petitioner that the petitioner fulfills the qualification as per the rules and also fulfills other eligibility criterion for being considered for the post of Chief Engineer (Civil). It is further stated that though the seniority list of Superintending Engineers (Civil) is not finalized, but looking to the length of service of the petitioner, the petitioner is ranked higher in the seniority list. But large number of persons juniors to the petitioner are sought to be promoted bypassing the rightful claim of the petitioner. It is further stated that respondent No.1 had undertaken the process of preparing the select list for the purpose of giving promotion to the post of Chief Engineer (Civil) and for such purpose, considered 21 persons according to the seniority in the cadre of Superintending Engineer (Civil) and put them in the zone of consideration. The petitioner is also put in the zone of consideration looking to his seniority. The petitioner has alleged that respondent No.1 has prepared the select list of 7 persons, named in the petition, and also alleged that some of them were though not eligible were included in such list. It is further stated that out of 7 persons, Shri P.N. Patel, Shri S.I.Patel and Shri C.K. Patel as also Shri R.W. Parmar who are juniors to the petitioner are wrongly promoted bypassing the rightful claim of the petitioner. The petitioner has got outstanding career still the claim of the petitioner was superseded. The petitioner has further averred that there are no guidelines set out for considering the claims of the persons for promotion to the posts of Chief Engineer (Civil) and the Departmental Promotion Committee (DPC) has gravely erred in not recommending the case of the petitioner for promotion. The petitioner has further averred that though respondent No.3 was not recommended by the DPC, but his name was interpolated subsequently with a view to favour him. The petitioner has further stated that eligibility for being considered for promotion to the post of Chief Engineer (Civil) is minimum 3 years service as Superintending Engineer (Civil). Shri C.K. Patel and Shri R.W. Parmar were not eligible and relaxation in the experience made in favour of said two persons was unwarranted, as number of other qualified persons were available at the time of selection and for such relaxation, though reasons were required to be recorded but no such reasons were record. By amendment in the petition, the petitioner has taken one more ground that respondent No.1 has gravely erred in considering 7 vacancies together to the post in question, though the said vacancies had arisen in three different years. It is stated that out of 7 vacancies,

one vacancy had arisen in the year 1991-92 and three vacancies had arisen in the year 1993-94 and respondent No.1, therefore, ought to have considered the above vacancies year-wise and ought to have made selection to the said post by making separate list year-wise. The State Government has not undertaken the selection process year-wise and therefore, the action of the respondent State Government in clubbing the vacancies of three separate years is illegal.

3. The petition is opposed by respondent No.1 by filing the reply affidavits dated 16.8.1997,26.11.2009, 1.12.2011 and the petitioner also filed Additional Affidavit dated 8.4.2010 and Further Affidavit dated 27.2.2013. During the course of hearing, one more affidavit dated 8.4.2013 was filed on behalf of respondent No.1 and Further Affidavit by the petitioner dated 9.4.2013 also came to be filed.

4. I have heard learned advocates for the parties.

5. Learned advocate Mr. Anuj K. Trivedi appearing for the petitioner submitted that the petitioner fulfilled the qualifications as required by the Recruitment Rules for the post of Chief Engineer (Civil) Class-I and also fulfilled the minimum eligibility criteria of experience and his grading in the ACRs was very good and therefore, the petitioner was required to be promoted to the next higher post of Chief Engineer (Civil) Class-I. Mr. Trivedi submitted that minimum three years experience in service on the post of Superintending Engineer (Civil) was to be counted and considered as on 30.6.1993 but the DPC considered the date of its meeting i.e. 7.5.1993 for counting minimum 3 years experience of the candidates. Mr. Trivedi submitted that the DPC was not authorised to change the eligibility/ cut-off date fixed by the State Government. Mr. Trivedi submitted that the DPC had also not independently applied its mind on the aspect of eligibility criteria of experience and also on the aspect of evaluation of the ACRs of the candidates for comparative merits of the candidates. Mr. Trivedi submitted that the promotion given to respondent Nos.3 to 7 bypassing the legitimate claim of the petitioner, is not only against the statutory rules for the post of Chief Engineer (Civil) Class-I but also contrary to the service record of the candidates. Mr. Trivedi submitted that though the rules specifically

provide that if person having an experience of 3 years on the post of Superintending Engineer (Civil) is not available for promotion, then only, person having less experience for a period not less than 2/3rd of 3 years was required to be considered and given promotion only if the appointing authority was satisfied that it was in the public interest to fill up the post by promotion of a person having less experience. Mr. Trivedi submitted that such mandate of the rules was given gobye firstly because the person like the petitioner who had completed 3 years of experience was already available and secondly because no reasons were recorded that in the public interest, it was required to fill up the posts by promotion with the persons having less experience. Mr. Trivedi submitted that the DPC has wrongly recorded in the proceedings that only two persons of 3 years experience were available. From the proceedings of DPC on record, it clearly appears that more than two candidates had completed more than 3 years on the post of Superintending Engineer. Mr. Trivedi submitted that comparison of merits of the candidates by DPC was also against the record of each of the candidates. He submitted that respondent No.3 who was graded only 'Good' in the proceedings of DPC came to be later on ranked 'Very Good' and given promotion. Mr. Trivedi submitted that the above aspects clearly reflect that the petitioner who was otherwise entitled to get promotion was deprived of his legitimate right to get promotion and the persons who were not entitled to promotion came to be given promotion.

5.1. Learned advocate Mr. Trivedi submitted that when statutory Rules provide not to consider candidate of less experience if a candidate of minimum 3 years experience is available and when the petitioner having completed 3 years experience was already available, even if the petitioner was graded as 'good' against the candidate graded as 'very good', having less experience, the petitioner was required to be recommended for promotion, otherwise the very intent and purpose of the proviso to sub-rule (3) would be rendered otiose. Mr. Trivedi also took the Court to the record of ACRs of the petitioner for last five years produced on record by the State authorities and pointed out that the petitioner was though graded as 'very good', still the DPC graded the petitioner as 'good', which was a clear error apparent on the face of the record and therefore, the decision of the DPC of not recommending the name of the petitioner for promotion was contrary to the record and against the statutory Rules. Mr. Trivedi submitted that the whole

proceedings conducted by the DPC was not only contrary to the Rules for promotion to the post of Chief Engineer (Civil) Class-I but reflect clear non-application mind of the DPC and therefore, non-recommendation of the name of the petitioner for promotion to the higher post is required to be declared as illegal and promotion given to respondent Nos.3 to 7 is required to be declared null and void and the respondent authorities are required to be directed to consider the case of the petitioner for promotion with effect from the date the respondent Nos.3 to 7 came to be promoted.

5.2. Learned advocate Mr. Trivedi has, in support of his submissions, relied on the following authorities:-

(1) In the case of *A.K. Bhatnagar and others Vs. Union of India and others* reported in *(1991)1 SCC 544*,

(2) In the case of *Subhash, S/o. Shriram Dhonde Vs. State of Maharashtra and Another* reported in *1995 Supp (3) SCC 332*,

(3) In the case of *Govt. of A.P. and Another Vs. M. Adbuta Rao* reported in *(2005)12 SCC 258,*

(4) In the case of *Abhijit Ghosh Dastidar Vs. Union of India and others* reported in *(2009)16 SCC 146,*

(5) In the case of *Dev Dutt Vs. Union of India and others* reported in *(2008)8 SCC 725*

6. As against the above arguments, learned Assistant Government Pleader Mr. Oza submitted that the respondent authorities and the DPC have followed the statutory rules and resolution of Government for appointment to the post of Chief Engineer (Civil) Class-I by promotion. Mr. Oza submitted that counting of 3 years experience was rightly taken on the date of DPC meeting and the petitioner had not completed 3 years experience on the said date and therefore, he was required to compete with other eligible candidates who had entered in the zone of consideration. Mr. Oza submitted that appointment to the post of Chief Engineer (Civil) Class-I by promotion is wholly on the basis of selectivity from amongst the persons coming in the zone of consideration prescribed by the Government irrespective of their inter-se seniority and such being the prime requirement, the petitioner was required to pass through the selection process. Mr. Oza submitted that in the process

of selectivity undertaken by the DPC from amongst the candidates came in the zone of consideration, the petitioner could not compete with other eligible candidates who were found having higher merits on the basis of their C.Rs. The petitioner was graded as 'good' whereas other candidates were graded as 'very good'. Mr. Oza submitted that for constituting zone of consideration as per the earlier resolution of the State Government, the candidates required were three times the number of posts and therefore, as per proviso to sub-rule (3) of the Rules, the persons having experience of less than 3 years, were required to be considered otherwise Rule 2 of the Rules could not have been followed for the purpose of promotion to the higher post. Mr. Oza submitted that proviso to sub-rule (3) permits the appointing authority to fill up the post by promotion by a person having less experience if a candidate having experience specified in Rule 3 is not available. Mr. Oza submitted that the respondent authorities as also the DPC acted strictly in accordance with sub-rule (3) and only those candidates who were complying with the qualifications and eligibility criteria as per Rule 3 of the Rules were considered. Mr. Oza submitted that the date for considering minimum 3 years experience of a candidate was the date when DPC met. Mr. Oza pointed out that the DPC first met on 26.4.1993. But, since the said meeting was required to be postponed, it met on 7.5.1993 and that was the relevant date to be considered for the purpose of considering the eligibility criteria of completion of minimum 3 years of service on the post of Superintending Engineer (Civil). Mr. Oza submitted that there are no guidelines of the State of Gujarat for DPC but the DPC follows the guidelines of Central Civil Service except eligibility date for determining the eligibility of the officers for promotion. Mr. Oza submitted that eligibility date for experience in the present case was when the DPC met for selecting the candidates for promotion. Mr. Oza submitted that in the past also, the eligibility date was always taken as the date when the DPC met. Mr. Oza submitted that though a reference to a date of 30.6.1993 is found mentioned in the proposal sent by the DPC but the same was a referral date for the purpose of preparing provisional select list as on 30.6.1993 and such date could not be taken as eligibility date for the purpose of counting experience of three years. Mr. Oza submitted that the DPC has considered last 5 years' ACRs of the candidates including the petitioner, and the DPC found grading of the petitioner as 'good' by taking average from last 5 years and such being based on material available with the DPC, no fault could be found with such grading of the

petitioner taken by the DPC. Mr. Oza submitted that the findings of the DPC is based on the material on record and this Court would not like to sit in appeal over the decision of the DPC in respect of the grading given by the DPC for all candidates whose cases were considered by the DPC. Mr. Oza thus submitted that since there is no violation of the Rules and since the DPC has on comparative merits of the candidates found the petitioner not suitable for promotion, this Court may not interfere in the ultimate decision taken by the DPC and that of the respondent authorities while exercising the powers under Article 226 of the Constitution of India. He thus urged to dismiss the petition.

7. Learned advocate Mr. Manan A. Shah for Mr. Arun H. Mehta, while adopting the arguments canvassed by learned Assistant Government Pleader Mr. Oza submitted that DPC has not only followed the statutory rules and on comparison of the merits of the candidates found respondent Nos.3 to 7 and the other candidates more meritorious than the petitioner. He submitted that the petitioner has failed to point out any violation of the statutory rules or any error apparent on record in the decision of DPC. He, therefore, urged to dismiss the petition.

8. Having heard learned advocates for the parties and having perused the record of the case, it appears that after exhausting the provisional select list as on 30.6.1991 for promotion to the post of Chief Engineer (Civil) from the post of Superintending Engineer (Civil), it was decided to prepare select list as on 30.6.1993 for filling up 7 posts of Chief Engineer (Civil) due to be vacant by 30.6.1994 and for that purpose, it was decided to call the meeting of DPC. The appointments by promotion to the posts of Chief Engineer (Civil) are governed by statutory Rules, called as Chief Engineer (Civil) in the Gujarat Service of Engineers, Class-I Recruitment Rules 1991. They are reproduced herein below:-

> "No.G.NJ-/(17)/GAB-1391/7/E: In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Government of Gujarat hereby makes the following rules to provide for regulating the Gujarat Service of Engineers, Class-I, in the Roads and Buildings Department, namely:-
>
> 1. These rules may be called the Chief Engineers (Civil) in the Gujarat Service of Engineers, Class-I, Recruitment Rules, 1991.

2. Appointment to the post of Chief Engineer (Civil) in the Gujarat Service of Engineers Class-I in the Roads and Buildings Department shall be made by promotion of Superintending Engineers (Civil) in the Gujarat Service of Engineers, Class-I in the Roads and Buildings Department on the basis of selectivity from amongst the persons coming up in the zone of consideration prescribed by Government irrespective of their interse seniority amongst those who constituted the zone of consideration.

3. To be eligible for appointment by promotion to the post mentioned in rule 2, the Superintending Engineer (Civil) in the Gujarat Service of Engineers, Class-I must:

(a) Possess at-least a Degree in Civil Engineering of a recognized University or a qualification equivalent to Degree in Civil Engineering recognized by the Government.

(b) have rendered minimum 3 years service as Superintending Engineer (Civil) in the Gujarat Service of Engineers, Class-I in the Roads and Buildings Department.

Provided that where as appointing authority is satisfied that a person having an experience specified in clause (b) is not available for promotion and that it is in public interest to fill up the post by promotion of a person having experience for a lesser period, it may for reasons to be recorded in writing, promote such person who has experience for a period not less than two third of the period specified in clause (b)."

9. The principle of selectivity as per Government Resolution dated 20.5.1978 was decided to be followed. As per the said Resolution, 21 names of Superintending Engineers against 7 posts were required to be considered. Considering the provision for experience in the rules, those officers who had completed 3 years/ 2 years of experience as on the date of DPC meeting, their cases were decided to be considered.

9.1. In the reply filed on behalf of respondent No.1 dated 16.8.1997, it is stated that unconditional list of Superintending Engineer (Civil) was yet to be finalized and therefore, DPC, which met on 26.4.1993, postponed its proceedings to 7.5.1993. The list of eligible persons was to be prepared for 8 probable posts up to 30.6.1993. In further reply dated 26.11.2009 filed on behalf of respondent No.1, it is stated that the top level committee, consisting of four persons under the chairmanship of Chief Secretary met on 7.5.1993 and considered names of 21 Superintending Engineers (Civil) for the purpose of promotion to

the post of Chief Engineer (Civil) on the basis of principle of selectivity. It is further stated that only two Superintending Engineers (Civil) were possessing 3 years' experience for the purpose of promotion to the post of Chief Engineer (Civil) as provided in the notification dated 19.12.1991. It is further stated that barring two officers, rest of the Superintending Engineers (Civil) were not possessing experience of 3 years as Superintending Engineers (Civil).

9.2. As found recorded in the decision taken by the Government through Under Secretary of the Roads and Buildings Departments at Annexure-A3, names of those Superintending Engineers, who had completed the prescribed minimum experience as on the date of the meeting of DPC, were sent for consideration. The date of 30.6.1993 appearing in the proposal sent to the Government at page Nos.76 and 77, as also in the proceedings of DPC, is the date fixed for the purpose of preparing provisional select list as on 30.6.1993, for filling 7 posts to be fallen vacant. However, for the purpose of counting the experience, the date fixed was the date of meeting of DPC.

10. On behalf of respondent No.1, one more affidavit dated 8.4.2013 to point out the procedure followed by DPC at the time of preparing the provisional select list as on 30.6.1991 when for counting the experience for three years, date of meeting of DPC was considered. Thus, in past also, when the provisional select list for the purpose of recommending the names for the post of Chief Engineer (Civil) was to be prepared, the date for experience which was taken was the date of meeting of DPC. In the present case, as stated above, decision to consider experience as on the date of meeting of DPC was already taken and DPC followed such date for the purpose of counting the experience of the candidates. Learned advocate Mr. Trivedi, however, submitted that since at the time of final approval given by the Government, it was stated that six out of eight officers had completed 3 years of experience as on 30.6.1993 and for two officers who had not completed 3 years of experience as on the said date, it was decided to grant relaxation in the eligibility criteria of completion of 3 years, the eligibility date for experience was 30.6.1993 and not the date of DPC. Such contention cannot be accepted. What was ensured by the said decision was that the candidates who had not completed 3 years service as on

30.6.1993 may not be given actual promotion, however the same cannot be taken as the relevant date to count experience of 3 years. In view of the above, it cannot be said that cut-off date or eligibility date for the purpose of counting the experience was 30.6.1993. Thus, the petitioner as on the date of meeting of the DPC had not completed experience of 3 years on the post of Superintending Engineer (Civil).

11. But then proviso to rules clearly provides that if a person having experience of 3 years is not available for promotion, it would be open for the concerned authority to consider the persons having less period of experience but not less than 2/3rd of 3 years experience. All such officers including the petitioner were considered by DPC, as they were fulfilling such eligibility of experience of not less than 2/3rd of 3 years, as found recorded by DPC. If we consider the date of last meeting of 7.5.1993, then two more officers are found to have completed 3 years' experience. As per the criteria of selectivity, those officers, who had completed 3 years of experience period with other 17 officers who had not completed 3 years of service but completed 2/3rd of 3 years of experience as required by proviso to rules were also taken in the zone of consideration and thereafter, DPC compared the merits from amongst all the candidates. Therefore, even if eligibility date is to be taken as of 30.6.1993, the petitioner was still required to compete with other candidates because as per Rule 2 of the Rules, promotion to the post of Chief Engineer (Civil) was to be made on the basis of selectivity from amongst the candidates coming up in the zone of consideration prescribed by the Government irrespective of their inter-se seniority amongst those who constituted the zone of consideration.

12. The DPC followed Government Resolution dated 20.5.1978 and from amongst 21 persons entered in the zone of consideration, the DPC was required to compare the merits of each of the candidates irrespective of their inter-se seniority. DPC was informed that against 5 officers, who were in the zone of consideration, there was a departmental inquiry pending and their cases were to be kept in sealed cover. Those officers were Shri K.S. Chauhan, Shri P.R. Shah, Shri M.I. Isani, Shri N.B. Patel and Shri M.K. Shah. Case of one Shri P.C. Pandya was kept open till he was taken in unconditional select list. From rest of the officers, 7 officers, named Shri N.B. Shah, Shri P.R. Dagli, Shri I.C. Shah, Shri P.N.

Patel, Shri S.I. Patel, Shri C.K. Patel, Shri R.W. Parmar were graded as 'very good', whereas other 7 officers named Shri C.K. Panwala, Shri P.R. Shah, Shri N.C. Shah, Shri S.J. Desai (petitioner), Shri V.D. Patel, Shri P.R. Choksi and Shri P.N.Jain were graded as 'good'. Thus 7 officers who were graded very good were recommended for their inclusion in the provisional select list as on 30.6.1993 subject to approval by the Gujarat Public Service Commission. It appears that respondent No.3-Shri P.R. Shah, who was graded as 'good' by DPC was subsequently included in the list of eligible candidates for recommendation by converting his grade from 'good' to 'very good' at the order of the then Minister of Roads and Buildings Department, which is annexed at Annexure-A6. All the above-said 7 persons, who were recommended by DPC for approval of the GPSC were graded as 'very good' and they were also found to have completed more than 2 years' experience on the posts of Superintending Engineer (Civil), whereas the petitioner was graded as 'good' by DPC. It is the case of the petitioner that though he was required to be graded as 'very good' on the basis of his last 5 years' ACRs, still he was graded as 'good' and respondent No.3 Shri P.R.Shah, who was graded as 'good' was subsequently considered and recommended by changing his gradation from 'good' to 'very good' at the instance of the concerned Minister. However, it appears from last 5 years' ACRs of the petitioner that the petitioner was graded as 'very good' for the year 1987-88, but then from 1.4.1988 to December 1989, he was graded as 'good officer'. Then from December 1989 to March 1990, he was graded as 'very good officer' but, the same was for short period. Then he was graded as 'very good' from 1.7.1990 to 31.1.1991, which was also for short period and thereafter, it appears that from 1.2.1991 to March 1991, it was stated as 'short period'. Then from 1.4.1991 to 27.6.1991, it was described as 'Joining Time'. Then, from 3.7.1991 to 28.7.1991, it was stated as 'short period' and thereafter from 29.7.1991 to 31.7.1992, he was graded as 'A good officer'. Then for the year 1992-1993, he was graded as 'very good' and 'sincere officer'. On the basis of such ACRs, DPC graded the petitioner as 'good'. As against the above, seven, including respondent Nos.4 to 7, officers were graded as 'very good'. So far as respondent No.3-Shri P.R. Shah is concerned, on finding that his ACRs reflected his grading 'very good', DPC decided to include his name for recommendation to GPSC. Thus, DPC found 8 persons having more merits than the petitioner on the basis of the material available before it. In the reply affidavit on behalf

of respondent No.1 dated 1.12.2011, it is stated that the petitioner was not having 'very good' remarks in all his ACRs and the top level selection committee has taken into consideration the criteria of 'very good' as first preference. It is further stated that DPC has taken into consideration the criteria like experience, last 5 years ACRs, seniority and no pendency of the departmental proceedings and recommended the cases of Superintending Engineers having more merits than the petitioner. The petitioner has failed to point out as to how grading given by DPC for the officers who were recommended was not correct. The petitioner has not pointed out any error apparent on the face of record so as to establish that the grading given by DPC was contrary to remarks in the ACRs of the officers recommended by it. The petitioner has also failed to point out that the DPC had acted contrary to the statutory rules for the purpose of recommending respondent Nos.3 to 7 and other candidates for promotion to the post of Chief Engineer (Civil).

13. In the case of *A.K. Bhatnagar (supra)* relied on by Mr. Trivedi, the Hon'ble Supreme Court has held that once Government frames rules under proviso to Article 309, it must strictly follow the same.

14. In the case of *Subhash (supra)* relied on by Mr. Trivedi, Hon'ble Supreme Court has held that the Tribunal fell into error in relying upon circulars to find the applicant of the said case unqualified as against the rules framed under Article 309 of the Constitution of India, as per which the applicant was possessing requisite experience.

15. In the case of *M. Adbuta Rao (supra)* relied on by Mr. Trivedi, Hon'ble Supreme Court has held that respondent of the said case was found fit for promotion by DPC but his promotion deferred because of pendency of enquiry proceedings, which was not challenged by the appellate State and therefore, after retirement, relief in monetary terms could be granted to the respondent.

16. In the case of *Abhijit Ghosh Dastidar (supra)* relied on by Mr.Trivedi, Hon'ble Supreme Court has held that grading of 'Good' which was below the benchmark 'very good' prescribed for promotion, ought to have been communicated to appellant particularly when the grading awarded to him in the preceding year was 'very good' and since 'good'

grading was not communicated to the appellant, such grading should not have been taken into consideration for promotion.

17. In the case of *Dev Dutt (supra)* relied on by Mr. Trivedi, the Hon'ble Supreme Court as held that all grading whether 'very good', 'good', 'average' or 'poor' required to be communicated to employees working in Government offices, statutory bodies, public sector undertakings, or other State instrumentalities where constitutional obligations and principles of natural justice and fairness apply. It is further held that Grant of a 'good' entry is of no satisfaction to an incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances. 'Good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry should be upgraded from 'good' to 'very good'. After considering representation of the employee(s), it is open to the authority to reject the representation and confirm the 'good' entry, but at least, an opportunity of making such representation should have been given to the appellant and such would only be possible if the appellant had been communicated 'good' entry. Communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidical structure whether often principle of elimination is followed in selection for promotion, and even a single entry can destroy career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted. It is further held that non-communication of entries in annual confidential reports of a public servant, whether he is in civil, judicial, police or any other service (other than military), has civil consequences because it may affect his chances of promotion or get other benefits. Such non-communication would be arbitrary and therefore, violative of Article 14 of the Constitution.

18. It appears that DPC recommended the names of those officers who were found eligible strictly as per the Rules. It is found from the minutes of the meeting of DPC at Annexure-A4 that DPC had excluded four officers against whom departmental inquiry was pending and recommended 7 officers who were included in the provisional select list

prepared for the purpose of recommending their names for promotion. In respect of all 7 officers, who were recommended, DPC found their grading as 'very good'. Once DPC on comparative merits of the candidates found that 7 officers were more meritorious than other officers, including the petitioner, on the basis of the material available before it, no error could be found with the decision of DPC unless it is pointed out by the petitioner that DPC's decision of giving 'very good' grading to those officers was contrary to the record of those officers. Though it appears that the name of the respondent No.3 was excluded by DPC from being included in the provisional select list for promotion, his ACRs were reflecting grading of 'very good' and on such basis, the concerned Minister passed order to take necessary action. However, such inclusion of the name of respondent No.3 would not make the petitioner entitled for inclusion of his name in the provisional select list of 7 persons prepared for the purpose of recommendation for being considered for promotion. There were other five officers also who were graded as 'good' but kept out of the provisional select list. When the provisional select list was to be made of 7 officers against 7 posts, it was obvious that DPC had to include the names of those 7 officers who were found to be more meritorious as per the comparative grading of the candidates. Therefore, even if grading of 'good' of the petitioner for a particular year was not communicated to the petitioner and was to be ignored, then also, in absence of any error apparent on the face of the record of the DPC, it is not open to this Court to sit in appeal over the decision arrived at by the DPC. In view of the above, decisions relied by learned advocate Mr. Trivedi will be of no help to the petitioner.

19. At this stage, decision of the Hon'ble Supreme Court in the case of *M.V. Thimmaiah and others Vs. Union Public Service Commission and others* reported in *(2008)2 SCC 119*, needs to be referred. In the said case, the Hon'ble Supreme Court has held and observed in para 36 and 39 as under:-

> "36. Therefore, in view of catena of cases, Courts normally do not sit in the court of appeal to assess the ARCs and much less the Tribunal can be given this power to constitute an independent Selection Committee over the statutory Selection Committee. The guidelines have already been given by the Commission as to how the ACRs to be assessed and how the marking has to be made. These guidelines take care of the proper scrutiny and not only by the Selection Committee but also the views of the State Government are obtained and ultimately the

Commission after scrutiny prepares the final list which is sent to the Central Government for appointment. There also it is not binding on the Central Government to appoint all the persons as recommended and the Central Government can withhold the appointment of some persons so mentioned in the select list for reasons recorded. Therefore, if the assessment of ACRs in respect of Shri S.Dayashankar and Shri R.Ramapriya should have been made as "outstanding" or "very good" it is within the domain of the Selection Committee and we cannot sit in the court of appeal to assess whether Shri R.Ramapriya has been rightly assessed or Shri Dayashankar has been wrongly assessed. The overall assessment of ACRs of both the Officers were taken; one was found to be "outstanding" and the second one was found to be very good. This assessment cannot be made subject of Courts or Tribunal's scrutiny unless actuated by mala fide.

39. It was also pointed out that in the case of Shri N. Sriraman and Shri K.Ramana Naik, the Selection Committee downgraded their reports from "outstanding" to "very good" yet they were selected. Similar is the case with Sri K.L.Lokanatha who has not been selected. Likewise the Selection Committee upgraded the assessment for the year 2001-02 from very good to outstanding yet he could not be selected. Therefore, this is also the process of selection and the Selection Committee constituted by the Commission and headed by the Member of the Commission, we have to trust their assessment unless it is actuated with malice or apparent mistake committed by them. It is not in the case of pick and choose, while selection has been made rationally. The selection by expert bodies unless actuated with malice or there is apparent error should not be interfered with. Lastly, the High Court considered the case of the two candidates who were eliminated by the Selection Committee and their cases were not sent to the Commission for selection to the I.A.S. cadre. The High Court found that this was the selection process by the Screening Committee headed by the Chief Secretary and these persons were not found more meritorious to be recommended for appointment. This assessment of the Screening Committee was found by the High Court to be proper and there was nothing on record to show that the candidates who were short-listed were not meritorious."

20. In fact, the main grievance in the petition is that respondent Nos.4 to 7 though juniors to the petitioner, came to be promoted bypassing the claim of the petitioner. The petitioner has also averred that the petitioner has outstanding career and is efficient in working and therefore, promotion granted to his juniors was illegal and arbitrary.

21. Under the statutory rules for promotion, as per Rule 2, appointment by promotion

is to be on the basis of selectivity from amongst the persons who entered into zone of consideration irrespective of their seniority. The petitioner had already entered in the zone of consideration with other 20 persons. After the petitioner entered in the zone of consideration, DPC was required to compare the merits of the candidates irrespective of seniority and DPC has considered the merits of the candidates including the petitioner. Therefore, the petitioner cannot contend that his juniors were allowed to march over him in the matter of recommending the names for promotion. In any case, even if name of respondent No.3 was not required to be recommended, that will never be a ground to hold that the petitioner was entitled to be included in the list of selected candidates for recommendation.

22. At this stage, it is also required to be noted that recommendation made by DPC also came to be approved by the Gujarat Public Service Commission, vide its order dated 5.10.1993, which is found at page No.112 of the affidavit dated 1.12.2011 filed on behalf of the respondent. Therefore, no error could be found with the decision of the DPC in not recommending the name of the petitioner.

23. For the reasons stated above, the petition is required to be dismissed. Hence, dismissed. Rule is discharged. Interim relief, if any, stands vacated forthwith. No costs.

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 2413 of 2012
D.D. 16.07.2012
Hon'ble Mr.Justice Ks Jhaveri

Raut Nitesh Chhaganbhai ... Petitioner
Vs.
State of Gujarat & Anr. ... Respondents

Caste and Category

Mistake in entry relating to particulars of caste and category at appropriate place in application form – Petitioner was considered under General Merit category, at the time of interview, as he mentioned 'Not applicable' against column "whether he is applying for 'Reserved' or 'Unreserved' (General) category even though he encloses caste certificate to effect that he belongs to ST category and petitioner fails to approach authorities or Court immediately when he was informed well in advance that he was called for interview for vacancies under general merit category – Whether in the circumstance, can it be said that the mistake committed by the petitioner is bona fide so as to allow the mistake to be rectified? No. Whether Public Service Commission is justified in considering him under general merit category? Yes.

Held:

"9.0. Moreover, when the petitioner was informed in the month of September informing him that he was called for interview for vacancies for General category instead of ST category even though he fell in the category of ST at that time, the petitioner ought to have approached the court immediately. Even delay of five months is vital when the personal interview took place in the month of September. The contention regarding the application form being accompanied by ST certificate is concerned, the commission has on the basis of the petitioner's statement in column no.4 that reserved category is not applicable to him considered him as an open merit candidate. Merely attaching the form would not make any difference when the inside information is different.

10.0 It is also required to be noted that as per application the petitioner was not clear as to which category he has opted and therefore the Commission considered his case according to an open merit candidate and when he was not successful he came out with the case that the authority should have considered his case in reserved category. It is not now open to the petitioner to contend otherwise and the respondent was therefore right in considering the case according to the details mentioned in the application. This court does not find any infirmity in the stand taken by the respondent Commission and therefore this petition fails on merits."

ORDER

1.0 The petitioner herein has prayed for direction to respondent No.2 to appoint the petitioner on the post of Principal (Sr. Surveyor/Technical Officer/Training cum Placement Offer/Trade Testing Officer) in Gujarat Skill Training Service Class II which has been kept vacant for ST category while declaring that the petitioner is eligible candidate from ST category.

2.0 The Gujarat Public Service Commission respondent no. 1 herein, on 28.01.2009, gave a public advertisement for several posts, one of them being Principal/Senior Surveyor/ Technical Officer/ Training cum Placement Office/ Trade Testing Officer Class-II pursuant to which the petitioner applied. The petitioner appeared in the written examination and cleared the same. Thereafter, the petitioner was called for interview to be held on 07.09.2011. At that time he was informed that he was called for interview for vacancies for General category instead of ST category even though he belongs to ST category. The petitioner forwarded copy of caste certificate along with letter and he was assured to consider him in ST category. On 02.12.2011, respondent declared the result and the petitioner has not been included in the list of ST candidates. The petitioner sought information regarding the same under RTI application whereby he was informed that since he had mentioned "Not Applicable" against the column 4(3) he had been considered belonging to "General Category" instead of ST category. Being aggrieved by the same, the petitioner has approached this Court by way of the present petition.

3.0 Heard Ms. Sheth, learned advocate appearing for the petitioner and Mr. D.G. Shukla, learned advocate appearing for the respondent Commission.

4.0 Ms. Sheth, learned advocate appearing for the petitioner submitted that the petitioner applied for the aforesaid post in pursuance of advertisement vide application dated 12.02.2009 in the prescribed format. In the said application form the petitioner in column 4 categorically mentioned "Scheduled Tribe". It was suggested that no column should be kept blank and hence he filled up all the columns. Since he had categorically

mentioned in the column 4 that he belongs to "ST" category at other places in every column '4' he mentioned 'Not applicable'. She further submitted that along with said application form the petitioner also annexed the certificate of Competent Authority for ST category.

4.1 Ms. Sheth, learned advocate for the petitioner further submitted that petitioner had categorically mentioned in the form that he belongs to ST category. On that basis only he was issued Entry Card permitting him to appear in the examination held on 25.04.2010 while stating "Category ST Male". From the said action of the respondent No.2 it is clearly spelt out that the application of the petitioner had been initially considered for appointment from ST category and accordingly he was issued Entry card. However, subsequently while calling upon him for oral interview for the reasons best known to respondent No.2 the case of the petitioner was considered for appointment from General Category.

4.2 Ms. Sheth also submitted that even otherwise, the Commission ought to have considered that the application of the petitioner was accompanied by ST Certificate. She submitted that it was bona fide error on the part of the petitioner in not stating clearly when asked in column 4 of the application that he was applying in reserved category and that he should not be penalized so heavily for such a bona fide mistake.

5.0 Mr. Shukla, learned advocate appearing for the respondent Commission strongly supported the stand taken by the respondent Commission and submitted that the Commission is justified in view of the fact that the petitioner in column no. 4 of the application form submitted on 16.02.2009 had mentioned 'Not Applicable' against 'Whether he is applying for 'Reserved' or Unreserved (General) category' and therefore the petitioner was considered as an 'Unreserved' category candidate. He submitted that as the petitioner did not get the minimum cut off marks as laid down for an 'Unreserved' Candidate he was not selected by the respondent Commission.

6.0 Mr. Shukla further submitted that there is delay of five months on the part of the petitioner in preferring the present petition.

7.0 Admittedly, the petitioner in column no. 4 of the application form submitted on 12.02.2009 had mentioned 'Not Applicable' against 'whether he is applying for 'Reserved' or Unreserved (General) category' and therefore the petitioner was considered as an 'Unreserved' category candidate. The petitioner had appeared at the Preliminary Test conducted by the respondent Commission on 25.04.2010. The respondent Commission had declared the preliminary result of 410 candidates on 15.06.2010 whose applications were yet to be scrutinized by the respondent Commission. After the scrutiny of the candidates, the respondent Commission declared the final result of the preliminary test on 05.08.2011 in which 191 candidates were found eligible for the personal interview. Further, at the time of personal interview, the petitioner was informed that he was considered for appointment from General category. The respondent Commission seems to have considered the fact that the petitioner was not possessing the qualifying norms/passing standard for unreserved category and therefore he is not included in the list of selected candidates.

8.0 The question here which is required to be considered is not as to which category the petitioner belongs to but as to whether the mistake is bona fide or genuine one which can be corrected at this stage. In this regard the law on the subject is well settled. The details in an application form once filled in and submitted cannot be allowed to be rectified at the will of the candidate. Such forms or certificates are required to be filled in correctly and cautiously. It shall not be appropriate to rectify the mistake at this stage merely because the admission ticket issued by the commission for the preliminary test states the words ';S.T ' against the category. It is pertinent to note that the preliminary test was conducted prior to scrutiny of the documents and the results are always subject to proper and final scrutinization of the documents. It is always open to the authorities to reject the candidature of any candidates at any stage if the form or certificates are not as per the requirement. The information given by the petitioner in the original application is the one which has weighed with the authorities and accordingly they have considered the petitioner as an open merit candidate and the passing standards applicable for the open merit candidates was applied in the case of the petitioner.

9.0 Moreover, when the petitioner was informed in the month of September informing him that he was called for interview for vacancies for General category instead of ST category even though he fell in the category of ST at that time, the petitioner ought to have approached the court immediately. Even delay of five months is vital when the personal interview took place in the month of September. The contention regarding the application form being accompanied by ST certificate is concerned, the commission has on the basis of the petitioner's statement in column no.4 that reserved category is not applicable to him considered him as an open merit candidate. Merely attaching the form would not make any difference when the inside information is different.

10.0 It is also required to be noted that as per application the petitioner was not clear as to which category he has opted and therefore the Commission considered his case according to an open merit candidate and when he was not successful he came out with the case that the authority should have considered his case in reserved category. It is not now open to the petitioner to contend otherwise and the respondent was therefore right in considering the case according to the details mentioned in the application. This court does not find any infirmity in the stand taken by the respondent Commission and therefore this petition fails on merits.

11.0 In the premises aforesaid, petition is dismissed. Notice is discharged.

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3054 of 2011
D.D. 13.05.2013
Hon'ble Mr. Justice C.L. Soni

Charan Harendrasinh Abhesinh … Petitioner
Vs.
Gujarat PSC & Anr. … Respondents

Candidature

Rejection of candidature for main examination conducted for selection to post of Assistant Conservator /Range Forest Officers Class-II – One of the eligibility criteria, as required by the advertisement inviting application to the post, was that those candidates who have completed 21 years age as on 30.03.2010 and appeared in the degree certificate examination before said date but whose results were not declared were permitted to appear in the preliminary examination and such candidates were required to produce certificate for passing of such degree examination as a proof. Petitioner submitted the degree certificate as final proof of possession of degree qualification along with application for main examination on 30.08.2010 wherein it was found that the degree examination was held in the month of April 2010, accordingly his application for main examination was rejected – Contention of the petitioner that he had appeared for practical examination from 15.03.2010 to 18.03.2010 and therefore it should be inferred that he had appeared for examination before 30.03.2010 and therefore rejection of his candidature is not justified – What was required in the advertisement being production of degree certificate in respect of examination held prior to 30.03.2010 and the degree certificate produced by the petitioner indicating that the examination was held in April 2010, whether the Public Service Commission was justified in rejecting his candidature declaring him ineligible for main examination? Yes.

Held:

12. Such decision taken by the respondent commission cannot be said to be unreasonable or arbitrary and cannot be substituted by this court while exercising the powers under Article 226 of the Constitution of India. In fact, respondent commission once having intended to treat only those candidates qualified who had appeared in degree certificate examination prior to 30.03.2010, respondent commission is the best authority to decide the eligibility of such candidates on the basis of degree certificate produced by the candidates. Respondent commission having taken the decision that the date and month mentioned in the degree certificate shall be considered as the date and month for degree examination, no illegality could be granted to the petitioner. Hence the petition is required to be dismissed.

JUDGMENT

1. This petition is filed under Article 226 of the Constitution of India seeking to quash and set aside the decision of respondent No.1 – Gujarat Public Service Commission rejecting his candidature for the post of Assistant Conservator of Forests/Range Forest Officer, Class-II and to declare him eligible to be considered for appointment on the said post pursuant to advertisement at Annexure-A.

2. It is the case of the petitioner that the petitioner had applied on-line to respondent No.1 Commission for the above said post and was permitted to appear in the preliminary examination. It is the case of the petitioner that the petitioner filled in the application form for the main examination along with the copy of degree certificate and final year mark sheet within the stipulated period of time. Such production of degree certificate and final year mark sheet was in proof support of passing of the degree examination by the petitioner as required by the advertisement. However, the petitioner received communication from respondent No.1 commission that the candidature of the petitioner was rejected on the ground that the petitioner did not possess requisite qualification as per the advertisement. It is the case of the petitioner that the petitioner does possess requisite qualification and the respondent No.1 Commission has committed illegality in rejecting his candidature for the main examination.

3. The petition is opposed by respondent No.1 by filing reply affidavit stating therein that it is clearly provided in the advertisement that those candidates who appeared at the degree certificate examination upto 30th March, 2010 i.e. last date for submission of application but their results were not declared would be permitted to appear in the preliminary test. The petitioner had not submitted the mark sheet of the final year degree certificate along with his application. The petitioner was asked to submit such degree certificate to which the petitioner informed the respondent commission that the result was not declared and therefore, he was not able to submit required document of his degree qualification. Respondent No.1 commission permitted the petitioner to appear in the preliminary test held on 30.5.2010. It is further stated that the petitioner then submitted

copy of mark sheet of Third Year B.Sc. with the application for the main examination on 30.8.2010 wherefrom it was found that the degree examination wherein the petitioner had appeared was held in the month of April, 2010. Therefore, the petitioner had not appeared in the degree certificate examination before 30.3.2010 and under the circumstances, the candidature of the petitioner was rejected. In such action on the part of the respondent commission, no illegality is committed.

4. On behalf of the petitioner, additional affidavit came to be filed on 4th May, 2012 pointing out that the petitioner had already appeared in the practical examination between 15.3.2010 to 18.3.2010 and, therefore, degree examination of the petitioner could be said to have commenced from 15.3.2010 which was the date prior to 30.3.2010 and, therefore, the petitioner could be said to have appeared in the degree examination prior to 30.3.2010.

5. I have heard the learned advocates for the parties.

6. Learned advocate Mr. Vaibhav A. Vyas appearing for the petitioner submitted that the petitioner was already permitted to appear at the preliminary examination on the basis of his on-line application. At the time when the petitioner submitted application for the main examination, the petitioner was not having the mark sheet for the degree examination, therefore, the petitioner could not produce such mark sheet with the application for the main examination. Mr. Vyas submitted that the qualification required as per the examination was that the candidates who have completed the age of 21 years on the last date of submission of the application 30.3.2010 and appeared in the degree certification but the result whereof was not declared, such candidates were permitted to appear in the preliminary examination. Mr. Vyas submitted that after the petitioner got copy of degree certificate with the mark sheet, the petitioner submitted such document as proof in support of his qualification and there is no dispute that the petitioner had cleared degree examination. Mr. Vyas submitted that since the petitioner has already cleared degree examination, the petitioner was very much eligible and entitled to appear in the main examination, still, however, respondent No.1 Commission declared the petitioner ineligible to appear in the main examination on the ground that the petitioner did not satisfy the requirement of qualification as per the advertisement as the petitioner had not appeared in

the degree certificate examination by 30.3.2010 but appeared in the month of April 2010. Mr. Vyas submitted that the degree examination of the petitioner had already commenced from the date of practical examination which was held between 15.3.2010 to 18.3.2010 and, therefore, the petitioner could be said to have appeared in the degree certificate examination by 30.3.2010. He, thus, submitted that the respondent Commission is not justified in declaring the petitioner ineligible for the main examination.

7. As against the above arguments, learned advocate Mr. D.G. Shukla appearing for the respondent Commission submitted that the advertisement clearly provided for considering the case of those candidates who appeared in degree certificate examination by 30.3.2010 and, therefore, those candidates who had not appeared in degree certificate examination by such date have not been considered eligible for the main examination. Mr. Shukla submitted that there are many such candidates whose candidature has been rejected on the similar ground and the petitioner does not deserve different treatment. Mr. Shukla submitted that respondent No.1 Commission has taken into consideration the degree certificate produced by the petitioner with his application from where it clearly appears that the petitioner had appeared in the degree certificate examination in the month of April, 2010 and, therefore, the petitioner cannot be said to have appeared in the degree certificate examination prior to 30.3.2010. Mr. Shukla submitted that the practical examination which was taken between 15.3.2010 to 18.3.2010 could not be said to be the examination in the context of the requirement of the advertisement. Mr. Shukla submitted that when the respondent commission has taken degree certificate produced by the petitioner as final proof wherein it is clearly mentioned that the degree examination was held in the month of April, 2010 and when the decision taken is based on such degree certificate produced by the petitioner, it cannot be said that respondent No.1 has committed any illegality in declaring the petitioner as ineligible for the main examination with other such similarly situated candidates. He, thus, urged to dismiss this petition.

8. While adopting the arguments advanced by the learned advocate Mr. Shukla for the respondent Commission, learned A.G.P. Ms. Megha Chitaliya appearing for the State Authority has submitted that since the petitioner has not fulfilled the requirement of the advertisement, no illegality could be found in the decision of respondent No.1.

9. Having heard the learned advocates for the parties and having considered the documents on record, it appears that the candidate applying for the post in question pursuant to advertisement at Annexure-A was required to satisfy eligibility criteria of qualification as required by the advertisement. It is provided in the advertisement that those candidates who have completed 21 years' age as on 30.3.2010 and appeared in the degree certificate examination before said date but whose results were not declared were permitted to appear in the preliminary examination. Such candidates were then required to produce certificate for passing of such degree examination as a proof.

10. There is no dispute about the fact that the petitioner was permitted to appear in the preliminary examination. However, from the copy of degree certificate examination produced by the petitioner, it was found that the said examination was held in the month of April, 2010.

11. Contention of the learned advocate Mr. Vyas is that since the practical examination was held from 15.3.2010 to 18.3.2010, date of commencement of the degree examination should be taken from the date of practical examination. Such contention cannot be accepted. It is required to be noted that what is provided was the production of the degree certificate examination held prior to 30.3.2010. Therefore, respondent commission was required to consider details provided in the degree certificate examination produced by the petitioner and such other similarly situated candidates. In the certificate, it is clearly stated that the degree examination was held in the month of April, 2010. Therefore, the question is whether the respondent no.1 commission is justified in considering degree certificate produced by the petitioner for deciding as to whether the petitioner had appeared in the degree examination prior to 30.3.2010 or not. As pointed out on behalf of respondent no.1 commission, respondent no.1 commission has taken date of such examination from the degree certificate produced by the petitioner and such other similarly situated candidates for deciding whether the petitioner and such other candidates appeared in the degree examination prior to 30.3.2010 or not and those candidates who are found to have appeared in the examination taken in the month of April, 2010 as per the degree certificate, have been declared as ineligible for the main examination.

12. Such decision taken by the respondent commission cannot be said to be unreasonable or arbitrary and cannot be substituted by this court while exercising the powers under Article 226 of the Constitution of India. In fact, respondent commission once having intended to treat only those candidates qualified who had appeared in degree certificate examination prior to 30.3.2010, respondent commission is the best authority to decide the eligibility of such candidates on the basis of degree certificate produced by the candidates. Respondent commission having taken the decision that the date and month mentioned in the degree certificate shall be considered as the date and month for degree examination, no illegality could be found in such decision, therefore, no relief could be granted to the petitioner. Hence the petition is required to be dismissed.

13. Accordingly, this petition is dismissed. Rule is discharged.

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HIMACHAL PRADESH PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.
CWP NO. 3447/2013
D.D. 28.03.2014
Hon'ble Mr. Justice Rajiv Sharma &
Hon'ble Mr. Justice V.K.Sharma

Poonam Kumari Thakur … Petitioner
Vs.
Himachal Pradesh PSC … Respondent

A. Selection process

Maintenance of transparency in selection process - With a view to maintain transparency in selection process directions issued to Public Service Commission to display marks secured by candidates in preliminary examination as well as main examination on official website at the time of declaration of results. Commission need not wait for completion of entire process till the recommendations are made for appointment under the pretext of maintenance of secrecy.

B. Re-Evaluation of answer sheets

Method of re-evaluation – Spot evaluation by team of experts – With a view to maintain transparency in evaluation, directions issued to get answer sheets evaluated on the spot by a team of experts comprising of not less than three members. Each experts to give his own marks separately and after evaluation of answer sheets average of marks given by three experts shall be treated as final.

ORDER

Rajiv Sharma, Judge (oral)

The respondent-Commission issued advertisement No.10/2011 dated 1.1.2012, whereby applications were invited from eligible candidates for recruitment to H.P.A.S. Combined Competitive Examination, 2011. Petitioner submitted an application for considering her candidature. She was issued Roll No. 115205. Preliminary examination was held. Petitioner participated in the preliminary examination. She was declared successful. Examination for General Studies Hindi was conducted on 9.2.2013 and Essay English was conducted on 10.2.2013. The examination in the subject of Geology was held on 12.2.2013 and in the subject of Geography on 16.2.2013.

2. According to the petitioner, she had done well in the examinations and was expecting that she would secure more than cut off marks. However, when the result was declared by the respondent-Commission, her name did not figure in the list of successful candidates. Petitioner was permitted to inspect her answer sheet by this Court on 12.6.2013, pursuant to which, she inspected the same on 17.6.2013.

3. Petitioner sought information under Right to Information Act, 2005 from the Public Information Officer of the respondent-Commission about the cut off marks for general category and highest marks secured by general category candidate in the HPAS (Main) Examination, 2011. She was informed by the respondent-Commission vide letter dated 24.5.2013 that the final process of H.P.A.S. Examination-2011 has not yet been completed and the requisite information would be supplied after making final recommendation for appointment to the Government. Petitioner secured 414 marks in the main examination and cut off marks in General category were 510.

4. We are of the considered view that in order to maintain transparency in the entire selection process, respondent-Commission should display the marks secured by each candidate in preliminary examination as well as main examination on the official website at the time of declaration of the result. The respondent-Commission need not to wait for the completion of entire process till the recommendations are made for appointment to the Government. The Court is not satisfied with the explanation given in the letter dated 24.5.2013. However, prayer of Mr. Ajay Mohan Goel, learned Advocate, to call for answer sheets of the petitioner is turned down since the petitioner secured only 414 marks and the cut off marks for general category were 510.

5. Plea of Mr. Ajay Mohan Goel, learned Advocate, seeking direction to the respondent-Commission for spot evaluation of answer sheets by more than one expert deserves to be allowed. In case spot evaluation of answer sheets is carried out by the respondent-Commission, it would further increase transparency in the selection process.

6. In view of discussion and observations made hereinabove, the writ petition is disposed of with a direction to the respondent-Commission to display marks obtained by each candidate in the preliminary examination as well as in the main examination (subject-wise) on the official website at the time of declaration of the result. Respondent-Commission is also directed to get the answer sheets evaluated on the spot by a team of experts not less than three in number and the each expert shall give his own marks and after evaluation of the answer sheets, average of the marks given by three experts shall be final. Pending application(s), if any, also stands disposed of. No order as to costs.

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JHARKHAND
PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (S) No.6071 of 2009
D.D. 17.07.2012
Hon'ble Mr. Justice D.N.Patel

Jiura Oraon	**…**	**Petitioner**
Vs.		
The State of Jharkhand & Ors.	**…**	**Respondents**

Selection process

Modification in cut off date fixed for receipt of marks/result sheet – Whether, merely on ground that Public Service Commission had got powers to fix cut off date for receipt of marks/result sheet, the cut off date already fixed can be altered to suit the petitioners? No. - Petitioner appeared for examination conducted for recruitment to posts of Primary Trained Teachers, which was conducted on 10.08.2008. As per clause (4) of advertisement inviting application for the said post candidates were required to submit result/marks sheet of Diploma in Primary Education course, within three months from date of conduct of examination – Petitioner could submit the same only in the month of August 2009 and therefore his candidature was rejected – Contention that as per clause(1) of the advertisement Commission is empowered to fix cut off date and such cut off date as fixed by the Commission being much prior to announcement of results of Diploma in Primary Education, the cut off date fixed shall be treated with reference to announcement of results of written examination conducted for recruitment and not with reference to date of conduct of written examination so as to extend the time limit upto 30.08.2009 to avoid rejection of his candidature because of late submission of result sheet. – Held that clause 1 & 4 of the advertisement should be read together and not in isolation. If read together results sheet has to be submitted within three months from date of conduct of examination. Further held that, fixing cut off date being policy decision courts cannot sit in appeal over such policy decisions. Further held that cut off date cannot be fixed to suit all aspiring candidates

Cases referred:

1. Dr. Ami Lal Bhat v. State of Rajasthan and others, (1997) 6 SCC 614
2. Ramrao and others v. All India Backward Class Bank Employees Welfare Association and others, (2004) 2 SCC 76
3. Union of India and another v. Parameswaran Match Works, (1975) 1 SCC 305
4. Government of Andhra Pradesh and others v. N. Subbarayudu and others, (2008) 14 SCC
5. University Grants Commission v. Sadhana Chaudhary and others, (1996) 10 SCC 536

JUDGEMENT

1. The present petition has been preferred mainly for the reason that respondents have not accepted the candidature of the petitioner for the post of Primary Trained Teacher because petitioner could not produce the result/marksheet of Diploma in Primary Education course prior to cut off date fixed by the Jharkhand Public Service Commission (hereinafter referred to as J.P.S.C. for the sake of brevity). As per Clause 4 of the public advertisement dated 21st September, 2007 (Annexure 2 to the memo of the petition) result of the Teacher's Training course was to be produced within three months from the date J.P.S.C. holds the examination for the post of Primary Trained Teacher. This examination was conducted on 10th August, 2008 by the J.P.S.C. and therefore, petitioner was supposed to produce the result/marksheet of his Teacher's Training examination (In the facts of the present case, it is Diploma in Primary Education for the present petitioner) on or before 10th November, 2008. It is submitted by counsel for the petitioner that petitioner appeared in Diploma in Primary Education examination in the month of December, 2008 and the final result was published by Indira Gandhi National Open University much later and vide letter at Annexure 6 to the Memo of the petition result was submitted to the J.P.S.C. by the petitioner on 3rd August, 2009. Thus, it is submitted by the counsel for the petitioner that the time for submission of marksheet/result of Diploma in Primary Education course may be extended for the petitioner from 10th November, 2008 till 3rd August, 2009. It is also submitted by the counsel for the petitioner that as per Clause No. 4 of the advertisement at Annexure 2 to the memo of the petition, such result/marksheet can be submitted within three months from the date on which the result of the examination conducted by J.P.S.C. was published. The J.P.S.C. has published the result of the examination of the post in question on 30th May, 2009 and therefore, on or before 30th August, 2009 petitioner has to submit result/marksheet of his diploma in Primary Education course which he has already submitted as per Annexure 6 to the memo of the petition. This aspect of the matter has not been properly appreciated by the respondents and therefore, a suitable direction may be given to the respondents to appoint the petitioner as a Primary Trained Teacher because the petitioner has already cleared the test taken by the J.P.S.C. for the post in question.

2. Counsel for the J.P.S.C. submitted that initially a public advertisement was issued on 20th April, 2007 for 8767 posts of Primary Trained Teachers (Annexure 1 to the memo of the petition). As per this advertisement the candidate should have a Teacher's Training certificate and later on, certain relaxations have been given by the respondents and these relaxations have been published by another public advertisement dated 21st September, 2007 in a newspaper, which is at Annexure 2 to the memo of the petition and as per Clause 4 of the advertisement at Annexure 2, those candidates, who are appearing in Teacher's Training examination, can also apply for the post in question, but they have to submit the result/marksheet of Teacher's Training examination within three months from the date on which J.P.S.C. holds examination for the post of Primary Trained Teacher. It is submitted by the counsel for J.P.S.C. that examination was conducted by J.P.S.C. on 10th August, 2008, therefore, as per Clause 4 of the Public Advertisement at Annexure 2, petitioner ought to have submitted marksheet/result of his Teacher's Training examination on or before 10th November, 2008. It is further submitted by the counsel for the J.P.S.C. that case of the present petitioner is grossly time barred because as stated in the memo of the petition, especially in paragraph no. 15 that the petitioner has appeared in Diploma in Primary Education course conducted by the I.G.N.O.U. much later. As per Clause 1 of the advertisement at Annexure 2, cut off date is to be fixed by the J.P.S.C. Moreover, such a cut off date will be much prior to the declaration of result by the J.P.S.C. Thus, Clause 1 and Clause 4 of the advertisement at Annexure 2 are to be read together. Both may not be read in exclusion of each other and on a conjoint reading of Clause 1 and Clause 4, cut of date of submission of result /marksheet of Teacher's Training examination must be fixed by the J.P.S.C. prior to publication of the result and within three months of the date on which the J.P.S.C. holds such examination. The cut off date was fixed as 10th November, 2008 because examination was conducted by the J.P.S.C. on 10th August, 2008. The petitioner has admittedly submitted the result of his diploma course of Teachers Training examination in the month of August, 2009 and hence he is not entitled to be considered for the post of Primary Trained Teacher. It is further submitted by the counsel for the J.P.S.C. that there may be vacancies in the post of Primary Trained Teacher because advertised posts are 8767 and the actual appointments may be of lesser number of candidates. This fact alone is not sufficient for appointment of the present petitioner because petitioner, as per the

advertisement at Annexure 2 is not eligible and qualified for the post in question. If there are more vacancies for the post in question the petitioner will get his chance in future as and when advertisement is published for this post again in future, but the cut off date prescribed by the respondents for submission of the educational qualification certificate may not be altered by this Court otherwise J.P.S.C. can not publish final result because any candidate may approach this Court for relaxation of time limit for submission of the certificates in support of his educational certificates. It is submitted by counsel for the J.P.S.C. that to fix the cut off date is a policy decision of the respondents and this court is not sitting in appeal against such policy decision. There cannot be any cut off date fixed by the respondents which will suit all the aspiring candidates and if no cut off date is fixed future candidates will be aggrieved. This cannot be a reason for making the cut off date fluctuating and therefore, since there is no substance in the petition, same may be dismissed.

3. Having heard counsel for both sides and looking to the facts and circumstances of the case, I see no ground to entertain this writ petition mainly for the following facts and reasons:

(I) The respondents have issued a public advertisement on 20th April, 2007 for total 8767 posts of Primary Trained Teachers. This advertisement is at Annexure 1 to the memo of the petition. As per this advertisement, a candidate should be a graduate and must possess a Teacher's Training certificate. Later on, another advertisement was published amending the earlier public advertisement. The second advertisement was published on 21st September, 2007 granting certain relaxations. The relevant relaxation is that those candidates who are appearing in Teacher's Training certificate course are also eligible to apply for the post of Primary Trained Teachers, but they will have to submit that result/marksheet of Teacher's Training certificate within a period of three months from the date on which the J.P.S.C. is holding examination for the post of Primary Trained Teachers. Clause 1 and Clause 4 of this second advertisement at Annexure 2 are the relevant

clauses. It further appears from the facts of the case that J.P.S.C has conducted examination for primary Training Teachers on 10th August, 2008 and therefore, as per Clause 4 of the Public Advertisement at Annexure 2, candidate must submit the result or marksheet of Teachers training certificate course within three months, i.e. on or before 10th November, 2008. The petitioner has appeared in Final examination of his Diploma in Primary Education course conducted by the Indira Gandhi National Open University, especially in practical examination later on, i.e. in the month of December, 2008, as stated in Paragraph 15 of the memo of the petition. Thus, petitioner could not submit his result or marksheet of diploma in Primary Education course on or before 10th November, 2008, which is a condition as per Clause 4 of Annexure 2 to the memo of the petition and hence his candidature has not been accepted by the respondents for the post in question.

(II) Counsel for the petitioner has heavily relied upon Clause 1 and Clause 4 of the advertisement at Annexure 2 to the memo of the petition and submitted that petitioner can submit his result of diploma in Primary Education Course at any time within three months from the date on which J.P.S.C. has declared the result of Primary Trained Teachers. It is submitted by the counsel for the petitioner that J.P.S.C. has declared the result on 30th May, 2009 and therefore, petitioner can submit the marksheet of Diploma in Primary Education on or before 30th August, 2009, which he did vide his letter dated Annexure 6 to the memo of the petition. This contention is not accepted by this Court, mainly for the reason that Clause 1 and 4 of the advertisement at Annexure 2 to the memo of the petition permits J.P.S.C. to fix any cut off date itself prior to the date of publication of result by J.P.S.C. for submission of marksheet of Teachers Training examination course undertaken by the candidates. Clause 1 to be read with Clause 4 of Annexure 2. As per clause 4 of Annexure 2, J.P.S.C. has already fixed a cut off date for submission of result/marksheet of Teacher's Training certificate by the candidates. As per clause 4 to Annexure 2, any candidate who is appearing in Teacher's Training course examination can apply for the post in question, but he will have to submit his result of Teacher's Training examination within three months from

the date on which J.P.S.C. is conducting the examination. Thus, J.P.S.C. has conducted examination on 10th August, 2008 and therefore, last date of submission of marksheet of the candidate of his Teacher's Training examination is 10th November, 2008, whereas petitioner has appeared in the practical examination conducted by IGNOU for Diploma in Primary Education course undertaken by the petitioner in the month of December, 2008. Thus, there is violation of Condition No. 4 of Annexure 2 by the present candidate/petitioner. Clause 1 and Clause 4 of Annexure 2 cannot be read in isolation. They must be read conjointly and there is no discrepancy in Clause 1 and Clause 4 if they are read together.

(III) It is further submitted by the counsel for the petitioner that as per Annexure 6 to the memo of the petition, petitioner has already submitted his certificate of Diploma in Primary Education course on 3rd August, 2008 and some relaxation may be given by this Court by extending the time limit for submission of the educational certificates by the candidates to the J.P.S.C. This contention is also not accepted by this court because so far the fixation of cutoff date is concerned, it is the power of the respondents. There cannot be any lump sum or general or wholesale relaxation in the cutoff date. For the submission of the educational qualification certificates there bound to be a fixed cut off date. If this court allows this petition there will be a fluctuating cut off date and any candidate may come at any time before this Court with a prayer for relaxation of cutoff date for submission of educational qualification certificate and there will not be any finalization of the result by the J.P.S.C. at all. Even J.P.S.C. has also written a letter to the candidates, which is at annexure 5 to the memo of the petition, dated 18th July, 2009 that petitioner has secured minimum qualifying marks, but his Teacher's Training certificate is not available and therefore, his result has not been published and therefore, he was informed that if he has his Teacher's Training certificate declared prior to 10th November, 2008, may submit it on or before 30th July, 2009. As the petitioner has no such certificate, which is issued prior to 10th November, 2008, there is no question of any relaxation to the petitioner and if such relaxation is allowed by the Court by the way of unguided sympathy, it will lead to fluctuating

cut-off date or uncertain cut-off date. Such type of lump sum, general relaxation will lead to unfairness to those candidates, who have never applied for the posts in question, though they are similarly situated to the petitioner.

(IV) Fixing cut-off date for submission of marksheet of educational qualification is the discretion of the rule making authority. There cannot be any cut-off date, which can be fixed with so much mathematical accuracy and with so much statistical nicety, which can avoid hardship in all conceivable cases. Once the cut-off date is fixed, some candidates are bound to fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary, unless the cut-off date is so "wide off the mark, as to make it wholly unreasonable.

(V) It has been held by the Hon'ble Supreme Court in the case of ***Dr. Amit Lal Bhat Vs. State of Rajasthan and Others***, as reported in ***(1997) 6 SCC 614 at paragraph nos. 5, 7, 11:***

"5. This contention, in our view, is not sustainable. In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this Court in Union of India v. Parameswaran Match Works and has been reiterated in subsequent cases. In the case of A.P. Public Service Commission v. B.Sarat Chandra the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut-off date was challenged. This Court considered the various steps required in the process of selection and said,

"When such are the different steps in the process of selection the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of

selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications".

This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate, which may arise if such an age is linked to the process of selection which may take uncertain time, it is desirable that such a cut-off date should be with reference to a fixed date. Therefore, fixing an independent cut-off date, far from being arbitrary, makes for certainty in determining the maximum age.

7. In the present case, the cut-off date has been fixed by the State of Rajasthan under its Rules relating to various services with reference to the 1st of January following the year in which the applications are invited. All Service Rules are uniform on this point. Looking to the various dates on which different departments and different heads of administration may issue their advertisements for recruitment, a uniform cut-off date has been fixed in respect of all such advertisements as 1st January of the year following. This is to make for certainty. Such a uniform date prescribed under all Service Rules and Regulations makes it easier for the prospective candidates to understand their eligibility for applying for the post in question. Such a date is not so wide off the mark as to be construed as grossly unreasonable or arbitrary. The time-gap between the advertisement and the cut-off date is less than a year. It takes into account the fact that after the advertisement, time has to be allowed for receipt of applications, for their scrutiny, for calling candidates for interview, for preparing a panel of selected candidates and for actual appointment. The cut-off date, therefore, cannot be considered as unreasonable. It was, however, strenuously urged before us that the only acceptable cut-off date is the last date for receipt of applications under a given advertisement. Undoubtedly, this can be a possible cut-off date. But there is no basis for urging that this is the only reasonable cutoff date. Even such a date is liable to question in given circumstances. In the first place, making a cut-off date dependent on the last date for receiving applications, makes it more subject to vagaries of the department concerned fixed as the last date for receiving applications. A person who may fall on the wrong side of such a cut-off date may well contend that the cut-off date is unfair, since the advertisement could have been fixed later at the point of selection or appointment. Such an argument is always open, irrespective of the cut off date fixed and the manner in which it is fixed. That is why this Court has said in the case of Parameswaran Match Works and later cases that the cut-off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. To say that the only cut-off date can be the last date for receiving applications, appears to be without any basis. In our view the

cutoff date which is fixed in the present case with reference to the beginning of the calendar year following the date of application, cannot be considered as capricious or unreasonable. On the contrary, it is less prone to vagaries and is less uncertain.

11. In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age-limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age-barred. We fail to see how the power of relaxation can be exercised in the manner contended.
(Emphasis supplied)

(VI) As per the aforesaid decision, it is not possible for the authority to fix a cut off date which will suit all the aspiring candidates and a cut off date, even if fixed after considering all most all the aspects, will certainly segregate the candidates, who can offer their candidature, from those, who cannot and somehow or other, there will always be some persons who will fall on the right side of the cut-off date and some, who will fall on the wrong side. But, that does not make a cut-off date arbitrary unless the cut-off date is so wide off the mark so as to make it wholly unreasonable. A cut off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. These aspects apply to the facts of the present case also, where a cut-off date is fixed for submission of Teachers Training certificate so as to give a chance to apply for the post even to those persons who are yet to complete their teachers training course, i.e. who are going to appear in the final examination of Teachers Training course. But inspite of that, petitioner could not furnish the required certificate within the cut off date. It cannot be said that there is any arbitrariness on the part of the State to fix the cutoff date, in the facts of the present case, because petitioner could not show that the said cut off date is so capricious

or whimsical as to be wholly unreasonable showing any malafide on the part of the State.

(VII) It has been held by the Hon'ble Supreme Court in the case of ***Ramrao and Others v. All India Backward Class bank Employees Welfare Association And Others*** reported in (2004) 2 SCC 76, at paragraph nos. 29 to 36 as under:

"29. It is now well settled that for the purpose of effecting promotion, the employer is required to fix a date for the purpose of effecting promotion and, thus, unless a cut-off date so fixed is held to be arbitrary or unreasonable, the same cannot be set aside as offending Article 14 of the Constitution of India. In the instance case, the cut-off date so fixed having regard to the directions contained by the National Industrial Tribunal which had been given a retrospective effect cannot be said to be arbitrary, irrational, whimsical or capricious.

30. The learned counsel could not point out as to how the said date can be said to be arbitrary and, thus, violative of Article 14 of the Constitution of India.

31. It is not in dispute that a cut-off date can be provided in terms of the provisions of the statute or executive order. In University Grants Commission v. Sadhana Chaudhary it has been observed: (SCC p.546, para 21)

"21. ...It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it unless it can be said that it is very wide off the reasonable mark. (See Union of India v. Parameswaran Match Works, SCC at 310 :SCR at p.579 and Sushma Sharma (Dr) v. State of Rajasthan, SCC at 66: SCR at p. 269.)"

32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with object which the decision of the Bank to promote its employees seeks to achieve. Such classifications would neither fall within the category of creating a class within class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date, but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.

