



2024: GAU-AS:10007

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.27 of 2019

Shehnaz Begum,
Wife Abu Naser Md. Wahid,
Resident of Hojai Town, Bishnupally, PO:
Hojai, District: Nagaon, Assam, PIN –
782435.

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, Guwahati – 781006.
2. The Assam Public Service Commission, represented by its Secretary, Khanapara, Guwahati – 781022.
3. The Officer-in-Charge, ACB Police Station-cum-Superintendent of Police, Vigilance & Anti Corruption, Assam, Guwahati – 781022.
4. The Superintendent of Police, Dibrugarh, District: Dibrugarh.

5. Smt. Naina Bhuyan,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

6. Mazedul Islam,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

7. Shri Harajyoti Mazumdar,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

8. Shri Deep Jyoti Sarmah,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

9. Rabeya Begum,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

10. Jyotisikha Das,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

11. Shri Nilothpal Paul,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

12. Shri Anirban Das,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

13. Shri Jyoti Prasad Lahan,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

14. Shri Tridip Kumar Taw,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

15. Shri Gitartha Kumar,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

16. Shri Sadananda Saikia,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

17. Shri Indubhusan Dutta,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

18. Smt. Kareng Beypi,
C/o Secretary, Assam Public Service
Commission, Khanapara, Guwahati –
781022.

.....Respondents

**– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

For the Appellant(s) : Mr. B.D. Das, Senior Advocate assisted
by Mrs. R. Deka, Advocate.

For the Respondent(s) : Mr. D. Mozumdar, Additional Advocate
General, Assam for respondent No.1.

: Mr. P.P. Dutta, Standing Counsel,
APSC for respondent No.2.

: Mr. K.N. Choudhury, Senior Advocate
assisted by Mr. D.J. Das, Advocate for
respondent Nos.5, 8, 10, 12, 14, 15, 17
& 18.

Date of Hearing : 26.09.2024.

Date of judgment : 03.10.2024.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

The instant writ appeal is filed by the appellant assailing the judgment and order dated 25.09.2018 passed by the learned Single Judge in WP(C) No.853/2017, whereby the learned Single Judge has refused to grant reliefs prayed for by the appellant in the writ petition, however, disposed of the said writ petition with certain observations.

The operative portion of the impugned judgment and order passed by the learned Single Judge is reproduced hereunder:

“22. For the reasons stated above, this court is of the opinion that the writ petitioner has failed to make out a case meriting interference with the select list dated 17-08-2016 by this court. As such, the relief as prayed for by the petitioner is declined.

23. Before parting with the record, it would be necessary to clarify herein that the discussions, observations and findings of this Court recorded in the foregoing paragraphs must be understood strictly in the context of the merit of the challenge made in the writ petition and those observations and findings shall in no way come in the way of the investigation in connection with the ACB P.S. Case No. 18/2016, which is stated to be under progress, nor shall it prevent the authorities from taking an independent view as regards the validity of the selection process depending upon the materials that may become available before them at any subsequent stage.”

2. The relevant facts, in brief, are that the Assam Public Service Commission (hereinafter to be referred as “APSC”), on 15.12.2012, had issued an advertisement inviting applications for filling up various posts which included 14(fourteen) Nos. of posts of District Malaria

Officer under the Health and Family Welfare (A) Department, Assam. Pursuant to the said advertisement, the appellant and other interested candidates had submitted their applications for the posts of District Malaria Officer and thereafter, took part in the screening test conducted by the APSC on 26.04.2015. The result of the said screening test was declared by the APSC on 20.08.2015 vide Notification dated 21.08.2015 published in The Assam Tribune, whereby as many as 59 candidates were declared as qualified for the *viva-voce*/Interview scheduled to be held on 18.09.2015, and the appellant was one of them. It is revealed that out of those 59 candidates, 56 candidates, including the appellant, had appeared for the *viva-voce*/Interview on 18.09.2015. The APSC issued a select list dated 17.08.2016 of 14 candidates who were selected as District Malaria Officers on the advertised vacancies.

3. As the appellant's name did not figure in the said select list, she approached the Writ Court by filing WP(C) No.853/2017 assailing the entire selection process claiming it as illegal.

4. The challenge of the appellant to the entire selection process was based on two grounds. Firstly, the APSC had selected candidates to the posts of District Malaria Officer only on the basis of the marks obtained by them in the *viva-voce* test while ignoring the marks secured by the candidates in the written test. It was the case of the appellant that selection solely based on *viva-*

voce is not permissible under the law and the same is treated to be illegal.

Second ground of the appellant to challenge the selection process was that the same was vitiated by corrupt practices committed by one of the Members of the Interview Board. Claims were made that the said Member of the Interview Board had approached her on phone and asked for money to ensure her selection. It was also alleged that in connection with the said incident, the appellant had already lodged an FIR with the Addl. Director General of Police, Vigilance and Anti-Corruption Department, Assam and based on which, ACB P.S. Case No.18/2016 was registered under Section 387 of the Indian Penal Code (IPC) read with Section 7 of the Prevention of Corruption Act, 1988 and in the said case, investigation is going on.

After hearing the learned counsel for the parties and going through the material placed before the Court, the learned Single Judge has rejected the ground raised by the appellant to the effect that the selections based solely on *viva-voce* are liable to be treated as illegal, while observing as under:

“9. At the very outset, it needs to be noted herein that the selection of candidates was conducted by the APSC in accordance with the provisions of “Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 (hereinafter referred to as the Rules of 2010), which was notified on 02-08-2010. The said rules have been framed under the powers conferred by the proviso to Article 320 of the Constitution of India. It is not in dispute that when the advertisement notice dated 15-12-2012 was issued, the Rules of 2010 were in force.

10. Chapter-III of the Rules of 2010 deals with the procedure for direct recruitment. As per Rule 21(i), the Chairperson of the Commission is required to constitute the Boards for interview/ viva-voce test of candidates for various posts for which selection is to be made. Rule 23 provides that the programme for interview shall be fixed by the Chairperson. Rule 27 lays down the procedure for holding the screening test where a large number of applications are received. Rule 27 is quoted herein below for ready reference:

“27. Where a large number of applications are received as a result of advertisement, the Commission may shortlist the candidates on the basis of their marks in the qualifying academic examination required for a post in terms of advertisement. The Commission may thereafter call for interview adequate numbers of eligible candidates in order of merit keeping in view the existing reservation policy of Govt.”

11. Rule 28 lays down the proportion that is to be maintained by the Commission for short-listing of candidates for interview and as per Rule 28(iii), the Commission can hold written examination for short-listing of candidates for interview.

12. Chapter-IV of the Rules deal with Combined Competitive Examination and from a plain reading of the various provisions contained in Chapter- IV, it is apparent that for the purpose of holding the Combined Competitive Examination, there is a provision for preliminary examination for short-listing candidates who would then be called for taking part in the written test and interview/ viva-voce. Thus, from a perusal of the various provision of rules, it is apparent that the marks obtained in the written test and interview would have to be counted in case of Combined Competitive Examination conducted under Chapter- IV but the same is not true in case of the selection procedure to be followed for direct recruitment under Chapter- III, where-under, the select list can be prepared on the basis of marks obtained in the viva-voce.

13. As noted above, Rule 28 (iii) under Chapter- III requires holding of written test only for the limited purpose of short-listing of candidates to be called for interview. There is nothing in the Rules coming under Chapter- III which requires the Commission to give credit to the candidates in respect of the marks obtained in the screening test. If that be the case, the preparation of

select list dated 17-08-2016 based only on the marks obtained by the candidates in the interview/ viva-voce test would have to be held as a permissible mode under the applicable Rules.

14. In the context of the discussions made hereinabove, it would further be pertinent to note herein that the advertisement notice dated 15-12-2012 had also clearly mentioned that the Commission may shortlist the number of candidates either on the basis of their marks obtained in the qualifying academic examination required for the post or by holding written examination, which will be notified in due course. Being fully aware of the said conditions, the writ petitioner has not only participated in the written test but has also appeared in the interview/ viva-voce test without any protest.”

5. So far as the allegation of the appellant regarding the corrupt practices committed by one of the Members of the Interview Board is concerned, the learned Single Judge has not found the same convincing and has observed that the said allegations are matter of investigation by the police and at this stage it would not be possible for the Court to take a conclusive view in the matter based on the material available on record. The writ Court has further observed that since the matter is stated to be still under investigation, it has refrained from making any further comment on the validity of the allegation made by the appellant.

As noted above, the learned Single Judge has disposed of the said writ petition with certain observations which have already been quoted in the foregoing portion of this judgment and assailing the impugned judgment and order, the appellant has preferred this writ appeal.

6. In this writ appeal, the Division Bench of this Court, on 01.02.2019, has issued notices to the

respondents while noting presence of some of the Advocates on behalf of the some of the respondents.

On 19.03.2021, a Co-ordinate Bench of this Court has noted the submission of the learned counsel for the APSC, whereby he assured this Court that the entire record pertaining to the selection process would be produced.

On 08.08.2023, the records pertaining to the selection process were produced and after perusing the evaluation sheets, a Co-ordinate Bench of this Court has observed that there have been rampant cuttings and over-writings in the manner of awarding marks to the candidates. It is further observed that there are various other discrepancies which, for the present, the Co-ordinate Bench refrains from commenting upon since the criminal case in relation to the selection in question is still under investigation. However, the Court has issued a direction to provide photocopy copies of the record to Mr. D. Mazumder, learned Additional Advocate General, Assam to prepare a summary thereof for assistance of the Court.

7. Pursuant to that, Mr. Mazumder has submitted a summary before this Court and from that it can be gathered that in the mark-sheets of *viva-voce*, there exist cuttings and over-writings in the original marks awarded to the candidates. The original marks awarded to the candidates were either reduced or increased. From the assessment report, it appears that out of the 56 candidates who appeared in the *viva-voce*, original marks of the 28 candidates were changed either by deduction or addition.

The chart prepared by the learned Additional Advocate General, Assam produced before this Court indicating the variation in the original marks, is reproduced hereunder:

List of candidates showing marks in the merit list and in the mark sheet:

Sl. No. as in merit list	Roll No.	Name of Candidate	Original marks in mark-sheet	Marks shown in merit list	Remarks
01.	0000551	Naina Bhuyan	82 (Pg-28)	80	Deducted 2 marks in General Bearing.
02.	0000526	Mazedul Islam	74 (Pg-17)	77	Added 2 marks in General Bearing.
03.	0000294	Harajyoti Mazumdar	77 (Pg-23)	77	Overwriting in General Bearing.
04.	0000230	Deep Jyoti Sharma	68 (Pg-12)	75	Overwriting in General Bearing marks.
05.	0000705	Rabeya Begum	75 (Pg-19)	72	Deducted 3 marks in General Bearing.
07.	0000556	Nilothpal Paul	72 (Pg-06)	70	Corrected 1 mark in degree and Deducted 1 mark in General Bearing.
08.	0000319	Imdadul Islam Khan	75 (Pg-03)	70	Deducted 5 marks in General Bearing.
09.	0000080	Anirban Das	70 (Pg-11)	69	Deducted 1 mark in General Bearing.
10.	0000581	Nazia Hassan	74 (Pg-06)	70	Deducted 4 marks General Bearing.
11.	0000396	Kokila Patowary	75 (Pg-26)	70	Deducted 5 marks in General

					<i>Bearing.</i>
12.	0000220	Dhrubajyoti Choudhury	75 (Pg-02)	70	Deducted 5 marks in General Bearing.
13.	0000324	Jyoti Prashad Lahan	76 (Pg-24)	70	Deducted 6 marks in General Bearing.
14.	0000909	Tridip Kr. Taw	73 (Pg-10)	70	Deducted 3 marks in General Bearing.
15.	0000270	Gitartha Kumar	71 (Pg-13)	70	Deducted 1 mark in General Bearing.
16.	0000888	Sadananda Saikia	73 (Pg-09)	70	Deducted 3 marks in General Bearing.
17.	0000718	Sayed Rizaul Karim Ahmed	71 (Pg-07)	70	Deducted 1 mark in General Bearing.
18.	0000321	Indubhushan Dutta	75 (Pg-04)	70	Deducted 5 marks in General Bearing.
21.	0000745	Richa Napen	72 (Pg-29)	70	Deducted 2 marks in General Bearing.
23.	0000814	Shehnaz Begum	73 (Pg-09)	69	Deducted 4 marks in General Bearing.
28.	0000797	Sangita Rani Sinha	72 (Pg-08)	69	Corrected 1 mark in HSLC and deducted 3 marks in General Bearing.
30.	0000150	Bhenila Bailung	71 (Pg-22)	69	Deducted 2 marks in General Bearing.
31.	0000690	Pankaj Kr. Mili	71 (Pg-28)	69	Deducted 2 marks in General Bearing.

32.	0000707	Ranju Chetri	76 (Pg-29)	69	Deducted 7 marks in General Bearing.
37.	0000415	Kishor Haloi	70 (Pg-16)	68	Deducted 2 marks in General Bearing.
40.	0000650	Papu Saikia	69 (Pg-18)	67	Deducted 2 marks in General Bearing.
52.	0000356	Jirsong Terang	68 (Pg-15)	62	Deducted 6 marks in General Bearing.
55.	0000696	Ranjan Kakati	67 (Pg-18)	60	Deducted 7 marks in General Bearing.
56.	0000571	Nabanita Bhuyan	64 (Pg-17)	60	Deducted 4 marks in General Bearing.

(*) Most of the corrections were made in **General Bearing** marks of the candidates.

8. On 18.06.2024, Mr. Mazumder, learned Additional Advocate General, Assam made a candid submission before this Court that the irregularities committed in the selection process to the posts of District Malaria Officer are of substantial in nature.

9. Taking note of the above submission, this Court granted time to the learned Additional Advocate General, Assam to complete his instructions as to whether the State Government is still interested in protecting the said selection process or not.

10. Pursuant to that, Mr. Mazumder, learned Additional Advocate General, Assam has produced a

communication dated 17.07.2024, sent by the Joint Secretary to the Government of Assam, Health & Family Welfare Department, to the Standing Counsel of the said Department, wherein the Government has taken a clear stand that the Government is not interested in protecting the selection process in question.

The relevant portion of the said communication dated 17.07.2024 is reproduced hereunder:

“With reference to the subject cited above, I am directed to inform you that the Department of Health & Family Welfare on receipt of the Hon’ble High Court order dated 18.06.2024 to provide necessary instructions as regards the stand of the Govt. of Assam with regards to Writ Appeal that has been filed vide W.A. No.27/2019 (Shehnaz Begum Vs. The State of Assam & 17) challenging the recruitment process conducted by the APSC for the post of District Malaria Officer pursuant to the advertisement dated 15.12.2012, it may be clearly stated that ‘Govt’ is not interested in protecting the selection process without any prejudice to the final outcome of the criminal case’.

This has the approval of competent authority.”

11. Mr. B.D. Das, learned Senior Counsel appearing for the appellant, assailing the impugned judgment and order dated 25.09.2018, has argued that the learned Single Judge has erred in holding that there was no illegality in selecting the candidates only based on the marks obtained by them in the *viva-voce*/Interview, as relevant Rules permitted to do so. Mr. Das, learned Senior Counsel has submitted that the selections made solely on the basis of *viva-voce*/Interview are always treated to be arbitrary and amount to mockery of the selection process. It is

contended by Mr. Das that the APSC was required to take into consideration the marks obtained by the candidates in the written examination along with the marks obtained in the *viva-voce*/Interview and after determining the average marks from the written examination as well as the *viva-voce*/Interview, the eligible candidates should have been selected.

Mr. Das has further contended that otherwise also, the record shows over-writing in the marks allotted in the *viva-voce*/Interview and the summary, as submitted by the learned Additional Advocate General, clearly demonstrates that the *viva-voce*/Interview held on 18.09.2015 was not fair and transparent. It is contended that in the above fact situation, the entire process of selection, pursuant to the advertisement dated 15.12.2012 is liable to be set aside.

12. Mr. D. Mazumder, learned Additional Advocate General, Assam appearing for the State has submitted that the State Government has already clarified the stand that the Government is not in favour of protecting the selection process in question and has left the matter to this Court to take appropriate decision.

13. Mr. P.P. Dutta, learned Standing Counsel, APSC has also adopted the same approach as has been taken by the State.

14. However, Mr. K.N. Choudhury, learned Senior Counsel appearing for the private respondent Nos.5, 8, 10, 12, 14, 15, 17 & 18 has submitted that the learned Single

Judge has not committed any illegality in holding that the APSC has not committed any illegality in selecting the candidates for the posts of District Malaria Officer only on the basis of the marks obtained by the candidates in the *viva-voce*/Interview as the same is permissible under the applicable Rules. Mr. Choudhury has contended that it is settled that if the Rules permit to do so, the selection for a post can be conducted only on the basis of marks obtained by the candidates in the *viva-voce*/Interview.

However, Mr. Choudhury has fairly conceded that though it is more than clear that irregularities have been committed in the *viva-voce*/Interview process, however, the candidates who have not been benefited by the said irregularities or who have not been found involved in any malpractice, their selections should be protected.

15. In support of his above contention, Mr. Choudhury has placed reliance upon the decision of the Hon'ble Supreme Court rendered in the case of ***Union of India & Ors. Vs. Rajesh PU, Puthuvalnikathu & Anr.***, reported in **(2003) 7 SCC 285**.

16. In the alternative, Mr. Choudhury, has suggested that as it is evident from the record that the original marks awarded to the candidates in the *viva-voce*/Interview were changed and the result was declared on the basis of the said changed marks, the respondent APSC can be directed to re-visit the result of the selection process by taking into consideration the original marks awarded to the candidates in the *viva-voce*/Interview.

It is also suggested by Mr. Choudhury that the candidates who stand in merit as per the original marks awarded to them in the *viva-voce*/Interview and remained in the merit list despite change of marks, their selection can also be protected. Ultimately, Mr. Choudhury has also left the matter to this Court to take an appropriate decision in the facts and circumstances of the case.

17. Heard the learned counsel appearing for the parties and also perused the record.

18. So far as the finding of the learned Single Judge to the effect that the selection for a post can be conducted only on the basis of marks obtained in the *viva-voce*/Interview, if the Rules permit to do so, is concerned, we are of the view that the said finding of the learned Single Judge cannot be said to be illegal because it is settled that where the Rules permit, the selection for a post can be based on the marks obtained in the *viva-voce*/Interview. The provisions of Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010, which has been extensively dealt with by the learned Single Judge, permit selection based only on the marks obtained by the candidates in the *viva-voce*/Interview and therefore, the said finding of the learned Single Judge is not liable to be interfered with.

19. Now the question remains as to what course should be adopted in view of the illegalities and irregularities committed by the Selection Board of the APSC while finalizing the select list for recruitment to the posts of

District Malaria Officer pursuant to the Advertisement dated 15.12.2012.

20. The Hon'ble Supreme Court in ***Sachin Kumar & Ors. Vs. Delhi Subordinate Service Selection Board (DSSSB) & Ors.***, reported in ***(2021) 4 SCC 631***, while emphasizing on the fairness and transparency of the selection process conducted by the public authorities, has observed as under:

“2. The constitutional values which undergird Articles 14 and 16 mandate that selection processes conducted by public authorities to make recruitments have to be fair, transparent and accountable. All too often, human fallibility and foibles intrude into the selection processes. Selection involves intense competition and there is no dearth of individuals who try and bend the rules to gain an unfair leap in the race. Irregularities in the process give rise to misgivings over whether the process has denied equal access to all persons. The sanctity of the selection process comes under a cloud. The detection of individual wrongdoing by candidates may result in action being taken to exclude those whose credentials or performance is tainted. But when the entire process is tainted, the authority in charge of conducting it may decide to cancel the selection as a whole. Judicial review is then invoked to challenge the decision to cancel the entire process.....”

In the very same judgment, the Hon'ble Supreme Court has held that while reviewing a process of selection by the public authorities in exercise of judicial powers, it is to be taken into consideration whether it is possible to segregate the persons who are guilty of wrongdoing from others who have adhered to the rules. Those who are innocent of wrongdoing should not pay a price for those who are actually found to be involved in irregularities.

The relevant portion of the aforesaid judgment rendered by the Hon'ble Supreme Court to this effect is reproduced hereunder :

“35. Over the last five decades, several decisions of this Court have dealt with the fundamental issue of when the process of an examination can stand vitiated. Essentially, the answer to the issue turns upon whether the irregularities in the process have taken place at a systemic level so as to vitiate the sanctity of the process. There are cases which border upon or cross over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examination or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of mal-practices or unfair means. Where a recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrongdoing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrong-doing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrong-doers, the selection of the untainted candidates can be allowed to pass muster by taking the selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in the constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to the norm of equality of

opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who have indulged in mal-practices and to penalise them for their wrong-doing, it would be unfair to impose the burden of their wrong-doing on those who are free from taint. To treat the innocent and the wrong-doers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles, that it becomes appropriate to advert to the precedents of this Court which hold the field.”

However, in the later part of the said judgment, it is held by the Hon'ble Supreme Court that recruitment to the public services must command public confidence and even if cancellation of the selection process on the basis of irregularities may cause hardship to a few, but on that count only such a selection process cannot be protected.

The relevant portion of the said Judgment to this effect is reproduced hereunder:

“66. Recruitment to public services must command public confidence. Persons who are recruited are intended to fulfil public functions associated with the functioning of the Government. Where the entire process is found to be flawed, its cancellation may undoubtedly cause hardship to a few who may not specifically be

found to be involved in wrong-doing. But that is not sufficient to nullify the ultimate decision to cancel an examination where the nature of the wrong-doing cuts through the entire process so as to seriously impinge upon the legitimacy of the examinations which have been held for recruitment.”.

21. While examining the present case in view of above pronouncements by the Hon’ble Supreme Court, we are of the opinion that the selection process conducted by the APSC for recruitment to the posts of District Malaria Officer cannot be said to be transparent and fair. As observed earlier, out of the 56 candidates, who have appeared in the *viva-voce*/Interview, marks of 28 candidates have been altered. The original marks awarded to those 28 candidates were changed and no justification is supplied for the same.

22. For our satisfaction, we have also carefully scrutinized the photocopies of the evaluation sheets pertaining to 56 candidates who had appeared in the *viva-voce*/Interview and found that apart from altering the marks of those 28 candidates under the Head of “General Bearing”, cuttings have also been made in “Sub Total” and other Heads by rounding of the original marks, other cuttings under several Heads have also been made to alter the original marks awarded to some of the candidates under the Head of “Educational Qualification”.

After taking into consideration the above irregularities, which are of serious nature, it is again reiterated that the selection process in question cannot be termed as fair and transparent.

23. In the aforesaid fact situation, it is also not advisable to allow the APSC to conduct fresh exercise of selection by taking into consideration the original marks obtained by the candidates in the *viva-voce*/Interview. Looking to the nature of the irregularities committed, it cannot be said that the candidates who had appeared in the *viva-voce*/Interview were awarded the original marks as per their performance in the *viva-voce*/Interview and it is always doubtful that the Interview Board, which had altered the original marks of the candidates later on, had awarded the original marks to the candidates as per their actual performances in the *viva-voce*/Interview, or as per their merits, without being influenced by any other considerations for which the original marks had been altered.

24. It is informed that though the selection, pursuant to the advertisement dated 15.12.2012 for the posts of District Malaria Officer was concluded on 17.08.2016, but till date, no appointment has been provided to the selected candidates on account of pendency of the writ petition as well as this writ appeal.

25. Otherwise also, it is settled that a person whose name figured in the select list has no indefeasible right of claiming appointment on the post for which he has applied.

26. At this stage, we do not find it appropriate to direct the APSC to re-visit the result of the candidates who appeared for the *viva-voce*/Interview while taking into consideration the original marks awarded to those

candidates in the *viva-voce*/Interview. The other suggestions given by Mr. Choudhury, learned Senior Counsel also cannot be accepted in the facts and circumstances of the case.

27. The selection held pursuant to the selection process also cannot be saved by taking aid of the decision of the Hon'ble Supreme Court rendered in ***Rajesh P.U., Puthuvalnikathu*** (supra) because the facts of the said case are quite distinguishable because in that case the Court has come to the conclusion that out of the 134 successful as well as 184 unsuccessful candidates, the result in respect of only 31 candidate was wrong, however, in the present case, as noted above, the marks of half of the candidates i.e. 28 out of 56 have been altered.

28. Since almost 8(eight) years have passed after issuance of the select list by the APSC and no appointment has been provided to any of the selected candidates, we deem it appropriate to set aside the selection process for the posts of District Malaria Officer and, resultantly, the select list dated 17.08.2016 and the entire selection process for the posts of District Malaria Officer pursuant to the advertisement dated 15.12.2012, is set aside. Order dated 25.09.2018 passed by the learned Single Judge in WP(C) No.853/2017 is modified accordingly.

The respondent APSC is further directed to conduct fresh selection process for the posts of District Malaria Officer on the available vacancies in accordance with law as expeditiously as possible.

29. This writ appeal is disposed of accordingly with the aforesaid observations.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant