

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 388 OF 2007

- 1) Mrs. Poonam/Reshma P. Naik
resident of House No.479,
Ambhekhan, Verem, Bardez, Goa.
 - 2) Sunita Nanu Khandeparkar,
resident of House No.385,
Durgawadi, Taleigaon-Goa.
 - 3) Samit M. Naik, resident of
Chinchwada, Chimbhel-Goa.
 - 4) Mrs. Lynn Fernandes alias Lymm Mendes,
resident of House No.66, Gaunchem Bhatt
Merces, Ilhas-Goa.
 - 5) Sunil Pundalik Mahale
resident of House No.179,
Uguem, Deul Wadi, Post Tamboxem,
Pereym-Goa.
 - 6) Dinkar Vaigankar, resident of House No.1400
Bandirwada, St. Cruz-Goa.
 - 7) Ravindra G. Vernekar,
resident of House No.223, near Football
ground, Headland Sada, Vasco-da-Gama-Goa.
 - 8) Karim Yusuf Shaikh Abdul,
SDI, WD IX (PHE), Public Works
Department, Baina,
Vasco-da-Gama-Goa.
 - 9) Narayan R. Bhaje, resident of
House No.284, "Laxmi Niwas", St.Inez,
Panaji-Goa.
- Petitioners

V e r s u s

- 1) The Principal Chief Engineer,
Public Works Department, Government
of Goa, Altinho, Panaji-Goa.
- 2) State of Goa, through its Chief Secretary,
having office at Secretariat, Porvorim-Goa.
- 3) Mutkundu Venkatkrishna C.;

- 4) Murgaonkar Trupti S. ;
- 5) Patil Sandip S. ;
- 6) Araujo Jocelyn Stavira ;
- 7) Pereira Joseph ;
- 8) Chodnekar Anita Yatin Prabhu ;
- 9) Nageshkar Jyoti Ramrao ;
- 10) Satarkar Samir D. ;
- 11) Manerkar Avinash Shashikant ;
- 12) Naik Santosh Sagun ;
- 13) Dhuri Suchita K. ;
- 14) Raikar Sandeep Pramod ;
- 15) Keluskar Prakash N. ;
- 16) Naik Swati Rohidas ;
- 17) Nagarsekar Kanchan Jivaji ;
- 18) Kubal Kishor G. ;
- 19) Kolambkar Trupti A. ;
- 20) Shiddekar Suresh N. ;
- 21) Haldonkar Rayu Kalidas. ;
- 22) Desai Reema R. ;
- 23) Bhagat Vinda G. ;
- 24) Kerkar Vishanti H. ;
- 25) Parodkar Narayan J. ;
- 26) Gaonkar Sandeep Vithal,
- 27) Kavlekar Suraj S. ;

- 28) Gurav Dppti C. ;
- 29) Amonkar Vishaka C. ;
- 30) Savarshekar Sunita B. ;
- 31) Fernandes Glenis Resita ;
- 32) Sakhardande Swarupa Avinash ;
- 33) Naik Prashant Keshav ;
- 34) Vernekar Sharmila Shodhan ;
- 35) Gaonkar Shilpa ;
- 36) D'Souza Mathew ;
- 37) Vaigankar Sebina Shripad ;
- 38) Dhulapkar Prachi P. Naik ;
- 39) Porob S. Sakharam ;
- 40) Naik Poonam Popat ;
- 41) Kudnekar Nisha Deepak ;
- 42) Kundaikar Neeta Ramrai ;
- 43) Kapileshwari Ameya Laxmikant ;
- 44) Adpoikar Someshwar Satchit Naik ;
- 45) Modagi Prakash M. ;
- 46) Khorjuvekar Hira Vithal ;
- 47) Jaidev Manoj M. ;
- 48) Jamble Raghuvir Vishwanath ;
- 49) Sawant Pritam A. ;
- 50) Naik Nilesh Vinayak ;
- 51) Kerkar Anita ;
- 52) Sawant Yojana Rama ;

- 53) Kandolkar Santoshi S. ;
- 54) Chari Rajaram S. ;
- 55) Nagvekar Priya S. ;
- 56) Gawas Shankar Chandrakant ;
- 57) Gawas Sunanda Keshav ;
- 58) Kande Vaibhav S. ;
- 59) Joshi Archita K. ;
- 60) Naik Sushant R. ;
- 61) Gonsalves Shirley Etlyn ;
- 62) Desai Mangala M. ;
- 63) Gogale Vidhya V. ;
- 64) Kavlekar Vitha Rajesh ;
- 65) Desai Trupti Gangadhar ;
- 66) Patil Sushma S. ;
- 67) Soman Tushar M. ;
- 68) Marathe Madhavi Mohan ;
- 69) Naik Seema Datta ;
- 70) Dessai Sawant Babita V. ;
- 71) Asmita A. Jog ;
- 72) Miranda Quiteria ;
- 73) Kankonkar Kalpana K. ;
- 74) Ajgaonkar Savita Datta ;
- 75) Azagaonkar Shraddha R. ;
- 76) Mamledar Shankar V. ;

- 77) Goltekar Gaude Chhaya J. ;
- 78) Bhosale Vishwanath R. ;
- 79) Naik Sandhya Shashikant ;
- 80) Gaude Rajesh Sitaram ;
- 81) Gaunekar Durgadas Nanu ;
- 82) Naik Dayanand S. ;
- 83) Gaude Dilip S. ;
- 84) Gaonkar Vrunda K. ;
- 85) Sudesh Tima Naik ;
- 86) Phadte Punam S. ;
- 87) Naik Kalidas Ramnath ;
- 88) Gawade Thanu Babuso ;
- 89) Parab Shubam Prabhakar ;
- 90) Gaude Malini Vishwanath ;
- 91) Korde Roopesh Pramod ;
- 92) Naik Pritam Yeshwant ;
- 93) Naik Rudresh M. ;
- 94) Naik Sarangi A. ;
- 95) Gawade Nita Santosh ;
- 96) Gawade Ganpat Babuso ;
- 97) Gaude Vivek S. ;
- 98) Naik Hema Gurudas ;
- 99) Shirodkar Lilesh ;
- 100) Tari Darshan Damodar ;
- 101) Naik Sharada T. ;

- 102) Gaude Vishnu Vaman ;
- 103) Po Rashmi Diana ;
- 104) Naik Suraj Balkrishna ;
- 105) Arondekar Devanand Laxman ;
- 106) Naik Bhupesh R. ;
- 107) Naik Palalvi Jayant ;
- 108) Gaude Khemu K. ;
- 109) Naik Prashant R. ;
- 110) Naik Sujata G. ;
- 111) Gaude Shrikant K. ;
- 112) Naik Sainath K. ;
- 113) Naik Nilesh V. ;
- 114) Gaude Urmila T. ;
- 115) Kholkar Nitin B. ;
- 116) Gaude Satu Laxman ;
- 117) Phadte Sandip W. ;
- 118) Naik Mohini S. ;
- 119) Nail Chetan R. ;
- 120) Tari Kanhopatra Vinayak ;

The Respondent Nos.3 to 120, through the
Principal Chief Engineer, Public Works
Department, Government of Goa, Altinho,
Panaji-Goa.

... Respondents

Mr. J. P. Supekar, Advocate for the Petitioners.

Mr. S. Dhargalkar, Addl. Government Advocate for the Respondent nos. 1 and 2.

Shri S. D. Lotlikar, Senior Advocate with Ms. N. Patil, Advocate for the Respondent

nos. 3 to 8, 10 to 13, 17 to 19, 21 to 23, 27 to 29, 31, 32, 34, 35, 37 to 41, 43, 44, 46 to 51, 53, 54, 59, 60, 62 to 64, 67 to 70, 72 to 79, 82 to 93, 95 to 102, 104 to 106, 108 to 110, 112, 114, 117 to 120-Private Respondents.

Mr. H. D. Naik, Advocate for the Respondent nos. 15, 20, 24 to 26, 30, 33, 52, 56 and 57.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : **22nd January, 2015**

ORAL JUDGMENT (Per F. M. Reis, J.)

Heard Shri J. Supekar, learned Counsel appearing for the Petitioners, Mr. S. Dhargalkar, learned Addl. Government Counsel appearing for the Respondent nos. 1 and 2, Mr. S. D. Lotlikar, learned Senior Advocate appearing for the private Respondents and Shri H. D. Naik, learned Counsel appearing for the Respondent nos. 15, 20, 24 to 26, 30, 33, 52, 56 and 57.

2. The above Petition, inter alia, seeking an Order or direction commanding the Respondents to cancel/revoke and withdraw the appointments of the Respondent no. 3 to 120 to the post of Lower Division Clerk pursuance to the advertisement dated 20.09.2006.

3. Briefly, the case of the Petitioners is that advertisement was issued on 20.04.2006 for thirty posts of Lower Division Clerk in the Respondent no. 1-Department, inter alia, with the requirement of Higher Secondary School Certificate or its equivalent qualifications, a computer literate and having knowledge of Konkani or Marathi. Out of the thirty posts, twelve were for general category and the remaining reserved for specific categories. It is further the contention of the

Petitioners that without inviting the candidates for written examination, all the eligible candidates were invited for oral interviews by letter dated 11.09.2006. It is further the contention of the Petitioners that in March, 2007, they learnt that the Respondents without holding a written interview have selected candidates to the post of Lower Division Clerk and that 118 candidates were given offers of appointment. It is further the contention of the Petitioners that a representation came to be made on their behalf by the Union on 16.03.2007 and no answer was received from the Respondents and in pursuance thereof, the Respondent no. 1 appointed 118 candidates i.e. the Respondent nos. 3 to 120 as against the thirty posts as advertised on 20.04.2006. Having no other alternative, the Petitioners filed the above Writ Petition which, came to be admitted by an Order dated 19.09.2007.

4. Shri J. Supekar, learned Counsel appearing for the Petitioners, has pointed out that the selection process stands vitiated as, according to him, the oral interviews were the only criteria for selection. The learned Counsel has pointed out that the marks to evaluate the Petitioners were followed by misconstruing the Recruitment Rules and the Circular dated 16.02.1998. The learned Counsel has thereafter taken us through the Circular dated 16.02.1998 to point out that the Circular dated 16.02.1998 would not otherwise be applicable to the Petitioners as, according to him, the minimum qualifications for the post of Lower Division clerk was Higher Secondary School Certificate and, thereafter, gave examples to point out how the marks criteria has been misconstrued whilst considering that all the candidates in fact had Higher Secondary School Certificates. The learned Counsel further pointed out that by awarding 45% marks to all the candidates having Higher

Secondary School Certificates irrespective of their percentage, has caused prejudice to the grading of the candidates by not fixing such marks based on the percentage attained by each candidate and, consequently, there is no distinction between a meritorious candidate and a less meritorious candidate. The learned Counsel further pointed out that five marks have been awarded for computer literacy when it was one of the minimum qualifications to apply for the post. The learned Counsel further took strong exception to the manner in which marks were allotted for candidates having typewriting certificates, experience and those who secured first class and distinction which resulted in awarding 15 marks to candidates without any basis. The learned Counsel further submits that marks which were awarded for extracurricular activities were also not in accordance with the guidelines referred to in such circular. The learned Counsel further pointed out that as such, the entire process of selection is based on the oral interview which would be the only deciding factor and a competing factor for selection to the post. The learned Counsel has thereafter taken us through the reply filed by the Respondent nos. 1 and 2 to point out that oral interviews of 2891 candidates were conducted during the period from 18.09.2006 to 16.10.2006 which would disclose that the selection Committee could devote not more than 3.5 minutes for each candidate.

The learned Counsel has relied upon the Judgment of the Apex Court reported in **1995 supp(1) SCC 206** in the case of **Satpal & ors vs. State of Haryana**. In support of his contention that examining such a huge number of candidates in such a short period would itself vitiate the selection process. The learned Counsel has also relied upon the Judgments of the Apex Court in support of his contention that oral interviews cannot be the only criteria process as reported

in **1985(4) SCC 417** in the case of **Ashok Kumar Yadhav & ors. vs. State of Haryana**, **1991(1) SCC 662** in the case of **Mohinder Sain Garg v.State of Punjab** and **2000(8) SCC 633** in the case of **Praveen Singh vs. State of Punjab**.

5. The next grievance of the learned Counsel appearing for the Petitioners is in connection with the excessive appointments by the Respondents though the posts advertised were only 30 and 118 candidates were selected. The learned Counsel has pointed out the contradictions in the affidavit in reply of the Respondent no. 1 with that regard about the post which are vacant for more than five years and those for a period of less than five years. The learned Counsel has further pointed out that if posts are vacant for more than five years, they require to be revived which has not been done in the present case. The learned Counsel further submits that a Selection Committee is incompetent to decide on additional posts and, as such, the appointments cannot be justified. In support of his contention, the learned Counsel has relied upon the Judgment of the Apex Court reported in **2001(10) SCC 237** in the case of **Srikant Tripathi & Ors. vs. State of U.P.** and **1993 Supp (4) SCC 377** in the case of **Hoshiar Singh vs. State of Haryana**. Learned Counsel as such submits that the impugned selection by the Respondents deserves to be quashed and set aside.

6. On the other hand, Shri S. D. Lotlikar, learned Senior Counsel appearing for the private Respondents, has pointed out that the Petition itself deserves to be rejected for non-joinder of necessary parties. Learned Senior Advocate further submitted that Zalu alias Shailesh Redkar, Manisha C. Karaskar, Shailesh P. Naik, Suchitra S. Gawas, Neema N. Gawas, Emy Fernandes, who were

selected and appointed vide advertisement dated 20.04.2006, have not been joined as parties to the Petition and, consequently, their appointment to the post of Lower Division Clerk have not been challenged which position is not disputed by the Petitioners and, as such, the Petition deserves to be rejected. The learned Senior Advocate has also brought to out notice that appointment letters of some of the private Respondents have not been produced by the Petitioners. Learned Senior Advocate further submits that in the absence of the challenge to the appointment of such candidates by itself would result in the above Petition being rejected for non-joinder of necessary parties. The learned Senior Advocate further submits that the Petitioners have been raising the plea that the selection is vitiated on the ground that it was based exclusively on oral interview which would mean that 100 marks were allotted to oral interviews. Learned Senior Advocate further points out that the Recruitment Rules as well as the affidavit filed on behalf of the first Respondent disclosed that 75% of marks were reserved for academic career, ten marks for extracurricular activities and 15 marks for viva-voce. Learned Senior Advocate further pointed out that these distribution of marks is in terms of the Recruitment Rules. The learned Senior Counsel further pointed out that the selection has not been done exclusively on the basis of the oral interview as can be seen by the performer produced on record. Learned Senior Counsel further submits that the foundation of the Petition itself is misconceived and, consequently, the same deserves to be rejected. Learned Senior Advocate further points out that the fact that fifty marks were given for basic qualifications to all the candidates including the Petitioners would itself disclose that there was no discrimination in the allotment of marks. The learned Senior Advocate further points out that the Selection Committee in fact awarded additional marks for higher qualification, additional

marks to candidates who have passed with first class which was uniformly adopted. The learned Senior Counsel as such submits that such approach of the Selection Committee, cannot be faulted. Learned Senior Advocate further submits that the contention of the Petitioners that the sole criteria was oral interviews is erroneous based on the material on record. The Learned Senior Advocate further points out that in view of the reservations made, there are candidates who are physically disabled children of ex servicemen, children of Freedom fighters, candidates belonging to Schedule Tribe and Schedule Caste and other backward classes and as such the locus of the Petition would depend upon the categories for which they belonged which have not been disclosed by the Petitioners. The Learned Senior Advocate further submits that the Petitioners have taken part in the selection process and as such it is not open to them to challenge merely because they have not been selected. Learned Senior Advocate further points out that there are no malafides attributed by the Petitioners in the selection process and, consequently, it is not open to the Petitioners to challenge such process. The Learned Senior Advocate further pointed out that the interviews were conducted from 18.09.2006 to 06.10.2006 which is during the course of nineteen days which by no stretch of imagination can be said to be short. The Learned Senior Advocate further pointed out that the contentions of the Petitioners are based on the Circular dated 16.02.1998 when at the time of the issuance of the advertisement, the Recruitment Rules framed under Article 309 of the Constitution of India were very much in place. Learned Senior Counsel further submits that the Recruitment Rules were published on 22.03.2006 and the advertisement was issued on 20.04.2006 and it is not pointed out by the Petitioners that there was any fundamental breach of the Recruitment Rules and, as such, on this ground alone, the contention of the

Petitioners deserves to be rejected. The Learned Senior Advocate points out that the selection committee has uniformly adopted the principles in the matter of selection and, as such, the contention of the Petitioners that the selection process is vitiated deserves to be rejected. The Learned Senior Advocate further points out that the allegations of the Petitioners that the appointments were in excess of the vacancies advertised is also misplaced as, according to him the affidavit filed by the State Government clearly shows how the vacancies had arisen after the publication of the advertisement and before the commencement of the Departmental Selection Committee meeting. The Learned Senior Advocate further pointed out that no prejudice has been shown or pleaded by the Petitioners and, as such, the said contention deserves to be rejected. The learned Senior Advocate further pointed out that the Division Bench of this Court in Writ Petition no. 319 of 2007 in the case of Mr. Richard John Lawrence Fernandes vs. The Deputy Director of Administration Office of the Principal Chief Engineer, has examined all such contentions and has found that this does not vitiate the selection process.

7. Shri Dhargalkar, learned Addl. Government Advocate appearing for the Respondent nos. 1 and 2, has pointed out that he adopts the contentions of the learned Senior Advocate appearing for the private Respondents and further submits that the Petition deserves to be rejected for non-joinder of all the candidates who are already in appointment. In support thereof, the learned Addl. Government Advocate has relied upon the Judgment of the Apex Court reported in **(2001) 6 S.C.C. 380** in the case of **All India SC & ST Employees' Association & anr. vs. A. Arthur Jeen & Ors.**

8. We have considered the submissions of the learned Counsel appearing for the respective parties and we have also gone through the records. The fact that all the selected candidates have not been made parties have not been disputed by Shri J. P. Supekar, learned Counsel appearing for the Petitioners. In this connection, the Apex Court in the said Judgment of ***All India SC & ST Employees' Association & anr.*** (supra) has observed at paras 13 and 14 thus :

“13. Although the candidates included in the panel showing their provisional selection do not get vested right to appointment, they will be surely interested in protecting and defending the select list. It is an admitted position that before the Tribunal the successful candidates whose names were included in the panel of selection were not made parties. The argument of the learned counsel that since the names and particulars of the successful candidates included in the panel were not given, they could not be made parties, has no force. The applicants before the Tribunal could have made efforts to get the particulars; at least they ought to have impleaded some of the successful candidates, maybe, in a representative capacity; if the large number of candidates were there and if there was any difficulty in service of notices on them, they could have taken appropriate steps to serve them by any one of the modes permissible in law with the leave of the Tribunal. This Court in *Prabodh Verma v. State of U.P.* has held that in writ petitions filed against the State questioning the validity of recruitment of a large number of persons in service could not be proceeded

with to hear and take decision adverse to those affected persons without getting them or their representatives impleaded as parties. In para 50 of the said judgment, summarizing the conclusions this Court in regard to impleading of the respondents has stated that: (SCC pp. 288-89)

“A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.”

14. This Court in para 4 of the Judgment in *A.M.S. Sushanth v. M. Sujatha* has stated thus: (SCC p. 198)

“4. We find that none of the persons who were selected and whose appointments were set aside by the High Court had been impleaded as a party-respondent. It appears that a public notice was given in a representative capacity only with regard to the appointment to the post of Assistant Sericulture Officer. The direction of the High Court, however, is not confined to that post alone and it is the appointments to the other posts also which have been set aside. This could not be done. The principles of natural justice demanded that any person who was going to be adversely affected by the order should have had an opportunity of being heard. That apart, one would have expected the High Court to have considered the report submitted

under Section 65 on its merits and then decided whether the said report should be accepted or not.”

9. Taking note of the said observations, the Respondents who have been impleaded are not in a representative capacity and, consequently, any adverse Order passed in connection with the subject Recruitment process, would have an adverse impact and affect the candidates who have been duly selected and appointed who are not parties to the above Petition and, as such, on this ground alone the Petition deserves to be rejected.

10. The next contention of Shri Supekar, learned Counsel appearing for the Petitioners, is that the selection process was conducted only by allotting marks by oral interviews but, however, as rightly pointed out by Shri S. D. Lotlikar, learned Senior Advocate appearing for the private Respondents, the per-forma produced by the Respondents clearly suggests that the marks were allotted for different categories as referred to therein. There were marks allotted to candidates who had passed the qualifying examination with distinction and first class and there were also marks for extracurricular activities and on different other basis. The allotment of 50 marks for the qualifying candidates for eligible qualification have been uniformly allotted to all the candidates and as such there is no discrimination with that regard. In such circumstances, we find that the foundation of the Petition itself that the selection process was only on the basis of oral interviews is totally misplaced as the material on record suggests otherwise. We do not find any infirmity with that regard in the marks earmarked for different categories which would call for interference by this Court.

11. Shri J. P. Supekar, learned Counsel appearing for the Petitioners, is seeking to rely upon the Circular dated 16.02.1998 in support of his contentions but, as rightly pointed out by Shri S. D. Lotlikar, learned Senior Advocate appearing for the private Respondents, before the advertisement was issued in the present case, the Recruitment Rules made under Article 309 of the Constitution of India were already notified in the Official Gazette on 22.03.2006. As such, relying on the earlier circulars to contend that there was any breach of the requirements referred to therein, cannot be accepted. In fact, on perusal of column 10 of the said Recruitment Rules prepared in exercise of powers under Article 309 of the Constitution, we find that it provides that the allotment of marks are 75 marks for academic careers ten marks, for extracurricular activities and fifteen marks for viva-voce. This itself shows that the allotment of marks by the selection committee was in accordance with the Recruitment Rules and, as such, the contention of the Petitioners that such allotment of marks is contrary to the Rules, cannot be accepted. Apart from that, there are no malafides attributed to the Petitioners in allotment of such marks and, on this ground also, the question of interfering in the process of selection would not at all be justified.

12. In fact, the Division Bench of this Court in the said Judgment in the case of **Mr. Richard John Lawrence Fernandes** (supra) has observed at paras 7, 8 and 9 thus :

“7. The question, whether law laid down by the Apex Court regarding fixation of marks for interview in selection would apply to a case where there is no

written test and selection made on the basis of academic performance and interview, fell for consideration before the Apex Court in **Anzar Ahmed vs. State of Bihar and others** (supra). In that case, the Division Bench considered the earlier decisions of the Apex Court in R. Chitrallekha and anr. vs. State of Mysore, [1964] 6 SCR 368; A. Peeriakaruppan, Etc. v. State of Tamil Nadu and ors. [1971] 2 SCR 430, Nishi Maghu Etc. v. State of Jammu & Kashmir and ors. [1980] 3 SCR 1253, Ajay Hasia etc. v. Khalid Mujid Sehravardi & On. Etc. (1981) ILLJ 103 SC and Koshal Kumar Gupta and ors. v. State of Jammu & Kashmir and ors. [1984] 3 SCR 407, Lila Dhar v. State of Rajasthan and ors. (1981) IILLJ 297 SC and Ashok Kumar Yadav and ors. etc. etc. v. State of Haryana and ors. etc. etc. [1985] Suppl. 1 SCR 657, and held that there is no hard and fast rule regarding the precise weight to be given to the viva voce test, as against the written examination. It was further held that the question of weight to be attached to viva voce would not arise where the selection is to be made on the basis of interview only. The Apex Court ultimately upheld the allocation of 50% marks for viva voce. The facts of the present case and the facts of the case before the Apex Court in **Anzar Ahmed vs. State of Bihar and others** (supra) are similar in as much as here was no written examination and the selection was on the basis of oral interview only.

8. Another Division Bench of the Apex Court in **Kiran Gupta and others etc. etc. vs. State of U.P. and others etc.**(supra), while considering the justifiability of allocation of more than 15 % marks for

interview, made the following observations in para 22 of the judgment.

“ **22.** It is difficult to accept the omnibus contention that selection on the basis of viva voce only is arbitrary and illegal and that since allocation of 15% marks for interview was held to be arbitrary by this Court, selections solely based on interview is a fortiori illegal. It will be useful to bear in mind that there is no rule of thumb with regard to allotment of percentage of marks for interview. It depends on several factors and the question of permissible percentage of marks for an interview test has to be decided on the facts of each case. However, the decisions of this Court with regard to reasonableness of percentage of marks allotted for interview in cases of admission to educational institutions/schools will not afford a proper guidance in determining the permissible percentage of marks for interview in cases of selection/appointment to the posts in various services. Even in this class, there may be two categories: (i) when the selection is by both a written test and viva voce; and (ii) by viva voce alone. The courts have frowned upon prescribing higher percentage of marks for interview when selection is on the basis of both oral interview and a written test. But, where oral interview alone has been the criteria for selection/appointment/ promotion to any posts in senior positions the question of higher percentage of marks for interview does not arise.”

From the perusal of these decisions, it is clear that where oral interview has been the criteria for selection, the question of higher percentage of marks for interview does not arise and the same may even exceed 15%.

9. In the light of the above decisions of the Apex Court, we do not find any merit in the petitioner's grievance that more than 15% marks were allocated for oral interview. The petitioner in this regard relied upon a decision of the Division Bench of the Apex Court in ***Director General., Indian Council for Agricultural Research and others vs. D. Sundara Raju*** (supra). The said decision would not be applicable to the facts of the case in hand, inasmuch as the Apex Court was considering the selection process by way of promotion of Senior Scientist to next higher grade of Principal Scientist.”

13. Taking note of the observations of this Court, the contention of the learned Counsel appearing for the Petitioners that the selection process is vitiated as more than fifteen percent marks have been given for oral interviews which otherwise is not correct, cannot be accepted. The Judgments of the Apex Court relied upon by learned Counsel appearing for the Petitioners are not applicable to the facts of the present case.

14. With regard to the contention of Shri Supekar, learned Counsel appearing for the Petitioners, that the selection of candidates were more than the post advertised, we find that on perusal of the affidavits filed by the State Government much before the selection Committee began the process, additional vacancies arose in such posts which were also required to be filled up. The Petitioners have not pointed out what prejudice has occasioned to them for filling up such additional posts and, consequently, it would not be just to interfere in the recruitment process on this ground.

15. The grievances of the Petitioners that the selection process has been completed in haste also cannot be accepted. The selection and the interview of the candidates went on for nineteen days which can be said to be reasonable in the facts and circumstances of the present case. As no malafides have been attributed on that count by the Petitioners, we find that the said contention also does not deserve any consideration.

16. In view of the above, we find no merit in the above Writ Petition which stands accordingly rejected with no orders as to costs.

K. L. WADANE, J.

F. M. REIS, J.

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