34. In State of W.B. v. Monotosh Roy it was held: (SCC pp.76-77, paras 13-15)

"13. In All India Reserve Bank Retired Officers Assn. v. Union of India a Bench of this Court distinguished the judgment in Nakara and pointed out that it is for the Government to fix a cut-off date in the case of introducing a new pension scheme. The Court negatived the claim of the persons who had retired prior to the cut-off date and had collected their retiral benefits from the employer. A similar view was taken in Union of India v. P.N. Menon. In State of Rajasthan v. Amrit Lal Gandhi the ruling in P.N. Menon case was followed and it was reiterated that in matters of revising the pensionary benefits and even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis has to be fixed for extending the benefits.

14. In State of U.P. v. Jogendra Singh a Division Bench of this Court held that liberalized provisions introduced after an employee's retirement with regard to retiral benefits cannot be availed of by such an employee. In that case the employee retired voluntarily on 12.-4-1976. Later on, the statutory rules were amended by notification dated 18-11-1976 granting benefit of additional qualifying service in case of voluntary retirement. The Court held that the employee was not entitled to get the benefit of the liberalized provision which came into existence after his retirement. A similar ruling was rendered in V. Kasturi v. Managing Director State Bank of India.

15. The present case will be governed squarely by the last two rulings referred to above. We have no doubt whatever that the first respondent is not entitled to the relief prayed for by him in the writ petition."

35. In Vice-Chairman & Managing Director, A.P. SIDC Ltd. v. R. Varaprasad in relation to "cut-off" date fixed for the purpose of implementation of Voluntary Retirement Scheme, it was said: (SCC p.580, para 11)

"11. The employee may continue in service in the interregnum by virtue of clause (I) but that cannot alter the date on which the benefits that were due to an employee under VRS were to be calculated. Clause (c) itself indicates that any increase in salary after the cut-off point/date cannot be taken into consideration for the purpose of calculation of payments to which an employee is entitled under VRS."

36 . The High Court in its impugned judgment has arrived at a finding of fact that the Association had failed to prove any malice on the part of the authorities of the Bank in fixing the cut-off date. A plea of malice as is well known must be specifically pleaded and proved. Even such a requirement has not been complied with by the writ petitioners." (Emphasis supplied)

(VIII) As per the above decision, a cut off date cannot be labeled as arbitrary even if no particular reason is given by the authority for fixing a particular date as cut off date unless it is considered whimsical or capricious in the circumstances. There is no mathematical or logical way of fixing it and unless very wide off the reasonable mark, it can be labeled arbitrary. Further, as held in the aforesaid case, in the present case also the petitioner could not prove any malice on the part of the State for fixing the cut off date.

(IX) It has been held by the Hon'ble Supreme Court in the case of *Union of India And Another v. Parameswaran Match Works, as* reported in (1975) 1 SCC 305, at paragraph no. 10, as under:

"10. .....That a classification can be founded on a particular date and yet be reasonable, has been held by this Court in several decisions (See M/s. Hatisingh Mfg. Co. Ltd. v. Union of India, Dr. Mohammad Saheb Mahbood Medico v. Deputy Custodian General, M/s. Bhikuse Yamasa Kshatriya (P) Ltd. v. Union of India and Daruka & Co. v. Union of India. The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the Legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark See Louisville Gas Co. v. Alabama Power Co. per justice Homes." (Emphasis supplied)

(X) As has been held in the aforesaid case, in the facts of the present case also the decision of J.P.S.C to fix a particular cut off date must be accepted, unless it can be said that it is very wide off the reasonable mark.

(XI)) It has been held by the Hon'ble Supreme Court in the case of ***Government of Andhra Pradesh & Others v. N. Subbarayudu & Others,*** reported in (2008) 14 SCC, at paragraph nos. 5 to 9, as under:

"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive

authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary.(See State of Punjab v. Amar Nath Goyal.)

6. No doubt in D.S. Nakara v. Union of India this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara case as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical) vide State of Bihar v. Ramjee Prasad, Union of India v. Sudhir Kumar Jaiswal (vide SCC para 5), Ramrao v. All India Backward Class Bank Employees Welfare Assn. (vide SCC para 31), University Grants Commission v. Sadhana Chaudhary, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in Aravali Golf Club v. Chander Hass and in Govt. of A.P. v. P. Laxmi Devi the court must maintain judicial restraint in matters relating to the legislative or executive domain."

(Emphasis supplied)

(XII) As held in the aforesaid decision, it can be said in the facts of the present case that J.P.S.C might have fixed the cutoff date keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances and this Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order

appears to be, on the face of it, blatantly discriminatory leading to some blatantly capricious or outrageous result.

(XIII) It has been held by the Hon'ble Supreme Court in the case of *University Grants Commission versus Sadhana Chaudhary and Others,* reported in *(1996) 10 SCC 536, at paragraph no. 21*, as under:

"21. We find considerable force in the aforesaid submission of Shri Banerjee. It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark. (See: Union of India v. Parameshwaran Match Works at p. 579 and Sushma Sharma (Dr.) v. State of Rajasthan at p.269.) in the present case, the date, 31-12-1993, as fixed by notification dated 21-6-1995, in the matter of grant of exemption from the eligibility test for appointment on the post of lecturer has a reasonable basis keeping in view the time taken in submitting the Ph.D. Thesis or obtaining M.Phil. Degree by candidates who had undertaken the study for Ph.D. Or M.Phil. Degree prior to the issuance of the 1991 Regulations and the date, 31-12-1993, cannot be held to be capricious or whimsical or wide off the reasonable mark. The High Court of Punjab and Haryana has proceeded on the basis that the cut-off date for the purpose of granting exemption from eligibility test should have nexus with the date of the advertisement inviting applications for appointment on the post of Lecturers. The High Court was in error in taken this view. The exemption from eligibility test that has been granted under para 5 of the advertisement dated 23-1-1995 is relatable to the introduction of the requirement of eligibility test in the 1991 Regulations. The object underlying the grant of exemption is to mitigate the resultant hardship to candidates who had registered for Ph.D. Degree or had joined the course for M.Phil. Degree on the basis of the minimum qualifications prescribed under the 1982 Regulations. The validity of the fixation of cut-off date for the purpose of grant of exemption from the eligibility test has to be considered with reference to the date of issuance of the 1991 Regulations and not with reference to the date of advertisement inviting applications for appointment on the post of Lecturers. We are, therefore, unable to uphold the direction of the High Court that it would not be necessary to appear in the eligibility test for candidates who have applied or/are applying for the Lecturers' posts pursuant to the advertisement dated 23-1-1995 if they have obtained M.Phil. Degrees or submitted Ph.D. Thesis before 31-12-1994, i.e. prior to the date of the publication of advertisement dated 23-1-1995 and the further direction to the Haryana Public Service Commission and State of Haryana to ensure that as and when any such advertisement is

issued, they would bear in mind that the eligibility dates be not far off from the date of advertisement. The exemption from the requirement regarding clearing the eligibility test has to be confined within the limits indicated in the amendment introduced in the 1991 Regulations by notification dated 21-6-1995. Respondents 1 and 2 who had moved the High Court by filing the writ petition obtained their M.Phil. Degrees prior to 31-12-1993. They would be entitled to exemption from clearing the eligibility test under the terms of the notification dated 15-6-1995. The decision of the High Court, insofar as it relates to the said respondents, is not required to be disturbed and is, therefore, maintained."

(Emphasis supplied)

(XIV) In the aforesaid case also it has been held that It is settled law that the choice of a date as a basis for classification cannot always be regarded as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is necessary to have a cut off date and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate, must be accepted unless it can be said that it is very wide off the reasonable mark.

4. In view of cumulative effect of the aforesaid facts, reasons and the judicial pronouncements, as there is no substance in this writ petition, it is accordingly dismissed.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 81 of 2013
D.D. 06.05.2013
Hon'ble Mr. Justice Narendra Nath Tiwari

Kuldeep Herenz … Petitioner
Vs.
The State of Jharkhand & Ors. … Respondents

Qualification

Prescribed qualification - Qualification prescribed in the notification inviting application for appointment to post of Junior Engineer (Mechanical) being possession of qualification of Diploma in Mechanical Engineering, whether denial of interview to the petitioner who is possessing qualification of Diploma in Automobile Engineering and who claims equivalence of qualification with Diploma in Mechanical Engineering on basis of certificate issued by B.I.T. Mesra to effect that 80% of syllabus covered in Diploma in Automobile Engineering is same as in Diploma in Mechanical Engineering, can be said to be arbitrary and improper? No.

Held:

That the certificate issued by an institution about equivalence of qualification cannot be imposed on Public service Commission when specific stipulation in advertisement mandates that persons possessing Diploma in Mechanical Engineering is eligible for said post. There is no arbitrariness or illegality on part of Public Service Commission in denial of interview to the post of Junior Engineer Mechanical.

JUDGMENT

In this writ petition, the petitioner has prayed for a direction on the respondents - Jharkhand Public Service Commission, Ranchi (J.P.S.C) to take interview of the petitioner, as he has been declared successful in the written examination, conducted by the J.P.S.C pursuant to the Advertisement No. 27/2012 dated 31.3.2012 for appointment of Junior Engineers. The petitioner has further prayed for a direction on the respondents to appoint the petitioner on the post of Junior Engineer (Mechanical) in Water Resources Development Department or Drinking Water and Sanitation Department, Government of Jharkhand.

According to the petitioner, he has got Diploma in Technology (Automobile). The J.P.S.C, by its Advertisement No. 27/2012 dated 31.3.2012, invited applications from the eligible candidates for filling up the posts of Junior Engineers (Mechanical, Electrical and other branches) in Water Resources Development Department, Road Construction Department, Drinking Water and Sanitation Department and Energy Department (Government of Jharkhand). The petitioner is a member of Scheduled Tribe. He applied for the said post against Sl. Nos. 1 & 3 i.e. Water Resources Development Department and Drinking Water and Sanitation Department, in the Scheduled Tribe category. Admit Card was issued to him. He appeared in the written examination. He was declared successful in the written examination. Thereafter, he was called for interview. However, when he went for interview, he was not allowed to appear in the interview on the ground that he does not possess the required Diploma in Mechanical Engineering. It has been submitted that denial of the petitioner's interview on the said ground is wholly arbitrary and improper.

The petitioner holds Diploma in Automobile Engineering, which is a combination of Mechanical and Electrical Engineering. The B.I.T, Mesra has given certificate that 80% of the syllabus covered in Diploma in Technology (Automobile) is same as Diploma in Technology (Mechanical) and it may be considered equivalent to Diploma in Technology (Mechanical) for academic and job purposes. On the basis of the aforesaid certificate, there was no valid ground for denial of the petitioner's interview. In view thereof, he is entitled for interview and appointment on the post of Junior Engineer, Mechanical.

The respondents have contested the petitioner's claim on the ground, inter alia, that the petitioner is Diploma in Automobile Engineering, while in the advertisement, the required eligibility for appointment of Junior Engineers (Mechanical), was Diploma in Mechanical, Civil and Electrical Engineering. The petitioner, thus, does not possess the requisite qualification and he cannot be appointed on the post of Junior Engineer, Mechanical.

I have heard learned counsel for the parties and considered the facts and materials on record. It is an admitted position that the petitioner has Diploma in Automobile Engineering, whereas the respondents required Junior Engineers, Mechanical, Civil and

Electrical and in the specific term, the posts were advertised and the applications were invited from the persons, who have Diploma in Mechanical, Civil and Electrical Engineering. In view thereof, I find no arbitrariness in denial of the petitioner's interview for the post of Junior Engineer, Mechanical.

Any opinion of an Institution produced by the petitioner, cannot be imposed on the respondents, particularly, when there was specific term in the advertisement, whereby only the persons having Diploma in Mechanical, Civil and Electrical Engineering, were eligible for the said posts. Direction, as sought for, cannot be given on that ground to take the petitioner's interview or to appoint him on the said post.

I find no merit in this writ petition.

This writ petition is, accordingly, dismissed.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
W. P. (S) No. 1051 of 2013
D.D. 21.10.2013
Hon'ble Mr. Justice Shree Chandrashekhar

Mithilesh Kumar … Petitioner
Vs
The State of Jharkhand & Ors. … Respondents

Eligibility criteria

Modification in eligibility criteria during process of recruitment and denial of appointment – Whether appointment can be denied to the petitioner, who was recommended for appointment to the post of Assistant Professor Mechanical Engineer, by Public Service Commission, on his possessing prescribed qualification (Master Degree + 5 years teaching experience and subject to acquiring Ph.D degree with 7 years from date of appointment) as per advertisement of Public Service Commission dated 22.06.2007 and corrigendum dated 17.08.2007, on ground that he does not possess Ph.D degree which came to be prescribed by AICTE vide its notification dated 05.03.2010/14.05.2010 and came to be adopted by Jharkhand Government vide notification dated 31.03.2012, long after petitioner was selected on 07.09.2011? No.

Held:

By relying on catena of decision of Apex Court to effect that criteria which was prevalent at the time when selection process commenced cannot be changed or modified to the disadvantage of candidates who participated and selected in the selection process and that after selection, a candidate would have vested right for consideration of his claim for appointment, held that Government was not justified in denial of appointment. Directions issued to respondents to consider petitioner case for appointment.

Cases referred:

1. Chairman, Railway Board and others v. C.R. Rangadhamaiah and others, (1997) 6 SC 623
2. State of Bihar and others v. Mithilesh Kumar, (2010) 13 SCC 467

JUDGMENT

The petitioner has approached this Court seeking a direction upon the respondents for considering his candidature for appointment as Assistant Professor in Mechanical Engineering at BIT, Sindri.

2. The brief facts of the case are that, the petitioner has been working as Lecturer, Mechanical Department, BIT, Sindri since, 17.10.1994. An advertisement was issued on 22.06.2007 inviting applications for appointment on various posts including the post of Assistant Professor, for which, the petitioner also applied. Subsequently, a Corrigendum dated 17.08.2007 amending the necessary qualification for appointment on the post of Assistant Professor was issued. The petitioner appeared and he was selected. The name of the petitioner was recommended by the Jharkhand Public Service Commission vide letter dated 07.09.2011. However, the petitioner was not offered appointment and therefore, the petitioner has approached this Court by filing the present writ petition.

3. A counter affidavit has been filed on behalf of the Jharkhand Public Service Commission stating as under:

> 6. "That it is stated that pursuant to advertisement no. 8/2007, interview of the candidates for the post of Assistant Professor in BIT, Sindri was conducted by the Commission in the period from 22.12.2010 to 24.12.2010 and as per decision of the Commission the names of the candidates were provisionally recommended post wise category wise for Mechanical Engineering faculty vide letter no. 1140 dated 16.08.2011 in which the name of the petitioner Shri Mithilesh Kumar figured at Sl. No.2.
>
> 7. That thereafter several representation were received in the office of the Commission from candidates possessing Ph.D degree who were not selected on the basis of marks given in the interview and evaluation of their academic career and evaluation of their academic career which was done on the basis of circular of Department of Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand which provides for taking out the average of percentage of marks obtained by a candidate from matriculation.
>
> 8. That on receipt of such representation the Commission in its meeting held on 29.08.2011 felt that for teaching posts some weightage ought to be given to the Ph.D degree and decided to give 10% weightage to the Ph.D degree holder.
>
> 9. That on the basis of such decision of the Commission as aforesaid, a revised list of the recommended Candidates were sent to the Principal Secretary, Science and Technology Department, Govt. of Jharkhand vide letter no. 1287 dated 07.09.2011 in which the name of the petitioner finds place at Sl. No. 3."

4. The respondent-State of Jharkhand has also filed a counter-affidavit taking an objection that subsequent to advertisement and the corrigendum, the All India Council for Technical Education prescribed qualification for appointment on the post of Assistant

Professor where under, holding a Ph.D degree for appointment on the post of Associate Professor (Assistant Professor) was made mandatory.

5. A plea has been taken by the State of Jharkhand that, since the qualification which was earlier prescribed by the All India Council for Technical Education was subsequently changed and modified by the All India Council for Technical Education, the name of the petitioner, who admittedly does not possess the said qualification, should not have been recommended by the Jharkhand Public Service Commission. Paragraph nos. 8 to 14 of the counter-affidavit are as under:

> 8. "That most humbly and respectfully it is stated and submitted that on the basis of this advertisement and the corrigendum issued, a candidate desirous of being appointed on the post of Assistant Professor was required to possess the qualification of Ph.D with First Class Degree at Bachelor's or Master's level in the appropriate branch under the head of experience it was stated that those candidates with First Class Degree at Master's level in the appropriate branch of engineering with five years experience in teaching could also apply. However, such candidates, if selected would have to complete Ph.D within seven years.
>
> 9. That most humbly and respectfully it is stated and submitted that however, before the appointment for the post of Assistant Professor and Professor could be made the AICTE issued fresh notification vide letter no. F.No. 373Legal/2010 dated 13.03.10 and a subsequent corrigendum issued on 14.05.10 bringing about certain changes in the eligibility criteria for the various posts.
>
> 10. That most humbly and respectfully it is stated and submitted that from a kind perusal of Annexure-A and A/1 to the counter affidavit, it shall appear that the post of lecturers was rechristened as Assistant Professor and accordingly the post of Assistant Professor was rechristened as Associate Professor.
>
> 11. That most humbly and respectfully it is stated and submitted that it shall further appear the liberty allowed to the Assistant Professor (in the changed scenario Associate Professors) to complete Ph.D. Degree within seven years of their appointment was done away with meaning thereby that a candidate desirous of being appointed on the post of Associate Professor must possess Ph.D. Degree on the date of his making an application for the said post.
>
> 12. That most humbly and respectfully it is stated and submitted that the said notification issued by the AICTE was adopted by the State of Jharkhand vide resolution taken vide memo no. 784 dated 31.03.12 with effect from

01.01.2006. By the said notification the teaching faculty was extended the benefit of pay revision and their salary was brought at par with the employees of the Central government. Clause-4 of the letter no. 784 dated 31.03.12 made it clear that by the said Circular all conditions applicable to the employees of the Central Government would be applicable, except the enhancement of age of retirement. It is also relevant to point out that the petitioners have been held entitled to benefit of pay revision from 01.01.2006 and also drawing salary on revised pay scale as per AICTE 6th Pay Rules. On the one hand the petitioner has accepted the revised provided in the letter no. 784 dated 31.03.12 on the other hand they are not ready to accept the changed eligibility criteria provided in the same letter for direct appointment on higher post.

13. That most humbly and respectfully it is stated and submitted that after the adoption of the recommendations of the AICTE the State Government was bound to make appointment in conformity with the recommendations of the AICTE.

14. That most humbly and respectfully it is stated and submitted that since during the pendency of the advertisement the eligibility criteria had under gone a change rendering the petitioner ineligible for the post of Associate Professor, he could not be appointed on the post of Associate Professor."

6. Heard counsel for the parties and perused the documents on record.

7. It is an admitted fact that the advertisement was issued on 22.06.2007 and the corrigendum was issued on 17.08.2007. The alternative qualification prescribed by the said advertisement for appointment on the post of Assistant Professor requires Master's Degree in First Class with five years' teaching experience however the candidate should acquire Ph.D degree in the next 7 years from the date of appointment. The All India Council for Technical Education also prescribed similar qualification for appointment on the post of Assistant Professor, which was mentioned in the advertisement. However, it appears that by a notification dated 05.03.2010 amended by notification dated 4.05.2010, a different qualification was prescribed by the All India Council for Technical Education where under, possessing Ph.D degree for appointment on the post of Associate Professor was made mandatory.

8. The learned counsel appearing for the petitioner has submitted that admittedly, at the time when the advertisement dated 22.06.2007 and the corrigendum dated 17.08.2007 were issued, the petitioner had the requisite qualification and the amended qualification

which has been prescribed by the All India Council for Technical Education by notification dated 05.03.2010, was adopted by the State of Jharkhand by notification dated 31.03.2012 and therefore, the subsequent change in the educational qualification as prescribed by the All India Council for Technical Education, cannot be made applicable in the case of the petitioner and therefore, the respondent-State of Jharkhand has illegally denied the petitioner, appointment on the post of Assistant Professor, Mechanical Engineering at BIT, Sindri. Learned counsel appearing for the petitioner has relied on the decisions of Hon'ble Supreme Court in *(1997) 6 SCC 623* and *(2010) 13 SCC 467*.

9. On the other hand, Mr. Rajesh Shankar, learned counsel appearing for the respondents submitted that since the All India Council for Technical Education has prescribed a qualification which was prevalent at the time when the recommendation by the Jharkhand Public Service Commission was made in favour of the petitioner, the Jharkhand Public Service Commission should not have recommended the name of the petitioner in view of the specific qualification prescribed by the All India Council for Technical Education. He has further submitted that since the petitioner does not possess the necessary qualification, he was not offered appointment on the post of Assistant Professor.

10. From the record, it would appear that the petitioner had the requisite qualification which was initially advertised by the Jharkhand Public Service Commission or which was mentioned in the corrigendum dated 17.08.2007. It has been settled by a catena of judgments of the Hon'ble Supreme Court that after the selection, a candidate would have vested right for consideration of his claim for appointment on the post for which his name has been recommended. It is also well settled that the criteria which was prevalent at the time, when the selection process started, cannot be changed to the disadvantage of the applicants. It is admitted in the present case that the norm of the All India Council for Technical Education was published on 05.03.2010 however, the said notification was adopted by the State of Jharkhand on 31.03.2012 and therefore, the said notification cannot be made applicable with retrospective effect, so as to deny the petitioner his claim for consideration for appointment on the post of Assistant Professor.

11. In *"Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others"*, reported in *(1997) 6 SCC 623*, the Hon'ble Supreme Court has observed as under,

> 24. "In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon, B.S. Yadav and Raman Lal Keshav Lal Soni."

12. In *"State of Bihar and others Vs. Mithilesh Kumar"*, reported in *(2010) 13 SCC 467*, the Hon'ble Supreme Court has observed as under,

> 19. "Both the learned Single Judge as also the Division Bench rightly held that the change in the norms of recruitment could be applied prospectively and could not affect those who had been selected for being recommended for appointment after following the norms as were in place at the time when the selection process was commenced. The respondent had been selected for recommendation to be appointed as Assistant Instructor in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms of recruitment were altered to the prejudice of the respondent. The question is whether those altered norms will apply to the respondent.
>
> 20. The decisions which have been cited on behalf of the respondent have clearly explained the law with regard to the applicability of the rules which are amended and/or altered during the selection process. They all say in one voice that the norms or rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect."

13. In view of the aforesaid, the present writ petition is allowed. The respondents are directed to consider the case of the petitioner within a period of four weeks.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 106 of 2014
D.D. 10.01.2014
Hon'ble Mrs. Chief Justice Banumathi.R. &
Hon'ble Mr. Justice Shree Chandrashekhar

Vandana … Petitioner
Vs.
The State of Jharkhand & Ors. … Respondents

Eligibility criteria

Appointment to post of Civil Judge (Junior Division) under Jharkhand Judicial Service – Petitioner, aspirant for post of Civil Judge (Junior Division), was not able to fulfill one of the eligibility criteria of enrolling as an advocate under the Advocates Act, 1961, on account of delay on part of State Bar Council Jharkhand, in enrolling her before last date fixed for submitting applications and therefore seeks directions to accept her application by J.P.S.C. pending fulfillment of eligibility criteria of enrolling as an advocate – Requirement of Rule 5(b) of Jharkhand Judicial Service (Recruitment) Rules, 2004 being that a candidate should be a graduate in law from a recognized University and enrolled as an Advocate under the Advocates Act, 1961 for applying to post of Civil Judge (Junior Division), merely because petitioner was not able to get enrollment certificate as an Advocate and fulfill eligibility on account of delay on part of State Bar Council and for no fault on part of petitioner, directions can be given to Public Service Commission to accept her application? No. Relying on decision of Apex Court in Rajasthan Public Service Commission v. Kaila Kumar Paliwal and another, reported in (2007) 10 SCC 260, held that such a direction cannot be given in respect of petitioner who does not possess the requisite qualification as provided under 2004 Rules, on the last date fixed for receipt of application.

Case referred:

1. Rajasthan Public Service Commission v. Kaila Kumar Paliwal and another, (2007) 10 SCC 260

JUDGMENT

Heard the learned counsel appearing for the parties and perused the documents on record.

2. The petitioner has approached this Court seeking a direction upon the respondent nos. 2 and 3 to accept the 'application form', which she would be submitting for appearing

in the Preliminary Test Examination for Jharkhand Judicial Service Civil Judge (Junior Division). The advertisement for the same was published on 11.12. 2013, inviting applications for appointment on the post of Civil Judge (Junior Division) in Jharkhand Judicial Services. The eligibility criteria as mentioned in the advertisement indicates that the applicant should be a Law Graduate from a recognized University and he must be enrolled as an Advocate under the Advocates Act, 1961.

3. The learned Senior counsel appearing for the petitioner has submitted that, though the result of L.L.B examination was published on 22nd December, 2013 in which the petitioner was declared pass and she applied before the State Bar Council for enrollment as an Advocate, yet she has not been enrolled. Since no such decision has been taken by the State Bar Council, the petitioner may be permitted to submit her application for appearing in the examination. The learned senior counsel for the petitioner has further submitted that there is no provision under the Advocates Act, 1961, which permits the Bar Council to delay the enrollment of an applicant and therefore, for no fault of the petitioner, the petitioner would be deprived of an opportunity of appearing in the examination.

4. Mr. Ajit Kumar, the learned Additional Advocate-General appearing for the High Court opposed the prayer of the petitioner. The learned counsel submits that Rule 8 of the Jharkhand Judicial Service (Recruitment) Rules, 2004 itself provides that the Commission may issue an advertisement inviting applications in the prescribed format, requiring the candidates to submit certificates. The petitioner has also annexed a copy of the Form which is annexed as Annexure-4 to the writ petition, a perusal of which would indicate that there is a requirement in the Form itself for providing the Registration Number and Year of Registration of the candidate. Rule 5(b) of the Jharkhand Judicial Service (Recruitment) Rules, 2004 also provides that a candidate should be a Graduate in Law from a recognized University and enrolled as an Advocate under the Advocates Act, 1961.

5. In view of the aforesaid facts, we find that the date on which the advertisement was issued i.e. 11.12.2013 and even on the last date for submitting the application form i.e.

10.01.2014, the petitioner does not possess the requisite qualification as provided under High Court of Jharkhand Rules, 2004 and as advertised by the JPSC.

6. In *"Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal & Anr.", reported in (2007) 10 SCC 260*, the Hon'ble Supreme Court has held that a candidate must possess the minimum educational qualification on the date of advertisement and since in the present case, the petitioner admittedly does not possess the minimum educational qualification, no indulgence can be granted by this Court. Para-21 of the said judgment is extracted below:

> 21. "Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the Rules and only in absence thereof, the qualification acquired till the last date of filling of the application would be the relevant date."

7. Accordingly, we are of the view that this writ petition deserves to be dismissed, hence dismissed.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (S) No. 7526 of 2013
With
I.A.NO. 173 of 2014
D.D. 16.01.2014
Hon'ble The Chief Justice Smt. R Banumathi &
Hon'ble Mr.Justice Shree Chandrashekhar

Bhola Nath Rajak & Ors. … Petitioners
Vs.
The State of Jharkhand & Ors. … Respondents

Age limit

Fixing of cut off date for calculating maximum age limit for appointment to post of Civil Judge (Junior Division) (Munsif) – Jharkhand Public Service Commission invited applications vide notification dated 10.12.2013 to fill up posts of Civil Judge (Junior Division) (Munsif) fixing maximum age of 35 years for general category with cut off date of 31.01.2013 for calculating maximum age of 35 years – Contention of the petitioner that examination to recruitment to post of Civil Judge (Junior Division) was last held in 2008 and no examinations were conducted thereafter, consequently many of the aspiring candidates completed maximum age of 35 years and deprived of opportunity from appearing in the examination and therefore cut off date for calculation of maximum age should be fixed as 31.01.2009 – Fixing cut off date for determining maximum or minimum age being the discretion of rule making authority or employer, whether by taking into consideration vast gap of about 5 years between earlier recruitment and present recruitment, and vast number of candidates are deprived of opportunity of appointment, because of age limit, the cut off date may be ordered to be fixed as requested by petitioner candidates in the interest of equity and justice? Yes. In the peculiar facts and circumstances of the case directions issued to Public Service Commission to modify cut off date as 31.01.2009 instead of 10.12.2013.

Cases referred:

1. Sanjiv Kumar Sahay and others v. State of Jharkhand and others, 2008(2) JLJR 543
2. Dr. Ami Lal Bhat v. State of Rajasthan and others, (1997) 6 SCC 614
3. Subodh Kr. Jha v. State of Jharkhand and others, (2005) 3 JLJR 622

ORDER

R.Banumathi,C.J.

The petitioners seek for a direction upon the respondents to fix the cut off for upper age limit to be 31.1.2009 by substituting the same to the advertisement issued, vide Advertisement No.4/2013 dated 10.12.2013, inviting applications for the post of Civil Judge (Junior Division) and to extend the time for submission of their applications and that backward category of candidates be given relaxation of three years in the maximum age limit.

2. Jharkhand Public Service Commissioner (JPSC) issued Advertisement No.4/2013 published in various newspapers on 10.12.2013, by which applications were invited from the eligible candidates for the post of Civil Judge (Junior Division) (Munsif) fixing the maximum age of 35 years for the candidates of general category with the cut off date of 31.1.2013 for the purpose of calculating the maximum age of 35 years. The writ petitioners are the aspiring candidates for the examination. The case of the petitioners is that the examination was held for appointment on the post of Civil Judge (Junior Division) (Munsif) in 2008 and thereafter examination for appointment on the post of Civil Judge (Junior Division) (Munsif) was not conducted. Since the examination was not conducted after 2008, writ petitioners and similarly placed candidates had completed the age of 35 years and since they have crossed the upper age limit of 35 years as fixed by the respondents in the impugned advertisement, the writ petitioners are being deprived of the opportunity from appearing in the examination. Since the examination was not conducted after 2008, the cut off date for calculating the maximum age limit of 35 years ought to have been fixed as 31.1.2009 instead of 31.1.2013. Hence, this writ petition.

3. When the matter came up for admission on 20.12.2013, after hearing the counsel for the writ petitioners and also for the respondents and following the judgment rendered in the case of *Sanjiv Kumar Sahay & Ors. Vs. State of Jharkhand & Ors.* reported in *2008(2) JLJR 543*, which pertains to the recruitment on the post of Civil Judge (Junior Division) (Munsif) in 2008, we passed the following orders:-

"14. Without expressing any opinion on the merits of the contention of the Petitioners, we permit the petitioners to submit their applications, fixing the maximum age 35 years with the cut-off date as on 31.01.2009. We also permit all those similarly placed persons who would be eligible to submit their applications and appear, taking the cut-off date as on 31.01.2009 (for the maximum age of 35 years).

15. We direct the respondent nos.2 to 4 to issue supplementary advertisement by 24.12.2013 in this regard, fixing the maximum age 35 years with cut-off date as on 31.01.2009. The applications so received taking the cut-off date 31.01.2009, shall be subject to the decision of this case and the same shall be indicated in the supplementary advertisement."

Accordingly JPSC has issued supplementary notification fixing the cut off date as 31.1.2009 for the purpose of calculating the maximum age of 35 years and also extending the time for submission of the applications from 6.1.2014 to 10.1.2014.

4. The point falling for consideration in this case is as to whether the writ petitioners are entitled to have the cut off date as 31.1.2009 for the purpose of calculating the maximum age of 35 years due to non-holding of the examination in terms of the Jharkhand Judicial Service (Recruitment) Rules, 2004.

5. It is relevant to refer the relevant rules for recruitment of Civil Judge (Junior Division) (Munsif) and rules 4 and 5 of the Jharkhand Judicial Service (Recruitment) Rules, 2004, being relevant, are reproduced below:-

"4. From time to time, the Commission, in consultation with the High Court, may decide and notify the number of vacancies of Civil Judge (Junior Division/Munsiffs) as are required to be filled up by appointment to be made on substantive or ad hoc basis, in accordance with these rules and shall then proceed to initiate the process of direct recruitment and invite applications from intending candidates eligible for appointment under these Rules.

However, while deciding and notifying the vacancies, the Commission shall make it subject to the Act, Rules and Regulations in force regarding the reservation of vacancies in posts and services under the State so that vacancies category wise, reserved for Schedules Castes, Schedules Tribes and Other Backward Classes, are included in the prescribed number in the notification issued by the High Court for this purpose.

5. *Eligibility- A candidate shall be eligible to be appointed as Civil Judges, Junior Division (Munsiffs) under these Rules provided:-*

(a) He is above the age of 22 years and below the age of 35 years as on the last day of January of the year in which applications for examination are invited.
Provided that in the case of a female candidate, or candidates belonging to Scheduled Caste or Scheduled Tribe there shall be relaxation of the upper age limited by 3 years.

(b) He is a graduate in law from a recognize University and enrolled as an Advocate under the Advocate Act, 1961, and

(c) He possesses sound health bears good moral character and is not involved in, or related to any criminal case involving moral turpitude.

6. By perusal of the Rules, it is evident that there is no provision for fixing the cut off date for determining the maximum age prescribed for the post of Civil Judge (Junior Division) (Munsif). We are conscious of the fact that normally decision fixing cut-off date is not interfered with by the Courts. However, huge backlog of undecided cases, large number of vacancies which have accumulated since 2008, which has also affected the ratio of Judges compared to the population of the State, are also the considerations which we have to keep in mind.

7. In Dr. Ami Lal Bhat vs. State of Rajasthan and Others (1997)6 SCC 614, the Supreme Court held that fixing the cut-off date for determining the maximum or minimum age prescribed for a post is in the discretion of the rule-making authority or the employer. Fixing an independent cut-off date, far from being arbitrary, makes for uncertainty in determining the maximum age. While deciding this issue, the Supreme Court however observed that power of relaxation is required to be exercised in public interest, for example, if other suitable candidates are not available for the post and the only candidate who is suitable has crossed the maximum age limit or to mitigate hardship in a given case and the Hon'ble Supreme Court held as under:-

"11. In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age-limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service

Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fide in connection with any delay in issuing an advertisement. The kind of power of wholesale relaxation would make for total uncertainly in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age-debarred. We fail to see how the power of relaxation can be exercised in the manner contended."

8. Admittedly no examination for filling up the post of Civil Judge (Junior Division) (Munsif) was held after 2008. In absence of regular examination for recruitment of Judicial Officers in the cadre of Civil Judge (Junior Division) (Munsif), the petitioners could not appear for the examination. In the meanwhile, the writ petitioners and similarly placed candidates have completed the maximum age of 35 years. By the reason of delay in holding the examination, the writ petitioners should not be disqualified from appearing in the examination.

9. Learned counsel for the petitioners placed reliance on the judgment rendered in the case of *Sanjiv Kumar Sahay & Ors. Vs. State of Jharkhand & Ors.* reported in *2008(2) JLJR 543*, where this Court allowed relaxation of age by modifying the cut off date fixing the maximum age of 35 years from 31.1.2008 to 31.1.2003. This Court ordered that the cut off date fixed in the impugned Advertisement No.13/2008 be as on 31.3.2003. After referring to rules 4 and 5 and various decisions of Hon'ble Supreme Court and also Patna High Court, this Court held as under:-

"Admittedly, no examination was held for appointment on the post of Munsif for the last 7 years. Although, respondent/State were under an obligation to hold examination and to fill up vacant posts every year. Although, there is no compulsion, on the part of the Government to make appointment even vacancies are available but at the same time if the vacancies are allowed to accumulate and bulk appointments are make at a time, there may be possibility of candidates possessing inferior merit coming in. Whereas if examinations are held periodically the chances are that the best of the available candidates should be appointed. Apart from that, those law graduates, because of inaction on the part of the respondents in holding examination every year, started practicing as lawyer in different courts and they have gained Bar experience for more than five years. If age relaxation is given to those law graduates who became over age for non-holding of examination, then there shall be every chance of good experienced candidates may be appointed on the said post".

10. In the case of **Subodh Kr. Jha vs. State of Jharkhand & Others** [(2005)3 JLJR 622], the Jharkhand Public service Commission issued advertisement in 2005 inviting applications for appointment on the post of A.P.P. One of the conditions put in the advertisement was upper age limit on 31.1.2005 should not exceed 35 years for general category candidates. Similar plea was taken by the writ petitioners that State of Jharkhand although came into existence in November, 2000, no examination was held for filling up the post of Public Prosecutor and so most of the eligible candidates were deprived of because of the fact that they have crossed the age of 35 years. In paragraphs 5 and 6 of the said decision the Court observed as under:-

> *"5. There is no dispute that by virtue of Bihar Reorganization Act, 2000 the State of Jharkhand came into existence on 14th November, 2000. Admittedly, since the creation of the State of Jharkhand no examination was held for selection of A.P.Ps. and it is for the first time in 2005 the respondents have come with an advertisement. The candidates who were eligible for applying to the said post and now have crossed 35 years of age have certainly been deprived of the said post because of the inaction of the respondents. In such circumstances, relaxation in age is to be given to those candidates who have crossed their maximum age limit.*
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> 6. Mr. Piparwall, learned counsel appearing on behalf of the Commission has produced before me copy of order dated 22.01.2003 passed in WPS No.289/2003 and submitted that in similar circumstances a writ petition was dismissed by this court. From perusal of the order it appears that the Commission had issued advertisement for Combined Competitive Examination for appointment in Jharkhand Civil Service. The writ petitioner prayed for a direction upon the respondents to give relaxation of three years in the upper age limit of 35 years for general categories. The learned Single Judge of this court dismissed the writ petition holding that the power of relax age for appointment or the power to fix the maximum age for appointment or the power to fix cut off date for appointment is vested with the Appointing Authority/State of Jharkhand. However, Mr. Piparwall, learned counsel very fairly submitted that after dismissal of the said writ petition the respondent-State gave two years relaxation in age for appearing in the Combined Competitive Examination".

11. Admittedly for recruitment to the post of Civil Judge (Junior Division) (Munsif), Jharkhand Public Service Commission issued advertisement in the year 2008 and thereafter Advertisement No.4/2013 issued on 10.12.2013 and there is a gap of about more than 5 years between the earlier advertisement issued in the year 2008 and in the year 2013. As

a consequence, the eligible candidates aspiring to appear for the Civil Judge (Junior Division) (Munsif) examination might have crossed their age between the period 2008 and 2013 and therefore, they did not have the opportunity of appearing in the examination. Having regard to the fact that there was no examination for recruitment for the post of Civil Judge (Junior Division) (Munsif), the cut off date for the recruitment of Civil Judge (Junior Division) (Munsif) of 2013 (Advertisement No.4/2013) should be 31.1.2009 to render justice to the deprived eligible candidates due to over-age. Accordingly, the cut off date for fixing maximum age of 35 years in the impugned notification is ordered to be 31.1.2009 instead of 31.1.2013.

12. I.A No.173/2014 has been filed for a direction to the respondents to give age relaxation to the Backward Classes in B.C I and B.C II in upper age by extending the same by 3 years in the maximum age limit. Rule 5 of the Jharkhand Judicial Service (Recruitment) Rules, 2004, provides for relaxation of upper age limit by 3 years only for the candidates belonging to Scheduled Caste or Scheduled Tribe and the rule does not stipulate relaxation of upper age limit for the backward candidates. By a separate order in W.P(S) No.7667 of 2013 dated 16.1.2014, we have dismissed writ petition seeking age relaxation in respect of backward category of candidates.

13. The Jharkhand Judicial Service (Recruitment) Rules, 2004, is in place for the past 10 years. The petitioners have neither challenged the rules, nor filed any writ petition seeking for a direction to relax maximum age limit for backward category candidates. The interlocutory application has been filed at the verge of last date for submission of application for the examination of Civil Judge (Junior Division) (Munsif) Recruitment 2013. Since the interlocutory application has been filed at the last moment, we are not inclined to entertain this interlocutory application and we dismiss this Interlocutory Application.

13. This writ petition is allowed with the following observations/directions:-

(A) The cutoff date 31.1.2013 fixed in the impugned Advertisement No.4/2013 dated 10.12.2013 is modified as 31.1.2009 and relaxation in age by modifying the cut off date is not only confined to the writ petitioners but also to the similarly placed candidates who possess other requisite qualification as per the Advertisement No.4/2013 dated 10.12.2013 issued by the Jharkhand Public Service Commission.

(B) The last date of submission of the application extended by the Jharkhand Public Service Commission from 6.1.2014 to 10.1.2014 in pursuance of the order of this Court dated 20.12.2013 is confirmed.

(C) The Jharkhand Public Service Commission is directed to receive and process the applications of the writ petitioners and also other candidates who submitted their applications in pursuance of the interim order passed by this Court dated 20.12.2013.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 7667 of 2013
D.D. 16.01.2014
Hon'ble Chief Justice Smt R Banumathi &
Hon'ble Mr.Justice Shree Chandrashekhar

Sudhir Kumar … Petitioner
Vs.
The State of Jharkhand & Ors. … Respondents

Age

Relaxation in maximum age limit in respect of candidates belonging to backward classes on par with SC/ST category candidates for appointment to post of Civil Judge (Junior Division) – Maximum age limit having been prescribed under Rule (5) of Jharkhand Judicial Service (Recruitment) Rules, 2004, which was in place for more than ten years, whether merely on ground that concession in upper age limit has been given to SC/ST category candidates, without challenging the Rule or filing any writ petition seeking directions to refix maximum age limit, that too, on last date fixed for submission of application, seek directions for enhancement in upper age limit? No. Held: By following decision of Hon'ble Apex Court in Chattar Singh v. State of Rajasthan, reported in (1996) 11 SCC 742, held that merely because of the concession in upper age limit given to SC/ST, the same cannot be extended to backward class category candidates.

Cases referred:

1. C.A. Rejendran v. Union of India, AIR 1968 SC 507
2. Ajit Singh (II) v. State of Punjab, (1999) 7 SCC 209
3. C. Udayakumar v. Union of India, 1995 Supp (3) SCC 146
4. Chattar Singh v. State of Rajasthan, (1996) 11 SCC 742

ORDER

R.Banumathi,C.J.&
Shree Chandrashekhar, J.

This writ petition has been filed for issuance of direction to the respondents to implement the circular issued by the Central Government and State Government for age relaxation for OBC and also for issuance of an appropriate direction to re-fix the age relaxation of Scheduled Caste and Scheduled Tribe candidates and to provide for relaxation of three years as five years.

2. Jharkhand Public Service Commission (JPSC) issued Advertisement No.4/2013 published in various newspapers on 10.12.2013, by which applications were invited from the eligible candidates for the post of Civil Judge (Junior Division) (Munsif) fixing the maximum age of 35 years for the candidates of general category including backward classes. As per proviso to Rule 5, in case of female candidate or candidates belonging to Scheduled Caste or Scheduled Tribe, there shall be a relaxation of the upper age limit by 3 years. As per Rule 5, there is no age relaxation of upper age limit for the backward class.

3. The writ petitioner is the aspiring candidate for the examination. The case of the petitioner is that the posts have already been reserved for backward classes i.e. 9 seats for BC-I, whereas seven seats for BC-II, while seats are being reserved for Scheduled Caste and Scheduled Tribe who have been given relaxation of upper age limit by three years, there is no such age relaxation given to the backward classes. It is the contention of the petitioner that as the backward classes come within the purview of weaker section of the society, Central Government as well as other State Governments are giving concession in the age fixation of other backward classes in upper age limit by five years and further relaxation in age and while so, the respondents have also to consider the relaxation in upper age limit of the backward classes by five years along with Scheduled Caste and Scheduled Tribe. Hence, this writ petition.

4. We have heard Mr.Vijay RanjanSinha, learned counsel for the petitioner, Mr.JaiPrakash, learned AAG for the State, Mr.SanjoyPiprawall, learned counsel for the Jharkhand Public Service Commission and Mr.Ajit Kumar, learned counsel for the High Court.

5. For recruitment of Civil Judge, Junior Division (Munsifs), Rule 5 of the Jharkhand Judicial Service (Recruitment) Rules, 2004, being relevant, reads as under:-

> "*5. Eligibility. – A candidate shall be eligible to be appointed as Civil Judges, Junior Division (Munsif) under these Rules, provided –*
>
> *(a) He is above the age of 22 years and below the age of 35 years as on the last day of January of the year in which applications for examination are invited.*

Provided that in the case of a female candidate, or candidates belonging to Scheduled Caste or Scheduled Tribe there shall be relaxation of the upper age limit by 3 years.

(b) He is a graduate in law from a recognized University and enrolled as an advocate under the Advocates Act, 1961, and

(c) He possesses sound health, bears good moral character and is not involved in, or related to any criminal case involving moral turpitude."

6. By reading of Rule 5, it is evident that relaxation of upper age limit is given only to Scheduled Caste or Scheduled Tribe and to the female candidates, but no such relaxation of upper age limit is given to backward classes. In absence of any rule, the petitioner cannot seek for relaxation of upper age limit to the backward classes merely on the ground that certain seats are reserved for the backward classes.

7. Yet another relief sought for by the petitioner is to refix age relaxation of Scheduled Caste and Scheduled Tribe as five years, as other States are providing it as constitutional scheme. As per proviso to Rule 5 of the Jharkhand Judicial Service (Recruitment) Rules, 2004, relaxation is given in upper age limit by three years in case of female candidates or candidates belonging to Scheduled Caste or Scheduled Tribe. The Jharkhand Judicial Service (Recruitment) Rules, 2004, is in place for the past 10 years, the petitioner has neither challenged the Rules, nor filed any writ petition seeking for a direction to refix the maximum age limit for Scheduled Caste and Scheduled Tribe candidates. This writ petition has been filed at the verge of last date for submission of applications for the examination of Civil Judge (Junior Division) (Munsifs) Recruitment, 2013.Since this writ petition has been filed at the last moment, we are not inclined to entertain this writ petition.

8. Article 16(4) of the Constitution is an enabling provision and it confers only a discretionary power on the State to make reservation in appointments in favour of backward class of citizens which, in its opinion, are not adequately represented in the services of the State. Taking note of the decision in *"C.A. Rajendran Vs. Union of India*", reported *in AIR 1968 SC 507*, the Hon'ble Supreme Court in "*Ajit Singh (II) Vs. State of Punjab*", reported in *(1999) 7 SCC 209*, has held that, "in view of the overwhelming authority right from 1963, hold that both Article 16(4) and Article 16(4-A) do not confer

any fundamental right nor impose any constitutional duty but, are only in the nature of enabling provisions vesting a discretion in the State to consider providing reservation, if the circumstances mentioned in those Articles warranted."

9. In *"C. Udayakumar Vs. Union of India"*, reported in *1995 supp (3) SCC 146*, the Hon'ble Supreme Court has held that the Government is not under an obligation to keep posts reserved in its services. To what extent within the constitutional limits, in what manner and in which of the services, reservation should be kept, is a matter for the Government to decide, on a consideration of the relevant factors. The Courts cannot give direction to the Government to keep reservation or the manner in which and the extent to which it should be kept. The Hon'ble Supreme Court has held as under:

> *3. "The Constitution itself recognises the distinction between the Scheduled Castes, Scheduled Tribes and the Other Backward Classes in the matter of reservation. Merely because reservations are kept or concessions are given to the Scheduled Castes and Scheduled Tribes which are not extended to the OBCs, the reservations and the concessions do not become discriminatory."*

10. In *"Chattar Singh Vs. State of Rajasthan",* reported in (1996) 11 SCC 742, the provision under Rule 13 of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1962 was challenged being discriminatory and violative of provisions under Article 14, Article 16(1) and Article 16(4) as the Rule 13 provided relaxation in cut-off marks upto 5% for candidates belonging to Scheduled Castes/Scheduled Tribes whereas such relaxation was not extended to candidates belonging to OBC category. The Hon'ble Supreme Court has discussed the issue in the following words:

> *"17. The next question is whether the OBCs are to be treated alike Scheduled Castes and Scheduled Tribes and given the 5% cut-off marks in the Preliminary Examination under proviso to Rule 13 and whether omission thereof prohibits the right to equality envisaged in Article 14? Article 14 provides right to equality of opportunity and equal protection of law. Articles 15 and 16 are species of Article 14. Article 16(1) prohibits discrimination and gives equality of opportunity to every citizen in matters relating to employment or appointment to any office under the State. Article 16(4) elongates the equality of opportunity to unequals by affirmative action by enjoining upon the*

State to make provision for reservation of appointments for posts in favour of "any backward class of citizens" which in the opinion of the State is not adequately represented in the service under the State. It is now a well settled legal position that Article 16(4) is not an exception but a facet of Articles 14 and 16(1). It gives power to the State to effectuate the opportunity of equality to any backward class of citizens. Article 366(24) defines "Scheduled Castes" and Article 366(25) defines "Scheduled Tribes". Article 341 empowers the President in consultation with the Governor of the State to specify by public notification that the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be. Similarly, Article 342(1) gives power to the President to specify the tribes or tribal communities which shall, for the purpose of Constitution, be deemed to be Scheduled Castes in relation to the State or Union Territories, as the case may be. That will be subject to the law made by Parliament under clause (2) of Articles 341 and 342(2) thereof. The expression "Backward Classes" has not been defined under the Constitution but the President has been empowered to appoint a Commission to investigate into the conditions of Backward Classes for recommendation with regard to steps to be taken by the Union or the State Governments to remove difficulties and to improve their conditions. Commissions like Kaka Kelelkar Commission and Mandal Commission were appointed by the President who identified the backward classes. On identification of social and educational backwardness and acceptance thereof by the appropriate Government, the President or the Governor of the State Government would issue public notification extending the benefits to improve their conditions. Until such a notification is published, Backward Classes are not entitled to the benefit of reservation under Article 15(4) or 16(4) of the Constitution. Articles 14 and 16 read with the Preamble gives equality of opportunity in matters relating to employment or appointment to any office under the State. ……

The constitutional objective of socio-economic democracy cannot be realised unless all sections of the society participate in the State power equally irrespective of their caste, community, race, religion and sex. All discriminations in sharing the State power made on these grounds and those discriminations are to be removed by positive measures. The concept of equality, therefore, requires that law should be adaptable to meet equality. Article 38 mandates to minimize inequality in income and to eliminate the inequality in status, facilities and opportunities not only among the individual but also among the groups of people to secure to them adequate means to improve excellence in all walks of life. Article 46 directs the State to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Equal protection clause, therefore, requires affirmative action for those placed unequally. Equality for unequals is secured by treating them unequally. Affirmative action or positive discrimination, therefore, is inbuilt in equality of opportunity in status

enshrined in Articles 14 and 16(1) of the Constitution. Therefore, Scheduled Castes and Scheduled Tribes stand as two separate classes while OBCs stand apart.

18. The State had evolved the principle of reservation to an office of the State or post as an affirmative action to accord socio-economic justice guaranteed in the Preamble of the Constitution; the fundamental rights and the directive principles which are the trinity of the Constitution to remove social, educational and economic backwardness as a constitutional policy to accord equality of opportunity, social status or dignity of person as is enjoined in Articles 14, 15, 16, 21, 38, 39, 39-A, 46 etc. Article 335 enjoins the State to take the claims of Dalits and Tribes into consideration for appointment to an office/post in the services of the State consistently with efficiency of administration. Though OBCs are socially and educationally not forward, they do not suffer the same social handicaps inflicted upon Scheduled Castes and Scheduled Tribes. Articles 15(2) and 17 furnish evidence of historical and social dissatisfaction inflicted on them. The object of reservation for the Scheduled Castes and Scheduled Tribes is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps. Therefore, they are always treated as dissimilar and they do not form an integrated class with Dalits and Tribes for the purpose of Article 16(4) or 15(4). Obviously, therefore, proviso to Rule 13 confines the 5% further cut-off marks in the Preliminary Examination from the lowest range fixed for general candidates. So, it is confined only to the Scheduled Castes and Scheduled Tribes who could not secure total aggregate marks on a par with the general candidates. The rule expressly confines the benefit of the proviso to Scheduled Castes and Scheduled Tribes. By process of interpretation, OBCs cannot be declared alike the Scheduled Castes and Scheduled Tribes. Therefore, the contention that in view of the doctrine of fusing "any backward class of citizen" in Article 16(4), further classification of Scheduled Castes and Scheduled Tribes and OBCs as distinct classes for the purpose of reservation and omission to extend the same benefits to OBCs violates Article 14 is devoid of substance. If the logic of equality as propounded by minority Judge is given acceptance, logically they are also entitled to reservation of seats in the House of the People or in the Legislative Assemblies of States, though confined to Scheduled Tribes and Scheduled Castes, by operation of Article 334(a) of the Constitution with a non obstante clause engrafted therein. The Founding Fathers of the Constitution, having been alive to the dissimilarities of the socio-economic and educational conditions of the Scheduled Castes and Scheduled Tribes and other segments of the society have given them separate treatment in the Constitution. The Constitution has not expressly provided such benefits to the OBCs except by way of specific orders and public notifications by the appropriate Government. It would, therefore, be illogical and unrealistic to think that omission to provide same benefits to OBCs, as was provided to Scheduled Castes and Scheduled Tribes, was void under Articles 16(1) and 14 of the Constitution."

7. Following the ratio laid down in the case of *Chattar Singh Vs. State of Rajasthan,* reported in *(1996) 11 SCC 742* and merely because of the concession in upper age limit is given to the Scheduled Caste and Scheduled Tribe, the same cannot be extended to the backward classes and the petitioner is not entitled to any relief sought in this writ petition. Since validity of proviso to Rule 5(a) of the Jharkhand Judicial Service (Recruitment) Rules, 2004, in so far as it relates to relaxation in upper age limit to Scheduled Caste and Scheduled Tribe is concerned, is not under challenge, therefore, prayer made by the petitioner cannot be entertained. This writ petition is thus dismissed.

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KARNATAKA
PUBLIC SERVICE COMMISSION

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
W.P. Nos.6500-6508/2009 (S-KAT) & Connected matters
D.D. 15.12.2010
The Hon'ble Mr. Justice N.Kumar &
The Hon'ble Mr. Justice B.Sreenivase Gowda

K.P.S.C. … Petitioner
Vs.
K.Sharada & Ors. … Respondents

A. Locus standi

Locus standi of Karnataka Public Service Commission to challenge orders passed by Karnataka Administrative Tribunal when Government accepts and seeks to implement the said order – Whether Karnataka Public Service Commission has locus standi to challenge orders of KAT holding that Government Order dated 13.02.2001 which brings general merit (Rural) candidates under creamy layer and prescription of Form-1 is violative of Section 3 of Karnataka Reservation of Appointments of posts (in the civil services of the State) for Rural candidates Act, 1977 and Rule 6(3)(b) of K.C.S. (General Recruitment) Rules, 1977 are applicable in matters of age relaxation, even when Government of Karnataka accepts the said orders and seeks to implement it? Yes. – Consequences of orders of K.A.T. being that select list prepared of A.E.E. had to be cancelled and redone, held that the KPSC is an aggrieved person and has locus standi to challenge order of K.A.T.

Held:

"33. The Commission is a constitutional authority created under the Constitution. It has to function in terms of the constitutional provisions giving effect to the object with which it is constituted under the Constitution and the State Legislature defines its functions, passes a law and specific functions are assigned to it under the statute, the Commission has to work strictly in accordance with the statutory provisions. When in the course of discharging its functions it is of the opinion that these actions are in accordance with the statutory provisions and if it feels the recruitment done by them is unnecessarily found fault with by a judicial body whose decision is contrary to the statutory provisions certainly they have a right to challenge the said order passed by the judicial authority. The reason for setting at naught the recruitment process is not the criteria. It is the ultimate result. If any action of the Commission is found fault with and the Commission has to redo the thing over again and if the Commission feels their action is strictly in accordance with law, they have a right to challenge the judgment of a judicial body which has found fault with their action. It is immaterial whether the action of the Commission is found fault with by making any allegations against the Commission or attributing mala fides or purely on procedural irregularity or being contrary to law. The contention that the Commission has nothing to do with the appointment in any particular department after the selection process is over and if the selection is set aside, they cannot be held to be aggrieved persons, cannot be accepted. Though the Commission has no personal interest in any of these recruitment, as a constitutional authority when it has conducted the selection in accordance with the

statutory provisions and if such selection is found fault with as improper or illegal, the Commission being an independent authority, if it wants to justify its actions and show that their actions are strictly in accordance with law, that can be done only by challenging that order in the Supreme Court. Therefore, their right to challenge the order finding fault with the selection process cannot be taken away. In that view of the matter, we hold that the Commission has the locus standi to challenge the order of a judicial authority, or a quasi judicial authority if their selections are set at naught by them not only on the ground of mala fides but even being contrary to law. It is open to them to show to the superior Courts that the recruitment or selection process which they have done is strictly in accordance with law and it has been unnecessarily interfered by a judicial or quasi judicial authority."

B. Age relaxation

Benefit of age relaxation to candidates for recruitment to post of AEE Division –I under Karnataka Public Works Engineering Department Service (Recruitment of Assistant Executive Engineers Division-I by competitive examination) Rules, 2007 – Proviso to rule 5 of 2007 Rules, read with Rules 13 & 14 thereof vis-à-vis Rule 6(3)(b) of K.C.S. (General Recruitment) Rules, 1977 – KPSC rejected candidature of applicants – Assistant Engineers working in other departments of State Government who are not treated as inservice candidates under 2007 Rules on ground of over age, as they are not entitled for relaxation of age under Rule 6(3)(b) of 1977 Rules – While interpreting provisions of Rules 5, 12 & 13 of 2007 Rules, vis-à-vis Rule 6(3)(b) of 1977 Rules, held that applicants, though do not possess age as required under 2007 Rules, as they satisfy requirement of provisions of 1977 Rules, are entitled for relaxation of age. Consequently order of KPSC rejecting their candidature quashed.

Held:

"42. So if a candidate who applies for recruitment under the Rule 2007 though he does not possess the age as required under Rule 5, if he satisfies requirement of clause (b) of Rule (3) of Rule 6 of Rules, 1977, he would be entitled to age relaxation as contained in the said proviso. Merely because in Rule 5 at the fag end, no maximum age limit for candidates competing under in-service quota is mentioned, that is not a case of relaxation to others and that does not come in the way of application of Rule 6(3)(b) and it would not have the effect of overriding the said provision."

C. Creamy Layer Policy

Government Order No.SWD 225 BCA 2000 dated 30.03.2002 – Whether creamy layer policy as contained in Government Order dated 30.03.2002 applies to inservice Group 'B' Assistant Engineers, falling under II A, II B, III A and III B categories, who applied for posts of Assistant Executive Engineers Division-I under 2007 Rules? – Whether rejection of candidature of applicants by KPSC on ground that they attract creamy layer policy of Government Order dated 30.03.2002 proper? – Whether interpretation of Note (1) of G.O. dated 30.03.2002 by Public Service Commission or KAT is correct? – Held that interpretation put in by KAT is correct.

Held:

1. This rule will not apply to direct recruitment to posts which insist on a prescribed period of service in a lower post or experience in a post, profession or occupation as a qualification or eligibility."

To mean that 'only a person who is already in the service and who continues to be in service alone will become eligible" thereby dispensed with possession of definite period of service to get the benefit of creamy layer policy – Whereas KPSC by strict interpretation applied the creamy layer policy to applicants – Keeping in view purposive construction, and recommendation of Backward Class Commission and principle underlying reservation coupled with fact that there are sufficient number of backward community candidates – The interpretation put in by K.A.T. is upheld and that of K.P.S.C. is rejected.

D. Inservice candidates:

Whether Assistant Engineers working in WRDO can be considered as "in service" candidates for limited purpose of recruitment to post of Assistant Executive Engineers, Division-I, under Karnataka Public Works Engineering Department Service (Recruitment of Assistant Executive Engineers Division-I, by competitive examination) Rules, 2007? Yes. – Held that as there is being no bifurcation of Irrigation and Public Works Department as understood in law and common seniority list is prepared, maintained and operated for purpose of promotion, the Assistant Engineers working in WRDO are eligible to apply against inservice posts notified under 2007 Rules.

Cases Referred:

1. Andhra Pradesh Public Service Commission v. Baloji Badhavath and others, {(2009) 1 SCC (L&S) 999}.
2. State of U.P. v. Rafiquddin, AIR 87 Supp SCC 401
3. Inter Prakash Gupta v. State of J & K, {2004(6) SCC 786
4. State of Punjab and others v. Manjit Singh and others, {2003 (11) SCC 559
5. A.P. Public Service Commission v. P. Chandra Mouleesware Reddy and Others {2006 (8) SCC 330}
6. J.K. Cotton Spinning and Weaving Mills Co., Ltd., v. State of Uttar Pradesh and another, AIR 1961 SC 1170
7. State of Rajasthan v. Gopi Kishen Sen, AIR 1992 SC 1754
8. Dr. Chakradhar Paswan v. State of Bihar and Others, AIR 1988 SC 959
9. Union of India v. Pushpa Rani and others {(2008) 9 SCC 242}
10. District Collector and Chairman, Viziangaram Social Welfare Residential School Society, Vizianagaram and another V/ M. Tripura Sundari Devi, {(1990) 3 SCC 655}
11. V.S. Richards v. State of Karnataka and another {2004 (1) Kar. L.J. 98}
12. Dhananjay Malik and Others v. State of Uttaranchal and Others, {(2008) 4 SCC 171}
13. K.H. Siraj v. High Court of Kerala and Others {(2006) 6 SCC 395}

ORDER

N.Kumar J.

In all these writ petitions, the order dated 19.12.2008 passed by the Karnataka Administrative Tribunal is challenged. Therefore, all these petitions are taken up for consideration together and disposed of by this common order.

W.P. Nos.6500 to 6508/2009:

2. The Karnataka Public Service Commission (for short hereinafter referred to as the 'Commission'), issued a notification dated 17.4.07 inviting applications for recruitment to the posts of Assistant Executive Engineers in the Public Works Department. The number of posts notified was 52 in the said notification, which comprised 42 from amongst open competition candidates and 10 from in-service candidates. The last date for receipt of applications was 26.05.2007. Subsequently, the Commission issued another notification dated 08.08.2007, by which the number of posts was enhanced. The number of posts notified in total was 104, out of which, 84 posts were earmarked for open competition candidates and 20 for in-service candidates.

3. The Government of Karnataka issued a Government Order dated 30.03.02 regarding the reservation policy under Articles 15(4) and 16(4) of the Constitution of India, laying down the comprehensive creamy layer policy. The said Annexure-11 of the said Government Order provides a list of persons who are not eligible to claim reservation under category II-A, II-B, III-A and III-B of the backward classes. Note 2(2) of the said Annexure provides that a candidate who is a Group-B officer in the services of the Government is not eligible for reservation under the said category of backward classes.

4. The Karnataka Reservation of Appointments of Posts (in the Civil Services of the State) for Rural Candidates Act, 2000, for short the 'Act', was brought into force on 16th February, 2001. Section 3 of the said Act provided that 25% of the vacancies ear marked for direct recruitment in each of the categories of general merit, Scheduled Castes and Scheduled Tribes and each of the categories of other Backward Classes shall be reserved for rural candidates. The term 'rural candidate' had been defined in the said Act. Proviso

to Section 3 of the said Act provided that the concept of creamy layer made applicable as per the order of the Government with regard to reservation issued under clause 4 of Article 16 of the Constitution shall apply mutatis mutandis to the case of a rural candidate belonging to General Merit or other Backward Classes, except category I. Exercising power under Section 5 of the said Act the State Government has issued a Government Order dated 13.02.01 which clarifies certain aspects with regard to reservation of rural candidates. The said Government Order also provides for the authorities who are competent to issue certificates for the said purpose and prescribes forms thereto. Clause I of the said Government Order provides that the concept of creamy layer shall apply to candidates belonging to general category and categories II-A, II-B, III-A and III-B of Backward Classes.

5. The respondents 1 to 9 in Application No.1770/08, 1792/08, 1794/08, 1801/08, 1949/08, 3403/08, 4795/08, 4796/08 and 4797/08 are presently working in the Public Works Dept. (PWD) and the Water Resources Development Dept. (WRDD) as Assistant Engineers. They applied in pursuance of the said notification. They are all eligible to be considered under the in-service quota. The respondents have claimed the benefit of belonging to different group i.e. II-A, II-B, III-A and III-B of the Backward Classes categories, in favour of which categories, certain posts are reserved as per the reservation policy of the Government.

6. Respondents 1 to 9 are admittedly Group-B officers. Except respondents 2 and 4, the rest of the respondents have produced certificates issued by the Tahsildar in Form-F which is a caste certificate issued to persons belonging to Backward classes categories other than for category I. The said certificate certifies that the persons in whose favour it is issued does not come within the creamy layer as prescribed by Government of Karnataka. In respect of respondents 2 and 4, the concerned Tahsildars have refused to issue such a certificate in Form-F on the ground that they hold Group-B posts and consequently, come within the creamy layer as described in the said Govt. Order. Noticing the said anomaly and certificates issued by the Tahsildar and taking into consideration of the Government Order and the further admitted position that the respondent No.1 to 9 hold Group-B posts

in the Govt., the Commission informed the said respondents that their cases cannot be considered under the categories II-A, II-B, III-A and III-B of the Backward Classes.

7. Aggrieved by the said action of the Commission, respondents 1 to 9 have individually filed applications before the Tribunal. The respondents No.2 and 4 in whose favour caste certificates have not been issued by the concerned Tahsildars sought a direction to the Commission to consider their claim under the concerned category of Backward classes and consequently for a direction to call them for personality test under the said category for selection and appointment to the post of Assistant Executive Engineers. The other respondents, respondents 1, 3 and 5 to 9 have sought for a direction to the Commission not to ignore the claim of the said respondents for selection under the respective categories of Backward Classes. In addition to the aforesaid applications, several other applications had been filed and pending before the Tribunal.

In W.P. Nos.6418 and 6419:

8. The respondents 1 and 2 in application Nos.1753/08 and 1546/09 are similarly placed as that of respondents 1 to 9 in the aforesaid writ petitions and were not interviewed on the ground that they are claiming reservation on the basis of false caste certificates. Challenging the said action of the Commission, Application No.1753/08 and 1746/08 were filed.

W.P. No.6510 to 6513/2009:

9. The respondents No.1 to 4 in Application Nos.1756, 1757, 1758 and 1759 of 2008 are all working as Assistant Engineers in the Department of Public Works. They applied under the general category in pursuance of the notification issued by the Commission for recruitment of Assistant Executive Engineers under the 'in service' quota. The respondents also claimed the benefit of reservation under General Merit (rural) category. In support of their claim, they have produced certificates in Form 2 issued by the concerned authorities. The respondents were issued interview letters requiring them to appear for the personality test by the KPSC. The said respondents were called for interview under the

General Merit (rural) category as they were eligible under the same. The respondents were not eligible to be called for interview in their candidature were to be considered under the general category. The respondents are admittedly Group 'B' officers in the services of the State. On the ground that they come within the creamy layer as prescribed in the Govt. order dt. 30.3.02. They were not interviewed. If they are not considered under General merit (rural) category they were not eligible to be interviewed. Aggrieved by the action of the Commission in not extending the benefit of General Merit (Rural) category, the said respondents filed applications before the Tribunal seeking for a direction to the KPSC to permit them to participate in the personality test. In the said applications, they also sought for a declaration that portion of the Government Order dated 30.3.02 bringing the General Merit (rural) category under creamy layer concept and prescribing Form 1 as illegal and invalid.

10. The applicants in Application No.5013/07 corresponding to WP No.6416/07 – R.Ravichandra and Application No.5015/07 corresponding to WP No.6417/07 – K.C.Shivakumar, working in other Government Departments. They have not been interviewed by the KPSC on the ground that they are over aged. They contended that Rule 6(3)(b) of the General Recruitment Rules applies to the case and they are entitled for the benefit of age relaxation as contained therein, in which event, the KPSC committed a grave illegality in not calling them for interview.

11. The petitioner - G.Kumar is working as an Assistant Engineer, presently on deputation in Bangalore Development Authority. He was appointed as an Assistant Engineer in Public Works Department during 1991. His recruitment was in terms of the Rules called the Karnataka Public Works Engineering Department Services (Recruitment) Rules, 1988 which came into force from 17.8.1989. It is stated that the Karnataka Public Works (Irrigation Services) (Recruitment) Rules, 1988 also came to be framed simultaneously. Thus there were separate and distinct recruitment rules pertaining to Karnataka Public Works Engineering Department and Karnataka Public Works Irrigation Department. By a notification dated 22.2.2007 the Karnataka Public Works Engineering Department Services (Recruitment of Assistant Executive Engineers Division-I by

Competitive Examination) Rules, 2007 prescribing the method of recruitment to the post of the Assistant Executive Engineer (Division-I), mode of conducting competitive examination, preparation of select list etc., was issued. The Public Service Commission vide their notification dated 17.4.2007 invited applications from eligible candidates for filling up 52 posts of Assistant Executive Engineer (Division-I) out of which 10 posts are earmarked for in-service candidates in KPWD. Petitioner submitted his application as against the said notification. In the format of the application at Sl.No.7, it is specifically stated as under:-

> Do you claim in-service quota? : Yes O, No O
> For PWD employees only. If so, shade the appropriate circle"

12. On 8.8.2007 yet another notification came to be issued enhancing the number of posts from 52 to 104 out of which 84 posts were earmarked for open competition candidates and 20 posts for in-service candidates. Petitioner who belongs to category 2A claimed reservation under 2A. Respondents 3 to 8 have been selected and appointed in Water Resources Department (for short WRD) during the year 2002-2003. The petitioner contends that the two departments are separate entities having separate recruitment rules. On 14.1.1999 KPW (Irrigation Services) (Recruitment of Assistant Engineers and Junior Engineers) Special Rules, 1998 was issued. Rule 7(2) (b) of the said Rules specifically provides the grace marks of 5% for each year of service subject to maximum of 30% shall be added to the percentage of total marks secured by a candidate in the qualifying examination, if such candidate has served on contract basis as Assistant Engineer or Junior Engineer as the case may be in the Irrigation Department of the State. A candidate who is working on contract basis in PWD is not eligible for such weightage of 5% for each year of service like a contract engineer in the Irrigation Department. Thus, the recruitment rules of two departments operate in separate fields and departments are separate. It is only after the publication of marks list and eligibility list with reference to register number the petitioner learnt that ineligible WRD Engineer candidates have been considered under in-service post. The petitioner was not aware of the said fact at the time of participating in the written examination. It is only after coming to know of the same he has preferred this writ petition challenging their selection among other grounds.

13. The Public Service Commission in the reply before the Tribunal traversing the aforesaid allegations stated that after receipt of applications from officials working in Water Resources Department including respondents 3 to 8 clarification has been sought from PWD in this regard. PWD as per letter dated 31.1.2008 a photocopy of which is enclosed as Annexure-R1 has informed that the applications forwarded by the applicants through the Chief Engineer, PWD (Communication & Buildings) or Chief Engineer, Water Resources Development Organisation only should be treated as applications from in-service candidates. Accordingly, applications of in-service candidates including respondents 3 to 8 forwarded through the Chief Engineer, PWD (Communication & Buildings) or Chief Engineer, Water Resources Development Organisation only have been entertained. It is learnt that though PWD and Water Resources Development Organisation are bifurcated the separation of the two departments is not fully complete and that common seniority/ gradation list of Assistant Engineers is being operated for the purpose of promotion. It is in this circumstance, respondents 3 to 8 have been permitted to apply for the post. Anyway, as far as this contention of the applicant is concerned the same has to be traversed by respondent No.1 – State of Karnataka.

14. The State at para 6 of the statement of objections have made their position clear. They submitted that, they have instructed the KPSC not to consider a person working in the Government as in-service candidate, except the Department of Public Works and Irrigation. This instruction came to be issued by this respondent considering the fact that Public Works Department has issued a common seniority list of Assistant Engineers of Public Works Department and Irrigation Department vide Notification dated 29.3.2003. Vertical bifurcation of both Public Works Department and Irrigation Department has not yet taken place. In other words, it is submitted that the process of bifurcation of two services namely, Public Works Department and Irrigation Department is yet to complete. In fact, the process of bifurcating the Public Works Service and Irrigation service is being taken up. In the process, it is found that many officers who exercise their option at one point of time came to be promoted to the next higher cadre or retired from service and consequently, the said option exercised by them has become infructuous. In view of the necessary steps are being taken up to invite fresh option from among the officers in various

cadres. By taking into account of this fact, and considering the fact that Assistant Engineers appointed in Irrigation Department are also being considered for promotion along with Engineers appointed in the Public Works Department, the Engineers appointed in the Irrigation Department are entitled to have the equal benefit in respect of the recruitment to the post of Assistant Executive Engineers Division-I in Public Works Department and accordingly, the KPSC was instructed to consider the Irrigation personnel as in service candidates.

15. The State has preferred a detailed counter before the Karnataka Administrative Tribunal making their stand very clear in so far as the concept of creamy layer and the Govt. Orders giving effect to the said creamy layer policy. They contend that a person who falls within the creamy layer is a person reaching advanced level or status. A person who does not belong to either SC or ST or any of the backward classes notified by virtue of the provisions contained under Article 16(4) of the Constitution is deemed to have reached advance social level or status and therefore is ineligible for reservation as a rural candidate. To determine whether a person who reached an advance social level or status falls within the creamy layer, economic status, namely the income limit the properties held either belonging to him or his family is also to be taken into account. As such, considering this aspect and by referring to these facts and also following a decision of the Hon'ble Supreme Court relating to the concept of creamy layer, the Govt. Order dated 13.02.2001 (Annexure-5) came to be issued. It is just and proper and is in accordance with the law laid down by the Supreme Court.

16. It is further submitted that it is a settled position of law that the very object/concept of reservation is to revise the status of a group of persons to reach the level of persons who are at the higher level. That being the position, it is to be noted that admittedly, the persons who belong to other Backward Classes under Article 16(4) of the Constitution are deemed to have reached advanced social level or status than that of the persons who do not belong to the categories specified under Article 16(4). Thus, the impugned Government Order while insisting the concept of creamy layer for persons belonging to other backward classes under Article 16(4) of the Constitution prescribes the creamy layer to the candidates

belonging to general merit. The claim of the candidates could be extended provided it is their case that the persons belonging to Backward Classes under Article 16(4) of the Constitution and general merit candidates are equal in status. Such plea cannot be entertained for the simple reason that under Article 16(4) the power is conferred upon the Govt. to identify Backward Classes. In view of the settled position, the applicants are not entitled to the benefit of the Government Order vide Annexure-5. The above narrated facts, position of law unmistakably demonstrate that the applicants have not made out any case which warrants interference in the impugned order and hence, they are liable to be dismissed in law.

17. The respondent No.2, 4, 6 and 9 have filed separate objections. They contend, by virtue of note 1 in the Govt. order, rule for reservation does not apply to direct recruitment of posts which insists on a prescribed period of service in a lower post or experience in a post as a qualification or eligibility. In the instant case, pursuant to notification dt. 17.4.07 and 8.8.07, the respondents have applied for appointment as in service candidates, i.e. by virtue of having experience in the post of Assistant Engineer. Therefore, these respondents fall under the exempted category and the Rule contained is inapplicable. Secondly, it was contended, the State Govt. has accepted the order of the KAT in terms of the direction dated 02.03.04 issued by the Principal Secretary, PWD. PWD has directed KPSC to implement the order of the KAT dated 19.12.08. A copy of the said direction is produced as Annexure 2. KPSC is only a recruiting body which is required to make recruitment in accordance with Rules and Regulations laid down by the Legislation and the Govt. It lacks any locus whatsoever to maintain the above writ petition when the decision of the KAT has been accepted by the State Government. On that ground they want the writ petitions to be dismissed. Even in the other batch of writ petitions the respondents have filed counter raising the very same grounds.

18. The challenge in these applications was for applying the concept of creamy layer to candidates belonging to general category on the ground that the same is in violation of Sec. 3 of the Act. The respondents claim, as per the Kannada version of the Act, proviso to Sec.3 provided that the concept of creamy layer is not applicable to General Merit and

category-I of Backward Classes. Therefore, the Govt. Order dated 13.2.01 would not have prescribed that creamy layer is applicable to General Merit and hence the Govt. order is in violation of Section 3 of the Act.

19. By the impugned order, the Tribunal has disposed of 40 applications including the applications of the said respondents 1 to 4. The applications are allowed by holding that the Govt. Order dated 13.02.01 which brings the General Merit (Rural) candidates under creamy layer and prescribes Form 1 is in violation of Section 3 of the said Act. The Tribunal also held that Rule 6(3) (b) of the General Recruitment Rules applies and age relaxation is permissible. There is no complete bifurcation of Public Works Department and Irrigation Department and therefore persons working in both the departments are eligible to apply for the posts in pursuance of the notification. Aggrieved by the said common order dated 19.12.08, the petitioner – Commission has preferred this batch of writ petitions. One petition is preferred by the employees of Public Works Engineering Department.

20. The points that arise for consideration in these writ petitions are as under:

(1) Whether the Karnataka Public Service Commission has locus standi to challenge the order of the Karnataka Administrative Tribunal when the Government has accepted the said judgment and is seeking to implement the same.

(2) Whether the applicants are entitled to the benefit of relaxation of age provided under Rule 6(3)(b) of the General Recruitment Rules?

(3) Whether the creamy layer policy is applicable to inservice candidates?

(4) Whether the employees who are working in WRDO are eligible to apply against in-service post notified in terms of the notification.

POINT NO.1

LOCUS STANDI OF KPSC

Whether the KPSC has locus standi to challenge the order of the Karnataka Administrative Tribunal when the Government has accepted its judgment and seek to implement the same?

21. Sri. K.Subba Rao, learned Senior Counsel contended that the Karnataka Public Service Commission has no locus standi to prefer these petitions against the order passed by the Tribunal on merits as it cannot be said to be an aggrieved person. If in course of the order, the Tribunal alleged malafides against the KPSC and had passed any strictures to that extent, only the KPSC can be said to be an aggrieved person and they are entitled to challenge the same before this Court. On the question of interpretation of a provision of law, or a Government Order, when the Tribunal has found fault with the interpretation by the KPSC and has rejected the said interpretation of the rules and law and thereafter, the Government did not challenge the same and on the contrary accepted the same, the KPSC has no locus standi to challenge the order of the Tribunal. In support of his contention, he relied on several judgments of the Apex Court.

22. Per contra Sri. Nanjunda Reddy, learned Senior Counsel appearing for the KPSC contended that, not only the KPSC has a right to challenge the order of the Tribunal if any adverse remarks are made against the KPSC but also on merits, if the interpretation placed by the KPSC is not accepted by the Tribunal. He further contends that the KPSC is an Authority constituted under the Constitution and it is expected to scrupulously follow the statutory rules operating in the field and if the interpretation placed by the Government or the authorities concerned is contrary to the statutory provisions, they have a right to challenge the said order before this Court and in support of his contention he relies on the judgment of the Apex Court in the case of Andhra Pradesh Public Service Commission vs Baloji Badhavath and Others (2009) 1 SCC (L&S) 999.

23. Chapter II of Part-XIV of the Constitution deals with the Public Service Commission. Article 315 deals with the establishment of Public Service Commission for the Union as well as the State and Article 320 deals with the functions of the Public Service Commission which reads as under:

> 320. Functions of Public Service Commissions
>
> (1) It shall be the duty of the Union and the State Public Service Commission to conduct examinations for appointments to the services of the Union and the services of the State respectively

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more State so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted

(a) On all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions and transfers;

(c) On all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India, or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advice on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor, of the State, may refer to them;

Provided that the President as respects the all India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respects the manner in which effect may be given to the provisions of Article 335

> (5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses or Parliament or the House or both Houses of the Legislature of the State may make during the

24. The Apex Court, in the case of State of U.P. vs Rafiquddin [AIR 87 Supp SCC 401], dealing with the functioning of the Public Service Commission has held as under:

> "30. The Commission is an independent expert body. It has to act in an independent manner in making the selection on the prescribed norms. It may consult the State Government and the High Court in prescribing the norms for judging the suitability of candidates if no norms are prescribed in the Rules. Once the Commission determines the norms and makes selection on the conclusion of the competitive examination and submits list of the suitable candidates to the Government it should not reopen the selection by lowering down the norms at the instance of the Government. If the practice of revising the result of competitive examination by changing norms is followed there will be confusion and the people will lose faith in the institution of Public Service Commission and the authenticity of selection. We are of the opinion that the Commission should take firm stand in these matters in making the selection in accordance with the norms fixed by law or fixed by it in accordance with law uninfluenced by the directions of the State Government unsupported by the Rules"

Again the Apex Court, in the case of Inder Parkash Gupta vs. State of J&K [2004 (6) SCC 786] held as under:-

> "The Public Service Commission is a body created under the Constitution. Each State constitutes its own Public Service Commission to meet the Constitutional requirement for the purpose of discharging its duties under the Constitution, Appointment to service in a State must be in consonance with the constitutional provisions and in conformity with the autonomy and freedom of executive action. Article 133 of the Constitution imposes duty upon the State to conduct examination for the appointment to the service of the State. The Public Service Commission is also required to be consulted on the matters enumerated under Section 133. While going through the selection process the Commission, however, must scrupulously follow the statutory rules operating in the field. It may be that for certain purposes, for example, for the purpose of short listing, it can lay down its own procedure. The Commission, however, must lay down the procedure strictly in consonance with the statutory rules.

It cannot take any action which per se would be violative of the statutory rules or makes the same inoperative for all intent and purport. Even for the purpose of short listing, the Commission cannot fix any kind of cut-off marks."

Again in the case of State of Punjab and Others vs. Manjit Singh and Others [2003 (11) SCC 559], it is held as under:

"11. The Commission derives its powers under Article 320 of the Constitution as well as its limits too. Independent and fair working of the Commission is of utmost importance. It is also not supposed to function under any pressure of the Government, as submitted on behalf of the appellant Commission. But at the same time it has to conform to the provisions of the law and has also to abide by the rules and regulations on the subject and to take into account the policy decisions which are within the domain of the State Government. It cannot impose its own policy decision in a matter beyond its purview.

Again, it is stated as under:

It is to be noted that under clause (3) of Article 320, the Union Public Service Commission or the State Public Service Commission, has to be consulted by the Government relating to methods of recruitment in civil services and for civil posts, promotions and transfers as well as about suitability of candidates etc. The consultation may also be in regard to disciplinary matters affecting a person serving under the Government. We then find that clause (4) particularly provides that nothing in clause (3) shall require consultation of the Commission in respect of the manner in which any provisions referred to in Article 16(4) may be made or the manner in which the effect may be given to the provisions of Article 335.

Article 16(4) deals with reservations and Article 335 pertains to consideration of reservation consistent with the maintenance of efficiency of the administration. As indicated earlier, clause (4) of Article 320 clearly provides that consultation of the Commission would not be necessary in the matters relating to Articles 16(4) and 335. Therefore, it would be a matter of policy to be decided by the State Government as to what measures, if necessary, may be provided regarding reservations vis-à-vis maintenance of efficiency in services. Where no special qualification or any prescribed standard of efficiency over and above the eligibility criteria is provided by the Rules or the State, it would not be for the Commission to impose any extra qualification/standard separately for maintaining minimum efficiency which, it thinks, may be necessary. No consultation with the Commission, in such matters, is envisaged in view of clause (4) of Article 320 of the Constitution."

25. Therefore, the Public Service Commission is a body created under the Constitution. Each State constitutes its own Public Service Commission to meet the constitutional requirement for the purpose of discharging its duties under the Constitution. The Commission derives its powers under Article 320 of the Constitution as well as its limits too. The Commission is an independent expert body. It has to act in an independent manner in making the selection on the prescribed norms. Independent and fair working of the Commission is of utmost importance. It is not supposed to function under any pressure of the Government. Appointment to service in a State must be in consonance with the Constitutional provisions and in conformity with the autonomy and freedom of executive action. While going through the selection process the Commission, however, must scrupulously follow the statutory rules operating in the field. The Commission, however, must lay down the procedure strictly in consonance with the statutory rules. The Commission should take firm stand in making the selection in accordance with the norms fixed by law or fixed by it in accordance with law uninfluenced by the directions of the State Government and unsupported by the Rules.

26. The Karnataka State Legislature has enacted the Karnataka Public Service Commission (Conduct of Business and Additional Functions) Act, 1959 for the performance of its functions and to provide for the exercise of certain additional functions by the Commission. The said enactment was passed for the performance of the functions of the Commission under the Constitution or under any law for the time being in force. Chapter III deals with additional functions of the Commission. One such additional function as contained in Section 16 is the conduct of service Examinations. Such examinations which persons serving in connection with the affairs of the State are required to pass under the conditions of recruitment of service are applicable to them and which may be notified by Government under this Section and such other examinations as may be notified by Government from time to time shall, with effect from such date as the Government may appoint, be conducted by the Commission in accordance with such rules as may be prescribed. Similarly, the Commission is also empowered under Section 17 as the authority competent to conduct examinations for appointments to the services of local authorities and it shall be the duty of the Commission to conduct such examinations. Section 18 of

the said Act empowers the Government to make Rules for carrying out the purposes of the Act in consultation with the Commission by notification in the official gazette. Accordingly, the Government in exercise of the powers conferred by Sections 15 and 18 of the Act after consultation with the Karnataka Public Service Commission has made the Rules called 'The Karnataka Public Service Commission (Functions) Rules, 1973'. Rule 3 of the said Rules provides that, when the Commission is consulted in regard to the making of rules of recruitment relating to any service the Commission shall advice on all matters relating to recruitment including the methods of recruitment, minimum qualifications, syllabus for written examination if any, principles to be followed in recruitment and such other matters. Rule 4 deals with direct recruitment by examination whereas Rule 5 deals with recruitment by selection. In both the cases the Commission shall scrutinize the applications received and issue admission certificate to such of those whose applications are in order and who fulfill the required conditions. In case of direct recruitment by selection, it shall scrutinize the applications received and make selections in accordance with the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973. When the Commission is consulted in regard to the suitability of any candidate or candidates for promotion, Rule 6 empowers the Commission for recruitment by promotion. The said promotion may be by selection or on the basis of seniority-cum-merit. Thus, a free hand is given to the Commission and it is the Government which has to consult the Commission and not the vice versa.

27. From the aforesaid statutory provisions and the law laid down by the Apex Court it is clear that, when once the assistance of the Commission is sought for in the matter of recruitment either by direct recruitment by examination or direct recruitment by selection or recruitment by promotion, the authority has to independently act in accordance with the Rules and make the selection. It is not obliged to act as per the dictate of the executive in these matters. That is the reason why an independent authority like the Commission was provided under the Indian Constitution. State Legislatures have passed enactments giving effect to the aforesaid constitutional provisions. It is the Government, which has to consult the Commission. The Commission is under no statutory obligation to consult the Government. The recruitment to be made by the Commission should be in consonance

with the constitutional provisions and the Acts and Rules governing the same. In fact Rule 11 categorically states appointments, promotions and transfers, made by any Appointing Authority in contravention of the relevant rules of recruitment and the Karnataka Public Service Commission (Consultation) Regulations, 1958 shall be reported to the Government by the Commission. The Government shall furnish to the Commission any information which the Commission considers it necessary for consideration of any matter referred to it for consultation unless it is certified by the Chief Secretary to Government that same cannot be furnished without undue labour or should be withheld in the public interest.

28. It is in the background of the scheme of the Act and the Rules, the locus standi of the Commission to challenge the orders passed by the judicial authorities finding fault with the selections made by it, is to be considered.

29. The Supreme Court in the case of A.P. Public Service Commission vs. P.Chandra Mouleesware Reddy and Others [2006 (8) SCC 330] dealing with a case where the Andhra Pradesh Public Service Commission which had challenged the judgment of the Division Bench of the High Court of Judicature of Andhra Pradesh which had upheld the order passed by the Andhra Pradesh State Administrative Tribunal held as under:-

> "20. Rule 6 of the Public Service Commission Rules, whereupon Mr. Prabhakar place reliance, is not of much significance. It operates in a different field. It will have no application in a case of this nature. The law cannot be permitted to act unfairly. It cannot be arbitrary. The country is governed by a Rule of Law and not by men. Thus, although a mistake had been committed by the State, the same cannot be directed to be perpetrated only because the Commission will have to undertake the selection process again and particularly, in view of the fact that the State of Andhra Pradesh did not question the order passed by the Tribunal."

30. Relying on this judgment it was contended firstly that, the Public Service Commission had no right to challenge the order passed by the Tribunal as well as the High Court. Secondly it was contended that, when the State Government has accepted the order of the Tribunal as well as the High Court, the Commission has no locus standi to challenge the same before the Apex Court. Though the question of locus standi was not decided expressly in the aforesaid judgment, in the facts of that particular case, the Apex Court held

the grievance of the Commission that it has to undertake the selection process again if the order passed by the High Court as well as the Tribunal stands was not a good reason for interfering with the said order. In that context it was held that the person who committed the mistake was the Government and the Government has accepted the judgment, the appeal preferred by the Commission to the Supreme Court lacks merit. Therefore, by no stretch of imagination it could be said that the said judgment lays down the proposition of law that the Commission has no locus standi to challenge an order passed by a judicial Tribunal. In fact, the learned Judge who passed the said judgment in the Apex Court had an occasion to consider the said question specifically in a subsequent judgment where the said portion of the earlier judgment was brought to his notice. After noticing the same the learned Judge has specifically clarified the legal position in the case of Andhra Pradesh Public Service Commission vs. Baloji Badhavath and Others [(2009) 1 SCC (L&S) 999. Dealing with the question of locus standi of the Public Service Commission to challenge the orders it was held as under:

> "46. So far as the question of locus standi of the appellant to file this special leave petition is concerned, we are of the opinion that it has the locus standi. The High Court not only has set aside GOMs dated 31.12.1997 but it has also set aside Notification dated 27.12.2007. If the High Court's judgment is to be implemented, a fresh selection procedure has to be undertaken by the appellant. Furthermore, in terms of Order 41 Rule 4 of the Code of Civil Procedure, the appellate court, in the event, finds merit in the appeal at the instance of one of the respondents may set aside the entire judgment although another respondent had not appealed there against. The Commission had undertaken the task of holding preliminary examination. It had followed the procedure laid down in its notification issued in this behalf and the GOMs issued by the State. It, therefore, could maintain a writ petition".

31. While referring to the aforesaid judgment in P.Chandra Mouleesware Reddy's case, the Apex Court held as under:-

> "48. ……. In Chandra Mouleeswara Reddy case, the State had accepted the judgment of the High Court. A mistake on the part of the State to issue the impugned direction was in question therein. It was in that context the aforementioned observations had been made. Therein 19 posts were to be filled up whereas a direction was issued to fill up only ten posts. The Tribunal directed the State to fill up all 19 posts. The State of Andhra Pradesh did not question the order of the Tribunal. Even the Commission was not required to carry out any fresh exercise to comply with the direction of the Tribunal. As

the order of the Tribunal was not found to be unjustified, the High Court refused to interfere therewith. The observations were made only in the aforementioned context".

32. Therefore, it is clear in P.Chandra Mouleesware Reddy's case, in pursuance of the direction issued by the Tribunal, the Commission was not required to carry out any fresh exercise to comply with the direction of the Tribunal. However, in Baloji Badhavath's case, if the order of the High Court is to be implemented, the Commission had to undertake the task of preliminary examination which had been set aside by the High Court. It is in that context it was held that, if the recruitment process conducted by the Commission if it is found fault with and set aside the same and if the Commission because of that order is compelled to redo the whole thing, then the Commission is an aggrieved person.

33. The Commission is a constitutional authority created under the Constitution. It has to function in terms of the constitutional provisions giving effect to the object with which it is constituted under the Constitution and the State Legislature defines its functions, passes a law and specific functions are assigned to it under the statute, the Commission has to work strictly in accordance with the statutory provisions. When in the course of discharging its functions it is of the opinion that these actions are in accordance with the statutory provisions and if it feels the recruitment done by them is unnecessarily found fault with by a judicial body whose decision is contrary to the statutory provisions certainly they have a right to challenge the said order passed by the judicial authority. The reason for setting at naught the recruitment process is not the criteria. It is the ultimate result. If any action of the Commission is found fault with and the Commission has to redo the thing over again and if the Commission feels their action is strictly in accordance with law, they have a right to challenge the judgment of a judicial body which has found fault with their action. It is immaterial whether the action of the Commission is found fault with by making any allegations against the Commission or attributing mala fides or purely on procedural irregularity or being contrary to law. The contention that the Commission has nothing to do with the appointment in any particular department after the selection process is over and if the selection is set aside, they cannot be held to be aggrieved persons, cannot be accepted. Though the Commission has no personal interest in any of these recruitment,

as a constitutional authority when it has conducted the selection in accordance with the statutory provisions and if such selection is found fault which as improper or illegal, the Commission being an independent authority, if it wants to justify its actions and show that their actions are strictly in accordance with law that can be done only by challenging that order in the superior Court. Therefore, their right to challenge the order finding fault with the selection process cannot be taken away. In that view of the matter, we hold that the Commission has the locus standi to challenge the order of a judicial authority, or a quasi judicial authority if their selections are set at naught by them not only on the ground of mala fides but even being contrary to law. It is open to them to show to the superior Court that the recruitment or selection process which they have done is strictly in accordance with law and it has been unnecessarily interfered by a judicial or quasi judicial authority.

POINT NO. 2

AGE RELAXATION

Whether Rule 6(3) (b) of the General Recruitment Rules has got over-riding effect over Rule 1 of the General Recruitment Rules and 2007 Rules?

34. The learned Counsel for the KPSC Sri. Nanjunda Reddy, submits that these recruitments are done under a special law, namely, the Karnataka Public Works Engineering Department Services (Recruitment of Assistant Engineers, Division I by Competitive Examination) Rules, 2007. Rule 5 of the said Rules provides for age and academic qualification of the candidates. It also provides that there is no maximum age limit for candidates competent under in-service quota, which in itself is relaxation in age. Therefore, the provisions of General Recruitment Rules providing for relaxation of age is not applicable.

35. The Karnataka Public Works Engineering Department Service (Recruitment of Assistant Executive Engineers, Divison-1 by Competitive Examination) Rules 2007 deals with recruitment to the post of Assistant Executive Engineer. Rule 5 deals with age, academic qualification of candidates which reads as under:

"5. Age and academic qualification of Candidates:- Every person who has attained the age of 21 years but not attained 40 years in the case of candidates belonging to the Scheduled Castes/Scheduled Tribes/Cat-I; 38 years in case of candidates belonging to category 2A/2B/3A/3B; 35 years in case of any other candidates as on the last date fixed for receipt of applications shall be eligible to apply for recruitment under these rules.

Provided that there is no maximum age limit for candidates competing under in service quota.

Candidates must be holder of a Degree in Civil Engineering or Construction Technology & Management granted by a University established by Law in India and from an Institute approved by the AICTE, or a Diploma Certificate from the Institution of Engineers (India) that he has passed Parts A & B of the Associate Membership Examination of the Institution of Engineers (India).

36. Rule 13 deals with application of General Recruitment Rules and it reads as under:

"13. Application of General Recruitment Rule:- Except in respect of matters for which provision is made in these rules, the provisions of the Karnataka State Civil Services (General Recruitment) Rules, 1977 for the time being in force, shall be applicable for purposes of recruitment under these rules."

37. Rule 14 deals with application of other Rules which reads as under:

"14. Application of other rules:- The Karnataka Civil Services Rules, the Karnataka Civil Services (Conduct) Rules, 1966 and all other rules for the time being in force regulating the conditions of service of Government servants made under the proviso to Article 309 of the Constitution of India, in so far as such rules are not consistent with the provisions of those rules, shall be applicable to persons appointed under these rules."

38. In support of his contention, the learned Senior Counsel relied on two judgments of the Apex Court which is reported in AIR 1961 SC 1170 in the case of J.K. Cotton Spinning and Weaving Mills co., Ltd. Vs. State of Uttar Pradesh and another, where in paragraph 9 and 10 it has been held as under:

"9. There will be complete harmony however if we hold instead that Cl.5(a) will apply in all other cases of proposed dismissal or discharge except where an inquiry is pending within the meaning of cl.23. We reach the same result by applying another well known rule of construction that general provisions yield to special provisions. The learned Attorney-General seemed to suggest that while this rule of construction is applicable to resolve the conflict between

the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In Pretty v. Solly (1859-53 ER 1032) quoted in Craies on Statute Law at p.206, 6th Edition) Romilly, M.R. mentioned the rule thus:- "The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply"

The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned; De Winton v. Crease, (1828) 5 Bing 177, United States v. Chase, (1889) 135 US 225 and Carroll v. Greenwich Ins. Co., (1905) 199 U.S. 401.

10. Applying his rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that Cl.5 (a) has no application in a case where the special provisions of Cl.23 are applicable."

39. Again the Apex Court in the Case of State of Rajasthan vs. Gopi Kishan Sen reported in AIR 1992 SC 1754 at paragraph 6 has held as under:

"6. Another argument which has been advanced on behalf of the respondent is on the basis of Rule 29 of the Rajasthan Services Rules 1951 declaring that "an increment shall ordinarily be drawn as a matter of course". It is argued that since this Rule does not allow the impugned provisions fixing a fixed rate of pay for the untrained teachers as an exception, the latter cannot be given effect to. There is no merit in this argument either. The rule of harmonious construction of apparently conflicting statutory provisions is well established for upholding and giving effect to all the provisions as far as it may be possible, and for avoiding the interpretation which may render any of them ineffective or otiose. In the present case Rule 29 dealing with payment of increment is in general terms while the Schedule in the 1969 Rules makes a special provision governing the untrained teachers, attracting the maxim "generalibus specialia derogant", i.e., if a special provision is made on a certain subject, that subject is excluded from the general provision. The Schedule in

the 1969 Rules, therefore, must be held to prevail over the general provisions of 1951 Rules."

40. From the aforesaid judgments, it is clear that general provisions should yield to specific provisions. It is not an arbitrary principle made by lawyers and judges, but spills from the common understanding of men and women. The Rule is that, whenever there is a particular enactment and a general enactment in the same statute and the latter taken its more comprehensive sense would over-rule the former. The particular enactment must be operative and the general enactment must be taken into affect only to the other parts of the statute to which it may properly apply. In case of conflict between specific provision and general provision, the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the specific provision. If a special provision is made on a certain subject, that subject is excluded from the general provision.

41. It is in this background when we look at the provisions of these rules, in so far as recruitment to the Karnataka Public Works Engineering Department Service in particular to the Assistant Executive Engineers, Division I by Competitive Examinations Rules, 2007. The Rules of 1977 provide for age limit for appointment. It is contained in Rule 6. Similarly, Rule 5 of the Rules 2007 provides for age and academic qualification of candidates. Therefore, when the special rules specifically provide for age and academic qualification of candidates, it over rides Rule 6(1) which deals with the same aspect. Rule 5 of the rules of 2007 declares that the said Rule 5 has no application to the service quota i.e. in so far as in-service candidates competing for posts earmarked for service quota. In respect of them, no maximum age is prescribed. Therefore, it is not a case of relaxation of age prescribed in Rule 5 for persons other than the in-service candidates. The said 2007 Rules do not provide for relaxation of age limit prescribed in rule 5. However, Rule 13 makes it clear that except in respect of matters for which provisions are made in these Rules, the provisions of the Karnataka State Civil Services (General Recruitment) Rules, 1977, for the time being in force shall be applicable for the purpose of recruitment under these Rules. Rule 14 also amplifies this aspect. Therefore, when the Rules of 2007 do not provide for relaxation of age as contained in sub-Rule (3) of Rule 6, the said sub-Rule

(3) has to be read into the Rules of 2007, so that the age limit prescribed in the said Rule 5 stands relaxed if the conditions prescribed in Rule 6 reads as under:

> "(3) Notwithstanding anything contained in sub-rule (1) the maximum age limit for appointment shall be deemed to be enhanced in the following cases to the extent mentioned namely:-
>
> (a) In the case of a candidate for appointment to a Class IV post on the personal establishment of a Minister, Minister of State or Deputy Minister, by five years, if such appointment is only for the duration of the term of office of such Minister, Minister of State or Deputy Minister;
>
> (b) In the case of a candidate who is or was holding a post under the Government or a local authority or (a corporation established by a State Act or a Central Act or established by the Government under a State Act or Central Act and owned or controlled by the Govt. by the number of years during which he is or was holding such post of (ten years) whichever is less;"

42. So if a candidate who applies for recruitment under the Rule 2007 though he does not possess the age as required under Rule 5, if he satisfies requirement of clause (b) of Rule (3) of Rule 6 of Rules, 1977, he would be entitled to age relaxation as contained in the said proviso. Merely because in Rule 5 at the far end, no maximum age limit for candidates competing under in-service quota is mentioned, that is not a case of age relaxation to others and that does not come in the way of application of Rule 6(3)(b) and it would not have the effect of overriding the said provision.

43. In fact, the Tribunal on an earlier occasion also took a similar view, which view has been affirmed by a Division Bench of this Court in the W.P. No.26021-31/97, where it was held, the Karnataka Civil Services (General Recruitment) Rules, 1977 as amended would squarely apply to the in service candidates and as such the finding of the Administrative Tribunal in respect of those candidates is just and proper and needs no interference. Thus, a similar contention raised by KPSC was negative in the said decision. In that view of the matter, the Tribunal was justified in holding that the aforesaid two applicants are entitled to age relaxation and the KPSC was not justified in not calling them for interview on the ground that they are age barred. It is not in dispute that if the relaxation

is extended to these two applicants, then they would satisfy the requirement of age and thus eligible not only to take the examination, but also to be called for interview. In that view of the matter, we hereby hold that Rule 6(3)(b) of the Rules of 1977 applies and the age prescribed under Rule 5 stands relaxed to that extent.

POINT NO.3

CREAMY LAYER CONCEPT

Whether New Comprehensive Creamy Layer Policy dated 30th March 2002 is applicable to in-service candidates who have applied for direct recruitment under 5% category?

44. Sri. Nanjunda Reddy, learned Senior Counsel contended that in so far as recruitment of 5% in-service candidate is concerned, no period of service in the lower post or experience in such post is prescribed. Every person who has attained the age of 21 years, who has not attained the age of 38 years, is eligible to apply. But in so far as in-service quota is concerned, no maximum age limit is prescribed. All that he has to satisfy is, the educational qualification under the Rules. Therefore, when a prescribed period of service in the lower post or experience in a post, is not a condition precedent for applying, the Comprehensive Creamy Layer of 2002 is applicable to the said post.

45. The Tribunal has categorically recorded a finding to the effect that no specific period of service is needed to be prescribed in order to become eligible to apply as an in-service candidate. The candidate must have put in some service and he should continue to be in service to be eligible to apply and that is sufficient to attract the Creamy Layer Policy. The learned Counsel submits that the said view of the Tribunal is contrary to the object with which this Comprehensive Creamy Layer Policy was unfolded by the Government.

46. From the facts set out above it is clear that KPSC issued two notifications for recruitment of 104 Assistant Engineers (Division-1). Out of the 104 posts to be filled up, 75% is earmarked for being filled up by way of promotion. In the remaining 25%, 20% is to be filled up by direct recruitment which is open to everyone including the persons who

are in service, whereas the remaining 5% of posts have to be filled up only from persons who are in-service. It is in that context in that 5% meant for in-service candidates again those posts have to be filled up according to the reservation policy of the Government in which event persons who fall under categories IIA, IIB, IIIA and IIIB are entitled to reservation. It is not in dispute that the applicants who claim reservation all belong to backward community and that they are Group 'B' officers. The question is because they are Group 'B' officers drawing a pay scale of Rs.6,000/- to Rs.11,200/- do they fall under New Comprehensive Creamy Layer Policy and thus excluded from applying for posts meant for in-service candidates and claim reservation among them.

47. It is also not in dispute that all these persons filed applications, they were called for the written examination, all of them have passed in the written examination, thereafter intimations were sent to them to attend the interview based on the merit. They did attend the interview. But, they were not allowed to get inside the interview hall on the ground that they are not eligible and they are excluded because of New Comprehensive Creamy Layer Policy. It is in that context they approached the Tribunal. The reasons assigned by the KPSC as is clear from the statement of objections is, Note 1 to the New Comprehensive Creamy Layer Policy excludes these Group 'B' officers belonging to the backward community. In order to appreciate that contention it is necessary to have a look at the said policy contained in Annexure-II.

"ANNEXURE-II to G.O. No.SWD 225 BCA 2000
Dated 30th March 2002
NEW COMPREHENSIE CREAMY LAYER

Under Article 15(4) and 16(4) of the Constitution of India, the following persons shall not be eligible for reservation of seats of posts categorized under IIA, IIB, IIIA and IIIB.

NOTE.

1. This rule will not apply to direct recruitments to pots which insist on a prescribed period of service in a lower post or experience in a post, profession or occupation as a qualification or eligibility.

2. This rule applies to son(s) or daughter(s) of the persons specified below:

1	(a) President of India (b) Vice President of India (c) All functionaries holding Cabinet rank in Government of India or Government of any State of union Territory. (d) Chairmen of Council of States and the State Legislative Councils. (e) Governors of States. (f) Speakers of Lok Sabha and Legislative Assemblies (g) Judges of Supreme Court and High Courts (h) Chairmen of Public Service Commission (i) Attorney General of India (j) Advocate General (k) Chief Election Commissioners (l) Comptroller and Auditor General of India (m) Member of Parliament at least for a period of five years – during the period of their office. (n) Member of State Legislature at least for a period of five years – during the period of their office.
2	The Candidate and either of whose parents/guardian is a Group-A or Group-B officer in the services of the Government or holds an equivalent post in public sector undertakings or an employee of a private industry/institution and draws a salary which is not less than that of a group B Officer (Pay Scale Rs.6000–11200).
3	The Candidate and his/her father's mother's/Guardian Gross Annual income exceeds Rs.2.00 lakhs.
4	The candidate and his/her father, mother/guardian holding 10 units of Agricultural Land as specified in the Karnataka Land Reforms Act 1961, and such of those holding more than 20 acres of plantation land.

D.M.AGA
Deputy Secretary to
Government
Social Welfare Department."

48. The Government Order dated 30.3.2002 revised the list of Backward Classes incorporating recommendations of the Backward Commission and it was brought into force with immediate effect. Clause (3) of the said Government Order categorically states that, a New Comprehensive Creamy Layer Policy as detailed in Annexure-II to this Government Order is brought into force with immediate effect. This Creamy Layer Policy does not apply to SCs/STs and Category-I of the Backward Classes. Candidates belonging

to Category-II(A), II(B), III(A) and III(B) shall be entitled to reservation in the manner specified in the New Comprehensive Creamy Layer Policy. Annexure-II to the said Government Order which is already extracted above lays down a New Comprehensive Creamy Layer Policy of the Government. As the opening words of Annexure-II makes it clear, the persons mentioned in the said Order are not eligible for reservation of seats of posts categorized under IIA, IIB, IIIA and IIIB. In other words, the persons mentioned in the said Order fall within the New Comprehensive Creamy Layer Policy and are not entitled to reservation though they belong to the backward communities. The person to whom that policy applies is set out in clauses 1, 2, 3 and 4 under Note 2. However, Note 1 which falls for interpretation in this case reads as under:-

> "1. This rule will not apply to direct recruitment to posts which insist on a prescribed period of service in a lower post or experience in a post, profession or occupation as a qualification or eligibility."

49. A careful reading of the aforesaid Note 1 makes it clear that, the intention of the Government was not to apply this New Comprehensive Creamy Layer Policy to two classes of persons. (1) to direct recruitment and to posts which insist on a prescribed period of service in a lower post or (2) to direct recruitment and to posts which insist on a prescribed experience in a post, profession or occupation as a qualification or eligibility. Therefore, the intension is clear. In the case of direct recruitment and to posts if the period of service in a lower post is a qualification or experience in a post, profession or occupation is a qualification, then they go out of the New Comprehensive Creamy Layer Policy as per Annexure-II. If those two conditions are not prescribed for eligibility then the candidates who fall under Group 'B' in the service of the Government or holds an equivalent post in a Public Sector fall within the Creamy Layer Policy and are not entitled to reservation.

50. Interpreting this provision, the Tribunal has held as under:

> "The Government Order dated 30.3.2002 in its Note (1) has clearly ruled out the applicability of the Creamy Layer principle to direct recruitments prescribing the service or experience as a qualification of eligibility. Though no specific period of service is prescribed, in order to become eligible to apply as an in-service candidate the candidate must have put in some service and he should continue to be in service to be eligible to apply. A person who has not put in any service cannot claim to be an in-service candidate. Merely because

> no definite period of service of experience is spelt out, it does not mean that the person without experience or service will become eligible. In the circumstances, it is implied in Note (1) that only a person who is already in the service and who continues to be in service alone will become eligible."

51. Assailing this reasoning of the Tribunal it was contended that the recruitment in question is solely for the in-service candidates in question. Therefore, the first condition to be specified is he must be in service on the day he makes an application. Then we have to find out the application of Note (1) to such a person. Rule 1 categorically states it will not apply to direct recruitment and to posts which insist on (1) a prescribed period of service in a lower post or (2) experience in a post, profession or occupation as a qualification of eligibility. Merely because a person is in service he is not eligible to apply to the notified post. He must be inservice, he must possess the requisite qualification prescribed under the Rules.

52. Rule 5 of the Karnataka Public Works Engineering Department Services (Recruitment of Assistant Executive Engineers Division-I by Competitive Examination) Rules, 2007 prescribes the following qualification to be eligible to apply for the post of Assistant Executive Engineers Division-I:-

> "5. Age and academic qualification of Candidates:- Every person who has attained the age of 21 years but not attained 40 years in the case of candidates belonging to the Scheduled Castes/Scheduled Tribes/Cat-I; 38 years in case of candidates belonging to category 2A/2B/3A/3B; 35 years in case of any other candidates as on the last date fixed for receipt of applications shall be eligible to apply for recruitment under these rules.
>
> Provided that there is no maximum age limit for candidates competing under in service quota.

Candidates must be holder of a Degree in Civil Engineering or Construction Technology & Management granted by a University established by Law in India and from an Institute approved by the AICTE, or a Diploma Certificate from the Institution of Engineers (India) that he has passed Parts A & B of the Associate Membership Examination of the Institution of Engineers (India).

53. No doubt the recruitment is a direct recruitment. Any person who is possessing the aforesaid qualification is eligible to apply to the said post. As is clear from the aforesaid provision no period of service in a lower post in the case of in-service candidates or

experience in a post/profession or occupation is prescribed as qualification or eligibility criteria.

54. In order to appreciate the aforesaid Government order what has to be seen is the provisions contained in the Karnataka Public Works Engineering Department Service (Recruitment) Rules, 1988. Rule 2 provides the method of recruitment and minimum qualification etc.,

Sl. No.	Category of post	Method of recruitment	Minimum Qualifications
xx 5	xx Assistant Executive Engineer Division-I	xx Seventy five percent by promotion from the cadre of Assistant Engineers; and Twenty percent by direct recruitment in accordance with the Karnataka Public Works Engineering Department Service (Recruitment of Assistant Executive Engineers, Division-I by Competitive Examination) Rules, 1973; Five percent by direct recruitment from among persons (in service) belonging to Karnataka Public Works Engineering Department who possess the qualifications prescribed for direct recruitment in accordance with the Karnataka Public Works Engineering Department Service (Recruitment of Assistant Executive Engineers Division-I by Competitive Examination) Rules 1973.	xx For promotion: (1) Must be holder of a degree in Civil/ Mechanical Engineering as the case may be. (2) Must have put in a service of not less than five years as Assistant Engineer. Provided that if officers who have put in a minimum service of five years are not available, an officer who has put in three years of service may be considered for promotion.

55. It states that, in respect of each category of posts specified in column (2) of the Schedule below, the method of recruitment and the minimum qualification if any, shall be as specified in the corresponding entries in columns (3) and (4) thereof. The schedule contains at column no.1-Sl.No., column No.2-category of post, column No.3-method of recruitment and at column No.4 minimum qualification. The recruitment to Assistant Executive Engineer Division-I is provided at Sl.No.5. The method of recruitment provides that 75% by promotion from the cadre of Assistant Engineers; and 25% by direct recruitment in accordance with the Karnataka Public Works Engineering Department Service (Recruitment of Assistant Executive Engineers, Division-I by Competitive Examination) Rules, 1973 which is replaced by 2007 Rules and 5% by direct recruitment from among the persons (in service) belonging to Karnataka Public Works Engineering Department who possesses the qualifications prescribed for direct recruitment in accordance with the Karnataka Public Works Engineering Department Service (Recruitment of Assistant Executive Engineers Division-I by Competitive Examination) Rules, 1973 which is now replaced by Rules of 2007.

56. The aforesaid Government Order sets out to whom the said policy shall not be applicable for reservation of seats of posts categorized under IIA, IIB, IIIA and IIIB. Note 2(2) is one such category. It reads as under:

> "The Candidates and either of whose parents/guardian is a Group-A or Group-B officer in the services of the Government or holds an equivalent post in Public sector undertakings or an employee of a private industry/institution and draws a salary which is not less than that of a group B officer (Pay scale Rs.6000-11200)."

57. Relying on the aforesaid provision in the Government Order it was contended that, though a person belongs to the castes enumerated under 2A, 2B, 3A and 3B to the Annexure to the Government Order dated 30.3.2002. If such candidate is a Group 'A' or Group 'B' officer then he will not be entitled for reservation and the Government Order dated 30.3.2002 excludes such persons from the benefit of reservation.

58. Per contra, it was contended that to decide whether a candidate is eligible for the benefit of the said Government Order or not, is the Tahsildar constituted under the

provisions of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation) of Appointments, etc.) Act, 1990 and not the Commission and therefore the Commission exceeded its power.

59. Section 4 of the said Act provides for reservation of appointment or posts, etc., Section 4A provides for issue of a caste certificate and income and caste certificate. Sub-section (2) of Section 4A provides that, any candidate or his parent or guardian belonging to other backward classes may, in order to claim benefit of reservation under Section 4, either for appointment to any service or post for admission to a course of study in University or any Educational Institution, make an application to the Tahsildar in such form and in such manner as may be prescribed for issue of an income and caste certificate. Sub-section (3) provides that, the Tahsildar may on receipt of an application under sub-section (1) or (2), and after holding such enquiry as he deems fit and satisfying himself regarding the genuineness of the claim made by the applicant pass an order issuing a caste certificate or, as the case may be, an income and caste certificate in such form as may be prescribed, or rejecting the application. The Rules framed under the aforesaid Act, in particular Rule 3-C declares that the caste certificate issued under Section 4-A shall be valid until it is cancelled. Sub-Rule (2) provides that the income and caste certificate issued under Section 4-A shall be valid for a period of five years. Any person aggrieved by the order of the Tahsildar under Section 4A is given the right of preferring an appeal under Section 4-B. Section 4-C provides for constitution of Committees for verification of income and caste certificate. Rule 5A provides for the validity of certificate issued by the Caste Verification Committee. Rule 6 provides for application for validity certificate and Rule 6A provides for verification by the Caste and Income Verification Committee and Rule 7 provides for issue of Validity Certificate. Rule 9 makes it obligatory on the person who has been successful in securing appointment under a reserved category to obtain validity certificate, for which he would not be entitled to the benefit of reservation. The certificate issued by the Tahsildar in the prescribed form clearly mentions that the policy of the Government in so far as creamy layer is concerned, is not applicable to them. The correctness of a caste and income certificate issued under the Actor the reservation certificate cannot be gone into by the Commission, the reason being, the Act is a self contained enactment which provides

for an appeal against the order granting the certificate. It also provides for a comprehensive method for verifying the correctness and for issue of certificate before appointment, which is a condition precedent and therefore, Commission has no jurisdiction to sit in judgment over the certificate issued by the authority under the Act. It has to simply receive the certificate and to act upon it. What cannot be done directly cannot be done by the Commission under the guise of interpreting the Government Order. Though prima facie the Government Order excludes reservation to Group 'B' employees when once the Tahsildar issues a caste and income certificate, it is issued on the assumption that the reservation is applicable to Group 'B' employees and they do not belong to the creamy layer. Commission cannot exclude them for consideration under the reserved category by interpreting such interpretation in the said Government order. It amounts to sitting in judgment over the certificate issued by a competent authority under the Act.

60. The contention of KPSC is that if a candidate is merely in service it is not sufficient to claim exemption from creamy layer. The further condition prescribed to be satisfied for recruitment is the prescribed period of service. If he satisfies the said condition, then will go out of this Creamy Layer Policy. In the instant case even though 5% is to be filled up by in-service candidates, there is no prescription of any period of service. Therefore, they will not go out of the Creamy Layer Policy and they are not eligible. By mistake, they were permitted to take the examination and also called for the interview. It is at that juncture when it was realized that they were all Group 'B' Officers in the very same department to whom this Creamy Layer Policy applies, they were not eligible for that 5% in-service quota and, therefore, they were not permitted to enter the interview hall.

61. Though the said argument appears to be attractive, if we look into Note 1 in the background of the recommendations of the Backward Commission which was considered before formulating the Creamy Layer Policy and the principle behind this legislation, it is difficult to uphold the said argument. In the recommendation of the Karnataka Public Service Commission for Scheduled Caste which submitted its report on 2000, it is observed as under:

> "For direct recruitment to certain posts long period of continuous services or experience is prescribed for eligibility. But in view of the operation of the creamy Layer principle, all those who are eligible because they are working in subordinate post are screened out of the backward classes. Therefore it was suggested that, since long and continuous service in a lower post is a condition precedent to get eligible for such post, the application of Creamy Layer to such post would result in taking away in one hand what is given by the other. Applying Creamy Layer would frustrate the very object of reservation in such posts."

62. Therefore, from the said report it is clear that persons who have put in long period of continuous service or experience should not be denied the benefit of reservation on the ground that they belong to Creamy Layer. It is after considering the said report, the policy is laid down. In other words, the persons belonging to these backward classes, if they have put in continuous service or experience, they should not be denied the opportunity of occupying higher post by way of direct recruitment by application of Creamy Layer. But if they do not possess the requisite experience or not in continuous service and if they belong to the Creamy Layer, the Policy applies.

63. In order to find out what is the qualification prescribed by way of prescribed period of service or experience, what is to be seen is the recruitment rules under which recruitment is made.

64. The Government of Karnataka has provided for horizontal reservation for rural candidates by enacting Karnataka Reservation of Appointments (Posts in Civil Services of the State) for Rural Candidates Act, 2000. Section 3 of the said enactment provides for 25% of the vacancies earmarked for direct recruitment in each of the categories of General Merit, Scheduled Castes, Scheduled Tribes and each of the categories of other backward classes shall be reserved for rural candidates. The concept of Creamy Layer is made applicable in the case of rural candidates belonging to General Merit or the other backward classes except Category-I under Clause (4) of Article 16 of the Constitution and the policy in Creamy Layer as evidenced by the order dated 30th March 2002 is made applicable to these rural candidates also.

65. In the 25% posts earmarked for recruitment other than by way of promotion 20% is earmarked for direct recruitment in the open category. In that open category even persons who belong to Group 'B' officers who are in service are eligible to compete. However,

because of the Creamy Layer Policy they would not be eligible to seek for reservation out of that 20% posts. Because in so far as 20% direct recruitment in open category is concerned, though they satisfy the contention that they belong to backward classes, they fall within the Creamy Layer Policy and, therefore, though they are eligible to compete in that category, but they will not be entitled to reservation. As opposed to that in so far as recruitment to 5% which is exclusively earmarked for in-service candidates is concerned, again among that 5% posts have to be filled up according to the reservation policy of the Government. It is here Note 1 is attracted. When the direct recruitment to posts insist on a prescribed period of service in a lower post then the said policy is not attracted. Though in the instant case no prescribed period of service in the lower post is prescribed, unless he is in service he cannot apply as against that 5% posts reserved for in-service. Even a person who has put in one day of service, would be an "In-service candidate". In other words, the qualification prescribed or the eligibility criteria prescribed for applying against this 5% post is, he must be in-service. It is immaterial the period of service in the lower post he has completed. Any other interpretation would lead to a situation where the posts earmarked for backward community among this 5% and rural candidates cannot be filled up from the cadre of Assistant Engineers as all Assistant Engineers are Group 'B' officers. The word 'prescribed period of service' in the Government Order if it is not understood to mean as person 'in service', the very object of reservation made to backward classes belonging to II-A, II-B, III-A and III-B would be frustrated. As is clear from what has transpired after the selection, in category II-A 2 posts, category II-B 2 posts, category III-A 1 post and category III-B 1 post were reserved. As there were no applicants at all in these categories, they have been converted into general merit. Only in case of III-B there was one candidate available. Therefore out of 8 posts which are marked for backward caste and GM, only one candidate has been selected in the said category and the remaining 7 posts are sought to be filled up by general merit category. Therefore, the Court should place such interpretation of this Government Order which contains the policy of the Government, so that the real object is achieved and what is sought to be given in one hand should not be taken away in the other hand. If a purposeful construction is not given to the words 'prescribed period of service' in the Govt. order and a literal meaning is given, it would defeat the very object of reservation. Therefore, as rightly held by the Tribunal any

interpretation that would lead to absurdity is to be avoided and if two interpretations are possible, that interpretation which would advance the cause of justice and extend the benefit of reservation, is to be preferred, keeping in mind the doctrine of purposive construction and the recommendations of the Backward Class Commission and the principle underlining this reservation coupled with the fact that there are sufficient number of backward community candidates are in the services it would be just and proper for us to accept the interpretation placed by the Tribunal as against the interpretation sought to be placed by the KPSC. That would serve the cause of justice. In fact after the order is passed by the Tribunal, the Government has accepted the interpretation. They are not aggrieved. They are not challenging the same. Under these circumstances, we are of the view that no exception could be taken to the finding recorded by the Tribunal on this question.

POINT NO.4

BIFURCATION OF P.W.D. & IRRIGATION DEPARTMENT

66. Sri. Padmanabha Mahale, learned Senior Counsel contended that the notification issued and the correspondence which is produced before the Court clearly shows that the recruitment was done to the P.W.D. Department under the Rules governing the P.W.D. employees. However, applications of all persons who are working in the Irrigation Department have been entertained and they have been selected. Therefore all those persons who were working in Irrigation Department who have been selected as against this advertisement, their selections are illegal and are liable to be set aside. The Tribunal has not properly appreciated the case put forth and was in total error in rejecting the said contention. Even before the said notification calling for applications, the petitioner has been giving representations and has challenged the endorsement issued earlier before the Tribunal. Therefore, merely because he applied against the said advertisement, it should not be said that he is stooped from challenging the said Creamy Layer after acquiescing in filing the application. Lastly it was contended that the application of the writ petitioners were entertained, they were permitted to take the examination, they were called for the interview and on the basis that the Creamy Layer is not applicable to the in-service

candidates on the date of the interview, they were sent back saying that they did not possess the eligibility criteria which is improper.

67. Per contra it is contended by Sri. P.S.Rajagopal, the learned Senior Counsel that, after the recruitment under the separate Rules meant for Irrigation Department, while preparing the seniority list, persons who are recruited under both the departments are considered and a common seniority list is prepared. In some cases, on the basis of the aforesaid seniority list, promotions are also given. Therefore, it is clear that the practice prevalent in this department makes it clear that persons working in both these departments are treated as belonging to one cadre, common seniority is prepared, promotion is given based on the said seniority. Till today the two cadres are not completely separated and they are treated as belonging to the same department. Therefore the persons working in the irrigation department are also entitled to apply against the notification as they continue to belong to P.W.D. Department.

68. The Governor of Karnataka sanctioned the establishment of State Civil Services in respect of Karnataka Irrigation Dept. Service. A notification came to be issued on 5th July 1989, prescribing the strength of each of the said categories and the number and category of posts borne thereon. It came into effect on 17th August, 1989 when it was published in the Karnataka Gazette. On the same day, in exercise of the powers conferred under Article 309 of the Constitution of India, the Governor of Karnataka made the Karnataka Public Works (Irrigation Services) (Recruitment) Rules 1988, providing for method of recruitment and minimum qualification, etc. Rule 3 of the said Rules dealt with constitution of the service which reads as under:

> The Karnataka Irrigation Service shall consist of: - Notwithstanding anything contained in Rule 2 and the schedule there under, in its initial constitution the categories of posts in the cadre of Group A, B, C and D persons appointed from among persons holding identical posts in the Karnataka Public Works Engineering Dept. Service, immediately before the date of commencement of these Rules.
>
> Provided that no person shall be so appointed unless he has expressed in writing within the time to be specified by Government by a separate notification in this regard, his willingness to be so appointed. If any person has already expressed his willingness before the commencement of these rules,

it shall not be necessary for him to express his willingness once again. The decision of the Government on the willingness shall be final.

Provided further that until persons are so appointed, persons holding the posts transferred to the Karnataka Irrigation Dept. service from the Karnataka Public Works Engineering Service shall hold the same on the deputation basis. The service rendered in the existing identical posts in the Public Works Engineering Dept. shall be taken as qualifying service for the purpose of promotion, seniority, pay and pension under these Rules.

69. Rule 5 was a saving clause. It is made clear, that notwithstanding, anything contained in these Rules, action already initiated for recruitment to the post of Assistant Executive Engineers, Division-I. Tracers, Junior Engineers (Civil) and Draughtsman (Civil) in accordance with the Karnataka Public Works Engineering Dept. Service (Recruitment) Rules, 1960, before the commencement of those rules shall be continued and disposed of under the Karnataka Public Works Engineering Dept. Service (Recruitment) Rules, 1960, as if these rules have not come into force.

70. Subsequently, in exercise of the powers conferred by sub-Sec. 1 of Sec. 3 read with Sec. 8 of the Karnataka Civil Services Act, 1978 (Karnataka Act 14 of 1978), the Government of Karnataka made the Karnataka Public Works (Irrigation Services) (Recruitment) and certain other Rules (Amendment) Rules, 1985. It came into force on 19th October, 1984. Rule 3 of the aforesaid Rules provided for amendment to the Karnataka Public Works (Irrigation Services) (Recruitment) Rules, 1988, providing for insertion of Rule 6 which dealt with Transitional Provisions. It reads as under:

"Notwithstanding anything contained in the Karnataka Public Works (Irrigation Services) Recruitment Rules, 1988, till the completion of formalities of the constitution of Irrigation Services in accordance with Rule 3, the posts in the Karnataka Irrigation Dept. Services shall also be filled in accordance with the provisions of the Karnataka Public Works Engineering Dept. Services (Recruitment) Rules, 1988."

71. Karnataka State Civil Services (Absorption of Persons appointed as Contract Engineers on contract basis in the Upper Krishna Project, Bheemarayanagudi in the Karnataka Public Works and Irrigation Department Engineering Services)(Special) Rules, 1990, came into force on 27th Feb. 1991. Rule 3 provided for absorption of persons

appointed on contract basis as Assistant Engineer in the UKP. The aforesaid provision stipulates that, notwithstanding anything contained in the Karnataka Civil Services (General Recruitment) Rules, 1977 and in the Rules of recruitment applicable to the post of Assistant Engineer in the Karnataka Public Works and Irrigation Department Engineering Services or in any other Rules made under the proviso to Article 309 of the Constitution of India, every contract engineer mentioned in Col.(2) of the schedule below, shall be absorbed in the corresponding category of posts and pay scales in the Karnataka Public Works and Irrigation Department Engineering Services mentioned in Col. (4) and (5) thereof.

72. The Karnataka Civil Service Rules, defines what a cadre is. Rule 8(7) reads as under:

> "Cadre means the strength of a service or part of a service, sanctioned as a separate unit."

73. The Apex Court in the case of Dr. Chakradhar Paswan vs. State of Bihar and Ors., AIR 1988 SC 959, dealing with the word "cadre has held as under:

> "In Service jurisprudence, the term 'Cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental R.9 (4) defines the word 'cadre' to mean the strength of a service or part of a service sanctioned as a separate unit. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency.

74. The Apex Court in the case of Union of India vs. Pushpa Rani and Others [(2008) 9 SCC 242] has held as under:-

> "23. In the service jurisprudence which has developed in our country, no fixed meaning has been ascribed to the term "cadre". In different service rules framed under proviso to Article 309 of the Constitution as also rules framed in exercise of the powers of delegated legislation, the word "cadre" has been given different meaning.
>
> 27. ……..the posts sanctioned in different grades would constitute independent cadres and we see no reason why a restricted meaning should be given to the term "cadre" for the purpose of implementing the roaster."

75. Therefore in 1989, the Government took a decision for establishment of State Civil Service in respect of Karnataka Irrigation Department Service. Notification was issued prescribing the strength of the said service. Rules were also framed for providing for method of recruitment and minimum qualification. On the day the rules were framed, the Irrigation Department was a part of Karnataka Public Works Engineering Department. Persons who were recruited for the said department were working. If those persons were willing to be severe their connection from the original parent and become a member of the newly constituted irrigation department he has to give his/her willingness. The Government has to issue a notification calling for such willingness and then willingness to be so appointed is to be given by an employee.

76. The material on record discloses that steps have been taken to bifurcate Public Works Department and Irrigation Department. Separate recruitment rules are already framed. However, the said process of bifurcation is yet to complete. It is not in dispute that the common seniority/gradation list of Assistant Engineers is being operated for the purpose of promotion as vertical bifurcation of both the departments has not yet taken place. The process of bifurcating Public Works Service and Irrigation Service is being taken up. In the process it is found that many officers who exercised their option at one point of time came to be promoted to the next higher cadre have retired from service and consequently, the said option exercised by them has become infructuous. Now steps are taken to invite fresh option from among the officers in various cadres. After the recruitment under separate Rules meant for Irrigation Department, while preparing seniority list, persons who are recruited under both the Departments are considered and a common seniority list is prepared. Therefore the practice prevalent in the Department makes it clear that both the Departments were treated as belonging to one cadre, common seniority is prepared and promotion is given based on the said seniority. Even to this day, two cadres are not completely separated and they are treated as belonging to the same department.

77. It is clear from the letter dated 23.09.1994, a request was made by the State to recruit 94 Assistant Executive Engineers (Division-I) by direct recruitment to be filled up in Public Works Department and Irrigation Department. That is the starting point for this recruitment process. However, consequently the request is confined to recruit Karnataka Public Works

Engineering Department, Division-I, which is a patent mistake. A mistake would not confer any vested right in favour of any person, much less, an employee.

78. Therefore, because of the mistake crept in, in the subsequent letter, it is also carried into the notifications issued by KPSC, where there is no mention of the Irrigation Department. It was contended that it is not open to the Government or KPSC to act contrary to the terms of the notifications for recruitment to these posts.

79. In support of their contention that the recruiting authority has to conduct recruitment within the four corners of the terms of the notification issued and it has no power to alter the terms of the notification or make recruitment contrary to the terms of the notification, reliance is placed on the following judgments:

80. The Apex Court in the case of District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another vs M.Tripura Sundari Devi [(1990) 3 SCC 655] it is held as under:-

> "It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

> In V.S.Richards vs. State of Karnataka and Another [2004 (1) Kar.L.J. 98] it is held as under:-

> "10. It is a well-settled principle of service jurisprudence that past or previous service will not be taken into account in reckoning seniority where the two services are distinct and different. Further seniority is a comparative concept between employees who are equally circumstanced. Where the previous service is neither in the same class or grade, nor in an equivalent class or grade the question of counting such previous service does not arise."

82. In Tripura Sundari Devi's case, in the notification issued, a particular qualification was prescribed. As persons who did not possess the said qualification had not applied,

ignoring the said qualification when appointment was made, of persons who did not possess the said qualification by relaxing the same, the Court struck down the said appointments on the ground that it is fraud on public. In Richard' cases it is a question of taking into consideration the past service for the purpose of reckoning seniority, where two services are distinctly different. Therefore both the decisions have no application to the facts of this case. This is not a case where any person is denied an opportunity of applying to a post in pursuance of the notification. The grievance is of a person who filed his application in pursuance of the notification who is complaining of non-compliance of the terms of the notification after he was not selected to the post. Therefore, we do not see any merit in the said contention.

83. Though in the said notification there is no reference to the Irrigation Department, the material on record clearly demonstrates that at no point of time the State and the Departments had any doubt in their mind, that in the present recruitment, both the personnel from Irrigation Department as well as Public Works Department has to be considered. It is in this background only the aforesaid amendment to the Public Works Department Rules was effected. Therefore, as there is no bifurcation of these two Departments as understood in law and the common seniority is prepared, maintained and operated for the purpose of promotion and the letter dated 23.09.1994 makes it abundantly clear that recruitment is for filling up the vacancies in both Public Works Department and Irrigation Department, it is not possible to find fault with the authorities as well as with the KPSC in entertaining the applications from the persons working in both the Department and considering their case for appointment in pursuance of the notification, even though in the notification or in the application, there is no mention about the Irrigation Department.

84. The notification under which these applications were invited is 11.5.2007 issued by the Karnataka Public Service Commission. This is the first of the notification in the series, the last date was 6.5.2007. G.Kumar filed the application within time. After filing the application, on 6.6.2007 he made a representation to the authorities requesting them to prescribe 5 years experience as an eligibility criteria for applying to the said post in which event the Government Order regarding Creamy Layer was not applicable. The said representation was rejected. One more representation was given on 20.1.2007. In addition to that he also moved the Karnataka Administrative Tribunal by filing Application No.4600/2007 challenging the earlier rejection. Thereafter, on 15.11.2007 he withdrew the

application making it clear that he would be satisfied with the consideration of the representation made by him earlier. On 11.2.2008 that representation was again rejected. On 12.2.2008 the Commission announced the results of the written examination. On 12.3.2008 call letters were issued to all the successful candidates. The said G.Kumar was last in the list in the merit. After being satisfied that he has no chances of being selected, on 21.7.2008 the present application is filed challenging these selections.

85. In the light of the aforesaid facts it was contended that, once he participated in the recruitment process without any murmur, he has acquiesced with the proceedings. Therefore, he is estopped from challenging the procedure. In the earlier application when he did not raise these grounds, he is precluded from raising it in the present proceedings on the principles of constructive res judicata. It was also contended that the petitioner in the writ petition who is challenging the notification on that ground is stopped from doing so because of acquiescence. In support of his contention, the following judgments are relied upon.

(A) The first of the judgment was in the case of Dhananjay Malik and Others vs. State of Uttaranchal and Others [(2008) 4 SCC 171] where it is held as under:-

> 7. It is not disputed that the Respondent-Writ Petitioners therein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or Graduate with Diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the rules.

(B) Again the Apex Court in the case of K.H.Siraj vs High Court of Kerala and Others [(2006) 6 SCC 395 held as under:-

> "
>
> 73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-petitioners to turn round hereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. It was so held by this Court in para 9 of Madan Lal v. State of J & J as under:
>
> "9. Before dealing with this contention, we must keep in view the salient

fact that the Petitioners as well as the contesting successful candidates being Respondents concerned herein, were all found eligible in the light of marks obtained in the written test to be eligible to be called for oral interview. Up to this stage, there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the Petitioners as well as the contesting Respondents concerned. Thus the Petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this Petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of the interview was unfair or the Selection Committee was not properly constituted. In the case of OM PRAKASH SHUKLA v. AKHILESH KUMAR SHUKLA (1986 Supp.SCC 285) it has been clearly laid down by a Bench of three learned Judges of this Court that when the Petitioner appeared at the examination without protest and when he found that he would not succeed in the examination, he filed a petition challenging the said examination, the High Court should not have granted any relief to such a Petitioner."

