

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP (C) No. 644 of 2020

Dr. Choudhurimayum Anup Sharma, aged about 34 years,
S/o Dr. Ashok Roy Choudhury of Brahmapur Thangapat
Mapal, PO & PS Porompat, Imphal East District, Manipur.

... PETITIONER

-VERSUS-

1. The State of Manipur represented by the Principal Secretary/ Commissioner/ Secretary, University & Higher Technical Education (Higher and Technical Education), Government of Manipur, office at Secretariat South Block, Babupara, PO & PS Imphal, Imphal West District, Manipur-795001.
2. The Director of University and Higher Education, Government of Manipur, office at Netaipat Chuthek, near Manipur State Archive Office, PO & PS Imphal, Imphal West District, Manipur.
3. The Governing Body, Pravabati College (Govt. Aided), Mayang Imphal, represented by its Secretary, Governing Body, Pravabati college, Mayang Imphal, PO & PS Mayang Imphal, Imphal West District, Manipur.
4. The Principal, Pravabati College (Govt. Aided), Mayang Imphal, PO & PS Mayang Imphal, Imphal West District, Manipur.

.....OFFICIAL RESPONDENTS

5. Wahengbam Ajoykumar Singh, Assistant Professor of Geology, C/o Principal Pravabati College (Govt. Aided), -Mayang Imphal, PO & PS Mayang Imphal, Imphal West District, Manipur.
6. Moni Oinam, Assistant Professor of Geology, C/o Principal Pravabati College (Govt. Aided), Mayang Imphal, PQ & PS Mayang Imphal, Imphal West District, Manipur.
7. L. Ibomcha Singh, Assistant Professor of Geology, C/o Principal Pravabati College (Govt. Aided), Mayang Imphal, PO & PS Mayang Imphal, Imphal West District, Manipur.

.... PRIVATE RESPONDENTS

8. The University Grant Commission (UGC) through its Secretary, University Grant Commission (UGC), Bahadur Shah Zafar Marg, New Delhi-110002.

..... PROFORMA RESPONDENT

**BEFORE
HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN**

For the Petitioner	::	Mr. M. Hemchandra, Sr. Adv.,
For the Respondents	::	Mr. Sh. Athoi, Adv. for R-5,6 & 7. Mrs. L. Monomala, GA for R-1&2. Mr. Kh. Tomba, Adv. for R-3 & R-4. Mr. S. Jasobanta, Adv. for R-8.
Date of Hearing and reserving Judgment & Order	::	10.08.2023
Date of Judgment & Order	::	30.08.2023

JUDGMENT AND ORDER
(CAV)

This writ petition has been filed by the petitioner to set aside the impugned review/DPC proceedings dated 31.5.2020, resolution No.1 and sitting No.24 dated 2.6.2020 of the Governing Body of Pravabati College, Mayang, Imphal and the appointment orders dated 3.6.2020 in respect of the private respondents 5 to 7 and to direct the official respondents to appoint the petitioner as Assistant Professor (Geology) in Pravabati College (Government Aided), Mayang, Imphal.

2. The case of the petitioner is that he is educationally qualified and eligible for consideration for appointment to the post of Assistant Professor (Geology) in Colleges/Universities as per the UGC Regulations-2018. On 16.2.2020, an advertisement was issued inviting applications from the eligible/qualified candidates with 55% and above for appointment to the posts of Assistant Professors in Pravabati College (Government Aided). Six candidates, including the petitioner, had applied for the post of Assistant Professor (Geology) and, accordingly, were shortlisted as per the marks obtained in graduation, post-graduation and other higher qualification and experiences and interview was held on 31.5.2020 by online mode. However, to the utter shock and surprise of the petitioner, vide impugned

order dated 31.5.2020, the Selection Committee/DPC recommended five candidates for appointment as Assistant Professor (Geology) in Pravabati College (Government Aided) and also issued appointment orders to the private respondents and two others leaving out the petitioner, who is much more qualified, eligible and deserved candidate for the post of Assistant Professor (Geology).

3. Further case of the petitioner is that, among five recommended candidates, three candidates, namely respondents 5 to 7 are not eligible and qualified to be appointed as Assistant Professor (Geology), as they are neither Ph.D degree holders, nor cleared NET/SLET/SET which is affront to the UGC Regulations-2018 read with Section IV of the Manipur Education Code-1982 and other guidelines issued by the Government. Therefore, the impugned interview/DPC proceedings and the appointments orders issued to the private respondents 5 to 7 are liable to be quashed and the respondent authorities should consider the appointment of the petitioner as Assistant Professor (Geology) in Pravabati College (Government Aided), Mayang, Imphal.

