

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.224 OF 2014

Dr. Md. Mijan Hossain,
son of Md. Mamtaj Uddin Ahamed,
resident of West Bank of Jagannath Dighi,
P.O. Radhakishorepur, Udaipur, Gomati District.

..... Petitioner

– Vs –

1. The State of Tripura,
represented by the Principal Secretary to the Govt. of Tripura,
Department of Agriculture,
New Civil Secretariat Complex, P.O. Kunjaban,
P.S. East Agartala, District West Tripura.
2. The Director of Agriculture,
Govt. of Tripura, Krishi Bhawan,
P.O. Agartala, P.S. West Agartala, District West Tripura.
3. Dr. V.K. Bahuguna,
Principal Secretary to the Govt. of Tripura,
Department of Agriculture,
New Civil Secretariat Complex, P.O. Kunjaban,
P.S. East Agartala, District West Tripura
(as Chairman of the Selection Committee)
4. Professor Rabindra Kumar Sinha,
representative of the Vice Chancellor,
Tripura University, P.O. Surjyamoninagar,
P.S. Amtali, District West Tripura
(as Member of the Selection Committee)
5. Dr. Abdul Haque,
Director of Agriculture, Govt. of Tripura,
Krishi Bhawan, P.O. Agartala, P.S. West Agartala,
District West Tripura
(as Member of the Selection Committee)
6. Dr. D. Alice,
Professor & Head, Department of Plant Pathology,
Tamil Nadu Agriculture Universities Coimbatore,
P.O. Coimbatore, Tamil Nadu.
(as Expert Member of the Selection Committee)

7. Dr. R.K. Samanta,
Ex. Vice Chancellor, Bidhan Chandra Krishi Viswa Vidyalaya,
P.O. Mohanpur, Nadia, West Bengal.
(as Expert Member of the Selection Committee)
8. Dr. Jammejey Parni,
Assistant Professor, College of Fisheries,
Central Agricultural University,
P.O. Lembucherra, P.S. Sidhai, District West Tripura
(as Expert Member of the Scrutiny Committee)
9. Dr. R.K. Saha,
In-charge Dean, College of Fisheries,
Central Agricultural University,
P.O. Lembucherra, P.S. Sidhai, District West Tripura
(as Expert Member of the Scrutiny Committee)
10. Dr. Durga Prasad Awasthi,
son of late Shiv Kumar Awasthi,
c/o Sri Sankar Narayan Awasthi,
resident of 79, Hariganga Basak Road, Melarmath,
P.O. Agartala, P.S. West Agartala, District West Tripura
11. Sri Niren Majumder,
son of Sri Rati Ranjan Majumder,
resident of Udaipur, Madhyapara,
P.O. & P.S. R.K. Pur, District Gomati

.....Respondents

B E F O R E
THE HON’BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Datta, Advocate

For the respondents : Mr. T.D. Majumder, G.A.
Mr. D.R. Choudhury, Advocate
Mr. D.C. Nath, Advocate

Date of hearing : 25.11.2014

Date of judgment & order: 27.02.2015

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

Heard Mr. A.K. Bhowmik, learned senior counsel, assisted by Mr. R. Datta, learned counsel appearing for the petitioner. Also heard Mr. T.D. Majumder, learned Govt. Advocate appearing for the respondent Nos. 1 & 2, Mr. D.C. Nath, learned counsel appearing for the respondent Nos. 3 to 9 as well as Mr. D.R. Choudhury, learned counsel appearing for the respondent No.10. None appears for the respondent No.11 despite due notice from this court.

2. On considering that this petition relates to appointment to the post of Assistant Professor, Plant Pathology in the College of Agriculture, Tripura, this petition has been taken up for final hearing.

3. By means of this petition the selection of the Assistant Professor, Plant Pathology, made in pursuance to the employment notification under No.F.19(18)Agri/SARS/CAT/2011-12/255, dated 29.04.2013 (Annexure-3 to the writ petition), has been challenged by the petitioner.

4. There is no dispute that by virtue of the notification dated 29.04.2013, the Govt. of Tripura invited application from the eligible candidate for filling up of the various posts including the post of Assistant Professor, Plant Pathology (2 posts) on

regular basis in the UGC scale (revised). In the said employment notice, it has been categorically provided that, the reservation would be made as per the rules applicable in the State. For the post of Assistant Professor in various disciplines, a candidate must have the following essential qualifications :

"A. Essential Qualification.

- (i) Bachelor's Degree in Agriculture/Aggt. Engineering/Horticulture/Veterinary Science followed by a Master's Degree in the concerned discipline.**
- (ii) Master's Degree in the relevant subject including relevant basic sciences having at least 55% marks in traditional system or DGPA to 2.75 in 4 point scale or 7.0 in 10 point scale in the concerned subject with consistent good academic record.**
- (iii) National Eligibility Test (NET) conducted by ICAR/ASRB/UGC/CSIR. For the post of Mechanical Engg., Electronic Engg. & instrumentation & Computer Engg. NET qualification is exempted.**
- (iv) For veterinary disciplines, candidates must possess recognized veterinary qualification including in the first or second schedule of the Indian Veterinary Council Act, 1984 and registered with the State Veterinary Council/Veterinary Council of India (Relaxable in Biochemistry, Animal Breeding and Geoeties, Livestock Production and Management and Vety. & A.H. Extension)**

Desirable :

Experience of teaching U.G./P.G. students."

5. As the petitioner found himself qualified for appointment to the said post of Assistant Professor, Plant Pathology, he applied in the prescribed form in response to the

said employment notification. For the said post, seven persons have applied and subsequently appeared for the interview. The petitioner has received the score card (Annexure-7 to the writ petition), showing the marks on different heads scored by the individual candidates, which is extracted hereunder :

Score Card for the Post of Assistant Professor, Deptt. Of Plant Pathology, College of Agriculture, Govt. of Tripura, Agartala, Tripura.

Sl. No	Name of the candidate & address	Aca- de- mic Qua- lifi- cat- ion (35)	Exp- eri- ence (4)	Fello- wsh- ip/ Aw- ard/ rec- og- ni- tion (4)	Spe- cial Atta- Inm- ents (1)	Sem- inar/ Symp- osium/ Confer- ence/ Cong- ress (2)	Inter- Natio- nal Expo- sure (1)	Sports/ Games/ Arts/ Extra- curri- cular acti- vities (5)	Radio/ TV progra- mmes (2)	Pub- lica- cati- ons (6)	Total (60)	Remark
1.	Dr. Manjul Pandey S/o Dr. U.N. Pandey	26.5	--	3.0	1.0	2.0	--	--	0.5	6.0	39.0	
2.	Dr. Md. Mijan Hossain S/o Mamtaj Uddi Ahamed	22.5	4.0	4.0	1.0	1.5	1.0	--	--	6.0	40.0	
3.	Dr. Durga Prasad Awasthi, S/o Lt. Shiv Kumar Awasthi	23.0	4.0	2.0	--	2.0	--	--	1.5	6.0	38.5	
4.	Anirudha Chattopadhyay, S/o Gopal Ch. Chattopadhyay	20.5	--	1.0	--	2.0	--	--	--	2.1	25.6	PhD pursuing
5.	Nishant Prakash, S/o Sushil Mohan Kanth	17.0	--	1.0	--	1.0	--	--	--	2.0	21.0	PhD pursuing
6.	Erayya, S/o Siddayya Ladi	19.0	--	1.0	--	2.0	--	--	--	5.25	27.25	PhD pursuing
7.	Dr. Mohd Rajik, S/o Lt. Ayab Hosan	21.5	--	1.5	--	0.5	--	--	--	6.0	29.5	--

6. The said score card, however, does not include the marks secured in the individual performance when the individual candidates were assessed for 40 marks. The score card carries marks for the academic records, research and other skills. From the final assessment sheet (Annexure-9 to the writ petition), it

appears that the respondent No.10 secured the top position followed by the petitioner. For purpose of reference, the said assessment sheet is reproduced hereunder :

ASSESSMENT SHEET – ASSISTANT PROFESSOR (PLANT PATHOLOGY), COLLEGE OF AGRICULTURE, TRIPURA, HELD ON 14.01.2014 AT AGARTALA.

Sl. No.	Name & Present Address	State	Sex	UR/ OBC SC/ ST	Assess-ment of acade-mic perfor-mance (60)	Viva Voce (40)	Total (60+ 40) =100	Remarks
1	2	3	4	5	6	7	8	9
1.	Dr. Md. Mijan Hussain, S/o Mamtaj Uddin Ahamed, West Bank of Jaganath Dighi, P.O. R.K. Pur, Udaipur, Udaipur, Gomati-799120	Tripura	M	UR	40.00	26.00	66.00	2nd
1.	Dr. Durga Prasad Awasthi, S/o Lt. Shiv Kumar Awasthi, C/o S.N. Awasthi, 79, HGB Road, Agartala-799001	Tripura	M	UR	38.50	30.00	68.50	1st
3.	Sri Om Prakash Yadav, S/o Vishwa Nath Yadav, Deptt. Of Microbiology & Plant Pathology, IAS, BHU, Varanasi-221005	UP	M	UR	26.50	27.50	54.00	
4.	Sri Niren Majumder, S/o Ratiranjan Majumder, R.K. Pur, Udaipur, Gomati Dist.	Tripura	M	SC	20.90	36.00	56.90	SC

7. It appears that the petitioner secured 66.00 out of 100 marks, whereas respondent No.10, Dr. Durga Prasad Awasthi secured 68.50 and respondent No.11, Niren Majumder, a Scheduled Caste candidate, secured 56.90 out of 100 marks. Another candidate, whose name appears in the said assessment

sheet, namely Om Prakash Yadav, secured 54.00 out of 100 marks.

8. The writ petitioner has challenged the said decision-making process on various counts, such as :

- (i) Whether in the selection, the rules of Central Agricultural University can be made applicable without following the University Grants Commission guidelines?
- (ii) Whether there is any order of adoption of the procedure of the Central Agricultural University?
- (iii) Whether the candidates were informed of the said selection procedure prior to the selection process including the viva voce?
- (iv) Whether the reserved posts can be identified after the advertisement was issued?
- (v) Whether 40% marks in viva voce has been fixed in breach of the fair play principles? and
- (vi) Whether the evaluation by the selection committee was done fairly?

9. Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioner, has emphatically submitted that since the

College of Agriculture, Tripura, is affiliated to the Tripura Central University, it is under obligation to follow the regulation for appointment to the post of Assistant Professor. In this regard, Mr. Bhowmik, learned senior counsel has referred to the UGC regulation for appointment to the post of Asstt. Professor, but he has submitted that in the affidavit-in-reply filed by the petitioner on 08.11.2014 in response to the affidavit-in-opposition filed by the respondent Nos. 3 to 9, clause '6.0.1' of the UGC regulation has been reproduced :

"6.0.1. The overall selection procedure shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on weightages given to the performance of the candidate and different relevant dimensions and his/her performance on a scoring system proforma, based on the Academic Performance Indicators (API) as provided in this Regulations in Tables I to IX of Appendix-III.

In order to make the system more credible, universities may assess the ability for teaching and/or research aptitude through a seminar or lecture in class room situation or discussion on the capacity to use latest technology in teaching and research at the interview stage. These procedure can be followed for wherever selection committees are prescribed in these Regulations."

10. From a bare reading of the above clause, it appears that comparative merit and the ability for teaching are to be determined by a transparent, objective and credible method of analysis. Academic Performance Indicator (API) for direct recruitment is provided in Appendix-III, Table-II(c), Annexure-8

to the writ petition. It has been further provided that the ability for teaching and/or research aptitude may be ascertained through a seminar or lecture in class room situation or discussion on the capacity to use latest technology in teaching and research at the interview stage.

11. Mr. Bhowmik, learned senior counsel has further submitted on supplementing his argument that, the process that has been followed is incongruity to what has been provided in the UGC regulation No.6.0.1. Even, according to Mr. Bhowmik, learned senior counsel, the State respondents did not follow the procedure in accordance with the Central Agricultural University guidelines. To support his submission, he has referred to a communication under No.CAU/Reg/178/Hort-AP/2000(PT)/1910, dated 26.12.2009, issued by the Dy. Registrar (Estt.) of the Central Agricultural University, Imphal, Manipur, to the petitioner for interview for the post of Assistant Professor (Plant Pathology & Microbiology), where it has been provided that :

“The interview will consist of two parts.

Part-I : You will have to make a Power Point presentation on any topic of your choice in the area of your subject/discipline for a period of 10 minutes. The presentation will be open to the Faculty and Students. The audio visual aids required for the purpose will be made available.

Part-II will consist of personal interview.”

Mr. Bhowmik, learned senior counsel has submitted that no such procedure has been followed in the interview. As such, even the procedure followed by the Central Agricultural University has not been followed in the selection process.

12. After referring to the selection process for recruitment to Assistant Professor level, Mr. Bhowmik, learned senior counsel has referred a guideline of the Punjab Agricultural University, Ludhiana, to show that the mark for interview is '50', whereas in the impugned selection procedure, the mark earmarked for viva-voce is '40'. Mr. Bhowmik, learned senior counsel has also referred to the procedure followed in some other Universities as regards the distribution of the marks. For example, in Kerala Agricultural University, the mark for interview is '20', in DAV University, Jalandhar, the marks for interview is '20', in Mangalore University, the marks for Interview Performance is '12.5', in Bangalore University, the marks for Interview Performance is '10', in Dr. Y.S. Parmar University of Horticulture and Forestry, Solan, the marks for interview is '15', in Vidyasagar University, the marks for interview is '20' and in Ch. Charan Singh Haryana Agricultural University, the marks for performance and expression in the interview is '15' marks. Mr. Bhowmik, learned senior counsel has further submitted that even the marks for interview of the Central Agricultural University is '30'. In support of that contention, he has referred to the score card

guidelines of the Central Agricultural University, Imphal, Manipur. He has also referred to the academic qualification prescribed by the Central Agricultural University, Imphal, Manipur.

The said score card guidelines, however, appears to be score card guidelines for the Dean/Professor/Director, not for the recruitment to the post of Assistant Professor and, as such, may not have any application at all in the present context.

13. Thereafter, Mr. Bhowmik, learned senior counsel has raised a very important question as to the distribution of posts for the reserved category candidates (ST & SC). He has also referred to the Memorandum for the Council of Ministers in connection with the meeting of the Council of Ministers held on 27.02.2014, where the appointment of Faculty Members in the College of Agriculture, Tripura, under the Department of Agriculture has been approved except for one selected candidate, namely Dr. Debashis Bhowmik, as he is not having NET (National Efficiency Test) qualification. But, Mr. Bhowmik, learned senior counsel, has emphatically pointed out that the way the reservation is made, it is wholly unsustainable. Para 8 of the said memorandum dated 15.02.2014 reads as under :

8. Roster position of total post sanctioned as well as advertised posts has been verified and inspected by the Department of Tribal Welfare and SC Welfare is placed in the Annexure-I, II & III.

In accordance with the Roster position during this selection process the computation of SC, ST & UR category in the post of Professor, Associate Professor Assistant Professor is given below. Detail break-up of the man in position and of candidates selected in reference to UR/ST/SC is placed in Annexure-IV.

Name of post	Category			Total	Remarks
	UR (GEN)	SC	ST		
Professor	6	2	3	11	
Associate Professor	11	4	7	22	
Assistant Professor	14	5	12	31	i) Total number sanctioned of Asstt. Professor is 44. Out of total sanctioned post 13 post are already filled up during selection process of 2011 (UR-9, SC-2 & ST-2). ii) At present 31 posts of Asstt. Professor are vacant and Roster has been verified/allotted accordingly. Photocopy of the roster verification report placed at page-7 to page-11.
Total :-	31	11	22	64	

14. Mr. Bhowmik, learned senior counsel, having referred to that computation, has submitted that all the posts of Assistant Professors of various discipline have been clubbed together for purpose of making division in various categories i.e. UR, SC & ST. Thus out of total number of vacant posts for the Assistant

Professor, 14 posts have been earmarked for UR, 5 posts have been earmarked for SC and 12 posts have been earmarked for ST. Mr. Bhowmik, learned senior counsel, has submitted that this clubbing together or basketing formula has been seriously deprecated by the apex court by clearly observing that such computation is entirely illegal and violative of Article 14 of the Constitution of India. The Reservation Rule has to be applied against the post in a particular discipline, but all the posts of various discipline cannot assessed under no circumstances or be clubbed or basketed together. He has further submitted that even in the assessment of the academic record some discrepancies has been committed by the official respondents. He has submitted that the respondent No.10 cannot get more than 5 marks, but he has been illegally awarded 6 marks against publications. For six national publications, as the first author, he could get mark for 5 best research publications (one mark for each publication) and, as such, the respondent No.10 cannot get more than 5 marks. According to the authenticated guidelines as contained in the annexures to the affidavit-in-reply, issued by the Central Agricultural University, Imphal, Manipur, he could get 4.8 marks only on the basis of NAAS Journal ID, inasmuch as, his best five research papers, namely two journals of Micro Pathological Research (Journal ID No.J274), one journal of inter-academical (J-233) and two journals of Environment and Ecology (Journal

ID-E047) could earn 16(8.8 + 3 + 4.2) marks, to be multiplied by 3/10, i.e. 4.8 marks, but he was wrongly awarded 6 marks. For purpose of reference, the relevant part of the said score card guidelines are reproduced hereunder :

L	Publications (Referred Articles) (NAAS)	10 marks	
	Identify 10 best research papers published in referred journals for allocation of score according to NAAS journal ID on a scale of 4 to 10.0. The total score obtained will be multiplied by 3/10 to obtain the actual marks. Maximum of 10 marks.		

15. The National Academy of Agricultural Sciences (NAAS) has published the ratings of Scientific Journals 2012 and, according to such method various points have been given by the NAAS.

16. Mr. Bhowmik, learned senior counsel has submitted that the respondent No.10 has not produced any document regarding his radio programme or best doctoral fellowship. In the course of his very elaborate submission, Mr. Bhowmik, learned senior counsel has also pointed out that the petitioner was not asked to make the Power Point Presentation etc. for verifying his teaching skill. As such, the method as suggested both by the UGC

or the Central Agricultural University, has not been followed and thus it cannot be held that the selection process was fair. He has further submitted that the Selection Board has given the petitioner 3 marks for Ph.D as he completed the Ph.D work without course work, whereas the respondent No.10 has been awarded 5 marks as he completed the Ph.D work with course work. At the relevant point of time, no course work was introduced when the petitioner had completed the Ph.D. As such, he will get two marks more for his Ph.D. He has also pointed out that the respondent No.10 was supposed to get maximum 5 marks for five best research publications, but he was wrongly awarded 6 marks by overlooking the maximum limit. So his mark should be reduced by 1 mark. Similarly, since there is no documentary proof that he had participated the radio programme, the marks he had secured on that count also be deducted from the total score. Mr. Bhowmik, learned senior counsel has further submitted that in B.Sc.(Agri.), the petitioner secured 89.4% marks, whereas the respondent No.10 has secured 75% marks, but both of them have been given the same mark, which is absolutely unacceptable.

17. So far the computation of reservation is concerned, Mr. A.K. Bhowmik, learned senior counsel, has relied on a decision of the apex court in **State of U.P. & Ors. Vs. M.C.**

Chattopadhyaya & Ors., reported in **(2004) 12 SSCC 333**,

where the apex court has enunciated as under :

“While, therefore, we are of the considered opinion that there can be a reservation in respect of post of Professor and the provisions of the Reservation Act would apply, but the same cannot be applied taking all the Professors as a cadre and it has to be made subjectwise, as has been earlier construed and held by this Court. We are also of the opinion that there cannot be a reservation for an isolated post. We further observe that in deciding the question of reservation the appropriate authority must follow the roster as has been published in exercise of power under Section 3(5) of the Reservation Act and then the roster should be duly complied with in accordance with the principles enunciated by this Court in Sabharwal case : (1995) 2 SCC 745.

[Emphasis added]

18. Mr. T.D. Majumder, learned Govt. Advocate appearing for the respondent Nos. 1 and 2, has submitted that the allegations made in the writ petition are wholly superficial without making any study at all. There is no appointment regulation for the Tripura College of Agriculture. The appointments are made in terms of the Recruitment Rules as published under the notification No.F.3(34)-AGRI(TRG)/CAT/2009-2010/170-176, dated 30.06.2010. The State-respondents, to adopt a fair methodology for appointment of the various posts under the College of Agriculture, has been following the procedure as followed in the Central Agricultural University, Imphal (Annexure-R/1 to the counter-affidavit filed by the respondent Nos. 1 and

2). At this point, Mr. Majumder, learned Govt. Advocate, has categorically stated that the copy of the guidelines for recruitment by the Central Agricultural University, Imphal, as filed by the petitioner does not exist in the record, but Annexure-R/1 is an authenticated copy supplied by the Central Agricultural University, Imphal. The variations of the provisions in the two copies of the guidelines are so apparent that this court may only consider the procedure that has been followed for selection of the Assistant Professor in the Plant Pathology depending on the copy filed by the respondents, inasmuch as the procedure as followed, has been followed in terms of the guidelines of the Central Agricultural University (Annexure-R/1 to the counter-affidavit filed by the respondent Nos.1 and 2). According to Mr. Datta Majumder, learned Govt. Advocate, the score card guidelines for the Assistant Professor are as follows :

	Details	Score
Graduation	Two marks for Medal at degree level Four marks for second class at degree level Six marks for first class at degree level Maximum 8 marks.	8
xxx	xxx	xxx
Ph.D	One mark for medal/rank at university level and one mark for Jawaharlal Nehru Award Five marks for Ph.D with course work and three marks for Ph.D without course work	7

	One mark for M.Phil			
	Maximum 7 marks			
xxx	xxx			xxx
xxx	xxx			xxx
I.	Publications			6
	Details of Publication	First Auth or	Co aut hors	
	Full length article in referred journal (For each paper published in the Indian Journals one mark, International Journals 2 marks). The best 5 research publications will be allocated score	Full mar ks	Half of the PI	
	Research Note/Short communication	0.50	0.25	
	Popular articles in Vernacular or in English	0.25	0.15	
	Book chapter	0.20	0.20	
	Grand Total			60

19. Mr. Datta Majumder, learned Govt. Advocate has further submitted that had this court scrutinised the records of the proceedings, it would be apparent that the score card guidelines for recruitment to the post of Assistant Professor have been meticulously observed by the Selection Committee. So far the objection as raised for evaluation of the publication, Mr. Datta Majumder, learned Govt. Advocate has pointed out that the petitioner have not done any work in some areas. As such, the

respondent No.10 has got 0.95 marks above the petitioner. Mr. Datta Majumder, learned Govt. Advocate, having referred to the 'Proforma for Inspection of 100 Point Roster' (Annexure-R/2 to the counter-affidavit filed by the respondent Nos. 1 and 2), has shown that in the class of Assistant Professor, out of 44 posts, 23 posts are marked for UR category, 14 posts are marked for ST category and 7 posts are marked for SC category. Men in possession are as follows :

UR	09
ST	02
SC	02

The posts vacant in terms of reservation are as follows :

UR	14
ST	12
SC	05

Mr. Datta Majumder, learned Govt. Advocate has also shown the respective roster point by virtue of the said Inspection Roster.

20. Mr. Datta Majumder, learned Govt. Advocate has seriously expressed his annoyance as the writ petitioner has filed incomplete documents to take undue advantage from this court, even if not to mislead the court. He has submitted that the recruitment process is quite transparent and there is no allegation against any member of the Selection Committee, even

though they have been impleaded as the respondents. He has submitted that from the minutes of the meetings of the Selection Committee for the post of Assistant Professor, Plant Pathology, College of Agriculture, Tripura, it will be apparent that on due consideration of the academic records, research achievement experience, publications etc. and performance in the interview, the committee recommends that minimum 60% average of Academic Performance and interview should be the bench mark for General Category candidates and 55% for ST & SC candidates to qualify for the post. It would further reveal that out of 11 candidates who were otherwise found eligible for appearing in the interview, only 4 candidates had attended the interview and there was only 1 SC candidate and no ST candidate. No ST candidate even applied for the post of Assistant Professor, Plant Pathology. On such meticulous scrutiny and assessment, respondent No.10 was recommended against the UR category whereas Sri Niren Majumder was recommended against the SC category. However, the name of the petitioner has been put in the panel by the Selection Committee. Mr. Datta Majumder, thereafter, has contended that merely because the College of Agriculture is affiliated to the Tripura University, it is under no obligation to follow only the University Grants Commission's regulation for recruitment to the post of Assistant Professor. To illustrate his submission, Mr. Datta Majumder, learned Govt. Advocate has

given an example of the Tripura Institute of Technology, which is affiliated to the Tripura Central University. He has submitted that for purpose of recruitment to the teaching posts, Tripura Institute of Technology follows the regulation of All India Council of Technical Education (AICTE). There is no prohibition that the College of Agriculture cannot follow the recruitment guidelines of the Central Agricultural University, Imphal, which is definitely more specific to such appointment. He has squarely denied that there have been any unfair means crept into the process, which would warrant intervention of this court. While making his submission on the distribution of marks between the academic qualification and the viva voce etc., Mr. Datta Majumder, learned Govt. Advocate has submitted that such distribution is in conformity to the guidelines of the Central Agricultural University, Imphal, which provides as under :

Score-card guidelines for Scientist/Assistant Professor

	Details		Score
A.	Academic Qualifications		35
10th	One mark for rank at state board/central board (upto 10th rank) at 10th class Half mark for every 5% increase in marks from 45% marks (for example a person with less than 45% at 10 level will get no marks, 45% marks will get half mark, 50% marks will get 1.00 mark, 80% and above will get a maximum of 4 marks. Maximum 5 marks.		5

12th	One mark for rank at state board/central board (upto 10th rank) at 10+2 level Half mark for every 5% increase in marks from 45% marks (for example a person with less than 45% at 10+2 level will get no marks, 45% marks will get half mark, 50% marks will get 1.00 mark, 80% and above will get a maximum of 4 marks. Maximum 5 marks.	5
Graduation	Two marks for Medal at degree level Four marks for second class at degree level Six marks for first class at degree level Maximum 8 marks	8
P.G.	One mark for medal/rank at University level and one mark for Jawaharlal Nehru Award at M.Sc. level. Five mark for second class at M.Sc. level Maximum 10 marks	10
Ph.D.	One mark for medal/rank at University level and one mark for Jawaharlal Nehru Award. Five marks for Ph.D with course work and three marks for Ph.D without course work. One mark for M.Phil Maximum 7 marks	7
B.	Experience	4
	Experience shall get marks only when the candidate has put in more than six months service in a recognized Govt. Institution/ICAR/University either in Teaching/Research/Extension. -Half mark for every six months service in the relevant field for the post applied for. Maximum 4 marks	
C.	Fellowship/Award/Recognition	4
	One marks each for fellowship Viz. JRF/SRF/Merit Fellowship at Degree/M.Sc/Ph.D.	

	One mark for each Best papers and half mark for/Best poster presentation.	
D.	Special Attainments	1
	One mark for each novel technology development, patent, prototype, genetic stock, variety, process, concept, methodology etc. -Half mark for any specific attainments of merit or special attainments.	
E.	Seminar/Symposia/ Workshop/Conference/Congress	2
	- Half mark for participation and presentation of a poster/paper (no marks for simple participation)	
F.	International Exposure	1
	Research work or part of the research work at M.Sc/Ph.D level done in the international institute either in India or abroad. - One mark each at M.Sc./Ph.D level. Maximum of 1 marks	
G.	Sports/Games/Arts/Extra curricular activities	5
	-One mark for first position in any event at Inter-University level and half mark for inter-college level. -1/2 mark for second and third position in each event at Inter-University level and 1/4 mark for inter-college level.	
H.	Radio/T.V. Programmes	2
	Radio/T.V. programmes in the relevant field -Half mark for each programme. Maximum 2 marks	
I.	Publications	6

	Details of Publication	First Author	Co Authors	
	Full length article in referred journal (For each paper published in the Indian Journals one mark, International Journals 1 marks). The best 5 research publications will be allocated score	Full marks	Half of the P1	
	Research Note/Short communication	0.50	0.25	
	Popular articles in Vernacular or in English	0.25	0.15	
	Book chapter	0.20	0.20	
	Grand Total			60

Apart that, Mr. Majumder, learned Govt. Advocate, has submitted that there is no provision which prohibits any technical institution to devise its own regulation for recruitment, if that confirms to the principles of fair play of selecting the suitable candidate.

21. Mr. Datta Majumder, learned Govt. Advocate, has referred to a decision of the apex court in **Jasvinder Singh & Ors. Vs. State of J & K and Ors.**, reported in **(2003) 2 SCC 132**, where the apex court has held as under :

8. The learned Single Judge also seem to have been very much carried away by few instances noticed by him as to the award of higher

percentage of marks in viva voce to those who got lower marks in written test as compared to some who scored higher marks in written examination but could not get as much higher marks in viva voce. Picking up a negligible few instances cannot provide the basis for either striking down the method of selection or the selections ultimately made. There is no guarantee that a person who fared well in written test will or should be presumed to have fared well in viva voce test also and the Expert opinion as well as experience in viva voce does not lend credence to any such general assumptions, in all circumstances and for all eventualities. That apart the variation of written test marks of those who were found to have been awarded higher marks in viva voce viz-a-viz those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case. There was no specific allegation of any mala fides or bias against the Board constituted for selection or any one in the Board nor any such plea could be said to have been substantiated in this case. The observation by the learned Single Judge that there was a conscious effort made for bringing some candidates within the selection zone cannot be said to be justified from the mere fact of certain instances noticed by him on any general principle or even on the merits of those factual instances alone. Further, the course adopted by the learned Single Judge in directing selection from general candidates all those who have obtained 56 marks in written examination cannot be justified at all and it is not given to the Court to alter the very method of selection and totally dispense with viva voce in respect of a section alone of the candidates, for purposes of selection. On a careful and overall consideration of the judgments of the learned Single Judge and that of the Division Bench, we are of the view that the decision of the learned Single Judge cannot be sustained for the reasons assigned by him and the decision of the Division Bench cannot be considered to suffer any such (SIC) in law to call for our interference.

[Emphasis added]

In this case also Mr. Datta Majumder, learned Govt. Advocate, has submitted that no mala fide or bias against the Board constituted for selection or anyone in the Board has been pleaded nor any such plea has been substantiated by the writ petitioner.

22. Mr. Datta Majumder, learned Govt. Advocate has finally submitted that it has been clearly mentioned in the employment notification that the reservation rules applicable in the State shall be followed and, accordingly, the same has been applied and there is no infirmity in such application at all. Mr. Datta Majumder, learned Govt. Advocate has justified the action of the selection committee, contending that the petitioner is having Ph.D. degree without course work in traditional system whereas the respondent No.10 is having Ph.D. degree under the upgrade systems (course and credit hour system), which has been duly noted by the scrutiny committee. The scrutiny committee has done their job strictly in accordance with the procedure for awarding marks and there is no infirmity. Moreover, Mr. Datta Majumder has raised the question that after participating in the interview the petitioner cannot be allowed turnaround to challenge the very procedure itself. He is estopped to do so. While concluding his argument, Mr. Datta Majumder, learned Govt. Advocate, has submitted that the College of

Agriculture, Lembucherra has been following the guidelines of the Central Agricultural University since its inception in 2007 on the basis of the decision of the Government. According to Mr. Datta Majumder, learned Govt. Advocate, there are three posts in Plant Pathology, out of which one post is already manned by one UR candidate. In terms of the roster, only one post can be earmarked for UR category. Broadly, even by the standard as prescribed in **State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors.**, there would be no change in the position. Mr. Datta Majumder, learned Govt. Advocate, has categorically submitted that no ST candidate was available.

23. Mr. D.C. Nath, learned counsel appearing for the respondent Nos. 3 to 9, has submitted that the allegations of not following the proper procedure is entirely misplaced and outcome of not viewing the matter from the perspective of the procedure that has been uniformly followed. He has submitted that the selection process has been carried out in strict conformity to the score card guidelines of the Central Agricultural University, Imphal. By virtue of the affidavit filed by the respondent Nos. 3 to 9, Mr. Nath, learned counsel has contended that the teaching aptitude test has been done in front of the selection board on the subject as preferred by the candidate himself. He has further submitted that the ICAR has adopted the UGC guidelines with modification for Agricultural University system. The ICAR

guidelines recommends the course work for Ph.D. study, which exists for long time. As such, the statement made by the petitioner regarding non-existence of the course work prior to 2009 cannot stand the scrutiny of record. In the Agricultural University system, the candidates having Ph.D. with course work would get 5 marks and the candidates having Ph.D. without course work would get 3 marks. He has referred to the score card of the Assistant Professor, Department of Plant Pathology and the assessment sheet of the Assistant Professor (Plant Pathology), Annexure-R/1 and Annexure-R/2 respectively to the counter-affidavit. Mr. Nath, learned counsel appearing for the respondent Nos. 3 to 9 has placed more emphasis on paras 11(iv) to 11(x) of his counter-affidavit filed on 27.10.2011, to contend that the entire process would be transparent and it would appear that there was no infirmity at any stage. For purpose of reference, paras 11(iv) to 11(x) of the counter-affidavit, are extracted hereunder :

“iv. As per the conversion formula given in the transcript, percentage of marks of Dr. Awasthi becomes 75%. The formula for the same is $Y(\text{percentage}) = 50 - 10X + 5X^2$, where X is the OGPA. In this case OGPA is 3.45 which after conversion become 75%. Dr. Awasthi passed from CAU, Imphal. As per CAU Academic Regulation 75% marks is first class which has no conformity with the UAS, Bangalore where 80% is first class. The percentage of marks for awarding 1st class is not uniform in all the Universities in India. So the argument for securing 2nd class by Dr. Awasthi in B.Sc.(Agri) does not stand and award of 6 marks for B.Sc.(Agri) is in the Academic performance is

more than justified. Further it may be clarified that Grade B is not equivalent to 2nd class.

v. As per the guidelines used for scoring, having first class in M.Sc.(Agri.) shall be awarded with 8 marks and it does not change by percentage. So 10% difference in marks of M.Sc.(Agri.) in first class category will not change the score.

vi. Dr. Awasthi has 6 national publications as 1st author and two national publications as 2nd or 3rd author. Based on the guideline he has been awarded 6 marks (max.) for publication. There is a provision to allot maximum 6 marks only to the publication whether it is national or international. In this section the Petitioner also got maximum marks by applying the similar criteria of scoring. Hence the unlawful claim of awarding more marks illegally stand nowhere.

vii. Dr. Awasthi is awarded 1.5 marks under TV and Radio program as he has two nos. of radio talks ($0.5 \times 2 = 1$ mark) and one TV program (0.5 marks) to his credit.

viii. As per the guidelines for scoring of candidates for the post of Asst. Professor there is no provision of awarding of marks for acquiring Post Doctoral Fellowship under the 'Academic Qualification' chapter. However, four (4) marks have already been allotted to the petitioner for his JSPS Post Doctoral Fellowship other fellowship etc. in Japan which is maximum under Fellowship/Award/Recognition category.

ix. Again, one (1) mark has been awarded to the petitioner for International Exposure and another one(1) mark has been awarded under Special Attainments to the candidate for having PDF degree and these are maximum as per guidelines. So, claim for additional marks for having PDF under does not stand as there is no provision under to award more marks under 'Academic Qualification' category.

x. Over all scoring of the petitioner are 40.0 out of 60 marks and of Dr. D.P. Awasthi are 38.5 out of 60 marks.

24. Mr. Nath, learned counsel, has categorically submitted that it is wholly untrue that the respondent No.10 did not produce any record. In support of his radio programmes, he has referred to the Annexures 2 and 3 of his compilation, which are part of the record as produced before this court, wherefrom it appears that the respondent No.10 participated in popular radio programmes in All India Radio, Agartala. From Annexure-1 of the compilation, it further transpires, according to Mr. Nath, learned counsel that the achievements and participation of respondent No.10 warranted the rating as given by the selection committee.

25. Having regard to the necessity of brevity, the publication and other information as furnished by the respondent No.10 is not reproduced herein. Mr. Nath, learned counsel, has supported awarding of 3 marks for Ph.D. without course work to the petitioner and 5 marks for Ph.D. with course work to the respondent No.10. He has also submitted that both the petitioner and the respondent No.10 have been rightly given 6 marks for their publication, out of which 5 marks for the five best publications of Indian Journals and 1 mark for eleven nos. articles and leaflets so far the respondent No.10 has authored and published. The respondent No.10 has got 0.5 mark for T.V. programme and 1 mark for the radio programme (half mark for each programme). The respondent No.10 has rightly got 6 marks

for getting the first class from the Central Agricultural University, Imphal. Thus there is no illegality in awarding the marks.

26. Mr. D.R. Choudhury, learned counsel appearing for the respondent No.10, has adopted the submissions made by Mr. T.D. Majumder, learned Govt. Advocate and Mr. D.C. Nath, learned counsel appearing for the respondent Nos. 3 to 9. Mr. Choudhury, learned counsel, has also pointed out that a detailed affidavit-in-opposition has been filed by the respondent No.10 showing that there is no infirmity in the selection process and the writ petition has been filed for affecting the petitioner's career. Mr. Choudhury, learned counsel, has also submitted that all the required record including the copies of the papers published in the various journals of repute have been annexed with the writ petition.

27. Having scrutinised the records as produced with the writ petition, affidavit-in-oppositions, affidavit-in-replies, rejoinder by the petitioner as well as the records produced by the respondents in terms of the order of this court and also having regard to the submissions made by the learned counsel for the parties, precisely the following questions falls for consideration of this court :

- (1) Whether following the score card guidelines of the Central Agricultural University, the respondent Nos. 1

to 9 have committed any illegality or acted unreasonably?

- (2) Whether the way the reservation policy has been applied can survive the test of law?
- (3) Whether the allotment of 40% marks is reasonable or arbitrary?
- (4) Whether the evaluation of the comparative merit of the petitioner and the respondent Nos. 10 and 11 has been done properly?

- (1) **WHETHER FOLLOWING THE SCORE CARD GUIDELINES OF THE CENTRAL AGRICULTURAL UNIVERSITY, THE RESPONDENT NOS. 1 TO 9 HAVE COMMITTED ANY ILLEGALITY OR ACTED UNREASONABLY?**

28. Unless there is regulation to be mandatory followed for recruitment to a post, the appointing authority may follow a transparent, reasonable and fair procedure for recruitment and it is within their competence. In the writ petition, no challenge has been projected, questioning the score card guidelines of the Central Agricultural University, Imphal, which according to the respondent Nos. 1 to 9 has been formulated for the Agricultural University system having due regard to the University Grants Commission's regulation by the Indian Council for Agricultural Research (ICAR). Apart that, this court has scrutinised the

procedure and it appeared from such scrutiny that the procedure is to a satisfactory extent is transparent, reasonable and fair so far the recruitment to such technical teaching posts is concerned. Thus the contention of the petitioner that the college of Agriculture is only supposed to follow the regulation of the UGC inasmuch as the college affiliated to the Tripura Central University, cannot be sustained.

(2) WHETHER THE WAY THE RESERVATION POLICY HAS BEEN APPLIED CAN SURVIVE THE TEST OF LAW?

29. This court finds sufficient force in the submission of Mr. A.K. Bhowmik, learned senior appearing for the petitioner, when he submitted that by creating a cluster of all posts following the depreciable method of clubbing together or basketing the posts of the Assistant Professors of various discipline, the respondent Nos. 1 and 2, have committed departure from the law declared by the apex court in **State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors.**, where the apex court has observed that :

".... The very advertisement of the University which had been issued in the year 1995 and was the subject-matter of challenge before the Allahabad High Court in the impugned judgment, had also come up for consideration before this Court in State of U.P. v. Dr. Dina Nath Shukla : (1997) 9 SCC 662. A Bench of two learned Judges

of this Court construed the provisions of the Reservation Act and also the provisions of the university statute and came to hold that it would not be permissible to club all posts of Professors together and then apply the principle of reservation. It was felt that if the total posts are advertised without subjectwise specification in every faculty, discipline, speciality or superspeciality, it would be difficult for the candidate to know as to which of the posts would be available either to the general or reserved candidates or whether or not they fulfil or qualify the requirements so as to apply for a particular post and seek selection. Necessarily therefore, the Court approved a part of the earlier judgment of the Allahabad High Court in Ram Niwas Pandey case even though that judgment had not been cited, by holding that the reservation has to be applied subjectwise and the Professors of all departments cannot be clubbed together and treated as one cadre. The Court, however, interfered with the conclusion of the Allahabad High Court on the question as to whether there can at all be a reservation on a single post. The Court was of the opinion that if there exists any isolated post, rule of rotation be applied and by application of roster for appointment and for achieving the said objective the Vice-Chancellor, who is the responsible authority under Section 4 has to enforce the Act, would ensure that single post in each category of Professors, Readers or Lecturers carrying the same scale of pay would be subject to reservation by applying the principle of rotation. This conclusion of the Court in the aforesaid case of Dr. Dina Nath Shukla : (1997) 9 SCC 662 is no longer good law in view of the Constitution Bench judgment of this Court in the case of Post Graduate Institute of Medical Education and Research v. Faculty Assn. : (1998) 4 SCC 1. Dr. Dina Nath Shukla relied upon the judgment in Union of India v. Madhav : (1997) 2 SCC 332. [Emphasis supplied]

30. As already reproduced, the **State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors.**, has definitely gave the expression as to the law, which according to this court is a

declaration under Article 141 of the Constitution of India and is applicable all over the country. The apex court has categorically stated that there can be reservation in respect of post of Professors and the provisions of the Reservation Act would apply, but the same cannot be applied taking all the Professors as a cadre and it has to be made subjectwise. It has been further declared that, if the roster has been duly complied with, then the roster would be redundant and the principles as enunciated by the apex court in **R.K. Sabharwal v. State of Punjab : (1995) 2 SCC 745** shall only be applicable, meaning thereby if the vacancy is created against the UR, ST or SC, the vacancy can only be filled respectively by the UR, ST and SCs, not by any other method.

31. This court has observed that all the posts of Assistant Professors in the College of Agriculture has been clubbed together and the incidence of clubbing together would emerge from the roster inspection report without any equivocality and, as such, the formula that has been followed cannot be sustained. Moreover, such reservation ought to have made known to the petitioner. But, for that reason this court will not make a topsy turvy of the recruitment process, inasmuch as the petitioner has preferred not to implead the other candidates who participated in the selection process by dint of the said employment notification. Hence, the challenge has to be examined within a very narrow

confine so far the petitioner and the respondent Nos. 10 and 14 are concerned. This court having carefully studied the enunciation is of the view that it might bring about or generate a new praxis if the law as decided by the apex court in **State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors.** is implemented. It appears that there are three posts of Plant Pathology. According to **State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors.**, all the three posts would form a cadre for purpose of Reservation Act and Rules and thus according to 100 point roster as followed in view of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992, two posts are supposed to go to the UR candidates and one post is supposed to go to the ST candidate. It is an admitted fact that no Scheduled Tribe candidate had applied, only one SC candidate, the respondent No.11 applied and he was recommended by the selection committee for appointment. The petitioner cannot have any claim on the post at point No.2, reserved for the ST candidates under any circumstances. As such, even if the reservation policy would have been applied in terms of **State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors.**, only one post was supposed to be earmarked for the UR category candidate.

32. Since the entire cadre has not been filled up as yet, there is no scope of applying the **R.K. Sabharwal v. State of**

Punjab principle. Therefore, this court even though has observed that the respondent Nos. 1 and 2 have acted without complying with the principles of **State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors.**, but in the instant case no prejudice in any manner for pursuing a grossly wrong procedure has been caused to the petitioner. Even though, the procedure as followed is unacceptable but for the impact as deduced in the context, no interference is at all warranted but the State-respondents are simultaneously directed to follow the law as prescribed in **State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors.** in all future recruitments, meaning that in the employment notice or advertisement they shall notify the vacancy earmarked for various categories such as UR, SC and ST, and the teaching post of various discipline shall not be clubbed together for purpose of applying the reservation policy. The teaching posts of the particular discipline shall form one cadre for the purpose of applying the reservation policy. Any deviation therefrom shall invite the contempt proceeding against the person who would indulge in or be responsible for such breach.

(3) WHETHER THE ALLOTMENT OF 40% MARKS IS REASONABLE OR ARBITRARY?

33. The objection that has been raised that allotment of 40% marks is unreasonable or arbitrary is no more debatable in view of catena of apex court decisions. In **Ashok Kumar Yadav**

& Ors. Vs. State of Haryana & Anr. etc. etc., reported in **(1985) 4 SCC 417**, the apex court has categorically held that both written examination and viva voce test are accepted as essential features of proper selection. There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. In **Ashok Kumar Yadav & Ors. Vs. State of Haryana & Anr.**, it has been categorically held in para 25 as under :

25. Glenn Stahl has pointed out in his book on *Public Personnel Administration* that the viva voce test does suffer from certain disadvantages such as the difficulty of developing a valid and reliable oral test, the difficulty of securing a reviewable record of an oral test and public suspicion of the oral test as a channel for the exertion of political influence and, as pointed out by this Court in *Ajay Hasia* case : (1981) 2 SCR 79, also of other corrupt, nepotistic or extraneous considerations, but despite these acknowledged disadvantages, the viva voce test has been used increasingly in the public personnel testing and has become an important instrument whenever tests of personnel 3 attributes are considered essential. Glenn Stahl proceeds to add that "no satisfactory written tests have yet been devised for measuring such personnel 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." There can

therefore be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination. Now if both written examination and viva voce test are accepted as essential features of proper selection in a given case, the question may arise as to the weight to be attached respectively to them. "In the case of admission to a college for instance", as observed by Chinnappa Reddy, J. in Lila Dhar case : (1982) 1 SCR 320, "where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life , greater weight has perforce to be given to performance in the written examination" and the importance to be attached to the viva voce test in such a case would therefore necessarily be mini mil. It was for this reason that in Ajay Haisa case this Court took the view that the allocation of as high a percentage of marks as 33.3% to the viva voce test was "beyond all reasonable proportion and rendered the selection of the candidates arbitrary". But as pointed out by Chinnappa Reddy, J., "in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way subject to basic and essential academic and professional requirements being satisfied". There may also be services "to which recruitment is made from younger candidates whose personalities are on the thresh hold of development and who show signs of great promise" and in case of such services where sound selection must combine academic ability with personality promise, some weight has to be given to the viva voce test. There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the

words of Chinnappa Reddy, J. in Lila Dhar case "exaggerated weight has been given with proven or obvious oblique motives." [Emphasis supplied]

34. In **Jasvinder Singh & Ors. Vs. State of J&K and Ors.**, reported in **(2003) 2 SCC 132**, the apex court has categorically observed that :

7. In Mahmood Alam Tariq and Ors. v. State of Rajasthan : (1988) 3 SCC 241 prescription of 33% as minimum qualifying marks of 60 out of total 180 marks set apart for viva voce examination does not by itself incur any constitutional infirmity. In Manjeet Singh v. ESI Corpn. : (1990) 2 SCC 367 this Court held that in the absence of any prescription of qualifying marks for the interview test the same 40% as applicable for written examination was reasonable. In Anzar Ahmed v. State of Bihar : (1994) 1 SCC 150 this Court exhaustively reviewed the entire case law on the subject including the one in Ashok Kumar Yadav's case and upheld a selection method which involved allocation of 50% marks for academic performance and 50 marks for the interview. The very observations in Ashok Kumar Yadav case would go to show that there cannot be any hard-and-fast rule of universal application for allocating the marks for viva voce viz-a-viz the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases. What ultimately required to be ensured is as to whether the allocation, as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Judged from the above the Division Bench could not be held to have committed any error in sustaining the allocation of 25 marks (20%) for viva voce as against 100 marks for written examination for selection of candidates in the present case. The learned Single Judge, in our view has adopted a superficial exercise and proceeded on a misunderstanding of the real ratio of the decision in Ashok Kumar Yadav case (supra). Further, the learned Single Judge appears to have applied the ultimate decision in the said case, to the case on hand

drawing certain inferences on mere assumptions and surmises or some remote possibilities, without any proper or actual foundation or basis, therefor.

35. **Jasvinder Singh & Ors. Vs. State of J&K and Ors.,** has virtually reiterated the law declared by the apex court in **Ashok Kumar Yadav & Ors. Vs. State of Haryana & Anr.** As such, allocation of 40% mark for recruitment to the post of Assistant Professor in Plant Pathology, according to the considered opinion of this court cannot be held arbitrary and unreasonable. Moreover, while scrutinising the record so produced before this court, this court has come across that the selection committee comprising of the respondent Nos. 3 to 9, has assessed the teaching skill in a class room situation. Thus this court does not find any infirmity or breach of any constitutional provision in this regard.

(4) WHETHER THE EVALUATION OF THE COMPARATIVE MERIT OF THE PETITIONER AND THE RESPONDENT NOS. 10 AND 11 HAS BEEN DONE PROPERLY?

36. At the first blush, submission of Mr. A.K. Bhowmik, learned senior counsel appears very impressive but for absence of *mala fide/bias* being categorically alleged and established against the selection committee, this court would not embark

upon to scrutinise the procedure that has been followed by them. But so far the challenge as regards to the score card on the basis of the academic qualification, publication of research paper etc. is concerned, this court finds that no infirmity or irregularity has been committed. Since the procedure has prescribed that the Ph.D. with the course work and the Ph.D. without course work are materially different, and weighed differently and since it has been submitted that the Ph.D with course work has been introduced long back and no contrary document or the pleading has been advanced by the writ petitioner, this court is not in a position to definitely infer that the award of the Ph.D by two different methods may carry equal weight. There is no unreasonableness in the procedure of awarding marks for publication of the research articles in the various journals. Even if, the rating of the petitioner be assumably accepted, it will not change the selection at all, inasmuch as this court finds on record that the respondent No.10 had participated in the popular Radio programmes and TV programmes. Mere change of one mark would not impact any change in the selection. Even without taking further stock on the records, this court finds that since it would not alter the merit position, such exercise would be entirely cosmetic. This court does find no infirmity even in assessing the research articles published in the various categories of journals. So far the question of allowing the petitioners for

Power Point Presentation, according to this court, is not a mandatory provision. The selection committee is within their discretion to select whether they would test the teaching skill of the candidates by allowing them the Power Point Presentation or by creating a class room situation. The respondent Nos. 3 to 9 have provided an analogy. Since there is a possibility of copying of the Power Point Presentation, they have not adopted the said procedure. Even though this reason is not accepted by this court, but so far the exercise of the discretion is concerned, it does not suffer from any infirmity.

37. Having held so, this writ petition is dismissed, however, subject to the direction made as regards to the method of applying the reservation policy in respect of the teaching posts, but without any cost whatsoever under the circumstances of the case.

The records so produced by the respondent Nos. 1 to 9 be returned under a sealed cover.

JUDGE

ROY