74. Therefore, the writ petition filed by the appellant-petitioners should be dismissed on the ground of estoppel is correct in view of the above ruling of this Court. The decision of the High Court holding to the contrary is per incuriam without reference to the aforesaid decisions."

86. The aforesaid undisputed facts clearly demonstrate that petitioner G.Kumar, participated in the selection process also made a representation pointing out his grievance. When the same was not considered, he approached the Tribunal and thereafter withdrew the said application and after not being successful in the selection process, he has again approached the authorities. Under those circumstances, the law laid down in the aforesaid judgments clearly applies to him and he is stopped from putting forth the said contention over again.

RE: SENIOIRTY

87. It is submitted that during the pendency of these proceedings, the KPSC has proceeded with the selection process and they have published the provisional select list on the basis of the stand taken by them. In view of their stand being found fault with by the Tribunal which is affirmed by us in these writ petitions, the said select list prepared by the KPSC is liable to be set aside. They are now directed to redo the whole thing keeping in

mind the findings recorded by the Tribunal as well as by this Court in these proceedings from the stage of conducting the interview to whom they issued interview call letters and did not actually interview them.

88. It is submitted by the KPSC that they have prepared two separate lists, one, of candidates who are to be recruited to the 84 posts, i.e., 20% quota and another separate provisional list of 20 candidates who are to be directly recruited under the in-service quota of 5%. In view of the order passed by the Tribunal as well as by us, it is only the in-service candidates who are going to be affected. Therefore, the provisional list prepared by the KPSC in respect of these in-service quota of 20 candidates is hereby set aside and the KPSC is directed to redo the whole thing from the stage of oral interview and prepare a fresh provisional select list keeping in mind the findings and observations recorded by the Tribunal as well as by this Court.

89. It was submitted on behalf of these in-service candidates that 2007 Rules provide for one final list and, therefore, there is no provision for two separate lists. Therefore, even if the provisional list of candidates of 5% quota is set aside, in effect, both the lists are set aside and one final list is to be prepared.

90. Per contra, the learned counsel for the persons who are selected in the 20% open category submitted that there is no flaw in the selection of these 84 candidates. They are without employment and if that provisional list is finalized and appointment orders are issued under Rule 5 of the Seniority Rules, it is the appointing authority which has to fix the inter se seniority between these two lists which can be done after the finalization of other list and, therefore, there is no case for selection of their list and selection process has to proceed.

91. In reply, the counsel appearing for the in-service quota candidates submitted that, it is settled law that the seniority is decided on the basis of the candidate joining the service. Therefore, once the select list of this open category is operated and they are given appointments and thereafter if the select list of in-service candidates is finalized and they are given appointment, they would become juniors to them and, therefore, it is appropriate to have only one list and not to permit the other list to be operated.

92. It is settled law that, in the matter of seniority either between a direct recruitment and promotes or between two direct recruits, it is the date of appointment order, which is crucial. The person who enters the service first will be senior to the person who enters later. It is a general rule well established. However, it is not an invariable rule. In a case of this nature though the recruitment is conducted under the same notification, same examination is conducted, interviews are called for, two separate provisional lists are prepared. Because of the litigation those lists are not given effect to. In fact the list of 20% quota is not under challenge at all. Because the selection is one and the same, because of the interim orders passed this Court, it is not given effect to.

93. The learned senior counsel Sri K.Subba Rao appearing for these direct recruits under 20% category submitted, if thosse candidates are given appointment order in earlier point of time, as the question of inter se seniority is to be decided by the appointing authority at the time of issuing appointment orders, they would concede that notwithstanding their earlier appointment orders and joining duty, Rule 5 is to be kept in mind and inter se seniority between these two lists is to be decided in accordance with Rule 5 ignoring the fact that the appointment orders are issued earlier and these persons have joined duty at an earlier point of time. This submission is placed on record and in our view that would solve the problem.

94. In fact, it would be appropriate for the Government while issuing the appointment orders to incorporate this aspect in the appointment orders, so that the same cannot be questioned subsequently. In view of the aforesaid submission, the list of all these 20% direct recruits in open category may be processed at the earliest point of time and taken through its logical conclusion. Similarly, without any further loss of time the list of this in-service candidates also be finalized at the earliest.

95. In the light of the aforesaid findings recorded by us on the four points raised in these writ petitions, we do not see any merit in these writ petitions and accordingly they are liable to be rejected. Hence, we pass the following:

ORDER

In view of the finding recorded by us on the question of relaxation of age prescribed affirming the order of the Tribunal, the KPSC is directed to give the benefit of age relaxation to the applicants before the Tribunal, namely Sri. R.Ravichandra and Sri. K.C.Shivashankar in terms of this order.

In view of the finding of the Tribunal as well as by this Court that the Creamy Layer Policy is attracted to in-service candidates as the said Government Order is made mutatis mutandi applicable to General Merit rural candidates, the benefit of the order of the Tribunal and this Court is to be extended to General Merit rural candidates under the in-service quota also.

The petitioner in W.P. No.13191/2009 G.Kumar though his application is rejected by the Tribunal, he would be entitled to the benefit of reservation under category IIA without applying the Creamy Layer Policy to him.

Writ petitions are dismissed.

Parties to bear their OWN COSTS.

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NKJ & BSGJ:
16.09.2011

W.P. Nos.6416-6417/2009 & Connected matters

ORDER

In the operative portion of the order, it is ordered as under:

> "In view of the finding recorded by us on the question of relaxation of age prescribed affirming the order of the Tribunal, the KPSC is directed to given the benefit of age relaxation to all the applicants before them in terms of this order."

There were only 2 applicants who approached the Tribunal complaining denial of age relaxation benefit by the KPSC. The Tribunal allowed the said claims and held that they are entitled to age relaxation, which order is affirmed in this writ petition.

However, in the above order extracted, we have directed the KPSC to give the benefit of age relaxation to all the applicants before them in terms of the order. The benefit of age relaxation is to be confined to the applicants before the Tribunal and not to all the applicants before the KPSC. Therefore in place of the words "before them" it is substituted as "applicants before the Tribunal namely Sri R.Ravichandra and Sri. K.C.Shivashankar".

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL, AT BANGALORE
A.No.2118 of 2009
D.D. 06.01.2011
Hon'ble Mr. Justice A.C. Kabbin, Chairman &
Hon'ble Smt.Usha Ganesh, Administrative Member

Shabeena Sultana … Applicant
Vs.
KPSC & Ors. … Respondents

Caste and income certificate

Rejection of applications submitted for Civil Services main examination for failure to submit required documents within date specified – As per clause xii of the notification bearing No. E(1) 30/2008/PSC dated 11.04.2008 inviting applications for Group A & B posts in State Civil Services, applicants were required to submit caste and income certificate, which was obtained between 24.05.2003 and 23.05.2008, along with application before the last date for submission of application for preliminary examination – Applicant submitted the said certificate only after obtaining it on 28.05.2008, because of delay on part of Tahsildar in issuing said certificate – However, her application to appear for main examination came to be rejected by KPSC – Whether in the circumstances, rejection of application by KPSC by issue of endorsement dated 30.04.2009 calls for interference? No. Held that where a candidate fails to produce requisite documents on the date fixed for such production as required by conditions stipulated in advertisement, K.P.S.C. is well within its right to reject applications irrespective of the difficulties faced by candidates in producing documents.

Cases referred:

1. Dolly Chandra v. Chairman, JEE and Others, (2005) 9 SCC 779
2. Ram Deen Maurya (DR.) v. State of Uttar Pradesh & Others, (2009) 6 SCC 735
3. Sri Kuldeep Singh Katoch v. H.P. Public Service Commission, O.A.No.248/2004, D.R. 22.06.2004
4. V. Swadathan Pillai K. v. Keral P.S.C. & Another, W.P.(C) No.29243/2004 D.D. 26.11.2004
5. Karnataka Public Service Commission v. B.M. Vijayashankar & Another (1992) (2) SCC 2007.

O R D E R

Smt.Usha Ganesh, Administrative Member

The applicant, an aspirant for the post of Gazetted Probationer, has in this application sought for a direction to the Karnataka Public Service Commission (for short 'KPSC') to permit her to appear for the interview for the said post.

2. In response to the Notification bearing No.E (1)30/2008-09/PSC dated 11.4.2008 (Annexure A1) issued by the KPSC – 1st respondent, the applicant filed her application for the post of Gazetted Probationer under category 2B. Having qualified in the preliminary examination, the applicant submitted a fresh application to appear for the Gazetted Probationer main examination 2008 within the stipulated period. By the Endorsement bearing No.E(1) 26/2009-10/PSC dated 30.4.2009 as at Annexure A5, she was informed that her candidature was rejected as her certificate claiming reservation was of a subsequent date after the preliminary examination and that she was not eligible to be considered under general merit category having scored less marks for consideration under that category. The applicant has filed this application challenging the above endorsement and to declare Clause xii of the Notification dated 11.4.2008 stipulating the submission of certificates obtained prior to the last date for submitting application.

3. Heard Sri.Prabhuling K Navadgi, learned Counsel for the applicant, Sri.T.Narayanaswamy, learned standing Counsel for 1st respondent, Sri.N.B.Patil, learned Government Pleader for Respondent 3 and M/s.Subbarao & Co., learned Advocates for Respondent 4.

4. The learned Counsel for the applicant submits that in response to the Notification dated 11.4.2008, the applicant filed her application for selection as a Gazetted Probationer, that under Clause xii of the said notification, persons seeking reservation under backward classes should submit the certificate in Form 'F' obtained after 24.5.2003 and before the last date prescribed for submission of the application namely 23.5.2008. He submits that the applicant belonging to category 2B filed the application before the Special Tahsildar, Bangalore North Taluk, Bangalore District on 13.5.2008 seeking for issuance of income and caste certificate, that the same was issued to the applicant on 28.5.2008 as at Annexure A2. He further submits that the applicant having submitted her application to the 1st respondent – KPSC on 20.5.2008 appeared for the preliminary examination and was declared successful and entitled to appear for the main examination, that as per the requirement she submitted a fresh application for the main examination on 13.2.2009 as at Annexure A4 and the respondent – authorities have issued the impugned endorsement as at Annexure A5 that as her certificate for reservation was not dated before the last date

for submission of application for the preliminary examination, her application is rejected. The learned Counsel contends that the applicant having been permitted to appear for the preliminary examination and her application for the main examination received by the respondent, it is not open to the respondents to dis-allow the applicant from appearing for the main examination and that they are estopped from rejecting her application. He submits that Clause xii of the notification is contrary to the rules and the objective of reservation to provide employment to backward classes category, stipulation of obtaining such certificate before a particular date, defeats the very purpose and is arbitrary, illegal and irrational. He further points out that the applicant took action to obtain the certificate by filing the application well before the last date for submission of applications and attributes the delay to the Special Tahsildar in issue of certificate; that the applicant cannot be held at fault and disentitled from appearing for the main examination as the applicant did not cease to be a person belonging to be a backward class if the certificate was of a later date and he prays for setting aside the impugned endorsement, the stipulation with regard to obtaining certificate before the last date for application and consideration of her candidature for the post of Gazetted Probationer.

5. The learned Standing Counsel for the KPSC, learned Government Pleader and the learned Counsel for 4th respondent admitting the facts regarding the submission of application on 23.5.2008 i.e., last date for submission of application, submits that as stipulated under Clause xii of the notification for claiming reservation she must obtain the caste and income certificate well before the last date as prescribed for submission of application, that as the applicant did not obtain the said certificate claiming reservation under category 2B on the last date prescribed but obtained it at a later date and consequently her candidature for selection to the post of Gazetted Probationer was rejected. He further submits that the applicant approached the Special Tahsildar, Bangalore North Taluk (additional taluk, Bangalore) for issuance of caste certificate only on 13.5.2008 and that the same was issued on 28.5.2008. They point out that the applicant not having taken steps for obtaining certificate under category 2B well before the last date prescribed for submission of application by the 1st respondent, she has failed to fulfill the conditions laid down and is not entitled for consideration under the said category. They further point out

that the contention of the applicant that she submitted her application on 13.5.2008 before the Special Tahsildar under the impression that the certificate would be issued on the very same date is without any basis as the rules envisage the Tahsildar to verify the income, documents and other materials submitted with the application and only upon the satisfaction of the correctness of such information and other particulars the caste and income certificate is issued, that the government instructions as at Annexure R3 dated 28.3.2005 also direct that such certificate be issued by the Tahsildar within two months from the date of submission of such application after proper inquiry, that on no account the Tahsildar should issue such certificate without preliminary inquiry on the very day of the submission of the application. They further submit that before the submission of application for preliminary examination, the candidates are required to obtain all the certificates, but the same are to be enclosed at the time of appearing for the main examination and upon scrutiny of such application, the candidature of the applicant was rejected since she had submitted the certificate at a later date, that the stipulation under Clause xii is as per the rules and that the applicant having applied and having participated in the preliminary examination is estopped from challenging clause xii as mentioned in the notification, that the income of the family as on the date of application being relevant and should not excess rupees two lakhs as on that date, that therefore the certificate should be obtained on or before the particular date and the contention of the applicant that the prescription of the date has no relevance is not valid as the income of the applicant may vary from time to time and that the applicant's contention that clause xii of the notification is contrary to the rules and beyond the purview of rules has no basis; that clause xii of the notification is in accordance with the rules. As none of the grounds claimed by the applicant are valid, they submit that the application may be rejected.

6. The learned Counsel for the applicant relies on the decision of the Supreme Court in the case of DOLLY CHANDRA vs. CHAIRMAN, JEE AND OTHERS ((2005) 9 SCC 779) wherein it was held that "every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature and it relates to possession of requisite qualification as on the date required as distinguished from submission of the proof of the same by the date required". In support of his contention that the production of the certificate before the last date for submission of the application is not mandatory but

directory, he places reliance on the decision of the Supreme Court in the case of RAM DEEN MAURYA (DR.) vs. STATE OF UTTAR PRADESH & ORS. ((2009) 6 SCC 735) wherein it is held that "if the consequence of non-compliance is not provided, the requirement may be held to be directory".

7. The learned Standing Counsel for KPSC refers to the decision in the case of Himachal Pradesh Public Service Commission in SHRI KULDEEP SINGH KATOCH vs. H.P. PUBLIC SERVICE COMMISSION – O.A.No.248/2004 D.D.22.6.2004 has held that the Commission will be within its right in rejecting the applications if the applications are not in strict compliance with the conditions and stipulations contained in the advertisement/ notification. To the same effect it has been held by Kerala High Court in W.P.(C) No.29243/ 2004 (F) V.Swadathan Pillai K vs. Kerala P.S.C. & Anr. D.D.26.11.2004 following the decision of the Supreme Court in Karnataka Public Service Commission vs. B.M.Vijayashankar & Anr. (1992 (2) SCC 207) that candidates applying for responsible jobs ought to conduct themselves in such a manner that their applications for the post are not rejected for non-compliance of the instructions.

8. The applicant evidently having produced the caste and income certificate dated 28.5.2008 dated beyond the last date for submission of application and the same is rejected by the respondent – authorities. We do not find any reason to interfere with the said endorsement. We agree with the contention of the learned Counsel for the KPSC that the applicant having participated in the process of selection by appearing in the preliminary examination cannot question the legality of clause xii of instructions to the candidates in the notification and is estopped from doing so. As referred by the respondents, the objective of Recruitment Rules 1992 is that the income of the family of the candidate claiming reservation should not exceed Rs.2.00 lakhs as on the date of submitting application. The applicant is unable to show any contravention of any rule by such stipulation and therefore her prayer for quashing Clause xii of the Notification bearing No. E(1) 30/2008-9/PSC dated 11.4.2008 (Annexure A1), we hold is not valid.

9. The decisions referred by the learned Counsel for the applicant are not relevant to the present application as the facts and circumstances are not the same. The decision of

the Supreme Court in the case of DOLLY CHANDRA vs. CHAIRMAN, JEE AND OTHERS ((2005) 9 SCC 779) relates to the submission of a certificate claiming the reservation based on the caste and income and as the income of the candidate on the cut-off date is relevant with regard to issue of caste certificate, the principles laid down in that decision are not applicable to the present application. As the instructions by the respondent – authorities clearly stipulate the production of the certificate dated prior to the last date for submission of the application and the consequences laid down in Clause xii, the principles laid down in the case of RAM DEEN MAURYA (DR.) vs. STATE OF UTTAR PRADESH & ORS. ((2009) 6 SCC 735) are not applicable to the facts and circumstances of the present application.

10. Where a candidate he/she fails to produce requisite documents on the date fixed for such production as required by the conditions stipulated in the advertisement/ notification, the KPSC will be well within its rights to reject the application irrespective of the difficulty of the candidate in producing documents. In every recruitment, the KPSC is required to attend innumerable applications and a candidate who fails to produce the requisite documents will advance one or the other ground for his/her failure to produce document at the time of interview or on the date fixed for production of documents. That itself is not sufficient to hold that such candidate can produce requisite documents later. Therefore, we reject the contention of the applicant that the KPSC was not right in rejecting his candidature for her failure to produce the documents and uphold the contention of KPSC.

11. In view of the above reasons, we dismiss the application. We uphold Clause xii of the Notification bearing No. E(1) 30/2008- 119/PSC dated 11.4.2008 (Annexure A1) stipulating the procedure to be followed in submission of the certificate claiming reservation and confirm the impugned Endorsement bearing No. E(1) 26/2009-10/PSC dated 30.4.2009 (Annexure A5).

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
W.P. No.6045/2011 (S-CAT)
D.D. 28.02.2012
The Hon'ble Mr. Justice Dilip B.Bhosale &
The Hon'ble Mrs. Justice B.S.Indrakala

Smt. Shabeena Sultana … Petitioner
Vs.
KPSC & Ors. … Respondents

Documents & Certificates

Submission of caste certificate within stipulated period – Petitioner did not submit caste certificate before last date fixed for submission of application i.e. 23.05.2008, as mandated by clause xii of the notification inviting applications, as she obtained certificate only on 28.05.2008 – Consequently, K.P.S.C. did not allow the petitioner to appear for main examination, though was allowed to appear for preliminary examination - Condition contained in clause (xii) of notification being mandatory whether refusal to permit petitioner for main examination may be found fault with? No. Whether Public Service Commission, having permitted her to appear for preliminary examination is estopped from disallowing her from appearing for main examination? No.

Held:

"5. Moreover, merely because the petitioner was allowed to appear for the preliminary examination, does not mean that KPSC was estopped from disallowing the petitioner from appearing for further examination/interview. In any case, the petitioner cannot be allowed to take advantage of the fact that she was allowed to appear for the preliminary examination, when admittedly all the required documents were not produced along with the application before the last date. In the circumstances this contention of the petitioner also deserves to be rejected."

Cases referred:

1. Omprakash Shukla v. Akhilesh Kumar Shukla, AIR 1986 SC 1043
2. Union of India v. Vinod Kumar, 2007(8) SCC 100
3. Charles K.Skaria and others v. Dr. C. Mathew and Others, 1980(2) SCC 752

ORDER

Dilip B Bhosale J.

This writ petition is directed against the judgment and order dated 6.1.2011 rendered by the Karnataka Administrative Tribunal at Bangalore in Application No.2118/2009. By the impugned judgment, the application filed by the petitioner seeking direction to the Karnataka Public Service Commission (for short 'KPSC') to permit her to appear for an interview for the post of Assistant Commissioner i.e., Gazetted Probationer was dismissed.

2. Notifications inviting applications to appear for the Gazetted Probationers main examination, 2008 was published on 11.4.2008. The last date for submitting the applications was 23.5.2008. For the candidates belonging to reserved category, it was specifically provided in the notification that they should submit caste certificate obtained by them during the period from 23.5.2003 to 23.05.2008. The petitioner had applied for the caste certificate on 13.5.2008 and it was received by her on 28.5.2008. Admittedly the caste certificate was not submitted by the petitioner before the last date for submitting the application viz., 23.5.2008. She was allowed to appear for preliminary examination and then she was denied permission to appear for the main examination. In view thereof, she filed an application before the tribunal seeking direction as aforementioned.

3. Learned counsel for the petitioner, at the outset, after inviting our attention to Clause xii of the notification dated 11.04.2008, submitted that it is contrary to the Rules and the objective of reservation policy to provide employment to backward class category. He submitted, stipulating a particular date in submitting the caste certificate, defeats the very purpose of reservation and is contrary to the Rules apart from being illegal and irrational. He then submitted, the petitioner having been permitted to appear for the preliminary examination and her application for the main examination received by the respondent, it was not open to them to disallow the petitioner from appearing for the main examination and that they are stopped from rejecting her application. Next he submitted, the delay caused in submitting the certificate before the cut-off/last date cannot be

attributed to the petitioner. The delay in submitting the application was due to the delay caused by the concerned authority in issuing the certificate. Lastly, he submitted that Clause xii in the notification was directory in nature and in view thereof, the KPSC ought to have allowed her to appear for the main examination and so also for the interview.

4. We have perused the judgment, impugned in the present writ petition, and so also the other material placed before us for consideration. There does not appear to be any dispute that the petitioner belongs to reserved category. But she applied for caste certificate for the first time on 13.5.2008 and the concerned authority issued the certificate within less than 15 days i.e., on 28.5.2008. We have perused the circular dated 23.8.2005 issued by the Government of Karnataka laying down the guidelines for issuance of caste and income certificate on physical verification. The circular clearly provides two months time to the concerned authority to issue certificate from the date of application. The circular also states that in any case the concerned authority is expected to conduct the preliminary enquiry before issuing caste certificate and therefore, it should not issue such certificate within less than 10 days from the date of application. It is thus clear that no fault can be found with the concerned authority in issuing caste certificate within 15 days from the date of application. In any case, it cannot be stated that the delay caused in submitting the certificate is attributable to the concerned authority and not to the petitioner.

5. There is no dispute that insertion of Clause xii in the notification was as per the Rules. In other words, Clause xii of the notification is consistent with the Rules which stipulates the last date or the period for submitting caste certificate. Petitioner did not challenge the Rules on the basis of which the impugned Clause was inserted in the notification. On the contrary petitioner participated in the selection process without protest. Petitioner, therefore, having participated in the process of selection without protest by appearing in the preliminary examination, cannot turn around and challenge the legality of Clause xii of the notification. (See OMPRAKAH SHUKLA vs AKHILESH KUMAR SHUKLA reported in AIR 1986 SC 1043 and UNION OF INDIA vs VINOD KUMAR reported in 2007 (8) SCC 100). Moreover, merely because the petitioner was allowed to appear for the preliminary examination, does not mean that KPSC was stopped from

disallowing the petitioner from appearing for further examination/interview. In any case, the petitioner cannot be allowed to take advantage of the fact that she was allowed to appear for the preliminary examination, when admittedly all the required documents were not produced along with the application before the last date. In the circumstances, this contention of the petitioner also deserves to be rejected.

6. The judgment relied on by the learned counsel in CHARLES K SKARIA AND OTHERS vs DR C MATHEW AND OTHERS reported in 1980 (2) SCC 752 in support of the contention that the requirement of production of caste certificate along with application before the cut off date was directory in nature, in our opinion would not have application to the facts of the present case. The petitioner was claiming the post reserved for particular category and therefore, production of the caste certificate along with the application in our opinion was mandatory. The Judgment of the Supreme Court in Charles K Skaria, in our opinion, was not dealing with the case, as is the case here. In the circumstances, we find no merit in the writ petition. Writ petition, therefore, fails and dismissed as such.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
W.P.NO.10076/2008 & Connected cases
D.D. 05.08.2011
The Hon'ble Mr Justice N.Kumar
The Hon'ble Mr Justice Ravi Malimath

Eranna … Petitioner
Vs.
State of Karnataka & Ors. … Respondents

A. Selection process

Selection to post of Section Officer by direct recruitment of in-service candidates in Karnataka Government Secretariat – KPSC, after publication of provisional select list of candidates, on realizing mistake committed in the Form prescribed to be filled in by candidates who had applied against notifications inviting applications to recruitment to the posts of Section Officer, Karnataka Government Secretariat, asked all such candidates for production of caste and income certificate in FORM No.2 in terms of Government Order No.SWD 225 BCA 2000 dated 30.03.2002 (creamy layer policy) and on consideration of such certificates re-did the select list, by which petitioners names were deleted from provisional select list and Respondents 3 to 7 in W.P.No.9971/2008 have been selected. But for the said error entire selection process is in order and in fact it resulted in selection of more meritorious candidates than the petitioners – Further, petitioners, not having put in 5 years of service in K.G.S. are not eligible to be considered to apply as in-service candidate to the said posts and not entitled to benefit of reservation under Government Order dated 30.03.2002 – Whether in the circumstances, procedure adopted for redoing of select list by KPSC may be found fault with ? No.

Held:

"10. After publication of the list, when the respondents 3 to 7 pointed out that they as well as the petitioners belong to the very same caste and they are more meritorious than the petitioners and an error is committed in excluding them from the list, the KPSC opened its eyes and found where the mistake lies and then, they issued an endorsement to rectify the said mistake giving an opportunity to all the applicants to file a certificate in the prescribed format. Once they were filed, the cases of the petitioners as well as the respondents 3 to 7 were considered together and as the respondents 3 to 7 were found more meritorious than the petitioners, their names were included in the final list. Consequently, the less meritorious petitioners though their names were found in the preliminary select list were deleted. In fact this Court had an occasion to consider the Creamy Layer Policy in the case of KPSC vs. K. Sharada and others in the W.P.Nos.6500-08 of 2009 and other connected matters disposed off on 15th December 2010, where it has been held that this Creamy Layer Policy is not applicable to all the in service candidates irrespective of the years or dates of service they have put in. In that view of the matter, we do not see any merit in the substance of the first contention."

"13….. It is true that the Tribunal has pointed out the various errors committed by the KPSC in the selection process. But none of those errors has in any way have affected the right or interest of the petitioners. It is only when such errors materially affected the right or eligibility of the candidate or the selected candidate, probably a case for reconsideration or a direction to redo the whole process in the facts of the case would arise. In the facts of the case, we are satisfied that no such case is made out."

Case referred:

K.P.S.C. v. K. Sharada and Others, W.P.Nos.6500-08/2009 & connected matters.

JUDGMENT

N.Kumar, J.

As common questions of law arise for consideration in both these petitions, they are taken up together and disposed of by this order.

2. The petitioners and respondents-3 to 7 have been in the services of the State in the respective departments mentioned in the cause title to the petitions. They applied to the Karnataka Public Service Commission (hereinafter called the 'KPSC') for selection and appointment as Section Officers by direct recruitment. The selection was on the basis of the competitive examination conducted by the KPSC in accordance with the Karnataka Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997 (hereinafter called the 'Rules'). The KPSC published the notification on 07-12-2005 inviting applications for filling up ten vacancies in the cadre of Section Officers from amongst the in-service candidates. In all, 253 candidates responded to the said notification. On 01-08-1996 yet another notification was issued raising the number of posts to be filled up to 20. Yet another notification was issued on 18-11-1996 raising the number of vacancies to 25. The two notifications dated 01-08-2006 and 18-11-2006 contained a special note intimating the candidates who had already applied in response to the earlier notification dated 07-12-2005, that there was no need for them to apply once again in response to the said notifications, but the caste certificates had to be furnished by them to the KPSC if they belonged to any reserved category or claimed any reservation newly added. The competitive examination was held by the Commission on 22nd and 23rd September 2007.

Accordingly after completion of the process of selection, KPSC published the provisional select list of candidates on 27-10-2007 inviting objections thereto from those who are affected thereby. The respondents – 3 to 7 who are also the applicants for selection and whose names did not figure in the provisional select list on 27-10-2007, raised objections contending that they were entitled to be selected on the basis of reservation under Article 16 (4) of the Constitution of India without reference to the creamy layer concept which did not apply to the selection in question. The KPSC after the said objections were raised, realized that they had committed a mistake in the Form which is prescribed to be filled by these candidates. Therefore they issued an endorsement dated 17-12-2007 giving opportunity to all the candidates who had applied as against those notifications, to produce the caste certificates and income certificates in Form No.2 in terms of the Government Order dated 30-03-2002 and they fixed 05-01-2008 as the last date for submission of the said certificates. The petitioners herein objected to the said procedure adopted by the KPSC. However, the KPSC after taking note of those caste certificates produced and taking into consideration the number of marks each of these candidates secured in the competitive examination, deleted the names of the petitioners from the provisional select list and included the names of respondents 3 to 7.

3. Aggrieved by the same, the petitioners approached the Karnataka Administrative Tribunal challenging the selection of respondents – 3 to 7. They mainly contended that the KPSC committed a mistake in giving an opportunity to the respondents-3 to 7 to furnish fresh caste and income certificates after publication of the provisional select list, thus affecting the interest of the petitioners whose names are removed from the list because of such an opportunity. They also contended that when the KPSC admits that it committed a mistake, the entire selection process ought to be set aside and it is to be re-done. They also contended that when the respondents- 3 to 7 did not challenge the very notification issued, but on the contrary, when they filed applications in terms of the said notification, they were estopped from challenging the notification or finding fault with the notification after their names did not figure in the provisional select list. In other words, they are estopped from raising objections at that belated stage.

4. The Tribunal, on a consideration of the aforesaid contentions, was of the view that the KPSC committed a mistake and when equal opportunity is given to all the applicants, the petitioners cannot have any grievance. When the petitioners and respondents-3 to 7 all belonged to the same caste, they cannot raise objections regarding an opportunity to similarly placed persons because of such notification when no such person has challenged this select list. It also held that when the error is corrected, but for the error, when the entire selection process is in accordance with law, there is no need to set aside the entire selection process and make a fresh selection. Aggrieved by the said order of the Tribunal, the petitioners are before this Court.

5. Sri.Subrahmanya Jois, the learned Senior Counsel appearing for the petitioners Counsel assailing the impugned order, contended that by virtue of the creamy layer policy of the Government as reflected in the Government order dated 30-03-2002, the respondents-3 to 7 are not eligible to have the benefit of reservation. Secondly, it was contended that in the three notifications issued, there was no mention that the reservation policy would be applicable to the selection and also the non-application of creamy layer policy to these persons and therefore, when the selection is made excluding the creamy layer policy and the provisional select list is announced, on the objections raised by these respondents-3 to 7, the KPSC should not have re-traced its steps and found these respondents eligible and thus included their names in place of the petitioners. The respondents-3 to 7 are estopped from challenging the said list as they had not challenged the notification. Thirdly, it was contended that the Rules of the game cannot be changed after commencement of selection process and that too, after the announcement of publication of the provisional select list. On that score also, the selection made by the KPSC is liable to be set aside. Lastly, it was contended that when the entire selection process is vitiated as pointed out by the Tribunal, the appropriate order to be passed was to set aside the entire selection process and re-do the whole process. Thus, seen from any angle, the impugned order and selection of the KSPC is liable to be set aside.

6. Per contra, the learned Senior Counsel Sri.Ravivarma Kumar appearing for the KPSC pointed out that the KPSC committed a mistake insofar as prescribing the Form in

which these petitioners had to submit the caste and income certificates and when once it was realized on being pointed out by respondents- 3-7, they have taken remedial steps and gave equal opportunity to all the applicants and thereafter completed the selection process and in the process, the persons selected are more meritorious than the petitioners. As there was no defect in the selection process but for this mistake of specifying the prescribed Form, the Tribunal was justified in not acceding to the request of the petitioners to set aside the whole selection process.

7. The learned senior counsel appearing for the respondents 3 to 7 pointed out that both the petitioners and the respondents 3 to 7 belong to the very same category. The Creamy Layer Policy is applicable to all of them. Because of the mistake in the format, which is specified, the respondents 3 to 7 were excluded from consideration in so far as granting reservation is concerned. When the same was pointed out, the correct format was issued and the respondent's case was also considered along with the case of the petitioners. Since they were more meritorious than the petitioners were, they have been selected. Therefore, he submits that no fault could be found either in the selection or in the order of the Tribunal.

8. In the light of the aforesaid material and the rival contentions, the first question that arise for consideration is whether the Creamy Layer Policy is applicable to the respondents 3 to 7.

9. As is clear from the notification issued, the first condition to be satisfied by an applicant is that he should have completed 5 years of service in the Government Secretariat. This direct recruitment is only for in service candidates, but not for in all service candidates. Only those who have completed 5 years of service in the secretariat are eligible to apply. In the Creamy Layer Policy Dated 30th March 2002, the Note-1 reads as under: -

> "1. This rule will not apply to direct recruitment to posts which insist on a prescribed period of service in a lower post or experience in a post, profession or occupation as a qualification or eligibility."

10. Therefore, though these petitioners are drawing a pay scale of Rs.6,000/- and above, but for the note, they were not entitled to the benefit of reservation because of that

note as a service of 5 years in the lower post is a condition precedent for being eligible to apply for the said post. The said Creamy Layer Policy of the Government is not attracted to these respondents 3 to 7. The petitioners are also placed in the same similar fashion. The confusion arose because of the format prescribed in the application. While considering the cases, the respondent's cases were not considered and that is how their names did not find place in the Provisional Select List. After publication of the list, when the respondents 3 to 7 pointed out that they as well as the petitioners belong to the very same caste and they are more meritorious than the petitioners and an error is committed in excluding them from the list, the KPSC opened its eyes and found where the mistake lies and then they issued an endorsement to rectify the said mistake giving an opportunity to all the applicants to file a certificate in the prescribed format. Once they were filed, the cases of the petitioners as well as the respondents - 3 to 7 were considered together and as the respondents 3 to 7 were found more meritorious than the petitioners, their names were included in the final list. Consequently, the less meritorious petitioners though their names were found in the preliminary select list were deleted. In fact this Court had an occasion to consider the Creamy Layer Policy in the case of KPSC vs. K.Sharada and others in the W.P.Nos.6500-08 of 2009 and other connected matter disposed off on 15th December 2010, where it has been held that this Creamy Layer Policy is not applicable to all the in service candidates irrespective of the years or dates of service they have put in. In that view of the matter, we do not see any merit in the substance of the first contention.

11. In so far as the 2nd contention that the respondents 3 to 7 are estopped from challenging the Provisional Select List as they had not challenged the notification itself is concerned, we do not see any merit in the same. In the notification issued, it is made clear that 25 posts are to be filled up by way of direct recruitment from in service candidates. When once the Government is recruiting and have entrusted this recruitment process to the KPSC, it is expected that all of them should follow the law governing this selection. It is not necessary that it should be expressly stated in the notification that the reservation policy would be followed or that the Creamy Layer Policy is followed. They are expected to make the reservation in accordance with the prevailing law. Therefore, the question of the respondents challenging the notification on the ground that the reservation policy is not

provided or that the Creamy Layer Policy is to be excluded would not arise. They also filed an application and they wanted these reservations to be made applicable. It is only when the formats that they had filed did not qualify them to be considered, the KPSC excluded their names. Once it was pointed out that what they have done is not correct, the KPSC has retraced its steps, gave an equal opportunity to everybody, took the correct format and has made the corrections. Therefore, we do not see any merit in the contention of the doctrine of estoppel being made applicable. Even otherwise, careful reading of the notification shows that the reservation policy would be followed in the matter of selection. Therefore, seen from any angle there is no merit in the said contention.

12. In so far as the 3rd contention that after publication of the provisional select list, the procedure followed by KPSC of calling for documents is improper is concerned, it is true that earlier they had issued an incorrect format. After realizing the mistake they corrected the same. It is in this regard that they gave an equal opportunity to all the applicants and thereafter, they decided their eligibility based on merits. When once an equal opportunity is given to all the applicants, they cannot have a grievance whatsoever. Therefore, we do not see any merit in this contention also.

13. Lastly it was contended that when the order of the Tribunal explicitly makes it clear that the selection conducted by KPSC is filled with mistakes, the proper course was to set aside the entire selection process and remand the matter back for fresh selection. It is true that the Tribunal has pointed out the various errors committed by the KPSC in the selection process. But none of those errors has in any way have affected the right or interest of the petitioners. It is only when such errors materially affected the right or eligibility of the candidate or the selected candidate, probably a case for reconsideration or a direction to redo the whole process in the facts of the case would arise. In the facts of the case, we are satisfied that no such case is made out.

14. Before parting with the facts, we would like to point out the relative merit of the candidates which are set out as under:-

Sl. No.	Name of the candidates placed in final select list	Category	Marks obtained	Name of the candidates placed in the provisional select list	Category	Marks obtained
1.	Maltesh Ningappa Banolli	3B	228	Dinesh Sampathraj	3B	223
2.	Chandrahas	2A	225	Vimalamma C	2A	159
3.	E.Shivarudrappa	3A	218	Eranna	3A	169
4.	H S Channabasappa	GM Rural	208	C S Shivakumara Swamy	GM Rural	185
5.	H K Sreepada Rao	GM Rural	190	M G Venkateshaiah	GM Rural	184

Respondents 3 to 7 are found in the second column the petitioners are in the fifth column. The marks obtained by each of them is obvious. Persons with higher marks are placed above those with lesser marks. If this corrective process was not done by the Commission, grave injustice would have been done to respondents 3 to 7. Therefore, absolutely, there is no justification for this Court to interfere with the just selection made by the Commission.

Accordingly, the writ petitions are dismissed.

Misc. W.1945/11 filed in W.P. No.10076/2008 for direction is also dismissed.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
Writ Petition No.23993 of 2009 (S-RES)
D.D. 21.11.2011
Hon'ble Mr. Justice N.Kumar

Sri. Lakshmisha M … Petitioner
Vs.
The State of Karnataka & Ors … Respondents

Equivalence of qualification:

Declaration of B.E. Transportation Engineering as equivalent to B.E. Civil Engineering – Authority competent to issue declaration of equivalence of qualification – Petitioner, possessing B.E. in Transportation Engineering applied for the post of Assistant Engineer (Civil) on the strength of certificate issued by Visveswaraya Technological University that B.E. Transportation Engineering is academically equivalent to B.E., Civil Engineering – Karnataka Public Service Commission refused to accept the certificate issued by the said University with regard to equivalency of qualification and insisted on declaration issued by Government of Karnataka, to consider his application – Whether, improper ? No. Held that as per Rule 2(h) of Karnataka Civil Services (General Recruitment) Rules, 1977 declaration of equivalence of qualification has to be issued by Government and University is not competent to issue declaration of equivalence of qualification.

ORDER

The petitioner has preferred this Writ Petition seeking a writ of mandamus directing respondents 1 and 2 to consider the representation made by the petitioner vide Annexure-G to treat B.E. Degree in Transportation Engineering as equivalent to B.E. Degree in Civil Engineering and issue notification in this behalf and in the alternative for certain other reliefs.

2. The petitioner is a holder of B.E. Degree in Transportation Engineering which he completed during the year 2006 securing 65% in overall subjects. The fourth respondent – Karnataka Public Service Commission invited applications by a notification dated 26.2.2009 for selection and appointment to 120 posts of Assistant Engineers (Civil) in BBMP as well as 11 posts for KHB respectively. The minimum qualification required for selection and appointment to the said post is B.E. Degree in Civil Engineering or equivalent examination as notified by the Government. The petitioner applied for both the posts in BBMP and KHB under category IIIA, Rural, Kannada Medium Study, as he belongs to Vokkaliga Community and he studied standards 1 to 10 at rural school in Kannada medium.

The third respondent-University has issued a certificate dated 2.6.2009 certifying that the B.E. Transportation Engineering is academically equivalent to B.E. Civil Engineering in all cases except for recruitment to teaching career. The grievance of the petitioner is fourth respondent is not ready to accept the declaration of the third respondent with regard to equivalency of the qualification and insist on a declaration/notification from the Government of Karnataka. The petitioner made a representation to the Hon'ble Minster for Higher Education on 9.6.2009. An endorsement came to be issued saying that granting of equivalency does not fall within their jurisdiction. Therefore, he has approached this Court for the aforesaid reliefs.

3. Learned counsel appearing for the Karnataka Public Service Commission pointed out the Karnataka Civil Services (General Recruitment) Rules, 1977 which governs the parties. Rule 2(h) define what an 'equivalent qualification' as under:-

> "Equivalent qualification means a qualification notified by the Government to be equivalent to a qualification prescribed in respect of any post in the Rules regulating recruitment to any State Civil Services".

According to him, Government has not issued any notification prescribing the equivalent qualification. University is not the competent authority under the Rules to certify the equivalent qualification. Therefore, the certificate issued by the University is not binding on the fourth respondent.

4. In the notification issued which is produced at Annexure-B at item No.32 for recruitment to 120 Assistant Engineer (Civil) posts the qualification prescribed is B.E. Degree in Civil Engineering or equivalent examination (equivalent examination as notified by the Government). It is not in dispute that the Government has not issued any notification under the aforesaid Rules notifying that B.E. Transportation Engineering is equivalent to B.E. Civil Engineering. In the absence of the said notification it is not possible to hold that the petitioner possess the requisite qualification to apply to the said post. That apart it is for the Government to decide to issue the equivalent qualification. It is purely discretionary. In such matters it is not appropriate for this Court to issue any direction one way or the other. Therefore, I do not see any merit in this petition. Accordingly, it is dismissed.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL, AT BANGALORE
Application No.6419 of 2006
D.D. 06.01.2012
Hon'ble Mr. Justice A.C.Kabbin, Chairman &
Hon'ble Smt. Usha Ganesh, Administrative Member

Sri Natesha D.B. … Applicant
Vs.
KPSC & Ors. … Respondents

Selection process

Non-grant of time to produce relevant documents – Applicant, on account of failure to produce original documents in support of his claim for reservation under category III B Rural KMS, at the time of interview, on alleged ground of loss of bag containing said documents, sought time to produce them after interview was over – K.P.S.C. rejected his request for grant of time to produce documents and interviewed him considering his case under General Merit category instead of under III B Rural KMS and selected him against post of Tahsildar instead of against post of Assistant Commissioner, to which post a less meritorious candidate was selected, on basis of condition contain in notice for personality test to the effect that the candidates will not be eligible to the personality test, if the requisite original certificates are not produced at the time of interview and further that candidates will not be allowed to produce the original documents subsequent to personality test – Whether in the circumstances rejection of request to grant time to produce original documents after interview was over can be said to be not tenable? No.

Cases referred:

1. Dolly Chhanda v. Chairman and others, 2005 9 SCC 779
2. Seema Kumar Sharma (Mrs.) v. State of Himachal Pradesh and others, 1997 (1) SLR 32
3. W.P.No.15384/1998 (Pushpa v. KPSC & Others) decided on 28.03.2000

O R D E R

Smt. Usha Ganesh, Administrative Member

The applicant, a successful candidate in the Gazetted Probationers Examination-2005, has challenged the allocation of cadre in this application.

2. In response to the Notification dated 4.11.2004 inviting applications for the preliminary examination for recruitment of gazetted probationer, the applicant filed his

application under category IIIB-Rural-KMS. After successfully qualifying in the main examination, he was called to appear for personality test on 28.3.2006 by No.E(1)/1932/05-06/PSC dated 9.3.2006 (Annexure-A10). The applicant submits that he lost his bag along with the papers including the IIIB caste certificate, rural certificate issued by the authorities while traveling in the BMTC bus on 27.3.2006. After lodging the complaint with the Chandra Lay-Out Police Station as at Annexure-A11, he appeared for the interview duly appraising authorities with regard to the loss of the original caste certificate and the rural certificate. In the provisional select list No.E(1)07/2006-07/PSC dated 15.4.2006 (Annexure-A12) the applicant was selected as the Tahsildar under GM category and the second respondent, a less meritorious candidate was selected to the post of Assistant Commissioner under GM-Rural and another candidate, as Deputy Superintendent under GM-Rural category. The applicant filed detailed objection/representation on 2.5.2006 duly explaining the circumstances in which he could not produce original caste certificate and rural certificate as at Annexures-A13 & A14 duly seeking permission to produce the concerned certificates, they being found subsequently. However, in the final select list No.E(1)41/2005-06/PSC dated 4.5.2006 (Annexure-A16) the applicant was selected as Tahsildar in the Group-B and the respondent No.2 was selected as the Assistant Commissioner. In pursuance thereof the applicant reported for duty as Tahsildar. He has filed this application seeking to quash the final select list to the post of Gazetted probationers dated 4.5.2006 in so far as applicant and the 2nd respondents are concerned and to set aside the selection of the 2nd respondent to the post of Assistant Commissioner and to direct the respondents to select the applicant as Assistant Commissioner in the Karnataka Administrative Service or in the alternative against the unfilled posts in the cadre of Assistant Commissioner or Deputy Superintendent or in any other vacancy arising in the said cadre.

3. Heard Sri Basavaraj V.Sabarad, learned counsel for the applicant, Sri T.Narayanaswamy, learned counsel for the 1st respondent-KPSC, Sri S.M.Chandrashekar, learned counsel for R-2 and Sri M.Nagarjan, learned AGA for R-3.

4. Reiterating the contentions raised in the application, the learned counsel for the applicant submits that the first respondent has committed a serious error of law and facts

in not selecting the applicant with 1051 marks to the post of Assistant Commissioner Group-A under GM-Rural-IIIB, while selecting the less meritorious candidate-second respondent with 1049 marks to the said post and similarly selecting candidates with 1048 and 1025 marks as Deputy Superintendents of Police; that non-selection of the applicant suffers from discrimination and arbitrariness; that the respondent-authorities have not appreciated the circumstances in which the applicant lost the bag containing the original certificates a day prior to the personality test; that it was beyond his control to produce the documents at the time of interview; that the respondents were not justified in not granting time to the applicant to produce the relevant documents which has resulted in miscarriage of justice; that the original documents being traced at a later date were produced before the authorities and pray for a direction to consider the applicant under GM-Rural category and to select him to the post of Assistant Commissioner. He further prays that the applicant may also be accommodated in the vacancies arising upon some of the candidates not joining the post.

5. The learned counsel for the applicant refers to the following decisions in support of his contention

1) 2005 9 SCC 779, (Dolly Chhanda Vs. Chairman & others
2) 1997 (1) SLR 32, (Seema Kumar Sharma (Mrs) Vs. State of Himachal Pradesh & others) and submits that in the above cited decisions the Supreme Court has directed to consider the documents produced at later date, holding that the delay in furnishing the documents at the relevant time should not disentitle those documents being considered.

6. The learned senior counsel for the first respondent-KPSC submits that as the applicant did not produce relevant certificate to consider his candidature under Rural quota, he was interviewed under GM category and was selected under group-B in the provisional list published on 15.4.2006, that though objections were called for within a period of fifteen days, as no objections were received from the applicant within the said period and the applicant was selected in the group-B post in the final select list published on 4.5.2006. He points out that the objections filed by the applicant as at Annexure-A13 & A14 were belated; that though the applicant produced all the other relevant certificates, he failed to produce the certificate in support of his claim under rural category. He further submits that

the relief sought for by the applicant would result in revising in the entire select list affecting all the selected candidates; that such revision is not permissible without the selected candidates being made parties; that the applicant having failed to produce the relevant documents in support of his claim for reservation at the relevant time cannot now seek a direction in this application for consideration to accommodate him against the unfilled vacancies, which are to be treated as fresh vacancies under G.O.No.DPAR.8.SBC.95 dated 20.6.1995; that as the applicant considered under GM category for the personality test selected and appointed to the post of Tahsildar, his subsequent prayer for consideration for appointment to the post of Group-A cannot be considered both on account of non-joinder of necessary parties and for failure to produce the relevant original documents at the time of interview and prays for dismissal of the application.

7. He relies on the observations made by the High Court of Karnataka in W.P.No.15384 of 1998 cited in the decision of this Tribunal in A.No.2326 of 2009, which are as follows:-

> "4. This point has been considered by a Division Bench of High Court of Karnataka in W.P.No.15384 of 1998 (A PUSHPA Vs. KPSC & ORS) decided on 28.3.2000, and following observations are made:
>
> "6. As per the notice for interview, all the candidates were required to produce all the original certificates at the time of interview and they were also made to know that failure to produce such originals will make the candidates ineligible for the interview. In spite of it, she was not able to produce the original reservation certificate dated 26.12.1994. Therefore, she was taken as General Merit candidate. Even under General Merit Category she was not eligible for selection in view of the fact that the percentage of her marks was much less than the last candidate selected under General Merit Category.
>
> 7. ……..In the matter of appointment, time and again it is said that the candidates have to comply with the specific stipulations while claiming reservation or with regard to the qualifications. Any laches on their part would definitely resulting in rejecting the application. In such a situation, one cannot claim as a matter of right sympathy or equity. As already discussed above, unless the writ petitioner has made out justifiable ground or cause for considering her case for category, this Court cannot come to her rescue. The 1st Respondent while considering her case for category-I or General Merit at the time of selection process or the Tribunal while considering her application or review application, have looked into the matter from all the angles. Therefore, the writ petitioner has not made out a case to give her the relief she has sought for."

8. The learned counsel for the first respondent submits that no objections were filed by the applicant to the provisional select list published on 15.4.2006; that the applicant in his representation to the first respondent as per Annexure-A13 submitted on 2.5.2006 sought permission to produce the original IIIB caste & Rural certificates on the ground that they were later traced; that as the applicant failed to produce the original requisite certificates at the time of personality test, the said request was not considered; that the applicant has himself to blame for his lapse. He points out to the discrepancy in submission of the applicant with regard to loss of documents made in Annexure-A13; that the said documents were lost while traveling in the BMTC bus on 27.3.2006, whereas in Annexure-R1 submitted at the time of interview, he submits that the bag with the relevant documents was lost while traveling from his native place to Bangalore to appear for interview; that there being a discrepancy in the submission of the applicant, the reason given for his inability to produce the requisite certificates cannot be accepted and prays for dismissal of the application. With regard to the prayer of the applicant to consider him for selection to the unfilled posts, he points out that the selection authority becomes functus officio after the publication of the select list and that there is no provision for publishing the additional select list after a forwarded to the appointing authority and prays for dismissal of the application.

9. The learned AGA and the learned counsel for the 2nd respondent refer to the following clause in the notice for personality test (Annexure-A10) specifically mentioned "that the candidate will not be eligible to the personality test, if the requisite original certificates were not produced at the time of interview and further the candidates will not be allowed to produce the originals subsequent to the personality test". In view of the above, they submit that the applicant now cannot claim the reservation under category III-B Rural having failed to produce the document at the relevant time and pray for dismissal of the application.

10. It is not in dispute that the applicant did not produce the documents in support of his claim for reservation under category IIIB-Rural-KMS before the first respondent-KPSC at the time of interview. His inability to produce the same is allegedly on account of loss

of the bag containing these documents, while traveling in the bus on 27.3.2006, police complaint was lodged with Chandra Police Station. It was not theft of the bag, but loss of bag since the applicant allegedly slept in the bus. It cannot be attributed to a natural cause. Loss of certificates, if true, was due to the negligence of the applicant. The applicant was interviewed under the GM category, in view of his representation before the authorities on that date seeking permission to appear as a candidate under GM category he being unable to produce the relevant certificates of reservation for verification. Evidently, the applicant himself is responsible for his failure to produce the relevant certificates and there is nothing to show that he was prevented from producing documents in spite of due diligence. In the absence of production of relevant documents in support of his claim for selection in the reserved category, at the relevant time, there are no grounds to consider the prayer of the applicant with regard to his selection to the post of Assistant Commissioner under GM-Rural category and to set aside the selection of the respondent No.2 to the post of Assistant Commissioner under IIIB-Rural category though he has secured less marks than the applicant. Other contention of the applicant regarding the selection of candidates with lesser merit to the post of Deputy Superintendent cannot be considered as the said candidates are not made parties in this application. We find that the decisions referred to by the learned counsel for the applicant are not similar to the facts and circumstances of the present application as the case of DOLLY CHHANDA VS. CHAIRMAN AND OTHERS, relates to admission to medical college and the failure of the applicant therein to submit the proof of requisite qualifications, there being no express provision to the general rule is that eligible qualification must be possessed on the last date fixed. In the present application, there being a specific clause in the notice for the interview directing the candidates to produce the relevant original certificates for verification before appearing for the personality test further stipulative that the production of original certificates subsequent to the date and time of the personality test will not be allowed, the principle laid down in this case, we hold is not applicable to the present application.

11. The facts and circumstances in the case of SEEMA KUMAR SHARMA Vs. STATE OF HIMACHAL PRADESH & OTHERS are not similar to the facts and circumstances of the case of this application and is not applicable as it relates to non-

production of a certificate regarding the petitioner belonging to IRDP family though she has submitted Serial Number along with the application.

12. The entire process of the selection being completed the applicant's prayer for consideration of his appointment against the unfilled post of Assistant Commissioner/ Deputy Superintendent of Police or any other vacancy available cannot be considered as the said vacancies are carried over to the next selection and no longer subsist.

13. In view of the above, we do not find any grounds to interfere with the notification No.E(1)41/2005-06/PSC Dated 4.5.2006 (Annexure-A16) in so far as the selection of the applicant and the 2nd respondent. Consequently the prayer of the applicant for selection in place of the second respondent as Assistant Commissioner and the alternative prayer to consider the applicant against the unfilled post in the cadre of Assistant Commissioner/ Deputy Superintendent are held as not tenable and the application is dismissed accordingly.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
W.P. No.34000/2011 (S-KAT)
D.D. 07.02.2012
The Hon'ble Dr. Justice K.Bhakthavatsala &
The Hon'ble Mr. Justice K.Govindarajulu

Smt. Sowmya Nagesh Nayak ... Petitioner
Vs.
State of Karnataka & Anr. ... Respondents

Reservation

Production of original caste certificate to claim reservation – Petitioner failed to produce original 2A caste certificate dated 27.08.2007, a copy of which was enclosed along with application, but produced a different one dated 10.12.2007, at the time of interview, contrary to conditions mentioned in employment notification as well as interview call letter and the request of petitioner to produce the original 2A caste certificate after interview was over was rejected. Consequently, petitioner was considered under GM category and was not selected – Whether in the circumstance can it be said that KPSC has committed any illegality and irregularity in not acceding to request of petitioner? No. Whether the Public Service Commission is right in rejecting request for extension of time to produce caste certificate? Yes.

Held:

(6) …. Caste certificates are important for the purpose of determining eligibility for claiming reservation and prepare final list, but she should have produced the original certificate dated 27.08.2007, but she has not done so. The contention of petitioner that she should have been given some time for production of the certificate does not merit as if every candidate is given time to produce the required certificate there will be delay in the preparation of select list. We see no good ground to interfere with the impugned order.

Case referred:

1. Dolly Chhanda v. Chairman, JEE and others, 2005 SCC 734

ORDER

Dr. Bhakthavatsala J.

The petitioner is before this Court challenging the order dated 29.06.2011 made in application No.7017/2010 on the file of Karnataka Administrative Tribunal at Annexure-'A'.

2. Learned counsel for the petitioner submits that as on the date of viva the petitioner had produced original 2A certificate dated 10.12.2007 instead of producing 2A certificate dated 27.08.2007, but the Karnataka Public Service Commission refused to receive the caste certificate dated 10.12.2007 and did not consider the case of the petitioner as against the reservation under 2A women, but considered the case of the petitioner under general merit and she was not selected. He submits that the petitioner approached the Tribunal praying for quashing the endorsement dated 11.10.2010 issued by Karnataka Public Service Commission at Annexure 15 and also issue direction to the Public Service Commission to consider the case of the applicant for selection to the post of Head Master under category 2A and include her name in the final list and appoint her as Head Mistress, but the Tribunal erred in rejecting the application on the ground that the income shown in the caste certificate was more than Rs. 2.00 lakhs and rejected the caste certificate on the ground that there was variance in the income shown in the certificate issued on 27.08.2007 and 10.12.2007. In this regard, it is submitted that as per the notification issued by the Government that any caste certificate issued in 2007 and if the parents were to be Group-'C' employees even if their gross income exceeds Rs.2.00 lakhs, the caste certificate shall be considered. He further submits that a representation was given to the Karnataka Public Service Commission seeking permission to produce the original certificate dated 27.8.2007, but the request was rejected.

3. Learned counsel of the petitioner relies on the decision of the Apex Court reported in 2005 SCC 734 in the case of Dolly Chhanda vs. Chairman, JEE and others on the point that there can be some relaxation in the matter of submission of the proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure.

4. Learned counsel for the respondent No.1 submits that there is no illegality in the impugned order.

5. Learned counsel for the respondent No.2/Karnataka Public Service Commission submits that the Tribunal has rightly rejected the application and there is no illegality or infirmity in the impugned order. He draws our attention to personality examination letter dated 05.08.2010 and as per Sl.No.8 (vide Annexure-A11) under no circumstances time will be granted for production of original certificates after the personality test and failure to produce the certificates, the candidate will loose their candidature. He further submits

that as per the direction at Sl.No.8 of Annexure-A11 and Sl.No.10 of KPSC notification inviting applications for the posts, it is specifically mentioned that certificates from the Tahsildar which is valid as on the date of submission of application and produce the original certificate for verification of the Commission. In spite of the direction given, the petitioner did not produce the original 2A caste certificate dated 27.08.2007 and therefore, the petitioner was considered as against General category and the request of the petitioner seeking direction to produce the original certificate dated 27.08.2007 was rejected and there is no merit in the petition.

6. The Tribunal has taken serious note that in the caste certificate dated 28.08.2007 income of the family is mentioned as Rs.2,52,888/-, whereas in the 2A certificate dated 10.12.2007, income of the family is mentioned as Rs.2,28,824/-. But, the discrepancy holds no water as the Government has issued a notification clarifying that if the income of the parents belonging to Group 'C' were to be more than Rs. 2.00 lakhs, they are eligible for claiming reservation under 2A category. In this regard learned counsel for the respondent No.2 Karnataka Public Service Commission submits that the clarification issued by the Government was quashed on 05.02.2009 and subsequently, the Government has issued another clarification certifying that the certificate issued till 05.02.2009 were saved. Thus, the petitioner is entitled to claim reservation under 2A category. But, the petitioner did not produce the original caste certificate as mentioned in the employment notification as well as interview call letter. It is pertinent to mention that caste certificate is important for the purpose of determining eligibility for claiming reservation and prepare final list. She should have produced the original certificate dated 27.8.2007, but she has not done so. The contention of the petitioner that she should have been given some time for production of the certificate does not merit as if every candidate is given some time to produce the required document there will be delay in the preparation of selection list. In our view, the decision, supra, relied upon by the Counsel for the petitioner is of no avail. We see no good ground to interfere with the impugned order.

7. In the result, the petition fails and the same is rejected.

Smt. Revathy Adinath Narde, learned High Court Government Pleader is granted three weeks time to file memo of appearance for the Respondents.

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SUPREME COURT OF INDIA
Special Leave to Appeal (Civil) No.13676 of 2012
D.D. 12.08.2013
Hon'ble Mr. Justice G.S.Singhvi &
Hon'ble Mr. Justice V.Gopala Gowda

Sowmya Nagesh Nayak . . . Petitioner
Vs.
State of Karnataka & Anr. . . . Respondents

Candidature:

Non-consideration of candidature against reserved category post on failure to produce original caste certificate at time of interview – Whether rejection of candidature of appellant for not complying with clause 10 of advertisement inviting applications for recruitment and condition No.8 of interview letter dated 05.08.2010 mandating that candidates are required to produce original certificates at the time of interview and stipulation that no time would be granted for production of original certificates after personality test was over, and those who failed to produce required certificates would loose their candidature, can be said to be illegal? No. – Whether Tribunal and High Court were right in refusing to issue mandamus to consider appellants candidature against reserved category is valid? Yes. – Candidature of appellant was not considered under reserved category by Karnataka Public Service Commission on her failure to produce original caste certificate dated 27.07.2007 at the time of interview and her request for grant of time to produce the same later on was also rejected. - Held that refusal to issue mandamus to Public Service Commission by Tribunal and High Court to consider appellants candidature against reserved category post is valid.

Cases referred:

1. Charles K. Skaria & Others v. Dr. C. Mathew & Others, {1980 (2) SCC 725}
2. Dolly Chhanda v. Chairman, Jee & Others {2005 (9) SCC 779}
3. Bedanga Talukdar vs. Saifudaullah Khan & Others {2011 (12) SCC 85

ORDER

Having failed to convince the Karnataka Administrative Tribunal (for short, 'the Tribunal') and the Division Bench of the Karnataka High Court to entertain her prayer for issue a direction to the Karnataka Public Service Commission (for short, 'the Commission') to accept her candidature as a reserved category candidate, the petitioner has filed this petition.

Sri.P.Vishwanath Shetty, learned senior counsel relied upon the judgments of this Court in Charles K.Skaria & Ors. Vs. Dr.C.Mathew & Ors. (1980 (2) SCC 725) and Dolly Chhanda vs. Chairman, Jee & Ors. (2005 (9) SCC 779) and argued that the decision of the Commission not to consider the petitioner's candidature against the reserved post was totally arbitrary and the tribunal and the High Court committed serious error by refusing relief to her. Learned senior counsel submitted that the petitioner had annexed caste certificate dated:27.08.2007 along with the application form and at the time of interview she produced another certificate dated:10.12.2007 and simultaneously made a request for grant of two day's time to produce the original of certificate dated:27.08.2007, but her request was rejected by the Commission without any reason and, in this manner, her claim for selection against the reserved category post was frustrated. Learned counsel emphasised that conditions incorporated in the advertisement and the letter of interview requiring the candidates to produce the original certificate at the time of interview are not mandatory and a small deviation from the rigor of such conditions should be treated as permissible. Learned senior counsel submitted that the petitioner's was an extremely hard case and the Commission should have relaxed the requirement of production of original certificate on the date of interview and considered her candidature against the post reserved for category 2A.

Sri.S.N.Bhat learned Counsel for the Commission invited our attention to clause 10 of the advertisement and contents of interview letter dated:05.08.2010 to show that all the candidates including the petitioner were informed in advance about the requirement of production of original certificate at the time of interview and argued that the Commission did not commit any illegality by refusing to entertain the petitioner's request for extension of time for production of the original certificate. Sri.Bhat also invited our attention to clause 8 of the interview letter to substantiate his arguments that the Commission had informed the candidates well-in-advance that the time fixed for production of original certificate shall not be extended under any circumstance. He also relied upon judgment of this Court in BedangaTalukdar Vs. Saifudullah Khan & Ors. (2011 (12) SCC 85) and argued that the conditions incorporated in the advertisement and the interview letter requiring the candidates to produce the original certificate cannot be relaxed.

We have considered the respective arguments/submissions and carefully scanned the record. In our view, the Tribunal and the High Court did not commit any error by upholding the decision of the Commission not to consider the petitioner's candidature against the reserved category post because she failed to produce the original caste certificate dated:27.08.2007 along with the application form or at least at the time of interview. In clause 10 of the advertisement, it was specifically mentioned that the candidates shall produce the original certificate for verification before the Commission. This was reiterated in the interview letter dated in the following words:

SPECIAL NOTICE TO CANDIDATES

All original certificates enclosed along with application"

By incorporating condition No.8 in interview letter dated:05.08.2010, the Commission had made it clear to the candidates that no time will be granted for production of original certificates after the personality test and those who fail to produce the required certificate will lose their candidature.

It is not in dispute that vide letter dated:05.08.2010, the petitioner was informed that the date of interview is 23.09.2010. Thus, she had more than one month's time to arrange for production of the original of certificate dated:27.08.2007. However, for the reasons best known to her, the petitioner failed to produce the original of certificate dated:27.08.2007 and produced an altogether different certificate, which was rightly discarded by the Commission because copy thereof had not been annexed with the application form.

The judgment of this court in Dolly Chhanda case is clearly distinguishable. The facts of that case were that the appellant before the Court, who was a ward of ex-serviceman had sought the Court's intervention because original of the certificate produced by her in the second round of counseling was not entertained by the concerned authority. The High Court dismissed the writ petition on the ground that the certificate furnished by the appellant did not bear any testimony that she belonged to reserved category. While setting aside the High Court's order, this Court observed:

7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e., in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated:29.06.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counseling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal."

In the case before us, here is no provision for second round of interview at which the petitioner could produce the original of certificate dated:27.08.2007. Therefore, the petitioner cannot rely upon the aforesaid judgment for seeking a mandamus to the Commission to entertain her candidature against the reserved category post. This view of ours is in accord with the judgment in Bedanga Talukdar's case. While dealing with a somewhat similar question, this Court observed:

"We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the

advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

30. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India".

In view of the above discussion, we hold that the Tribunal and the High Court rightly refused to issue a mandamus to the Commission to consider the petitioner's candidature against the reserved category post and the special leave petition is liable to be dismissed. Ordered accordingly.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
W.P. Nos.2775-2777/2012 (S-KAT) C/W W.P. No.3109/2012 (S-KAT)
D.D. 13.03.2012
The Hon'ble Dr. Justice K.Bhakthavatsala &
The Hon'ble Mr. Justice K.Govindarajulu

Sri. Mahadev Teggi & Ors. … Petitioners
Vs.
State of Karnataka & Anr. … Respondents

Necessary parties:

Maintainability of writ petitions on ground of non-joinder of parties – Contention that selected candidates are not made parties and writ petitions are not maintainable or liable to be rejected - whether holds ground when select list is yet to be published? No.

Contention of the learned Counsel for respondent No.2 that the selected candidates were not made as parties and therefore this batch of writ petitions are liable to be rejected, hold no water, as the select list is not yet published and therefore the candidates, who are going to be selected, are not necessary parties for adjudication of this case. Therefore, the contention of learned Counsel for respondent No.2 that the writ petitions are not maintainable on the ground of non-joinder of necessary parties, falls to the ground.

Cases referred:

1. Kanpur University and others v. Samir Gupta and others, AIR 1983 SC 1230
2. Pankaj Sharma v. State of Jammu and Kashmir & Others, 2008 AIR SCW 2332 (2)
3. Ashok Kumar Yadav and Others Etc. Etc., v. State of Haryana and others Etc. Etc., AIR 1987 SC 454
4. Sanjay Singh & Another v. U.P. Public Service Commission, Allahabad & Another, 2007 AIR SCW 707
5. University of Cochin v. N.S. Kanjoonjamma, (1997) 4 SCC 426
6. Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171
7. Madanlal v. State of Jammu & Kashmir, (1995) 3 SCC 486
8. Marripati Nagaraja v. Government of Andhra Pradesh, (2007) 11 SCC 522
9. Cha drashekar S. Salimath v. Director of Collegiate Education of Karnataka, ILR 1996 KAR 2921
10. Punjab University v. Narinder Kumar, (1999) 9 SCC 8
11. P.U. Joshi v. Accountant General, (2003) 2 SCC 632
12. State of Karnataka v. B. Suvarna Malini, (2001) 1 SCC 728
13. Asif Hameed v. State of Jammu & Kashmir, 1989 (Supp) (2) SCC 364
14. Director, National Institute of Technology v. N.S. Harsha, ILR 2004 KAR 4215
15. Sanjay Kumar Manjul v. Chairman, UPSC, AIR 2007 SC 254 = (2006)
16. Andhra Pradesh Public Service Commission v. Baloji Badhavath, (2009) 5 SCC 1

17. Indian Express News Papers (Mobmay) Pvt. Ltd.,v. Union of India, (1985) 1 SCC 641.
18. Lalan Kumar Jha and Others vs. Shri Abdul Siddiq and another AIR 2001 SC 1851
19. All India SC & ST Employees Association and another vs. A. Arthur Jeen and Others

ORDER

Dr. Justice K.Bhakthavatsala:

These writ petitions are directed against common order dated 6.1.2012 dismissing all the Applications in Nos.4962-5055/2010 and connected cases, on the file of Karnataka Administrative Tribunal (in short, 'KAT') at Bangalore.

