

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.7289/2011 & conn. Matters**

Reserved on: **9th March, 2017**
Pronounced on: **20th March, 2017**

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+ **W.P.(C) No. 7289/2011**

ALOK KUMAR SHARMA AND ORS. Petitioners

Through: Mr. Monoj Ohri, Sr. Adv. with
Ms. Prabhsahay Kaur, Mr.
Abhimanyu Singh and Ms.
Shilpa Dewan, Advocates.

versus

**NATIONAL COUNCIL FOR COOPERATIVE TRAINING (NCCT)
AND ANR.** Respondents

Through: Mr. J.K.Singh and Ms.
Madhulika Agarwal, Advocates
for R-1/NCCT.
Mr. Ripu Dhaman Bhardwaj,
CGSC with Mr. Sahaj Garg,
Advocate for R-2/UOI.

+ **W.P.(C) No. 7568/2012**

POOJA ARORA Petitioner

Through: Mr. Sanjiv Bahl and Mr.
Eklavya Bahl, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Ripu Daman Bhardwaj,
CGSC and Mr. Sahaj Garg,
Advocate for R-1 & 3.
Mr. J.K.Singh and Ms.
Madhulika Agarwal, Advs. for
R-2,4 and 5.

+ **W.P.(C) No. 7715/2012**

S. HEROJIT SINGH

..... Petitioner

Through:

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj,
CGSC and Mr. Sahaj Garg,
Advocate for R-1 & 3.
Mr. J.K.Singh and Ms.
Madhulika Agarwal, Advs. for
R-2,4 and 5.

+ **W.P.(C) No. 7716/2012**

DR. PRANAB BAISHYA AND ORS.

..... Petitioners

Through: Mr. Arunabh Chowdhary, Mr.
Karma Dorjee, Mr. Vaibhav
Tomar and Ms. Shruti
Choudhary, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj,
CGSC and Mr. Sahaj Garg,
Advocate for R-1 & 3.
Mr. J.K.Singh and Ms.
Madhulika Agarwal, Advs. for
R-2,4 and 5.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This bunch of writ petitions are being decided by this
common judgment inasmuch as same issues arise for determination in

all these cases. Petitioners in all these cases were appointed as Lecturers, and working as probationers, with National Council for Cooperative Training (hereinafter referred to as 'respondent no.1/employer') when their services were terminated by the impugned orders. For the sake of convenience, facts referred to in this judgment are of W.P. (C) No.7289/2011. Impugned orders in the cases of all the petitioners are more or less the same, and the impugned order in W.P.(C) No.7289/2011 reads as under:-

"NCCT/2-7/Pers/2011

September 26, 2011

OFFICE ORDER

Department of Agriculture and Cooperation Ministry of Agriculture, govt. of India, conducted an enquiry into the process of recruitment and selection of the lecturers in NCCT, who had applied against the advertisement in the Employment News appeared in 2-8 October, 2010 and the enquiry committee has found that this has been done in violation of established procedure in this regard. Based on this DOAC has directed NCCT to cancel the whole process of the recruitment of these lecturers vide the letter No.A11011/5/2009-CET (Pt) Dated 29.07.2011. Accordingly, your appointment as lecturer at ICM, Jaipur is hereby cancelled with immediate effect.

You are directed to collect dues if any on account of salary, allowances and any other benefits admissible to you as per rules.

This issues with the approval of the competent authority.

Sd/-

(Dr. Dinesh)

Director General

To:

Lecturer

Institute of Cooperative Management"

2. Petitioners were appointed as Lecturers with the respondent no.1/employer pursuant to their selection in the interviews conducted in terms of the advertisement dated 2.10.2010 issued in the

Employment News. Petitioners were given offers of appointments and these appointments commenced with the petitioners starting as probationary officers for a period of two years. There were certain complaints (argued to be anonymous by the petitioners) with respect to gross illegalities in the selection process of the Lecturers, and consequently, a committee was appointed by the Department of Agriculture and Co-operation (DAC) of the Ministry of Agriculture vide its letter dated 16.5.2011 to conduct a detailed enquiry. The enquiry committee members were Mr. A. Mazumdar, Joint Secretary, Ministry of Agriculture, Department of Agriculture and Co-operation (DAC), Mr. Sandeep Kumar, Under Secretary in the same Ministry and Department and Mr. Ghanshyam Thakur, Under Secretary again in the same Ministry and the Department. The enquiry team conducted a detailed enquiry, examined all the papers and looked into the records and gave its report which contained detailed findings and reasons. The enquiry committee has concluded that the entire selection process is vitiated, and therefore, should be cancelled. Hence the impugned letters were issued to the petitioners cancelling their appointments with the respondent no.1/employer during their probation periods.

3. The issue before this Court is whether the respondent no.1/employer could have cancelled the entire selection process. The

related issue is that whether the selection process could have been cancelled without the petitioners being heard i.e whether the cancellation of the selection process was violative of the principles of *audi alteram partem*. The crux of the matter is that whether the selection process need not have been cancelled because, as argued by the petitioners, there could have taken place separation of the untainted candidates from the tainted ones.

4. Before discussing the Enquiry Report, let us examine as to what is the law in regard to cancellation of the selection process as a whole. Supreme Court in this regard has consistently held that if the examination/recruitment process is so tainted that it would not be possible to segregate the tainted from the untainted candidates, then the entire selection process should be cancelled. It has also been held that if the illegality committed goes to the root of the matter which vitiates the entire selection process, then even in such a case the selection process as a whole should be cancelled. Further, it has also been held by the Supreme Court that before cancellation of the complete selection/recruitment process, there must exist foundational facts. Supreme Court has further held that if appointments are made in violation of Articles 14 and 16 of the Constitution of India then such appointments would be void and null, and that Article 311 of the

Constitution of India will not come into play in view of commission of illegality in the selection process. Thus when candidates have been appointed contrary to the applicable law and rules, and the entire event has been investigated, then the entire selection process can be set aside inasmuch as in such a case the system itself is found to be corrupt. The judgment of the Supreme Court which requires to be referred to and wherein the applicable principles with respect to *en masse* cancellation of the selection process have been laid down, is the judgment in the case of ***Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others (2006) 11 SCC 356***. The relevant paras containing the ratio of the ***Inderpreet Singh Kahlon's*** case (*supra*) have been consolidated by the Supreme Court in its recent judgment in the case of ***Joginder Pal and Others Vs. State of Punjab and Others (2014) 6 SCC 644***. This is done in paras 10 to 10.5 of ***Joginder Pal's*** case (*supra*) wherein the principles laid down in ***Inderpreet Singh Kahlon's*** case (*supra*) have been set down in a consolidated manner, and these paras read as under:-

“10. From the reading of the judgment in *Inderpreet Singh Kahlon case*, one can discern the following principles:

10.1 An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. Since the services of the Appellants were terminated not in terms of the Rules but in view of the commission of illegality in the selection process involved, the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution need not be considered.

10.2 Before a finding that an appointment has been made in violation of Articles 14 and 16 of the Constitution can be arrived at, the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, can the legal principles be applied. When the services of employees are terminated inter alia on the ground that they might have aided and abetted corruption and, thus, either for the sake of probity in governance or in public interest their services should be terminated, the court must satisfy itself that conditions therefore exist. The court while setting aside a selection may require the State to establish that the process was so tainted that the entire selection process is liable to be cancelled. *In a case of this nature, thus, the question which requires serious consideration is as to whether due to the misdeed of some candidates, honest and meritorious candidates should also suffer.*

10.3 A distinction exists between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved. Only in the event it is found to be impossible or highly improbable that the tainted cases can be separated from the non-tainted cases could en masse orders of termination be issued. *Both the State Government as also the High Court in that view of the matter should have made all endeavours to segregate the tainted from the non-tainted candidates.*

10.4 Cases which may arise where the selection process is perceived to be tainted may be categorised in the following manner:

- (i) Cases where the "event" has been investigated.
- (ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded.
- (iii) Cases where the selection was made but appointment was not made.
- (iv) Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules.

If the services of appointees who had put in a few years of service were terminated, compliance with three principles at the hands of the State was imperative viz.: (1) to establish satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) to determine the question that the illegalities committed went to the root of the matter, which vitiated the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) whether the sufficient material present enabled the State to arrive at a satisfaction that the officers in majority had been found to be part of the fraudulent purpose or the system itself was corrupt.

10.5 Once the necessary factual findings as enumerated above are arrived at, or it is found impossible or highly improbable to separate tainted from untainted cases, all appointments traceable to the officers concerned could be cancelled. But admittedly, in the present case, although there had been serious imputations against Ravinderpal Singh

Sidhu being at the helm of the affairs of the State Public Service Commission, all decisions made by the Commission during his tenure are yet to be set aside.” (underlining added)

5. Let us at this stage now refer to some of the relevant paras of the Enquiry Report given in the present case and these paras read as under:-

“1. Background:

The Department of Agriculture & Cooperation vide OM No.A.11011/5/2009-CET (Pt.) dated 16th May, 2011 has ordered an inquiry by a team of officers led by Shri A. Majumdar, Joint Secretary and comprising of S/Shri Ghanshyam Thakur, Under Secretary (Coop) and Sandeep Kumar, Under Secretary (Pers.) into the irregularities in the appointment of lecturers in National Council for Cooperative Training (NCCT).

The NCCT has its headquarters in New Delhi. It has 20 number of institution located in various parts of the country for which lecturers where recruited. Dr. Chadrapal Singh Yadav is the Chairman and Dr. Dinesh is the Director General (DG) of NCCT. Dr. Yadav joined as Chairman, NCCT w.e.f 18.3.2010 while Dr. Dinesh joined as DG, NCCT w.e.f 18.4.2011 Dr. T. Paranjyothi, who is the Secretary of the NCCT joined the post on 4.9.2006.

2. Inquiry:

The inquiry team conducted the inquiry w.e.f 26th May, 2011. The team scrutinized the dossiers of the selected candidates. It also scrutinized some applications of candidates who were shortlisted for interview but were not finally selected and some applications of candidates who were not shortlisted for interview. The team also examined all other relevant records such as relevant notes on files of the NCCT, minutes of the meetings of the screening committee, proceedings of the meetings of the Standing Recruitment Committee (SRC), statement of award of marks to the candidates etc. The team also held discussion with the DG, NCCT, Secretary (NCCT) and other officials of NCCT and sought clarifications on various aspects of the recruitment process. The team visited the headquarters of the NCCT for this purpose.

Clarifications were also obtained verbally from Shri R.K. Singh, Chief Director, Department of Agriculture & Cooperation (DAC), Government of India and Shri Nitin V. Gadre, Director, Vaikunth Mehta National Institute of Cooperative Management (VAMNICOM), Pune (over telephone).

The different stages of the recruitment process for the post of lecturer in NCCT were closely examined and the following facts were revealed during the enquiry.

(a) **Vacant Posts:**

- Approval of the Chairman, NCCT was obtained for filling up a total of 40 posts of Lecturers (Gen-4, SC-12, ST-6, OBC-15 and PH-3) on 30.08.2010.
- The Chairman, NCCT accorded approval for advertisement of the post of Lecturer as per draft advertisement on 30/8/2010.
- The reservation roster register was checked and it appears that the vacancies were determined as per the orders/guidelines issued by the Department of Personnel & Training (DoPT). The vacancies as indicated above were determined after taking into account the backlog pertaining to SC, ST, OBC and PH which had occurred since apparently the NCCT had not followed the roster in the past.

(b) **Advertisement:**

- The vacancies were advertised in the Employment News issue dated 2-8 October 2010 (Annexure-I). Although the disciplines (namely, Finance and Law, Cooperation, computer (MIS)/Management were mentioned in the advertisement, discipline wise break-up of the vacant posts again which applications were invited was not indicated in the said advertisement. **The vacancies were not advertised in any other newspaper.**
- The Essential Qualification for the post of lecturer as stated in the said advertisement were: "Masters' degree in Economics/Commerce/or any other relevant discipline required for the post/MBA. Preference will be given to the candidates having additional professional qualifications such as Higher Diploma in Cooperative Management etc."

The Experience for the said post as stated in the said advertisement was: "3 years Teaching Experience in a College/Cooperative Training organization/Cooperative Department/Coop. Institute."

The Age for the said post was "35 years and below". No cut-off date for determination of the age limit was indicated in the advertisement. The said advertisement clearly stated that "the maximum age limit is relaxable for SC/ST/OBC/PH as per GOI rules. Age is also relaxable in case of all the posts for personnel work in NCUI Cooperative Education Field Projects, Contractual employees and Lecturers working in NCCT having requisite qualification and experience".

- As per the said advertisement, applications were invited on plain paper. No format of the application was prescribed in the said advertisement.
- As per the said advertisement, applicants were required to furnish details such as name, post applied, date of birth, address, qualification, experience and category (whether SC/ST, OBC & PH), publication, nationality, languages known and other relevant information. However, candidates were not required to submit

attested photocopies of their certificates. Further, they were not required to paste their photograph on their application.

- As per the said advertisement, applications were required to be sent to the Secretary, NCCT within “30 days from the date of this publication.” However, a specific last date and time for receipt of applications was not indicated in the said advertisement.

(c) **Receipt of Application:**

- According to the Secretary, NCCT applications in response to the said advertisement were placed before him and thereafter were sent for diarizing and entry in a register opened for this purpose.
- The institute fixed 1st November, 2010 as the last date for receipt of application. However, details of applications received after the said last date were not entered into the register opened for receipt of applications.

(d) **Constitution of Standing Recruitment Committee (SRC):**

The Standing Recruitment Committee (SRC) of the NCCT was constituted by the Chairman, NCCT vide Notification No.2-7/92-Pers dated 11.01.2011 (**Annexure-2**). Approval for constitution of the said committee was taken from Chairman, NCCT. The SRC consisted of the Chairman, NCCT, Additional Secretary & Financial Adviser, Department of Agriculture & Cooperation (DAC), Govt. of India (GOI), Joint Secretary (C&C), DAC, GOI, Director, Vaikunth Mehta National Institute of Cooperative Management (VAMNICOM), Pune, Prof. U.M. Shah, Ex. Prof, VAMNICOM, Shri V.N. Rai, Ex. M.D, KRIBHCO and Director General, NCCT.

(e) **Scrutiny of Applications:**

- A screening committee was constituted by the Chairman, NCCT, vide Notification 2-7/92 dated 08/12/2010 (**Annexure-3**) to scrutinize the applications received for the post of lecturer. The screening committee comprised of Chief Director (Cooperation), Department of Agriculture & Cooperation, Govt. of India, Secretary, NCCT and Registrar, VAMNICOM.
- The Screening Committee met on 17.01.2011 and 15.02.2011. The minutes of the Screening Committee are attached (**Annexure-4**). The Registrar, VAMNICOM did not attend the meetings of the screening committee.
- At its meeting held on 17.01.2011, the Screening Committee recommended a total of 138 candidates against different categories to be eligible for appearing for interview before the selection committee. The category wise break up of such recommended candidates was: SC-36, ST-2, OBC-53, General-43 and PH-4.
- Subsequently, at its meeting held on 15.02.2011, the Screening Committee also recommended that one more candidate namely Shri Mahesh Kumar Verma belonging to the SC Category be also called for the interview before the selection Committee.

- The Screening Committee, at its meeting held on 17.01.2011, recommended relaxation of teaching experience from 03 years as stipulated in the eligibility conditions to 01 year. Consequently, 02 candidates belonging to the ST category and 08 candidates belonging to SC category who did not have 03 years teaching experience as stipulated in the eligibility conditions were recommended by the Screening Committee for the interview.
- The Recommendations of the Screening Committee regarding relaxation of the requirement of 03 years teaching experience and of short listing the candidates for interview were accepted by the Chairman, NCCT.
- Further, file records (**Annexure-5**) indicate that Upper Age relaxation was granted by the Chairman, NCCT on the recommendations of the Joint Director, NCCT. Secretary, NCCT & the DG NCCT in the following cases:
 - (a) 4 internal candidates belonging to General Category on 08.02.2011.
 - (b) 4 internal candidates belonging to OBC category on 08.02.2011.
 - (c) 4 Ph. D. degree holders (General/OBC candidates) on 08.02.2011.
 - (d) 01 candidate belonging to OBC category on 18.02.2011.
- Further, on 04.01.2011 the educational qualification in the case of one OBC candidate was relaxed by the Chairman, NCCT on the recommendations of Joint Director, NCCT, Secretary, NCCT and the DG, NCCT.

(f) Interview:

The Standing Recruitment Committee (SRC) interviewed the candidates who were shortlisted for interview on 21.02.2011, 22.02.2011 & 26.02.2011. The meetings of the SRC on the 21st & 22nd February, 2011 were held in New Delhi, whereas, the meeting of the SRC on 26th February, 2011 was held at Hyderabad. The aforesaid meetings of the SRC were chaired by Dr. C.P.S. Yadav, Chairman NCCT and were attended by four other members namely, Shri V.N. Rai, Ex. MD, KRIBHCO; Shri Nitin R. Gadre, Director, VAMNICOM; Prof. U.M. Shah, Ex. Prof. VAMNICOM, Pune and Smt. Anita Manchanda, DG NCCT, New Delhi (Member Convener). **The Additional Secretary & Financial Advisor and Joint Secretary (C&C), Department of Agriculture and Cooperation, Government of India did not attend the meetings.** Shri R.K. Singh, Chief Director, Department of Agriculture and Cooperation, Government of India, **who is not a member of the SRC, attended all the aforesaid meetings of the SRC.** Attendance Sheet duly signed by the members and their travel plans are annexed (**Annexure-6**)

- 43 candidates were called for interview before the SRC on 21.02.2011 and 32 candidates appeared for the same.

- 44 candidates were called for interview before the SRC on 22.02.2011 and 37 candidates appeared for the same.
- 65 candidates were called for interview before the SRC on 26.02.2011 and 50 candidates appeared.
- Consolidated proceedings of the meetings of the SRC held on 21st, 22nd & 26th February, 2011 (**Annexure – 7**) were prepared and signed by the above mentioned members of the SRC who attended the meetings. The consolidated proceedings of the SRC were signed by a non member namely Shri R.K. Singh who also attended the aforesaid meetings of the SRC.
- The proceedings of the SRC referred to above were undated.

XXXXX

XXXXX

3. Irregularities

The inquiry revealed that a large number of irregularities were committed during the recruitment process. Some of the irregularities that were noticed during the enquiry are highlighted below:

(a) **As per Rule 3.5 of Service, Recruitment & Promotion Rules of the NCCT, approval of the Council is required for relaxing the eligibility requirement of minimum teaching experience of three years. However, in the instant case, such relaxation was granted by the Chairman, NCCT as mentioned above.**

(b) **The advertisement for recruitment of lecturer did not require candidates to submit applications with photographs pasted thereon. This is a very serious lapse.** All recruitment/selection bodies in the country such as the UPSC, Staff Selection Commission, Railway Recruitment Boards etc. require applicants to submit attested photographs pasted on their applications and applications not confirming to this requirement are summarily rejected. Applications with attested photographs pasted thereon are insisted upon in order to prevent impersonation at any stage of the recruitment process.

(c) Examination of the dossiers of the selected candidates revealed that 24 no. of applications of the selected candidates were without photographs. Details of such candidates are furnished at Annexure-10. Since these applicants had not affixed their photographs on their applications, the possibility of someone impersonating on their behalf at any stage (particularly during the interview) cannot be ruled out. As such, one cannot also be certain as to whether the candidate who has actually joined the post was the same person as the one who had appeared for the interview before the selection committee.

(d) A cut off date for determination of the age limit was not indicated in the advertisement.

(e) A proper system for receiving the applications from the candidates was not devised by the NCCT. A separate counter was not opened to receive applications from those applicants who desired to submit the same in person, nor was a separate sealed box kept in the

headquarters of the NCCT where applicants could drop their applications. A running identification number was not affixed on the applications as and when they were received. The covering envelopes of applications received were not retained. As such, the dates on which they were actually received could not be verified.

(f) Details of applications received after the last date was not entered into the register opened for receipt of applications.

(g) Examination of the dossiers of the candidates who were finally selected was made during the inquiry and the statement in **Annexure-11** gives some details of the shortcomings noticed in their applications. The following irregularities in the applications of the finally selected candidates were noticed:

(i) Copies of the certificates of Date of Birth, Caste/Tribe (wherever relevant), educational qualification, teaching experience, physical handicap (wherever relevant) were not available in respect of a number of candidates who were finally selected. The details of such candidates are available in the statement in **Annexure-12**.

(ii) Many of the selected candidates do not satisfy the eligibility requirements for the post of lecturer as laid down in the advertisement. Moreover, in some cases the experience or educational qualification as stated by the candidate is not relevant to the eligibility requirements. Further, some candidates have produced certificates of experience which are at variance from their teaching experience as claimed by them in their application. Some of the shortcomings noticed in this regard, is indicated in the statement at **Annexure-11**. Some glaring irregularities noticed are highlighted below:

- Ms. Mini Mohan K. was shortlisted for the interview and eventually selected even though she did not submit certificate of educational qualification, date of birth, teaching experience and caste. Her application does not have a photograph.

- Shr. R. Pandian (Date of Birth : 14.9.66) was selected against the Physically Handicapped (PH) category quota even though he did not claim PH status in his application form. He is clearly over aged even if he is allowed age relaxation for five years as a departmental candidate and for three years as an OBC candidate. Moreover, he has not submitted copies of Physically Handicapped Certificate, Birth Certificate and Caste Certificate alongwith his application. Further, his application is without a photograph.

- Shri R.P. Karodiya has, his application, claimed teaching experience of more than 10 years. However, the copy of the experience certificate from Mandwa College, Mandwa dtd. 18.2.2011 submitted by him states that he has worked as Sahayak Kendra Adhikshak/Ati Kendra Adhikshak in examinations conducted by the Rajasthan University from 2002-10. This is not a certificate of teaching experience. Moreover, since this certificate is dated 18.02.2011, it could not have been attached with his application.

- Shri Upnish Yadav, an applicant with a M.Sc degree in Chemistry, has stated that he has seven and a half years experience as a Project Officer in NCUI Coop Education Field Project. This is not an experience of teaching. His application is without a photograph.
- Shri S. Khongsai (D.O.B: 01.3.80), has in his application (without photograph) claimed that he had served in Don Bosco College, Maram, Imphal First as a tutor during 1995-96 and thereafter as a lecturer in 1996-97. However, he has attached a copy of a certificate from Don Bosco College to the effect that he has worked as a lecturer in the said college in the year 2007-08 (Exact dates not mentioned). The difference in the dates of experience is glaring.
- Ms. Julufa Islam Chaoudhary has, in her application claimed that she had served as a lecturer in Lloyd College, Noida without giving any dates of such experience. But the copy of the experience certificate available in her dossier shows that she has worked as lecturer w.e.f. 01.07.09 to 01.07.10 in Assam Valley International, Dispur. There is clearly a mismatch between her claim of teaching experience and the copy of the experience certificate submitted by her. She has also not submitted a copy of her Date of Birth certificate and her application is without a photograph.

(h) The screening committee had shortlisted number of candidates for the interview who had not submitted copies of their certificates. However, the said Screening Committee did not extend the same consideration to many other candidates whose applications are rejected for want of requisite certificates.

(i) The original certificates of the candidates who appeared for the interview do not appear to have been verified. No record was available to indicate that such an exercise was carried out and if so by whom.

(j) Attendance sheet of candidates who appeared for the interview bearing their signatures/initials is not available in the records.

(k) The statement of marks awarded by the members of the SRC should have been prepared & signed by the members who were present immediately after the conclusion of the interview on each day and thereafter kept in a sealed cover. A consolidated statement of marks awarded to the candidates should have been prepared at the end of the third meeting of the SRC on 26.02.2011 and signed by the members of the SRC present in the meetings. However, the records show that although a consolidated statement of marks awarded to the candidates was prepared, the same was not signed by members of the SRC who were present in the meetings of the SRC. Further, Shri R.K. Singh, Chief Director (Coopn), Department of Agriculture and Cooperation, who is not a member of the SRC, attended the aforesaid meetings of the SRC for interviewing the candidates.

From the above facts, it is clear that the manner in which the members of the SRC selected the candidates who appeared before them for interview

at its meetings held on 21st, 22nd and 26th February, 2011 was irregular and contrary to the procedure established in this regard.

(l) Despite receiving a letter the Department of Agriculture & Cooperation (DAC), Govt. of India advising NCCT not to go ahead with the recruitment at 14:39 hours on 14th March, 2011, DG, NCCT dispatched the offer of appointment to the selected candidates by speed post from 19:55 hours onwards on the evening of the same day. This was a blatant defiance of the directions of the Govt. of India.

(m) 32 out of the 36 the selected candidates were allowed to join the institutions to which they had been appointed as lecturer in spite of the instructions of the DAC asking NCCT not to go ahead with the recruitment.

(n) The original certificates of the selected candidates do not appear to have not been verified by the Heads of the institutions concerned before allowing the candidates to join their posts. No record was made available to the enquiry team from which it can be ascertained that this was done. Moreover, this exercise could not have been actually carried out by the concerned heads of institutions since the dossiers of the selected candidates or copies thereof were not provided to the institutions concerned by the NCCT headquarters. Also, the very fact that the NCCT, vide their letter dated 29th April, 2001 had written to various Universities and educational institutions seeking verification of the certificates submitted by the candidates clearly indicates that verification of the original certificates of the selected candidates had not been done before allowing them to join their posts.

(o) There are no records to show that all the selected candidates had been medically examined and were found to be medically fit by an authorized medical authority before they were allowed to join their posts.

(p) There are no records to show that verification of character and antecedents of the selected candidates had been done before they were allowed to join their posts.

4. Observations/Findings:

(a) **The entire recruitment process has been conducted in a highly irregular, faulty and arbitrary manner in gross violation of the established procedure for recruitment of candidates.** Starting from the stage of issue of advertisement in the Employment News to the actual selection of candidates and to their joining the posts, a number of irregularities have been committed by those officials involved in the recruitment process. The specific natures of irregularities have been highlighted in Para-3 above and needs no repetition. **The serious nature of irregularities shows that the entire recruitment process has been vitiated.** It is obvious that there has been a serious lapse on the part of the officials concerned.

(b) It is clear that the members of the screening committee did not exhibit due diligence while scrutinizing the applications received. They have also acted in a highly arbitrary manner by rejecting applications of some candidates who had not submitted copies of the requisite certificates along with their applications while at the same time short

listing many candidates who had not submitted copies of the requisite certificates along with their applications for the interview. Many of these shortlisted candidates were also eventually selected. This clearly appears to be an act of criminal negligence with a mala fide intent on the part of the officials concerned.

(c) Dr. T. Paranjyothi, the Secretary, NCCT and Shri R.K. Singh, Chief Director (Cooperation), Department of Agriculture & Cooperation as members of the Screening Committee are primarily responsible for the irregularities committed during the process of screening of applications received for the post of lecturer in NCCT. The officials who assisted them in the process of screening of the applications are also responsible for the irregularities committed.

(d) Dr. C.P.S. Yadav, Chairman, NCCT and Ms. Anita Manchanda, the then Director General NCCT should take over all responsibility for the lapses in the recruitment process since the recruitment process was conducted under their overall superintendence, control and guidance.

(e) The Recruitment Rules for the post of lecturer appear to be defective. The educational qualifications prescribed in the recruitment rules are vague and not specific. No cut off percentage of marks is prescribed in the essential educational qualification with the result that even candidates with poor academic record can be appointed as a lecturer. There is no requirement in the recruitment rules to the effect that the prescribed educational qualification and teaching experience should be obtained from a recognized University/Institution. This has considerably diluted the quality of candidates eventually selected for the post of lecturer.” (emphasis is mine)

6. In view of the aforesaid detailed findings and conclusions of the enquiry team the following recommendations were made:-

“Recommendations:

(a) **In view of the extremely serious nature of the irregularities detected in the recruitment process for the post of lecturer in the NCCT, the sanctity of the entire recruitment process has been lost. It is therefore recommended that the recruitment process for the post of lecturer be scrapped and the appointment of the selected candidates be cancelled.**

(b) The irregularities that have been detected by this enquiry reveal, prima facie, criminal negligence and mala fide intent on the part of the members of the screening committee and some other officials of the NCCT. The full extent of involvement of other officials of the NCCT or of any other person(s) in the irregularities committed during the recruitment process could not be ascertained during this inquiry. Moreover, the original certificates were not verified during this enquiry to ascertain their genuineness. Keeping in view the extremely serious

nature of irregularities that have been brought out during this enquiry, it is felt that a detailed investigation into the entire process for recruitment of lecturers needs to be conducted. It is therefore recommended that the entire matter pertaining to the recruitment of lecturers in NCCT be entrusted to an investigating agency having powers under the law to record evidence, summon witnesses etc.

(c) In order to prevent occurrence of such irregularities in future, recruitments in the NCCT and similar autonomous bodies in the cooperation sector may be entrusted to a standing recruitment committee/board constituted for this purpose by the Govt. of India, Department of Agriculture & Cooperation (DAC). Persons having experience in conducting recruitments in the UPSC, SSC etc. could be associated with such a committee/board.

(d) The recruitment process for a reasonably large number of posts (as in the present case) should invariably consist of a written test to be followed by an interview of the candidates who qualify in the written test. The final selection of candidates should be based on the total of marks obtained by them in the written test as well as the interview.

(e) The recruitment rules for the post of lecturer need revision. The recruitment rules should clearly specify that the educational and teaching experience qualifications should be obtained from a recognized educational institution. The requirement of teaching experience could be dispensed with. Since the curriculum of the programmes conducted by the institutions under the NCCT comprise of different disciplines of Management studies (such as marketing, Organizational behavior, Human Resource management, Finance etc.), Economics, Commerce and Cooperation, only candidates having a Masters degree in these subjects could be considered for appointment to the post of lecturer in the NCCT. This could be stated specifically in the eligibility conditions in the recruitment rules. The eligibility conditions specified in the recruitment rules should also clearly indicate a specific cutoff percentage of marks in the Master degree in these subjects. Further, qualification in the National Eligibility Test (NET) could be considered in lieu of teaching experience.

sd/-
(Sandeep Kumar)
Under Secretary, Government of India
Ministry of Agriculture
(Dept. of Agriculture & Cooperation)

sd/-
(Ghanshyam Thakur)
Under Secretary, Government of India
Ministry of Agriculture
(Dept. of Agriculture & Cooperation)

sd/-
(A. Majumdar)
Joint Secretary, Government of India
Ministry of Agriculture
(Dept. of Agriculture & Cooperation)

(emphasis is mine)”

7. (i) At this stage itself, it is required to be observed that there is no need of following the principles of natural justice by giving notice to each particular candidate when the entire selection process is validly cancelled i.e there is no requirement of complying with the principles of *audi alteram partem* by giving show-cause notices to each individual candidate whose appointment is cancelled in view of the *en masse* cancellations. This has been held by the Supreme Court in the case of ***Union of India and Others Vs. O. Chakradhar (2002) 3 SCC 146***. The relevant para of this judgment is para 8 and this para 8 reads as under:-

“8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show-cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.”

(ii) Reliance placed on behalf of some of the petitioners to the judgment of the Supreme Court in the case of ***Onkar Lal Bajaj and Others Vs. Union of India and Another (2003) 2 SCC 673*** to argue that principles of natural justice should have been complied with is misconceived inasmuch as in the case of ***Onkar Lal Bajaj (supra)*** no ratio is laid down that even if foundational facts exist for cancellation

of the entire selection process, yet show-cause notice must be issued to each and every candidate before cancellation of appointments. In the case of ***Onkar Lal Bajaj (supra)*** Supreme Court has clearly observed that authorities in that case did not have with it the necessary data to consider the aspect of *en bloc* cancellation and controversy in that case pertained only to a few cases.

(iii) For the reasons already given above similarly the judgment cited on behalf of the petitioners in the case of ***Mahipal Singh Tomar Vs. State of Uttar Pradesh and Others (2013) 16 SCC 771*** will not apply inasmuch as what will apply is the ratio of the judgment of the Supreme Court in the case of ***O. Chakradhar (supra)*** that there is no need of individual notices to individual persons once the entire selection process is scrapped on account of widespread and all persuasive irregularities and illegalities affecting the results.

8. A reading of the aforesaid paras of the Enquiry Report shows that foundational facts existed for the respondent no.1/employer to hold that the entire selection process was vitiated and that therefore, the selection process in the opinion of this Court was rightly cancelled.

9. The following salient conclusions are drawn by the Enquiry Report, and which in the opinion of this Court have rightly

resulted in the recommendation and hence the cancellation of the entire selection process:-

(i) The candidates were not required to paste their photographs on the applications and resultantly there arises the issue of impersonation of the candidates in the selection process. This fundamental flaw is such that there cannot be segregation of the tainted and untainted candidates.

(ii) Though last date of 1.11.2010 was fixed for receipt of the applications, yet no record was maintained as to when the applications were received with their serial numbers. Details of applications received after the last date were not entered into the register opened for receipt of the applications. Therefore, in the present case there cannot take place segregation of applications of the candidates which were received before the cut-off date and after the cut-off date, and resultantly it cannot be known that the candidates who ultimately were selected had in fact applied before the cut-off date or after the cut-off date.

(iii) The two members of the Standing Recruitment Committee (SRC) being the Additional Secretary and Financial Advisor and the Joint Secretary, C&C, DAC did not attend the selection meetings. The Coram of the SRC was therefore incomplete, and consequently, the

entire selection process is vitiated on account of non-joining in the selection process of two essential members of the SRC.

(iv) Not only two members of the SRC did not attend the selection committee meetings but one person Sh. R.K. Singh who was the Chief Director of DAC, but who was not the member of the SRC, however attended all the meetings of the SRC and acted effectively as a member of the SRC although he was not the member of the SRC. The entire selection process is therefore vitiated on account of inclusion of a person in the selection committee who was not a member of the selection committee/SRC.

(v) Service Rule 3.5 of the respondent no.1/employer required that if there has to take place relaxation in the eligibility criteria of minimum experience of three years, that relaxation can only be given in terms of the decision of the Council of the respondent no.1/employer, however, no such decision of the Council existed for giving of the relaxation of the minimum required experience of three years in teaching. In spite of there being no valid decision of the Council of the respondent no.1/employer, yet, relaxations were given and candidates were selected/appointed by giving relaxations. The decision to give relaxation by the SRC was taken after the advertisement was issued and thus various candidates would not have

applied who did not know that relaxation will be given and were thus illegally left out of the selection process.

(vi) The Screening Committee adopted an arbitrary and pick and choose policy of rejecting some candidates who had not submitted copies of their certificates but extended such benefit to other candidates who also had not submitted copies of their certificates. Therefore, various candidates have been arbitrarily left out and which vitiates the entire selection process.

(vii) In addition to the fact that photographs of the candidates were not pasted on the application forms, the attendance sheet of candidates who appeared in the interview does not contain the signatures and initials of the candidates. Once again, therefore, the entire selection process is vitiated as the chance of impersonation of candidates cannot be ruled out.

(viii) The statement of marks awarded by the members of the SRC were not prepared immediately after conclusion of the interviews on each day and kept in a sealed cover. No doubt, thereafter a consolidated statement of marks awarded was prepared but the same was not signed by the members of the SRC who were present in the meeting of the SRC with the fact that Sh. R.K. Singh who was not the member of the SRC attended the meetings of the SRC for interviewing

the candidates. Clearly, therefore, there was complete irregularity and violation of the procedure for selection of the candidates by the SRC.

(ix) There was no advertisement issued in newspaper so that large number of candidates could apply for the posts, and which would result in a healthy competition, and instead advertisement was only issued in the Employment News.

10. In the opinion of this Court, the aforesaid conclusions of the enquiry committee are such that the entire selection process is vitiated and it is not possible to segregate the tainted from the untainted candidates. No doubt, in the Enquiry Report there are observations with regard to separation of tainted and untainted candidates on some specific subjects/aspects, however, on the other aspects as have been given in the preceding paras, and which vitiate the entire selection process, there cannot take place segregation of the tainted from the untainted candidates. In fact, an extremely important aspect in this case for rightly cancelling the entire selection process is that in the present case it is not that only the candidates have cheated but the fact of the matter is that there would be besides cheating of the candidates also the collusion of the successful candidates with the members of the SRC. The subject selection process is a classic case which requires *en masse* cancellation of the selected candidates as not only candidates

were tainted but the selection process adopted by the SRC was tainted and that too in collusion with the candidates. In my opinion therefore, foundational facts existed for the authorities to arrive at a decision for cancellation of the entire selection process.

11. I would like to note that in addition to the aforesaid conclusions given by the Enquiry Report for recommending cancellation of the entire selection process, there are two additional reasons which show that the entire selection process is tainted and therefore should be cancelled.

12. The first reason is that it is seen that the recruitment rules do not provide what should be the prescribed procedure for selection to the post of Lecturer. It is not provided whether selection of Lecturers has to be by written test plus interviews or only by written test with nominal marks in the interview or the selection can be wholly by interviews only. This aspect is indeed very important because the facts of the present case show that the SRC has not relied upon any policy of the respondent no.1/employer which provides how the weightage is to be given under different headings to the candidates who appear in the interviews. Once therefore there is lack of specific recruitment rules as to the method of recruitment of Lecturers in different colleges of the respondent no.1/employer, with the fact that there is no stated policy

which existed prior to commencement of the selection process as to giving of weightage to the candidates in the interview process, such irregularities go to the root of the matter whereby the entire selection process is vitiated and illegal as the selection process is hit by Article 14 of the Constitution of India.

13. The second reason which results in vitiation of the entire selection process does find a passing mention in the enquiry committee report, but this reason is a substantial reason, and which is that advertisement was only issued in the Employment News and there were no advertisements in the newspapers. This has resulted in a very limited set of people appearing in the selection process. Supreme Court has frowned upon this method of selection and has held that it is not enough that advertisement is issued only in the Employment News. This is so held by the Supreme Court in its judgment in the case of *State of Orissa and Another Vs. Mamata Mohanty, (2011) 3 SCC 436*. Paras 35 and 36 of this judgment which lay down this ratio read as under:-

Appointment/employment without advertisement

“35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in

addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: *Delhi Development Horticulture Employees' Union v. Delhi Admn.*, *State of Haryana v. Piara Singh*, *Excise Suptd. v. K.B.N. Visweshwara Rao*, *Arun Tewari v. Zila Mansavi Shikshak Sangh*, *Binod Kumar Gupta v. Ram Ashray Mahoto*, *National Fertilizers Ltd. v. Somvir Singh*, *Telecom District Manager v. Keshab Deb*, *State of Bihar v. Upendra Narayan Singh & State of Madhya Pradesh v. Mohd. Ibrahim*.)

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.” (underlining added)

14. The judgment in the case of ***Mamata Mohanty (supra)*** is also relevant so far as the issue/subject of relaxation which was given by the SRC in the present case. Though the relaxation given is illegal in the absence of there existing the requisite decision of the Council of the respondent no.1/employer as per Rule 3.5, yet even assuming that relaxation has been given by the Council, such relaxation given should have been applied in a transparent manner by specifically including this aspect in the advertisement issued for the posts. If in the advertisement issued it was specified that relaxation could be given, then, many more candidates would have applied for selection. The only

relaxation provided in the advertisement was for age, but there was no relaxation prescribed with respect to the teaching experience criteria and which as per the advertisement was required to be three years teaching experience and which was reduced to one year by the SRC. The following paras of the judgment in the case of *Mamata Mohanty (supra)* squarely deal with the aspect for holding such selection process to be illegal are paras 42 to 51 and which paras read as under:-

“RELAXATION:

42. In *J.P. Kulshrestha (Dr.) v. Allahabad University* issue of relaxation of eligibility came for consideration before this Court wherein it was held as under:

“15. ...We regretfully but respectfully disagree with the Division Bench and uphold the sense of high second class attributed by the learned single Judge. The midline takes us to 54% and although it is unpalatable to be mechanical and mathematical, we have to hold that those who have not secured above 54% marks cannot claim to have obtained a high second class and are ineligible.

16. ... We have earlier held that the *power to relax*, as the Ordinance now runs, in so far as high second class is concerned, does not exist. Inevitably, the appointments of the 3 respondents violate the Ordinance and are, therefore, *illegal*.”

(emphasis added)

43. In *Rekha Chaturvedi v. University of Rajasthan*, this Court again dealt with the power of relaxation of minimum qualifications as the statutory provisions applicable therein provided for relaxation, but to what extent and under what circumstances, such power could be exercised was not provided therein. Thus, this Court issued the following directions:

“A. The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its Ordinance/Statutes.

B. The candidates selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose.

C. When the University or its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/notification both that the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal.

D. The University/Selection Committee must mention in its proceedings of selection the reasons for making relaxations, if any, in respect of each of the candidates in whose favour relaxation is made.

E. The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of. An adverse inference is liable to be drawn if the minutes are destroyed or a plea is taken that they are not available.” (emphasis added)

44. In *P.K. Ramachandra Iyer v. Union of India*, this Court while dealing with the same issue, held that once it is established that there is no power to relax the essential qualifications, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.

45. In *A.P. Public Service Commission v. B. Swapna*, this Court held that:

“15. Another aspect which this Court has highlighted is scope for relaxation of norms.... Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated.” (emphasis supplied)

46. This Court in *Kendriya Vidyalaya Sangathan v. Sajal Kumar Roy*, held:

“11. ...The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age-limits.... The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof.”

(emphasis added)

47. In *Food Coop. of India v. Bhanu Lodh*, this Court held:

“12. ...Even assuming that there is a power of relaxation under the Regulations.... the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases.... We do not think that they are intended as an ‘open sesame’ for all and sundry. The wholesale go-by given to the Regulations, and the manner in which the recruitment process was being done, was very much reviewable as a policy directive, in exercise of the power of the Central Government under Section 6(2) of the Act.”

48. In *Bhanu Prasad Panda (Dr.) v. Sambalpur University*, one of the questions raised has been as to whether a person not possessing the required eligibility of qualification i.e. 55% marks in Master's degree can be appointed in view of the fact that the UGC refused to grant relaxation. On the issue of relaxation of eligibility, the Court held as under:

“5.the essential requirement of academic qualification of a particular standard and grade viz. 55%, in the ‘relevant subject’ for which the post is advertised, cannot be rendered redundant or violated.... The rejection by UGC of the request of the Department in this case to relax the condition relating to 55% marks at post-graduation level...is to be the

last word on the claim of the Appellant and there could be no further controversy raised in this regard.” (emphasis added)

49. In view of the above, this Court held that the appointment of the Appellant therein has rightly been quashed as he did not possess the requisite eligibility of 55% marks in Master's course.

50. In absence of an enabling provision for grant of relaxation, no relaxation can be made. Even if such a power is provided under the Statute, it cannot be exercised arbitrarily. (See: *Union of India v. Dharam Pal*). Such a power cannot be exercised treating it to be an implied, incidental or necessary power for execution of the statutory provisions. Even an implied power is to be exercised with care and caution with reasonable means to remove the obstructions or overcome the resistance in enforcing the statutory provisions or executing its command. Incidental and ancillary powers cannot be used in utter disregard of the object of the Statute. Such power can be exercised only to make such legislation effective so that the ultimate power will not become illusory, which otherwise would be contrary to the intent of the legislature. (Vide: *Matajog Dobey v. H.S. Bhari* and *State of Karnataka v. Vishwabharathi House Building Coop. Society*).

51. More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over. (Vide *K. Manjusree v. State of A.P.* and *Ramesh Kumar v. High Court of Delhi*).” (underlining added)

15. Therefore, in view of the fact that there was no relaxation prescribed with respect to teaching experience in the advertisement issued for the subject selection process, no valid reasons exist for giving relaxation (one such important aspect was if there was lack of suitable number of candidates and which could not be the position in the present case because of lack of widespread advertisement for appointment to the post), the selection committee did not have power to relax the norms which could have only be relaxed by the Council of the respondent no.1/employer as per Rule 3.5, therefore, the selection process as a whole is vitiated and has been rightly recommended for

being quashed by the enquiry committee, and the appointments were hence cancelled of the petitioners by the respondent no.1/employer.

16. In view of the above said discussion I cannot agree with the argument urged on behalf of the petitioners that in the present case there can be segregation of tainted and untainted candidates and hence petitioners being non tainted candidates their appointments be not cancelled. Ofcourse I am presuming petitioners are untainted candidates because there is lack of pleadings and substantiation as to how each of the petitioners are untainted, including that whether petitioners had pasted photos on their applications, petitioners whether had infact attended the interviews, petitioners whether have given attested copies of their certificates and got the originals verified etc etc. This issue of whether the petitioners are or are not untainted candidates is left open as it is found in this case that the selection process is tainted in a widespread manner with illegalities existing which go to the root of the matter and thus the selection process was rightly cancelled. As already discussed in detailed above, the entire process of selection is fundamentally vitiated, illegal, arbitrary and in fact a dishonest collusive action. Further as already stated above, the selection process in the present case is not only with respect to lack of scruples in the selection of the selected candidates/petitioners but in

fact there is found to exist an unholy alliance/collusion between the petitioners/selected candidates and the SRC of the respondent no.1/employer. Accordingly, the authorities were justified in cancelling the entire selection process and it is not permissible for the petitioners to argue that present is a case wherein there can be separation of tainted and untainted candidates.

17. On behalf of the petitioners in W.P.(C) No. 7289/2011, the following judgments were relied upon in support of the arguments for not cancelling the selection process:-

- (i) ***Union of India and Others Vs. Rajesh P.U., Puthuvalnikathu and Another (2003) 7 SCC 285 (para 6)***
- (ii) ***Dolly Chhanda Vs. Chairman, JEE and Others (2005) 9 SCC 779 (para 7)***
- (iii) ***V. Lavanya and Others Vs. State of Tamil Nadu Represented by its Principal Secretary and Others (2017) 1 SCC 322 (para 30 to 36)***

18. The judgment cited on behalf of the petitioners in the case of ***Rajesh P.U (supra)*** only lays down that Courts should not apply rigid and arbitrary standard to cancel the entirety of selection when no infirmity is found with respect to most of the candidates. In ***Rajesh P.U's*** case (*supra*) there were 134 successful as well as 184 unsuccessful candidates, of which 31 candidates though declared successful were not really entitled to be declared successful and

selected for appointment. Therefore, the judgment in **Rajesh P.U's** case (*supra*) cannot help the petitioners once in the facts of the present case foundational facts exist to show that the entire selection process was vitiated by means of irregularities which went to the root of the matter.

