

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.452 of 2022

Smt. Jhulan Rani Debbarma, Age-38

W/o Bijoy Kumar Kalai,

R/o: Vill & P.O- Kanchan Mala,

P.S- Srinagar, Dist: Sepahijala, Tripura

....Petitioner(s)

Versus

1. The State of Tripura

To be represented by the Secretary, Department of law,
Govt. of Tripura, New Secretariat Complex, Kunjaban,
Agartala, West Tripura, PIN 799010

2. The District & Sessions Judge,

West Tripura, Agartala, O/o the District & Sessions Judge,
West Tripura District, Agartala

3. The Additional District & Sessions Judge,

West Tripura District, Agartala, O/o the District & Sessions Judge,
West Tripura District

4. Sri Rajesh Debnath,

S/o Sri Sudhangshu Debnath, R/o: Vill: North Brajapur,
P/o: Bishalgarh, Dist: Sepahijala

5. Jakir Miah,

S/o: Md Abdul Rab, R/o: Vill & PO- Khupilong,
PS- Killa, Dist: Gomati Tripura

6. Smt Subangkari Podder,

W/o: Sri Suraj Debbarma, R/o: Vill : AD Nagar Road no 6,
P.O & P.S: AD Nagar, Dist: West Tripura

7. Sri Prasanjit Debnath,

S/o Lt Tapan Debnath, R/o Vill: North Barjapur,
P.O: Brajapur, P.S: Bishalgarh, Dist: Sepahijala

8. Sri Sudip Nath Bhowmik,

S/o Lt Abinash Chandra Nath Bhowmik,
R/o: Vill: Dhaleshwar, Road No. 9, P.O: Dhaleshwar,
P.S: East Agartala, Dist: West Tripura

9. Smt Purnima Roy,

W/o Sri Bhasan Chandra Paul, R/o: Vill: Ranirbazar,
Bridhanagar, P.O & P.S: Ranirbazar, Dist: West Tripura

10.Smt Payel Roy,

D/o Sri Prantosh Roy, R/o: Vill: A.D Nagar, Road No. 07, P.O & P.S: A.D
Nagar, Dist: West Tripura

11. Sri Sukanta Das,

S/o: Sri Jitendra Kumar Das R/o: Vill: Sonamura (East Side of Ramesh
Boarding) P.O. RK Pur, PS RK Pur,
District: Gomati Tripura, PIN: 799120

12.Smt. Ruma Das,

W/o: Sri Rakesh Das, D/o: Sri Dilan Das R/o: Sat Dubia, P.O: Sidhai Mohanpur, District: West Tripura, PIN: 799210

13.Sri Sujit Sarkar,

S/o: Lt. Ranjit Sarkar, R/o: Belabar, School Tilla, P.O: SD Mission, PS: Amtali District: West Tripura, PIN:799003

14.Sri Abdul Malik,

S/o: Lt. Eshad Ali, R/o: East Durgapur, P.O: Kirtan Tali, P.S: Kailashahar, District: Unakoti, Tripura, PIN:799279

15. Sri Birajit Das,

S/o: Lt. Birendra Kumar Das, R/o: Near Hospital Panisagar, P.O: Panisagar, District: North Tripura, PIN:799260

16. Sri Haradhan Das,

S/o: Lt. Rajendra Das, R/o: Ambedkar Pally, Jogendra Nagar, P.O: Jogendra Nagar, P.S: Agartala College, District: West Tripura, PIN:799004

17. Sri Gautam Nama,

S/o: Lt. Gopal Nama, R/o: Masterpara, Melagarh, P.O: Rudijala, P.S: Melagarh, District: Sepahijala, Tripura, PIN:79915

(Notice to the Respondents nos 4 to 17 may be served through the District and Sessions Judge, West Tripura, as they are serving in the post of Group-D (Peon Grade) under the District and Sessions Judge, West Tripura District)

....Respondent(s)

WP(C) No.596 of 2022

Smt. Krishnaika Debbarma

W/o Smt. Rupamala Debbarma,
R/o: Vill: Heamara, P.O- Baikunthapur,
P.S- Sidhai Mohanpur, Dist: West Tripura, Pin:799211

....Petitioner(s)

Versus

1. The State of Tripura

To be represented by the Secretary, Department of Law, Govt. of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN 799010

2. The District & Sessions Judge,

West Tripura, Agartala, O/o the District & Sessions Judge, West Tripura District, Agartala

3. The Additional District & Sessions Judge,

West Tripura District, Agartala, O/o the District & Sessions Judge, West Tripura District

4. Sri Rajesh Debnath,

S/o Sri Sudhangshu Debnath, R/o: Vill: North Brajapur, P/o: Bishalgarh, Dist : Sepahijala

5. Smt Subangkari Podder,

W/o: Sri Suraj Debbarma, R/o: Vill : AD Nagar Road no 6, P.O & P.S: AD Nagar, Dist: West Tripura

6. Sri Sudip Nath Bhowmik,

S/o Lt Abinash Chandra Nath Bhowmik, R/o: Vill: Dhaleshwar, Road No. 9, P.O: Dhaleshwar, P.S: East Agartala, Dist: West Tripura

7. Sri Sukanta Das,

S/o: Sri Jitendra Kumar Das R/o: Vill: Sonamura (East Side of Ramesh Boarding) P.O. RK Pur, PS RK Pur, District: Gomati Tripura, Pin: 799120

....Respondent(s)

WP(C) No.597 of 2022

Sri Debasish Bhattacharjee

S/o Lt. Haridhan Bhattacharjee

R/o: Vill: Office Tilla, Bishalgarh,

P.O+PS:- Bishalgarh, Sepahijala, Tripura, Pin: 799102

....Petitioner(s)

Versus

1. The State of Tripura

To be represented by the Secretary, Department of Law, Govt. of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN 799010

2. The District & Sessions Judge,

West Tripura, Agartala, O/o the District & Sessions Judge, West Tripura District, Agartala

3. The Additional District & Sessions Judge,

West Tripura District, Agartala, O/o the District & Sessions Judge, West Tripura District

4. Sri Rajesh Debnath,

S/o Sri Sudhangshu Debnath, R/o: Vill: North Brajapur,

P/o: Bishalgarh, Dist : Sepahijala

5. Smt Subangkari Podder,

W/o: Sri Suraj Debbarma, R/o: Vill : AD Nagar Road no 6,

P.O & P.S: AD Nagar, Dist: West Tripura

6. Sri Sudip Nath Bhowmik,

S/o Lt Abinash Chandra Nath Bhowmik, R/o: Vill: Dhaleshwar, Road No. 9,

P.O: Dhaleshwar, P.S: East Agartala, Dist: West Tripura

7. Sri Sukanta Das,

S/o: Sri Jitendra Kumar Das R/o: Vill: Sonamura (East Side of Ramesh Boarding) P.O. RK Pur, PS RK Pur, District: Gomati Tripura, Pin: 799120

....Respondent(s)

WP(C) No.632 of 2023

Sri Sujit Das

S/o- Sri Shibu Das, Village-Gorkhabasti, Nutanpalli, P.O-Kathalbagan, P.S-NCC, District-West Tripura Age-... years.

....Petitioner(s)

Versus

1. The State of Tripura

To be represented by the Secretary, Department of Law, Govt. of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN 799010

2. The District & Sessions Judge,

West Tripura, Agartala, O/o the District & Sessions Judge, West Tripura District, Agartala

3. The Additional District & Sessions Judge,

West Tripura District, Agartala, O/o the District & Sessions Judge, West Tripura District

4. Sri Sukanta Das,

S/o: Sri Jitendra Kumar Das R/o: Vill: Sonamura (East Side of Ramesh Boarding) P.O. RK Pur, PS RK Pur, District: Gomati Tripura, Pin: 799120

5. Smt. Ruma Das,

W/O:- Sri Rakesh Das, D/o: Sri Dilan Das R/o: Sat Dubia, P.O: Sidhai Mohanpur, District: West Tripura, Pin:799210

6. Sri Sujit Sarkar,

S/o: Lt. Ranjit Sarkar, R/o: Belabar, School Tilla, P.O: SD Mission, PS: Amtali District: West Tripura, PIN:799003

7. Sri Birajit Das,

S/o: Lt. Birendra Kumar Das, R/o: Near Hospital Panisagar, P.O: Panisagar, District: North Tripura, PIN:799260

8. Sri Haradhan Das,

S/o: Lt. Rajendra Das, R/o: Ambedkar Pally, Jogendra Nagar, P.O: Jogendranagar, P.S: Agartala College, District: West Tripura, PIN:799004

9. Sri Gautam Nama,

S/o: Lt. Gopal Nama, R/o: Masterpara, Melagarh, P.O: Rudijala, P.S: Melagarh, District: Sepahijala, Tripura

....Respondent(s)

For Petitioner(s)	:	Mr. Samarjit Bhattacharjee, Advocate
For Respondent(s)	:	Mr. Kohinoor N. Bhattacharyya, G.A
		Mr. S. Dey, Advocate
		Mr. P. Gautam, Advocate

Date of hearing and

Delivery of Judgment & Order : 11.03.2024

Whether fit for reporting : Yes

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

The above bunch of writ petitions involves similar and identical points of law and facts, and as such these are taken up and heard together for disposal with the consent of learned counsels appearing for the parties. The case bearing No.WP(C)632/2023 has been taken as lead case on the basis of the submission advanced by Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioners in the above bunch of writ petitions.

2. In WP(C) 632/2023, the petitioner has prayed for following reliefs:-

“i. Issue Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction shall not be issued whereby directing the Respondents nos 1 to 3 to conduct fresh Oral interview & on the basis of marks obtained by the Petitioner in the fresh oral interview/viva voce test, prepare the merit list and give appointment to the Petitioner in the post of Group D(Peon grade) in pursuance to the advertisement no 4314, dated, 24.04.15, issued by the District & Sessions Judge, West Tripura, Agartala.

ii. Make the rules absolute.

iii. Call for records.

iv. Pass any further order/orders as this Hon'ble High Court considered fit and proper.”

3. **Background facts of the case:-**

3.1 The Office of the District & Sessions Judge, West Tripura, Agartala had issued an advertisement dated 24.04.2015 [Annexure 2 to writ petition no.WP(C) 632/2023 titled as *Sujit Das Vs. The State of Tripura and 8 Ors.*] for the purpose of appointment of Group-D employees. Many candidates applied for recruitment in terms of the advertisement and they participated in the written test as well as *viva voce* test. The Office of the District & Sessions Judge under Notification dated 02.05.2017 [Annexure 3 to WP(C) 632/2023] published the result with the approval of the Hon'ble High Court. From the Notification dated 02.05.2017, it is revealed that the respondents, District Judiciary had indicated the marks of the respective candidates which comprised the total marks obtained both in written and *viva voce* test. Two candidates, namely, *Jakir Miah* and *Sri Rajesh Debnath* had filed writ petitions [WP(C) 894 of 2018 and WP(C) 715 of 2018]

respectively] before this Court, and a Coordinate Bench of this Court had allowed the said two writ petitions to the extent indicated here-in-below:-

“[8] Be that as it may, this court is of the view that the marks awarded to the petitioners in the interview are not only illogical but also unintelligible. Having observed thus, the respondent No.1 is directed to take fresh interview of the petitioners within a month from the day of receiving a copy of this order. If they are found suitable after aggregating the marks of the written examination and the viva-voce test, the petitioners shall be accommodated against the vacancy available at present and accordingly they would be appointed.

[9] It is needless to say that the petitioners are to be considered in the UR category and that is the reason why the last candidate in the UR category has been referred.

[10] It is made absolutely clear the petitioners will not get any benefit retrospectively. They would get all the benefits from the date of their appointment only, if they are selected in the process.

In the result, both the writ petitions are allowed to the extent as indicated above.”

3.2 It is pertinent to mention herein that the Office of the District & Sessions Judge had allowed the said two writ petitioners to appear before the Interview Board again and accordingly, on being selected were appointed against Group-D posts considering them under UR category.

3.3 Thereafter, many candidates had filed similar writ petitions asking for a direction of this Court to allow them to again appear before the Interview Board. A Coordinate Bench of this Court had passed similar order and those candidates appeared before the Interview Board and later on it was noticed that all of them were found suitable and accordingly, were appointed. In the same manner, as many as twelve candidates had been appointed against Group-D posts. The last selection was made in the year 2022 when the Office of the District & Sessions Judge had issued a

Memorandum dated 02.03.2022 [*Annexure 8 to WP(C) 632/2023*] allowing as many as seven candidates.

3.4 The appointment of those seven candidates as mentioned in the Memorandum dated 02.03.2022, according to the present writ petitioners, had given them a right to file the present writ petitions before this Court asking this Court to pass a similar direction for constitution of a fresh Interview Board and to allow them to appear before such Interview Board for the purpose of *viva voce* test. It is relevant to note herein that all the present writ petitioners had secured zero marks in the first round of *viva voce* test. Pertinently, all the candidates who had filed the writ petitions and subsequently selected had also secured zero mark in the *viva voce* test as it is revealed from the publication of the first selection list [*Annexure 4 to WP(C) 632/2023*]

4. In the aforesaid background of facts, I have heard Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioners, Mr. Kohinoor N. Bhattacharyya, learned G.A appearing for the State-respondents, Mr. P. Gautam, learned counsel appearing for the respondent-District & Sessions Judge, West Tripura Judicial District, Agartala and Mr. S. Dey, learned counsel appearing for the private-respondents in WP(C) No.452 of 2022.

5. Mr. Bhattacharjee, learned counsel appearing for the petitioners has heavily relied upon the judgments passed by Coordinate Bench of this Court wherein directions were passed to constitute fresh Interview Board and allowed the petitioners to appear before such Interview Board for their subsequent selection and appointments. Mr. Bhattacharjee, learned counsel has drawn my attention to an observation made by the Coordinate Bench

while disposing of the writ petition No.894 of 2018 titled as *Sri Jakir Miah Vs. The District & Sessions Judge, West Tripura and 4 Ors.* wherein it was observed thus:-

“[7] Ms. Dhar, learned counsel appearing for the respondent No.1, has produced the record of viva-voce test and that has been perused by this court, but how marks were distributed is not available from the records of interview. It is not denied that the petitioners have participated in the said proceeding. It is, however, accepted that some marks have been allotted on the basis of the qualification. If that is so, it is really absurd how the petitioners can secure zero in the viva- voce test. Even the respondents No. 3, 4 and 5 have not stated the method they have followed in the viva-voce. It is really strange that no method has been recorded anywhere in the records, even not in the sheet, where they have given marks. From one of the sheets,.....”

6. Mr. Bhattacharjee, learned counsel has further relied upon the judgment dated 31.01.2022 in connection with case No. **WP(C) 303/2021** titled as ***Sri Sukanta Das Vs. The District & Sessions Judge, West Tripura and 4 Ors.*** along with other connected writ petitions wherein the learned Single Bench of this Court at para-21 had observed thus:-

“21. But in the same judgment i.e. Ram Gopal (Supra), the apex court having relied upon State of Uttar Pradesh v. Arvind Kumar Srivastava reported in (2015) 1 SCC 347 has observed that the normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so, would amount to discrimination and would be violative of Article 14 of the Constitution of India.”

7. While disposing of a bunch of writ petitions in *Sri Sukanta Das(supra)* , a Coordinate Bench of this Court had passed the following directions:-

*“26. As the petitioners are situated in the same background, they are also entitled to the reliefs as provided in a series of decision passed by this court starting from **Jakir Miah** (supra) to **Sudip Nath Bhowmik** (supra). As such, all the writ petitions are disposed of with the following reliefs:*

(i) The respondents shall constitute a fresh interview committee which would comprise of the same level (but not necessarily the same judicial officers) of officers as in the original interview committee and take a fresh interview of the petitioners;

(ii) This shall be done within a period of four months from today;

(iii) On the basis of the marks that may be allotted pursuant to such fresh interviews and the marks scored by the petitioners in the written examination, if they deserve selection, they shall be appointed to the said post on the existing or next available vacancies;

(iv) Such appointments shall be prospective and shall carry no benefits of the past period;

(v) Entire exercise shall be completed within a period of four months from today.”

8. Laying enough emphasis on the above observation made by the Coordinate Bench of this Court in the aforesaid judgments, Mr. Bhattacharjee, learned counsel for the petitioners submits that the present petitioners being similarly situated are entitled to get similar reliefs and this Court should pass a direction upon the District & Sessions Judge, West Tripura to constitute fresh selection board for taking *viva voce* test involving the petitioners. Mr. Bhattacharjee, learned counsel has candidly submitted that the present writ petitions should not be dismissed on the ground of delay and laches for the simple reason that the last selection was made in the year 2022 under notification dated 02.03.2022.

9. Opposing vehemently to the reliefs sought for by the present writ petitioners, learned G.A appearing for the respondents-State of Tripura

has submitted that the present writ petitions are badly barred by doctrine of delay and laches. According to learned G.A, if this process is going on, then, it will be seen that thousands of writ petitions will come up before this Court to allow them to appear before freshly constituted Interview Board.

10. Learned G.A has drawn the attention of this Court as regards the parameters laid down by the Supreme Court in the case of *State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors.* reported in (2015) **1 SCC 347** for consideration of selection of candidates and the law of discrimination. I have perused the said parameters which are laid down by the Hon'ble Supreme Court at para 22. To attract the principle of delay and laches, Mr. Bhattacharyya, learned G.A has relied upon the judgment passed in *Bharat Sanchar Nigam Ltd Vs. Ghanshyam Dass & Ors* reported in (2011) **4 SCC 374** wherein it was observed that *where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others. In Jagdish Lal and others v. State of Haryana and others [(1997) 6 SCC 538], the appellants who were general candidates belatedly challenged the promotion of Scheduled Caste and Scheduled Tribe candidates on the basis of the decisions in Ajit Singh Januja v. State of Punjab [(1996) 2 SCC 715], Union of India v. Virpal Singh Chauhan [(1995) 6 SCC 684] and R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745] and this Court refused to grant the relief saying:*

“.....this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution. It

is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from Virpal Chauhan and Ajit Singh ratios. But Virpal Chauhan and Sabharwal cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation to all the persons prior to the date of judgment in Sabharwal case which required to be examined in the light of the law laid in Sabharwal case. Thus earlier promotions cannot be reopened. Only those cases arising after that date would be examined in the light of the law laid down in Sabharwal case and Virpal Chauhan case and equally Ajit Singh case. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In A.B.S. Karamchari Sangh case a Bench of two Judges to which two of us, K. Ramaswamy and G.B. Pattanaik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not open to judicial review. In Chander Pal v.....”

“.....Since the respondents preferred to sleep over their rights and approached the Central Administrative Tribunal only in 1997, they cannot get the benefit of the order dated 07.07.1992 of the Tribunal in O.A. No.1455 of 1991 and will only be entitled to the benefit of the circular dated 13.12.1995 which was in force in 1997.”

11. Learned G.A has tried to persuade this Court that the learned counsel for the petitioners has only placed his reliance on sub-para 22.1 without drawing attention of this court as regards the parameters settled by

the Hon'ble Supreme Court in the subsequent paragraphs of the judgment rendered in *Arvind Kumar Srivastava (supra)*.

12. To add, Mr. Gautam, learned counsel appearing for the respondent, District & Sessions Judge, West Tripura Judicial District, Agartala has, *firstly*, contended that while determining the suitability of a candidate in the *viva voce* test, the members of the Interview Board can award zero mark and the methodology the members adopted in the process of undertaking *viva voce* test cannot be questioned by the Court; *secondly*, this Court cannot sit as an Appellate Authority over the decision of the respondents based on the report of Selection Committee comprising experts on the subject in issue. Mr. Gautam, learned counsel has pressed into service the judgment passed by the Hon'ble Supreme Court in *Hoshiar Singh Vs. State of Haryana* reported in (1993) Supp 4 SCC 377 to convince the court that a candidate can secure zero mark in the process of determining one's suitability. Para 13 and 14 of *Hoshiar Singh(supra)* reads thus:-

“13. As regards rejection of candidates on the ground that they had misbehaved at the time of interview, we are unable to agree with the High Court that the Board could not reject a candidate on the ground that he had misbehaved at the time of interview. In the process of selection, the Board is required to adjudge the suitability of the candidate for appointment on the post for which selection is being made. The Board is entitled to take note of the behaviour of the candidate at the time of interview and if it is found that the behaviour is such as to render him not suitable for holding the post for which selection is to be made, the Board would be perfectly justified in rejecting him for appointment on the post. If the course suggested by the High Court is adopted, namely, that the Board may give zero mark to the candidate who misbehaves at the time of interview, the result would be that a candidate whose behaviour was such as to render him unfit for appointment to

the post, may have to be selected and recommended for appointment on the basis of the marks secured by him in the written test although in view of his behaviour at the time of interview the Board found that he is not suitable for such appointment. The suitability of a candidate for appointment has to be considered on the basis of an overall assessment of his performance during the process of selection. The conduct and behaviour of the candidate at the time of interview is a relevant factor in making such assessment. The absence of any provision in the Rules prescribing minimum marks for interview does not mean that the Board is bound to select a candidate who is found to be unsuitable for appointment by the Board on account of his behaviour at the time of interview. We do not propose to go into the question as to whether the candidates who have been rejected by the Board on the ground of misbehaviour had misbehaved at the time of interview since the selection is liable to be quashed for the reasons mentioned”

14. *The directions given by the High Court quashing the selection and appointment of the appellants in these appeals must, therefore, be upheld and the appeals are liable to be dismissed.”*

13. Mr. Dey, learned counsel appearing for the private respondents in WP(C) 452/2022 has placed a decision passed by a Single Bench of this Court(Arindam Lodh, J.) in WP(C) 677/2022 titled as ***Sri Amal Kanti Ghosh Vs. The State of Tripura and 9 Ors.*** where this court had dismissed the similar prayers made by the petitioner.

14. I have given my thoughtful consideration to the submission advanced by learned counsel appearing for the rival parties, perused the judgments and the documents annexed with the writ petitions.

15. At the very outset, I am of the considered view that the present writ petitions are badly barred by the principle of delay and laches. The advertisement was published in the year 2015. The process was continued and ultimately, first selection list was published under notification dated

02.05.2017 [Annexure 3 to WP(C) 632/2023]. In the year 2018, some of the candidates who secured zero mark in the *viva voce* test had approached this court praying for a direction to constitute a fresh Interview Board and the Court allowed them to appear in the *viva voce* test. Accordingly, Interview Board was constituted and ultimately those writ petitioners were appointed. Subsequently, as many as 12 writ petitioners approached this court praying for similar reliefs and those were also allowed by a Coordinate Bench of this Court and all of them were selected. As I said earlier, the last selection and appointment were made in the month of March, 2022. It is apparent that the present writ petitioners also had secured zero mark. They noticed it when the first selection list was published under notification dated 02.05.2017(supra). Thus, the petitioners were well aware of the fact that they secured “zero” mark in the interview, but the petitioners had kept on maintaining silence for a long time and suddenly woke up from deep slumber and filed the instant writ petition in the year 2022 praying for a direction upon the respondents to conduct fresh oral interview.

15.1 Thereafter, some of the candidates approached this Court on the basis of RTI application stating *inter alia* that through RTI application they came to know that they obtained zero mark in the *viva voce* test, and prayed for a direction to conduct their oral interview afresh by a re-constituted selection board. A Coordinate Bench of this Court had allowed their prayers and ultimately they got appointed in the post of Group D. Even after that, the present writ petitioners did not come forward before this court praying for similar reliefs and they preferred to sleep over their rights, if they had any.

16. I have noticed the reply given by the members of the Interview Board which has been noted in the case of ***Jakir Miah(supra)*** at para 6 of the judgment, which is reproduced here-under, for convenience, in *extenso*:-

“[6] Even the respondents No. 3, 4 and 5, the members of the Interview Board filed their separate reply and contended that the petitioners' claim that they ought to have given marks is based on no material. They have asserted that zero mark was awarded to those candidates who were found not 'suitable' for the post and mere appearance in the viva-voce test did not give rise to any right to the petitioner to get any marks of his choice. Not only the petitioners, but some other candidates were also given zero marks considering their suitability”

16.1 I am constrained to observe as to whether this Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India can question the methodology to be adopted by a Selection Committee or the members of the Interview Board to test the suitability of the candidates in absence of any allegation of bias against any members of the Interview Board. According to me, it is absolutely within the domain of the Selection Committee or the members of the Interview Board. The court can in no way in exercise of its extraordinary jurisdiction under Article 226 of the Constitution can step into the shoes of the Selection Committee or the Interview Board whatever it may be. The members of the Interview Board i.e. respondents No.3, 4 and 5 in the writ petition had clearly stated in the case of ***Jakir Miah(supra)*** that while determining the suitability of the candidates they had awarded zero mark as they found the candidates were not suitable for the post.

17. At this juncture, I may gainfully refer to the parameters laid down by the Hon'ble Supreme Court in the case of ***Arvind Kumar***

Srivastava (supra) as regards the question of discrimination which are as under:-

“23) The legal principles which emerge from the reading of the aforesaid judgments, cited both the appellants as well as the respondents, can be summed up as under

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

*(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see **K.C. Sharma & Ors. v. Union of India** (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the*

Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

18. In the present case, the Coordinate Bench of this Court had passed further similar directions while allowing the writ petitions filed by some unsuccessful candidates securing zero mark. After careful perusal of the earlier judgments passed by this Court as referred to supra, in my opinion, there is no material to infer that those judgments were passed as judgment *in rem*. In my opinion, those judgments were to be treated as judgments *in personam*.

19. My above view is further fortified by the observation of the Coordinate Bench of this Court made in the case of **Sri Sukanta Das(supra)**, which is as under:-

“27. Before parting with the records, this court would observe that in view of the decision in Ram Gopal (Supra) as from the date of the publication of the result of the selection test three years have elapsed no further action by any person who appeared in the interview shall not ordinarily be entertained.”

19.1 Having observed thus, the Coordinate Bench of this Court had expressly created a stumbling block in entertaining fresh writ petitions, if any, by any person/candidates who appeared in the interview under the advertisement dated 24.04.2015 [Annexure 2 to WP(C) 632/2023] and in that meanwhile, three years had already been elapsed since the date of the publication of the result of the selection test. It is apparent that the present writ petitioners have approached this court after almost 5(five) years as from

the date of the publication of the result of the selection test. The position as of now has already been settled by the District & Sessions Judge in the matter of appointment of the candidates who appeared in the selection process in terms of the advertisement under notification dated 24.04.2015.

20. Having read and considered thus, this Court declares all the judgments passed by the said Coordinate Bench of this Court on the subject in issue as judgments *in personam* and not in *rem*.

21. In the ultimate analysis, I am of the firm view that the selection process which was commenced in the year 2015 should not be continued perennially, and at one stage it must be stopped keeping in mind the principle of equity. In my opinion, none of the petitioners has any right to approach this Court praying for a direction to constitute a fresh Interview Board and to allow them to appear before such Interview Board for their selection because all of them were found unsuccessful in the first list published by the respondents. A candidate may secure zero mark if he/she is unable to answer a single question put forth by the members of the Interview Board. It is not absurdity at all. There are other factors also. Oral interview is a mechanism to evaluate/assess a candidate's personal characteristics as initiative, ingenuity, alertness and ability to elicit cooperation.

22. In my considered view, since the Court does not possess the necessary equipment to test the suitability of a candidate appearing in any selection process, it should be left to the wisdom of the experts, and should not be interfered with unless the selection process suffers from proven vice of arbitrariness or obvious oblique motive.

I may profitably refer to the decision of Hon'ble Supreme Court in *Lila Dhar Vs. State of Rajasthan & Ors, (1981) 4 SCC 159*, where it was observed as under:-

“5. It is now well-recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview-test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview-test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview-test, much depending on the constitution of the Interview Board. O. Glenn Stahl in his Public Personnel Administration points out:

“Any form of written test possesses certain administrative advantages over the oral and performance types. The written form is much easier and cheaper to administer. It can be given to a large number of individuals at the same time, thus conserving the time of the examiners. As a general rule it is easier to evaluate objectively, and the technical proficiency demanded in rating is usually, although not always, less. The oral test has long served as a basic selection tool in private employment but has been more slowly accepted in the public field. This conservatism arises out of three considerations: (1) the difficulty of developing valid and reliable oral tests; (2) the difficulty of securing a reviewable record of an oral test; and (3) public suspicion of the oral as a channel for the exertion of political influence through the destruction of anonymity. Despite these acknowledged disadvantages, however, orals have been used increasingly in public personnel testing and have become important instruments wherever tests of personal attributes are considered essential. As we have noted no satisfactory written tests have yet been devised for measuring such personal characteristics as initiative, ingenuity and ability to elicit cooperation, many of which are of prime importance.

When properly employed, the oral test today deserves a place in the battery used by the technical examiner.... The general principle is that resort should never be had to an oral if the relevant factors to be tested can be measured at some other point in the examining process. The reason is that the reliability of the oral, even under the best of conditions, tends to be lower than that of the well designed written test. The oral test should be confined, then, to the evaluation of relevant traits which cannot be measured in any other way. [Ibid., p. 92] ”

In the United Nations Handbook on Civil Service Laws and Practice it is said:

“... the written papers permit an assessment of culture and intellectual competence. The interview permits an assessment of qualities of character which written papers ignore; it attempts to assess the man himself and not his intellectual abilities.”

23. That apart, when the Rule stipulates for *viva voce* test, then, there must be some purpose the framers wanted to achieve. By now, it is well settled that interview is the best mode of assessing suitability of a candidate for a particular position. While the written examination testifies the candidates' academic knowledge commensurate to the posts, the oral test alone can bring to light one's overall intellectual and personal qualities which would reveal whether he is fit for the post. The Selection Committee always keeps in mind the legislative intendment behind framing of such rule. So, the decision of the Selection Committee should not be dislodged or discarded on flimsy grounds.

24. In *Lila Dhar (supra)*, it was observed that:

“The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favoritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service.....”

25. I reiterate that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not expected to sit as Court of Appeal over the decisions taken by the experts in the Selection Committee and to scrutinise the relative merit of the candidates unless the process of assessment/evaluation is vitiated either on the ground of malafides, bias or arbitrariness. Moreso, in the case on hand, the Selection Committee was constituted in terms of the relevant rules and there was no allegation against the constitution of the committee. I may gainfully refer the decision of the Apex Court in the case of ***Dalpat Abasaheb Solunke vs. B.S. Mahajan***, (1990) 1 SCC 305. Para 12 of the judgment reads thus:

“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

Again, in *Secy. (Health) Deptt. of Health & F.W. vs. Anita Puri (Dr)*, (1996) 6 SCC 282, the Apex Court held thus:

“9. It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus considered, we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.”

26. Pertinently, in the above batch of writ petitions, I find that none of the petitioners has levelled any allegation of bias, or malafide against any Members of the Selection Committee. In such a case, in my opinion, the court must refrain itself from interfering with such selection process.

27. In the light of above discussions and the reasons thereof, I find no merit in this bunch of writ petitions, and accordingly, the same stand dismissed.

JUDGE