2. The brief facts of the case leading to the filing of the writ petitions may be stated as under:

The petitioners are applicants before the KAT. The petitioners along with others had approached the KAT for the following reliefs:

(i) To declare note 4 of clause A in Section-1 of Schedule II to the Recruitment Rules providing the selection of candidates for the main examination in order of merit on the basis of performance in the preliminary examination as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India; and

(ii) To direct the respondents to select the candidates for the main examination by adopting a methodology by which candidates including applicants choosing different optional subjects are given a fair and equal chance of selection to the main examination.

3. Contention of the Karnataka Public Service Commission (KPSC) is that no case is made out to interdict the process stipulated by Rules and re-write the Rules. Further, the concept of scaling and proportional representation, as of now are not provided by the rules.

4. In view of the pleadings and arguments addressed by the learned Counsels for the parties, KAT had formulated the following points for its consideration:

(i) Whether the present method of selecting candidates for the main examination on the basis of marks obtained in preliminary examination can be said to be violative of Articles 14 & 16 of the Constitution of India on the ground that it is not as fool-proof as scaling or moderation method?

(ii) Whether award of full marks to questions key answers of which were found to be not appropriate, amounted to discrimination?

(iii) Whether para-7.1 of the impugned notification dated 27.1.2010 need reading it down as providing for consideration of all candidates who obtain minimum marks, for the main examination?

(iv) What order?

5. The K.A.T. for the reasons stated in the impugned common order, has answered point Nos.(i) and (ii) in the affirmative and point No.(iii) stating that it does not require that the Rule to be interpreted in a different way and dismissed all the applications. This is impugned in this batch of writ petitions by few of the applicants.

6. Sri C.M.Nagabhushan, learned Counsel appearing for M/s. Goutam & Rajeswar, submitted that the Tribunal has held that the suggestion of the candidates for adopting scaling method has been conveyed to KPSC that the Commission would examine the same for future recruitments, but erred in holding that the present method of recruitment for the posts of Gazetted Probationers Group A and B is not violative of Articles 14 and 16 of the Constitution of India and also erred in holding that the present process cannot be faulted or unconstitutional. He has cited the following decisions:

(i) AIR 1983 SC 1230 (Kanpur University and Others vs. Samir Gupta and Others) on the point 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;

(ii) 2008 AIR SCW 2332 (2) (Pankaj Sharma vs. State of Jammu and Kashmir & Ors.) on the point that it cannot be said that by not granting benefit of additional marks to 'selected' candidates which were given to 'unselected' candidates, injustice had been done to 'selected' candidates; and on the point that in Kanpur University v. Samir Gupta (1983) 4 SCC 209, combined Pre-Medical Test was taken by the University for admission to medical course. Objective type of questions were set up and four options were indicated, three being wrong. It was held that the Court will presume key answers to be correct and proceed to examine accordingly. But, if any of the key answers is proved to be 'demonstrably wrong' or is such that 'no reasonable body well-versed in the subject would regard as correct',

it would be unfair to penalize students for not giving an answer that accords the key answer. In such a situation, a Court of law can issue an appropriate direction.

(iii) AIR 1987 SC 454 (Ashok Kumar Yadav and Others etc. etc., vs. State of Haryana and Others etc. etc.) on the point that where there is a composite test consisting of a written examination following by a viva voce test the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest, thrice the number of vacancies to be filled;

(iv) 2007 AIR SCW 707 (Sanjay Singh & Anr. Vs. U.P. Public Service Commission, Allahabad & Anr.) on the point that the fact that scaling is a standard method of assessment, when a common base has to be found for comparative assessment of candidates taking examinations in different optional subjects, is not in dispute. In fact, the Commissioner may continue to adopt the said system of scaling, where a comparative assessment is to be made of candidates having option to take different subjects. The question is whether scaling, in particular, linear standard scaling system as adopted by the Commission, is a suitable process to eliminate 'examiner variability' when different examiners assess the answer scripts relating to the same subject.

7. Sri. P.S.Rajagopal, learned Senior Counsel, appearing for Sri. Reuben Jacob, for respondent No.2/KPSC, submitted that final selection list has been prepared after the dismissal of the Application by KAT and the same is ready. He further submits that as per notification bearing No.E(1)11961/2009-10/PSC dated 27.1.2010, applications were called for the post of filling up vacancies of 268 posts of Gazetted Probationers Group A & B in accordance with Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examination) Rules 1997, but the petitioners did not challenge the notification and Rules, and they appeared for the preliminary examination and thereafter resorted to litigate the matter and the KAT has rightly held that there is no error in the present method of selecting candidates for the main examination on the basis of marks obtained in the preliminary examination and not applying the method of scaling and awarding of full marks to questions when key answers of which were found to be not appropriate, is not amounting to discrimination. He has cited the following decisions:

(i) (1997) 4 SCC 426 (University of Cochin vs. N.S.Kanjoonjamma;

(ii) (2008) 4 SCC 171 (Dhananjay Malik vs. State of Uttaranchal)

(iii) (1995) 3 SCC 486 (Madanlal vs. State of Jammu & Kashmir);

(iv) (2007) 11 SCC 522 (Marripati Nagaraja vs. Government of Andhara Pradesh);

(v) ILR 1996 KAR 2921 (Chandrashekar S Salimath vs. Director of Collegiate Education of Karnataka)

(vi) (1999) 9 SCC 8 (Punjab University vs. Narinder Kumar);

(vii) (2003) 2 SCC 632 (P U Joshi vs. Accountant General);

(viii) (2001) 1 SCC 728 (State of Karnataka vs. B.Suvarna Malini);

(ix) 1989 (Supp)(2)SCC 364 (Asif Hameed vs. State of Jammu & Kashmir)

(x) ILR 2004 KAR 4215 (Director, National Institute of Technology vs. N S Harsha);

(xi) AIR 2007 SC 254 = (2006) 8 SCC 42 (Sanjay Kumar Manjul vs. Chairman, UPSC);

(xii) (2009) 5 SCC 1 (Andhra Pradesh Public Service Commission vs. Baloji Badhavath); and

(xiii) (1985) 1 SCC 641 (Indian Express News Papers (Bombay) Pvt. Ltd. Vs. Union of India)

8. Apart from the above decisions, learned Counsel for respondent NO.2 has contended that the petitions are not maintainable on the ground that the selected candidates are not made parties to these writ petitions. In this regard, he relies on an un-reported decision of Circuit Bench at Dharwad dated 29.11.2010 made in W.P. Nos.13810/2005 c/w 14421/ 2005 (S-CAT) (Lalan Kumar Jha and Others vs. Shri Abdul Siddiq and another decision reported in AIR 2001 SC 1851 (All India SC and ST Employees Association and Another vs. A Arthur Jeen and others).

9. Contention of the learned Counsel for respondent No.2 that the selected candidates were not made as parties and therefore this batch of writ petitions are liable to be rejected, holds no water, as the select list is not yet published and therefore the candidates, who are going to be selected, are not necessary parties for adjudication of this case. Therefore, the contention of learned Counsel for respondent No.2 that the writ petitions are not maintainable on the ground of non-joinder of necessary parties, falls to the ground.

10. In so far as the merits of the case is concerned, learned counsel for the petitioners

submits that the scaling method which was approved by the Apex Court, shall be adopted by KPSC for present recruitment itself.

11. Admittedly, the petitioners have appeared for the preliminary examination without challenging the notification dated 27.1.2010 (at Annexure-A1) and the Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examination) Rules, 1997. Hence, the Tribunal is justified in holding that the KPSC has followed the Rules while selecting the candidates for the post of Gazetted Probationers Group A and B. In pursuance of the impugned order dated 6.2.2012 the KPSC has finalized the selection process and list is ready. Further, in pursuance of the direction given by KAT, Government of Karnataka, by notification bearing No.DPAR 14 SRR 2011 dated 28.9.2011, has amended the 1997 Rules relating to preliminary examination and KPSC on the basis of the amended Rules, has issued a notification dated 3.11.2011, calling for applications to fill up 352 posts of Gazetted Probationers of Group A and B. Hence, we see no good ground to interfere with the impugned order.

12. In the result, the writ petitions fail and they are hereby rejected.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
Application No.5268/2008
D.D. 19.04.2012
Hon'ble Mr. Justice A.C.Kabbin, Chairman &
Hon'ble Mr. Abhijit Dasgupta, Administrative Member

Sri Gurubasavarajaswamy Pandit … Applicant
Vs.
The State of Karnataka & Anr. … Respondents

Rejection of application:

Failure to enclose grade point conversion percentage certificate along with application form – Karnataka Public Service Commission rejected the application of applicant - candidate for selection to post of Lecturer in Government First Grade Colleges in the Department of Collegiate Education on ground of non-enclosure of grade point conversion percentage certificate, as required under the instructions contained in information booklet – Contention of the applicant that before rejection of application it was not conveyed to him and it is not mandatory to enclose the said certificate as the KPSC was well acquainted with scoring pattern – KPSC required to prepare a list of names of eligible candidates for interview in order of merit on the percentage of marks secured in the Masters Degree and for which purpose certificate of grade point conversion very essential, whether in the circumstances there is any illegality in rejection of application? No.

Held that candidates have to comply with specific stipulation while claiming reservation or with regard to qualifications. Any laches on their part would result in rejecting application – One cannot claim sympathy or equity as a matter of right – Application dismissed as devoid of merit.

Cases referred:

1. Bedamga Talildar v. Saifudaullah Khan and others, (2011) 2 SCC 85
2. W.P.No.15384/1998 decided on 28.03.2000

ORDER

Mr. Abhijit Dasgupta, Admn. Member:

The Karnataka Public Service Commission (Respondent No.2) ('KPSC', for short) had initiated recruitment to 175 posts of Lecturers in Political Science pursuant to Notification dated 24.12.2007 in Government First Grade Colleges in the Department of Collegiate Education in accordance with the Karnataka Education Department Rules, 1964, as

amended from time to time, the Karnataka Education Department Services (Collegiate Education Department) (Special Recruitment) (Amendment) Rules, 1993 and Government Order dated 23.11.2006. The applicant who possesses Master's Degree in Political Science and NET/Ph.D. in Political Science had applied for the post under Scheduled Caste category. He had enclosed only Grade Card of the University without percentage certificate, which was contrary to the instructions contained in the Information Booklet that certificate showing grade point conversion to percentage should be enclosed along with the application. On that ground the application of the applicant was rejected by the KPSC as per list of rejected candidates published on the website vide Annexure A-8, challenging which the applicant has filed this application.

2. The learned Counsel for the applicant submitted that the rejection of the candidature of the applicant without conveying the same to the applicant is violative of the principles of natural justice, as the applicant has not been served with any notice nor has any explanation been sought from him. It is further contended that the KPSC is well acquainted with the scoring pattern awarded by Jawaharlal Nehru University. On earlier occasions in respect of some other candidates the KPSC had corresponded with the said University and obtained certificates of equivalence. Hence, in the case of the applicant, insistence on production of certificate of conversion of percentage is illegal. It is also contended by him that Clause 14(1) of the recruitment notification which provides for production of certificate of equivalence is illegal, as the equivalence of grade is already provided on the reverse of the marks card issued by the concerned University.

3. Per contra, the learned counsel for the KPSC contended that under Rule-6 of the Special Recruitment Rules (referred to above) the KPSC is required to prepare a list of names of eligible candidates for interview arranged in the order of merit based on the percentage of marks secured in the Master's Degree in the relevant subject. Therefore, the percentage of marks secured in the Master's Degree in the relevant subject by the candidate is necessary for the purpose of preparing such list. For this purpose, clear instructions have been issued to the candidates in the recruitment notification that candidates producing certificate showing grade point should produce conversion percentage certificate with the

application. The applicant had since only produced certificate showing grade point and did not produce certificate showing conversion percentage, his application was rejected. The KPSC has denied the contentions of the applicant that there is violation of principles of natural justice and also that the KPSC had obtained clarification from Jawaharlal Nehru University on earlier occasions in respect of some other candidates with regard to scoring pattern. As regards the contention of the applicant that pattern of grading is mentioned on the reverse of the Marks Card and Grade-B and its numerical value 5 is equivalent to 55% (Grade-B = 5 x 11 = 55%), the contention of the KPSC is that this contention of the applicant that multiplier to be used for converting grade point average into percentage is 11 is without any basis. As the grade point average at 5.25 secured by the applicant falls under Grade-B, it is contended, the claim of the applicant that grade point average secured by him is equivalent to 57.75% is not correct. Therefore, the contention of the KPSC is that without the percentage certificate issued by the University it is not possible to determine the percentage of marks secured by the applicant in the Master's Degree in the relevant subject for the purpose of considering whether he is eligible for interview as provided under Rule-6 of the Special Recruitment Rules and, hence, there is no illegality in the rejection of the application of the applicant.

4. From the rival contentions of the parties the question that arises for consideration is whether the rejection of the application of the applicant by the KPSC is legal. Admittedly, the applicant has not produced percentage certificate which would show conversion of grade points to percentage as required under the recruitment notification. In the absence of the same, it was not possible for the KPSC to determine the percentage of marks secured by the applicant in the Master's Degree in the relevant subject for the purpose of considering whether he is eligible for interview as provided under Rule-6 of the Special Recruitment Rules.

5. It is well settled that selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of

relaxation is or is not provided in relevant rules it must be mentioned in advertisement. Such power, if exercised, should be given due publicity to ensure those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution, as held by the Supreme Court in BEDAMGA TALILDAR v. SAIFUDAULLAH KHAN AND OTHERS reported in (2011) 2 SCC 85. In the said case, deprecating the approach of the High Court in directing that condition with regard to submission of identity card could be relaxed in case of Respondent No.1, the Supreme Court held as under:

> "Perusal of the advertisement in the instant case clearly shows that there was no power of relaxation. The High Court erred in directing that condition with regard to submission of identity card either along with application form or before appearing for preliminary examination could be relaxed in case of Respondent 1, which was impermissible in view of mandate of Articles 14 and 16 of the Constitution. The finding of the High Court that Respondent No.3 – the State Public Service Commission had not treated condition with regard to submission of identity card along with application or prior to appearing in preliminary examination as mandatory, also contrary to evidence on record. The impugned direction to consider claim of Respondent 1 on basis of identity card submitted after selection process was over, unsustainable."

It is also well settled that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. In the case on hand, a perusal of the advertisement will clearly show that there was no power of relaxation.

6. There can be no dispute with regard to the proposition that candidates have to comply with the specific stipulations while claiming reservation or with regard to the qualifications. Any laches on their part would definitely result in rejecting the application. In such a situation, one cannot claim as a matter of right sympathy or equity. In this regard, it is worthwhile to refer to the following observations of the High Court of Karnataka in Writ Petition No.15384/1998 decided on 28.3.2000:

"6. As per the notice of interview, all the candidates were required to produce all the original certificates at the time of interview and they were also made to know that failure to produce such originals will make the candidates ineligible for the interview. In spite of it, she was not able to produce the original reservation certificate dated 26.12.1994. Therefore, she was taken as General Merit Candidate. Even under General Merit Category, she was not eligible for selection in view of the fact that the percentage of her marks was much less than the last candidate selected under General Merit Category.

7. …In the matter of appointment, time and again it is said that the candidates have to comply with the specific stipulations while claiming reservation or with regard to the qualifications. Any laches on their part would definitely result in rejecting the application. In such a situation, one cannot claim as a matter of right sympathy or equity. As already discussed above, unless the writ petitioner has made out justifiable ground or cause for considering her case for category, this Court cannot come to her rescue. The 1st Respondent while considering her case for Category-I or General Merit at the time of selection process or the Tribunal, while considering her application or review application, have looked into the matter from all the angles. Therefore, the Writ Petitioner has not made out a case to give her the relief she has sought for."

7. In the light of the aforesaid decisions, no fault can be found with the decision of the KPSC in rejecting the application of the applicant. The application is devoid of merits and, consequently, it is dismissed.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
Application No.7930 of 2011
D.D. 25.04.2012
Hon'ble Mr. Justice A.C.Kabbin, Chairman &
Hon'ble Mr. Abhijit Das Gupta, Administrative Member

Shivappa Alagawadi … Applicant
Vs.
The Secretary, KPSC … Respondent

Rejection of application:

Deviation in procedure for filing application – Karnataka Public Service Commission issued notification inviting application for appointment to post of Lecturer in Mechanical Engineer in Government Polytechnics by online method, but applicant – candidate did not submit the same in online mode – K.P.S.C. rejected his application on ground that he did not file application as per stipulation contained in notification inviting application – Whether action of KPSC in rejecting application can be found fault with? No.

Held:

Selection process has to be conducted strictly in accordance with stipulated selection procedure as contained in selection notification and when a particular procedure is mentioned in notification the same has to be scrupulously maintained – Consequently, no fault could be found in rejecting candidature of applicant.

Cases referred:

1. Bedamga Talildar v. Saifudaullah Khan and others, (2011) 2 SCC 85
2. W.P.No.15384/1998 decided on 28.03.2000
3. Jagadish Rai v. State, AIR 1977 Punjab & Haryana 56

ORDER

Mr. Abhijit Das Gupta, Administrative Member

Heard the applicant who has appeared in person and the learned Counsel for the Respondent/Karnataka Public Service Commission ('the KPSC', for short).

2. Challenge in this application is to Endorsement dated 26.10.2011 issued by the KPSC to the applicant rejecting and returning his application sent through off-line mode on the ground that since applications were called through 'on-line', there is no provision to consider his 'off-line' application.

3. The short question that arises for consideration is whether the action of the KPSC in strictly adhering to the terms of the notification and rejecting the application of the applicant is justified.

4. It is not disputed that the KPSC had issued notification dated 17.5.2011 inviting applications 'on-line' from eligible candidates for recruitment to 174 posts of Lecturers in Mechanical Engineering in Government Polytechnics in the Department of Technical Education. It is also not disputed that the Notification clearly stated that applications should be submitted only on-line and there is no provision to send applications personally or through post. It is also not disputed that the applicant sent his application 'off-line' and it is on that short ground his application has been rejected.

5. It is a settled position of law that there cannot be any relaxation in terms and conditions which are required to be complied with by candidates, unless reserves right to relax any condition imposed in the advertisement. Relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution, as held by the Supreme Court in BEDANGA TALUKDAR v. SAIFUDAULLAH KHAN AND OTHERS reported in (2011) 2 SCC 85. In the said case, deprecating the approach of the High Court in directing that condition with regard to submission of identity card could be relaxed in case of Respondent No.1, the Supreme Court held as under:

> "Perusal of the advertisement in the instant case clearly shows that there was no power of relaxation. The High Court erred in directing that condition with regard to submission of identity card either along with application form or before appearing for preliminary examination could be relaxed in case of Respondent 1, which was impermissible in view of mandate of Articles 14 and 16 of the Constitution. The finding of the High Court that Respondent No.3 – the State Public Service Commission had not treated condition with regard to submission of identity card along with application or prior to appearing in preliminary examination as mandatory, also contrary to evidence on record. The impugned direction to consider claim of Respondent 1 on basis of identity card submitted after selection process was over, unsustainable."

It is also well settled that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. In the case on hand, a perusal of the advertisement will clearly show that there was no power of relaxation.

6. Similar view has been expressed by the High Court of Karnataka in Writ Petition No.15384/1998 decided on 28.3.2000 thus:

> "6. As per the notice of interview, all the candidates were required to produce all the original certificates at the time of interview and they were also made to know that failure to produce such originals will make the candidates ineligible for the interview. In spite of it, she was not able to produce the original reservation certificate dated 26.12.1994. Therefore, she was taken as General Merit Candidate. Even under General Merit Category, she was not eligible for selection in view of the fact that the percentage of her marks was much less than the last candidate selected under General Merit Category.
>
> 7. …In the matter of appointment, time and again it is said that the candidates have to comply with the specific stipulations while claiming reservation or with regard to the qualifications. Any laches on their part would definitely result in rejecting the application. In such a situation, one cannot claim as a matter of right sympathy or equity. As already discussed above, unless the writ petitioner has made out justifiable ground or cause for considering her case for category, this Court cannot come to her rescue. The 1st Respondent while considering her case for Category-I or General Merit at the time of selection process or the Tribunal, while considering her application or review application, have looked into the matter from all the angles. Therefore, the Writ Petitioner has not made out a case to give her the relief she has sought for." (emphasis by us)

This Tribunal has also taken a similar and consistent view in several cases involving claim for such relaxation.

7. The applicant who is a party in person contends that he being an Ex-serviceman ought to have been given a relaxation in the matter. In this regard, he has placed reliance on the decision of the Supreme Court in JAGDISH RAI v. STATE, reported in AIR 1977

PUNJAB & HARYANA 56 (Full Bench), in which the following observations have been made:

> "While the best and most meritorious of those seeking appointment under the State should be selected, it is also equally fair and equitable that a just proportion of the posts should be given to those who, because of a peculiar handicap, may not stand a chance against those not so handicapped. It would be an extension of the principle of Article 16(4) to those that do not fall under Article 16(4). The State has an undoubted obligation to provide employment to Ex-servicemen who have faithfully served the interests of the country's security, ready to risk their lives. The State has an obligation to protect them from the competition of civilians against whom they may not stand a chance for reasons already mentioned. The State is, therefore, justified in classifying them separately as a source of recruitment and reserving posts for them. Nor, can it be said that efficiency of service will suffer. Ex-service personnel are required to possess the same minimum qualifications as others and they came endowed with qualities of discipline, sacrifice, initiative, loyalty, sense of public duty etc., qualities not to be scoffed at in public service. Hence, the reservation of posts in favour of Ex-servicemen must be upheld…"

We may observe that the main point that was required to be considered in that case before the Hon'ble Supreme Court was whether the reservation of vacancies for Ex-Armed Forces Personnel was constitutionally valid or not. The observations would not amount to give relaxation of conditions which a candidate for a post in the State Government service is required to comply with. We may observe that in no way the applicant as Army Personnel was handicapped in sending the application on-line.

8. Sri T.Narayanaswamy, learned counsel for the KPSC has submitted that even the application personally handed over by the applicant suffered from defect, in the sense that it was incomplete, since marks secured in the examination had not been mentioned. The applicant submitted that in view of his experience in the Air Force, the degree given to him is a deemed degree and that, therefore, the marks were not available. As rightly pointed out by the learned counsel for the KPSC, Annexure A-16(c) produced by the applicant on 22.3.2012 contains statement of marks secured in the conversion course for Engine/Fitter Trade during April, 1988. Therefore, even the off-line application given by the applicant was defective and the KPSC was right in rejecting that application.

9. Lastly it is contended by the applicant that the Government by Order No.GAD.106.SSR.62 dated 13.9.1962 has specifically directed that minor irregularities in the applications submitted by candidates of all classes including members belonging to Scheduled Castes and Scheduled Tribes be condoned and that an opportunity should be given to cure the defects. That Government Order is no more in force after issuance of the Karnataka Civil Services (General Recruitment) Rules, 1977 and the subsequent Government Orders which require strict compliance of the conditions to be fulfilled by candidates while submitting the applications.

10. In the light of our discussion, we find no fault on the part of the KPSC in rejecting the candidature of the applicant. The application is bereft of merit and is liable to be dismissed.

11. In the result and for the reasons stated above, we dismiss the application.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
WRIT PETITION NOS.11223-230/2012 (GM-Res)
D.D. 06.06.2012
The Hon'ble Mr. Justice Ajit J Gunjal

M.A.Mahesh & Ors. … Petitioners
Vs.
State of Karnataka & Anr. … Respondents

Creamy Layer Policy:

Benefit of retrospectivity to income limit prescribed under Government Order No. SWD 225 BCA 2000 dated 30.03.2002, to get benefit under creamy layer policy – Government by its notification dated 06.02.2012 raised income limit from Rs. 2 lakh to 3.5 lakhs – Whether Government Order raising income limit from Rs. 2 lakhs to 3.5 lakhs can be directed to be given retrospectively so that the benefit of Government Order can be had by the petitioners? No. Held that having regard to wording of notification, it comes into effect only as on 06.02.2012 – If given effect to from retrospective date it would virtually alter notification itself and its terms and conditions which is impermissible.

ORDER

The 1st respondent had fixed the limit of total gross income of the applicants to be excluded from creamy layer of backward classes at Rs.2 lakhs. This was pursuant to a Government order dated 30.03.2002. The 1st respondent has passed an order announcing the creamy layer income limit from Rs.2 lakhs to Rs.3.5 lakhs to get the benefits of backward classes economically. The case of the petitioners is that the said notification dated 06.02.2012 is required to be applied retrospectively to all those, who have made the applications prior to this notification.

2. I am of the view that having regard to the wordings of the notification, which would come into effect only as on 06.02.2012, the question of petitioners being benefited from the said notification does not arise. If at all such a benefit is to be extended, it would virtually alter the notification itself and its terms and conditions which is impermissible.

3. Having said so, I am of the view that the question of giving retrospective effect to Annexure 'A' in the circumstances does not arise.

Petitions stand ***disposed of*** accordingly.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
Writ Appeal NO.17576/2011 (S-RES)
D.D. 03.07.2012
Hon'ble Mr. Justice K.L. Manjunath &
Hon'ble Mr. Justice V.Suri Appa Rao

N.S.Vijayanth Babu … Appellant
Vs.
Karnataka PSC & Anr … Respondents

Recruitment:

Recruitment to posts of Panchayat Development Officers (PDO) under Karnataka General Service (Development Branch and Local Government Branch) (Recruitment of Panchayat Development Officers (Special) (Recruitment) Rules, 2009 – Chief Executive Officers of various Districts in the State, the Appointing Authorities under 2009 Rules, entrusted work of selection of PDO to Karnataka Public Service Commission, the selection authority – Public Service Commission by notification dated 18.03.2011 invited applications to fill up posts of PDO in respect of 29 districts by one common entrance test, with one of the conditions of notification being that the candidates can apply for one district of his choice in the entire State– Whether such a condition in the recruitment notification is unreasonable and violative of Articles 14 and 16 of Constitution of India? No.

Held, that selections having been entrusted to one common selection authority and selection authority, if by conduct of one common entrance test for the entire State, selected candidates, by granting liberty to choose one district of their own choice, such a restriction cannot be said to be not a reasonable restriction – Selections held valid.

Cases referred:

1. Radhey Shyam Singh and Others v. Union of India and Others, (1997) 1 SCC 60
2. Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy and others, (2011) 9 SCC 286
3. K.G. Ashok and Others v. Kerala Public Service Commission and Others, (2001) 5 SCC 419

ORDER

K.L. Manjunath, J.

The appellant being aggrieved by the order passed in W.P. No.14397/2011 dated 26.09.2011 has filed this appeal.

2. The writ petition filed by the appellant came to be dismissed by the learned single Judge on a technical ground that the appellant was required to approach the Karnataka Administrative Tribunal (hereinafter referred to as the 'KAT' for brevity) and without exhausting the remedy open to him has filed a writ petition. Accordingly, the writ petition was dismissed granting liberty to the appellant to approach the KAT.

3. By consent of the parties, we have heard the appeal on merits as the appellant has challenged the legality and correctness of the Notification issued by the Government to recruit Panchayath Development Officers (hereinafter referred to as the 'PDOs' for brevity) to different districts in the State of Karnataka through Karnataka Public Service Commission (hereinafter referred to as the 'KPSC' for brevity). We are of the view, under such circumstances, it is open for a party to approach the KAT or before this Court. Accordingly, we have heard the appeal on merits.

4. The facts leading to this case are as hereunder:

The appellant is a practicing Advocate of this Court. According to him, he has obtained a post-graduation in law. The KPSC issued a Notification on 18.03.2011 inviting applications from eligible candidates for selection for the post of PDOs. In all, 1353 posts were to be selected for different districts. According to the terms and conditions of the Notification, a candidate shall be a graduate and who has completed 18 years of age and selection of the candidates is through written examination and the applications were to be filed between 21.03.2011 and 19.04.2011 and that the application shall be made through on-line (electronic media). One of the specific conditions imposed is that, the candidate can apply for one district of his choice in the entire State. If any application is filed for more than one district, such applications would be rejected. On the ground that there is a discrimination in directing the eligible candidates to choose only one district and that there is a prohibition to apply for other district and such restriction is in violation of Articles 14 & 16 of the Constitution of India, writ petition was filed. According to him, there is no reasonable classification and there is no nexus between the process of district wise selection and the object for selection is, to select a best candidate is taken away.

5. It is seen that the writ petition was dismissed at the stage of preliminary hearing. The Government had no occasion to file the statement of objections because the State was not made as a party and the State has been made as a party in this appeal.

6. The Government has filed a counter in this appeal stating that, the Notification has been issued to fill up 1353 posts for different districts. The Rules were framed as per the Government Notification dated 07.07.2009 and these Rules are called as the Karnataka General Service (Development Branch and Local Government Branch) Recruitment of Panchayat Development Officers (Special) (Recruitment) Rules, 2009.

According to these Rules, Appointing Authority means "the Chief Executive Officer of the Zilla Panchayath of the respective District" and the "Selection Authority" means "the Authority notified by Government as such from time to time". Based on the request of the Appointing Authority, the Selection Authority (KPSC) was requested to select the candidates based on the need of each of the district's and such restriction is only a reasonable restriction and not in violation of the Articles 14 and 16 of the Constitution. According to the Government, a candidate is not prohibited from choosing the district of his choice since there are thirty districts in the State as the Selection Authority has to conduct different selection process for appointment's in each district, in order to get an opportunity for all the eligible candidates, the applications were invited by the KPSC to conduct a written examination to select the candidates for all the twenty nine districts permitting the candidates to choose the district of their choice. According to them, selection of a District cannot be stated to be un-reasonable restriction and is not in violation of Articles 14 & 16 of the Constitution.

7. It is also the case of the State Government that, before framing the Rules, objections were invited and after considering the objections/reply, Rules were framed in the year 2009 and the appellant who has not applied for the post has filed a petition only to harass the candidates who have already taken the examination. In the circumstances, the Government requested the Court to dismiss the appeal.

8. Similarly, KPSC supporting the contention of the Government requested the Court to dismiss the appeal.

9. The appellant relied upon a judgment of the Apex Court reported in (1997) 1 SCC 60 (Radhey Shyam Singh and others –vs- Union of India and others), wherein the Apex Court at Paragraph No.10 has observed as under:

> "The argument advanced by the learned counsel for the respondents that this process of zone wise selection has been in vogue since 1975 and has stood the test of time cannot be accepted for the simple reasons that it was never challenged by anybody and was not subjected to judicial scrutiny at all. If on judicial scrutiny it cannot stand the test of reasonableness and constitutionality it cannot be allowed to continue and has to be struck down. But we make it clear that this judgment will have prospective application and whatever selections and appointments have so far been made in accordance with the impugned process of selection shall not be disturbed on the basis of this judgment. But in future no such selection shall be made on the zonal basis. if the Government is keen to make zone wise selection after allocating some posts for each zone, it may make such scheme or rules or adopt such process of selection which may not clash with the provisions contained in Articles 14 and 16 of the Constitution of India having regard to the guidelines laid down by this Court from time to time in various pronouncements. In the facts and circumstances of the case, we make no orders as to costs. The appeals and writ petitions are allowed as indicated above".

Relying upon Paragraph – 10 of the judgment, he contends that the district wise selection is bad in law and the same is in violation of Articles 14 & 16 of the Constitution of India.

He also relied upon a judgment of the Apex Court reported in (2011) 9 SCC 286 (Andhra Pradesh Dairy Development Corporation Federation –vs- B.Narasimha Reddy and others), wherein the Apex Court at Paragraph No.18 has observed as under:

> "18. It is well settled law that Article 14 forbids class legislation, however, it does not forbid reasonable classification for the purpose of legislation. Therefore, it is permissible in law to have class legislation provided the classification is founded on an intelligible differentia which distinguishes persons of things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question. Law also permits a classification even if it relates to a single individual, if, on

account of some special circumstances or reasons applicable to him, and not applicable to others, that single individual may be treated as a class by himself. It should be presumed that the legislature has correctly appreciated the need of its people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. There is further presumption in favour of the legislature that legislation had been brought with the knowledge of existing conditions. The good faith on the legislature is to be presumed, but if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The law should not be irrational, arbitrary and unreasonable inasmuch as there must be nexus to the object sought to be achieved by it".

10. Therefore, relying upon these judgments, he requested this Court to hold that the Notification invited for the selection to the posts of PDOs on district wise basis prohibiting the candidates to file an application for more than one district is violative under Articles 14 & 16 of the Constitution.

11. Per contra, learned counsel appearing for the KPSC and the Government relying upon the K.G.Ashok and others –vs- Kerala Public Service Commission and others reported in (2001) 5 SCC 419 submits that, as the selection of the candidates is for different districts, the classification made by the Government cannot be held to be in violation of the Articles 14 & 16 and the question now raised by the appellant has been considered in the aforesaid judgment and such reasonable classification cannot be held contrary to the Articles 14 & 16. According to them, the Hon'ble Supreme Court in K.G.Ashok case have also considered the judgment in Radhey Shyam Singh –vs- Union of India. Therefore, their lordships have held that restriction in question is not vocative of Article 14 and question of reading down the same does not arise. In the aforesaid judgment, in Paragraphs 12 and 13, their lordships have held as hereunder:

"12. It appears that the Government introduced decentralisation of recruitment to the lower ministerial cadre in various departments and teaching posts in the Education Department to district level vide GO (MS) No.154/71 dated 27.05.1971 with a view to avoid administrative inconvenience caused due to dearth of recruits in such cadres in the northern districts of Kerala. It was with this intention that the Government stipulated conditions

restricting inter-district transfers vide government order dated 27.05.1971. However, while implementing the decentralization, a lot of practical problems cropped up before the Commission. If candidates are allowed to apply to more than one district in response to the same notification, they have to be allowed to appear in the tests to be conducted in different districts on different dates and subsequently, if they find a berth in the ranked list relating to more than one district, they will have to be advised for recruitment from more than one district, they will have to be advised for recruitment from more than one district if the occasion arises. A candidate who is appointed in one district will have to forego appointment in another district and the same defeats the very purpose of the aforementioned government order. The circumstances as detailed above would put the Commission in an embarrassing situation and cause administrative difficulties. The situation would assume fresh dimensions if it is allowed to prevail in the present day district wise selections. Therefore, the candidates are permitted to apply for one district only in one notification. It is in order to avoid such exigencies and to facilitate a feasible selection process, the Commission issued orders to the effect that candidates are prohibited from applying to more than one district for the post notified in one and the same notification. Accordingly, in the notification inviting applications for district wise selection, specific instructions are incorporated to the effect that a candidate should not send applications for the post in more than one district and his failure to observe the same would entail rejection of application of such a person apart from taking other actions enumerated above.

13. Though a candidate is prohibited from applying in more than one district, he is free to choose any district of his choice and thus the only thing is that the candidate is not entitled to apply for the same post in more than one district at a time. Here, the right of the candidate is not curtailed as he / she is not prevented from choosing the district of his / her choice. At the same time, if every person is permitted to apply for all districts the number of applications received by the Commission will be 14 times the number of applications now being received with the result that the Commission will be doing a futile exercise of selection work in the other 13 districts, as a candidate can after all accept appointment in only one district. Considering all these aspects the Commission has imposed the restriction on candidates from applying in more than one district in response to one and the same notification. The restriction does not tantamount to the denial of opportunity to a candidate for applying to any post".

9. Now, in this background, we have to consider whether the Government is prohibited from conducting common entrance test to recruit the PDOs for different district. The appellant is not disputing that the selection process is not for the entire State, and

that it is for different district. The Rules itself clearly says who is the Appointing Authority and is the Selection Authority. If the Appointing Authority is only a District Head of the Zilla Panchayath and if the selection process is given to KPSC by the Government, and if one common entrance test is conducted for the entire State granting liberty to the candidates to choose the district of their choice and such restriction cannot be held to be not a reasonable restriction. Even in (Andhra Pradesh Dairy Development Corporation Federation –vs- B.Narasimha Reddy and others), referred supra, their lordships have held that Article 14 does not forbid reasonable classification for the purpose of legislation. Their lordships have also ruled that, it is permissible in law to have class legislation provided the classification is founded on an intelligible differentia which distinguishes persons of things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question.

10. In this background, if the Rules have been framed in 2009 and recruitment has to be made district wise as the posts are to be filled up in all the thirty districts in the State considering the laborious process which involves in the selection process for a common entrance test is conducted by the Selection Authority allowing the candidate to choose the place of district of their choice, such classification cannot be held to be unreasonable. Therefore, we are of the view that, in view of the judgment in K.G.Ashok and others –vs- Kerala Public Service Commission and others, referred supra, and considering the ruling relied upon by the appellant, even as those rulings does not forbid reasonable classification. We are of the view that there are no merits in this appeal and accordingly, it is dismissed.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
WRIT PETITION NO.17693/2008 (S-KAT)
D.D. 04.09.2012
The Hon'ble Mr. Justice N.Kumar &
The Hon'ble Mr.Justice H.S.Kempanna

R.Mahesha … Petitioner
Vs.
KPSC & Ors. … Respondents

Service weightage

Allotment service weightage for possession of teaching experience for selection to post of Lecturer in Collegiate Education Department – Karnataka Public Service Commission refused to consider the fraction of service rendered from 28.12.2005 to 31.03.2006, in the academic year 2005-06, as completed academic year of service for allotment of service weightage – Requirement of proviso (a) to Rule 6(B) of the Karnataka Education Department Services (Collegiate Education Department) (Special Recruitment) Rules, 1993 being allotment of "wieghtage at the rate of one percent for each completed academic year of service", whether Karnataka Public Service Commission is justified in refusing to allot service weightage for the academic year 2005-06? Yes. – Tribunal was justified in upholding action of K.P.S.C. – Order passed by the Tribunal legal and valid and do not call for interference.

ORDER

N.Kumar, J

This writ petition is filed challenging the order passed by the Karnataka Administrative Tribunal dismissing the application filed by the petitioner herein holding that the service weightage allotted by the Karnataka Public Service Commission (KPSC) is correct and does not call for any interference.

2. For the purpose of convenience the parties in this petition would be referred to as they are arrayed in the application.

3. The applicant Sri.R.Mahesha is a candidate for recruitment to the post of lecturer in Electronics notified by the KPSC. He has passed M.Sc. in Electronics from Mysore University, M.Phil from The Bharathidasan University, Thiruchirapalli. He has worked as lecturer in Electronics for the academic years 2003-04, 2004-05 2005-06 and 2006-07. The Director of Collegiate Education has issued certificate for the same on 25.1.2008.

The applicant has secured 67.65% marks in M.Sc degree and he is entitled for one mark for having passed M.Phil degree and entitled for four grace marks for having worked as Lecturer in Electronics. He has been awarded 10 marks in the interview. Thus, the total percentage of marks works out to 82.65. The provisional select list was published on 24.6.2008. The name of the second respondent who has secured 82.42% has been included and the petitioner who has secured 82.65% marks has not been included. Therefore, the petitioner filed an objection to the provisional list. He contended that the second respondent has been given 5 marks for service rendered by him even though he has worked on part-time basis and not as full time lecturer. After considering the said objections an endorsement came to be issued to the petitioner stating that the certificate issued by the Principal of the Government college for Women, Mandya, shows that the petitioner/applicant has worked from 28.12.2005 to 31.3.2006 in the academic year 2005-06 and hence service weightage for the academic year is not granted. Therefore, the applicant approached the Tribunal contending that even the service rendered for a fraction of a year is to be considered as service of an academic year and therefore, the contention of the KPSC is one without the authority of law. If one more mark is given on account of weightage he would be more meritorious than the second respondent. However, the tribunal after considering the rival contentions was of the view only those persons who have completed one academic year of service shall be entitled to weightage and the service rendered for a fraction of a year cannot be taken into consideration and therefore, dismissed the application filed by the petitioner.

4. Aggrieved by said the order, the applicant has preferred this writ petition.

5. The learned Senior counsel assailing the impugned order of the Tribunal contends, when once certificate is issued by the Collegiate of Education stating that the applicant has worked for four academic years, KPSC has no power to sit in judgment over the said certificate. Even if a fraction of service is rendered in an academic year, it has to be construed as a service rendered in an academic year and the benefit of 1% weightage is to be extended to the applicant. Therefore, he submits that the impugned endorsement is illegal and requires to be set aside.

6. Per contra, the learned counsel for the respondent supported the impugned order.

7. Facts are not in dispute. For the academic year 2005-06, the applicant has worked only from 28.12.2005 to 31.3.2006 i.e. roughly for about three months. Proviso (a) to Rule 6B of the Karnataka Education Department Services (Collegiate Education Department) (Special Recruitment) Rules, 1993 reads as under :-

> (a) a weightage at the rate of one percent for each completed academic year of service shall be added to the average percentage of marks secured by the candidate in the Master's Degree in the relevant subject, if such candidate possesses teaching experience as lecturer in any college affiliated to any University established by law in India, including the candidate who has served as part-time Lecturer in Government First Grade Colleges of the Department of Collegiate Education;

8. The aforesaid provision makes it clear the service to be rendered may be full time or part time, but such a service should be rendered throughout the academic year. Then only the weightage of 1% per academic year could be granted. Admittedly, for the academic year 2005-06, the applicant has worked from 28.12.2005 to 31.3.2006. The academic year commences from 15.6.2005 though part-time appointments are made from 28.12.2005. Therefore, from 15.6.2005 till December the applicant has not worked. Therefore, the KPSC which is vested with the power to select the candidates has rightly given weightage excluding the service for the period from 28.12.2005 to 31.03.2006. It is in accordance with the aforesaid rules and the Tribunal was justified in upholding the action of the KPSC.

9. Insofar as the contention that the second respondent was working only as a part time teacher is concerned it should not have been taken into consideration, the aforesaid Rules makes it clear the weightage is to be given to candidates who have served as part time lecturers in Government First Grade Colleges in the department of Collegiate Education. Therefore, for the purpose of weightage, service rendered may be part time or full time, but it should be throughout the academic year. In that view of the matter the Tribunal was justified in upholding the action of the KPSC. The order passed by the Tribunal is legal and valid and do not call for interference.

Accordingly, the petition is dismissed.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
W.P. No.11043 of 2008 (GM-RES) & Connected cases
D.D. 14.09.2012
Hon'ble Mr. Justice Mohan Shantanagoudar

KPSC	**…**	**Petitioner**
Vs.		
Smt. Lalitha Bai K &Anr.	**…**	**Respondents**

A. R.T.I.

Furnishing copies of evaluated answer books – Whether Karnataka Public Service Commission may refuse to furnish copies of evaluated answer books to respondents on ground that there are no rules compelling it to provide such information? No. Relying on judgment of Apex Court in Central Board of Secondary Education and another vs. Aditya Bandopadhyay and others reported in (2011) 8 SCC 497, held that unless answer books fall under exempted category as described in clause (e) of Section 8(1) of the R.T.I. Act, K.P.S.C. is bound to provide copies of answer books despite absence of rules compelling it to provide copies of answer books – State Chief Information Commissioner justified in directing K.P.S.C. to provide copies of answer books to respondents.

B. R.T.I.

Furnishing copies of evaluated answer books of third parties – Whether Karnataka Public Service Commission is bound to furnish copies of evaluated answer scripts of third parties, as directed by the State Chief Information Commissioner? No - Referring to judgment of Apex Court reported in (2011) 8 SCC 497, held that private respondents are not entitled to get copies of evaluated answer books of the third parties – Directions of State Chief Information Commissioner, held not sustainable.

C. R.T.I.

Furnishing names of question paper setters and examiners – Whether Public Service Commission is bound to furnish names of paper setters as well as examiners to private respondents? No. By referring to judgment of Apex Court reported in (2011) 8 SCC 497, held that such information comes under exempted category, particularly in view of the fact that secrecy of such information is required to be maintained in the interest and safety of paper Setters and Examiners

Case referred:

1. Central Board of Secondary Education and another vs. Aditya Bandopadhyay and others reported in (2011) 8 SCC 497

O R D E R

Order in W.P. No.11043/2008, W.P. 15890/2009, W.P. 15891/2009, W.P. 15892/2009, W.P. 29681/2009

In all these matters, the petitioner – Karnataka Public Service Commission ('KPSC' for short) has sought for quashing the orders passed by the State Chief Information Commissioner by which State Chief Information Commissioner by which State Information Commissioner has directed the petitioner – KPSC to furnish copies of the answer scripts of the private respondents herein.

2. The records reveal that the private respondents in all these matters have written certain examinations conducted by KPSC. The results were announced. However, the private respondents in these matters filed applications before the KPSC to get the copies of the answer scripts for verification. The same has been negatived. Ultimately, the private respondents in all these matters approached State Chief Information Commissioner by lodging the complaints under the provisions of the Right to Information Act, 2005 ('RTI Act' for short) with a prayer that they should be furnished the copies of their answer scripts. The said appeals were allowed and the petitioner – KPSC was directed by the State Chief Information Commissioner to furnish the answer scripts of the private respondents herein.

3. The question as to whether the information as sought for by the private respondents should be furnished by the KPSC or not is no more res integra inasmuch as the said question is fully covered by the judgment of the Apex Court in the case of CENTRAL BOARD OF SECONDARY EDUCATION AND ANOTHER –vs- ADITYA BANDOPADHYAY AND OTHERS reported in (2011)8 SCC 497. In the said decision, the Apex Court has observed thus:

> "26. The examining bodies (universities, Examination Boards, CBSE etc.,) are neither intelligence nor security organisations and therefore the exemption under Section 24 will not apply to them. The disclosure of information with reference to answer books does not also involve infringement of any copyright and therefore Section 9 will not apply. Resultantly, unless the examining bodies are able to demonstrate that the evaluated answer books fall under any of the categories of exempted

"information" enumerated in clauses (a) to (j) of sub-section (1) of Section 8, they will be bound to provide access to the information and any applicant can either inspect the document/record, take notes, extracts or obtain certified copies thereof.

27. The examining bodies contend that the evaluated answer books are exempted from disclosure under Section 8(1)(e) of the RTI Act, as they are "information" held in its fiduciary relationship. They fairly conceded that evaluated answer books will not fall under any other exemptions in sub-section (1) of Section 8. Every examinee will have the right to access his evaluated answer books, by either inspecting them or take certified copies thereof, unless the evaluated answer books are found to be exempted under Section 8(1)(e) of the RTI Act.

36. Section 22 of the RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer books fall under the exempted category of information described in clause (e) of Section 8(1) of the RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer books, even if such inspection or taking copies is barred under the rules/ bye-laws of the examining body governing the examinations. Therefore, the decision of this Court in Maharashtra State Board of Secondary and Higher Education –vs- Paritosh Bhupeshkuamr Sheth – (1984)4 SCC 27 and the subsequent decisions following the same, will not affect or interfere with the right of the examinee seeking inspection of the answer books or taking certified copies thereof. "

Thus it is clear from the aforementioned observations of the Supreme Court that despite the absence of rule compelling the KPSC to provide the answer scripts, the examinees are entitled to copies of the answer scripts under the provisions of the RTI Act. In this view of the matter, the State Chief Information Commissioner is justified in directing the petitioner – KPSC to provide copies of the answer scripts of the private respondents.

Accordingly, the impugned orders need to be confirmed. Hence W .P. No.11043/2008, W.P. 15890/2009, W.P. 15891/2009 and W.P. 15892/2009 are dismissed.

For the very reasons mentioned supra, W.P. No.29681/2009 is also dismissed and consequently the order passed by the State Chief Information Commissioner directing the KPSC to provide marks card of the petitioner in W.P. No.29681/2009 stands confirmed.

ORDER IN W.P. No.13981/2009, W.P. 15893/2009

The private respondents in these matters have sought for answer scripts of third parties. The aforementioned dictum of the Apex Court may not be applicable to these two matters. In the aforementioned judgment, the Apex Court has ruled that the examinee has got right to inspect his/her evaluated answer scripts or take certified copies thereof. The Apex Court has not ruled that any examinee is entitled to get the evaluated answer scripts of the third parties or for taking certified copies of the answer scripts of the third parties. Hence the impugned orders directing the petitioner – KPSC to provide certified copies of answer scripts of the third parties etc., to the private respondents herein cannot be sustained.

It is to be noted that in W.P. No.13981/2009, the private respondent has sought for the name and particulars of the person who sets the question papers etc., in addition to the copies of answer scripts of the third parties. The name of the question paper settler cannot be disclosed in view of the observations made by the Apex Court in the case of CENTRAL BOARD OF SECONDARY EDUCATION AND ANOTHER cited supra. The name of the question paper settler as well as the names of the examiners who evaluated the answer scripts cannot be disclosed as such information is exempted, particularly in view of the fact that the secrecy of such information has to be maintained in the interest of the examinees and the safety of the question paper settler as well as examiners.

Accordingly, the impugned orders are quashed. W.P. No.13981/2009 c/w W.P. 15893/2009 are allowed.

Order in W.P. No.35367/2010

In this writ petition, the petitioner has sought for quashing the order dated 7.5.2010 vide Annexure-E passed by the 3rd respondent – Karnataka Public Service Commissioner/first appellate authority under the provisions of the RTI Act.

The petitioner applied for providing xerox copies of all the answer scripts written by him to the post in question on 15.2.2010 to the Assistant Secretary, Exams Section-

1 of KPSC under the provisions of the RTI Act. The said authority issued an Endorsement on 2.3.2010 stating that it cannot provide the information sought for in view of Section 8(1)(e)(g) and (j) of the RTI Act. Being aggrieved, the petitioner filed an appeal before the Appellate Authority under the provisions of the RTI Act, which came to be dismissed as per Annexure-E dated 7.5.2010 on the ground that the KPSC cannot provide information as sought for inasmuch as the rules of KPSC do not provide for grant of xerox copies/certified copies of the answer scripts of the examinee.

The question involved in this writ petition is squarely covered by the judgment of the Apex Court cited supra. For the very reasons assigned in W.P. No.11043/2008, W.P. 15890/2009, W.P. 15891/2009, W.P. 15892/2009 and W.P. 29681/2009, this writ petition needs to be allowed and the order of the KPSC needs to be set aside. As held by the Apex Court in the aforementioned judgment, the petitioner is entitled to answer scripts.

Accordingly, this writ petition stands allowed. The KPSC is directed to furnish copies of answer scripts of the petitioner.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
Application Nos.2407 to 2409 of 2009
D.D. 09.10.2012
Hon'ble Mr. Justice A.C.Kabbin, Chairman &
Hon'ble Mr. Abhijit Das Gupta, Administrative Member

Smt. Pankaja & Ors. … Applicants
Vs.
State of Karnataka & Ors. … Respondents

A. Selection –Prescribed qualification

Qualification prescribed, as per notification issued inviting applications and relevant recruitment rules to post of Lecturer in Biology, being possession of M.Sc. in Botany or Zoology, whether, applicant who possesses qualification of M.Sc. in Life Science, which has not been declared as equivalent to M.Sc., in Botany or Zoology, by competent authority, can find fault with her non-selection to the post of Lecturer in Biology, howsoever meritorious she may be? No.

Held that it is well settled that a candidate who does not possess prescribed qualification is not eligible for selection and appointment. Applicant who does not possess qualification prescribed cannot find fault with her non-selection.

B. Qualification

Authority competent to declare equivalence of qualification – Whether Courts or Tribunal are competent to declare equivalence of qualification? – No. Held that as per Rule 2 (1)(h) of K.C.S. (General Recruitment) Rules, 1977 authority competent declare equivalence of qualification is Government – It is not for Courts to determine whether a particular qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification.

C. Qualification

Prescription of qualification – Whether Tribunal may direct Government to amend recruitment rules so as to insert M.Sc., Life Science as one of the qualifications for post of Lecturer in Biology? No. Held that prescription of qualification is within exclusive domain of the State and it is not for the statutory Tribunal to direct Government to have a particular recruitment or eligibility criteria or avenue of promotion or impose itself by substituting its view for that of State.

Cases referred:

1. Mohammed Sujatha v. Union of India and others, AIR 1974 SC 1631
2. D.L. Asava v. State of Rajasthan and others, 1982(1) SLR 677

3. Parasappa and others v. State and others, 2009 KSLJ 293
4. State of Rajasthan v. Lata Arun, AIR 2002 SC 2642
5. P.U. Joshi v. Accountant General, (2003) 2 SCC 632
6. Union of India v. Pushpa Rani, 2008 AIR SCW 6564

ORDER

Mr.Abhijit Dasgupta, Hon'ble Administrative Member:

Karnataka Public Service Commission (for short, 'KPSC') which is the Respondent No.3 had issued Notification dated 27.3.2008 inviting applications for selection to 100 posts of Lecturers in Biology in Government Pre-University Colleges. The selection was to be done by conducting competitive examination as provided under the Karnataka General Services (Pre-University Education) (Recruitment) (Amendment) Rules, 2007 (for short, 'the Recruitment Rules'). The applicants were candidates for the said recruitment. All the three applicants possess the qualification of M.Sc., (Life Science). While the applicant No.1 belongs to General Merit category, applicants No.2 and 3 belong to Category-2A/Rural/Kannada Medium. On the basis of the information furnished by them in the applications they were permitted to appear for the competitive examination and thereafter on the basis of the marks secured by the candidates in the competitive examination the applicants were called for verification of original documents. At the time of verification of documents it was found that the applicants do not possess the prescribed qualification, namely M.Sc. (Botany or Zoology) but they possessed M.Sc. (Life Science). On this ground the applicants were treated as ineligible for the post and their names were not included in the provisional select list. Aggrieved by their non-selection and challenging the selection of Respondents No.5 to 8, the applicants have filed the present applications. They have also prayed for a mandamus to the Government to include M.Sc., (Life Science) subject also as one of the eligible criteria for appointment to the post of Lecturer in Biology.

2. The learned Advocate for the applicants contended that the applicants have studied Botany and Zoology as optional subjects in B.Sc., Degree and they are competent to teach Botany and Zoology at Pre-University Education level. They have also studied two years Post Graduation course in Life Science. It is contended that in the first year M.Sc., Degree they have studied the following subjects:

(1) Bio Chemistry and Micro Biology,

(2) Cell and Molecular Biology and Plant Physiology,

(3) Taxonomy and Environmental Biology,

(4) Developmental Biology and Endocrinology and other related subjects

And in the final year M.Sc., they have studied the following subjects:

(1) Genetic and Molecular Genetics and Biophysics,

(2) Animal Physiology, Ethology and Neurobiology,

(3) Immunology and Plant Molecular Biology,

(4) Genetics, Engineering, Aquaculture, Sericulture and Biostatistics and other related subjects.

It is further contended that the applicant No.1 has secured 173.5 marks, applicant No.2 has secured 156.5 marks and in addition he is a gold medalist in M.Sc., Degree and the third applicant has secured 143.75 marks in the competitive examination. The private Respondents have secured lesser marks than the applicants and, hence, the non-selection of the applicants is arbitrary. The learned Advocate for the applicants also contended that the Life Science post graduate course is approved by the University Grants Commission and several Universities. It is also contended that the several candidates who have studied Life Science in M.Sc., Degree and Environmental Science in M.Sc., have been appointed and, hence, non-selection of the applicants is arbitrary. It is finally contended that the KPSC has not considered the objections filed by them and the selection list has been finalized even before completion of 15 days time stipulated for consideration of objections. The learned Advocate for the applicants has placed reliance on decisions of the Supreme Court in MOHAMMED SUJATHA v. UNON OF INDIA AND OTHERS, reported in AIR 1974 SC 1631 and D.L.ASAVA v. STATE OF RAJASTHAN AND OTHERS, reported in 1982(1) SLR 677, wherein the Supreme Court has directed that candidates possessing equivalent qualifications may be considered for selection.

3. Respondents No.1, 2 and 4 who are State and its functionaries have filed a Reply Statement traversing the averments of the applicants. Their only contention is that the applicants do not possess the prescribed qualification and, hence, their non-selection and

the selection of the private respondents who possess the requisite qualification cannot be faulted. It is also contended that the applicants knowing fully well the qualifications stated in the recruitment notification have applied and participated in the selection process and, hence, now they are estopped from contending that their non-selection and the selection of the private respondents is arbitrary.

4. The KPSC has also filed a reply statement denying the contentions of the applicants. There is no dispute about the facts. The contention of the KPSC is that after verification of original documents of the candidates, a letter was written to the Commissioner, Pre-University Education, seeking clarification regarding consideration of candidatures of candidates with Life Science/Bio Science/Micro Biology/Environmental Science in Master's Degree for the post of Lecturer in Biology and the Commissioner in his reply dated 19.3.2009 has clarified that the said subjects have not been prescribed under the Rules nor have they been treated as equivalent qualifications and, hence, question of treating the qualification of M.Sc. (Life Science) as equivalent qualification does not arise.

5. From the contentions of the parties, the following points arise for consideration:

(a) Whether the non-selection of the applicants is bad in law?
(b) Whether the qualification possessed by the applicants can be treated as equivalent qualification?

6. POINT NO.1: The method of recruitment to the post of Lecturer in Government Pre-University Colleges is fifty percent by direct recruitment and fifty percent by promotion. For direct recruitment, the Recruitment Rules inter alia prescribe:

> "In respect of the subject mentioned in column (2) of the table annexed to these rules, must have passed Master Degree in second class in the subject specified in corresponding entries in column (3) of the table annexed to these rules with a Bachelor of Education (B.Ed.,) or its equivalent.
>
> Provided that for a period of four years from the date of commencement of the Karnataka General Services (Pre-University Education) (Recruitment) (Amendment) Rules, 2007, candidates who have not passed B.Ed., or its equivalent may be considered for recruitment subject to the condition that they shall pass B.Ed., Degree or its equivalent examination during the period of four years at their own cost. If they have not passed B.Ed., Degree or its equivalent during the said period they shall be discharged from service."

In the Table annexed to the Recruitment Rules as against the post of Lecturer in Biology, the subjects mentioned are Botany and Zoology. Therefore, in order to be eligible for selection to the post of Lecturer in Biology as per the Recruitment Rules one must possess M.Sc., in Botany or Zoology. Admittedly, the applicants do not possess the said qualification. On the other hand, the private Respondents possess the said qualification. Hence, no fault can be found either with the non-selection of the applicants or the selection of the private respondents. It is well settled that a candidate who does not possess the prescribed qualification is not eligible for selection and appointment, even if he were to be successful in the competitive examination and secure more marks than the selected candidates who possess the requisite qualifications. Therefore, we answer point No.1 in the negative and find no fault with the non-selection of the applicants.

7. POINT NO.2: Admittedly, the qualification of M.Sc., (Home Science) possessed by the applicants is not declared as an equivalent qualification to that of M.Sc., (Botany and Zoology). Any Notification declaring equivalence has to be issued by the Government under Rule 2(1)(h) of the Karnataka Civil Services (General Recruitment) Rules, 1977. The term 'Equivalent Qualification' is defined in Rule 2(1)(h) of the General Recruitment Rules. According to the said Definition, "Equivalent Qualification" means "a qualification notified by the Government to be equivalent to a qualification prescribed in respect of any post in the rules regulating recruitment to any State Civil Services".(See 2009 KSLJ 293 :PARASAPPA AND OTHERS v. STATE AND OTHERS). In the absence of such declaration by the Government whether this Tribunal can declare the equivalence is the question. It is a well settled principle of law that it is not for Courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. In this regard, it is relevant to refer to the following observations of the Supreme Court in the case of STATE OF RAJASTHAN v. LATA ARUN, reported in AIR 2002 SC 2642:

> "9. The points involved in the case are two fold : one relating to prescription of minimum education qualification for admission to the course and the other relating to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad, as equivalent to or higher than + 2 or 1st year of TDC for the purpose of admission. Both these points relate to matters

> in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute. It is not for Courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. That is not to say that such matters are not justifiable. In an appropriate case the Court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates."

Therefore, point No.2 is also answered in the negative and we hold that this Tribunal cannot go into the equivalence of a qualification.

8. The decisions on which the learned Advocate for the applicants has placed reliance are not applicable to the case on hand, as the facts are different.

9. As regards the other contention of the applicants that candidates possessing equivalent examinations have been selected in the present recruitment is concerned, it is open for the applicants to challenge their selections. In the absence of those candidates, this Tribunal cannot go into their alleged selection.

10. The other prayer of the applicants to direct the Government to amend the recruitment rules by inserting the Life Science subject also as eligible criteria for appointment to the post of Lecturer in Biology is beyond the purview of courts.

11. It is well settled that question relating to prescription of qualification is within the exclusive domain of the State and it is not for the statutory Tribunals to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. In this regard, it is worthwhile to quote what the Supreme Court has said in P.U.JOSHI v. ACCOUNTANT GENERAL - (2003) 2 SCC 632 at para 10:

> "We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts,

cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

The aforesaid principle of law has been reiterated by the Supreme Court in UNION OF INDIA v. PUSHPA RANI, reported in 2008 AIR SCW 6564 by stating as follows:

"Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration." (para 29) (underlining by us)

As stated in the aforesaid decisions, the power of judicial review in the matter of prescription of qualifications and conditions of service is very limited.

12. For the reasons stated above, there is no merit in the applications, and accordingly, they are dismissed.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
Application Nos.6911 to 6916/2012 C/W
Application Nos.7180 to 7182/2012
D.D. 11.12.2012
Hon'ble Mr. Justice A.C.Kabbin, Chairman &
Hon'ble Mr. Abhijit Dasgupta, Administrative Member

Vishwanath V.R. & Ors. … Applicants
Vs.
State of Karnataka & Anr. … Respondents

Examination

Postponement of schedule of civil services main examination fixed for selection of Gazetted Probationers – Public Service Commission issued notification dated 03.11.2011 inviting applications to fill up posts of Gazetted Probationers – Preliminary examination was completed on 22.04.2012 and eligibility list for main examination was published on 06.06.2012 and schedule for main examination was fixed between 25.08.2012 and 14.09.2012. On account of stay of High Court examinations schedule was announced after vacation of stay on 17.11.2012 – Some of the applicants requested for postponement of examinations on ground that dates of examination for selection to post of Range Forest Officers, are clashing with civil services examination also that the dates overlap with UGC and other examinations – KPSC after examining requests issued a press statement declining to postpone examination already scheduled– Whether in the circumstances, decision of KPSC in not re-scheduling examination date is arbitrary? No. – Held that at any given time one or other examination fixed in a year may overlap with dates of examinations of Public Service Commission. It would be very difficult to plan examination schedule which does not overlap schedule of other examinations. In addition to this other difficulties of Commission like finding suitable exam hall invigilator, police protection, dates of various elections are to be taken into consideration, - Accordingly decision of Public Service Commission refusing to reschedule examination date does not call for interference.

Cases cited:

1. Lokesha C.K.v. State of Karnataka & others (W.P.No.7749/2005 (GM-RES) decided on 21.1.2005
2. Kumar Nilesh and another v. State of Jharkhand and others, decided on 13.08.2004 (W.P.(c) No.4075/2004
3. Dashrath Singh v. The Union Public Service Commission and another (D.B. Civil Writ Petition No.5693/2003) and
4. Varun Sharma v. Haryana Public Service Commission decided on 29.08.2011 (CWP No.15276/2011)

Cases referred:

1. Lokesha C.K.v. State of Karnataka & others (W.P.No.7749/2005 (GM-RES) decided on 21.1.2005
2. Kumar Nilesh and another v. State of Jharkhand and others, decided on 13.08.2004 (W.P.(c) No.4075/2004
3. Dashrath Singh v. The Union Public Service Commission and another (D.B. Civil Writ Petition No.5693/2003) and
4. Varun Sharma v. Haryana Public Service Commission decided on 29.08.2011 (CWP No.15276/2011)

ORDER

Mr.Justice A.C.Kabbin, Hon'ble Chairman:

These two batches of applications relate to the schedule of main examination fixed for selection of Gazetted Probationers. The prayer is to postpone the main examination.

2. Common questions of facts and law arise for consideration in these two batches of applications and, hence, they were heard together and are decided by this common order.

3. The Karnataka Public Service Commission ('the Commission', for short) issued a Notification on 3.11.2011 inviting applications for 362 posts of Gazetted Probationers. The Preliminary Examination was attended by 1,13,807 candidates and it was completed on 22.4.2012. The eligibility list for the Main Examination was published on 6.6.2012 and applications for the Main Examination were to be submitted on or before 30.6.2012. The Schedule for the Main Examination was published and the Main Examination was scheduled between 25.8.2012 and 14.9.2012. That was published in the Commission's Website on 9.7.2012. However, since a Writ Petition was filed in the Hon'ble High Court in Writ Petition No.10223/2012 on 2.8.2012 and an interim order was granted, a Press Note was issued by the Commission on 9.8.2012 (Annexure A-10 in Applications No.7180-7182/2012) intimating the public as under:

"PRESS NOTE

In compliance of the Hon'ble High Court interim order, Gazetted Probationers Main Examination 2011 for 362 posts, which was scheduled to be held from 25.8.2012 to 14.9.2012, has been postponed. The next date of examination and time table will be announced on the Commission's Website http://kpsc.kar.nic.in.

Sd/-

(V.B.PATIL)
Secretary,
Karnataka Public Service Commission"

The order of stay was later vacated on 10.9.2012. The Writ Petition was dismissed on 16.11.2012. The very next day the Schedule of Examination was published in the Commission's Website on 17.11.2012. Some of the candidates requested for postponement of the Main Examination on the ground that the Examination for selection to the post of Range Forest Officer ('RFO', for short) was scheduled from 15.12.2012 to 19.12.2012 and UGC Examination was scheduled to be held on 30.12.2012. It was also prayed that certain Service Examinations were scheduled on 23.12.2012. Pleading that it would be difficult for many of the candidates to appear for both the Examinations, the schedule of which would overlap, they requested the KPSC to postpone the Main Examination. After examining the matter, information was given in the Press by the Commission that it was not possible to postpone the Examination and that the candidates were at liberty to choose any one of the Examinations (vide Press Note Annexure A-13 and A-14 in Applications No.6911-6916/2012). Aggrieved by the same, some of the candidates filed Writ Petitions No.47554 to 47559/2012 before the Hon'ble High Court of Karnataka. After ascertaining from the Commission about the possibility of postponement of the Examination, the High Court dismissed the Writ Petitions on 29.11.2012 with liberty to the applicants to approach this Tribunal. In pursuance of that order, the Applicants in the first batch of Applications filed Applications No.6911-6916/2012.

4. The ground urged by those Applicants is that in view of overlapping of the Schedule of Examinations for the posts of RFO and Gazetted Probationers, and in view of the date given for the UGC Examination and certain Service Examinations, majority of the

candidates would be handicapped in choosing the examinations and they would not be able to appear for some of the examinations and that, therefore, a direction may be issued to the KPSC to postpone the Main Examination by re-scheduling it.

5. There is another batch of applications by three candidates, that is Applications No.7180 to 7182/2012. Those applicants contend that the KPSC having failed to give a Press Note with regard to the order of the Hon'ble High Court vacating the stay, they have been subjected to discrimination, thereby affecting their preparation for the Examination and that, therefore, to observe the principles of natural justice, it is desirable to postpone the Examination of the Commission.

6. The contention taken by the Commission is that the plea of the applicants has been examined on all angles but that taking into consideration the necessity of conducting the Examination at the earliest, the possibility of one or the other Examination overlapping the schedule of examinations fixed by the Commission, the availability of space for rescheduled examination, and Invigilators and other matters, it is concluded that it was not possible to postpone the examination. It is also contended that if the plea of the applicants is accepted by the Tribunal, it would be difficult for the Commission to fix another schedule which may not clash with one or the other examinations for selection of candidates for some other services. It is also mentioned that the Commission had also to take into consideration the annual examinations of educational institutions which may be scheduled in between March and May. Therefore, it is contended that only because some of the candidates would be handicapped in attending the main examination, they cannot insist for rescheduling the examination.