4. Respondents 1 and 2 have filed affidavit-in-opposition stating that Pravabati College, Mayang, Imphal is a

private Government Aided College. All Government Aided Colleges function as per Manipur Education Code-1982 and the service conditions are as specified under the said Code and the appointment has been made by the Secretary of the Governing Body. There is no role of the Government and the respondents 1 and 2 have no power of quashing and setting aside the impugned appointment order dated 3.6.2020 in respect of the private respondents, as their appointments have been made by the Secretary of the Governing Body and not by the Government. Hence, they prayed for dismissal of the writ petition.

5. The respondents 3 and 4 filed affidavit-in-opposition, *inter alia*, stating that after the petitioner was not recommended by the DPC for appointment to the post of Assistant Professor of the College in Geology in furtherance of the advertisement dated 16.2.2020 by taking "U" turn, the petitioner has filed the writ petition. Such an action on the part of the petitioner is barred by the law laid down by the Hon'ble Apex Court. It is stated that the petitioner obtained his M.Sc. degree in Petroleum Geology from Punjab University. The advertisement made by the respondents 3 and 4 was for appointment to the post of Assistant Professor (Geology). Therefore, the qualification possessed by the petitioner is not

completely commensurate with the post so advertised by the College. The engagement of the petitioner as Guest Lecturer in the Department of Geology of D.M. College of Sciences, Imphal was made by the Principal, D.M. College of Sciences at the remuneration of Rs.3000/- per month. The engagement of the petitioner as Guest Faculty in the Department of Geology, Imphal College for a period of six months vide order dated 15.7.2019 was also made by the Principal of the College without remuneration. It is stated that as many as six candidates including the petitioner applied for the post of Assistant Professor (Geology) of the College. On receipt of the applications, the Principal of the College sent a letter to the Director, University & Higher Education, Government of Manipur on 20.5.2020 requesting for nomination of subject experts for online interview for appointment of Assistant Professors of Pravabati College in respect of the subjects indicated in the said advertisement.

6. It is stated that in response to the letter dated 20.5.2020, the Director of University and Higher Education vide letter dated 26.5.2020 nominated as many as 21 subject experts for appearing in the interview for appointment to the post of Assistant Professors of the College. One Dr.Th. Ranjit Singh, Associate Professor, D.M. College of Science was nomination for

the subject Geology. Thereafter, the Secretary of the Governing Body, Pravabati College vide notification dated 29.5.2020 informed the candidates to attend the online interview for appointment to the post of Assistant Professors. On the same day, an order was also issued by the Secretary, Government Body, thereby constituting four members of the DPC for appointment to the post of Assistant Professors(Geology). The DPC for appointment to various posts of Assistant Professors of the College was held and, finally, the Director, University and Higher Education, vide letter dated 14.7.2020, accorded the approval to the appointment of the recommended candidates by the DPC under certain terms and conditions, including the condition that the appointments are to be made as per the recommendation made by the DPC under Section 4(B) of the Manipur Education Code, 1982 and subsequent resolutions of the Governing Body and the appointment are to be made by the Governing Body of the College at the College level. The entire proceedings for appointment to the post of Assistant Professor (Geology) as well as other subjects were made in accordance with law. Therefore, there had not been any irregularity on the part of the College authorities to the entire proceedings for appointment to the posts. Hence, prayed for dismissal of the writ petition.

7. The private respondents 5 to 7 filed affidavit-in-opposition stating that pursuant to the advertisement dated 16.2.2020, the respondents 5 to 7 applied for the post of the Assistant Professor (Geology) and the appointment of teachers of Aided Colleges, including the Pravabati College, Mayangis governed by the provisions of the Manipur Education Code. There is no provision of law for recommending more qualified candidates in a DPC and all the candidates have to be treated at par, in case, the candidates possessed the minimum qualifications. It is stated that the petitioner was not recommended for appointment to the said post by the DPC/Screening Committee and the private respondents have been recommended for appointment to the said post thereby appointment orders were issued in favour of the private respondents and other persons.

8. It is stated that the DPC was held in accordance with the relevant provisions of law, including the provisions of the Manipur Education Code, with the approval of the competent authorities of the Department of Higher and Technical Education. The DPC on proper examination and also performances made by the private respondents along with other persons recommended the private respondents and two other persons to

the said post. Hence, they prayed for dismissal of the writ petition.