19. The judgment relied upon by the petitioners in the case of **Dolly Chhanda** (*supra*) only lays down that depending on the facts of the case there can be some relaxation in the matter of submission of proof and it would not be appropriate to apply any rigid principle in the domain of procedure. However, **Dolly Chhanda's** case (*supra*) was not a case of cancellation of the entire selection process on account of irregularities affecting the entire selection process wherein it was not possible to segregate the tainted and untainted candidates. Petitioners therefore cannot take any benefit of the judgment in **Dolly Chhanda's** case (*supra*).

20. The judgment in the case of **V. Lavanya** (*supra*) is relied upon to argue that benefit of relaxation of 5% marks can be given to the reserved category candidates, and with respect to which proposition there is no dispute, because that aspect is covered by circulates, however, the issue in the present case is that not only the entire selection process stood vitiated on account of gross illegalities and

irregularities but also that the selection criteria was changed midway in the selection process and thereby unfairly prejudicing and leaving out those candidates who would otherwise have applied if such left out persons would have known that there could have been relaxation of the required norm of three years of teaching experience. The judgment in the case of *Mamata Mohanty (supra)* referred to hereinabove makes it clear by reference to various other judgments of the Supreme Court that the selection criteria cannot be changed during the selection process. In any case, it is seen that in the present case the relaxation of the selection criteria of three years teaching experience has been done without the requisite approval of the Council of the respondent no.1/employer and which is mandated as per Rule 3.5, with the fact that there was no declared policy of the respondent no.1/employer existing at the commencement of the selection process as to how the candidates have to be given weightage in the interviews and how the candidates would be selected in terms of the said policy.

21.(i) Finally, it was argued on behalf of some of the petitioners that since petitioners have worked for substantial amount of time of around two years as probationers, therefore, their appointments be not cancelled.

(ii) To this argument urged on behalf of some of the petitioners, a complete answer is found in the judgment of the Supreme Court in the case of *Hitendra Singh S/o Bhupendra Singh and Others Vs. Punjabrao Deshmukh Krishi Vidyapeeth By Registrar and Others (2014) 8 SCC 369* wherein Supreme Court has clearly observed that merely on account of lapse of time those persons who are selected by unfair and unreasonable means cannot be allowed to continue because that would amount to perpetuating a wrong when deserving candidates are left out with a brooding sense of injustice and cynicism against the efficacy of the system which is meant to act fairly and objectively. The relevant paragraphs of this judgment are paras 32 and 34, and which paras read as under:-

“32. The Chancellor declined to show any leniency to the petitioners no matter they had served the University for over six years primarily because the entire selection process was in his opinion vitiated by widespread irregularities in the selection process. The findings recorded by Justice Dhabe Committee upon a detailed and thorough examination of the matter fully supported that view of the Chancellor. The reasons that prevailed with the Chancellor cannot be said to be illusory or irrelevant so as to call for interference from a writ court.

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34. Continuance in office of those selected by means that are not fair, transparent and reasonable will amount to perpetuating the wrong. The length of service put in by the candidates who were selected on the basis of such a faulty selection process may be one of the considerations that enters the mind of the Court but there are other weighty considerations that cannot be given a go-by or conveniently forgotten lest those who do not adopt such malpractices or those who expect the system to protect their interest and their rights are eternally disappointed and left to believe that a wrong once done will never be corrected just because the legal process by which it is to be corrected is a long and winding process that often takes years to reach fruition.”

(iii) In view of the ratio in the case of *Hitendra Singh (supra)* the argument of the petitioners that they having been appointed and served as probationers for around two years, hence their appointments should not be cancelled, is an argument which has no merit, and is therefore rejected.

22. The judgment in the case of *Hitendra Singh (supra)* is also relevant in the present case inasmuch as it lays down the ratio that Courts will not interfere with decisions of the executive authorities inasmuch as there is very limited scope of judicial review by a Court once a fact finding enquiry arrives at its decision on the basis of materials which are examined. Accordingly, once conclusions are drawn by the enquiry committee upon careful appraisal which is justified even a writ court will not interfere with the conclusions of the enquiry committee. The relevant paras of the judgment in *Hitendra Singh (supra)* are paras 26 and 27 and which read as under:-

“26. The findings recorded by Justice Dhabe Committee were based on facts discovered in the course of the inquiry. No serious attempt was made before the High Court nor even before us to challenge the said findings of fact. Even otherwise a finding inquiry instituted by the Chancellor was bound to involve appraisal of evidence, documentary and oral. The conclusions drawn on the basis of such appraisal were open to critical evaluation by the authorities before whom the conclusions and the Report was submitted for action but once such conclusions are upon a careful reappraisal found to be justified, a writ Court will be very slow in interfering with the same.

27. In the present case, upon receipt of the report from Justice Dhabe Committee the matter was directed to be placed before the Executive Council of the University. That direction was meant to give the Executive Council an opportunity to examine the findings of fact and the conclusions

drawn from the same critically and to determine whether the same were justified. The Executive Council, it is common ground, had without any reservation approved the findings recorded by Dhabe Committee, no matter with a recommendation to the Chancellor to take a lenient view in the matter, having regard to the fact that the Petitioners had already served the University for nearly six years. The recommendation of the Executive Council did not, however, find anything amiss with the conclusions drawn by the Dhabe Committee as to the irregularities in the selection process culminating in illegal appointments of the selected candidates. The “fact finding” aspect thus stood concluded with the approval of the Executive Council of the University. The Vice Chancellor no doubt made an attempt at segregating what according to him was the valid part of the selection from that which was not, but the Chancellor did not approve of that exercise. The Chancellor took the view that the entire selection stood vitiated by widespread irregularities, leaving hardly any room for a distinction between the so called valid and invalid parts of the selection process. Be that as it may the fact remains that we have not been able to find any reason to interfere with the findings recorded by the Justice Dhabe Committee. The sanctity of the entire selection process having been vitiated by irregularities and acts of nepotism, Question (iii) shall have to be answered in the negative, which we accordingly do.”

23. In view of the above, there is no merit in the petitions, and the same are therefore dismissed, leaving the parties to bear their own costs.

MARCH 20, 2017
Ne/ib/godara

VALMIKI J. MEHTA, J