7. In this regard, we have heard the arguments of Sri K.N.Puttegowda, learned Advocate for applicants in Applications No.6911 to 6916/2012, Sri H.S.Jois, learned Senior Counsel who represented him in arguing on behalf of those applicants and Sri B.M.Shyamprasad, learned Advocate for the Applicants in Applications No.7180 to 7182/2012 and Sri P.S.Rajagopal, learned Senior Counsel for Sri T.Narayanaswamy, learned Standing Counsel for the Commission. It is argued by Sri H.S.Jois, learned Senior Advocate for the applicants that the decision of the Commission taken without taking into

consideration the real grievance of the applicants not only offends the principles of natural justice but also it is arbitrary. In support of his plea regarding principles of natural justice, he has referred to the decision of the Hon'ble Supreme Court in GURMEJ SINGH v. STATE OF PUNJAB AND ANOTHER, reported in (2009) 12 SCC 440. We find on a perusal of that decision that it is with regard to the necessity of giving an opportunity to a police official before initiating prosecution and the observations in that decision are not applicable to the facts of the present case. It is contended by the learned Senior Counsel that the very decision of the Commission in publishing the reschedule of examination on 17.11.2012 immediately the next day of dismissal of the Writ Petition by the Hon'ble High Court of Karnataka indicates arbitrariness. Therefore, he submits that though it is an administration decision, since it is arbitrary the Tribunal may interfere in the matter. Supplementing his argument, it is argued by Sri B.M.Shyamprasad, learned Advocate for the applicants in the second batch of applications that the Commission failed in its duty in issuing a Press Note immediately after the stay was vacated in the Writ Petition on 10.9.2012 and, therefore, these candidates were not aware of the impending examination till the Commission published in the Website the fresh schedule on 17.11.2012. He contends that this created discrimination between the candidates who were aware of the stay having been vacated on 10.9.2012 and the candidates who did not come to know of that factor till 17.11.2012. He submits that this discrimination handicapped these candidates in preparation for examination and, therefore, the decision of the Commission to go on with the examination as rescheduled offends principles of natural justice. He prays for a direction to the Commission to postpone the Examinations.

8. It is pointed out by Sri P.S.Rajagopal, learned Senior Advocate representing the Commission that there was no obligation on the part of the Commission to give a Press Note and the Press Note given for postponement of examination earlier was necessitated by the order of stay granted by the Hon'ble High Court. From the Press Note (Annexure A-10) he points out that it clearly indicates that the schedule of the main examination would be published in the Commission's Website. That had already been mentioned by the Commission in the Instructions Manual given to the candidates. He submits that, therefore, it cannot be said that by not issuing a Press Note in pursuance of the order of the Hon'ble

High Court on 10.09.2012 vacating stay order, discrimination was shown by the Commission to the candidates who were in know of order dated 10.9.2012. He submits that when the main examination was scheduled in the first instance, every candidate prepares for the main examination and the stay order of the Hon'ble High Court was only a stop gap, which every candidate was aware and that, therefore, it cannot be said that there was any discrimination exhibited by the Commission.

9. As regards the alleged arbitrariness by the Commission as alleged by the applicants in the first batch of applications, Sri P.S.Rajagopal, learned Senior Advocate submits that though on the very next day of dismissal of the Writ Petitions the schedule of the examination was published on 17.11.2012, arrangements and plans for the conduct of the main examinations were being worked out from 10.9.2012, the date on which stay order was vacated by the Hon'ble High Court of Karnataka. It cannot, therefore, be said that the decision of the Commission was arbitrary.

10. We have considered both the contentions. As regards the RFO Examination the total number of candidates who had qualified for the main examination was 620. The candidates who have qualified for the present main examination of the Commission are 7188 and the applicants who have submitted applications for the main examination of the Commission are 6751. Therefore, it cannot be said that majority of the candidates will be handicapped in attending the main examination of the commission.

11. As rightly pointed out by the learned Senior Counsel for the Commission, the schedule of examinations has to be fixed by the Commission and unless there are materials to show that it is mala fide or wholly unreasonable affecting the rights of the candidates, a judicial forum should not interfere in administrative decisions. If taking into consideration the grievance of the applicants, the main examination is to be postponed it would affect the prospects of more than 6000 candidates. At any given time one or the other examination fixed in a year may overlap with the dates of such examinations and if the Commission is to be directed to adopt the method of planning an examination schedule, which does not overlap the schedule of other examination, it would be very difficult, if not impossible, for the Commission to fix the schedule. In addition to this difficulty, the Commission has to

take into consideration the availability of examination halls, the number of invigilators who would be available, the police force that has to be deployed, the dates of elections that are liable to be fixed during that period. Therefore, it will be a difficult task for the Commission to fix dates of examinations which do not clash with the dates of other examinations. In such matters, the decision of the selecting authority should not be interfered with by judicial forums. On consideration of all the materials, the Commission has come to the conclusion that it is not possible to postpone the examination. We do not find any ground to interfere in that decision.

12. As regards the contention of the second batch of applicants that there is discrimination, we find no such discrimination. The first paper publication issued by the Commission about postponement of the schedule of the main examination was in view of the stay order granted by the Hon'ble High Court, as such press note was absolutely necessary to inform the candidates about postponement of examination. For the next schedule, the press note itself indicated that it would be published in Commission's Website When that publication itself indicated that the next schedule would be published in the website of the commission, it is the duty of the candidates to look to the Website. On the ground that the Commission has not given press note with regard to the rescheduling of the examination or the fresh schedule we find no such discrimination and the plea of the applicants is imaginary.

13. In this regard, the learned Senior Counsel for the Commission has referred to the following decisions:

(1) LOKESHA. C.K. Vs. STATE OF KARNATAKA & 2 OTHERS {W.P.No.7749 of 2005 (GM-RES)} decided on 21.1.2005 the Karnataka High Court;

(2) KUMAR NILESH & ANOTHER Vs. STATE OF JHARKHAND & OTHERS decided on 13.8.2004 {W.P.(C) No.4075/2004};

(3) DASHRATH SINGH Vs. THE UNION PUBLIC SERVICE COMMISSION & ANOTHER (D.B.CIVIL WRIT PETITION No.5693 of 2003) and

(4) VARUN SHARMA Vs. HARYANA PUBLIC SERVICE COMMISSION decided on 29.8.2011 (CWP No.15276/2011).

In the decision in LOKESHA. C.K. Vs. STATE OF KARNATAKA & 2 OTHERS {W.P.No.7749 of 2005 (GM-RES)} decided on 21.1.2005 the Karnataka High Court rejected the prayer of such an applicant, who was a candidate for the post of Gazetted Probationers (Preliminary) Exam-2005 for postponement of the examination scheduled. He had claimed postponement of the examination on the ground that he had to cast his ballot in Grama Panchayat election. Since it was a flimsy ground advanced by the candidate, that decision may not be applied here. However, in a decision of the Jharkhand High Court in KUMAR NILESH & ANOTHER Vs. STATE OF JHARKHAND & OTHERS decided on 13.8.2004 {W.P.(C) No.4075/2004} a similar prayer for re-scheduling the examination on the ground that it would clash with University Examinations was considered and it is observed as follows:

> "In my opinion, this Court cannot order re-scheduling of the examination only because in case of few students like petitioners the dates of examination may clash. Nothing has been brought to show that the University and Jharkhand Public Service Commission should consult before announcing the dates of examination."

In a Division Bench decision of High Court of Judicature for Rajasthan at Jodhpur in DASHRATH SINGH Vs. THE UNION PUBLIC SERVICE COMMISSION & ANOTHER (D.B.CIVIL WRIT PETITION No.5693 of 2003) the observations on a similar question were as under:

> "Having heard learned counsel for the petitioner, we see no merit in this public interest litigation. The petitioner wants to alter and reschedule the dates either of U.P.S.C. or R.P.S.C. to make it convenient for candidates to take both the examinations viz. R.A.S. Exam. 2003 to be conducted by RPSC and Central Police Forces (Asst. Commdt.) Examination, 2003 by U.P.S.C. The examinations are to commence from 12.10.2003.
>
> Undoubtedly, the petitioner may be in dilemma to make up his mind. However, it is important to bear in mind that both the Public Service Commissions are independent autonomous bodies and are entitled to determine their own calendar of various examinations that are conducted by them. In both the examinations, the candidates from all over the country are eligible to participate depending upon the option of the candidates. The dates are already notified in advance for holding examinations. Large number of candidates are involved who too must have made their arrangements to take examinations at one place or another. Such dates cannot be altered to detriment of large number of people who have accordingly chartered out there programmed for taking

those examinations. Every candidate has a choice to chose his priority and appear in the examination which may be held at one time.

Public Service Commissions of the different State and Union Public Service Commission, for that matter, like Universities are not required to under any objections to keep calendar of all other such bodies holding examinations for offering employment. Offering of opportunities by each one of them is open to all. It is for the candidates to opt, which he wants to avail. The calendar of dates fixed by different agencies are bound to clash some time.

In our opinion, it is not and fair demand on different Public Service Commissions to make it imperative for them to fix programmes of various examinations to be held by them in consultation with all other State Public Service Commission and not to hold examinations at one and same time in the infructuate the whole process for selection of candidates which has been set in motion and delay the recruitment to the detriment of all concerned including proper administration.

In this case the competing dates are fixed by UPSC and RPSC. In given case when applications are invited on all India basis by State Public Service Commission, same situation may arise in calendar of examinations fixed by different State Public Service Commissions.

To hold that no such two examinations in which candidates on all India basis are entitled to appear to be held on same date is to deny the independent functioning of different autonomous bodies."

In a decision of Punjab and Haryana High Court in VARUN SHARMA Vs. HARYANA PUBLIC SERVICE COMMISSION decided on 29.8.2011 (CWP No.15276/2011) the following observations were made:

"The petitioners want the postponement of the examination, which is scheduled under the HCS (Judicial Branch) Preliminary Examination, 2011 fixed for 4.9.2011. The contention is that on the same day the examination is also set for the Himachal Pradesh Administrative Service Combined Competitive (Preliminary) Examination of 2010. The petitioners would state there are several candidates, who would be applying for the same and there would be no other option for them but to choose to appear in only one of them. The petitioners who are two persons cannot seek for postponement merely because they have applied for two competitive examinations which are going to be held on the same day. There are bound to such clashes where several examinations are held for various departments and it is impossible for anyone to run through a check and find that no other examination is set for the same day. It shall be left to the petitioners to choose between either one of them. There is no enforceable right for the petitioners to seek for postponement. The writ petition is dismissed."

On a perusal of the same, we are of the opinion that in matter of fixation of examination schedule by the Commission, Judicial Forum should not interfere except where the rights of the parties are affected or that fixation of the schedule is wholly unreasonable or illegal. We may observe that no right of the applicants is affected. They are at liberty to opt for one of the examinations. The inconvenience pleaded by them is not sufficient to re-schedule the examination since it is dependent on many factors as discussed above. Even the plea of the applicants in the second batch of applications is also found to be imaginary.

14. Sri K.N.Puttegowda, learned counsel for the applicants in the first batch of applications referred to Rule 4 of the Karnataka Public Service Commission (Conduct of Service Examinations) Rules, 1965 wherein the examinations mentioned therein have to be conducted by the Commission. It is contended that the Commission did not fix the schedule but the Deputy Secretary of the Commission having fixed the schedule it is not in accordance with the Karnataka Public Service Commission (Conduct of Service Examinations) Rules, 1965. The schedule published and signed by the Deputy Secretary of the Commission is the schedule as approved by the Commission. It is pointed out by the learned senior counsel for the Commission that under Section 4 of the Karnataka Public Service Commission (Conduct of Business and Additional Functions) Act, the Chairman or in his absence the next Senior Member may deal with any urgent matter appearing to him to require immediate action and such action shall be reported to the Commission as early as possible. He submits that after considering all the aspects this schedule has been fixed. We find that there is nothing to show that the decision was not by the Commission vitiating the schedule so fixed.

Therefore, we find that both these two batches of applications are devoid of merits and consequently we dismiss all the applications.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
Writ Petition No. 9339 of 2012 (S-KAT)
D.D. 03.01.2013
The Hon'ble Mr.Justice N.K.Patil &
The Hon'ble Mrs.Justice B.S.Indrakala

KPSC … Petitioner
Vs.
Sangappa & Ors …. Respondents

Reservation

Modification in reservation category during selection process – Whether Karnataka Public Service Commission was justified in rejecting request of petitioner for modification in reservation category from II A KMS Rural to II A KMS, if petitioner, immediately after publication of provisional select list, on coming to know that he does not belong to Rural category, by submitting a representation, requested for modification, merely on ground that once a candidate seeks reservation under a particular category, he shall not seek modification, when the recruitment process is in progress? No. – Whether reasoning given by Karnataka Administrative Tribunal for issuing directions to modify reservation category of the petitioner is just and reasonable? Yes.

Held:

7. The Tribunal has rightly pointed out that there is a slight difference which justifies the prayer of the first respondent. He has claimed reservation under 2A/KMS/Rural. His claim under rural category was in view of his study in a school in a rural area. He has contended that subsequently, he came to know that the school in which he studied in Guledagudda for one year was not in a rural area. Therefore, he claimed under 2A/KMS before the final Selection List was published. He has made his request immediately after the provisional select list was published. When he had made the request after the provisional select list, same ought to have been considered under the peculiar facts and circumstances of the case. First respondent though has been selected in the final select list has not been given appointment order on the ground that he studied for one year at Guledagudda which was not a rural area and accordingly, allowed the said application, quashed the impugned endorsement dated 11.08.2009 issued by the KPSC and directed the KPSC to consider the claim of the applicant under Category 2A/KMS and re do the list after issuing such notices as may be necessary to the affected candidates and the said exercise shall be completed within three months from the date of the said order. The reasoning given by the Tribunal for allowing the application and issuing such a direction to the KPSC is just and reasonable and, therefore, it does not call for interference, at this stage.

O R D E R

N.K.Patil, J.

The petitioner in this petition has sought for quashing of the order dated 23/11/2011 passed by the Karnataka Administrative Tribunal, Bangalore, in Application No.3408/2010 filed by the R1 herein vide Annexure-C.

2. The applicant- first respondent herein, assailing the selection made in so far as the 4th respondent is concerned and also seeking a direction to the respondents to consider his case under Group –IIA Kannada Medium only and to issue appointment order or in the alternative, to direct the respondents 1 to 3 therein to re-consider the select list considering his selection and appointment under Group-II A KMS category only, has filed an application before the Karnataka Administrative Tribunal, Bangalore, in Application No. 3408/2010, contending that, applicant is a Primary School Teacher, he was one of the candidates for the post of High School Head Masters. He had claimed reservation under category - 2A/KMS/Rural. The reason for claiming reservation under Rural Category was that he had studied from 1st to 10th Standard in a school in rural area i.e., Konkanakoppa in Badami Taluk. However, he had studied 5th standard in Guledagudda and on the basis of the certificate issued by the concerned authorities that Guledagudda is a rural area, he had claimed reservation under Rural Category. Thereafter, he detected that Guledagudda was not a rural area and therefore, he gave a representation on 15.6.2009 few days after the provisional select list was published on 01.06.2009 to consider his candidature under category 2A/KMS. His name had figured in the provisional select list under category-2A-Rural.

3. It is the further case of the applicant-first respondent that, immediately, he has filed an application before the Tribunal in No.2984/2009 contending that he has given a representation claiming reservation only under Category-2A/KMS and ignoring it, selection has been made under 2A category/Rural. The said application was allowed by the Tribunal by order dated 21.7.2009 and a direction was issued to the KPSC to consider his request and take a decision. The KPSC after examining the matter has given an

endorsement in No.E(1)7808/2009-10/PSC, dated 11.8.2009 stating that applicant had been selected under Category-2A Rural and that when a candidate seeks reservation under a particular category, he cannot ask for consideration under a different category which is under challenge. Therefore, he prayed that the said application may be allowed.

4. The said application had come up for consideration before the Tribunal on 23rd November 2011. The Tribunal, after hearing both sides and after considering the material available on record, allowed the said application, quashed the impugned endorsement dated 11.8.2009 and directed the KPSC to consider the claim of the applicant-first respondent under Category-2A/KMS and redo the list after issuing such notices as may be necessary to the affected candidates and the said exercise shall be completed within three months from the date of the said order. Being aggrieved by the said order, 4th respondent-petitioner has presented this petition.

5. Learned counsel appearing for the petitioner Sri. Reuben Jacob, at the outset, submitted that the direction issued by the Tribunal is erroneous in nature and it is not sustained and is liable to be set aside. To substantiate the said submission, he submitted that, the case of the first respondent herein has been considered and his name has been shown in the provisional list under category 2A Rural quota. Applicant-first respondent has given representation claiming reservation only under category 2A/KMS which has been considered and an endorsement has been issued on 11.8.2009 stating that he has been selected under 2A Rural and that when he has sought reservation under a particular category, he cannot seek for consideration under different category, after considering the horizontal and vertical reservation as permissible under relevant Rules and if his request has been considered, the case of the 4th respondent has to be discontinued, who on the basis of final selection list was discharging his duties. But this aspect of the matter has not been considered or appreciated by the Tribunal while issuing directions to the Commission. Therefore, he submitted that the impugned order passed by the Tribunal is liable to be set aside.

6. Per contra, learned Government Pleader appearing for 2nd respondent, inter-alia, contended and substantiated that the order passed by the Tribunal is just and reasonable

and after due consideration of the stand taken by the respective parties and after assigning cogent and valid reasons in paras 4 and therefore, it does not call for interference. Nor the petitioner has made out any good grounds to entertain the relief sought in this petition.

7. After hearing the learned counsel for the parties and after careful perusal of the order impugned dated 23.11.2011 passed by the Tribunal, we do not find any error, much less material irregularity as such committed by the Tribunal in allowing the said application and issuing such a direction. It is specifically pointed out by the counsel who represented the petitioner before the Tribunal that, if once a candidate has claimed reservation under a particular category, he cannot change the version and claim reservation under a different category. The Tribunal has rightly pointed out that, there is a slight difference which justifies the prayer of the first respondent. He has claimed reservation under 2A/KMS/Rural. His claim under rural category was in view of his study in a school in rural area. He has contended that subsequently, he came to know that the school in which he studied in Guledagudda for one year was not in a rural area. Therefore, he claimed under 2A/KMS before the Final Select List was published. He has made his request immediately after the provisional select list was published. When he had made the request after the provisional select list, same ought to have been considered under the peculiar facts and circumstances of the case. First respondent though has been selected in the final select has not been given appointment order on the ground that he studied for one year at Guledagudda which was not a rural area and accordingly, allowed the said application, quashed the impugned endorsement dated 11.8.2009 issued by the KPSC and directed the KPSC to consider the claim of the applicant under Category 2A/KMS and re do the list after issuing such notices as may be necessary to the affected candidates and the said exercise shall be completed within three months from the date of the said order. The reasoning given by the Tribunal for allowing the application and issuing such a direction to the KPSC is just and reasonable and therefore, it does not call for interference, at this stage. Nor the petitioner has made out any good grounds to entertain the relief sought in this petition. Hence, we decline to entertain the relief sought in this petition. Accordingly, the writ petition filed by the petitioner is dismissed.

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SUPREME COURT OF INDIA
Special Leave to Appeal (Civil) Nos.26852-26867 of 2011
D.D. 01.04.2013
Hon'ble Mr. Justice G.S.Singhvi &
Hon'ble Mr. Justice Kurian Joseph

N.Govindaraju & Ors. … Petitioners
Vs.
KPSC & Ors. … Respondents

A. Impleading

Non-impleadment of selected candidates while challenging selections – Whether order of Tribunal annulling selections, while deciding applications for interim relief, without insisting to implead selected candidates as parties, by merely indicating that appointments made henceforth will be subject to final adjudication of original application, sufficient to relieve petitioners of obligation to implead selected candidates as parties? No. Held that order passed by Tribunal in nullifying selections suffers from fundamental flaw of non-impleadment.

B. Selection

Drug Inspectors – Validity of order of Tribunal setting aside selection of Drug Inspectors challenged before High Court – High Court upholding selections made on basis of marks secured by candidates in qualifying examination but without taking into consideration requirement of 3 years experience prescribed under Rule 12 of 2002 Rules – Appellants who failed to raise issue before High Court that in terms of Karnataka Health and Family Welfare Services (Drug Control Department non-teaching Staff) (Recruitment) Rules, 2002, a special rule, having overriding effect over the Karnataka Civil Services (Direct Recruitment by competitive examination and selection) (General) Rules, 2006, possession of three years experience for consideration for selection is mandatory, whether can contend that High Court committed an error in upholding selections? No.

ORDER

These petitioners are directed against order dated:13.06.2011 passed by the Division Bench of the Karnataka High Court whereby the writ petitions filed by the official and the private respondents were allowed and the order passed by the Karnataka Administrative Tribunal (for short, the Tribunal) quashing the selection of the private respondents for appointment on the posts of Drug Inspector was set aside.

We have heard Mr.K.Radhakrishnan, learned senior counsel appearing for the petitioners at some length and carefully perused the impugned order.

In our opinion, the order passed by the Tribunal suffered from the fundamental flaw of non impleadment of the selected candidates as parties to the original application filed by the petitioners. Although, the Tribunal had while deciding the application for interim relief filed by the petitioners indicated that the appointments made henceforth will be subject to final adjudication of the original application, that was not sufficient to relieve the petitioners of their obligation to implead the selected candidates as parties and in their absence, the Tribunal could not have nullified the selection made for appointment on the posts of Drug Inspector.

Mr.Radhakrishnan, learned senior counsel for the petitioners did argue that the Karnataka Health and Family Welfare Services (Drug Control Department Non-teaching Staff) (Recruitment) Rules, 2002, which are in the nature of special rules have overriding effect over the Karnataka Civil Services (Direct Recruitment by Competitive Examinations and Selection) (General) Rules 2006, and the selection made de-hors the 2002 Rules are nullity, but we are not inclined to entertain this argument because no such point was raised before the High Court.

We are further of the view that the High Court did not commit any error by holding that in terms of Rules 5 and 6 of the 2006 Rules, the selection was to be made on the basis of the marks secured by the candidates in the qualifying examination and not by taking into consideration 3 years experience prescribed under Rule 12 of the 2002 Rules or the provisions contained in the Drugs and Cosmetics Rules, 1945.

With the above observation, the special leave petitions are dismissed.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
A.Nos.3389, 3390, 3392 to 3401, 3405 to 3411 of 2004 c/w
A.Nos.3964 to 3969 of 2004
D.D. 02.04.2013
Hon'ble Mr. Justice A.C.Kabbin, Chairman &
Hon'ble Smt.Usha Ganesh, Administrative Member

Sri Malatesh Guttal & Ors. … Applicants
Vs.
K.P.S.C. & Anr. … Respondents

A. Examination

Cancellation of examinations and ordering for re-examination – Whether merely on ground of translational mistakes in Kannada version of question papers can it be said that candidates who wrote civil services examination in Kannada version were handicapped and because of which candidates who had written examination in English version had an edge over them, when quality of standard of translation was not such that one does not understand the meaning behind those questions after one compared them with English version available on back of each such question paper and when immediately after detecting the translational mistakes they were corrected and extra grace time was given to candidates to compensate time that had been lost? No. – Whether in the circumstances the said lapse can be held to be sufficient to affect performance of candidates so as to order for cancellation of whole examination process and order for re-examination? No.

Held:

Quality of standard of translation being though not of required standard, they were not such that one cannot understand meaning behind those questions after one compared them with English version available on back of each such question and immediately after detecting mistakes they were having been corrected and extra time given to candidates to compensate time that had been lost held that the said lapse cannot be sufficient to affect performance of candidates so as to order for cancellation of while examination process and order for re-examination.

Held:

"6.2 In a competitive examination, any lapse on the part of the selecting authority will have to be considered to determine to what extent that lapse affected the performance of candidates. If lapse was such that it would not affect the performance of such candidates, materially, such lapse will not be sufficient to cancel the whole examination. Considering the number of questions wherein the defective translation had been made, which were not many and the correct meaning that can be understood by the candidates after comparing

the concerned questions with the English version we do not find that these mistakes handicapped materially the candidates who wrote in Kannada language.

6.3 The KPSC has shown that immediately after the mistakes were detected, the mistakes were corrected. It is also stated that wherever time had been lost by the candidates, it was made up by giving grace time. Therefore, we find that the translation mistakes were not sufficient to cancel the whole selection process and order for re-examination. Point No.1 is answered in the negative."

B. Evaluation of answer scripts

Whether merely on ground that candidates have performed better in one particular subject, may an inference could be drawn that evaluation in certain subject gives an edge over other subjects? No. - Held that mere chances of a candidate scoring higher marks in one subject, when candidates had at their own volition opted for a particular subject, cannot be a ground to dub it as discriminatory and complain that a candidate opting for a different subject has an advantage.

C. Method of evaluation

Whether candidates may seek directions for adoption of particular method of evaluation contending that present method adopted is not proper? No. – Held present method of evaluation being neither arbitrary nor discriminatory, held that no such directions could be given.

> " 8.1 The main stress by the learned counsel for the applicants is regarding the prayer to direct subject-wise scaling and moderation. In that regard, main reliance has been placed on the decision of the Supreme Court in Sanjay Singh and another v. U.P. Public Service Commission & Another, {(2007) 3 SCC 720}. In that case, the Supreme Court on considering the particular recruitment to the posts of Civil Judges (Junior Division) in Uttar Pradesh held that the scaling system adopted by the Uttar Pradesh Public Service Commission was unsuitable in regard to the selection of Civil Judges Junior Division. It directed moderation. We may observe here that in conclusion a specific direction was made by the Supreme Court in that case that it would not affect the selections/ appointments already made in 2003 examination. The present recruitment was between 2002 and 2004. That decision of the Supreme Court in Sanjay Singh's case rendered at a later date, i.e., on 09.01.2007 does not affect the method adopted by the KPSC between 1999 and 2004. As to whether scaling method is proper or moderation is proper is a question of policy. It depends on the particular service also. The Supreme Court in P.U. Joshi and others v. Accountant General, Ahmadabad and others, (2003 SCC (L&S) 191) has observed as follows:
>
> 'Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and

other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunal, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State.'

8.2. Since we find that the present method is neither arbitrary nor discriminatory, we find absolutely no substance in the contention of the applicants that the method adopted was nor proper. Point No.3 is, therefore, answered in the negative."

Cases referred:

1. Marripati Nagaraja & Others v. Government of A.P. & Others, (2007 AIR SCW 6861)
2. Sanjay Singh & Another v. U.P. Public Service Commission & Another {(2007) 3 SCC 720}

O R D E R

A.C.Kabbin, Chairman

These applicants were candidates for the posts of Gazetted Probationers Group-A and B called for by the Karnataka Public Service Commission (for short 'KPSC') in notification No.E(1)51/PSC/99-2000 dated 15.12.1999 (Ann-A1). The last date for submission of applications was 22.1.2000 and it sought to fill up 95 vacancies in Group-A and 95 in Group-B. The preliminary examination was held on 12.3.2000 and 73691 candidates took the preliminary examination. The results of the preliminary examination were declared on 3.4.2002. The main examination was held between 27.7.2002 and 26.8.2002. The result of the main examination as declared on 28.2.2004. The provisional list of candidates with total marks secured was published in notification no.E(1)645/2003-2004/PSC dated 28.2.2004 (Ann-A2). It is that notification that has been challenged in these batches of applications, with a further relief for directing the respondent no.1-KPSC to revalue the papers pertaining to subjects of criminology, anthropology, general studies, history, sociology, public administration, economics, geography and political science and to direct investigation into the process of evaluation by the respondent no.1 by an independent body.

Further prayer that respondent no.1 be directed to adopt subject wise scaling, moderation and other methods as suggested by the Hon'ble High Court of Karnataka in Writ Petitions no.12548 & 12549 of 2002 and other connected matters, disposed of on 11.10.2002. In effect, relief sought is for a direction to conduct the main examination afresh.

2. The grounds urged for these reliefs may be briefly stated as follows:

(1) Majority of the applicants have written the examination in Kannada language. They have been discriminated as compared to the candidates who have written the examination in English language;

(2) Some questions in Kannada question papers were incorrect, vague and were incapable of conveying proper meaning;

(3) Persons who had been entrusted with the work of framing the question papers appeared to be not well versed in Kannada language and the questions in English language have been literally translated into Kannada which do not convey proper meaning and therefore the candidates who wrote in Kannada language were put to disadvantageous position;

(4) There was no correct translation in Kannada question papers pertaining to General Studies papers-1 & 2, Criminology, Anthropology, Economics, Sociology;

(5) In respect of Anthropology, Economics, Sociology, certain questions were orally directed to be altered after the candidates had written the examination for about an hour;

(6) In respect of subject Public Administration, a separate table was given altering the question paper after the candidates had written the examination for an hour;

(7) Marks have been deliberately brought down in respect of the above subjects;

(8) Answer papers in Criminology were valued by persons who were not competent to value the same.

3. While denying the contentions of the applicants, the contentions taken by the respondent no.1-KPSC may be briefly stated as follows:

"It is true that there are some mistakes in Kannada version of question papers pertaining to General Studies papers-1 & 2, Criminology papers-1 &

2, Anthropology papers-1 & 2, Economics papers-1 & 2 and Sociology papers-1 & 2 as highlighted by the applicants, but it is denied that the applicants who have written the examination in Kannada language have been discriminated as compared to the English medium candidates. Each question paper contains both versions, i.e., English version on one side and Kannada version on the other. As all the candidates including the candidates who have chosen to write the examination in Kannada language know English language, there is no question of Kannada medium candidates being misled due to translation mistake. All the Kannada medium candidates have attempted and answered questions after fully understanding the questions. If such applicants have secured low marks in these subjects it is because of poor quality of answers and not because of translation mistakes in question papers. Out of 23 applicants, 11 applicants have written the main examination in Kannada language and 10 applicants have written in English medium. One applicant, viz., Sri N.S.Chidananda being not eligible for the main examination has not appeared for the main examination. It is not the case of the applicants that 10 applicants who have written in English medium have been benefited and gained advantage over 11 who have written in Kannada medium. As regards the allegation regarding alteration in question papers, soon after the commencement of the examination after coming to know of the translation mistakes in question papers, the KPSC took immediate steps to rectify the mistakes as per Ann-A20 to A31. Rectifying the translation mistakes does not amount to alteration of question papers. Model answers both in Kannada and English had been given to evaluators. Therefore, apprehension of the applicants is unfounded. The allegation that evaluation has been made several times with strict instructions to the evaluators that they should not normally give marks more than 200 in respect of subjects like, Anthropology, Criminology, Economics, History, Public Administration, Political Science, etc., is denied as the allegation is imaginary. The allegation that criminology papers have been valued by retired police officers is denied as false. The allegation that the candidates who have opted for subjects History, Agriculture and Marketing have secured more marks as compared to other optional papers because the evaluators, whom certain candidates had known, have awarded higher marks is also false. As regards scaling method, they are advocating inter subject scaling and not specialized scaling method as alleged by them. Inter subjects scaling had not been adopted at any time by the KPSC. Evaluation has been made following strict method of evaluation and no irregularity has been committed. The contentions taken by the applicants are imaginary."

4. We have heard the arguments of Sri D.R.Ravishankar, learned counsel for applicants in A.No.3389, 3395, 3396, 3398, 3400, 3406, 3409, 3410 & 3411 of 2004, Sri M.R.Rajagopal, learned counsel for applicants in A.No.3390, 3392, 3393, 3394, 3397, 3399, 3401, 3405, 3407 & 3408 of 2004, Sri S.Victor Manoharan, learned counsel for applicants in A.Nos.3964 to 3969 of 2004, Sri S.M.Chandrashekar, learned Senior Counsel

for Sri T.Narayanaswamy, learned counsel for respondent no.1-KPSC and Sri N.B.Patil, learned Government Pleader for respondent no.2.

5. The points that arise for consideration are:

(1) Whether the translation mistakes in Kannada version were sufficient to hold that the candidates who wrote in Kannada language were handicapped in writing answers requiring reexamination?

(2) Whether there is any substance in the contention of the applicants that evaluation in certain subjects gave an edge over other subjects?

(3) Whether there is any need to direct subject-wise scaling and moderation in the evaluation method as prayed for by the applicants?

Point No.1:-

6.1 Sri D.R.Ravishankar and Sri M.R.Rajagopal, learned advocates, who led the arguments on behalf of the advocates representing the applicants stressed regarding certain mistakes which were in Kannada version of question papers. We have gone through those mistakes. We find that the translation of certain questions in Kannada was not up to the mark, as admitted by the KPSC, but there was English version of questions on the back page of each such question and therefore the confusion, if any, would not survive if it was compared to the question in English. To certain extent, there is substance in the contention of the applicants that the translation of certain questions was not of required standard, but we do not find that sub-standard translation in certain questions in the present case was such that one does not understand the meaning behind the questions after one compared it with English version of questions. The mistakes were not sufficient to hold that the applicants were handicapped by that poor quality translation to certain questions. In fact, the KPSC has admitted its lapse and has assured that in future such mistakes will not happen.

6.2 In a competitive examination, any lapse on the part of the selecting authority will have to be considered to determine to what extent that lapse affected the performance of candidates. If lapse was such that it would not affect the performance of such candidates,

materially, such lapse will not be sufficient to cancel the whole examination. Considering the number of questions wherein the defective translation had been made, which were not many and the correct meaning that can be understood by the candidates after comparing the concerned questions with the English version we do not find that these mistakes handicapped materially the candidates who wrote in Kannada language.

6.3 The KPSC has shown that immediately after the mistakes were detected, the mistakes were corrected. It is also stated that wherever time had been lost by the candidates, it was made up by giving grace time. Therefore, we find that the translation mistakes were not sufficient to cancel the whole selection process and order for re-examination. Point no.1 is answered in the negative.

Point No.2:-

7.1 The contention of the applicants that the evaluation in some of the subjects gave undue advantage to certain candidates has been denied by the KPSC. There is no material to show that the candidates who wrote the examination in certain subjects had an edge over other candidates. In a competitive examination, where different optional subjects are available, performance will be different and only because candidates in one subject had secured more marks or more number of candidates had been successful, itself does not make the method unscientific or unworkable. Equal opportunity had been given to candidates and as submitted by the KPSC proper evaluation had been done in all subjects.

7.2 At the time of arguments, it was mentioned on behalf of the applicants that large scale irregularities had been detected in both the recruitments of 1998 and 1999 batches of recruitment to the Gazetted Probationers Group-A and B posts and that the matter is under consideration of the High Court in W.P.No.11550 of 2008 coupled with W.P.No.9098 of 2009 and connected matters. An investigation had been directed, which confirmed complicity of certain officers of KPSC in giving undue preference to certain candidates. Further action is being taken in the matter as per the direction of the High Court. It may be mentioned here that the malpractice, which according to the investigation allegedly took

place at that time was not regarding mistakes in question papers, evaluation method or the process adopted in selection, but regarding deliberate manipulation of answer papers of certain candidates by some KPSC employees to favour those candidates. In respect of those allegations, the High Court in the writ petition will pass appropriate order, but so far as the matter concerned in these applications, namely, candidates who attempted questions in Kannada version were handicapped, certain subjects had an edge over other subjects, papers in certain subjects were evaluated by incompetent evaluators, evaluation method was not proper, that investigation ordered by the High Court in the writ petition has no connection.

7.3 There is no material to show that candidates in certain subjects had advantage over candidates in other subjects. It may also be observed that mere better performance of candidates in one particular subject cannot be the basis for drawing an inference in this regard. When option is given to choose one or more subjects out of several subjects, marks obtained in those subjects only become relevant for considering the purpose of determining the eligibility of the candidate in the said examination. It is observed by the Supreme Court in MARRIPATI NAGARAJA & OTHERS Vs. GOVT. OF A.P. & OTHERS (2007 AIR SCW 6861) that where candidates are given equal opportunity, there cannot be any discrimination. The possibility that a candidate opting for a particular subject may score more than a candidate opting for other subject is not the criteria to determine the question of an equal opportunity. Every method has advantages and disadvantages. The Government while framing the rules eliminates as many disparities as possible. Therefore, mere chance of a candidate scoring in one subject does not make comparison of marks in different subjects discriminatory when the candidate had at his own volition opted for a particular subject. Therefore, he cannot complain that candidate opting for a different subject has an advantage. If review of performance in an examination reveals the necessity of improvement in the examination system, corrective steps have to be taken, but selection itself does not become invalid on such claim. We find in the present case the claim of the applicants imaginary. We, therefore, answer Point No.2 in the negative.

Point No.3:-

8.1 The main stress by the learned counsel for the applicants is regarding the prayer to direct subject-wise scaling and moderation. In that regard, main reliance has been placed on the decision of the Supreme Court in SANJAY SINGH & ANOTHER Vs. U.P. PUBLIC SERVICE COMMISSION & ANOTHER {(2007) 3 SCC 720}. In that case, the Supreme Court on considering the particular recruitment to the posts of Civil Judges (Junior Division) in Uttar Pradesh held that the scaling system adopted by the Uttar Pradesh Public Service Commission was unsuitable in regard to the selection of Civil Judges Junior Division. It directed moderation. We may observe here that in conclusion a specific direction was made by the Supreme Court in that case that it would not affect the selections/ appointments already made in 2003 examination. The present recruitment was between 2002 and 2004. That decision of the Supreme Court in SANJAY SINGH's case rendered at a later date, i.e., on 9.1.2007 does not affect the method adopted by the KPSC between 1999 and 2004. As to whether scaling method is proper or moderation is proper is a question of policy. It depends on the particular service also. The Supreme Court in P.U.JOSHI & OTHERS Vs. ACCOUNTANT GENERAL, AHMEDABAD & OTHERS {2003 SCC (L & S) 191} has observed as follows:

> "Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunal, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State."

8.2 Since we find that the present method is neither arbitrary nor discriminatory, we find absolutely no substance in the contention of the applicants that the method adopted was not proper. Point No.3 is, therefore, answered in the negative.

9. In view of the findings we have given above, we have found that the impugned selection list does not call for interference.

10. The learned counsel for the KPSC submits that out of 4659 candidates who appeared for the main examination, 947 became eligible for personality test, out of whom 354 had written answers in Kannada medium. This itself shows that the contention of the applicants that the candidates who attempted Kannada version questions had been put to a disadvantageous position, is imaginary. 191 candidates were selected, out of whom 67 had attempted answers in Kannada. Therefore, we do not find any ground either to quash the selection list or to direct the respondent no.1 to revalue the answer papers of certain subjects. Consequently, the other reliefs also do not survive.

For the above said reasons, all the applications are dismissed.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
Application No.2197 of 2013
D.D. 02.05.2013
Hon'ble Mr. Justice A.C. Kabbin, Chairman &
Hon'ble Mr. Abhijit Dasgupta, Administrative Member

Smt. Geetha D.M.	**…**	**Applicant**
Vs.		
Chief Electoral Officer & Ex-officio Principal Secretary to Govt. & Ors.	**…**	**Respondents**

A. Interview

Postponement of interview in respect of recruitment to posts of Gazetted Probationers, till election process to State Assembly are over – State Election Commission, in its letter dated 05.03.2009, clarifies that KPSC being a statutory authority it may continue recruitment process during election process and only recruitment through non-statutory bodies would require prior clearance from the Election Commission – However, Government in its letter dated 02.04.2013 requests the Public Service Commission to stop interviews until election process are over, and if interviews are proceeded with it will be presumed that with a particular intention interviews are being conducted – Acceding to consistent letters of Government Public Service Commission postpones interviews – Whether, KPSC being a statutory authority and there being no hurdles from Election Commission to continue recruitment process, merely on direction of State Government, KPSC is bound to postpone recruitment process? No. Held that KPSC is not bound to postpone interview – In view of specific reasons if KPSC postpones interviews, it is justifiable.

B. Interview

Postponement of interviews – In absence of mala fides, whether candidates for recruitment have right to challenge administrative decision taken to postpone interviews? No.

Held that candidates for recruitment should not rush to judicial forum only because interviews are postponed, and they have no right to question administrative decision taken to postpone interviews in absence of allegation of malafides.

O R D E R

A.C. Kabbin, Chairman

The Applicant is a candidate for the post of Gazetted Probationer for selection, for which interviews had been fixed by the Karnataka Public Service Commission (KPSC for short)

between 3.4.2013 and 24.4.2013. She had been called for interview on 4.4.2013 (Annexure-A2). In the meantime, by press release bearing No.E(1) 04/2013-14/PSC dated 2.4.2013, the KPSC postponed interviews scheduled from 3.4.2013 to 24.4.2013 with further information that further dates of interview would be intimated. It is that press release that has been mainly challenged in this application. Further prayer is to quash the following letters:

(i) D.O. letter written by Sri. Sanjeev Kumar, I.A.S., Principal Secretary to Government, DPAR bearing No.Si.Aa.Su.E. 27 SeLoSe 2013 dated 2.4.2013 (Annexure-A3) to the Secretary, KPSC intimating that since the KPSC was not postponing the interviews as requested in earlier letters, there would be no option to the government but to presume that with particular intention interviews have been continued despite the intimation by the government.

(ii) Earlier D.O. letter of the Principal Private Secretary to Government, DPAR No. Si.Aa.Su.E. 27 SeLoSe 2013 dated 2.4.2013 (Annexure-A4) requesting KPSC to stop the interviews until election process would be over.

(iii) Copy of the letter of Chief Electoral Officer bearing No.OS/2708/ Comp/13 dated 1.4.2013 (sent on 2.4.2013) (Annexure-A5) to the Chief Secretary to Government of Karnataka, requesting him to instruct the KPSC to put the interviews on hold till completion of election process in respect of State Assembly Elections.

2. It is argued by Sri. J. Prashanth, learned Counsel for the Applicant that the letter No.437/6/2009-CC&BE dated 5.3.2009 (Annexure-A9), in para-11 that the regular recruitment through State Public Service Commission may continue during the election process and only recruitment through any statutory bodies would require prior clearance from the Commissioner and that, therefore, the letter of the Chief Electoral Officer dated 1.4.2013 (Annexure-A5) to the Government and subsequent communication by the Government on 2.4.2013 (Annexures A3 and A4) ran contrary/counter to the said power of the KPSC. He submits that there was no need to postpone the interviews scheduled between 3.4.2013 and 24.4.2013 and that, therefore, the concerned communications are liable to be quashed.

3. The interviews for selection to civil posts conducted by the KPSC are dependent on the availability of the dates for interviews, places and many other factors. The postponement of the interviews for the period from 3.4.2013 to 24.4.2013 made in the press release is said to be quashed on the ground that it was not justifiable.

4. Sri. P.S. Rajagopal, learned Senior Counsel appearing for Sri. T.Narayanaswamy, learned Counsel for R3 – KPSC, pointed out that postponement was not as per the wish of the KPSC but in view of the circumstances which were created by consistent letters of the government which made the KPSC to postpone the interviews. He points out that though the KPSC had taken a stand that the election process come in the way of interviews by the KPSC, as it is clear from instructions given in para-11 of the letter of the Election Commissioner of India dated 5.3.2009 (Annexure-A9) and interviews were, in fact, conducted as per the schedule, there was a letter by the Chief Electoral Officer and Ex-officio Principal Secretary to Government, DPAR (Elections) requesting the Chief Secretary to Government of Karnataka to instruct the KPSC to put the interviews on hold till the completion of election process and that, therefore, there was no option but to postpone the interviews.

. We see that in pursuance of the letter of the Chief Electoral Officer, a letter was sent by the Principal Secretary to DPAR on 2.4.2013 (Annexure-A4) clearly asking the KPSC not to conduct the interviews until the election process was over. On the same day, another letter has been sent by the government in which the following instructions were given:

> "ಈ ಸಂಬಂಧವಾಗಿ ನಮ್ಮೊಡನೆ ಮಾತನಾಡಿದಾಗ ಆಯೋಗವು ಮೌಖಿಕ ಸಂದರ್ಶನವನ್ನು ನಡೆಸುತ್ತಿರುವ ವಾಸ್ತವತೆಯನ್ನು ನೀವು ಸ್ಥಿರೀಕರಿಸಿರುತ್ತೀರಿ. ಕರ್ನಾಟಕ ಲೋಕ ಸೇವಾ ಆಯೋಗದ ಈ ಕ್ರಮವು ಚುನಾವಣಾ ಆಯೋಗದ ಸೂಚನೆಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿ ನಡೆಸುತ್ತಿರುವ ಮೌಖಿಕ ಸಂದರ್ಶನದ ಪ್ರಕ್ರಿಯೆಯು ಕಲುಷಿತವಾಗುತ್ತದೆ ಹಾಗೂ ಅದರ ಆಧಾರದ ಮೇಲೆ ತಯಾರಿಸಿದ ಆಯ್ಕೆ ಪಟ್ಟಿಯು ಅನೂರ್ಜಿತವಾಗುತ್ತದೆ ಮತ್ತು ಅಂತಹ ಅನೂರ್ಜಿತವಾದ ಆಯ್ಕೆ ಪಟ್ಟಿಯನ್ನು ಸರ್ಕಾರ ಜಾರಿಗೊಳಿಸಲು ಬರುವುದಿಲ್ಲ."

6. It is therefore, clear that it was the specific instruction of the Government to postpone the interviews and communications that if the interviews were continued, an adverse inference has to be drawn against the KPSC.

7. Sri. P.S. Rajagopal, learned Senior Counsel for the KPSC submits that the term of the Hon'ble Chairman of the KPSC will be over on 10.5.2013 and in view of this specific stand of the government, an impression was created in the KPSC that continuing the interviews would bring bad name to KPSC. He submits, it is for that reason that press release was issued on the same day i.e., on 2.4.2013 postponing interviews scheduled to be held from 3.4.2013 to 24.4.2013.

8. On consideration of the matter, we find that though KPSC was not bound by the ban imposed on recruitment by non-statutory bodies, it was entitled to continue the interviews. In view of these specific reasons, the KPSC felt it proper to postpone the interviews. We find that this decision cannot be faulted.

9. As regards the prayer to quash Annexures A3 to A5, they are the communications between the Chief Electoral Officer and Government and the Government and the KPSC and contain the views of the concerned authorities. They are not liable to be quashed. Only the decision has to be quashed and since we find that the decision was based on a proper reason, we do not find that the press release dated 2.4.2013 and postponement of interviews are not liable to be quashed.

10. Next question is about the fixing further dates for interviews. Learned Senior Counsel for KPSC submits that that would be held at the earliest. In view of that submission, directing the KPSC to fix up the next schedule of interviews at the earliest, we dismiss this application.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
W.P.Nos.26902-14 of 2009 (S-KAT) & Connected matters
D.D. 08.07.2013
Hon'ble Mr. Justice D.V. Shylendra Kumar &
Hon'ble Mrs. Justice B.S.Indrakala

Dr. Shankar Lamani & Ors. … Petitioners
Vs.
State of Karnataka & Ors. … Respondents

A. Estoppel

Recruitment to posts of Lecturers in Collegiate Education Department – Petitioners are those persons who are aspiring for the post of Lecturers in various disciplines, and are basically aggrieved by the KPSC not adhering to its own stipulation indicated in its notification and the recruitment rules governing the adding of weightage marks and KPSC has not followed uniform procedure/method in respect of all applications and in processing them petitioner, though contend that M. Phil degrees awarded by Distance Education mode are not valid degrees, but do not seek relief in respect of validity of such degrees and urge that KPSC should not have acted on the basis of such suspect degrees – Whether in the circumstance, only on the ground that writ petitioners are those who had undergone very selection process and failed to get themselves selected, are they estopped from challenging selection of respondents? No.

B. Jurisdiction of K.A.T.

Recruitment to posts of Lecturers in Collegiate Education Department – Grievance of applicants before the Tribunal was in respect of illegal selection for deviating from the very conditions indicated in the notification and the rules? Yes. - In the circumstances, held that KAT has jurisdiction to look into applications involving such disputes.

C. Maintainability of writs

Judicial review – Challenge to process of preparation of selection list by the Public Service Commission. If preparation of select list is flawed due to violation of relevant rules or not adhering to published conditions/stipulations? Whether such actions are amenable to judicial review – In the circumstances, held that writ petitions are maintainable.

D. Declaration of validity of M. Phil Degree

M. Phil degrees awarded by Universities located in Tamil Nadu, through distance education mode, having study centres in State of Karnataka – Whether Court or Tribunal can declare validity of M. Phil degrees awarded by Universities located in Tamil Nadu,

through distance education mode, having study centres in State of Karnataka? No. Held that Courts cannot grant validity of a Degree given by institutions or recognized University or affiliated recognized Universities. It is the University which can take action either for invalidating or recalling degrees – However, Courts and Tribunals in exercise of powers of judicial review can issue directions to University or other authority to take action as per law if it is found that the University or institutions conferring such degrees are not conforming to mandatory stipulations of law under UGC Act, or any other Act binding Universities.

E. Guest of Lecturers

Awarding of weightage marks to guest Lecturers for experience in teaching – Whether in absence of specific provision in sub-rule (a) of Rule 6B of Karnataka Education Department Services (Collegiate Education Department) (Special Recruitment) Rules, 1993 to award weightage marks to 'Guest Lecturers' on par with part time Lecturers, Karnataka Public Service Commission may award weightage marks to them? No. - Held that awarding of weightage marks to Guest Lecturers is not only contrary to conditions and stipulations mentioned in the notification inviting applications but also contrary to sub-rule (a) of Rule 6B of 1993 Special Rules – Direction issued to KPSC to redo select list by deleting percentage of marks awarded on basis of experience gained as Guest Lecturers.

Cases referred:

1. University of Mysore v. Govinda Rao, AIR 1965 SC 491
2. Rajendra Prasad Mathur v. Karnataka University and another, (1986) Supp SCC 740
3. Kurmanchal Institute of Degree & Diploma and others v. Chancellor, MJP Rohilkhand University and others, (2007) 6 SCC 35
4. Annamalai University Rep. By Registrar v. Secretary to Government, Information and Tourism Department and others, (2009) 4 SCC 590
5. Bharati Vidyapeeth (Deemed University) and others v. State of Maharashtra and another, (2004) 11 SCC 755
6. Dr. Preeti Srivastava and another v. State of M.P. and others, 1997 (7) SCC 120
7. Ajay Kumar Singh v. State of Bihar, 1994 (4) SCC 401
8. Parshvanath Charitable Trust and others v. All India Council for Technical Education and others, 2013 (3) SCC 385
9. N. Ganesan v. Tamil Nadu Electricity Board, Rep. by its Chairman, Writ Appeal Nos.1327 to 1342/2011, decided on 23.02.2012
10. Tamil Nadu Graduate Food Inspector's Association by its Organising Secretary v. The Director-cum-State Food Health Authority and others, Writ Appeal (MD) Nos.236 & 237/2007 and MP(MD) Nos.21 & 2/2007, decided on 11.10.2007
11. Madal Lal and others v. State of J & K and others, (1995) 3 SCC 486
12. Dhananjay Malik v. State of Uttaranchal, 2008 SCC (L&S) 1005
13. B.L. Asawa v. State of Rajasthan {(1982) 2 SCC 55}
14. Tata Cellular v. Union of India {(1994) 6 SCC 651}
15. Surya Devi Rai v. Ram Chander Rai {(2003) 6 SCC 675}

16. Kalinga Mining Corporation v. Union of India {(2013) 5 SCC 252
17. Basavaiah (DR) v. Dr. H.L. Ramesh {(2010) 8 SCC 372}
18. Sajeesh Babu v. N.K. Santhosh {(2012) 12 SCC 106}
19. M.P.Sugar Mills Co. Ltd., v. State of Uttar Pradesh and others, AIR 1979 SC 621.

O R D E R

D.V. Shylendra Kumar

In this batch of writ petitions, writ petitioners have questioned the correctness of the common order dated 19-08-2009 passed by the Karnataka Administrative Tribunal at Bangalore in Application Nos 953-959 of 2009 and connected cases.

2. Writ petitioners are also aggrieved by the selection list prepared by the second respondent – Karnataka Public Service Commission [for short KPSC or the Commission], which had prepared the list of candidates selected for being appointed to the post of Lecturers in the Government First Grade Colleges in the state of Karnataka in respect of subjects – Sociology – 184 candidates [subject matter of WP Nos 26902-09], Political Science – 179 candidates [subject matter of WP Nos 26535-39 of 2009], History – 180 candidates [subject matter of WP Nos.25733-39 of 2009] and in the subject of Economics – 205 candidates [subject matter of WP Nos 25740-50 of 2009] English and other subjects.

3. Writ petitioners were also aspirants for these posts and had filed their applications in response to the Notification dated 24-12-2007 published by the Commission inviting applications for selection to as many as 2550 posts of lecturers in government first grade colleges in the state in different subjects. Writ petitioners had all participated in the interview conducted by the Commission and their performance has been assessed by the Commission. The Commission had interviewed all eligible persons who had applied to these posts and who were found eligible in terms of the qualifications prescribed as per the Karnataka Education Department Services [Collegiate Education Department] [Recruitment] Rules, 1964 [for short 'General Rules'] and the amendments made to 1964 Rules from time to time read with the Karnataka Education Department Services [Collegiate Education Department]

[Special Recruitment] Rules, 1993 [for short '1993 Special Rules'] and amendments to these Rules from time to time.

4. Under the General Rules, 50% of the available posts in the cadre and recruitment rules to the post of lecturers were to be filled up by direct recruitment and other 50% being by way of promotion. The requisite qualification stipulated that persons who have obtained the minimum percentage of 55% marks or its equivalent grade in the master's degree in the concerned subject and also must have obtained 50% marks in the eligibility test for lecturership conducted by the designated agency, which means that 50% in National Eligibility Test [NET] conducted by the University Grants Commission or CSIR or State Level Eligibility Test [SLET] conducted by the state government or any authority accredited by the University Grants Commission [UGC]. However, in so far as passing of the NET is concerned, a relaxation was made in favour of persons who have acquired M.Phil degree in the subject insofar as teaching in the undergraduate level is concerned, granting exemption from the requirement of passing NET, with a minimum of 50% marks to those possessing M.Phil degree in the subject, and so qualified before the last date for submitting application.

5. The 1993 Special Rules also provided that the candidates should be of the age limit between 21 and 35 years, but relaxation was made in the age up to 10 years in favour of candidates belonging to scheduled caste and scheduled tribe and Group – A and for a period of three years in case of candidates belonging to Group – B & C.

6. The 1993 Special Rules also provided for marking system for selection and under Rule 6A total of 14 marks was earmarked for interview, 2 marks for personality, 3 marks for power of expression, 3 marks for smartness and initiative, 3 marks for general knowledge and other traits including the knowledge of the subject which has a bearing on the job content of the post for which recruitment is being made. The object of the interview was to assess the suitability of the candidates for appointment to the post of lecturers.

7. Rule – 6B – prescribes about preparation of selected candidates lists, on the basis of aggregate percentage of marks secured in master's degree in the relevant subject and the marks secured in the interview and to prepare in the order of merit a list of candidates in respect of each subject eligible for appointment.

8. Under the proviso to Rule 6-B of the Special Rules, candidates whose names figure in the list prepared by the selection authority are entitled to what is known as weightage of providing or adding additional marks under three categories – (a), (b) and (c) – and in respect of category (a), candidates having teaching experience in any college affiliated to any university established by law in India including a candidate who has served as part-time lecturer in government first grade colleges of the department of collegiate education, weightage at the rate of 1% for each completed academic year is to be added to the average percentage of marks secured by the candidate concerned in the master's degree examination in the subject concerned; under category (b), a weightage of 3%, 2% or 1% shall be added to the average percentage of marks secured by the candidate in the master's degree examination in the subject concerned, if he/she had obtained first or second or third rank respectively in the master's degree examination, as declared by the university; and under category (c), candidates who possess PhD should be given weightage of 2% and candidates who possess M.Phil degree to be given 1% as weightage. However, the further proviso to the rule giving weightage of marks stipulates that the total weightage added to the average percentage of marks under categories (a), (b) and (c) of the first proviso shall not exceed 5%.

9. Supplementing the stipulations indicated in the general rules and special rules, KPSC has issued information and special instructions in its notification dated 24-12-2007 inviting applications from eligible candidates. A copy of this notification has been produced before the tribunal as Annexure-A102 to the Application No 1663-75 of 2009, corresponding to WP Nos. 26902-14 of 2009. The last date for submitting filled up applications was indicated as 31-1-2008 in this notification. The applications should be in the prescribed format prescribed by the commission and same can be

submitted at the branches of notified DCC bank and apex bank and at the main office of the commission at Bangalore or its local offices at Mysore, Belgaum and Gulbarga. It is also indicated that selection would be made in consonance with the general and special rules and based on the merit of the candidates, in the sense, based on the aggregate percentage of marks obtained by the candidates adding up the percentage in the qualifying examination viz., post-graduation in the subject concerned, marked obtained in the interview and the weightage of marks. It is also indicated that the percentage of weightage of marks in the aggregate a candidate can obtain under categories (a), (b) and (c) of the first proviso to Rule 6-B of the special rules shall not exceed 5 i.e. the total percentage of weightage cannot exceed 5%. The notification also indicated about the age limitation, scale of pay, nature of the employment, providing for caste certificate and certificate of rural background, disability certificate etc. The notification also indicated by way of special instructions under para-14 that copies of certificates regarding caste, educational qualifications etc., should also be produced along with the application before the last date fixed for receipt of applications. It is also indicated that a candidate should not apply for more than one post in the same application, but can apply in different applications for different posts. The notification warned the candidates stating that canvassing in any form should invite disqualification. However, the last date fixed for receipt of applications was subsequently extended by the commission from 31-1-2008 to 20-2-2008.

10. Para 7.1 in the notification dated 24.12.2007 provides for instructions to the candidates relating to educational qualifications. It is indicated that before the last date prescribed for receipt of applications, the candidates should be holder of master's degree in the subject concerned with a minimum of 55% of marks with relaxation in favour of candidates belonging to SC/ST etc., to be at 50% and must have passed NET conducted by UGC or CSIR or SLET conducted by the state government or any authority accredited by the UGC. The proviso regarding relaxation requires exemption from passing of NET with a minimum of 50% marks in respect of candidates who possess PhD or M.Phil degree in the subject concerned. It is based on such parameters, applications were received from candidates the same were processed by the commission.

11. While the petitioners in these writ petitions are persons who were applicants before the tribunal, KPSC has also preferred WP No 28567 of 2009, questioning the correctness of the common order passed by the tribunal in all such applications before it, wherein the selection by KPSC in different subjects was under challenge. But, in so far as it related to the order passed in Application No 861 of 2009 is concerned, wherein the challenge was confined to selection based on providing weightage to candidates who had claimed it on the basis of teaching experience and who were termed as guest lecturers and also the Respondent Nos. 5 to 39 in the application No.861/2009 before the Tribunal had obtained M.Phil degree from Alagappa University in Tamil Nadu, which university did not have recognition to impart distance education course in M.Phil. The subject involved in this application was regarding selection of persons to be appointed as Lecturers in 'English' subject. The Tribunal having ruled that such persons having worked as guest lecturers are not eligible for addition of any percentage of marks as weightage, as neither the special rules provides for giving such weightage to persons with experience as guest lecturers nor the notification issued by the commission inviting applications had mentioned so.

12. WP No 4309 of 2010 is directed against the order passed by the tribunal in Application No 4320 of 2009 by a separate order dated 4-1-2010, rejecting the stand of the applicant that selection notification dated 27-2-2007 published by KPSC to be quashed, in so far as it related to the candidates who acquired M.Phil degree in the year 2007 and 2008 awarded by Alagappa university and other universities, for the reason that it was not approved by the Distance Education Council [DEC], and the tribunal, following its main judgment dated 19-8-2009 rendered in Application Nos. 953-59 of 2009 and connected cases, rejected the application. The applicant-writ petitioner was an aspirant for the post of lecturer in political sciences.

13. The applicants before the Tribunal had raised various grounds to attack the selection process and sought for invalidation of the same. The tribunal, based on the challenge posed to selection in different applications, had categorized the applications into three parts. The first part of applications related to challenge to the

selection list, inter alia, on the ground that M.Phil degrees awarded to the respondents-selected candidates by universities which had no approval or accreditation by the DEC are not valid. The second category related to applications posing challenge to government order dated 23-11-2006 effecting amendment to the earlier government order dated 9-1-2003 and providing for relaxation from appearance in NET in respect of candidates who possess PhD or M.Phil degrees. The third category of applications were those wherein individual grievances had been made out regarding KPSC not adhering to the stipulated norms in respect of many selected candidates.

14. In so far as the weightage or otherwise of M.Phil degrees was under challenge, which were obtained by some of the selected candidates from Alagappa university, Periyar university, Bharathidasan university, Vinayaka mission university, Madurai Kamaraj university and Annamalai university, is on the premise that all these universities are located in Tamil Nadu state; that they had opened their study centres in the state of Karnataka without the permission of the state government, wherein the selected candidates, arrayed as respondents, had undergone their course of study in the state of Karnataka; that DEC had not given approval to M.Phil degree conferred by these universities under the distance education mode and therefore it violated DEC guidelines and UGC regulations, under which DEC had been recognized as an authority for laying down norms and standards and therefore such degrees obtained from these universities in turn are in violation of UGC regulations and further that whereas the DEC guidelines has stipulated that the duration of M.Phil course by distance education mode should be for a minimum period of two years, all these universities had stipulated the duration of the course as only one year.

15. While learned counsel for applicants had elaborated the main grounds referred to above, calling in aid many authorities and by making submissions with different hues and shades, the applications were strongly resisted by KPSC by urging various contentions and so also some of the private respondents and some of the universities who conferred M.Phil degrees by distance education mode and so also the state government.

16. It was strongly urged before the Tribunal on behalf of the KPSC that the applications are not maintainable for the reason that the applicants who applied for the posts under the notification and having participated in the selection process without any protest, cannot turn around and challenge the selection process only because they found that they were not getting selected. It was also urged that validity of the Degrees possessed by the private respondents insofar as M.Phil Degree is concerned, cannot be gone into by the Tribunal. In this regard, it was urged that the guidelines issued by the DEC on which considerable reliance had been placed by the applicants are only draft norms in ensuring quality in distance learning system; that based on this, it cannot be said that M.Phil Degree of one year course awarded by the private institutions imparted through distance education mode is not valid, as the duration of the course is two years; that the draft norms assuming it is upheld, can only be prospective and also that the students who have undergone course in Study Centres set up outside the State in which the respondent – Universities are located cannot have any bearing on the Degree conferred by them on students who had studied in Study Centres for the reason that ultimately the DEC's guidelines being only directory and not mandatory. It is only on communication to the UGC such Degrees have been approved and not frowned upon; that the method of aggregating marks cannot be said that it does not have a definite and relevant purpose as it is only a method of recognizing the merit of the applicants through the performances in the examination and as reflected in the marks obtained in the examination and the fact that marks obtained by the students from different Universities are all treated alike cannot by itself be a detracting factor as KPSC was bound to treat all persons with requisite qualification in a uniform manner; that the last date for receipt of the application had been extended from 31.01.2008 to 20.02.2008 as per the request made by the Government of Karnataka and not to give any benefit to candidates who have obtained M.Phil Degrees through distance education mode from the Universities located outside the State of Karnataka as contended by the applicants.

17. It is also urged that the KPSC was not competent to sit in Judgment over the Degrees conferred by recognized Universities and set up by an Act of Parliament or an act of the State and the KPSC had no choice in the matter so long the applicants

possessed Degrees conferred by the Universities conforming to the norms as stipulated under the rules and the notifications.

18. It was also urged on behalf of the KPSC that while the KPSC cannot go into the validity of the Degree issued by the University established by law, if University itself has been derecognized, the KPSC was prepared to examine this aspect; that the applicants were unable to make good that any University which had granted M.Phil Degrees based on which weightage was given to such applicants and exemption from NET was also given, has been derecognized.

19. It was also urged that even as per the University Grants Commission Act, 1956 [for short 'UGC Act'], three categories of universities that is established under an Act of Parliament, an Act of State Legislation and University which is conferred a deemed University status under section 3 of the UGC Act, are all Universities which are empowered to award Degrees and the Degrees which are questioned in the applications are all awarded by the Universities set up under the State Act or deemed University under section 3 of the UGC Act and therefore no exception can be taken to M.Phil Degree awarded by these Universities.

20. Insofar as awarding of marks for service weightage is concerned, it was urged on behalf of the KPSC that it has been done only in accordance with relevant rules and on the basis of service certificates produced by the candidates. It was also contended that counter signature by the director of Collegiate Education is not a mandatory requirement as that is not the qualification whereas teaching experience is the qualification. It was however clarified that full time lecturers of private colleges are eligible for service weightage, it was not so in respect of part time lecturers in private colleges. It was only part time lecturers in Government Colleges who are eligible for service weightage. It is also urged that certificates obtained after cut off date by itself cannot make any difference as, it is in continuation of the provisional certificate and the students had completed their Degree before the cut off date and a mere issue of Degree certificate later does not in any way disqualify a candidate.

21. It was also contended that while under section 22 of the UGC Act, it is only the prerogative of the University established by law to confer a Degree, it was not within the province of Indira Gandhi National Open University [for short 'IGNOU'] to recognize or derecognize the Degree conferred by the University in accordance with section 22 of the UGC Act and a non approval by DEC – a creature under the statute of IGNOU to say about validity or otherwise of the Degree conferred by the University established under law. It was therefore urged on behalf of the KPSC that all applications should be dismissed.

22. Similar contentions were urged on behalf of the State Government and the locus of the applicants to question the selection process for having participated in the same was strongly highlighted placing reliance on many Judgments of the Supreme Court. Primacy of the provisions of the UGC Act was highlighted to contend that non compliance with the so called guidelines formulated by DEC set up under the IGNOU Act was urged to be of no consequence; that the DEC guidelines having no statutory recognition cannot make any Degrees conferred by the Universities invalid assuming that such Universities had not followed guidelines. Considerable reliance was placed on the proceedings of the Meeting of the Board of Management of IGNOU held on 22.05.2007 regularizing the programmes being offered by the existing University Institutions under distance education system up to the point of time and it was also pointed out that if at all the recognition of the Council was necessary only in the academic session on and after July 2007; that the fact that Universities outside the State of Karnataka arrayed as respondents and who had conferred M.Phil Degrees are all set up under the State law or deemed university by UGC under section 3 of the UGC Act was highlighted to submit that Degree conferred by these Universities even under the distance education mode were valid Degrees. The DEC regulations in any event can become operational only from 22.05.2007 when the Board of Management of IGNOU met and approved the DEC guidelines only on this day.

23. Learned senior counsel appearing on behalf of the private Universities and

private respondents in these applications have also strongly contended before the Tribunal on similar lines and had urged for dismissal of the applications.

24. On the basis of such pleadings and submissions made at the Bar, the Tribunal had formulated as many as 'nine' points for its determination reading as under:

(1) Whether the Applications are maintainable under Section 19 of the Administrative Tribunals Act, 1985?
(2) Whether the Applicants are estopped from challenging the select lists having participated in the selection process?
(3) Whether this Tribunal can go into the validity of the Degrees awarded by Alagappa and other Universities?
(4) Whether the provisions of the UGC Act prevail over those of IGNOU and Guidelines of the DEC?
(5) Whether the approval from DEC by the Universities is mandatory and the absence of such approval from the DEC renders the Degrees in M.Phil acquired by the private Respondents invalid?
(6) Whether the UGC Guidelines are required to be followed irrespective of the provisions of the Cadre & Recruitment Rules framed by the State Government relating to the post of Lecturer and whether the Government Order dated 23.11.2006 and the Notification dated 24.12.2007 issued by the KPSC supplant the Cadre & Recruitment Rules?
(7) Whether the Guidelines issued by the DEC are mandatory?
(8) Whether the action of the Government in granting exemption to candidates who have acquired Degrees in M.Phil., from appearing for NET/SLET is valid?
(9) Whether the individual grievances made out by some of the Applicants can be gone into in this bunch of Applications? What order or direction?

25. The Tribunal held that having regard to the prayer sought for, point No.1 is answered in favour of the applicants as applications were maintainable within the scope of section 19 of the Administrative Tribunals Act, 1985. The applicants were not estopped from raising the contentions urged therein as challenge was only to the faulty procedure followed by the KPSC in not applying the special rules in its true letter and spirit. On second point, the Tribunal answered it in favour of the applicants and held that they are not estopped from challenging the same.

26. On the third point, placing strong reliance on the Judgments of the Supreme Court in the case of 'UNIVERSITY OF MYSORE v. GOVINDA RAO' reported in AIR 1965 SC 491 and in the case of 'RAJENDRA PRASAD MATHUR v. KARNATAKA UNIVERSITY AND ANOTHER' reported in 1986 [SUPP.] SCC 740 and other decisions of the Supreme Court following these decisions, it was held that the Tribunal had no power to sit in Judgment over the validity of M.Phil Degree awarded by Alagappa University or other Universities and this point was answered against the applicants.

27. The point No.4 was answered against the applicants, in the sense that, the provisions of the UGC Act prevailed over IGNOU Act and guidelines of DEC. The fifth point as to whether approval from DEC by the Universities is mandatory and in the absence of such approval from the DEC, Degree in M.Phil acquired by the candidates is invalid, was answered against the applicants by holding that such absence of permission from DEC to Alagappa University and other Universities who impart education through distance mode does not render the Degree of M.Phil conferred by them and acquired by the private respondents invalid after elaborately discussing the provisions of IGNOU Act and UGC Act and the proceedings taken by the DEC and Board of Management of IGNOU.

28. On point No.6, the Tribunal held that the Government Order dated 23.11.2006 and the Notification dated 24.12.2007 issued by the KPSC only supplements the cadre and recruitment rules and therefore being not at variance with the cadre and recruitment rules nor the special rules, interference by the Tribunal was not warranted.

29. On point No.7, it was held that the guidelines issued by the DEC are not mandatory as DEC itself had no legal authority nor was a statutory authority and it was held to be only directory. Point No.8 was answered by the Tribunal in the affirmative by holding that the weightage given to candidates with M.Phil Degree and exemption given are all legal as the recruitment rules have been brought in conformity with the communication issued by the UGC about granting exemption from any of those candidates having M.Phil Degree.

30. On point No.9, the Tribunal held that while the Tribunal cannot examine the individual grievances of various applicants, the applicants were given liberty and KPSC was directed to consider the representations individually, but the Tribunal on noticing that the KPSC in fact had given weightage to Guest Lecturers, concluded that the same being not in conformity with Rule 6B[1][a] of the 1993 Special Rules and weightage to be given to experience of teaching being only in favour of the applicants who had experience as full time lecturers in private institutions and as part time lecturers in Government First Grade Colleges at the Department of Collegiate Education and Guest Lecturers not fitting into either of these two descriptions, giving weightage on the basis of experience and awarding marks is not in consonance with Rule 6B[1][a] of the 1993 Special Rules and so also the notification issued by the KPSC by inviting applications not mentioning about any weightage to Guest Lecturers, it was held that the KPSC assuming that it has based on certain clarifications issued by the State Government had granted weightage to Guest Lecturers, it is illegal as no relaxation in qualification can be made not only contrary to the rules and regulations, but also contrary to the very notification inviting the applications indicating the qualifications required and the benefits to be given in certain situations. Ultimately, in its conclusion, the Tribunal dismissed the challenge to the validity of the Degrees so obtained by the private respondents through distance education mode and so also the challenge to the Notification dated 23.11.2006. With regard to individual grievances, it was permitted for the applicants to point out their grievances within timeframe to the KPSC and the State Government and within the period of further one week of receipt of the same, the State Government as well as the KPSC to take decision on the same and all contentions in this regard were left open.

31. It is aggrieved by this order of the Tribunal, the present writ petitions by some of the applicants as noticed earlier.

32. Writ petition by KPSC is being aggrieved by that part of the order where the Tribunal has held that the KPSC had committed illegality awarding weightage marks to Guest Lecturers.

33. We have heard Sri. Shivaraj N Arali, learned counsel for petitioners in writ petition Nos.26902-26914/2009 and being led by learned senior counsel Sri. Rajagopal, M/s. Shyam Prasad and Ajit, Advocates appearing for the petitioners in Writ petition Nos.26535-26539/2009, 25733-25739/2009 and 25740-25750/2009 and Sri. T Narayanaswamy, learned counsel appearing for the petitioner – KPSC in writ petition No.28567/2009 and Sri. Reuben Jacob, learned counsel appearing for the respondent – KPSC in all these petitions, Smt. S. Susheela, learned Additional Government Advocate appearing for the State Government, Sri. Kantharaj, learned counsel appearing for the respondent – caveator in writ petition No.28567/2009, Sri. K Subbarao, learned senior counsel appearing for some of the selected candidates arrayed as respondents in the writ petitions, Sri. Subramanya Jois, learned senior counsel appearing for deemed Universities under section 3 of the UGC Act, Madurai Kamaraj University and University set up under the legislation of Tamil Nadu Government, Sri. J Prashanth, learned counsel appearing for some of the selected candidates arrayed as respondents in writ petition Nos.25740-25750/2009 so also some of the respondents in writ petition Nos.26902-26914/2009.

34. Learned counsel appearing for the parties have not only made elaborate submissions but also have placed reliance on a good number of Judgments of the Supreme Court to support their propositions. Submissions and arguments are vast, contentions raised are many fold, authorities relied upon are innumerable, but ultimately, submission of learned counsel for petitioners is to allow the writ petitions whereas learned counsel for respondents have prayed for dismissal of the writ petitions.

35. KPSC also produced some of the original applications and marks awarded to candidates during interview and weightage in respect of some of the candidates arrayed as respondents in these writ petitions.

36. Appearing on behalf of the writ petitioners in WP Nos.26902-26914/2009,Sri. Rajagopal, learned senior counsel instructed by Sri. Shivaraj N Arali, Advocate, have strongly urged that M.Phil Degree qualification conferred by the Universities located

outside the State of Karnataka and located in Tamil Nadu, namely, Vinayaka Missions University, Madurai Kamaraj University, Periyar Institute of Distance Education, Annamalai University, Bharathidasan University – respondents 79, 80, 81, 82 & 83 respectively in writ petition Nos.26902-26914/2009, are all invalid for the reason that duration of the course of study was only one year whereas DEC norms stipulated that it should be for a minimum of two years for M.Phil Degree when studying through distance education mode.

37. It is also urged that the Study Centres of these Universities wherein respondents had underwent course of study and attended, being located in the State of Karnataka and outside the territorial jurisdiction of the State in which these Universities had been established by an Act of that State or being a deemed university under section 3 of the UGC Act, having not obtained approval from the State Government in respect of Study Centres, is illegal, in the sense, DEC norms and guidelines specifically stipulated for opening of Study Centres, permission from the State in which such Centres are to be set up.

38. It is also strongly urged that the Tamil Nadu State Government taking note of the haphazard manner in which these Universities were conducting distance education programmes in M.Phil courses, had directed the Universities not to offer these courses through distance education from the academic year 2007-08 and such courses should be offered only in regular stream and when this is the state of affairs and order of the State Government in which these Universities have been set up, no M.Phil Degree can be obtained after this period and even Degrees obtained purporting to be on the basis of the study for earlier years being suspect, the Tribunal has committed a grave error in upholding the Degree for recognition as valid qualification, particularly, for relieving such respondents from the requirement of passing NET and also in awarding weightage marks to them.

39. Mr. Rajagopal, learned senior counsel has contended that the Study Centres should be located within the territorial jurisdiction of the University and within the State insofar as deemed Universities are concerned and therefore location of Study Centres

of Universities which are within the State of Tamil Nadu outside the State, namely, in different places in Karnataka and more so without permission and approval of the State Government are all not valid and therefore the students who have underwent any study or course in such Study Centres cannot be said to have acquired a valid Degree by having a proper course of study.

40. In support of this submission, Mr. Rajagopal, learned senior counsel has placed reliance on the Judgment of the Supreme Court in the case of 'KURMANCHAL INSTITUTE OF DEGREE & DIPLOMA AND OTHERS v. CHANCELLOR, MJP ROHILKHAND UNIVERSITY AND OTHERS' reported in [2007] 6 SCC 35. In this case, the Supreme Court held that cancellation or closing of study centres operating outside the territorial jurisdiction of the University was upheld and the challenge by the Institution against the order challenging closure of the study centres because it was located outside the territorial jurisdiction of the University which had been given permission for opening the study centre was not permitted.

41. Mr. Rajagopal, learned senior counsel would also submit that so called retrospective recognition or post facto recognition or approval to the course conducted through distance education mode imparted by the respondents – Universities is not a valid order as even if DEC had done so, it had no such power and places reliance for this proposition on the Judgment of the Supreme Court in the case of 'ANNAMALAI UNIVERSITY REP. BY REGISTRAR v. SECRETARY TO GOVERNMENT, INFORMATION AND TOURISM DEPARTMENT AND OTHERS' reported in [2009] 4 SCC 590 and it is therefore submitted that assuming that the Universities claim that they had obtained post facto approval or recognition, it is of no consequence in law and the approval can only operate prospectively. It is submitted that if a student has undergone a course of study prior to this period, it cannot be said that such student has held a valid degree.

42. Mr. Rajagopal, learned senior counsel also submits that the Tribunal has committed error in not making a distinction between M.Phil Degree obtained through regular course of study and M.Phil Degree obtained through distance education mode;

that the guidelines and regulations made by DEC being a Body meant to regulate and maintain standards in imparting education by distance education mode for achieving such purpose, that should be followed by the Universities and Institutions and it cannot be diluted on the premise that the University regulations did not provide for such standards. Reliance is placed on the Judgment of the Supreme Court in the case of 'BHARATI VIDYAPEETH [DEEMED UNIVERSITY] AND OTHERS v. STATE OF MAHARASHTRA AND ANOTHER' reported in [2004] 11 SCC 755, to hold that concept of territorial jurisdiction of the University has been done away and scope of operation of University is now expanded throughout the territory of India as a ratio emerging from the aforesaid Judgment is totally erroneous inference drawn by the Tribunal by rejecting the contentions of the applicants – petitioners that the study centres cannot be located outside the territorial jurisdiction of the University and the State in the case of deemed university; that this Judgment of the Supreme Court has not laid down any such proposition or law and on the other hand, the ratio in this case is only to hold that UGC Act is not only for the purpose of making grants to various institutions governed by it, but also has the competence to grant deemed status for a University under section 3 of the UGC Act. It was only held in this case that State Laws and Orders etc., can only operate in respect of deemed Universities if not relating to maintaining of standards of higher education, but not in respect of maintaining standards of education which are within the domain of Medical Council, Dental Council etc.

43. It is also contended by Sri Rajagopal that the commission has committed an illegality in awarding weightage marks to applicants who had claimed teaching experience as guest lecturers, inasmuch as, neither the special Rules nor the notification issued by the commission inviting applications had provided for the same. It is also submitted that even in respect of others, the commission has awarded weightage marks based on the certificates issued by incompetent persons/authorities to issue such certificates, particularly in the case of persons claiming part-time lecturer experience, as the certificate should have been issued for such experience by the directorate of collegiate education, government of Karnataka and not by any private

persons. Sri Rajagopal submits that part-time lecturer in private educational institutions are also given such certificates, that is also bad in law. Sri Rajagopal has urged that the tribunal, though noticed these irregularities and infirmities, has, nevertheless, has not invalidated the same, but relegated the same to the commission to redo, without commensurate directions, is virtually denying relief to the applicants, though they succeeded in their contentions and accepted by the tribunal.

44. It is also submitted by Sri Rajagopal, learned senior counsel, that accepting incomplete applications, applications without necessary certificates, though, is noticed by the tribunal on a perusal of some of the applications produced by the KPSC before the tribunal, not invalidating the selections is another error committed by the tribunal.

45. Sri Rajagopal and Sri Shivaraj N Arali, have strongly contended that out of the selected candidates in the subject of sociology, petitioners-applicants had arrayed 74 of them as respondents to the applications before the tribunal and in the writ petitions before this court, on the premise that their selection is bad for one reason or the other such as not possessing valid M.Phil degree, not having experience in teaching entitling them award of weightage of marks, not submitting their applications duly filled in before the last date prescribed for receipt of applications by the commission, not producing relevant certificates along with the applications and the tribunal though found many of these allegations were true even from out of the record of only 43 of such selected candidates as against 83 arrayed as respondents, has neither invalidated the selection of candidates with such defects and deficiencies, nor has cared to scrutinize the record in respect of other 30 candidates, which had been withheld by the commission from production before the tribunal, and therefore an adverse inference should have been drawn.

46. Sri Rajagopal also submitted that KPSC while had published a provisional select list on 26-11-2008 and had invited objections and though the petitioners-applicants filed their objections on 1-12-2008, they have all been mechanically rejected on 1-1-2009 without due consideration and KPSC has proceeded to announce the final list, which is the same as provisional list, without effecting any changes. In this

regard, it is submitted that pursuant to the directions issued by the tribunal, which, in fact, had found many glaring irregularities and illegalities committed by KPSC in the process of the applications and in the selection of candidates, those objections were filed subsequently, yet again KPSC has mechanically rejected all such representations given on 25-8-2009, which yet again shows the mechanical manner in which KPSC is functioning and disregarding the directions issued by the tribunal. Submission is that the selection process is vitiated and the selection of respondents 3 to 76 should be set aside and the select list redone on merit basis, after eliminating persons who are bereft of qualifications and eligibility.

47. Sri Rajagopal, by drawing our attention to a chart and tabulated statement prepared by the counsel in respect of private respondents showing the kind of lacuna in their applications as to why such applications could not have been entertained, has submitted that KPSC should be directed to address these issues and give specific finding and to invalidate the applications of the candidates which are not in conformity with the instructions contained in the employment notification issued by the commission.

48. Sri B M Shyam Prasad and Sri Ajit, learned counsel appearing for the petitioners in other petitions, apart from adopting all the arguments advanced on behalf of the petitioners in the other batch of writ petitions as urged by Sri P S Rajagopal, learned senior counsel, have submitted that the tribunal has committed an error in concluding that distance education imparting universities in Tamil Nadu having obtained UGC permission, DEC permission is not necessary. In this regard, learned counsel pointed to the very UGC Rules, particularly Rule 4, which stipulates that a deemed university should obtain the approval of DEC before starting distance education course. Submission is that DEC guidelines have been approved by the DEC at its meeting of the board of management and with effect from 19-1-2006 as per the proceedings in the 26th meeting of the board of management and the DEC being a statutory authority, in the sense that it is also an authority created under Section 23 of the IGNOU Act read with statute 28 of the statutes of the IGNOU - a statutory authority, and therefore even as per Regulation 4 of the UGC Regulations, these guidelines are binding on all

institutions imparting education by distance mode and offering degrees and even in respect of the duration of the course for M.Phil is a minimum of two years and if they have set up their study centres outside the territorial jurisdiction of the universities and outside the state in the case of deemed university located in a particular state, then permission of the other state is a must.

49. M/s. B M Shyam Prasad & Ajit, Advocates, have also submitted that finding of the Tribunal is that DEC has no authority in the eye of law; that it has no backing of the statute; that the guidelines which are framed by it regarding standards to be maintained for imparting M.Phil course in Degree through distance education mode is not binding is clearly erroneous and unsustainable finding; that the UGC regulations itself has recognized the status and position of DEC; that it is as noticed earlier a statutory authority; that the DEC is a regulatory Body meant to prescribe and maintain standards in institutions which offer courses and Degrees through distance education mode and therefore the regulations and guidelines prescribed by it is on par with that prescribed by any professional Body like Medical Council of India or AICTE and has in support of the submission placed strong reliance on the decision of the Supreme Court in the case of 'DR. PREETI SRIVASTAVA AND ANOTHER v. STATE OF M.P. AND OTHERS' reported in 1997 [7] SCC 120 and in particular has placed strong reliance on the Judgment as contained in paragraph-55 of this Judgment wherein the Supreme Court has held that the guidelines prescribed by Medical Council of India regarding maintenance of standards in Medical Education and Higher Medical Education binds all Universities and Universities should necessarily follow the same and if otherwise the Medical Council can derecognize the Degrees offered by such Universities and holding so by overruling its earlier Judgment in the case of 'AJAY KUMAR SINGH v. STATE OF BIHAR' reported in 1994 [4] SCC 401 wherein it had been held that Medical Council guidelines was only directory but overruling the said view, the Supreme Court has taken the view in the case of 'DR. PREETHI SRIVATSAVA [supra] that Medical Council guidelines and regulations are statutory and binding and mandatory on the Universities and on the strength of the ratio of the decision of the Supreme Court, submits that the DEC should be taken to be a professional

Body on par with Medical Council of India [for short 'MCI'] and All India Council for Technical Education [for short 'AICTE'] and therefore it is urged that the guidelines prescribed by DEC binds the Universities imparting education by distance education mode.

50. It is also submitted that time schedule and other stipulations as per the DEC guidelines and regulations also equally bind the Universities who are running courses through distance education mode and in support of this submission, reliance is placed on the Judgment of the Supreme Court in the case of 'PARSHVANATH CHARITABLE TRUST AND OTHERS v. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION AND OTHERS' reported in 2013 [3] SCC 385. Strong reliance is placed on the observations and findings given at paragraphs 34 and 35 of this Judgment to submit that it had been held in that case that the time schedule calendar as prescribed by AICTE binds all Institutions of Education and so also is the situation where the DEC vis-à-vis Universities offering courses through distance education mode.

51. Mr. Shyam Prasad has also placed reliance on the Judgment of the Madras High Court in the case of 'N. GANESAN v. TAMIL NADU ELECTRICITY BOARD, REP. BY ITS CHAIRMAN' decided on 23.02.2012 in writ appeal Nos.1327 to 1342 of 2011 wherein the students who had been admitted in Universities imparting courses through distance education mode and which courses were not approved or permitted by the DEC or UGC, such admissions were not valid and awarding of Diplomas by them was also illegal being contrary to the guidelines, rules and regulations framed by AICTE and UGC also based on the affidavit placed before the court to this effect, directions had been issued to the Director of Technical Education to take appropriate action against the erring University and Institutions. The appellants' case was dismissed who had sought for appointment in Tamil Nadu Electricity Board on the strength of the Diploma conferred by such University and by distance education mode.

52. Likewise, reliance is also placed on another Judgment of the Madras High Court rendered in the case of 'TAMIL NADU GRADUATE FOOD INSPECTOR'S ASSOCIATION BY ITS ORGANISING SECRETARY v. THE DIRECTOR-CUM-

STATE FOOD HEALTH AUTHORITY AND OTHERS' rendered on 11.10.2007 in writ appeal [MD] Nos.236 and 237 of 2007 and MP [MD] Nos. 1 and 2 of 2007 wherein it was held that the Diploma offered by Vinayaga Mission Research Foundation cannot be said to be a valid Diploma for the reason that it had not been approved by DEC or UGC, but the course offered by distance education programmes and unless it is disapproved by UGC is a valid contention, which came to be rejected by the Madras High Court. The Madras High Court held that such view requires reconsideration, particularly, when it has not been expressly approved by UGC or DEC. It was also held that Diploma courses offered by deemed university does not come within the purview of Directorate of Technical Education.

53. On the strength of the ratio of these decisions, what is urged by Sri. Shyam Prasad is that approval by professional Body like DEC is a must and if not degree conferred by University offering distance education in M.Phil course and the concurrent Degree is not valid.

54. Mr. Shyam Prasad has with reference to Regulation 3.4 of UGC [Establishment of and Maintenance of Standards in Private Universities] Regulations, 2003, has mandated that private institution should fulfill the minimum criteria in terms of programmes, faculty, infrastructural facilities, financial viability etc., as laid down from time to time by the UGC and other concerned statutory bodies such as the All India Council for Technical Education [AICTE], the Bar Council of India [BCI], the Distance Education Council [DEC], the Dental Council of India [DCI], the Indian Nursing Council [INC], the Medical Council of India [MCI], the National Council for Teacher Education [NCTE], the Pharmacy Council of India [PCI] etc., and as per this regulation also, it is indicated that DEC is not only a statutory Body, but also its norms prescribed in minimum criteria for running a programme and faculty requirement for the same etc., are all to be complied strictly; that violation by any institution or university necessarily leads to invalidation of the Degree conferred by such errant universities or institutions.

55. Mr. Shyam Prasad has submitted that the guidelines issued by the UGC for establishing new Departments in the campus or setting up of Off-Campus Centres and starting distance education programmes by deemed universities and particularly for reopening the study centre, points out that the deemed universities are normally permitted to operate within their own campus and within the area of their specialization and so far as setting up of new off-campus centres are concerned, procedure as per guidelines 2.2 stipulates that it can be set up only after due permission from the UGC and the concerned State Government where such centres are proposed to be established; that in the absence, it is submitted that the Degree will not be valid and such is the case in respect of M.Phil Degrees conferred by Vinayaka Mission University.

56. Mr. Shyam Prasad has pointed out that even as per letter addressed by the UGC during October 2007 and sent to all Vice Chancellors of all Deemed Universities, it has been emphasized that before starting the courses under distance education mode, they should have obtained prior approval of both DEC and UGCV and any course started in violation, even if had been started, should be stopped immediately and unauthorized study centres in existence should also be closed down immediately and on failure to comply with such directions, the Universities run the risk of withdrawal of deemed university status conferred on them. All these materials are relied upon to submit that the DEC is a recognized professional Body whose guidelines and regulations are binding on all institutions imparting distance education and offering courses through distance education mode.

57. Learned counsel submits that writ petitioners are questioning the selection of 39 candidates selected for being appointed as Lecturers in Political Science from out of 179 in writ petition Nos.26535-26539/2009, selection of 23 candidates in History subject from out of 180 candidates in writ petition Nos.25733-25739/2009 and selection of 55 candidates in Economics subject from out of 205 candidates selected in writ petition Nos.25740-25750/2009 and submits that these respondents having obtained M. Phil by undergoing study in distance education mode and from Universities located in Tamil Nadu, the Degrees should be considered invalid and therefore urges

for redoing the list of selected candidates by removing the names of these respondents as in the absence of a valid M. Phil Degree, such selected candidates will not even fulfill the requisite minimum qualification such as passing NET with 50% marks and submits that the case of writ petitioners should be considered.

58. In the writ petition filed by KPSC i.e., writ petition No.28567/2009, questioning the common order of the Tribunal, insofar as it related to finding that giving of teaching experience weightage to candidates who are having guest lecture experience is illegal, Sri. T. Narayanaswamy, learned counsel has appeared and has strongly urged that the Tribunal committed a grave error in concluding that the guest lecturers are not eligible for service weightage; that it is only change in the nomenclature; that guest lecturers and part time lecturers perform same kind of duties and same nature of job and the State Government for certain reasons had redesignated the post of part time lecturers in the Government First Grade Colleges as guest lecturers, but in all other respects, nature of duty and appointment remained the same; that in view of the Government Notification clarifying its earlier notification that persons who can be engaged as guest lecturers can only be amongst the retired lecturers, but later relaxing the same as per Government Notification of the year 2005 saying that situations when retired lecturers are not available to be appointed as guest lecturers, even others can be appointed, submits that KPSC based on this had treated guest lecturers on par with part time lecturers; that in substance, there was no difference between the two and as such submits that the Tribunal while disposing of Application No.861/2009 before it should have taken note of this point, should not have interfered with awarding of weightage marks to guest lecturers holding it as illegal is not sustainable.

59. Sri. Kantharaj, learned counsel for respondent in writ petition No.28567/2009 and applicants in Application No.861/2009 strongly contended that the Tribunal has very correctly characterized awarding of weightage marks to guest lecturers; that it is clearly in contravention of rule -6B of the 1993 Special Rules; that it is not within the domain of KPSC to deviate from the rule imposing its own norms and standards and defend its action by saying that the State Government though was aware of the appointment of guest lecturers having not provided for or giving weightage to

them nor having amended, no exception can be taken to the validity of the rules or binding nature of it; that the Tribunal is clearly in error in showing favour to guest lecturers which is not contemplated under the rules and even as per the notification issued by the UGC itself.

60. It is significant to note in this regard that the State Government which has filed statement of objections exclusively to this writ petition, has taken a specific stand that as indicated in paragraph-4 of its statement and has strongly supported the view taken by the Tribunal to urge that the Tribunal was right in noticing that Rule 6B[1][a] of the 1993 Special Rules did not provide for grant of service weightage in favour of guest lecturers and has therefore rightly held that such action on the part of the KPSC in granting weightage marks to guest lecturers is illegal and consequential declaration such weightage to guest lecturers is illegal is only to be upheld.

61. It is also reiterated in the statement filed on behalf of the State Government that weightage of 'five' marks for service will be justified only if candidates had served as full time lecturers affiliated to any University in India or as part time lecturers in Government First Grade College as per Rule 6B[1][a] of the 1993 Special Rules and any other type of experience is not one qualifying for award of weightage marks for past experience.

62. In paragraphs 5 & 6, the same aspect is emphasized that no service weightage can be given to guest lecturers on par with part time lecturers, particularly, as guest lecturers had been given ample opportunities to apply for the post of lecturers and therefore no provision had been made to give them service weightage and KPSC not acting as per the rules, but acting to the contrary is definitely not sustainable.

63. Smt. S. Susheela, learned Additional Government Advocate with reference to such statement, has defended the view of the Tribunal and submitted that the writ petitioners' contention in the writ petitions to the effect that guest lecturers are not entitled for service weightage marks to this extent and on such premise is justified.

64. Appearing on behalf of the KPSC, Mr. Reuben Jacob, learned counsel has strongly urged that the KPSC has gone about the selection procedure as per the notification and has strictly adhered to the scheme of selection process; that instructions as contained in the Notification dated 24.12.2007 and the calendar for receiving the applications have all been strictly adhered to; that the academic qualifications have also been strictly enforced; that the KPSC had followed the method of what is known as 'check list' to be filled up by each of the candidate in his own handwriting in two sets indicating as to what all documents have been submitted along with the application; that it has adopted a transparent policy in this regard; that the applications were scrutinized, a list of applications which were rejected was also notified based on not having cut off marks for eligibility or their applications being not proper and based on the merit list of candidates, notices were issued to them, interviews were conducted and marks were given at the time of interview and addition of weightage marks i.e., for possessing M.Phil Degree one mark, candidates having obtained ranks proportionate to their qualification and the candidates with past experience proportionate to the number of years of experience, but the KPSC has limited the total marks given under the weightage scheme to a maximum of 'five' and in no case it has been exceeded; that the KPSC has also not received any application or documents after last date prescribed for receiving the applications, but is only such of those documents such as originals and for replacing provisional Degree certificates etc., further documents, originals were received at the time of interview of the candidate for which the candidate had already filed copies/provisional Degree certificate along with the application; that the KPSC had made available the records of other respondents insofar as candidates who had been selected in Sociology subject which was under challenge in writ petition Nos.26902-26914/2009.

65. Mr Reuben Jacob submits that the learned counsel for petitioners have also been enabled to go through the same; that the discrepancies pointed out have all been explained; that none of them is in the nature of violation of the conditions of the Notification; that even violation pointed out by Sri. P S Rajagopal, learned senior counsel with reference to candidature of Ms. Poornima is only in the nature of technical

violation, but not really violation of any of the stipulations regarding last date and such aspects; that the KPSC had published provisional list of candidates based on their total marks merit wise, objections had been invited, considered, final selection list was published thereafter and forwarded to the State Government for action of the same and therefore submits that the writ petitions have no merit on the aspect of violation by KPSC on the basis of the conditions for submitting applications as indicated in the notification.

66. With regard to the validity or otherwise of M.Phil Degree certificate issued by the Universities in Tamil Nadu which are Universities under the State enactments or deemed universities under the UGC Act are concerned, submission is that the KPSC and the State Government had also sought for clarification from the UGC who has not expressed that Degrees are invalid; that in the wake of such clarification issued by the UGC itself, it was not for the KPSC to sit in appeal over the validity of the Degree; that even otherwise, the KPSC cannot determine this question as the KPSC cannot invalidate the Degrees conferred by the University established in law and recognized by the UGC; that the UGC's letter dated 29.05.2009 addressed to the Secretary to Government, Higher Education, Education Department, had specifically indicated that even the candidates with M.Phil Degree from distance mode can be considered for recruitment for the post of lecturer with a concomitant relaxation in their favour from the requirement of passing NET and therefore submits that the challenge to M.Phil degree conferred by such University does not stand.

67. It is also submitted that the Tribunal cannot go into the validity of such Degrees and therefore the Tribunal has rightly refrained from embarking on such a venture.

68. Mr. Reuben Jacob, learned counsel has referred to extensively from the order of the Tribunal where under it is held that the Tribunal noticed the Universities had all the approval of the UGC and in this regard, has also with reference to the Judgment of the Supreme Court in the case of ANNAMALAI UNIVERSITY [supra] and distinguishes this case, as one of a person without a basic Degree being conferred with

post graduate Degree which was not in conformity with the UGC norms or DEC guidelines and therefore such a Degree was held to be invalid by the Supreme Court but the case on hand is not one such.

69. It is submitted that at the best, violation can be termed as procedural irregularity committed by the University and at any rate, it is not for the KPSC to sit in Judgment over these actions. What is very strongly urged is that while the UGC itself has not taken any action for invalidating the Degree conferred by these Universities for M. Phil course through distance education, it is not for the KPSC to take a different view going into great details of manner of functioning of these Universities etc.

70. It is essentially urged that the KPSC is not the monitoring authority on the functioning of such Universities and has to accept the Degree at its face value so long as it is not invalidated by the competent authority.

71. Mr. Reuben Jacob, learned counsel has also sought to defend action of the KPSC in awarding marks to guest lecturers on the premise that guest lecturers who are in substitution of part time lecturers, but continued to discharge the same nature of functions and therefore if the KPSC had treated them on par with part time lecturers, no exception can be taken and to this extent, the Tribunal is in error in characterizing and awarding of weightage marks to guest lecturers as illegal.

72. Appearing on behalf of private respondents, M/s.K. Subbarao and Sri. Subramanya Jois, learned senior counsel have submitted in tandem that in the first instance, writ petitions as well as applications before the Tribunal are not tenable in as much as petitioners were persons who had applied for the post under the very notification issued by the KPSC, participated in the selection process and only after finding that they have not been selected and therefore are aggrieved have now turned around to question the validity of the very selection which is not permitted in law; that they having participated in the selection process are estopped from questioning the very validity

of selection process and in support of the same, have placed strong reliance on the Judgment of the Supreme Court in the case of 'MADAN LAL AND OTHERS v. STATE OF J & K AND OTHERS' reported in [1995] 3 SCC 486 and in the case of 'DHANANJAYMALIK v. STATE OF UTTARANCHAL' reported in 2008 SCC [L&S] 1005.

73. Learned senior counsel have also submitted that the question of equivalence of a Degree or as to whether M.Phil Degree conferred by the Universities in Tamil Nadu by distance education mode is on par with M.Phil Degree obtained by students who have undergone regular course of study is not a question that can be examined by courts and Tribunals, but it is only academic Bodies which can examine the same and the Tribunal which has limited jurisdiction cannot also go into the validity of the Degrees conferred by Universities and therefore the Tribunal is very right in accepting the Degree conferred by the University whether under the distance education mode or otherwise and whether located inside the State or outside the State as a valid Degree and in this regard have drawn our attention to section 22 of the UGC Act to submit that the right of conferring or granting a Degree is only that of University established by the State or Central Legislation and it is not for the Tribunal to annul such a Degree nor for this court, though powers of this court are much wider than the power of the Tribunal, this court being a Constitutional Court, but the question is whether it should be done or not and submits that in the circumstances, there is no occasion to embark on this venture.

74. Mr. Subba Rao has also submitted that when once the Degree is granted and conferred by the University, it cannot be invalidated by a court or by other Universities and has in this regard placed strong reliance on the decision of the Supreme Court in the case of GOVINDA RAO [supra] to which extensive reference has been made by the Tribunal and which has been followed consistently by the Supreme Court in its later Judgments.

75. Sri K Subbarao, learned senior counsel, has also sought to justify the judgment of the Supreme Court in the case of ANNAMALAI UNIVERSITY [supra], pointing out

that the Supreme Court had held that post facto approval of post-graduate degree by state education board in that case is not valid for the reason that a candidate did not have a basic degree at all which is a prerequisite for undergoing a course in post-graduation even under distance education mode, but such was not the situation in the present batch of cases; that post facto approval of starting of a course and continuing of a course by distance education mode by universities or by professional bodies like DEC cannot be sought to be invalidated on the ratio of the judgment in the above judgment of the Supreme Court.

76. Placing reliance on the judgment of the Supreme Court in the case of B L ASAWA vs STATE OF RAJASTHAN [(1982) 2 SCC 55], it is submitted that a degree conferred by one university cannot be either invalidated or annulled by another university and support is drawn from this judgment and submission is that a degree conferred by a university even assuming it is located in Tamil Nadu, cannot be invalidated by another university or institution and therefore the tribunal also could not have gone into the validity of this aspect of the matter.

77. It is also submitted by Sri Subbarao that a degree conferred by a university, recognized and set up by an Act of Parliament or an Act of state legislature or as a deemed university under Sections 3 and 22 of the UGC Act is valid, not merely within the territorial jurisdiction of the university but throughout the country and therefore even degrees conferred by universities located in Tamil Nadu are, nevertheless, valid even for the purpose of selection to the post of lecturer in the state of Karnataka. Therefore, Sri Subbarao has urged for dismissal of the writ petitions.

78. Sri H Subramanya Jois, learned senior counsel appearing for respondent-universities – Vinayaka mission university as well as Madurai Kamaraj university – and private respondents in WP No 26902-14 of 2009 and other batch of writ petitions, has firstly urged that the scope of judicial review under Article 227 of the Constitution of India is considerably less, in the sense that court cannot act as a court of appeal. It is submitted that it is well established constitutional principle that while exercising

the jurisdiction of judicial review, High Court and Supreme Court interfere only when there is an illegality or material irregularity in the decision making process affecting the decision or when the decision is so irrational and that cannot be accepted, as recognized in Wednesbury principle. In this regard, strong reliance is placed on the decision of the Supreme Court in the case of TATA CELLULAR vs UNION OF INDIA [(1994) 6 SCC 651] and also in the case of SURYA DEV RAI vs RAM CHANDER RAI [(2003) 6 SCC 675] and in the case of KALINGA MINING CORPORATION vs UNION OF INDIA [(2013) 5 SCC 252].

79. It is secondly contended by Sri Jois that DEC being a creature under a statute of IGNOU Act, it has no statutory recognition as in the case of UGC, established by an Act of Parliament or State legislation and at any rate the provisions of UGC Act prevail over IGNOU Act, which is sub-serving the UGC Act in the matter of laying down norms and standards in education, in particular higher education and therefore submits that the approval or non-approval in implementing the guidelines issued by DEC in their letter and spirit will not make any difference to the degree conferred by the universities recognized under law and for such purpose has placed reliance on the decision of the Supreme Court in the case of ANNAMALAI UNIVERSITY [supra], particularly paragraphs 40, 51 and 59, and also in the case of BHARATHI VIDFYAPEETH vs STATE OF MAHARASHTRA [(2004) 11 SCC 755]. Though Sri Jois has submitted that judicial in matters of selection and appointment made by experts in the absence of plea and proof of mala fides is a hindering factor for the court to examine the validity or otherwise of the selection and has also placed reliance for such purpose on the decision of the Supreme Court in the case of BASAVAIAH (DR) vs DR H L RAMESH [(2010) 8 SCC 372], following the dictum at the Constitution Bench of the Supreme Court in the case of SAJEESH BABU vs N K SANTOSH [(2012) 12 SCC 106], we are afraid, for this proposition, these authorities may not help much, as, at the very best, case of the writ petitioners and the applicants before the tribunal is that KPSC has acted in violation of the Rules and its own terms in the notification and has also acted to favour many candidates even by receiving their applications and documents beyond the last date prescribed and at any rate has shown uncalled for favour in the

case of candidates who claimed service weightage marks on the basis of guest lecturer experience by awarding marks to such persons when even Rule did not permit or enable the same.

80. Sri Jois has taken us elaborately through the order of the tribunal and made submissions that these respondents though had not questioned the findings of the tribunal on points 1 and 2, which went in favour of the applicants, the respondents can nevertheless support the order of the tribunal on the same lines as the position of a respondent in an appeal to support a decree even while not appealing against the findings of the trial court by calling in aid the provisions of Order XLI Rule 22 CPC. Submission is that the findings on points 1 and 2 rendered by the tribunal are suspect and on point 2, it is submitted that the applicants-writ petitioners are estopped from contending so before the tribunal having participated in the selection process. In support of this submission, a celebrated case of the Supreme Court in the case of M P SUGAR MILLS CO. LTD. vs STATE OF UTTAR PRADESH & OTHERS [AIR 1979 SC 621].

81. Sri Subramanya Jois has also submitted that the answer given by the tribunal on point No 3 alone is sufficient to dismiss these writ petitions, as these findings do not suffer from any of the three requisites for inviting interference in judicial review; that the findings of the tribunal does indicate there is no drawback in it; that it did not suffer from any procedural irregularities nor suffer from any irrationality and not an illegality and therefore the findings cannot be examined within the scope of judicial review under Article 227. Sri Jois submitted that once the findings of the tribunal on point No 3 are accepted, no other findings survive for examination and therefore no scope for interference in writ jurisdiction.

82. Sri Jois has also placed strong reliance on the findings recorded by the tribunal to hold that DEC has no statutory recognition nor its guidelines and regulations are statutory provisions; that they are all mere guidelines with no force of law and therefore cannot in any manner pave way for either de-recognizing or invalidating a degree conferred by a university even assuming that the university has not scrupulously followed the guidelines.

83. Sri Jois has also called in aid the principle of equity to submit that the respondents having already been appointed should not be disturbed at this point of time from their jobs on humanitarian grounds. It is also submitted that the writ petitioners have sought to raise certain points before this court when such points were not even raised before the tribunal and this is also not permissible.

84. Sri J Prashanth, learned counsel appearing for respondents 8, 10, 11, 42, 61 & 62 in WP No 26902-14 of 2009, submitted that in the applications filled up and submitted by these respondents, there is no illegality or non-fulfillment of any of the guidelines; that Kuvempu university, from which they had obtained M.Phil degree in sociology subject, had issued a notification dated 30-1-2008, a copy of which is produced as Annexure-R88 to the objections filed by these respondents on 25-6-2013, and they have produced their M.Phil degree certificates at the time of interview and therefore it is not as though they did not possess M.Phil degree.

85. Sri Prashant, also appearing for the respondents 4, 6, 7, 10, 11, 13, 14, 16, 19, 26, 29 and 37 in WP No 28567 of 2009, submitted that these respondents working either as part-time lecturers in government colleges or full time lecturers in private colleges and even as guest lecturers are also working as part time lecturers in government colleges and therefore justified the award of service weightage marks to them and therefore submitted that they having also worked as part time lecturers, their service as guest lecturer can also be counted for awarding marks, but for different purpose.

86. It is in this background of such pleadings, contentions and authorities relied upon and the statutory provisions in supplementing the guidelines, communications clarifications issued by the state government, central government and the UGC, these writ petitions are required to be examined to decide the extent of interference possible in writ jurisdiction and as to what extent the findings of the tribunal are sustainable and the actions of the KPSC either can be sustained or can be invalidated?

87. We notice one common streak in the submissions made by learned counsel for the parties in these petitions is that they have all asserted the supremacy of the

UGC and the UGC Act, the Regulations and the guidelines and if either to defend the validity of the M.Phil degree conferred by the universities in question located in Tamil Nadu through distance education mode, as contended by the learned counsel for the respondents or to attack the same as urged by the learned counsel appearing for petitioners.

88. In the wake of such submissions, the points that arise for our consideration are:

i) Whether the applications before the tribunal and the present writ petitions are tenable?
ii) Whether this court can declare on the validity of the M.Phil degree conferred by six universities in question located in Tamil Nadu and having their study centres in the state of Karnataka?
iii) Whether any further directions are required to be issued to KPSC in the wake of the finding of the tribunal that awarding of service weightage marks to guest lecturers is illegal and also calls for interference?
iv) Whether any guidelines and directions are required to be issued to the KPSC in the wake of the developments as noticed and pointed out by the learned counsel for the parties in these writ petitions and as notice from the records of the KPSC?

89. The preliminary objection raised on behalf of the respondents, particularly, the private respondents is about the maintainability of the present writ petitions before this court and the applications as had been filed by the present writ petitioners before the Tribunal.

90. The objections raised are two fold. One is that the writ petitioners have asserted that M. Phil Degrees granted by the Universities located in Tamil Nadu through distance education mode is not a valid Degree and therefore on such premise, the Tribunal should invalidate the Degree which in effect is the prayer and the consequence being prayed, this being not within the scope of jurisdiction of the Administrative Tribunal under the provisions of the Administrative Tribunals Act, 1985, the applications should not have been entertained by the Tribunal. This objection is one relating to the scope of jurisdiction of the Tribunal.

91. The second part of the objections regarding maintainability before the Tribunal

is on the premise that the applicants before the Tribunal who had undergone the very selection process cannot turn around and challenge the selection process just because they are not able to get themselves selected and therefore they are estopped from questioning the process of selection by the KPSC on the principle of promissory estoppel etc. This is very strongly urged by not only counsel appearing for the KPSC before this court but also by learned senior counsel appearing for private respondents – universities and students who had acquired M.Phil Degree from those universities. The Tribunal no doubt examined these two questions and had answered it in favour of the applicants.

92. We would prefer to give our own reasons. The applicants who were persons aspiring for the post of Lecturers in various disciplines in terms of the notification issued by the KPSC inviting applications are basically aggrieved by the KPSC not adhering to its own stipulations indicated in the notification under which the applications are invited and not adhering to the recruitment rules governing the adding of weightage marks and KPSC not following a uniform procedure/method in respect of all applications and processing them. The applicants though no doubt had contended that the Degrees awarded by Alagappa and other Universities located in the State of Tamil Nadu in M.Phil course from distance education mode are not valid Degrees, no relief had been sought for vis-à-vis validity of the Degree by the applicants. The applicants had only urged that the KPSC should not have acted on the basis of suspect Degrees obtained by private respondents in these petitions and applicants before the Tribunal.

93. An Administrative Tribunal is a creature under the Central Legislation – Administrative Tribunals Act, 1985. The jurisdiction of the Tribunal, particularly, the State Tribunal is in respect of matters relating to employment in the State services and disputes arising in the course of employment under the State. The grievance of the applicants was in respect of selection made to the post of lecturer which is undisputedly employment under the State and that it is an illegal selection for deviating from the very conditions indicated in the notification and the rules and therefore is well within the scope of section 15 of the Administrative Tribunals Act, 1985. In

fact, disputes relating to the cases of employment under the State, has to be necessarily brought before the Tribunals only, and not elsewhere. The Tribunal has jurisdiction to look into the applications involving such disputes. The applications before the Tribunal by the present writ petitioners undoubtedly involved disputes relating to employment of the respondents under the State and on the basis of select list prepared and forwarded by the KPSC to the State Government. There is no dispute or doubt that preparation of select list is for appointment to the post by the State Government. The applicants had not sought for declaration of any of the Degrees as invalid. Whether granting such relief, the Tribunal has jurisdiction is a debatable point. When that had not been sought for and what had been sought for is only with regard to employment to be provided on the basis of M.Phil Degrees which according to the applicants was a suspect or invalid Degree. The applications were entertained as very much within the scope of jurisdiction of the Tribunal. Good number of authorities relied upon by learned counsel for respondents in this regard will not get attracted to the facts of the present case.

94. The second limb of the argument is that the applicants who had undergone the very selection process cannot turn around and question the selection of others; that they are estopped from challenging the select list having participated in the selection process and on the authority of the decision relied upon by learned counsel for respondents and therefore the applications were not maintainable. We find that the contentions of the applicants was not that selection process in its entirety was bad or suspect, but the KPSC has deviated from the settled principles of fair play and uniform treatment, has acted in contravention of the very recruitment rules governing such appointments and in award of weightage marks in contravention of the rules. Such challenges are all on the premise that the KPSC has not adhered to the rules and terms of conditions in the notification published inviting the applications. The challenge is not to the selection process per se in general, but to the illegal act, manner of evaluating comparative merits of the applicants by the KPSC and also on the premise that the KPSC itself has given a go by from adhering to the special recruitment rules while awarding experience weightage marks.

95. Not according equal opportunities to all similarly situated persons in matters of public employment definitely violates Articles 14 and 16 of the Constitution of India and it can definitely be brought before the Tribunal and also before this court. If the conduct of the KPSC while preparing the select list is hit by such discriminatory procedure or method followed by the KPSC and is violative of Article 16 of the Constitution of India, which is a constitutional violation and not merely statutory violation or irregularity in not adhering to a rule, but an infraction of the constitutional rights. Any matter of this nature can definitely be brought before the Tribunal and also this court for relief if it is the case of the applicants and the writ petitioners that there is violation of any constitutional provisions. In fact, an accepted principle of law on scope of fundamental rights, particularly, Articles 14, 16 etc is that no person can waive fundamental right nor can even plead estoppel against the person claiming a constitutional right. Challenge to the selection by the applicants before the tribunal was principally on the premise that such action violates Articles 14 and 16 – fundamental right given to citizens under the Constitution of India. In such matters, the principle of promissory estoppel is definitely not attracted. Therefore, we have to necessarily hold that the applications were very much tenable before the Tribunal both on the grounds of disputes brought before the Tribunal by the applicants was well within the limits of jurisdiction conferred on service Tribunals under the Administrative Tribunals Act, 1985 and also that any challenge to the selection process based on any violation of fundamental right, the question of estoppel does not operate nor on facts the applicants have questioned the selection process as has been frowned upon by the Supreme Court in the case of MADAN LAL [supra] relied upon by learned counsel for respondents and the later cases following the same. The relief sought for in the applications was well within the scope of section 15 of the Administrative Tribunals Act, 1985.

96. Insofar as challenge to maintainability of the writ petitions before this court is concerned, it is not precisely the challenge on the basis of jurisdiction of this court to entertain the present writ petitions, but as an argument that the relief sought for whether as against the findings and conclusion of the Tribunal in the applications

or as sought for in the writ petitions, does not come within the scope of judicial review under Article 227 of the Constitution of India and on such premise, it is contended that the writ petitions cannot make any headway before this court for further relief and learned senior counsel appearing for the respondents have called in aid the Judgments of the Supreme Court in the case of TATA CELLULAR, SURYA DEV RAI and KALINGA MINING CORPORATION [supra]. While it is true that the scope of judicial review as noticed in these Judgments of the Supreme Court is definitely not on par with the appellate jurisdiction and not for granting all types of reliefs, nevertheless, judicial review is available within the limits of Article 227 of the Constitution of India in respect of administrative actions and more so when the impugned action is said to be in violation of constitutional provisions and fundamental rights. Judicial review of administrative action in fact is recognized as a basic feature of the Constitution and there is no question of saying that there cannot be judicial review in respect of administrative action of preparing a select list by the KPSC for appointment to the post of Lecturers under the State and if preparation is flawed due to violation of the relevant rules or not adhering to the published conditions, stipulations and such actions are definitely amenable within the scope of judicial review of administrative action in the exercise of writ jurisdiction by this court. The reason given by us about as to how principle of promissory estoppel are not attracted in the context of maintainability of the applications before the Tribunal afortioari applies to the maintainability of the present writ petitions before this court and it is made clear that the jurisdiction of judicial review of administrative action of this court is not dependent on the person bringing a cause in writ jurisdiction or to say in other words, conduct of a person, nor is it limited by interse actions amongst private persons. While exercising writ jurisdiction and for judicial review of executive/administrative action, the superior courts in this country are High Court and the Supreme Court do not examine the cause as in the case of adversary litigation between two parties, but examination is only of the conduct and functioning of the State and as to whether it is within the limits of statutory provisions and constitutional provisions. Whether a writ petitioner may get relief he has sought for in the writ petition may be a question of uncertainty. That cannot be confused with availability of jurisdiction of this court

for examining a cause. It is therefore we hold that it cannot be said that the present writ petitions are not maintainable before this court, as urged by learned counsel for respondents.

97. With regard to the statements of objections filed on behalf of the respondents – Universities in Tamil Nadu and private respondents who were its students and who have got M.Phil Degree through distance education mode that it is not open to the Tribunal or for this court to declare the Degree conferred by such Universities as invalid as that is not within the scope of the Tribunals or the Courts but is an academic matter to be left to the Academicians and as provided for in law is concerned, we notice that neither in the applications before the Tribunal nor in the writ petitions before this court, prayer is made by the applicants/writ petitioners for declaration that the Degree is invalid. On the other hand, argument is built upon the premise that these Universities have not adhered to the norms and guidelines stipulated by the DEC and on the other hand have started these courses without approval or recognition and therefore such Degrees are suspect and cannot be called a Degree with the same quality and content as conferred by other Universities in favour of candidates who have undergone regular course of study and passed the same in M.Phil and therefore such of the private respondents should not have been given exemption from appearance in the NET and passing the same and also should not have been given weightage marks. Considerable amount of time is spent by learned counsel for respondents and by placing reliance on good number of authorities as noticed above, to contend that firstly courts cannot sit in appeal over the Degree conferred by the University recognized in law and secondly to submit that the argument advanced on behalf of the applicants – writ petitioners is flawed as the DEC regulations being not statutory regulations, cannot have mandatory binding effect and that non-adherence cannot make any difference to the Degree granted by these Universities.

98. We have also bestowed our consideration to the relevant submissions and are of the view that courts in the exercise of jurisdiction of judicial review cannot and do not embark on declaring legality of a Degree, but can definitely issue directions to the

University or the authority to take action as per law if it is found that the University or Institutions conferring such Degrees are not conforming to the mandatory stipulations of law, particularly, under the UGC Act or under any other Act binding the Universities. However, after elaborate consideration of the developments hitherto and in the light of the conduct of UGC and DEC, both not frowning upon such Degrees and even positively validating the Degree by post facto approval of the courses in the earlier years, we are of the opinion that it is not necessary for this court to interfere on this aspect and of course there was no occasion for the Tribunal to interfere and therefore the Tribunal cannot be characterized as having committed error or illegality in not going into this question. In this view of the matter, as we are holding that the court cannot grant validity of a Degree given by Institutions, it is recognized university or affiliated recognized university and it is only the University which can take action either for invalidating the Degree or for recalling the Degree, we are not going into the details of good number of authorities cited and relied upon by learned counsel for petitioners in these writ petitions to contend that the Degree should be declared as not a valid degree as the question is not directly in issue and that is incidentally brought up for examination and likewise we do not go into the details of authorities relied upon by learned counsel appearing for the respondent – Universities and private respondents – applicants before the KPSC who have contended that the Degree should be declared to be valid and the legal position as emerges from these authorities and application of the same to the facts of the present case as we are neither invalidating the Degree nor giving a certificate that it is a valid degree in the present order. We are just taking note of the position as it stands and are deciding the case on such premise.

99. We do find that a candidate holding M.Phil Degree has a great advantage over others who do not have, in the sense, firstly such applicant-candidates gets an exemption from appearance and passing in NET with minimum 50% marks and secondly, they get the advantage of 1% of marks getting added by way of weightage to their marks obtained otherwise. In such a situation, it is true and as contended by learned counsel for petitioners that giving such concessions and benefits to students

who appear to have somehow managed to acquire M.Phil Degree from a University which has not adhered to any standards or norms or stipulations and is only keen on conferring Degree on its students, the matter requires re-examination both at the level of UGC for continuing the exemption from pass in NET in respect of such persons who have acquired M.Phil Degree by distance education mode and also reconsideration on the part of the State Government, on the question of awarding weightage of 1% of marks even in respect of applicants who have such M.Phil Degree from the Universities who are conferring degrees through, distance education mode and not necessarily in an orderly manner but as of now the UGC instructions providing for exemption to persons possessing M.Phil Degree from appearance in NET and the State Government continuing with this rule providing for weightage of one marks to M.Phil students and manner the UGC not making much distinction between the M.Phil Degree acquired by students who have undergone regular course of study and by those who acquired it by distance education mode and treating them on par, but we do not propose to interfere on this aspect notwithstanding attractive arguments advanced on behalf of the writ petitioners.

100. The next question is as to sustainability of the finding of the tribunal that the awarding of weightage marks to guest lecturers for the experience in teaching is illegal and cannot be sustained and if so, if any further directions are required to be issued to the KPSC. In so far as this question is concerned, KPSC and private respondents through their counsel have strongly contended that the post of guest lecturers is on par with the post of part-time lecturers and in fact it was a substitute to part-time lecturers and therefore there is nothing wrong in awarding marks for experience in favour of guest lecturers also and no interference is called for.

101. On the other hand, submission on behalf of the petitioners by learned counsel for petitioners is that when the recruitment rule does not provide for giving weightage marks to guest lecturers, it is not open to the commission by a process of logic and reasoning to extend the benefit of the award of weightage marks on that analogy.

102. The relevant rule in this regard is Rule 6-B of the 1993 special Rules providing for such weightage of marks and under proviso (a) to sub-rule (1) of Rule 6-B, the weightage to be added for earlier teaching experience as lecturer is as under:

> (a) a weightage at the rate of one per cent for each completed academic year of service shall be added to the average percentage of marks secured by the candidate in the Master's Degree in the relevant subject, if such candidate possesses teaching experience as lecturer in any college affiliated to any University established by law in India, including the candidate who has served as part-time Lecturer in Government First Grade Colleges of the Department of Collegiate Education;

103. The rule is quite clear and explicit and provides for adding one percentage for each completed academic year of service if a candidate has teaching experience as lecturer in any college affiliated to the universities established under law in India and includes candidates who had served as part-time lecturer in government first grader colleges under the department of collegiate education. There is absolutely no mention of any guest lecturer qualifying for such weightage under this proviso and on the other hand it is conspicuously absent. One should bear in mind that it is under this rule such weightage is provided for and it cannot be added under any other provision, whether by KPSC or even the state government, in favour of persons having teaching experience otherwise than as stipulated under the Rule itself. An explanation that there is not much difference between a part-time lecturer and a guest lecturer cannot be found outside the rule and it should be within the rule. So long as the rule does not provide for and does not contain the same, it is a clear violation of the rule, more so by giving undue advantage to such applicants over others and not an advantage or weightage provided for under the rule itself.

104. A selection list based on mark-wise merit list prepared by adding weightage percentage not provided for in law is definitely flawed and invalid. In fact, even the notification issued by the commission also has not made any such mention of the possibility of guest lecturers also getting weightage on par with other part-time lecturers. This also means that KPSC has acted contrary to its own conditions and

stipulations mentioned in the notification and also contrary to Rule 6-B of the 1993 special rules.

105. In our considered opinion, the tribunal is very right in characterizing such award of marks in favour of guest lecturers as illegal, but has failed to issue commensurate directions to the commission based on such finding. After examination of the rival contentions in these petitions also, we are of the same view and though it is alleged by Sri Subramanya Jois, learned senior counsel appearing for some of the private respondents that on equitable principle, the appointments should not be disturbed on the ground of equity, we find and hold that we cannot accept this submission for two reasons. Firstly, the appointments are made subject to the outcome of these writ petitions and secondly overlooking an illegality will amount to placing premium on such conduct of the KPSC. Awarding of an uncalled for weightage marks gives an undue advantage to a person getting it and amount to an arbitrary action on the part of KPSC in violation of Articles 14 and 16 of the Constitution of India. It also amounts to denial of equal opportunity to such of those other guest lecturers who, perhaps, could have applied and competed for selection had it been notified that guest lecturers also qualify for getting weightage for experience.

106. Consequently, we direct the KPSC to redo the select list in respect of subjects sociology, political science, economics and history, in so far as persons arrayed as respondents in these writ petitions and also in the subject of English in respect of persons arrayed as respondents in Application No.861 of 2009 before the tribunal, against which order passed in this application, KPSC has preferred WP No 28569 of 2009, by deleting the percentage of marks awarded to such persons on the basis of experience gained as guest lecturers and finalize the select list based on merit and marks the candidates retained on such deletion and vis-à-vis writ petitioners. It is made clear that even after this exercise, if there are more meritorious candidates than the writ petitioners, it will only enure to the benefit of such other more meritorious candidates and not necessarily to the writ petitioners, unless they also qualify in the merit list on such basis. If a candidate who had been given weightage marks for his/her experience

as guest lecturer, nevertheless, still manage to have a higher percentage of marks and is eligible for selection on such premise, no need to disturb his/her present position. The state government is also directed to act accordingly in so far as the appointments are concerned. In fact, a revised select list should be forwarded by KPSC. In fact, the support given by the state government to this view through its statement of objections also has a great say in the matter and significant. Therefore, the state government is bound by this view and to act on such premise.

107. That leaves us with the various other irregularities pointed by Sri Shivaraj N Arali and Sri P S Rajagopal, learned senior counsel, and also M/s B M Shyam Prasad and Ajit, learned counsel for petitioners in these writ petitions. The irregularities pointed out are vis-à-vis individual applications and the learned counsel for petitioner have also given us a chart containing the kind of deficiency noticed by them on receipt of applications from each of the respondents mentioned in the chart and to contend that very receipt of the applications is in violation of the notified compliance that were required to be fulfilled by the applicants and the availability or non-availability of M.Phil degree on the last date fixed for receipt of applications, is not definite.

108. Learned counsel for KPSC had made available the original applications of such of those applicants whose applications had not been placed before the tribunal and learned counsel for petitioners have been enabled to go through the same and point out what are the anomalies in them. It is based on such premise, learned counsel for petitioners have prepared the chart showing the nature of violations by the applicants in submitting their applications before the KPSC.

109. In fact, though the tribunal itself had noticed many such violations, did not thought it fit to interfere, but enabled the applicants before it to submit their objections to the KPSC and the KPSC to take note of it and act on the same. The complaint by the learned counsel for petitioners is that though such objections were filed individually by the applicants-writ petitioners, KPSC has mechanically rejected them and has stuck to its original stand that in the process of applications, no violations of rule or condition is involved.

110. We are not very satisfied about the manner of response given by the commission to the objections raised. A perusal of a few of the applications, in fact, leaves much to be desired, as it gives us an impression that KPSC has enabled some of the applicants even by going out of the way by receiving their applications and documents as and when made available and also giving an impression that applicants who possess M.Phil degree acquired through distance education mode conferred on them by the six universities located in Tamil Nadu and outside the state of Karnataka on the basis of study centres opened by them in the state of Karnataka are shown considerable leeway, indulgence and relaxation. Such an impression is gathered, as some of these applicants have submitted their documents in installments and even up to the date of interview, which was almost more than one year from the last date prescribed for receipt of applications.

111. It does leave a feeling that something is wrong somewhere and not everything is alright with the KPSC in receiving the applications or selection process thereafter. Though it is contended by Sri Reuben Jacob, learned counsel for the KPSC, that the commission has not received any applications beyond the last date and no original of the documents which were not made available either in the provisional form or as per the certificate issued by institutions have been received later and all originals and documents received at the time of interview had already been submitted in the form of copies earlier. We still have an uneasy feeling that all is not well with the functioning of KPSC. Non-receipt of applications in a uniform manner and not putting in date stamps on the receipt of the applications and the KPSC not even indicating as to when exactly the applications were forwarded to the KPSC from its receiving centres located in the branches of some cooperative banks, all leaves a feeling of suspicion and possible malpractice in the functioning of the KPSC in these matters.

112. While being conscious of the scope of jurisdiction of judicial review under Article 227 of the Constitution of India, we did not propose to embark on a detailed enquiry or ascertaining only as to what exactly had happened and accepting the submissions of learned counsel for KPSC at their face value for whatever reasons, it

does not mean that we are issuing a clean-chit or certificate in favour of KPSC in the manner of its functioning. While, we do not propose to interfere with the selection process on the premise of improper or irregular receipt of applications or documents, it does assume significance if the candidates without qualification acquired before the last date prescribed for receipt of applications, have, nevertheless, made applications and post facto have made good the qualification acquired subsequently, definitely is not valid applications. For such purpose, we permit the writ petitioners to yet again point out the defects and deficiencies to the KPSC in respect of the applications of persons who have been arrayed as respondents in these writ petitions and direct the commission to examine them in an objective manner and on the touchstone of the stipulations prescribed in the notification and the rules governing the same. We also permit the state government to hold an independent enquiry and to ascertain the possible malpractices and if found to be proved or if any officials of the KPSC have indulged in such malpractice, to take commensurate punitive action against the erring officials and also to invalidate the selection and appointment of such beneficiary applicants who are party to such malpractices.

113. In the wake of the above discussion and conclusion, we answer point No.1 for our determination in the affirmative and hold that the applications were tenable before the Tribunal and so also the writ petitions before this court.

114. With regard to point No.2 for determination, we find that relief is not given to the petitioners for declaration that M.Phil Degree conferred by these Universities in question located in Tamil Nadu and having study centres in the State of Karnataka as invalid as we have found that in the present facts and circumstances, such a relief cannot be given and therefore this point is answered in the negative in favour of the respondents.

115. With regard to point No.3 for determination relating to award of service weightage marks to Guest Lecturers, we hold that it is illegal and being not contemplated under the rules governing the issue and does call for interference and we have directed the KPSC to delete the marks given to such candidates who have been given service weightage

on the basis of experience as Guest Lecturers. Therefore, the point is answered in the affirmative and we issue directions to KPSC to redo the merit list in respect of the subjects which are subjects matter of these writ petitions vis-à-vis respondents who have indicated to have been given service weightage for experience as Guest Lecturers, by deleting the service weightage marks for Guest Lecturers and then to arrange all applications of writ petitioners and private respondents on merit basis and finalize the list. Therefore, this point is answered in the affirmative and as indicated above directions are issued.

116. With regard to point No.4, we have already opined issue of guidelines and directions is very much necessary in the wake of the manner of functioning of the KPSC and also to ensure that at least henceforth, KPSC functions in a proper manner as the entire procedure is required to be streamlined and made more transparent and law and rule conforming. KPSC should treat all applicants alike even in the matter of extending some concessions or relaxation for the production of originals and there should not be any pick and choose method followed by it in this regard.

117. The KPSC also to always adhere to the rules governing the selection process and terms and conditions stipulated in the notification published by the KPSC inviting applications from eligible candidates. Therefore, this question is also answered in the affirmative and directions are issued.

118. In the result, writ petition Nos.26902-26914/2009, 26535-26539/2009, 25733-25739/2009, 25740-25750/2009 & 26138/2013, 4309/2010 are all allowed in part and to the extent as discussed and indicated in the above order.

119. Writ petition No.28567/2009 filed by the KPSC is hereby dismissed as one not having any merit and not calling for interference.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
WRIT PETITION No.4939/2013 (GM-CC)
D.D. 10.07.2013
Hon'ble Mr. Justice A.S.Bopanna

Smt.Aruna Kumari N N ... Petitioner
Vs.
The Commissioner, Backward Classes Welfare Dept. & Ors. ... Respondents

Family Income

Computation of family income for purpose of issue of category III B certificate in respect of candidates deriving income from Government service and services rendered in other authorities under Government or aided institutions, — Petitioner, while working as Assistant Teacher in Department of Public Instructions, got selected to post of Assistant Controller of State Accounts Department claiming benefit of reservation under category III-B – Caste and Income Verification Committee refused to issue verification certificate under category III B, by computing family income taking into consideration income/pay received by the petitioner in the capacity of Assistant Teacher, as it exceeded the limit of Rs. 2 lakhs prescribed under Circular dated 14.02.2000 – Whether the action of the Caste and Income Verification Committee in rejecting to issue verification certificate on ground that the family income of the petitioner exceeds limit of Rs. 2 lakhs, by taking into consideration pay of the petitioner, valid? No.

Held:

"**7.** Therefore, in my view, the circular dated 14.02.2000 would be applicable to the case of the petitioner inasmuch as the said circular provides for exclusion of the salary earned in any other posts in the Government and the petitioner having worked as Assistant Teacher, the salary earned there from cannot be taken into consideration, while considering the eligibility for the certificate to be issued to claim employment under Category – 3B.

8. In that view of the matter, the view taken by the Original Authority as well as the Appellate Authority that the circular dated 14.02.2000 would not be applicable to the case of the petitioner cannot be accepted. The impugned order dated 28.12.2012 passed by the first respondent and the order dated 31.07.2012 passed by the second respondent are accordingly quashed. The respondents are directed to grant the benefit of the circular dated 14.02.2000 to the petitioner and thereafter verify the validity of the said Category – 3B certificate issued in favour of the petitioner and proceed further in the matter in accordance with law. The further process shall be completed as expeditiously as possible but not later than two months from the date on which the certified copy is made available to the respondents.

In terms of the above directions, writ petition stands allowed."

O R D E R

The petitioner is before this Court seeking for the following reliefs:

a. Call for records pertaining to the impugned Order No.Him VaKaNi/ MaaSha/CR-11/2012-13 dated 28.12.2012 of the First Respondent (Annexure-AC) and proceedings of the Second Respondent Committee dated 31.07.2012 (Vide Annexure-M) and the impugned Order No.HimVaE/B-4/CR-13/2012-13, dated: 31.07.2012 (vide Annexure-L) passed by the second Respondent and set aside the aforesaid order of the First Respondent and proceedings and the order of the second Respondent; and

b. Direct the first and second Respondents to consider the claim of the petitioner under Category 3B by taking into consideration of the aforesaid provisions relating to reservation and to issue the validity Certificate under Category 3B for the aforesaid post on that basis."

2. The case in brief is that the petitioner was appointed as Assistant Teacher in Department of Public Instructions, Government of Karnataka, vide office order dated 23.04.2007. While the petitioner was in service, the fourth respondent had invited applications for the Gazetted Probationers' Group-A and B Officers for the year 2010, vide notification dated 27.01.2010. The petitioner had applied in response to the same. In that regard, the petitioner had also claimed benefit of reservation under Category-3B and had obtained caste and income certificates from the Thasildar, Chickmagalore, on 18.02.2010. The petitioner had thereafter succeeded in securing the job as Assistant Controller in the State Accounts Department. It is at this juncture, the verification of the said document was required to be made by the Authorities concerned. In that regard, the question that arises for consideration is as to whether the pay that is received by the petitioner as Assistant Teacher Grade-II should also be included to consider the income limit of Rs.2 lakhs provided for issue of such Category-3B certificate while taking into consideration the income of the family. The circular dated 14.2.2000 (Annexure-N) is relied on by the petitioner to contend that the salary derived from her employment as Assistant Mistress is to be excluded from the income to be taken into consideration for the purpose of issue of certificate. In the instant case, it0 is not in dispute that the salary if excluded, the income would be within the limit of Rs.2 lakhs as provided for issue of certificate.

3. The respondents, however, contend that the circular dated 14.2.2000 would not apply to the case of the petitioner inasmuch as the application made by the petitioner to the fourth respondent is in respect of open selection and not as an in-service candidate in the same department. It is therefore contended that the said circular would be applicable only to persons who are 'in-service' and would apply for selection to a higher posts in the same Department and not otherwise. The said consideration in fact has been made by the Original Authority as well as the Appellate Authority. It is in that circumstance, the petitioner being aggrieved by the same is before this Court.

4. Heard Sri H.N.Nanjunda Reddy, learned senior counsel appearing for Sri P.Changalaraya Reddy, learned counsel for the petitioner, Sri. Vijayakumar A. Patil learned Government advocate for respondents No.1 to 3 & 5 to 7 and Sri. Reuben Jacob, learned counsel for respondent No.4 and perused the writ papers.

5. Having noticed the rival contentions, in fact all other aspects appears to be the admitted case except the position as to whether the circular dated 14.2.2000 would be applicable to the case of the petitioner or not. It is not in dispute that if the salary earned by the petitioner as a teacher is excluded, the income of the petitioner's family would be within the limit of Rs.2 lakhs that is provided for issue of a certificate to be classified as Category – 3(B) and entitle her for reservation. Hence, all that is required to be noticed by this Court is the purport and scope of the circular dated 14.2.2000 and thereafter arrive at a conclusion as to whether the Original Authority and the Appellate Authority have construed the same in an appropriate manner to arrive at their conclusion.

6. In that view of the matter, it is necessary to notice the circular dated 14.02.2000 which is produced at Annexure – N to the petition. A bare reading of the circular would indicate that the income derived from Government services and the services rendered in the other authorities under the Government or aided institutions is to be excluded and thereafter the income, if any, derived from other sources is to be taken into consideration before the income of the family is to be decided. As noticed, the learned Government Advocate would however contend that the said benefit of exclusion of the salary would not be available to the petitioner inasmuch as she was working as a teacher and presently she has applied for the appointment in an open selection which was notified by the fourth respondent and not for

a higher post in the same Department. In order to consider the said contention, a detailed reading of the circular would indicate that in the preamble portion, it has referred to an earlier circular dated 03.08.1985 which provides that such benefit is available to in-service candidates who would apply for the higher post and if the benefit of reservation under Category-3B is sought, the salary earned in the lower post is to be excluded. If this aspect of the matter is kept in view, it is clear that the circular dated14.2.2000 (Annexure-N) has in fact clarified the said position and it has been issued to make it applicable to the other employees who are serving in the other Departments of the Government as also the other institutions as indicated therein and has granted the benefit of Category - 3B certificate in the case of such employees, if their income is below the prescribed limit after excluding the salary.

7. Therefore, in my view, the circular dated 14.2.2000 would be applicable to the case of the petitioner inasmuch as the said circular provides for exclusion of the salary earned in any other posts in the Government and the petitioner having worked as Assistant Teacher, the salary earned there from cannot be taken into consideration, while considering the eligibility for the certificate to be issued to claim employment under Category-3B.

8. In that view of the matter, the view taken by the Original Authority as well as the Appellate Authority that the circular dated 14.2.2000 would not be applicable to the case of the petitioner cannot be accepted. The impugned order dated 28.12.2012 passed by the first respondent and the order dated 31.07.2012 passed by the second respondent are accordingly quashed. The respondents are directed to grant the benefit of the circular dated 14.2.2000 to the petitioner and thereafter verify the validity of the said Category - 3B certificate issued in favour of the petitioner and proceed further in the matter in accordance with law. The further process shall be completed as expeditiously as possible but not later than two months from the date on which the certified copy is made available to the respondents.

In terms of the above directions, writ petition stands allowed.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
Application No.6029/2006
D.D. 26.07.2013
Hon'ble Mr. Justice A.C.Kabbin, Chairman &
Hon'ble Mr. Abhijit Dasgupta, Administrative Member

Meera Rachappa Alur ... Applicant
Vs.
State of Karnataka & Ors. ... Respondents

Selection

Non-production of original caste certificate at the time of personality test – Applicant was selected for appointment to the post of Assistant Commercial Tax Officer under general merit Female category on her failure to produce original III B category certificate at the time of personality test – Request of applicant to produce original caste certificate belonging to III B Female category, subsequent to personality test and after publication of provisional select list and on which basis to consider her case for selection against post of Assistant Commissioner instead of A.C.T.O. was rejected by KPSC in view of stipulation in note (a) of personality test letter to the effect that, 'candidates will not be eligible for personality test if the requisitioned original certificates are not produced on the date and time of interview and under no circumstances candidates will not be allowed to produce original certificates and documents subsequent to date and time of personality test – Whether in the circumstances action of Karnataka Public Service Commission in rejecting request of applicant to produce original caste certificates after personality test was over and for selection against post of Assistant Commissioner under III B Female category can be said to be arbitrary and erroneous? No.

Held:

"6. Further, as held by the Kerala High Court in writ petition (Civil) No.29243/2004 (F) (V. Swadathan Pillai.K. v. Kerala Public Service Commission and Another) decided on 26.11.2004, on which the learned Advocate for the KPSC has placed reliance, instructions of the KPSC are meant to be taken care of an duly complied with uniformity by all the candidates and the applicant cannot claim any exemption from that and that the courts are not justified in exercising their discretionary power in favour of such persons upsetting the functioning of the KPSC which is bound to deal with the cases of lakhs of students for whose guidance and compliance a uniform set of instructions is issued. It is also seen that the applicant herself conceded in her representation dated 19.01.2006 (Annexure R1) that she did not carry with her original caste certificate relating to Category III-B at the time of Personality test and sought for permission to attend the personality test. Therefore, the applicant has to blame himself for her failure to produce the original III B category certificate at the time of personality test. Needless to say that candidates expecting responsible jobs like Group-A and Group-B are expected to conduct themselves in such a manner that their claim for reservation is not rejected for non-compliance of the instructions."

Cases Referred:

1. V. Swadathan Pillai K. v. Kerala Public Service Commission and Another) decided on 26.11.2004, writ petition (Civil) No.29243/2004 (F)
2. Bedanga Talukdar v. Saifudaullah Khan and others, (2011) 2 SCC 85
3. Natesha D.B. v. Karnataka Public Service Commission and others, A.No.6419/2006, decided on 06.01.2012
4. Natesha D.B. v. Karnataka Public Service Commission and others, A.No.5559/2012, decided on 18.09.2012

ORDER

Mr. Abhijit Dasgupta, Hon'ble Administrative Member:

The Karnataka Public Service Commission ('KPSC', for short) had initiated selection process to Gazetted Probationers Group-A and Group-B posts in 1998 Recruitment process as per Notification dated 9.3.1998. The matter was pending in courts till 2005. Thereafter, selection process was continued in terms of the order of the High Court as confirmed by the Supreme Court and eligibility list of candidates to be called for personality list was prepared on the basis of merit and reservation claimed by the candidates. Provisional list was published on 13.2.2006 (Annexure A-10). After considering objections final list was published on 28.2.2006. The KPSC forwarded the select list to the Government and the selected candidates have since been appointed to the posts to which they had been selected. The applicant was a candidate for the aforesaid recruitment and had claimed reservation under 3B/F category. She secured 73.33 marks in the personality test and 1037 marks in the Main Examination and in all she secured 1110.33 marks. She was selected for the post of Assistant Commissioner of Commercial Taxes and her name was included in the provisional select list (Annexure A-10) under General Merit/Female category. Subsequent to the Personality Test the applicant made a representation dated 3.2.2006 (Annexure A-8) seeking permission to produce reservation certificate under III-B category.

2. The case of the applicant is that she had been selected for the post of Class-I and Class-II Officers by the KPSC in view of her eligibility and merit in the 1998 KAS batch. Though she claimed selection and appointment under Category III-B, her candidature has been wrongly considered for General Merit and on the basis of the same she has been

allotted the post of Assistant Commissioner of Commercial Taxes in the Commercial Taxes Department, as she could not produce the certificate relating to Category III-B. Request made by the applicant in this regard was rejected and she was allotted to Commercial Taxes Department by considering her claim under General Merit Category, whereas in the case of others similar request has been considered. The grievance of the applicant is that the procedure adopted and the allotment order dated 13.3.2006 of the KPSC posting the applicant to the Commercial Taxes Department is totally arbitrary and erroneous.

3. The learned Advocate for the applicant contended that the action of the official Respondents in not allotting the applicant to the Revenue Department is arbitrary and discriminatory, as several others under Category III-B, namely Akram Pasha, Shivananda Kapashi, Gangubai Mankar, Banneppa and Milan Murugod have been allotted to the Departments opted by them notwithstanding the fact that they did not produce the certificate relating to Category III-B and several candidates who have secured less marks than the applicant have been allotted to the departments of their choice. It is further submitted by him that an undertaking was obtained from the applicant that she was satisfied for being considered under General Merit Category and that she would not fall back to Category III-B under any circumstances and such an undertaking is opposed to the Constitutional Rights of the Applicant. It is also contended that the action of the Authorities is not providing an opportunity to the applicant to produce the requisite certificate is violative of the principles of natural justice.

4. The contention urged on behalf of the KPSC is that no doubt the applicant was selected to the post of Assistant Commissioner of Commercial Taxes and his name was included in the provisional select list Annexure A-10 under General Merit/Female Category, subsequent to the personality test, she requested for permission to produce reservation certificate relating to Category-IIIB and that request was rejected while publishing the provisional and final lists in view of the fact that the applicant's candidature was considered under General Merit category, as she failed to produce the original III-B reservation certificate at the time of personality test. The KPSC in its reply statement has denied the contention of the applicant that the applicant gave representations dated

19.1.2006 and 27.1.2006 (Annexures A-6 and A-7) and has taken a stand that the applicant has concocted the said documents in order to overcome her failure to produce the original certificate relating to III-B category at the time of personality test. The KPSC has also denied the contention of the applicant that certain candidates were exempted from producing certificates relating to category at the time of Personality Test. As regards the selection of Respondents No.3 and 4, the contention urged on behalf of the KPSC is that no doubt they have secured less marks than the applicant, Respondent No.3 who has secured 1052 marks has been selected to the post of Assistant Commissioner under III-B Category and Respondent No.4 who has secured 1050 marks has been selected to the post of Assistant Controller under General Merit/Female category by virtue of her merit even though she has claimed reservation under III-B category. The learned Advocate for the KPSC referred to decision of the Kerala High Court in Writ Petition (Civil) No.29243/2004 (F) (V.SWADATHAN PILLAI.K v. KERALA PUBLIC SERVICE COMMSSION AND ANOTHER) decided on 26.11.2004 for the proposition that instructions of the KPSC are meant to be taken care of and duly complied with uniformly by all the candidates and, hence, no fault could be found with the rejection of the claim of the applicant.

5. After hearing both sides, it is seen that the applicant had been selected to the post of Assistant Commissioner, Commercial Taxes Department under General Merit/Female category, as she failed to produce original III-B certificate. It is also seen that Note (a) of the Notice of Personality Test at Annexure A-5 clearly stated:

> "The candidate should appear for Personality Test half-an-hour earlier to the schedule time indicated to facilitate the office to verify all the original certificates (copies of which enclosed to his/her Application for G.P.Main Examination 2005) before allowing him/her to appear for personality test. The candidate should note that he/she will not be eligible for personality test if the requisitioned original certificates (copies of which enclosed to his/her application for G.P.Main Examination 2005) are not produced on the date and time of interview. Under no circumstances, the candidate will be allowed to produce the originals subsequent to the date and time of Personality Test."

Therefore, in view of clear instructions quoted above it was not open for the applicant to seek permission to produce the original III-B category and Rural Reservation Certificate

after the Personality Test was over and after the publication of the provisional select list. As regards the selection of Respondents No.3 and 4, the contention of the KPSC is that they had produced their original III-B certificates at the time of Personality Test and, hence, the applicant cannot have any grievance with regard to the selection of respondents No.3 and 4. We do not find any mala fide in the selection of Respondents No.3 and 4.

6. Further, as held by the Kerala High Court in Writ Petition (Civil) No.29243/2004 (F) (V.SWADATHAN PILLAI.K v. KERALA PUBLIC SERVICE COMMSSION AND ANOTHER) decided on 26.11.2004, on which the learned Advocate for the KPSC has placed reliance, instructions of the KPSC are meant to be taken care of and duly complied with uniformly by all the candidates and the applicant cannot claim any exemption from that and that the courts are not justified in exercising their discretionary power in favour of such persons upsetting the functioning of the KPSC which is bound to deal with the cases of lakhs of students for whose guidance and compliance a uniform set of instructions is issued. It is also seen that the Applicant herself conceded in her representation dated 19.1.2006 (Annexure R-1) that she did not carry with her original caste certificate relating to Category III-B at the time of Personality Test and sought for permission to attend the Personality Test. Therefore, the applicant has to blame himself for her failure to produce the original III-B category certificate at the time of Personality Test. Needless to say that candidates expecting responsible jobs like Group-A and Group-B are expected to conduct themselves in such a manner that their claim for reservation is not rejected for non-compliance of the instructions.

7. It is well settled that selection process has to be conducted strictly in accordance with stipulated selection procedure. In the matter of appointment, candidates have to comply with the specific stipulations while claiming reservation or regarding qualifications. Any laches on their part would definitely result in rejection of their applications. In such a situation, the candidate cannot claim as a matter of right sympathy or equity. If any relaxation is to be provided it should be given due publicity to ensure those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to

mandate of equality in Articles 14 and 16 of the Constitution, as held by the Supreme Court in BEDANGA TALUKDAR v. SAIFUDAULLAH KHAN AND OTHERS reported in (2011) 2 SCC 85. In the said case, disapproving the approach of the High Court in directing that condition with regard to submission of identity card could be relaxed in case of Respondent No.1, the Supreme Court held as under:

> "Perusal of the advertisement in the instant case clearly shows that there was no power of relaxation. The High Court erred in directing that condition with regard to submission of identity card either along with application form or before appearing for preliminary examination could be relaxed in case of Respondent 1, which was impermissible in view of mandate of Articles 14 and 16 of the Constitution. The finding of the High Court that Respondent No.3 – the State Public Service Commission had not treated condition with regard to submission of identity card along with application or prior to appearing in preliminary examination as mandatory, is also contrary to evidence on record. The impugned direction to consider claim of Respondent No.1 on basis of identity card submitted after selection process was over, is unsustainable."

8. In a similar situation, the High Court of Karnataka in Writ Petition No.15384/1998 decided on 28.3.2000 has held thus:

> "6. As per the notice of interview, all the candidates were required to produce all the original certificates at the time of interview and they were also made to know that failure to produce such originals will make the candidates ineligible for the interview. In spite of it, she was not able to produce the original reservation certificate dated 26.12.1994. Therefore, she was taken as General Merit Candidate. Even under General Merit Category, she was not eligible for selection in view of the fact that the percentage of her marks was much less than the last candidate selected under General Merit Category.
>
> 7. …In the matter of appointment, time and again it is said that the candidates have to comply with the specific stipulations while claiming reservation or with regard to the qualifications. Any laches on their part would definitely result in rejecting the application. In such a situation, one cannot claim as a matter of right sympathy or equity. As already discussed above, unless the writ petitioner has made out justifiable ground or cause for considering her case for category, this Court cannot come to her rescue. The 1st Respondent while considering her case for Category-I or General Merit at the time of selection process or the Tribunal, while considering her application or review application, have looked into the matter from all the angles. Therefore, the Writ Petitioner has not made out a case to give her the relief she has sought for."

9. A similar claim has been rejected by this Tribunal in several cases including Application No.6419/2006 (NATESHA D.B. v. KARNATAKA PUBLIC SERVICE COMMISSION AND OTHERS) decided on 6.1.2012, which has been confirmed by the Hon'ble High Court in Writ Petition No.5559/2012 (S-KAT) (NATESH D.B. v. KARNATAKA PUBLIC SERVICE COMMISSION) decided on 18.9.2012.

10. In the light of the aforesaid decisions, there is no merit in the Application and consequently, the application is dismissed.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
Application No.4769 of 2013
D.D. 31.07.2013
Hon'ble Mr. Justice A.C.Kabbin, Chairman

Smt. Sunanda Sanganala … Applicant
Vs.
The Secretary, KPSC & Anr. … Respondents

Candidature

Non-payment of examination fee – Whether K.P.S.C. is at fault in rejecting candidature of applicant on ground of non-payment of examination fee along with application, as required under relevant rules? No. Held, if a candidate fails to pay the fee even if it is by mistake, the candidature cannot be validated.

O R D E R

Office has raised objections that Annexure-A11 is incomplete and impugned order at Annexure-A13 is not addressed to the applicant.

2. As regard Annexure-A11, it is submitted by the learned counsel for the applicant that it is an internet copy and as it has been received it has been produced. As regard the second objection, it is submitted that Annexure-A13 is issued to the applicant's husband who had applied under Right to Information act on behalf of the applicant. Accepting these explanations, office objections are over ruled.

3. Sri T.Narayanaswamy, learned standing counsel for the KPSC (respondents) is permitted to file his vakalath in the office.

4. The applicant was a candidate for the post of Assistant Horticulture Officer in pursuance of Notification dated 22.11.2012 (Annexure-A8). She has not been selected. To ascertain the reason for not selecting her, applicant's husband filed an application under RTI act for which impugned endorsement bearing No.R(1):179/2013-14/PSC dated 6.7.2013 (Annexure-A13) has been issued. It is stated in the endorsement that the candidature of the applicant has been rejected on the ground that she had not produced receipt for having paid the application fee.

5. It is admitted by the applicant that application fee had not been paid. The learned advocate for the applicant submits that it was only a mistake. It is further argued by the learned counsel for the applicant that the applicant has given a representation to condone that lapse and that it ought to have been considered.

6. The selection rules require that examination fee should be paid in the Bank when the application is filed by internet. If a candidate fails to pay the fee, even if it is by mistake, the candidature cannot be validated. Therefore, I do not find any substance in the contention of the applicant that she ought to have been considered for selection and appointment.

7. For the above said reason, the application is dismissed at admission stage under Section 19(3) of the Administrative Tribunals Act.

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IN THE HIGH COURT OF KARNATAKA, BANGALORE
WRIT PETITION NO: 12530/2010 (S-RES)
D.D. 31.07.2013
The Hon'ble Mr.Justice L. Narayana Swamy

Jagadeesh B Naik … Petitioner
Vs.
KPSC & Ors. … Respondents

Caste Certificate

Non-production of caste certificate in prescribed format – Whether selection of respondent-3, made on basis of caste certificate issued by competent authority in a different format than the one prescribed by Public Service Commission is vitiated? No. Whether non-production of caste certificate in a prescribed format is a curable defect? Yes.

"8. Non production of requisite certificate is curable defect in which the person shall not be affected. Under Karnataka Schedule Caste, Schedule Tribe and other Backward Classes (Reservation of Appointment etc) Rules different type of caste certificates are prescribed based on the purpose for which the certificates are issued. This must have created confusion in the applicants and also the authorities in issuing the certificates and that might be the reason that the third respondent has produced Appendix-1 and later Form-D. Under these circumstances, the defect of non production of Form-D, which is required as per the notification as rightly pointed out during verification which has been duly complied. In that view of the matter, I do not find any good reason to interfere with the same.

Accordingly, writ petition stands dismissed."

ORDER

Petitioner challenged the selection and appointment of the respondent no.3 for the post of Assistant Engineer under Scheduled Tribe category in city corporation, Bangalore. Respondent no.1 Karnataka Public Service Commission issued notification calling for application for selection by its notification dated 10/08/2009, after the completion of procedure of selection respondent no.3 has been selected.

2. The grounds for challenge is as per the notification issued by the commission the candidates should produce caste certificate in Form-D but third respondent has

produced Appendex-1 which is not a requisite certificate. Under these circumstances, on the ground that the third respondent has not produced the requisite certificate as it is insisted by the Karnataka Public Service Commission for selection his appointment has to be set aside. The notification issued for filling up backlog posts of Assistant Engineer in Civil and total post called for is 5 in number of which one post is reserved for Scheduled Tribe. Petitioner nos. 3 and 4 belong to Schedule Tribe. The learned counsel submits that when the notification specifically insist the candidates to produce the certificate in particular format the same must be produced and the commission or the selection authority cannot consider the other format or any other certificates.

3. The learned counsel for the third respondent submits that it is not in dispute that third respondent is a person belongs to Schedule Tribe. The certificate produced by the third respondent is issued by the competent authority. The third respondent is selected and he has been issued with appointment order and he has been completed probation period also. In the circumstance, he cannot be disturbed at this stage.

4. The fourth respondent submits that even if this petition is allowed the next highest marks is secured by the fourth respondent and he would have the chance of selection.

5. I have heard the learned counsel for the petitioner and learned counsel for the respondents.

6. The learned counsel for the first respondent submits that Karnataka Public Service Commission submits that selection has been made strictly following the notification and rules prevailed. The documents between the dates 15/1/2010 and 27/1/2010 the third respondent was directed to produce the document in Form-D, accordingly he has obtained from competent authority and produced the same to the satisfaction of the commission, accordingly his case was considered and he is selected.

7. The only question required to be consideration is whether the third respondent selection is just and proper in view of producing Form-D whether it is a curable defect since facts are not disputed. Whether the petitioner and third respondent belongs to Scheduled Tribe and secondly whether the competent authority the Tahsildar of the respective Taluks has issued valid certificates is not examined as to the correctness of the certificates issued. I find from Annexure-J, the certificate obtained which is produced as Appendix-1 along with the statement of objections the selected candidate third respondent produced Form-D which was sought to be produced as per the notification. Under these circumstances, both the certificates issued by the competent authority have declared the fact that third respondent was available for consideration of his case and under Schedule Tribe category.

8. Non production of requisite certificate is curable defect in which the person shall not be affected. Under Karnataka Schedule Caste, Schedule Tribe and other Backward Classes (Reservation of Appointment etc) Rules different type of caste certificates are prescribed based on the purpose for which the certificates are issued. This must have created confusion in the applicants and also the authorities in issuing the certificates and that might be the reason that the third respondent has produced Appendix-1 and later Form-D. Under these circumstances, the defect of non production of Form-D, which is required as per the notification as rightly pointed out during verification which has been duly complied. In that view of the matter, I do not find any good reason to interfere with the same.

Accordingly, writ petition stands dismissed.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
Application Nos.683-685/2012 & Connected cases
D.D. 23.08.2013
Hon'ble Mr. Justice A.C.Kabbin, Chairman &
Hon'ble Mr. Abhijit Dasgupta, Administrative Member

Harsha H.R. & Ors. … Applicants
Vs.
State of Karnataka & Ors. … Respondents

A. Selection procedure

Selection to posts of Assistant Executive Engineer Division-I, by direct recruitment – Direct recruitment to posts of Assistant Executive Engineer being from two sources namely 'open competition category' and 'inservice category' and there being separate quota for recruitment in respect of said two categories and inspite of inservice candidates indicating their choice to be considered under inservice category, whether Karnataka Public Service Commission was justified in selecting inservice category candidates against quota earmarked for open competition category? Yes. In absence of any indication in Recruitment Rules or notification inviting application that inservice candidates cannot claim selection in open competition quota and no separate application being prescribed for candidates from inservice quota and for candidates from open competition quota, held that inservice candidates are entitled to compete in open category also if their applications were forwarded by competent authorities to selecting authority and the KPSC is justified in considering case of inservice candidates for selection under open competition category.

B. Selection process

While filling application form for recruitment to post of AEE, against column no.7 "Do you claim under inservice quota? Yes or No" if an inservice candidate opts for 'Yes' whether that itself can be construed to exclude them from considering their case under open competition category? No. There being one common application for both the categories and Question No.7 only sought to ascertain as to whether a candidate claims to be considered in inservice quota, held that it cannot be said to exclude inservice candidate, who had indicated his desire to be considered in inservice quota from being considered under open category quota.

Cases referred:

1. K. Duraiswamy & Another v. State of Tamil Nadu & Others, {(2001) 2 SCC 538}
2. Sathyabrath Sahoo and others v. State of Orissa and others {(2012) 8 SCC 203}
3. Vishwanath M.S. v. State of Karnataka and others, 1993 K.S.L.J. 917
4. P. Mohanlal Pillai v. State of Kerala and others, AIR 2007 SC 2840
5. Mukul Saikia and others v. State of Assam and others {(2009) 1 SCC 386

6. Kishor Kumar & others v. Pradeep Shukla & Others, {(2012) 4 SCC 103
7. Rajya Sabha Secretariat & Others v. Subhash Baloda, 2013 AIR SCW 1325

O R D E R

Hon'ble Mr. Justice A.C. Kabbin, Chairman:

These applications are regarding legality of the procedure adopted in direct recruitment to the posts of Assistant Executive Engineers held in pursuance of notification dated 17.4.2007. The question that has arisen is whether the consideration of the applications of certain in-service candidates in open competition category of this recruitment was legally valid.

2. In accordance with the Karnataka Public Works Engineering Department Services (Recruitment of Assistant Executive Engineers Division 1 by Competitive Examination) Rules, 2007, (hereinafter referred to as 'Competitive Examination Rules, 2007') published in Gazette dated 22-2-2007 (Annexure A1), applications were called for direct recruitment to the posts of Assistant Executive Engineers. Number of posts to be filled as stipulated in Notification No.E(1) 17/2007-08/¦J¸ï¹ dated 17-4-2007 (Annexure A2) was 52 posts. Out of these posts, 42 were to be filled by selection of candidates in open competition category and 10 posts were to be filled from in-service candidates. The last date fixed for submission of applications was 16-5-2007. Subsequently, some more posts were included for recruitment for which second Notification calling for applications to fill up 104 posts of AEEs was issued in No.E(1) 585/2007-08/PSC dated 8-8-2007. That Notification included 52 posts for which applications had been called for in Notification dated 17-4-2007. Out of 104 posts, 84 posts were to be filled by open competition and 20 posts were from in-service candidates. As per the Recruitment Rules, 75% of posts were to be filled by promotions of Assistant Engineers Division I, 20% by direct recruitment by open competition and 5% by direct recruitment from in-service candidates. The present recruitment is in respect of 20% by open competition and 5% from in-service candidates.

3. The selection procedure consisted of a written examination and personality test. As per Rule 8 of the Competitive Examination Rules, 2007 (Annexure A1), based on the merit

in the written examination the candidates were required to appear before the Karnataka Public Service Commission for personality test in the ratio of 1:5 in each category of reservation. Accordingly, interviews were conducted separately for in-service candidates and for candidates in open competition category; and provisional select list of 84 candidates selected in open competition was published in Notification No.E(1) 72/2009-10-PSC dated 20-5-2009 (Annexure A14). As regards 20 posts of in-service candidates the provisional select list was published on 9-12-2011 (Annexure A16).

4. In between, a question arose as to whether creamy layer policy applied to in-service candidates claiming reservation and the matter was taken to the Tribunal in A.Nos.1447 of 2008. On the decision of the Tribunal, a batch of writ petitions was filed in which by judgment dated 15-12-2010 passed in W.P. No.6500 to 6508 of 2009 (S-KAT) and connected writ petitions, it was held that the benefit of creamy layer policy was not applicable to in-service candidates. Thereafter, revised provisional list in respect of open competition category was published in Notification No E(1)6499/2011-12/PSC dated 9-12-2011 (Ann A15) and in respect of in-service candidates revised provisional list was published in the Notification of the same date. (Ann. A16). After considering the objections, a final select list of open competition candidates was published in Notification No. E(1) 6591/2011-12/PSC dated 3-1-12012 (Ann. A18). In respect of in-service candidates, Notification of even number dated 3-1-2012 (Ann-A19) was published. The list challenged in these applications is the final list of open competition category (Annexure-A18).

5. The applicant No.1 in the 1st batch of applications (i.e., 683 to 685 of 2012) is an in-service candidate who had claimed selection in open competition category and other applicants in all applications were candidates in open competition category. The Respondents no.3 to 21 are candidates selected in open competition category but all of them were in-service candidates also. The respondent No.24 in A.No.755 of 2012 was the lone in-service candidate who had claimed selection only in open competition category and he has been selected in that category.

6. The point that has been raised by the applicants is that in-service candidates, who had marked in the applications their choice for being considered in in-service quota were

not entitled to claim selection in open competition category unless they had specifically indicated in their applications their wish to be considered for selection in open competition category also and that none of the private respondents (except Respondent No.24 in A.No.755 of 2012), who are in-service candidates and who had indicated their choice to be considered in in-service quota was entitled to be considered in open competition category. It is therefore, contended that the selection of the private respondents in open competition category transgressed the recruitment rules and undue advantage has been conferred on in-service candidates who could have been considered only in in-service category. It is also contended that by this method, the chances of these applicants for being selected was scuttled.

The reliefs claimed by the applicants are:

(1) For issuance of a writ of certiorari quashing the impugned Notification No.E(1) 6591/2011-12 dated 3-1-2012 (Ann-A18) insofar as it relates to the selection of Respondents 3 to 21;

(2) To declare that the Respondents 3-21 are ineligible for selection as against 84 posts earmarked for open competition for the posts of AEE, Division No 1.

(3) To select the applicants in such posts and to appoint them.

7. The contentions of the Karnataka Public Service Commission which have been generally adopted by the Government and the private respondents may be briefly stated as follows:

(i) In-service candidates were also entitled to compete for open competition category posts if they were within age limit as per Rule 5 of the Special Rules, 2007 and possessed requisite qualification;

(ii) Application form is common for both sources and the only requirement for an in-service candidate was to shade appropriate circle as against question at column No.7 of the application i.e.,

" Do you claim in-service quota?
which would only mean that such candidate is claiming consideration in in-service quota as well as in open competition category.

(i) In view of the decision of the Tribunal and the High Court, a revised provisional select list was prepared and published for open competition category and also for in-service category separately.

(ii) After considering objections, final select lists were prepared and published. As in the provisional select lists, some in-service candidates figured in the final select list for open competition category as they had acquired higher marks and were selected according to their merit.

(iii) There was no bar for an in-service candidate to compete in open competition category.

8. We have heard the arguments of learned Senior Counsel Sri.K.Subbarao who argued for the applicants in the 1st batch of applications A.Nos.683 to 685 of 2012, Sri.M.S.Bhagwat, Sri. N.B.Bhat, Sri.S.V.Narasimhan, Sri.V.R.Sarathy and Sri.V.Lakshminarayana, Advocates for applicants in these batch of applications and Sri. M.Nagarajan, AGA for Respondent No.1 and Sri.P.S.Rajagopal, Senior Counsel who argued for Sri.T. Narayanaswamy, learned advocate for R2 – Karnataka Public Service Commission, Sri.Ranganatha S.Jois, Sri.S.G.Pandit, Sri.K.T.Garadimani, Sri.H.M.Nagendra, Sri.J.Prashanth, Sri.H.Mohan Kumar, Sri.Marthi S, and Sri.Vishwanatha Bhat (Adv. For R24 in A.No.755 of 2012), learned Counsel who represented the other private respondents.

The points that arise for consideration are:

(i) Whether an in-service candidate, who had claimed consideration of his candidature in in-service quota, was not entitled to be considered for selection in open competition quota?

(ii) Where a candidate had shaded the circle against the question as to whether he was claiming in-service quota is entitled to be considered only in in-service quota and was not entitled to be considered for selection in open competition category?.

Point No.1:

9. As per Recruitment Rules, admittedly direct recruitment to the posts of Assistant Executive Engineers is from two sources. One source is described as 'open competition category' and the other source is 'in-service category'. The procedure for recruitment for both the sources is governed by common rules called The Karnataka Public Works Engineering Division Services (Recruitment of Assistant Engineers Division No.1 by Competitive Examination) Rules, 2007.

Rules 5 to 9 of the Competitive Examination Rules (Annexure A1) which are relevant read as under:

"5. **Age and academic qualification of Candidates**: Every person who has attained the age of 21 years but not attained 40 years in the case of candidates belonging to the Scheduled Castes/ Scheduled Tribes/ Cat-1; 38 years in case of candidates belonging to category 2A/2B/ 3A/3B; 35 years in case of any other candidates as on the last date fixed for receipt of applications shall be eligible to apply for recruitment under these rules.

Provided that there is no maximum age limit for candidates competing under in-service quota.

Candidates must be holder of a Degree in Civil Engineering or Construction Technology and Management granted by a University established by Law in India and from an institute approved by the AICTE or a diploma Certificate from the Institution of Engineers (India) that he has passed Parts A & B of the Associate Membership Examination of the institution of Engineers (India).

6. **Conduct of Competitive Examination –**

(1) The Commission shall call for applications by advertisement for admission to the competitive examination, in such form as it may determine and before such date and on payment of such fees as may be specified by the Commission in the Advertisement. The Commission shall also specify in such advertisement the provisional number of vacancies to be filled and the number of vacancies reserved for Scheduled Castes, Scheduled Tribes and other Backward Classes. The Commission shall be responsible for all arrangements relating to the conduct of a competitive examination.

(2) No person shall be admitted to a competitive examination unless he holds a certificate of admission from the Commission. The decision of the Commission as to the eligibility or otherwise of a person for admission o the examination shall be final.

7. Examination:- (1) The competitive examination shall consist of-

(i) a written examination in Kannada, English, General Knowledge and optional subjects specified in the Schedule; and

(ii) Personality test.

(2) The maximum marks for personality test shall not exceed 5% of the competitive examination marks.

8. **Candidates to be called for Personality Test**:-

Based on the merit in the written examination, the candidates shall be required to appear before the Commission for the Personality Test in the ratio of 1:5 (vacancy candidate) in each category of reservation.

9. **List of selected candidates**:- The Commission shall prepare in the order of merit the final list of candidates on the basis of aggregate of the marks obtained in the written examination & personality test and after taking into consideration the rules and orders in force relating of posts for SC, ST, OBCs and Others."

10. It is therefore clear that the qualifications and written examination for both sources was the same. Selection process was common. The dispute is only regarding the eligibility of in-service candidates to be considered in open competition category and preparation of select list (provisional and final).

11. The contention of the applicants is that an in-service candidate who had claimed consideration of his candidature in in-service quota was not entitled to be considered for selection in open competition quota. Neither the recruitment rules nor the notification gives a meaning that an in-service candidate cannot claim selection in open competition quota. The only requirement is that if he has to claim selection in both the sources it has to be indicated. Unfortunately, in the present recruitment, no separate applications were prescribed for candidates from in-service quota and for candidates from open competition quota. It was a common application form. The only requirement was that if any application was filed by an in-service candidate, he had to indicate as to whether he has to be considered in in-service quota or not. Neither the application nor any rule gives an impression that a candidate who had filed such application if he had indicated that his claim has to be considered in in-service quota was precluded from claiming selection in open competition quota.

12. As per Rule 11 of the Karnataka Civil Services (General Recruitment) Rules a government servant applying for an appointment to any service or post has to submit his application through the authority competent to appoint him to the post which he holds at the time of making the application. It is for such authority to decide as to whether the government servant shall be permitted to apply and such permission shall ordinarily be granted unless the authority considers that the grant of such permission will not be in public interest. Therefore, if this condition is satisfied, an in-service candidate also can compete for open competition quota. It is not in dispute that all in-service candidates who are private

respondents in these applications had forwarded their applications through official superiors and the competent authority permitted them to apply.

13. The argument of the learned counsel for the applicants is that such act is held to be illegal by the Hon'ble Supreme Court in K.DURAISWAMY & ANOTHER Vs. STATE OF TAMIL NADU & OTHERS {(2001) 2 SCC 538}. In that case, the question that was considered was about the legality of the procedure followed by the Tamil Nadu Government for selection of candidates for admission to Post Graduate Diploma/Degree, MBBS., Higher Specialty Course for the academic session 1999-2000. The conclusion in that case was that in-service candidates could not, on the basis of merit be considered, against the seats earmarked for non-service candidates. On a perusal of the entire decision, we find that in that case 50 percent of the seats were to be earmarked for in-service candidates on merit basis and remaining 50 percent of seats available in each of the specialty were to be allowed to non-service candidates. The Government Order specifically enumerated various categories of medical officers who alone were entitled to be considered as in-service candidates and had to be considered for selection against the 50 percent seats allocated exclusively for in-service candidates. As far as the remaining 50 percent referred to as open quota, while stipulating the criteria for selection, it was specifically stated that all other eligible medical officers except those enumerated categories of medical officers shall be eligible to apply for the same. Therefore, in that case non-service quota specifically excluded in-service medical officers. In the present case, neither the recruitment rules nor that notification calling for applications makes that specific exclusion of in-service candidates for competing in open quota category.

14. Learned counsel for the applicants have cited another decision in SATHYABRATH SAHOO & OTHERS Vs. STATE OF ORISSA & OTHERS {(2012) 8 SCC 203}. It was a case of weightage given to in-service candidates who had served in rural areas who on the strength of weightage had got admission in open category stream. That was disallowed.

15. In fact, a question similar to the present one had arisen in Karnataka in an earlier recruitment of Assistant Executive Engineers for 50 posts called for in notification no.197/

85-86 dated 10.6.1985 which was for similar recruitment. In that recruitment also, direct recruitment for open competition was 20 percent and for in-service candidates it was 5 percent. Consideration of in-service candidates for open competition was assailed in an application before the Tribunal in VISHWANATH. M.S. Vs. STATE OF KARNATAKA & OTHERS {1993 K.S.L.J. 917}. After considering similar contentions, it was held that it was permissible for an in-service candidate to seek consideration under the quota reserved for direct recruitment in open competition. The relevant portion of Para 2 of the said decision reads as under:

> "2. Karnataka Public Service Commission - 2nd respondent has filed its reply statement. The Public Service Commission contends that the fourth respondent in his application had indicated his desire to be considered both under the 20% available to open competition as well as 5% for the in-service candidates as he was in service on the date of the application which we find from the records as acknowledged by the Public Service Commission on 24-7-1985. The stand taken by the Public Service Commission is that having regard to the fact that the applicant was an in-service candidate and that under the relevant provisions governing recruitment the income of the applicant was to be excluded in determining the category under which he was to be considered in accordance with the Government Order of 12-12-1986. As evidenced by the Code sheet form the records produced which shows that the Commission had considered him as 'Backward Tribe' (Group A). So far as that aspect is concerned that the 4th respondent belongs to Backward Tribe is not disputed. But what is disputed is that he could not have made a choice under Column 9 of the application and therefore it is impermissible for him to be considered in either of the categories. Column 9(b) reads as follows:
>
> 9. (b) Whether you are a candidate
> (i) In-service or
>
> (ii) Open competition
>
> If under in-service category furnish service certificate from the competent authority at page 4 of the application form"
>
> The thrust of the argument founded on the language of Column 9(b) is that it should be read as either/or; but we do not see the expression either/or in the language employed. It only indicates whether the applicant is an in-service candidate or a candidate of open competition. If he is an in-service candidate then he is required to produce evidence of the same in the prescribed manner. Therefore, we do not see any prohibition restricting the applicant qualified to apply both under open competition and the quota reserved for in-service candidates.

We are therefore of the view that it was permissible for in-service candidates to seek consideration under the quota reserved for direct recruitment."

16. In the light of the above principle and when neither the recruitment rules nor the notification exclude in-service candidates from seeking selection in open competition category also, the decision depends on the factual aspects as to whether private respondents had applied for selection in both the sources. For the above said reasons, we answer Point No.1 in the negative. Such candidates were entitled to compete in open competition category also when their applications had been forwarded by the competent authority to selecting authority and they had been permitted by the competent authority to apply.

Point No.2:

The whole dispute revolves around the factual aspect as to the choice indicated by private respondents to be considered for in-service quota precluded them from being considered in open competition category. Therefore, it has to be examined as to whether those applications indicated the choice of the private respondents to be considered only in open competition category.

The relevant column is as follows:
"7. Do you claim under in-service quota? Yes 0 No 0 "

18. Admittedly, all the private respondents except Respondent No.24 in A.No.755 of 2012 had shaded the circle Yes 0. It is therefore, argued by the learned counsel for the applicants that this indicated that those in-service candidates selected in open competition category had specifically indicated their desire to be considered only in in-service candidate quota and no separate applications having been submitted by these candidates in open competition category they could not have been considered for selection in that category. The contention of the selected candidates and the KPSC is that the application was a common application for both sources; that the claim of such candidates only indicates choice of the candidate whether he wants to be considered for in-service quota also and that it cannot be considered as indication of the wish of the candidates to be considered in that particular category only.

19. Apparently, the sources are different. It would have been appropriate for the KPSC to have either prescribed two separate applications or a specific condition therein that an in-service candidate who desires to be considered in open competition category should file a separate application. That has not been done. Therefore, the application has to be taken as common for both sources and the question No.7 only sought to ascertain from the candidate as to whether he desires to have his claim to be considered in in-service quota. It cannot be said that this specifically excluded an in-service candidate who had communicated his desire to be considered in in-service quota from being considered in open competition category.

20. As discussed above, on a reading of question/column No.7 in the application calling for the posts, it cannot be said that answer to that question by an in-service candidate in affirmative excludes him from claiming selection in open competition. It may be that other interpretation is also possible but such interpretation does not exclude the interpretation put forth by the KPSC and the private respondents that it does not exclude in-service candidates but only indicates the claim of the candidates to consider their case for in-service quota also.

21. So, on facts, we conclude that the answer to Question/column No.7 in the application form did not exclude an in-service candidate from claiming selection in open competition.

22. Another factor we have noticed is that for an in-service candidate to apply for in-service quota, only service certificate that he holds the permanent post of AE was required since as of right he can compete in that quota. For an in-service candidate applying for open competition category, in addition, the application will have to be forwarded by the Appointing Authority, if he permits the in-service candidate to apply for the post, as required by Rule 11 of the General Recruitment Rules.

23. In the present case, the certificate printed in the application form, which is signed by the competent authority in respect of applications by in-service candidates has recorded the following certificate:

"He/She is permitted to apply for the said post"

Since this sentence in the service certificate was not required for in-service quota candidates, the claim of all such candidates can be considered for open competition category also.

24. It is argued by the learned counsel representing the applicants that the applicants had been considered only in-service candidate quota until the time of interviews since they had been called for interview in in-service category and that they had not been called for interview in open competition category. It is argued by them that therefore, it has to be considered that the KPSC also had considered them as claiming only in-service quota and that the KPSC changed the policy later. It is argued that such change of policy during the pendency of selection is impermissible. In this regard they have relied upon certain decisions.

25. In P.Mohanlal Pillai vs. State of Kerala & others (AIR 2007 SC 2840) the following observations were made:

> "Held: In the instant case for recruitment to the posts of Watchman/ Messenger/Attender was not governed by any statutory rules and the employer Govt. company had enlarged the zone of consideration from 1:3 to 1:4 after publication of result of written examination and cut-off marks was also lowered without disclosing reasons.
>
> Held that the appointing authority had exercised powers for an unauthorized purpose and inference of favoritism had to be drawn and it also amounted to malice in law. "

In Mukul Saikia and Others vs. State of Assam and others {(2009) 1 Supreme Court Cases 386} filling up of vacancies over and above the number of vacancies advertised was held to be violative of Articles 14 and 16.

26. In Kishor Kumar & Others vs. Pradeep Shukla & Others {(2012) 4 Supreme Court Cases 103} change in the norms of recruitment during the pendency of selection process to the disadvantage of the candidates who were denied opportunity was held impermissible.

27. In addition to the decisions cited above, the applicants have produced a copy of the opinion of Sri.K.R.Chamayya (Hon'ble former Acting Chairman of KAT) given on 21-2-2008 to the KPSC. That was a legal advice given to KPSC and was a privileged opinion under Section 126 of the Indian Evidence Act. In the normal course, it would not have been

disclosed. However, the KPSC has chosen to disclose it and the following portion of the same is relied upon by the applicants to contend that despite the advice by their legal expert about the inadmissibility of selection of in-service candidates in open competition category this was resorted to after the interviews were over. Page 326 of the said opinion reads thus:

> "In Duraisamy's case the rules provide that 50% of the available seats are allocated exclusively to 'in service' candidates and other 50% as open quota for all eligible candidates except 'in service' candidates. So in service candidates were made not eligible for posts reserved for others. IN the present case the rules provide that 75% of posts be filled by promotion, 20% by direct recruitment in accordance with the Karnataka Public Works Engineering Department Services (Recruitment of Assistant Executive Engineers Division I by Competitive Examination) Rules 2007. The rules in Duraisamy's case are very clear about ineligibility of 'in service' candidates for open quota seats but there is no such specific ineligibility provision in the Rules relating to this case but percentage of posts allocated to different categories is stated. If that specified percentage is violated in any selection the selection would be considered by the Courts as in violation of the rules. Even if the rules do not contain a specific provision as in Duraisamy's case the legal effect cannot be different. This aspect i.e., import of such fixation of quota is discussed in para 12 of the decision, in particular in the portion extracted above. In that para 12 of the decision it is clearly stated that fixation of quota itself is sufficient to hold that 'no one in one category has any right to stake a claim against the quota earmarked for the other class or category'. It is not stated in the decision that the findings recorded in para 12 is based on the facts of that case. That is the rule laid down by the Court for general application. That finding lays down the law for general application in cases where seats or posts are set apart or allocated for a specified category of candidates. Hence, the in service' candidates in this case have no right to stake a claim against 84 vacancies set apart for open competition and inclusion of 'in service' candidates in the select list relating to 'open competition' is bad in law. If the intention was to make them eligible to be considered for both categories column 7 in the application was not necessary. Introduction of Column 7 in the application form supports this view.
>
> Said Column 7 is as follows:
>
> "7. Do you claim in-service quota? Yes ( ) No ( )
> [For PWD employees only. If so shade the appropriate circle (s)]"
>
> It requires an 'in service' candidate to indicate whether he wants to be considered for 'in service' quota or not. To give effect to the legal position laid down by the Supreme Court, the applicants were asked to indicate whether they claim to be considered as belonging to 'in service' class or category or not.
>
> For the reasons stated above inclusion of 'in service' candidates in the select list relating to 'open competition' is bad in law.

28. The above suggestion only indicated about the necessity of preparing select lists for in-service candidates and open merit candidates separately and opined about inadmissibility of candidates in one source transgressing the quota of other sources. The said opinion did not take into consideration such of the in-service candidates who were to be considered in open competition category also. Therefore, it cannot be said that despite that opinion a change of policy was adopted by the KPSC to the disadvantage of the applicants who were candidates in open competition category.

29. According to the Rules and the Notifications the applications were common, written examination was also common, interviews for two sources had to be conducted separately. The question that would arise is as to whether the marks obtained in viva voce by in-service candidates who were also claiming in open competition category could be considered for their selection in open competition category also. As observed earlier though the sources were different a common procedure was to be adopted. Though candidates had to be called for viva voce separately, for in-service quota and for open competition category, if an in-service candidate has already been interviewed, there does not arise the necessity of interviewing him once again for considering his eligibility in the other category. The marks obtained in the interview can be taken into consideration. That is not transgression of quota.

30. As suggested by the Legal Advisor to the KPSC on 2-12-2008 on the basis of marks obtained in the competitive examination separate merit list of in-service candidates and another list of others was required to be prepared and it was done. On the basis of those lists applicants had to be called for interview from the two sources in accordance with Rule 8 of the Special Rules 2007. After interview on the basis of total marks obtained in the competitive examination and interview, one merit list of in-service candidates and another list of others was required to be prepared.

31. In the present case the private respondents (except R24 in A.No.755 of 2012) were called for interview in in-service candidate quota. They were not separately called for interview in open competition category. The question that arises is whether that would disentitle them from being considered in open competition category. In our opinion, it does not.

32. Since final select list was to be common, there was no need to conduct two separate interviews for the same candidate - one for his claim being considered in in-service category and another for open competition category. Therefore, the marks obtained in interview for in-service category by the private respondents would not disentitle them from being considered in open competition category also. As observed earlier, common application by them entitles them to be considered for both categories.

33. It is not disputed that the private respondents selected in open competition category had obtained marks more than the applicants and on the basis of merit they were included in the select list. The applicants' claim that they were prejudiced by this method has to be rejected since as observed above the Rules do not prohibit the in-service candidates from competing in open competition category, that the application form was common and as held by us the common application, containing shading of 'circle' in the application form for considering their claim did not exclude them from being considered for open competition category. Therefore, it cannot be said that by the method adopted by the KPSC the applicants were prejudiced.

34. Sri.P.S.Rajagopal, learned Senior Counsel for the KPSC has referred to the observations of the Supreme Court in Rajya Sabha Secretariat & others vs. Subhash Baloda (2013 AIR SCW 1325) to contend that where there is no discrimination and no prejudice has been caused to the applicant the Court should not substitute its own view that another method could have been adopted. By producing the statement of candidates called for interview in open competition category on the basis of reservation he points out that out of 341 candidates called for interview in open competition category 84 were selected. Apparently, the applicants had not obtained sufficient number of marks even to reach the cut-off marks in each category. Therefore, it cannot be said that any prejudice has been caused to the applicants.

35. In the present case as we have discussed above, neither the recruitment rules nor the Notifications calling for applications excluded in-service candidates from being considered for selection to open competition category.

36. On consideration of all factors, and the decisions cited by the learned counsel on both sides, we conclude that:

(i) that there was no bar for an in-service candidate to apply and seek selection both in in-service quota and open competition category.

(ii) that proforma of the application was common for both sources and specific certificate by the superior authority that the candidate was permitted to apply for the said post indicated that the candidate was entitled to be considered for open competition category also.

(iii) That there is no transgression of the Rule nor is there any deviation from the procedure by considering the marks obtained by private respondents in viva voce conducted for in-service candidates' quota for considering their eligibility for selection in open competition category also.

(iv) The private respondents having been selected on the basis of merit, no prejudice is caused to the applicants.

In view of the above findings, we are of the opinion that the applicants are not entitled to the reliefs sought for. In the result and for the reasons stated above we dismiss all the applications.

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
WRIT PETITION NO.29752/2011 (GM-RES)
D.D. 29.10.2013
Hon'ble Mr. Justice V.Suri Appa Rao

K P.S.C.	**…**	**Petitioner**
Vs.		
The State Commissioner for Persons with Disabilities & Ors.	**…**	**Respondents**

Physically handicapped persons

Powers of Commissioner for disabilities to suo motu stall recruitment process initiated by Karnataka Public Service Commission – Whether Commissioner for Disabilities appointed under Section 60 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has powers to suo motu order for stalling of recruitment process in progress initiated by Karnataka Public Service Commission on purported ground of not making adequate reservation in favour of the physically disabled persons ? - No. Held that Section 61 of the 1995 Act which deals with powers of the Commissioner indicates that Commissioner can only submit report to State Government on implementation of 1995 Act and no more – Even if the Public Service Commission violates the provisions of the Act, Commissioner is not competent to withhold recruitment process – If the provisions of the 1995 Act are violated at the most he may bring it to the notice of Government – Under the circumstances order passed by State Commissioner quashed.

ORDER

The Karnataka Public Service Commission filed this writ petition for quashing the direction dated 3.5.2011 in Suo-Motto Case No.PDA/Sec 62/04/11-12/87 passed by the 1st respondent at Annexure-A. Whereby, the Commissioner appointed under Section 60 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1955 passed the following order:

1. The Karnataka Public Service Commissioner, Bangalore, to withhold the recruitment process of 418 posts of Horticulture Assistants, in the Dept. of Horticulture, Govt. of Karnataka vide notification No:PSC 1 RT (4) B-1/2010 dtd. 6.9.2010 and to ensure employment opportunities for the persons with disabilities as per Sec 2(h) of the Persons with Disabilities Act 1995, which includes the various categories of disabled persons under the Act.

2. The Horticulture Department to re-identify the posts to be reserved for persons with disabilities and ensure employment opportunities to the various categories of persons with disabilities as per the Persons with Disabilities Act 1995
3. The Karnataka Public Service Commissioner to take steps to ensure the proper reservation of posts for persons with disabilities as per the Persons with Disabilities Act 1995 and then notify recruitment notifications.

2. Aggrieved by the aforesaid order passed by the said Commissioner, the Karnataka Public Service Commission contend that the 1st respondent has no power under any of the provisions of the Act to pass such impugned order or direction. The 1st respondent Commission itself filed a public interest litigation before this Court in W.P. No.NO.13442/ 2011 (GM-RES) seeking for a direction to the Government and the Commissioner in respect of reservation of vacancies in the appropriate manner in the physically handicapped category which goes to show that the 1st respondent has no power to pass an impugned order.

3. Learned counsel for the petitioner submit that in pursuance the requisition received from the Government of Karnataka, the petitioner-Karnataka Public Service Commission initiated recruitment process for the purpose of recruiting suitable candidates to 418 posts of Horticulture Assistants in the Department of Horticulture, Government of Karnataka, by issuing a Notification dated 6.9.2010 by following the reservation policy. In the meanwhile, on 3.5.2011, the 1st respondent-Commissioner passed the impugned order in Suo-Motu case directing the Commission to withhold the recruitment process in respect of the said 418 posts of Horticulture Assistants.

4. On the interim application filed by the petitioner, this Court granted interim stay of Annexure-A on 11.8.2011. The interim order is continued till today. In the meanwhile, the selection process has been completed for 418 posts of Horticulture Assistants and the result has also been declared and list of selection has been sent to Government for issuing appointment orders.

5. However, the point for consideration in this case is:

"Whether the 1st respondent-Commissioner is competent to pass order at Annexure-A directing the petitioner-Karnataka Public Service Commission to withhold the recruitment process for 418 posts of Horticulture Assistants ?"

5. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was introduced in the Loka Sabha in the year 1995 with the main objects to provide for the following:

(i) To spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) To create barrier free environment for persons with disabilities;

(iii) To remove any discrimination against persons with disabilities in the sharing of development benefits, vis-à-vis non-disabled persons

(iv) To counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) To lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) To make special provision of the integration of persons with disabilities into the social mainstream.

6. It is therefore proposed to provide inter alia for the constitution of Co-ordination Committees and Executive Committees at the Central and State levels to carry out the above various functions assigned to them.

7. Section 60 of the Act provides for Appointment of Commissioners for persons with disabilities which reads as under:

60. Appointment of Commissioners for persons with disabilities –

(1) Every State Government may, by notification appoint a Commissioner for persons with disabilities for the purposes of this Act.

(2) A person shall not be qualified for appointment as a Commissioner unless he has special knowledge or practical experience in respect of matters, relating to rehabilitation.

(3) The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Commissioner shall be such as may be prescribed by the State Government.

(4) The State Government shall determine the nature and categories of officers and other employees required to assist the Commissioner in the discharge of his functions and provide the Commissioner with such officers and other employees as it thinks fit.

(5) The officers and employees provided to the Commissioner shall discharge their functions under the general superintendence of the Commissioner.

(6) The salaries and allowance and other conditions of service of officers and employees provided to the Commissioner shall be such as may be prescribed by the State Government.

8. Section 61 of the Act reads as hereunder:

61. Powers of the Commissioner. - The Commissioner within the State shall-

(a) co-ordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;

(b) monitor the utilisation of funds disbursed by the State Government.;

(c) take step to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

9. In the instant case, the petitioner-Karnataka Public Service Commission, with the consent of the Government of Karnataka initiated the recruitment process for the purpose of recruiting 418 posts of Horticulture Assistants in the Department of Horticulture and issued a suitable notification dated 06.09.2010 inviting applications from the suitable candidates. After the recruitment process has been started and before completion of the recruitment process, the Commissioner passed the impugned order on 03.05.2011 directing the Karnataka Public Service Commission, Bangalore, to withhold the recruitment process of 418 posts of Horticulture Assistants on the

ground that the notification issued by the petitioner appears to be violative of the Act and by the said order, the State Commissioner further directed the petitioner to re-identify the posts to be reserved for persons with disabilities and ensure employment opportunities to the various categories of persons with disabilities as per the Act. Admittedly, the State Commissioner passed the order suo motu without any complaint by any persons covered by the Act.

10. Section 61 of the Act clearly indicates the Commissioner has to submit reports to the State Government on the implementation of the Act and forward the copy thereof to the Chief Commissioner. The order passed by the Commissioner is silent about the violation of the Act. Even if the Commission violates the provisions of the Act, the Commissioner is not competent to withhold the recruitment process taken up by the petitioner with the consent of the Government of Karnataka. At the most, the State Commissioner can bring it to the notice of the Government, if the provisions of the Act are violated by the petitioner in issuing the notification for filling up the posts of the Horticulture Assistants for the benefit of the persons with disability. Further, the Commissioner is supposed to co-ordinate with the Department of the State Government for the programmes and schemes meant for the persons with disability. The State Commissioner has not indicated in the order as to which the provision of the Act is violated by the petitioner in issuing the notification.

11. No doubt, the Chief Commissioner and the Commissioner, for the purpose of discharging their functions under the Act, have the same powers as are vested in a Court under the Code of Civil Procedure. Section 63 of the Act reads as under:

> 63. Authorities and officers to have certain powers of civil court.- (1) The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-
>
> (a) summoning and enforcing the attendance of witnesses;
> (b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner and Commissioners shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

12. In the instant case, there is no complaint from any persons covered by the Act and admittedly the petitioner has provided adequate reservation to physically handicapped persons in the notification itself. Without violation of any of the provisions of the Act, the State Commissioner passed the impugned order withholding the recruitment process suo motu for which, the State Commissioner was not competent to pass such order stalling the recruitment process of the Karnataka Public Service Commissioner without any justifiable cause or reason. Moreover, the first respondent is also not competent to pass such order under the provisions of Section 61 of the Act.

13. Therefore, the impugned order dated 03.05.2011 passed by the first respondent-State Commissioner is hereby quashed. Accordingly, the petition is allowed.

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IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE
Application No.4269/2009
D.D. 12.11.2013
Hon'ble Mr. Justice A.C.Kabbin, Chairman &
Hon'ble Mr. Abhijit Dasgupta, Administrative Member

Sri Brahamnath Annappa Khanapure ... Applicant
Vs.
State of Karnataka & Ors. ... Respondents

Interview

Interview intimation – Applicant did not receive interview letter because of lapse on part of KPSC in writing correct/sufficient address, as furnished by him, on interview letter. On learning through website and paper notification published by the Commission to the effect that interviews will be held between 27.07.2009 and 29.07.2009 and those who do not receive interview letters may approach authorities of the Commission, applicant approached KPSC authorities on 29.07.2009 and requested for giving him interview – His request was rejected on ground that he did not attend interview, on the date fixed for interview i.e. on 27.07.2009 – Plea of Public Service Commission for rejection of interview that applicant ought to have appeared for interview, on 27.07.2009, seeing publication in website, when its paper notification makes it clear that candidates who do not receive intimation letter may approach office of Public Service Commission, Whether justifiable? No.

Held:

"7. Held that the last sentence of the publication clearly gave an opportunity to such of the candidates who did not receive interview intimation to contact the central office of the KPSC. Accordingly, the applicant did contact the KPSC, which is proved by his representation dated 29.07.2009. The KPSC ought to have verified as to why the applicant did not receive the interview card. Therefore, when it is proved that because of the mistake on the part of the KPSC in not recording the full address of the applicant on the postal cover, the applicant failed to appear for interview on 27.07.2009, he ought to have been permitted to appear for interview on 29.07.2009 when it was the last date for interview. We find that the rejection of this prayer of the applicant was unjustifiable."

ORDER

A.C. Kabbin, Hon'ble Chairman.

Karnataka Public Service Commission (hereinafter referred to as the 'KPSC') invited applications for the posts of Junior Training Officer (Electrician) in the Department of Employment & Training by notification No.PSC.1.RTB-3/2007 dated 12.11.2007 (Annexure

A-1). In pursuance of the Notification, the applicant submitted his application claiming reservation under Category III-B Rural and KMS. The applicant claims that he secured 74.26% marks in the qualifying examination but he did not receive the call letter for interview. When he did not receive the interview card he verified and found that on the ground of insufficient address the cover sent to him for interview had been returned with postal endorsement that the addressee was not because of insufficient address. He verified from website and learnt that interviews were scheduled from 27.7.2009 to 29.7.2009. He appeared before the KPSC on 29.7.2009 and submitted a representation mentioning that he did not receive Interview Card and that, therefore, he might be given an opportunity to appear for the interview. That representation was rejected on the ground that as he failed to appear for interview on 27.7.2009 he was not entitled to appear for interview on 29.7.2009. It was further mentioned that the factum of interview from 27.7.2009 to 29.7.2009 had been published in all daily newspapers and website. Challenging that Endorsement and contending that because of insufficient address written by the staff the KPSC on the postal cover he did not get advance intimation to appear for the interview, this application has been filed by the applicant.

2. It is argued by Sri. J.Venkatesh Prasad, learned Counsel for the applicant that the very paper publication was to intimate such of the candidates who did not receive intimation for interview to appear and that, therefore, when the applicant appeared for interview on 29.7.2009 with a specific plea that as he had not received the interview card he ought to have been permitted to appear for interview. Therefore, this application has been filed praying that the Endorsement be quashed and that the applicant be given an opportunity to appear for interview and he be considered for selection in pursuance of the same.

3. The contention of the KPSC is that since the name of the applicant is "Brahamnath", his name was accordingly written on the cover in which the interview intimation had been sent and that, therefore, the applicant cannot put forth the plea that he did not receive that cover. Pointing out that similar cover with the same address as "Brahamnath" with other particulars had been received by him on an earlier occasion, it is contended that the

contention now taken by the applicant is not sustainable. It is also urged that the intimation of interview had been given by publishing in website and also giving paper publication and, therefore, the applicant cannot plead ignorance of the date of interview.

4. We have heard the argument of Sri. J.Venkatesh Prasad, learned Counsel for the applicant and Sri. T.Narayanaswamy, learned counsel for the KPSC. Respondent No.3 is represented by Sri. Premkumar, learned Advocate.

5. In support of the applicant's contention that the applicant did not receive the interview intimation because of insufficient address, it is pointed out by the learned advocate for the applicant that though in the application to the KPSC the applicant had given address as "Brahamnath A. Khanapure, Post Bellad-Bagewadi, Taluk Hukkeri, District Belgaum", only "Brahamnah" had been written as the name which led to return of the cover without serving it on the applicant. In the original application in the column "Name and Postal address: (In capitals), this is what had been written by the applicant:

"BRAHMANATH A.KHANAPURE,
PO:BELLAD-BAGEWADI,
TQ:HUKKERI, DIST:BELGAUM
PINCODE 591 305,
Mobile : 9901664436"

The argument of Sri. T.Narayanaswamy, learned Advocate for the KPSC is that the applicant had written his name in the application form as "Brahmanath" and, therefore, it was recorded so in the computer and, therefore, that was reproduced on the cover in which the interview intimation was sent. We find that this contention of the KPSC is unacceptable. Column No.1 of the application form specified that the name of the applicant be written as it is in SSLC or X standard marks card. Accordingly, it has been written by the applicant in column No.1. It was not the postal address of the applicant. There is a separate column in the application for postal address, wherein the applicant had given his postal address as reproduced above. Therefore, the plea of the KPSC that in the computer only "Brahmanath" had been entered is unacceptable, so far as writing address of the applicant on the cover containing interview intimation card.

6. As regards the plea of the KPSC that on an earlier occasion a postal cover with the name "Brahmanath" with other particulars had been received by the applicant is no defence in view of the fact that the postal cover written only with the name "Brahmanath" omitting his name "A.Khanapure" made the postal authorities to return the cover with endorsement "address is insufficient". It is conclusively proved that the applicant did not receive the intimation for interview and it is only because instead of writing his postal address as given in the application only the first name was written omitting the other initial 'A" and surname "Khanapure".

7. The above facts clearly show that the applicant failed to appear for the interview because he did not receive the intimation. As to the plea of the KPSC that he ought to have appeared for the interview seeing the publication in website, the KPSC may refer to their own paper publication Annnexure R-2 which reads as under:

"ಪತ್ರಿಕಾ ಪ್ರಕಟಣೆ"

ಕರ್ನಾಟಕ ಲೋಕ ಸೇವಾ ಆಯೋಗವು ಉದ್ಯೋಗ ಮತ್ತು ತರಬೇತಿ ಇಲಾಖೆಯಲ್ಲಿನ ಎಲೆಕ್ಟ್ರಿಷಿಯನ್ ವೃತ್ತಿಯ 81 ಕಿರಿಯ ತರಬೇತಿ ಅಧಿಕಾರಿ ಹುದ್ದೆಗಳ ನೇಮಕಾತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ದಿನಾಂಕ: 27.07.2009 ರಿಂದ 29.07.2009 ರವರೆಗೆ ಸಂದರ್ಶನವನ್ನು ಆಯೋಗದ ಕೇಂದ್ರ ಕಛೇರಿ ಉದ್ಯೋಗ ಸೌಧ, ಇಲ್ಲಿ ನಡೆಸಲಾಗುವುದು.

ಅರ್ಹ ಅಭ್ಯರ್ಥಿಗಳಿಗೆ ಸಂದರ್ಶನ ಸೂಚನಾ ಪತ್ರಗಳನ್ನು ಈಗಾಗಲೇ ಕಳುಹಿಸಲಾಗಿದೆ. ಸಂದರ್ಶನಕ್ಕೆ ಆಹ್ವಾನಿಸಲಾದ ಪ್ರವರ್ಗವಾರು ಕೊನೆಯ ಅಭ್ಯರ್ಥಿಗಳು ಗಳಿಸಿರುವ ಪ್ರತಿಶತ ಅಂಕಗಳ ವಿವರಗಳನ್ನು ಮತ್ತು ಅರ್ಹರಾದ ಅಭ್ಯರ್ಥಿಗಳ ಪಟ್ಟಿಯನ್ನು ಹಾಗೂ ತಿರಸ್ಕೃತ ಅಭ್ಯರ್ಥಿಗಳ ಪಟ್ಟಿಯನ್ನು ಆಯೋಗದ ಅಂತರ್ಜಾಲದಲ್ಲಿ ಪ್ರಕಟಿಸಿದ್ದು "ವೆಬ್‌ಸೈಟ್ http://kpsc.kar.nic.in ನಲ್ಲಿ ನೋಡಬಹುದು. ಅರ್ಹ ಅಭ್ಯರ್ಥಿಗಳಿಗೆ ಸಂದರ್ಶನ ಸೂಚನಾ ಪತ್ರ ತಲುಪದೇ ಇದ್ದಲ್ಲಿ ಆಯೋಗದ ಕೇಂದ್ರ ಕಛೇರಿಯನ್ನು ಕೂಡಲೇ ಸಂಪರ್ಕಿಸತಕ್ಕದ್ದು.

ಸಹಿ

(ವಿ.ಬಿ.ಪಾಟೀಲ್)
ಕಾರ್ಯದರ್ಶಿ,
ಕರ್ನಾಟಕ ಲೋಕ ಸೇವಾ ಆಯೋಗ "

The last sentence of the publication clearly gave an opportunity to such of the candidates who did not receive interview intimation to contact the central office of the KPSC. Accordingly, the applicant did contact the KPSC, which is proved by his representation dated 29.7.2009. The KPSC ought to have verified as to why the applicant did not receive the interview card. Therefore, when it is proved that because of the mistake on the part

of the KPSC in not recording the full address of the applicant on the postal cover, the applicant failed to appear for interview on 27.7.2009, he ought to have been permitted to appear for interview on 29.7.2009 when it was the last date for interview. We find that the rejection of this prayer of the applicant was unjustifiable.

8. For the above said reasons, we allow the application and quash the Endorsement No.R(2)1800/2009-10/PSC dated 12.8.2009 (Annexure A-2) and direct the KPSC to give an opportunity to the applicant within two months from today, consider his case for selection and if he qualifies for selection in the category in which he claimed reservation or in the general merit category, to select him. In that event, the Respondent No.1 shall take steps to appoint the applicant, if necessary by creating a supernumerary post. The whole process shall be complied within three months from today.

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