9. Assailing the impugned DPC proceedings and the appointment orders issued to the private respondents, Mr. M. Hemchandra, the learned senior counsel for the petitioner submitted that the petitioner applied for the post of Assistant Professor (Geology) at Pravabati College as advertised by the Secretary, Governing Body vide advertisement dated 16.2.2020 and the eligibility criteria as per the advertisement is 55% and above for appointment to the post of Assistant Professors in Pravabati College (Government Aided) including one post for the subject Geology. The interview was conducted on 31.5.2020 by online for six candidates, including the petitioner, for the lone post of Assistant Professor (Geology). Vide the impugned interview/DPC proceedings dated 31.5.2020 for appointment to the post of Assistant Professor (Geology), the Selection Committee recommended 5 candidates for appointment as Assistant Professor (Geology) in Pravabati College, leaving the petitioner. According to the learned counsel, the petitioner is very much qualified, eligible and deserving candidate having qualified NET and had also obtained Ph.D degree from Punjab University

for appointment to the post of Assistant Professor (Geology), however, he was not recommended by the DPC.

10. The learned senior counsel for the petitioner further submitted that under the RTI information received by the petitioner, it has come to the knowledge that the private respondents are not at all eligible and qualified to be appointed as Assistant Professor (Geology) in Pravabati College as per the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and measures for the Maintenance of Standards in Higher Education, 2018, as the private respondents neither Ph.D degree holders nor have cleared NET/SLET/SET. Further, the private respondents 5 and 6 possess only Master of Science in Earth Science from Manipur University in the year 2015 and 2016 respectively, while the seventh respondent possesses Master of Science (Geology) from University of Mysore in the year 2011 which are considered as not qualified/not eligible for appointment to the post of Assistant Professor in Colleges and Universities as per the UGC Regulations, 2018 read with Manipur Education Code, 1982.

11. The learned senior counsel next submitted that in respect of Selection Committee for recruitment of teaching staff,

the Principal of the Pravabati College should be the Chairman of the Selection Committee, however in the case on hand, the Selection Committee was constituted with the Principal as one of the members of the Selection Committee and not as its Chairman with no one being appointed as the Chairman of the said Selection Committee.

12. Drawing this Court's attention to Clause 4 of Section IV of the Manipur Education Code, the learned senior counsel further submitted that the advertisement has to be published for two consecutive days in the local newspaper and also should have been published in the State Gazette in reasonable time. However, none of those were done in the instant case. The criteria for short-listing of candidates for interview for the post of Assistant Professors in Colleges published by the UGC vide notification dated 18.7.2018 clearly shows that the petitioner is very much qualified for appointment to the post of Assistant Professor in the Department of Geology, Pravabati College (Government Aided). As per the said notification, the petitioner scores 77 marks as on the date of the interview and as per the criteria for short-listing of candidates for interview for the post of Assistant Professors in Colleges.

13. The next submission of the learned senior counsel for the petitioner is that at the relevant point of time when the Manipur Education Code was framed, 45% marks were considered as Second Class Degree, however, as on date, the qualifying mark for Second Class Degree is 55%.

14. The learned senior counsel then submitted that any selection/appointment at Pravabati College (Government Aided) including the selection/appointment of Assistant Professor (Geology) in the said College are to be done as per the Rules and Regulations framed by the UGC and not as per the whims and fancies of the Governing Body of Pravabati College. Arguing so, the learned senior counsel submitted that the petitioner is very much eligible and qualified for appointment to the post of Assistant Professor in Pravabati College (Government Aided) for the subject Geology as per the UGC Regulations, however, his name was not considered and the appointment of the private respondents are tainted with full of material irregularity, arbitrariness, bias, favoritism and nepotism and also adopting corrupt practice. The vacancies over and above the number of vacancies advertised cannot be filled up. Therefore, the proceedings of the impugned DPC and the consequential

appointment orders issued in favour of the respondents 5 to 7 are liable to be set aside.

15. In support of the submissions, the learned senior counsel for the petitioner relied upon the following decisions:

(i) *Raj Kumar and others v. Shakti Raj and others*, (1997) 9 SCC 527.

(ii) *Jeevan Diesels and Electricals Limited v. Janbirsingh Chadha (HUF) and another*, (2010) 6 SCC 601.

(iii) *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others*, (2003) 2 SCC 111.

(iv) *Public Service Commission, Uttaranchal v. Mamta Bishi and others*, (2010) 12 SCC 204.

(v) *Chairman cum Managing Director, Coal India Limited and others v. Ananta Saha and others*, (2011) 5 SCC 142.

(vi) *Pramod Kumar v. UP Secondary Education Services Commission and others*, AIR 2008 SC 1817.

***(vii) Dhanajaya Reddy v. State of
Kartanaka, (2001) 4 SCC 9.***

***(viii) Moumita Poddar and another v.
Indian Oil Corporation and another,
2005 (4) GLT 538.***

16. Mr. Kh. Tomba Singh, the learned counsel for the respondents 3 and 4 submitted that Pravabati College (Government Aided) issued an advertisement on 16.2.2020, thereby advertising various posts of unapproved Teachers/Lecturers/Assistant Professors of the College, including the post of Assistant Professor (Geology). In pursuance of the advertisement, applications were submitted by the petitioner and the private respondents as well as other persons. The short-listing of the applicants were made with the approval of the competent authorities of the Department of Higher and Technical Education, Government of Manipur and as many as 6 numbers of candidates were short listed for interview. The interview of the short listed candidates were conducted on 31.5.2020 by online mode. The Board consisted Dr.Th. Ranjit Singh, Associate Professor, Department of Geology, D.M. College of Science, Impohal, P.Shantikumar Singh, OSD (University and Higher Education), Government of Manipur, Ng.

Jeyshankar Singh, Assistant Professor, Department of Geology, Pravabati College and A.Sunil Sharma, Principal/in-charge of the College and on proper examination of the performances made by the candidates, including the private respondents as well as other persons, the Committee had recommended 5 candidates, including the private respondents 5 to 7. The petitioner was not recommended by the said Committee, as he scored 214 marks only. As recommended, the private respondents 5 to 7 and one Venus Guruaribam, Dr.Khumukcham Radhapyari Devi were appointed and have been discharging their duties in the College.

17. The learned counsel for the respondents 3 and 4 urged that having taken part in the process of selection knowing fully well, the petitioner is not entitled to challenge the criteria or process of selection. The DPC which was held for appointment to the post of Associate Professor (Geology) of Pravabati College was made for the post of unapproved teachers. The appointment, maintenance as well as the administration of such College i.e. Grant-in-Aid College are governed by the provisions of the Manipur Education Code. The ground for challenging the proceedings of the DPC is that the private respondents are neither Ph.D degree holders nor cleared the NET/SLET, for which they are not eligible for the said post as prescribed in the

UGC Regulations. The said provisions of the UGC Regulations is applicable at the time of regular appointment/regularization as full-fledged Government Associate Professor/Lecturers. The issue in the present writ petition is for appointment of unapproved Teacher/Lecturer. There is no rule other than the Manipur Education Code for appointment, maintenance and administration of such Aided Colleges. The respondents 3 and 4 have acted in accordance with the provisions of the said Rules with the approval of the Department of Higher and Technical Education. The writ petition filed without arraying other persons who were recommended and appointed to the post of Assistant Professor (Geology) is not maintainable and, therefore, the same is liable to be dismissed. In support, the learned counsel placed reliance upon the following decisions:

(i) *Anupal Sinha and others v. State of Andhra Pradesh and others, (2020) 2 SCC 173.*

(ii) *Union of India and others v. N.Murugesan and others, (2022) 2 SCC 25.*

18. Mrs. L. Monomala, the learned Government Advocate appearing for the respondent State submitted that no

irregularities were committed by the respondents 3 and 4 at any point of time while recommending and appointing the private respondents 5 to 7 for the post of Assistant Professor (Geology) in Pravabati College (Government Aided) and having participated in the selection process, the petitioner is estopped from questioning the selection process. Thus, a prayer has been made to dismiss the writ petition.

19. Mr. Sh. Athoi, the learned counsel for the private respondents 5 to 7 submitted that the fifth respondent scored 219 marks and he stood 5th rank in the said DPC; the sixth respondent scored 232 marks and stood 4th rank and the seventh respondent scored 245 marks in the interview and he stood third rank. The petitioner scored 214 marks only and, therefore, he was not recommended by the Committee. Based on the recommendation made by the Committee, appointment orders were issued in favour of the private respondents as well as the other persons whose names appeared at Serial Nos.1 and 2, who scored 255 and 256 marks respectively.

