

***THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD
+ Writ Petition Nos.23378 of 2013, 5070, 5260, 5658, 5860, 5864,
8764, 9819, 10497, 18166, 21314 and 27490 of 2015 &
W.P.No.16769 of 2017 and 16770 of 2017**

% Date: 28-04-2017

W.P.No.23378/2013

1. Ponnala Praveen, S/o P. Surender Reddy, 40 years, H.No.2-1-15, Mamathanagar Colony, Road No.13, Nagole, Hyderabad, and others.

PETITIONERS

AND

1. The State of Andhra Pradesh, represented by its Chief Secretary to Government, Secretariat Buildings, Hyderabad, and others.

..... RESPONDENTS

! Counsel for petitioner: Mr. P.V. Krishnaiah
Mr. A. Sudershan Reddy,
Mr. Md. Shafiquz Zaman
Mr. S. Ramachandra Rao,
Mr. K. Satyanarayana Murthy
Senior counsel

^ Counsel for respondents: G.P. for Medical & Family
Welfare
G.P. for Transport
G.P. for General Administration
Mr. G. Vivekananda

< Gist:

> Head Note:

? Cases referred:

1. (2004) 2 SCC 459
2. (2008) 7 SCC 153
3. (1994) 4 SCC 165
4. (2003) 8 SCC 311
5. (2008) 4 SCC 619

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Delivered on: 28-04-2017

Coram:

**The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Mr. Justice G. SHYAM PRASAD**

**Writ Petition Nos.23378 of 2013, 5070, 5260, 5658, 5860, 5864,
8764, 9819, 10497, 18166, 21314 and 27490 of 2015 &
W.P.No.16769 of 2017 and 16770 of 2017**

W.P.No.23378 of 2013

Between:

1. Ponnala Praveen, S/o P. Surender Reddy, 40 years, H.No.2-1-15, Mamathanagar Colony, Road No.13, Nagole, Hyderabad.
2. M. Ashwini Goud, S/o M. Prabhu Goud, 40 years, Unemployee, #2-97, Old Ramachandrapuram, Medak District, Andhra Pradesh.
3. A. Srinivasa Rao, S/o A. Krishna, aged 44 years, H.No.2-2-1076/2, 1st floor, Tilak Nagar, Amberpet, Hyderabad.
4. N. Srinivasa Rao, S/o (late) N. Veera Raghavulu, Aged 40 years, #9-36-12, Vinayanagar Dayal Apartment, Pitapuram Colony, Visakhapatnam District.
5. Sasabilli Venkata Ramana, S/o C. Chinnam Naidu, Aged 39 years, # Veeraghattam village and Mandal, Srikakulam District.
6. B. Suresh Babu, S/o B. Kondappa, 41 years, #27/708, Ambedkarnagar, Ananthapur District.
7. Morla Ramana Rao, S/o M. Nageswara Rao, aged 35 years, R/o Vegavaram Post, Denduluru Mandal, Eluru, W.G. District.
8. Boddu Narasinga Rao, S/o Simhachalam, #2-96, Paravada village and Mandal, Visakhapatnam District.
9. Yejerla Suresh, S/o Seshaiyah, aged 44 years, H.No.70-2-164/1, Store Street, Ramanaiahpet, Kakinada, East Godavari Dist.
- 10.L. Pranith Rajasekhar, S/o Sekhar Babu, aged 33 years, R/o. 3-74, Kalyan Bazar, Budirampadu Post, Komminepally Mandal, Khammam Urban, Khammam Dist.
- 11.K. Sreedhar, S/o Saidulu, 42 years, #3-6-109, Near Hanuman Temple, MRO Office Road, Suryapeta, Nalgonda.
12. E.V. Prasad, S/o Durgaiah, 46 years, H.No.5-6-521, Kopuwada, Karimnagar District.
- 13.Chintha Janardhana, S/o Chintha Narasimhulu, Aged 46 years, H.No.53/183-7, Nabhi Kota Ravindranagar Post, Kadapa District.
- 14.K. Hari Krishna, S/o Syamasundaram, 43 years, H.No.12-1-331/66/504, Dattatreya Colony, Hyderabad.
- 15.Mahesh Kondaji, S/o Venkateswamy, 41 years, H.No.1-1-733, Bhimunidubba, near New Bus Stand, Koratla, Karimnagar.
- 16.K. Krunakar, S/o K. Janardhan Chetty, 38 years, H.No.25/1/424, 5th Cross Road, Postal Colony, A.K. Nagar, Nellore District.
- 17.R. Siva Kumar, S/o Subba Rayudu, 43 years, H.No.28/1052-62-6, Devanagar, Nandyal, Kurnool District.
- 18.C.V. Murali Krishna Reddy, S/o C. Venkata Ramireddy, Aged 37 years, H.No.2-5-85, Satram Street, Allagadda, Kurnool District.

19. Chiluveru Surendar, S/o Chinnaiah (late) aged 31 years, H.No.11-136, Ramnagar Colony, Devarakonda Post and Mandal, Nalgonda District.
20. K. Ranga Rao, S/o Tata Rao, 35 years, H.No.7-148, Near Panchayat Office, Vatluru Post, Pedapadu Mandal, W.G. District.
21. A. Ramesh, S/o Malla Reddy, aged 42 years, H.No.12-7-45/1, Reddy Colony, Mancherial, Adilabad District.
22. K. Madhava Reddy, S/o K.V. Reddy, aged 39 years, H.No.B-478, Phase-II, Near Community Hall, Vanasthalipuram, Hyderabad.
23. Gowni Padma Bhushan, S/o G. Nagappa, aged 38 years, Unemployee, R/o 4/102, Near Head Post Office, Fort, Gooty, Ananthapur District.

... Petitioners

Vs.

1. The State of Andhra Pradesh, represented by its Chief Secretary to Government, Secretariat Buildings, Hyderabad.
2. The State of Andhra Pradesh, represented by its Principal Secretary to Government, Transports, Roads and Buildings Department, Secretariat Buildings, Hyderabad.
3. The Commissioner of Transports, Government of Andhra Pradesh, Khairatabad, Hyderabad.
4. APPSC, represented by its Secretary, Prathiba Bhavan, Nampally, Hyderabad.
5. State of Andhra Pradesh, represented by its Principal Secretary to Government, Medical and Health Department, Secretariat Buildings, Hyderabad.
6. The Superintendent, Osmania General Hospital, Afzal Gunj, Hyderabad.
7. The Superintendent, Gandhi General Hospital, Musheerabad, Hyderabad.

.... Respondents

For Petitioner : Mr. P.V. Krishnaiah

For Respondents : G.P. for Medical & Family Welfare

G.P. for Transport

G.P. for General Administration

Mr. G. Vivekananda

W.P.No.5070 of 2015

Between:

Ch. Rambabu, S/o Veerabrahmam, aged about 38 years, Occ: Assistant Motor Vehicle Inspector, R.T.O., Ongole, Prakasam District.

..... Petitioner

Vs.

1. The Commissioner of Transport, State of Andhra Pradesh, Somajiguda, Hyderabad, and others.

For Petitioner : Mr. A. Sudershan Reddy,
Sr. CounselFor Respondents : G.P. for Services (AP)
Mr. M. Prasda Rao

W.P.No.5260 of 2015

Between:

1. Konduru Ravi Shankar Prasad, S/o Raja Rao, Aged about 40 years, AMVI, O/o Deputy Transport Commissioner, Srikakulam and another.

..... Petitioners

Vs.

1. The Commissioner of Transport, Somajiguda, Hyderabad, State of Andhra Pradesh, Somajiguda, Hyderabad and 15 others.

.. Respondents

For Petitioner : Mr. Md. Shafiquz Zaman
Learned counsel

For Respondents : G.P. for Services (AP)
M/s. Indus Law Firm

W.P.No.5658 of 2015

Between:

Kolla Malleswari, W/o P. Lakshminarayana,
AMVI, DTC Office, Guntur, Flat No.401,
Yaganti Smile Apartment, Maruti Nagar,
Guntur District and 9 others

..... Petitioners

Vs.

1. State of Andhra Pradesh, represented by its Principal Secretary to Govt, Transports, Roads and Buildings, Secretariat Buildings, Hyderabad and 9 others

.. Respondents

For Petitioner : Mr. S. Ramachandra Rao,
Sr. Counsel

For Respondents : G.P. for Services (AP)
G.P. for Services (TG)
Mr. C.V. Mohan Reddy,
Sr. counsel

W.P.No.5860 of 2015

Between:

T. Ravi Kumar, S/o T. Rama Rao,
AMVI, O/o Deputy Transport Commissioner,
Warangal and another

..... Petitioners

Vs.

1. The Commissioner of Transport, Somajiguda, Hyderabad, State of Telangana and 19 others.

.. Respondents

For Petitioner : Mr. Md. Shafiquz Zaman
Mr. K. Satyanarayana Murthy
Sr. Counsel

For Respondents : G.P. for Services (TG)
M/s. Indus Law Firm

W.P.No.5864 of 2015

Between:

1. Smt. K. Malleshwari, W/o. Sri P. Laxminarayana, Occ: Asst. Motor Vehicle Inspector, R/o. Yaganti Smile Apts., Maruthi Nagar, Guntur and another.

... Petitioners

Vs.

1. The Andhra Pradesh Public Service Commission, rep. by its Secretary, Pratibha Bhavan, M.J. Road, Nampally, Hyderabad, and others

... Respondents

For the Petitioner : Mr. K. Satyanarayana Murthy

For Respondents : M/s. Indus Law Firm

W.P.No.8764 of 2015

Between:

1. Pasupuleti Narsimhulu, S/o. P. Venkataiah, Occ. AMVI, Palamaner Ceck Post, Chittoor District, R/o. H.No.4-57/1, Bound Street, Greampet, Chittoor, and others.

... Petitioners

Vs.

1. Gundluri Suhash S/o. G. Surender Reddy, un employee, R/o. 11-410-B, Society Colony, Madanapalli, Chittoor District and others.

... Respondents

For the Petitioner : Mr. K. Satyanarayana Murthy

For Respondents : M/s. Indus Law Firm

W.P.No.9819 of 2015

Between:

Ch. Ram Babu, S/o. Veerabrahmam
Assistant Motor Vehicle Inspector,
C/o. Deputy Transport Commissioner, Ongole.

... Petitioner

Vs.

1. Gundluri Suhash, S/o. G. Surendra Reddy, R/o. 11-410-B, Society Colony, Madanapalli, Chittoor District, and others.

... Respondents

For the Petitioner : Mr. K. Satyanarayana Murthy

For Respondents : M/s. Indus Law Firm

W.P.No.10497 of 2015

Between:

Gundluri Suhash, S/o. G. Surendra Reddy,
R/o. 11-410-B, Society Colony, Madanapalli,
Chittoor District.

... Petitioner

Vs.

1. State of Andhra Pradesh, rep. by its Principal Secretary, Transport, Road & Buildings Department, Secretariat Buildings, A.P. Hyderabad-500 022, and others.

... Respondents

For the Petitioner : Mr. K. Satyanarayana Murthy

For Respondents : M/s. Indus Law Firm

W.P.No.18166 of 2015

Between:

1. Chennuri Ram Babu, S/o. Veerabrahmam Assistant Motor Vehicle Inspector, Ongole, Prakasham District, Andhra Pradesh, and 5 others.

... Petitioners

Vs.

2. State of Andhra Pradesh, rep. by its Principal Secretary, Transport, Road & Buildings Department, Hyderabad-500 022, and 9 others.

... Respondents

For the Petitioner : Mr. K. Satyanarayana Murthy

For Respondents : M/s. Indus Law Firm

W.P.No.21314 of 2015

Between:

1. C.V. Murali Krishna Reddy, S/o. Venkatarami Reddy, R/o. D.No.2-5-85, Satram Street, Zone IV Kurnool, Kurnool District, and others.

... Petitioners

Vs.

1. The Andhra Pradesh Public Service Commission, rep. by its Secretary, Prathiba Bhavan, Nampally, Hyderabad, and others.

... Respondents

For the Petitioner : Mr. K. Satyanarayana Murthy

For Respondents : M/s. Indus Law Firm

W.P.No.27490 of 2015

Between:

1. Rasanul Raghu Babu, S/o. Ushanna, R/o. Dhodaguntapalli (V), Pamireddypalli (PO), Peddamandhadi Mandal, Mahaboob Nagar District, and others.

... Petitioners

Vs.

1. Telangana State Public Service Commission, rep. by its Secretary, Pratibha Bhavan, Nampally, Hyderabad, and others.

... Respondents

For the Petitioner : Mr. K. Satyanarayana Murthy

For Respondents : M/s. Indus Law Firm

W.P.No.16769 of 2017

Between:

M. Ramana Rao, S/o. Nageswara Rao
R/o. Vegavaram Post, Eluru,
West Godavari District.

... Petitioner

Vs.

1. The Andhra Pradesh Public Service Commission, rep. by its Secretary, Pratibha Bhavan, nampally, Hyderabad, and others.

... Respondents

For the Petitioner : Mr. K. Satyanarayana Murthy

For Respondents : M/s. Indus Law Firm

W.P.No.16770 of 2017

Between:

G. Rajaneekanth Roy, S/o. G.S.R. Murthy
D.No.16-2/1, Lanka Nagar,
Prahlapapuram, Visakhapatnam

... Petitioner

Vs.

1. The Andhra Pradesh Public Service Commission, rep. by its Secretary, Pratibha Bhavan, nampally, Hyderabad, and others.

... Respondents

For the Petitioner : Mr. K. Satyanarayana Murthy

For Respondents : M/s. Indus Law Firm

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD**

**Writ Petition Nos.23378 of 2013, 5070, 5260, 5658,
5860, 5864, 8764, 9819, 10497, 18166, 21314 and 27490
of 2015; and W.P.No.16769 of 2017 and 16770 of 2017**

Common Order: (per V.Ramasubramanian, J.)

By a Notification bearing No.45/2008 published on 30-12-2008, the Andhra Pradesh Public Service Commission invited applications online for recruitment to 218 posts of Assistant Motor Vehicle Inspectors in the Andhra Pradesh Transport Subordinate Service. The applications were to be submitted between 13-4-2009 and 30-4-2009.

2. All persons who applied in response to the Notification were invited for a written test on 14-11-2009. Those who were shortlisted in the written examination were invited for a Physical Measurement Test to be conducted by a team of doctors from the Osmania General Hospital, Hyderabad and Gandhi Hospital, Secunderabad on 23-9-2010. The candidates who were found to be of the requisite physical measurements were invited for an oral interview, which was held during the period from 16-02-2012 to 22-02-2012.

3. It must be pointed out at this stage that the post of Assistant Motor Vehicle Inspector is governed by the Special Rules for Andhra Pradesh Transport Subordinate Services. The Rules prescribe both educational qualifications as well as

certain physical measurements, which were incorporated in the Notification for recruitment itself. These requirements are as follows:

“PARA-2: EDUCATIONAL QUALIFICATIONS:

Applicants must possess the qualifications from a recognized University/Board as detailed below or equivalent thereto, subject to various specifications in the relevant Service Rules and as indented by the department as on the date of Notification.

Sl. No.	Name of the Post	Essential Educational Qualifications
01	Assistant Motor Vehicle Inspectors in Transport Subordinate Service	i) Must hold a Degree in Mechanical Engineering or Automobile Engineering of a recognized University in India established or incorporated by or under a Central Act or a Provisional Act or a State Act or institution recognized by the University Grants Commission or any equivalent qualification. OR Must hold a Diploma in Automobile Engineering granted by the State Board of Technical Education and Training, Andhra Pradesh or Technological Diploma Examination Board, Hyderabad or Any other equivalent qualification. ii) Must hold a Motor Driving License and have experience in driving motor vehicles for a period of not less than 3 years and possess Heavy Transport vehicle endorsement. Provided that where persons with 3 years experience in driving motor vehicles are not available, persons with two years experience in driving motor vehicles may be appointed. Provided further that in case of Women, they must hold a Motor Vehicle driving license, if they are holder of Light Motor Vehicle license, if they are holder of Light Motor Vehicle Driving License only, they shall acquire the Heavy Transport Vehicle Endorsement within two years of their joining the service as Assistant Motor Vehicles Inspector, failing which they services will be terminated without assigning any reasons.

PHYSICAL REQUIREMENTS:-

i) For Men:- The Minimum height must not less than 165 Cms. in height and must not be less than 86.3 Cms.

round the chest on full inspiration with a minimum expansion of 5.00 Cms.

a) For Men (SC/ST and Aboriginal Tribes):- The minimum height must not be less than 160 Cms. and must not less than 83.80 Cms. round the chest on full inspiration with a minimum expansion of 5.00 Cms.

ii) For Women:- The height shall not be less than 157.5 Cms. and must not be less than 86.3 Cms. round the chest on full inspiration with a minimum of expansion 5.00 Cms.

iii) Must be certified to possess the visual standards specified below without glasses:

(a) Right Eye: Distance Vision 6/6 Near Vision: 0.5

(on Shellen's Chart)

(b) Left Eye: Distance Vision 6/6 Near Vision: 0.5

(on Shellen's Chart)

(c) Each eye must have a full field of vision.

(d) Colour Blindness, Squint or any morbid conditions on the eyes or lids or either eye, knock kness, pigeon chest, flat foot, varicose veins, hammer goes, fractured limbs and decayed teeth shall be deemed to be a disqualification.

NOTE: The applicants should satisfy a Competent Medical Board as to their fitness, physique, vision etc., as provided for in the rules at the appropriate stage of the recruitment process."

4. After the completion of the 3-tier process of recruitment, the Service Commission forwarded a list of about 169 candidates to the Government as having been finally selected and recommended for appointment. By the proceedings dated 27-02-2012, the Government issued orders of appointment to these 169 candidates and these candidates were sent for training from March to May, 2012.

5. In the meantime, a candidate by name B.Ravi, who was unsuccessful in the Physical Measurements Test, filed an application in O.A.No.7984 of 2011 on the file of the Andhra

Pradesh Administrative Tribunal challenging the rejection of his candidature. While admitting the said application on 10-10-2011, the Tribunal gave an interim direction to send the said candidate for re-medical examination by constituting a competent Medical Board comprising of experts from Gandhi and Osmania Medical Hospitals.

6. Following the said B. Ravi, another candidate by name K. Rajanna moved the A.P. Administrative Tribunal by filing an application in O.A.No.8511 of 2011, challenging a Memo issued on 12-8-2011 by the Public Service Commission, rejecting his candidature on the ground that he did not possess the required physical standards. The main relief sought for by the said K. Rajanna in O.A.No.8511 of 2011 was to set aside the Memo issued by the Public Service Commission and to send him for re-medical examination. He sought a similar interim relief in the application and the interim relief was granted on 01-11-2011, when the application came up for orders as to admission.

7. Despite the fact that the written examination was held on 14-11-2009, the results of the written test were published on 09-02-2010, the candidates were called for certificates verification in March, 2010 and 696 candidates were sent for physical measurements in the last week of September, 2010 and all candidates who were disqualified by the Medical Board were issued with Memos in August, 2011, no candidate except B.Ravi and K. Rajanna moved the A.P.

Administrative Tribunal before the commencement of the interviews on 16-02-2012.

8. However, after the interviews were over and the final list of selectees was published, 2 candidates by name K. Sreedhar and A. Ravi jointly filed an application in O.A.No.2005 of 2012. Interestingly, the prayer made by those 2 applicants in O.A.No.2005 of 2012 was for a declaration that the action of the Public Service Commission and the Commissioner of Transports in going ahead with the selection only on the basis of the certificates issued by the Medical Boards was contrary to law and that the physical measurements of the selected candidates should be carried out in the presence of the applicants. An interim prayer was also sought in O.A.No.2005 of 2012, to submit the party respondents in that application to Physical Measurements Test, in the presence of the applicants in O.A.No.2005 of 2012. It must be pointed out that this O.A.No.2005 of 2012 was actually filed on 13-3-2012, after the issue of the orders of appointment dated 27-02-2012 to the selected candidates and after they had started undergoing training.

9. Following O.A.No.2005 of 2012, a group of about 8 candidates joined together and filed an application in O.A.No.3211 of 2012. The main prayer and the interim relief sought in O.A.No.3211 of 2012 was just the same as those in O.A.No.2005 of 2012.

10. Thereafter, another application in O.A.No.3578 of 2012 was filed by one candidate by name M. Kumar. His grievance was particularly against 2 candidates, who were impleaded as respondents 6 and 7 in his original application. But his allegations against those 2 candidates were completely vague. He merely stated in para 6(i) of his original application that it was reliably learnt and understood that the respondents 6 and 7 were not having sufficient height and chest expansion. Therefore, his main prayer was to set aside the selection of only those 2 candidates and his interim prayer was to consider his own case.

11. The above application was followed by O.A.Nos.3714 3821, 3825 and 5675 of 2012. The application O.A.No.3714 of 2012 was filed by a single individual by name G. Vijay Kumar and his main prayer was to declare him to have been selected and to set aside the selection of about 6 candidates whom he had impleaded as respondents 4 to 9. The interim relief sought in O.A.No.3714 of 2012 was for a direction to the Public Service Commission to send the unofficial respondents for a re-medical examination.

12. Similarly, O.A.Nos.3821 and 3825 of 2012 were filed by one M. Mallikharjuna Rao and P. Anil Kumar respectively, praying for setting aside the selection of about 6 candidates impleaded in the application as respondents 4 to 9. The interim prayer sought in these applications was for a stay of the Provisional Select List.

13. Similarly, O.A.No.5675 of 2012 was filed by 2 candidates, challenging the selection of 4 candidates. The main relief sought in O.A.No.5675 of 2012 was also to set aside the select list and to appoint the applicants. The interim relief sought was to appoint the applicants to the post.

14. As we have pointed out earlier, ***only 2 persons who were the applicants in O.A.Nos.7984 and 8511 of 2011 went before the Tribunal immediately after the rejection of their candidature by the Medical Board constituted in September, 2010. All other candidates who were unsuccessful, went before the Tribunal only after March, 2012 i.e. after the selected candidates joined duty and started undergoing training.*** Another important aspect is that ***instead of challenging their own non-selection, most of these candidates challenged the selection of a few named individuals in the Physical Measurements Test and sought the cancellation of their selection.*** Insofar as the interim reliefs are concerned, the candidates who went before the Tribunal sought different types of interim orders. Some of them sought a stay of operation of the select list, some of them sought an interim direction to send a few named individuals for re-medical examination and some of them sought an interim direction to consider their own cases for appointment rather than seeking the disqualification of the named individuals.

15. During the pendency of these original applications, the Government issued a Memo No.10662/A2/2012-1, dated 13-7-2012, requesting the Director of Medical Education to constitute a Medical Board with senior doctors working in Gandhi Medical College, Secunderabad and Osmania Medical College, Hyderabad, in the place of the existing Medical Board, for conducting re-medical test and re-physical measurements, without deputing the doctors who conducted medical examination earlier. Since this Memo dated 13-7-2012 now happens to be the genesis of the entire spate of litigation, we deem it fit to extract the Memo dated 13-7-2012 as follows:

“The attention of the Director of Medical Education, A.P., is invited to the reference first cited, wherein it was directed to constitute a fresh independent Medical Board for the limited purpose of medical re-examination of the candidates for the post of Assistant Motor Vehicle Inspector in A.P. Transport Sub-Service, by drawing experts from Gandhi Hospital, Secunderabad/Osmania General Hospital, Hyderabad, as per the orders of the Tribunal dated: 1-11-2011 in OA No.8511/2011. Accordingly, he has conducted the medical test, and the APPSC has selected 158 candidates as AMVIs.

2. In the reference 3rd cited, the T.R & B Dept. have stated that certain un-employee aspirants have filed complaint petition stating that certain candidates who are selected as AMVIs are not medically fit and they managed medical boards of Osmania and Gandhi Hospital and got appointments; that some of the candidates disqualified in previous notification for the colour blindness also got through the medical examination and got appointments and that 16 candidates who were selected have not fulfilled the condition of physical fitness. Due to malpractices of some of the candidates, the complainant candidates who

got qualified in both medical and written and viva conducted by the A.P. Public Service Commission, have lost the opportunity of appointment as AMVI. Such candidates have requested to re-conduct medical test to the AMVIs who are selected through the Notification No.45/2008, so that they may be given opportunity of getting posted as AMVIs.

3. The Additional Transport Commissioner in the reference 2nd cited has informed that after completion of written test, medical test and oral interview, the APPSC selected 158 candidates, they have undergone training and postings were also issued after completion of training. Further, after completion of the selection process and announcing the result, further enquiries if any should be got done by the Government only.

4. The T.R&B Dept. have therefore, requested this Dept. to constitute another Medical Board in place of the existing one with senior doctors so as to enable them to refer the present issue for conducting re-medical test and re-physical measurements in the first instance.

5. The Director of Medical Education, A.P., Hyderabad is therefore requested to constitute another Medical Board with senior doctors working in Gandhi Medical College, Secunderabad and OMC, Hyderabad or any other hospitals / medical colleges, in place of existing Medical Board, for conducting re-medical test and re-physical measurements, without deputing the doctors who have conducted medical re-examination earlier, for selection of AMVIs.”

16. Pursuant to the aforesaid Memo dated 13-7-2012, the Director of Medical Education appears to have constituted a Medical Board at MGM Hospital, Warangal, though the direction issued by the Government in para 5 of their Memo dated 13-7-2012 was to constitute a Medical Board with senior doctors from Gandhi Medical College, Secunderabad and Osmania Medical College, Hyderabad. Interestingly, the constitution of the Medical Board with doctors at MGM

Hospital, Warangal, appears to have been ordered by the Director of Medical Education on 13-7-2012 itself, the very day on which Government Memo dated 13-7-2012 was issued.

17. Pursuant to the constitution of the second Medical Board, the Superintendent of MGM Hospital, Warangal, fixed a period of 6 days from 01-11-2012 to 06-11-2012 for the examination of all the selected candidates. Therefore, by the proceedings dated 26-10-2012, the Transport Commissioner, Hyderabad, directed all newly recruited candidates to attend a re-medical examination at MGM Hospital, Warangal.

18. In the reference column of the proceedings dated 26-10-2012 issued by the Transport Commissioner, there is a reference to 6 proceedings. The Government Memo dated 13-7-2012 was at serial No.4 in the reference column and the letter of the Director of Medical Education constituting the second Medical Board pursuant to the Government Order was at serial No.5 in the reference column. The letter of the Director of Medical Education cited in column No.5 of the reference is also dated 13-7-2012, the very same day on which the Government directed the Director of Medical Education to constitution a fresh medical Board.

19. ***Two interesting aspects to be noted here are (a) that the Director of Medical Education sprung into action on the very same day, namely 13-7-2012, on which the Government ordered a re-medical examination***

and (b) that contrary to the directions issued by the Government to constitute a fresh Medical Board with senior doctors from Gandhi Medical College, Secunderabad and Osmania Medical College, Hyderabad, the Director of Medical Education chose to select doctors from MGM Hospital, Warangal.

20. Aggrieved by the Memo issued by the Transport Commissioner on 26-10-2012 to go for a second medical examination, 2 candidates who were selected and undergoing training, filed applications in O.A.Nos.8548 and 8549 of 2012 on the file of the A.P. Administrative Tribunal. Though the Tribunal admitted those applications, the interim relief sought by them not to subject the selected candidates for fresh medical examination, was rejected by the A.P. Administrative Tribunal by an order dated 31-10-2012. Therefore, all selected candidates were left with no alternative except to undergo the process of re-verification of physical measurements in MGM Hospital, Warangal, from 01-11-2012 to 06-11-2012.

21. It appears that even when the process of re-verification of physical measurements was going on, some of the candidates protested on the ground that they were subjected to harassment. However, the re-verification of the physical measurements was completed by 06-11-2012 and a report was submitted.

22. As per the report dated 29-11-2012 submitted by the second Medical Board to the Transport Commissioner on 29-11-2012, a total of 167 candidates out of the 169 selected candidates attended the process of re-verification, leaving 2 absentees. Out of those 167 candidates, the second Medical Board declared 83 candidates as not having the requisite physical measurements.

23. A careful look at the report of the second Medical Board would show that they disqualified 83 candidates under one or more of the following criteria namely (1) height, (2) chest minimum, (3) chest expansion, (4) varicose veins, (5) decayed tooth, (6) visual standards, (7) flat foot and (8) a combination of one or more of the above. The number of candidates disqualified under each one of these parameters, could be summarised as follows:

(1) Height	= 7
(2) Chest minimum	= 14
(3) Chest expansion	= 35
(4) Varicose veins	= 1
(5) Decayed tooth	= 7
(6) Visual standards	= 4
(7) Flat foot	= 2
(8) Combination of one or more of the above	= 13

Total	= 83

24. Yet another interesting feature of the report dated 29-11-2012 submitted by the second Medical Board was that instead of presenting the break-up as we have done above,

to show as to how 83 candidates failed the Physical Re-measurement Test, the second Medical Board gave a different table that added to the confusion. The table furnished by the second Medical Board as part of their report dated 29-11-2012 is as follows:

“STATEMENT SHOWING THE PHYSICAL STANDARDS
WHICH COULD NOT BE FULFILLED BY THE CANDIDATES

Sl. No.	PARTICULARS	No. of Candidates
1	Height	13 (8M+5F)
2	Chest Expansion	41 (21M+20F)
3	Minimum Chest	18 (17M+1F)
4	Decayed Teeth	12 (9M+3F)
5	Vision Standards	6 (M)
6	Colour Blindness	2 (M)
7	Varicose veins	2 (M)
8	Flat foot	3 (M)
9	Fractured Limbs	1 (M)
10	Knock Knees	1 (F)

25. It may be seen that the break-up given by us in the paragraph immediately preceding the previous paragraph tallies exactly with the total number of candidates said to be disqualified namely 83 in number. But in the Statement annexed to the report of the second Medical Board, the total comes to about 99 out of 167.

26. Perplexed at the report of the second Medical Board, the Government issued a Memo dated 19-3-2013, constituting a Committee comprising of 2 doctors and one Joint Transport Commissioner to examine the medical reports and to suggest the further course of action. Interestingly, the decision to constitute such a Committee was taken in a meeting convened on 21-01-2013, with the Superintendents

of the Gandhi Hospital and Osmania General Hospital, whose doctors were in the first Medical Board.

27. The said Committee met on 10-5-2013, analysed the report of the second Medical Board and gave an opinion, which reads as follows:

“After going through the minutes of the meeting dated: 21-01-2013 the above Committee has expressed the following views.

- (1) The deficiency of Decayed Teeth may be allowed for correction.
- (2) The Deficiencies viz, Varicose Veins, Knock Knees, Fractured Limbs at the time of Physical examination time to be disallowed.
- (3) As regards to the variation in measurement of Chest expansion and Height variation up to 1 cm may be possible as an interpersonal variation Or use of different types of measuring Equipment.
- (4) As the Transport Department is an uniformed services with field work, the existing Rules to be applied as regard to flat foot and Knock Knees.
- (5) Colour Blindness a permanent Disability – Hence Disallowed – However Refraction Errors on correction may be allowed as per the standard decided by Ophthalmologist.”

28. Accepting the recommendations of the Committee of Experts made on 10-5-2013, the Government directed the Transport Commissioner to prepare a list of selected candidates who had to be sent out of employment. Accordingly, the Transport Commissioner issued show cause notices dated 13-11-2013 to about 15 candidates, calling upon them to show cause as to why their services should not

be terminated in terms of Rule 10(e) of the Andhra Pradesh State and Subordinate Services Rules, 1996.

29. All the 15 candidates gave their replies to the show cause notices. However by a common order dated 23-11-2013, the Transport Commissioner terminated the services of those 15 candidates in terms of Rule 10(e) of the A.P. State and Subordinate Services Rules, 1996. The deficiencies, on account of which the services of those 15 candidates were terminated, are given in a tabular column in the Order dated 23-11-2013, which is as follows:

Sl. No.	Name and Designation	Place of working	Name of the deficiency(s)
1.	T. Venugopala Rao, AMVI	ICP, Purushothapuram, Srikakulam Dist.	Height is 163.8 as against 165.0
2.	Koduru Ravi Shankar Prasad, AMVI	O/o Dy. Transport Commissioner, Srikakulam	1) Height is 164.1 as against 165.0 2) Colour-Blindness
3.	Bayyavarapu Srinivasa Rao, AMVI	ICP, B.V. Palem, Nellore Dist.	Height is 164.0 as against 165.0
4.	Chennuri Rambabu, AMVI	O/o RTO, Ongole, Prakasam Dist.	Height is 162.6 as against 165.0
5.	Kolla Malleswari, AMVI	O/o DTC, Guntur	Height is 154.6 as against 157.5
6.	Nelluri Prasanna Kumari, AMVI	O/o DTC, Guntur	Height is 157.2 as against 157.5
7.	Mahammad Ismail Khan, AMVI	ICP, Naraharipet, Chittoor Dist.	Height is 161.9 as against 165.0
8.	Pasupuleti Narasimhulu, AMVI	Palamner Check Post, Chittoor Dist.	Height is 164.0 as against 165.0
9.	Mandal Nirmala, AMVI	O/o RTO, Khammam	Height is 157.0 as against 157.5
10.	J. Prameela, AMVI	Paloncha Check Post, Khammam Dist.	Height is 150.0 as against 152.5
11.	Thotamalla Ravikumar, AMVI	O/o DTC, Warangal	Height is 159.6 as against 160.0
12.	Maheshwaram	RTA, Hyderabad	Height is 156.2 as

	Venkataiah		against 160.0
13.	M.R. Shilpa, AMVI	RTA, Hyderabad	Height is 156.4 as against 157.5
14.	P.Kiran Kumar, AMVI	Shapur Check Post, Rangareddy Dist.	Height is 164.9 as against 165.0
15.	Jayaprakash Reddy Sabbu, AMVI	Zaheerabad Check Post, Medak Dist.	Colour-Blindness

30. Thus it could be seen that ***out of the 15 candidates eventually terminated, the termination of 13 candidates was on account of deficiency in height, the termination of one candidate was on account of colour blindness and the termination of another candidate was both on account of colour blindness and on account of deficiency in height.*** It is also to be noted that the deficiency in height ranged from 0.1 cm to 3.8 cms. As a matter of fact, the deficiency in height of 9 out of 13 candidates was only 1 cm and below.

31. Upon receipt of orders of termination, 2 out of those 15 candidates filed O.A.No.8274 of 2013, 10 candidates filed O.A.No.8275 of 2013 and 3 candidates filed O.A.No.8276 of 2013, on the file of the A.P. Administrative Tribunal challenging the orders of termination. On 26-11-2013, the Administrative Tribunal admitted the original applications and granted an interim order directing the Government to reinstate all the 15 candidates. Accordingly, the Government passed an order 11-12-2013 reinstating all the 15 terminated employees into service. The Government filed vacate stay

petitions and a lot of unselected candidates jumped into the fray and got impleaded in those 3 original applications.

32. But even before the issue of the orders of termination dated 23-11-2013, several unselected candidates filed a number of applications in O.A.Nos.570, 1018, 1140, 1227, 1440, 1948 and 2014 of 2013 seeking a direction to the Government to throw the entire set of 83 candidates found by the second Medical Board to be unfit for appointment, out of employment and to appoint them in their place. One unselected candidate filed O.A.No.8390 of 2013, praying for considering his case of appointment, in the place of the terminated candidate. This application O.A.No.8390 of 2013 was filed obviously after the order of termination of 15 candidates.

33. Thus, there were a host of original applications before the A.P. Administrative Tribunal, some of which were filed by the unselected candidates craving to unseat the selected candidates and to take their place and the others by 15 candidates whose services were terminated, based upon the second Medical Report and the recommendations of the Committee of Experts constituted by the Government. All the applications were classified (with or without logic) into 2 groups by the A.P. Administrative Tribunal. Into the 1st group fell a batch of about 15 applications in O.A.Nos.1018, 2005, 3211, 3578, 3714, 3821, 3825 and 5675 of 2012, 570, 1140,

1227, 1440, 1948, 2014 and 8390 of 2013. The candidates who were the applicants in these original applications and the reliefs sought by them are summarised in a tabular column for easy appreciation as follows:

OA No.	Status of the applicants	Prayer
1018/2012	Unselected (1)	To set aside the selection of 2 unofficial respondents and to consider his appointment.
2005/2012	Unselected (2)	To consider their case for appointment in Zone-VI against the vacancies created for SC candidates.
3211/2012	Unselected (8)	To declare the action of R.1 & R.2 as illegal and arbitrary, and to conduct fresh physical measurements in their presence.
3578/2012	Unselected (1)	To set aside the selection of R.6 & R.7 and consider their case.
3714/2012	Unselected (1)	To set aside the selection of unofficial respondents and to consider his case.
3821/2012	Unselected (1)	To declare the Provisional Selection List of R.2 as arbitrary.
3825/2012	Unselected (1)	To declare the selection of R.4 to R.14 as illegal and consider his case.
5675/2012	Unselected (2)	To declare the selection of R.6 to R.9 and consider their case.
570/2013	Unselected (1)	To appoint the candidates selected by the 2 nd Medical Board and replace them against the ineligible and unqualified AMVIs.
1140/2013	Unselected (2)	Not considering the candidature based on the Merit List issued by the second Medical Board as illegal.
1227/2013	Unselected (1)	Not considering the candidature based on the Merit List issued by the second Medical Board is illegal.
1440/2013	Unselected (9)	To cancel the appointments of the disqualified candidates and appoint them in those vacancies based on the merit list issued by the 2 nd Medical Board.
1948/2013	Unselected (1)	To consider the appointment of the candidates selected by the 2 nd Medical Board.
8390/2013	Unselected (1)	To cancel the appointments of the disqualified candidates and appoint them in those vacancies based on the merit list issued by the 2 nd Medical Board.
2014/2013	Unselected (3)	To consider and appoint them as per the 2 nd Medical Board's results.

34. Similarly, the Tribunal took up, under the 2nd group of cases, a batch of 5 original applications in O.A.Nos.8592 of

2012, 7160, 8274, 8275 and 8276 of 2013. The status of the applicants in these 5 applications and the reliefs sought for by them are placed in a tabular column for easy appreciation.

OA No.	Status of the applicants	Prayer
8592/2012	Selected (8)	To set aside the Memo dated 26-10-2012 and other consequential Memos directing the applicants to attend re-medical examination.
7160/2013	Selected (2)	Quash the Memos dated 02-5-2012, 13-7-2012 and 26-10-2012 issued by the respondents.
8274/2013	Selected (2)	To set aside the termination order issued by the Transport Commissioner dated 23-11-2013.
8275/2013	Selected (10)	To declare that the applicants are entitled to continue in service with all consequential benefits.
8276/2013	Selected (3)	To set aside the termination order issued by the Transport Commissioner dated 23-11-2013.

35. By a final order dated 09-02-2015, the Tribunal first dismissed all the 5 cases forming part of the 2nd group after holding that the constitution of a second Medical Board for re-verification of the physical measurements was perfectly valid and that the termination of the services of 15 candidates was also correct.

36. As a consequence, the Tribunal, by a separate order passed on the same day, namely 09-02-2015, disposed of the 15 cases falling in the 1st batch, with a direction to the Government to appoint the eligible candidates in the vacancies created due to the termination of the services of 15 candidates, by duly following the roster and merit.

37. Challenging the 2 different sets of orders passed by the A.P. Administrative Tribunal, on the same day, namely 09-02-2015 in the aforesaid 2 different batches of cases, both the terminated candidates as well as the unselected candidates have come up with the present batch of writ petitions. While the grievance of the terminated candidates is that the termination of their services has been wrongfully upheld by the Administrative Tribunal, the grievance of the unselected candidates is that instead of sending out only 15 candidates, the Government ought to have terminated the services of all 83 candidates found by the second Medical Board not to be satisfying the physical measurements prescribed by the Rules.

38. Thus, we have on hand 2 warring groups who have challenged and/or defended every step in the process of selection and have been litigating for the past 5 years. The unfortunate part of the whole story is that this series of litigation is also fuelled by a spate of orders, interim or otherwise, passed by the Tribunal and/or by this court.

39. Since the parties to these writ petitions comprise of three categories, viz., (1) candidates whose services were terminated after appointment; (2) candidates, who were unselected and who secured several orders; and (3) the Government and the Government Departments, we would

refer to the parties not by their ranking in the writ petitions but by their status, for easy reference.

40. We have heard Mr. P. Gangaiah Naidu, S. Ramachandra Rao and D.V. Seetharama Murthy, learned Senior Counsel appearing for the selected and terminated candidates, and Mr. C.V. Mohan Reddy, learned Senior Counsel and Mr. P.V. Krishnaiah, learned counsel appearing for the unselected candidates and the learned Government Pleader for Transport (Telangana).

41. As we have indicated earlier, the objection of the selected candidates, whose services were terminated, is first to the very constitution of the second Medical Board. If the constitution of the second Medical Board by the Government is found to be correct, it is **only** then that the other issues as to whether the termination of the services of 15 candidates was proper or as to whether the services of all 83 candidates found by the second Medical Board to be deficient in physical measurements should have been terminated etc., would arise for consideration. Therefore, the first and foremost question that we have to decide in this batch of writ petitions is as to whether the constitution of the second Medical Board by the Government was fair and proper or not?

42. At the cost of repetition, we remind ourselves first, of the sequence of events, in order to find an answer to the

first question. Therefore, the sequence of events is listed as follows:

<u>Date</u>	<u>Event</u>
30.12.2008	Notification inviting applications
14.11.2009	Written test.
23.09.2010	Physical measurement test by the Doctors of Osmania Medical Hospital and Gandhi Medical Hospital
16.02.2012 to 22.12.2012	Interviews.
27.02.2012	Appointment orders issued to 169 candidates.
March to May, 2012	the selected candidates sent for Training
13.07.2012	The Government issues a Memo requesting the Director of Medical Education to constitute a Medical Board with senior Doctors working in Gandhi Medical Hospital, Secunderabad and Osmania Medical Hospital, Hyderabad.
13.07.2012	The Director of Medical Education constitutes a second Medical Board on the very same day, but with Doctors from MGM Hospital, Warangal.
26.10.2012	The Transport Commissioner, Hyderabad, directs all newly recruited candidates to attend re-medical examination at MGM Hospital, Warangal, from 1.11.2012 to 6.11.2012.
31.10.2012	Two selected candidates filed O.A.Nos.8548 & 8549/2012 challenging the constitution of the second Medical Board, but the Tribunal refused to stay the second Medical board.
01.11.2012	Second Medical examination held

29.11.2012	The report of the second Medical Board submitted to the Transport Commissioner.
19.03.2013	The Government constitutes a Committee comprising of two Doctors and one Joint Commissioner to examine the medical reports, and to suggest the course of action.
10.05.2013	The Committee submits a report that though 83 candidates were found by the second Medical Board to be deficient in physical measurements, the deficiencies in respect of majority of them are ignorable and hence action can be taken only in respect of 15 out of 83 found deficient by the second Medical Board.
13.11.2013	A show cause notice is issued to 15 out of 169 selected candidates, of whom 83 were found deficient by the second Medical Board.
23.11.2013	Orders of termination passed as Against 15 candidates.

43. In the batch of cases on hand, the entire process of selection was in the hands of the Public Service Commission and the process commenced on 31-08-2008 with the issue of a notification. The written examination was held on 14-11-2009 and the physical measurement test was conducted in September, 2010. The first set of persons to approach the A.P. Administrative Tribunal in the year 2011 had only a limited grievance that their own physical measurements were not properly done. It was only after oral interviews were held in

February, 2012 and orders of appointment were issued on 27-02-2012, that several persons started approaching the Tribunal with a grievance that candidates who did not satisfy the physical measurements were found eligible in the physical measurement test conducted by the team of doctors.

44. Interestingly, none of the unsuccessful candidates made any semblance of an allegation in any of the Original Applications before the A.P. Administrative Tribunal as against the Public Service Commission, which conducted the written examination as well as the oral interviews. ***The process of selection adopted by the Public Service Commission in the form of written examination as well as oral interview was not at all assailed by any of the unsuccessful candidates. All the ire of the unselected candidates turned only as against the Medical Board, which took the physical measurements of candidates shortlisted in the written examination.***

45. Since the Public Service Commission itself does not have the expertise to check certain aspects such as colour blindness, varicose veins etc., the Service Commission naturally had to outsource the task of taking physical measurements to a team of doctors. ***None of the selected candidates ever made any complaint to the Service Commission, before the interviews were conducted, about the alleged irregularities committed by the Medical Board.*** As we have pointed out earlier, there was a time gap

of about 17 months from the date on which physical measurements were taken in September 2010 and the dates on which interviews were conducted in February 2012. **No allegations of malafide exercise of power were ever made as against the individual members of the Medical Board comprising of senior doctors of two reputed Medical Institutions.**

46. It must be remembered that the Public Service Commission is vested under Article 320 of the Constitution, with the duty and power to conduct examinations for appointments to the Services of the Union and the Services of the States. Article 320 (3) lists out the matters on which consultation with the Public Service Commission is mandatory. Article 320 (3) of the Constitution reads as follows:

“(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case

may be, the Governor, of the State, may refer to them: Provided that the President as respects the all India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.....”

47. The Government as well as the A.P. Administrative Tribunal have completely overlooked or forgotten to bear in mind one crucial distinction between (1) subjecting a selected candidate to medical examination and (2) conducting a physical measurement test before selection. The conduct of a physical measurement test before the completion of the process of selection, is within the exclusive domain of the Public Service Commission. Subjecting a selected candidate to medical test before the issue of appointment order lies within the domain of the appointing authority/Government. **Once a request is made by the Government to the Public Service Commission to select a particular number of candidates for appointment to a post, the entire process of selection comes within the domain and power of the Public Service Commission. From the stage of issue of the notification for recruitment, up to the stage of sending the select list of candidates to the Government, it is the Service Commission that has control over all intermediary steps.** Therefore, if the Government finds one of the steps in the process of selection coming within the exclusive control of the Public Service Commission, to have been vitiated, then the Government is obliged to consult the Public Service

Commission under Article 320 (3) of the Constitution, before taking any corrective measure. **Otherwise, the constitutional autonomy conferred upon the Public Service Commission will stand encroached.**

48. Therefore, if at all the Government was convinced that the Medical Board to which the Public Service Commission entrusted the task of taking physical measurements had not done its duty properly, **the Government ought to have sought the advice of the Public Service Commission before ordering the constitution of a second Medical Board.** This is especially so for two reasons namely **(a) that the alleged irregularities happened at the stage when the Public Service Commission was in absolute control of the process of selection and (b) that even now there are no allegations of corrupt practices or malafide exercise of power either against the Public Service Commission or even against the Medical Board constituted by the Public Service Commission.**

49. Since the Government ordered the constitution of the second Medical Board without any reference to the Public Service Commission, **the very constitution of the second Medical Board is contrary to law in the teeth of Article 320 (3) of the Constitution.** One more aspect that should be borne in mind is that **no allegations of corrupt practices**

have been made against the members of the Medical Board to which the task of taking the physical measurements was entrusted by the Public Service Commission before the conduct of the interviews. Adoption of corrupt practices is not to be presumed on the principle of res ipsa loquitur. Even if the Medical Board, out of negligence had not carried out its task properly, in September 2010, the candidates or even the Government ought to have requested the Public Service Commission not to go ahead with the interviews in February 2012 until the cloud of suspicion was cleared. This was not done. Therefore, the very constitution of the second Medical Board is clearly contrary to law.

50. As we have pointed out earlier, the very Government Memo directing the Director of Medical Education to constitute a second Medical Board was dated 13-07-2012. The Director of Medical Education constituted the second Medical Board by his proceedings dated the very same day namely 13-07-2012. We do not know how it happened with such a lightning speed. More over the Government direction was to constitute a second Medical Board with doctors from two reputed hospitals in Secunderabad and Hyderabad. But the Director of Medical Education constituted the second Medical Board with doctors from Warangal. These facts coupled with the failure of the Government to refer the matter to the Public Service Commission in terms of Article 320 (3),

renders the exercise of constitution of the second Medical Board, highly arbitrary apart from being illegal and unconstitutional. Therefore, we are of the considered view that the second Medical Board constituted as a challenge to the physical measurements made by the first Medical Board, was illegal and hence, no action can be initiated on the basis of the report of the second Medical Board.

51. As a normal rule, one illegality in administration will generally lead to another, with the second leading to the third and so on and so forth. As if to prove this theory right, the Government constituted an Expert Committee comprising of two doctors and the Joint Transport Commissioner to examine the report of the second Medical Board. This expert committee overruled the opinion of the second Medical Board with respect to 68 candidates and accepted the report of the second Medical Board only in respect of 15 candidates. ***The constitution of the expert committee to examine the report of the second Medical Board and to suggest corrective measures, was also an illegality and it was a product of the “original sin” namely that of ordering the constitution of the second Medical Board.***

52. It is needless to mention that there can be no *via media* or patch up work or compromise in the matter of illegalities. If the first Medical Board was wrong and the second Medical Board was right, the report of the latter cannot be diluted by an expert committee. The attempt at

diluting the same is actually born out of the first illegality in not consulting the Public Service Commission before taking a corrective measure. Though in respect of matters relating to disciplinary action falling under Article 320(3)(c), consultation with the Public Service Commission has been held only to be directory and not mandatory, the same is not the precedent with regard to the other sub-clauses under clause (3) of Article 320. Therefore, we hold that the constitution of the second Medical Board was contrary to law.

53. Arguments were advanced by the learned counsel appearing for the unsuccessful candidates to the effect that as the appointing authority, the power of the Government to subject the group of selected candidates to medical examination, cannot be questioned. Reliance is placed in this regard, upon a judgment of the Supreme Court in ***P. Srinivas v. M. Radhakrishna Murthy and others***¹.

54. But the above argument loses sight of one important distinction. ***The power of the Government to subject a selected candidate to a medical examination is different from the power of the Government to check the correctness of the report received by the Public Service Commission from the team of doctors, who took physical measurements, before interviews were conducted.*** The power before selection and the power after selection are compartmentalised. In *P. Srinivas*, the issue before the

¹(2004) 2 Supreme Court Cases 459

Supreme Court was actually the fixation of seniority. Incidentally, a question arose as to whether the Government could enlarge the joining time for a selected candidate, when the power to enlarge the joining time was already conferred upon the Commission. It is in this regard that the Supreme Court held that even if the power of extending the time was given to the Commission by the Government itself, the Government was not denuded of its powers to extend the time. Therefore, the case has no application to the facts of the present batch.

55. Reliance was placed by the unsuccessful candidates on the decision of the Supreme Court in ***Pramod Kumar v. U.P. Secondary Education Services Commission and others***². But the said case arose out of the termination of the services of a selected candidate, on the ground that he produced a fabricated and illegal degree certificate. Therefore, he was found to be not qualified for appointment at all and hence, the case stands on a different footing.

56. In ***Krishan Yadav and another v. State of Haryana***³ the Supreme Court found clear proof of favouritism, nepotism, unfairness and a great deal of political influence playing a vital role in the selection of Taxation Inspectors, disregarding merit altogether, shocking the conscience of the Court. Therefore, the Supreme Court set aside the entire selection. But as we have pointed out earlier,

² (2008) 7 Supreme Court Cases 153

³ (1994) 4 Supreme Court Cases 165

no allegations of corrupt practices are made in this batch of cases against the Public Service Commission, which conducted the written examination before the physical measurement test and also conducted the oral interview after the physical measurement test. There were not even allegations of corrupt practices against the team of doctors who took the physical measurements. As a matter of fact the finding of the second Medical Board that 83 candidates do not satisfy the physical measurement test, has now been set at naught by the expert committee. Therefore, the case before the Supreme Court in *Krishan Yadav* has no comparison to the one on hand.

57. In ***Ram Preeti Yadav v. U.P. Board of High School***⁴, the Court found fraud on the part of the candidates. Though the Court also pointed out in paragraph 13 that negligence can be an evidence of fraud, it could only be one of the pieces of evidence. ***If no fraud is alleged or proved and no irregularities are alleged either in the matter of conduct of written examination or in the matter of conduct of interviews on the part of the Service Commission, an allegation of negligence on the part of the team of doctors who took physical measurements in between the process of written examination and interview, cannot lead to an inference of fraud.*** Therefore, we are of the considered view that the constitution of the

⁴ (2003) 8 Supreme Court Cases 311

second Medical Board without consulting the Public Service Commission was illegal and the manner in which the Director of Medical Education went about its constitution, appears to be arbitrary. The A.P. Administrative Tribunal failed to take into account this crucial aspect. If this aspect had been taken note of, the Tribunal would have allowed the applications of the selected candidates challenging the constitution of the second Medical Board. If the applications challenging the constitution of the second Medical Board had been allowed, all other issues would have automatically fallen like a pack of cards.

58. In ***Sadananda Halo and others v. Momtaz Sheikh and others***⁵, the selection to 5500 posts of Armed Constables in the State of Assam was challenged on the ground that there were large scale irregularities. A single Judge of the Gauhati High Court directed the constitution of a Committee of 3 Judicial Officers to examine a sample survey of records of the selected as well as unsuccessful candidates and eventually set aside the selection process for 15 Districts, while upholding the selection process for 10 Districts. The Division Bench partially allowed the appeals in respect of 4 Districts. While reversing the judgments of the Single Judge as well as the Division Bench and upholding the entire selection, the Supreme Court pointed out in paragraph 59 of its judgment that it is a settled position that the

⁵ (2008) 4 Supreme Court Cases 619

unsuccessful candidates cannot turn back and assail the selection process, except under certain situations. The Court also pointed out in paragraph 60 of its decision that unless a selection process is vitiated by *mala fide* exercise of power or lack of *bonafides* or bias or political interference, they do not call for any interference.

59. As we have pointed out in more than place,

- (i) the conduct of physical measurement test took place after the written examination but before the viva voce;
- (ii) only 2 candidates, who failed in the physical measurement test, approached the Tribunal in the year 2011, before the viva voce was conducted;
- (iii) all other candidates approached the Tribunal only after the declaration of the results in the viva voce;
- (iv) the grievance of some of the unselected candidates arose only after their participation in the interview and not being able to make it to the final select list.

In other words, the aspiration of most of the unsuccessful candidates, who went before the Tribunal, was that if a few candidates, who out beat them in the oral interview, could be failed in the physical measurement test conducted much before the interview, these unsuccessful candidates can take their place. Unfortunately, the Government and the Director of Medical Education appear to have fallen a prey to these aspirations of the unsuccessful candidates. This led to the constitution of a second Medical Board and the whole

confusion created thereafter. Therefore, we are of the considered view that the constitution of the second Medical Board was arbitrary and contrary to law.

60. In fact the constitution of the Second Medical Board and the findings recorded by them became questionable even by the findings recorded by the Expert Committee comprising of 2 doctors, constituted by the Government in April, 2015. At least in respect of 4 out of 15 candidates, the Expert Committee constituted by the Government with 2 doctors, gave different measurements of height, contrary to the measurements given by the second Medical Board. This can be seen from the following table:

Name of selected candidate	Height measured by second Medical Board on 1-11-2012	Height measured by expert committee on 6-4-2015
1) Malleswari	154.6	155.8
2) J. Pameela	150.0	153.0
3) M.R. Shilpa	156.4	158.5
4) Md. Ismail Khan	161.9	163.9

61. Therefore, the constitution of the second Medical Board, especially when the entire exercise undertaken by the Public Service Commission never became suspect, was completely uncalled for. Once this is clear, all consequential actions taken by the official respondents would also be illegal. Therefore, the orders of termination passed as against 15 candidates are liable to be set aside.

62. Hence, W.P.Nos.5070 of 2015, 5260 of 2015, 5658 of 2015, 5860 of 2015 and 5864 of 2015, filed by the selected candidates as against their termination, are liable to be

allowed. Accordingly, these writ petitions are allowed and the order of the A.P. Administrative Tribunal, dated 09-02-2015 passed in O.A.Nos.8274, 8275 and 8276 of 2013 rejecting the challenge of these candidates to the orders of termination is set aside. These Original Applications shall stand allowed and the orders of termination set aside. Similarly, the writ petitions filed by the selected candidates in W.P.Nos.5864 of 2015 and 18166 of 2015, which arose out of O.A.Nos.7160 of 2013 and 8592 of 2012 challenging the very constitution of the second Medical Board are also allowed.

63. As a consequence, W.P.Nos.8764 and 9819 of 2015 filed by the selected candidates as against the order of the Tribunal in O.A.No.570 of 2013 allowing the application of an unselected candidate, is also allowed and the order of the Tribunal in O.A.No.570 of 2013 is set aside. O.A.No.570 of 2013 shall stand dismissed.

64. W.P.No.23378 of 2013 is filed by a group of 23 unselected candidates questioning the alleged apathy on the part of the official respondents in not taking action against the doctors, who constituted the first Medical Board and seeking a further direction to order an enquiry. Since this writ petition is filed on the basis of the second Medical report and also since we have held the constitution of the second Medical Board itself to be illegal, this writ petition is devoid of merits and hence, it is dismissed.

65. W.P.Nos.10497, 21314 and 27490 of 2015 are filed by the unselected candidates challenging the refusal of the Tribunal in O.A.Nos.570 of 2013 and 1443 of 2013 to grant the relief of a direction to the Government to replace not only 15 but also all the 83 candidates found by the second Medical Board not to have satisfied the physical measurements. In view of our findings, these writ petitions are liable to be dismissed. Accordingly, they are dismissed.

66. W.P.Nos.16769 and 16770 of 2017 are also filed by unselected candidates challenging the refusal of the Tribunal in O.A.Nos.5675 of 2012, 570 of 2013 and 1440 of 2013, to grant the relief of a direction to the Government to terminate the services of 83 candidates found to have not satisfied the physical measurements. These writ petitions are also dismissed.

As a sequel thereto, all miscellaneous petitions, if any, pending in all the writ petitions, shall stand closed.

V.RAMASUBRAMANIAN, J

G.SHYAM PRASAD, J

Date: 28-04-2017

AK/Ksn

Note:

- i) LR copy be marked.
- ii) The Registry is directed to return the original medical certificates to the

counsel for the respective candidates

B.O./Ksn



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition Nos.23378 of 2013, 5070, 5260, 5658, 5860,
5864, 8764, 9819, 10497, 18166, 21314 and 27490 of 2015;
and W.P.Nos.16769 and 16770 of 2017
(per VRS, J.)



28th April, 2017.
Ksn