20. The learned counsel further submitted that the petitioner by accepting the contents of the advertisement applied for the post and after his name is not included in the list of selected candidates, he filed the writ petition and filing of such

petition is not permissible and, therefore, on the sole ground, the writ petition is liable to be dismissed.

21. According to the learned counsel, in view of the provisions of the Manipur Education Code as well as the condition provided under the advertisement, the private respondents are quite eligible for the post of Assistant Professor (Geology) and the petitioner has no right to question and/or challenge the proceedings of the DPC on the recommendation of which, the private respondents along with other persons have been appointed to the post of Assistant Professor (Geology) by taking “U” turn. In support, the learned counsel relied upon the following decisions:

(i) *Manish Kumar Shahi v. State of Bihar and others*, (2010) 12 SCC 576.

(ii) *Anupal Singh and others v. State of Andhra Pradesh and others*, (2020) 2 SCC 173.

(iii) *Union of India and others v. N.Murugesan and others*, (2022) 2 SCC 25.

22. Mr. S. Jasobanta, the learned counsel for the UGC submitted that the collective wisdom of the Selection Committee

could not be questioned, as it is prerogative of the Selection Committee based on the collective judgment after examining the candidate's educational background and performance in the interview and without any deviation from the UGC Regulations prevalent at the point of time. Thus, the learned counsel prayed for dismissal of the writ petition.

23. This Court considered the rival submissions and also perused the materials available on record.

24. The grievance of the petitioner is that the petitioner is educationally well qualified and very much eligible for consideration to be appointed to the post of Assistant Professor (Geology) in Colleges/Universities as per the UGC Regulations, 2018. However, his name was not recommended by the Selection Committee/DPC and, on the other hand, the private respondents were selected and appointed to the post of Assistant Professor (Geology) in Pravabati College (Government Aided). According to the petitioner, the private respondents are not eligible and qualified to be appointed as Assistant Professor (Geology) as per the UGC Regulations on Minimum Qualifications for appointment of Teachers and other academic staff in Universities and Colleges and measures for the maintenance of Standards in Higher Education, 2018 and the

eligibility criteria for the post of Assistant Professor by direct recruitment has been stated in the UGC Regulations, 2018 as under:

“i. A Master’s Degree with 55% marks (or an equivalent grade in the point scale wherever the grading system is followed) in a concerned/relevant/allied subject from an Indian University, or an equivalent degree from an accredited Foreign University.

ii. Besides fulfilling the above qualifications, the candidates must have cleared the National Eligibility Test (NET) conducted by the UGC or the CSIR or a similar test accredited by the UGC, like SLET/SET or who are or have been awarded a PhD Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of MPhil/PhD Degree) Regulations, 2009 or 2016 and their amendments from NET/SLET/SET.”

The private respondents are neither Ph.D degree holders nor cleared NET/SLET/SET which is directly affront to

the UGC Regulations read with Section IV of the Manipur Education Code, 1982. In the impugned DPC dated 31.5.2020, for appointment to the post of Assistant Engineer (Geology) in Pravabati College, the Selection Committee recommended 5 candidates, leaving the petitioner who is much more eligible and qualified with NET and also obtained Ph.D degree.

25. It is also the say of the petitioner that as per the notification dated 18.7.2018 published in the Gazette of India notified the UGC Regulations on Minimum Qualifications for appointment of Teachers and other academic staff in Universities and Colleges and measures for the maintenance of Standards in Higher Education, 2018, the petitioner scores 77 marks as on the date of the interview. Since Pravabati College (Government Aided) is affiliated to Manipur University and recognized by the UGC, the provisions of the UGC Regulations are applicable in the present scenario. Any selection/appointment at Pravabati College (Government Aided) is to be done as per the Rules and Regulations framed by the UGC and not as per the whims and fancies of the Governing Body.

26. On the other hand, Mrs. L. Monomala, the leaned Government Advocate for the respondent State submitted that Pravabati College, Mayang, Imphal, is a private Government

Aided College and all the Government Aided Colleges function as per the Manipur Education Code and the service condition are as specified under the Manipur Education Code and the appointment has been made by the Secretary of the Governing Body. There is no role of the Government.

27. Mr. Kh. Tomba Singh, the learned counsel for the respondents 3 and 4 contended that the DPC which was held for appointment to the post of Assistant Professor (Geology) was made for the post of unapproved teachers. The appointment, maintenance as well as administration of the College i.e. grant-in-aid college are governed by the provisions of the Manipur Education Code. However, the case of the petitioner is that the private respondents are neither Ph.D. degree holders nor cleared NET/SLET for which they are not eligible for the said post as prescribed by the UGC Regulations, 2018.

28. According to the learned counsel for the respondents 3 and 4, the provisions of UGC Regulations, 2018 are applicable at the time of regular appointment/regularization as full-fledged Government Assistant Professor/Lecturers. The issue in the instant case is for appointment of unapproved Teacher/Lecturer. Therefore, there is no rule other than the

Manipur Education Code for appointment and maintenance and administration of the College.

29. On a perusal of the various provisions of the UGC Regulations, 2018 as well as the Manipur Education Code, 1982 highlighted by the learned senior counsel for the petitioner, this Court is of the view that the appointments of teaching staff/faculty as well as non-teaching staff of Aided Colleges under the Government of Manipur are governed by the provisions of the Manipur Education Code. In this regard, Section 4B of the Manipur Aided College Employees (Service) Rules, 1974 of the Manipur Education Code stipulates that the appointment is to be made by the Governing Body at the College level. The Director of University and Higher Education, Government of Manipur, in its letter dated 14.7.2020 addressed to the Secretary of the Governing Body, Pravabati College, accorded approval to the list of candidates proposed to be appointed as Assistant Professors/Lecturers at Pravabati College (Government Aided). In the said letter, it has been stated as under:

"I am to refer to your letter no. 1/PBC/MI/91 dated 02.06.2020 on the above subject and to convey that, as per section 49B) of Manipur aided College Employees (service) Rules, 1974 of the Manipur Education Code, 1982, the undersigned has no

objection in appointing 52 (fifty two) candidate listed in the Annexure as Assistant Professors/Lecturers at Pravabati College (Government Aided), Mayang Imphal by the Governing Body of the College as per the requirements of the College under the following terms and conditions:

- i. The appointments are to be made as per recommendations made by the duly constituted Selection Committee constituted under section 4(B) of Manipur Education Code, 1982 and subsequent resolution of the Governing Body of the College.*
- ii. The appointments are to be made by the Governing Body of the college at the college level only.*
- iii. Under no circumstance, the appointed teachers can claim to be Government appointed/approved teachers.*
- iv. The salary to the appointed teachers is to be borne by the Governing Body of the college from the college fund the State Government shall not grant any financial aid for the same.”*

30. From the above, it is clear that, as rightly argued by the learned counsel for the respondents 3 and 4, the notification issued by the UGC dated 18.7.2018 notifying the UGC

Regulations on Minimum Qualifications for appointment of Teachers and other academic staff in Universities and Colleges and measures for the maintenance of Standards in Higher Education, 2018 has no role to play in the impugned selection. The specific averments of the respondent State is that all Government Aided Colleges function as per the Manipur Education Code, 1982 and the service conditions are as specified under the Manipur Education Code and the appointment has been made by the Secretary of the Governing Body only.

31. The learned senior counsel for the petitioner contended that the Manipur Aided College Employees (Service) Rules, 1974 states that in respect of Selection Committee for recruitment of teaching staff, the Principal of the College should be the Chairman of the Selection Committee, however, in contravention of the same, the Selection Committee/DPC was constituted with the Principal, Pravabati College as one of the Member and not as Chairman and they proceeded with the impugned interview/DPC proceedings for appointment to the post of Assistant Professor (Geology) and recommended 5 candidates, including the private respondents, leaving the petitioner who is much more deserving for the aforesaid post.

Thus, the argument of the learned senior counsel is that the Selection Committee was constituted with 4 Members without Chairman which offended Chapter XI Section 1(4) of the Manipur Education Code.

32. In reply, Mr. Kh. Tomba Singh, the learned counsel for the respondents 3 and 4 submitted that in the said DPC for appointment to the post of Assistant Professors of the College, including the Assistant Professor (Geology), the Principal of the College was the Chairman of the DPC. However, due to bona fide mistake while typing the proceedings of the DPC, the word Chairman was omitted under the Principal of the College. The word Chairman was not reflected under the name of any other members of the Committee.

33. As could be seen from the records, with the help of the subject experts, the DPC was constituted and proceeded. Since the Committee was constituted in accordance with the provisions of law, the omission of Chairman in the impugned DPC proceedings cannot be faulted. It is also the submission of the learned counsel for the UGC that the collective wisdom of the Selection Committee could not be questioned as it is prerogative of the Selection Committee based on the collective judgment after examining the candidate's educational background and

performance in the interview and without any deviation from the UGC Regulations prevalent at the relevant point of time.

34. According to the petitioner, applications were invited vide advertisement dated 16.2.2020 from the eligible/qualified candidates with 55% and above for appointment to the posts of Assistant Professors in Pravabati College (Government Aided). Accordingly, six candidates, including the petitioner, had applied for the post of Assistant Professor (Geology). The authorities shortlisted the names as per their marks obtained in graduation, post-graduation and other higher qualification and experiences and held interview on 31.5.2020 by online mode. According to the petitioner, compared to other candidates who applied for the post of Assistant Professor (Geology), the petitioner is well qualified and deserved to be selected, as the academic scores/records, performance in the interview and the other qualifications are in high pedestal as that of the other candidates.

35. The case of the respondents 3 and 4 is that the petitioner obtained M.Sc. degree in Petroleum Geology from Punjab University. The advertisement made is for appointment to the post of Assistant Professor (Geology). Therefore, the

qualification possessed by the petitioner is not completely commensurate with the post so advertised by the College.

36. The learned counsel for the respondents 3 and 4 raised an objection as to the maintainability of the writ petition by contending that the petitioner having participated in the interview/DPC, after his non-selection, cannot challenge the entire proceedings of the DPC and the consequential appointments orders issued in favour of the private respondents 5 to 7.

37. According to the learned senior counsel for the petitioner, there are illegalities in the proceedings of the DPC and the conduct of the selection is not in accordance with the relevant Rules and, therefore, the principle of estoppel by conduct or acquiescence has no application. In support, the learned senior counsel placed reliance upon the decision in the case of *Raj Kumar*, supra, wherein, the Hon'ble Supreme Court held thus:

“16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification and the posts were taken out

from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in MadanLal v. State of J&K, (1995) 3 SCC 486 and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But, in this case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.”

38. Countering the argument of learned senior counsel for the petitioner, the learned counsel for the respondents 3 and

4 vehemently argued that the entire proceedings for appointment to the post of Assistant Professor (Geology) as well as the other subjects were made in accordance with law, including the provisions of the Manipur Education Code, and with the approval of the Directorate of University and Higher Education. Therefore, there are not irregularities/illegalities on the part of the College authority to the entire proceedings for appointment to the post of Assistant Professors of the College, including the post of Assistant Professor (Geology).

39. Admittedly, nothing has been produced by the petitioner to show the alleged irregularities/illegalities on the part of the College authorities to the DPC proceedings. After taking part in the selection process, the petitioner is estopped from challenging the selection process.

40. In *Manish Kumar Shahi*, supra, the Hon'ble Supreme Court held as under:

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have been

dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of Uttaranchal, Amlan Jyoti Borooah v. State of Assam and K.A.Nagamani v. Indian Airlines.”

41. In *Anupal Singh*, supra, the Hon'ble Supreme Court held as under:

“55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12.10.2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12.10.2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12.10.2014 and the private respondents are estopped from challenging the selection process. It is a settled law that a person having consciously

participated in the interview cannot turn around and challenge the selection process.”

42. In *N. Murugesan*, supra, the Hon'ble Supreme Court held that a person who knows that if he objects to an instrument then he will not get benefit he wants, cannot be allowed to do so while enjoying fruits. One cannot take advantage of one part while rejecting rest. A person cannot be allowed to have benefit of an instrument while questioning same. Such a party either has to affirm or de-affirm transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of said enjoyment, thereafter questions other part. An element of fair play is inbuilt in this principle and it is also species of estoppels dealing with conduct of a party. In paragraph 27.3, the Hon'ble Supreme Court held thus:

“27.3 A party cannot be permitted to “blow hot-blow cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is stopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to

violate the principles of what is right and of a good conscience.”

43. In view of the propositions enunciated by the Hon'ble Supreme Court, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the applicable law, the petitioner has waived his right to question the proceedings of the DPC and the consequential appointment orders in respect of the private respondents 5 to 7 or the methodology adopted by the Selection Committee/DPC for making the selection of the Assistant Professor (Geology). The result of the interview cannot be challenged by the petitioner who has participated in the interview and has taken the chance to get selected at the said interview and ultimately finds himself to be unsuccessful. Therefore, the decision in the case of *Raj Kumar*, supra, relied upon by the learned senior counsel for the petitioner is not applicable to the case of the petitioner. The other decisions relied upon by the learned senior counsel for the petitioner are also directly not applicable to the case of the petitioner. Therefore, the same are not elaborated in this order.

44. In view of the finding arrived at by this Court that the petitioner, having participated in the interview, on his non-

selection for the post is estopped from challenging the entire proceedings of the DPC, the argument raised on behalf of the petitioner that the advertisement ought to have been published for two consecutive days in the local newspaper and should have been published in the State Gazette has no legs.

45. The further argument of the learned senior counsel for the petitioner is that one of the DPC members tampered with the marks of the private respondents and, therefore, the entire DPC proceedings is to be set aside. Admittedly, to prove the said allegation, no piece of material has been produced by the petitioner. If the aforesaid allegation of the petitioner is genuine and borne out by records, nothing prevented the petitioner from approaching the competent forum for the same at the relevant point of time. However, the petitioner has failed to do so. Therefore, the aforesaid argument of the petitioner cannot be countenanced.

46. As could be seen from the records, the authorities of Pravabati College after shortlisting of candidates have conducted the interview on 31.05.2020 by online mode. Admittedly, the said online interview was conducted with the approval of the Department of Higher and Technical Education. The Selection Committee constituted made a panel of

candidates who appeared in the said interview according to the marks scored by them. The records further reveal that out of 6 shortlisted candidates, 5 were selected, leaving the petitioner who scored only 214 marks. The other candidates, namely the respondents 5 to 7 and two others have scored more marks than the petitioner. In fact, in the said list, by scoring 256 marks, Dr. Khumukcham Radhapyari Devi got first rank; by score 255 marks, Venus Guruaribam got second rank; by scoring 245 marks, the seventh respondent got third rank; by scoring 232 marks, the sixth respondent got fourth rank and by scoring 219 marks, the fifth respondent got fifth rank. The petitioner has failed to implead the first two rank holders as party respondents. The non-impleadment of the aforesaid two selected candidates seriously affects the writ petition.

47. Though the petitioner contended that the private respondents 5 and 6 possesses only Master of Science in Earth Science from Manipur University in the year 2015 and 2016 respectively, while the seventh respondent possesses Master of Science (Geology) from University of Mysore in the year 2011 which are considered as not qualified/not eligible to be appointed as Assistant Professor in Colleges and Universities, nothing has been produced by the petitioner to establish the said contention.

On the other hand, as stated supra, having considered the educational qualification and suitability and also the performance in the interview, the DPC has rightly recommended the private respondents 5 to 7 for appointment to the post of Assistant Professor (Geology) in Pravabati College (Government Aided).

48. This Court is of the view that there is no illegality or bias in the impugned DPC proceedings/interview dated 31.05.2020 and the same has been held in accordance with the procedure. The plea of the petitioner that the appointment of the private respondents are tainted with full of material irregularity, arbitrariness, bias, favoritism and nepotism and also adopting corrupt practice is not supported by any valid proof. The petitioner, having taken part in the process of selection is not entitled to challenge the entire process of selection. Equally, having participated in the selection process, the petitioner is estopped from raising the plea that the vacancies over and above the number of vacancies advertised cannot be filled up. The factum of increase/ decrease of the posts so advertised has been clearly spelt out in the advertisement. That apart, the petitioner has not questioned the advertisement dated 16.2.2020.

49. The invocation of the jurisdiction under Article 226 of the Constitution of India by the petitioner after he was not

selected/recommended by the DPC is legally not sustainable. The petitioner, accepting the contents of the advertisement, applied for the post and after his name is not included in the list of selected candidates, he filed the writ petition. Filing of such a writ petition admittedly is not permissible in law. The conduct of the petitioner clearly disentitles him from questioning the selection of the private respondents as Assistant Professors (Geology) in Pravabati College (Government Aided). As the impugned DPC proceedings is valid in law, the consequential appointment orders dated 3.6.2020 issued by the respondent authorities in respect of the private respondents 5 to 7 are legally sustainable and the petitioner has no right to question the same. It is reiterated that in the interview, the petitioner has secured low marks than the private respondents 5 to 7. That apart, the performance of the petitioner in the interview is very poor. Therefore, the respondent authorities are right in not selecting the petitioner for the post of Assistant Professor (Geology). The action of the respondent authorities cannot be questioned by the petitioner by filing the instant writ petition. The writ petition is devoid of merits and, therefore, the same is liable to be dismissed.

50. In the result, the writ petition is dismissed. There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil