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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 20.09.2019

1.

CWP-16643-2017 (O&M)

Vanita Rose

... Petitioner

Versus

Maharishi Dayanand University Rohtak and others

... Respondents

2.

CWP-25319-2017 (O&M)

Pooja Walia

... Petitioner

Versus

Maharishi Dayanand University Rohtak and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil K. Nehra, Advocate
for the petitioner in CWP-16643-2017.

Mr. J.S. Rana, Advocate for
Mr. Hari Chand, Advocate
for the petitioner in CWP-25319-2017.

Mr. Anurag Goyal, Advocate
for respondent Nos.1 & 2/University.

Mr. Jasbir Mor, Advocate
for respondent No.3.

AMIT RAWAL, J.

CM-11567-CWP-2019 IN CWP-16643-2017

For the reasons stated in the application, which is supported by

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an affidavit, replication to the written statement filed on behalf of respondent Nos.1 and 2 along with Annexures P-20 to P-22, are taken on record, subject to all just exceptions.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of two writ petition bearing **CWP No.16643 of 2017** titled as **“Vanita Rose V/s Maharishi Dayanand University Rohtak and others”** and **CWP No.25319 of 2017** titled as **“Pooja Walia V/s Maharishi Dayanand University Rohtak and others”**, according to counsel for the parties, issues involved in both writ petitions are identical. However, the facts are taken from CWP No.16643 of 2017.

The petitioner has approached under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the proceedings/result of Selection Committee dated 09.03.2017 (Annexure P-8), whereby respondent No.3 has been recommended/appointed to the post of Assistant Professor (Education) in the respondent/University and order dated 19.04.2017 (Annexure P-9), whereby Registrar, Maharishi Dayanand University, Rohtak, rejected the representation of petitioner; further writ of mandamus directing the respondent/University to appoint the petitioner with all consequential benefits from the date, when respondent No.3, was appointed and also award four (4) marks to the petitioner in view of holder of Gold Medal, by quashing appointment of respondent No.3.

The facts, which culminated into filing of the writ petition, are that in pursuance to advertisement No.PR-70 of 2016 (Annexure P-1)

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inviting the applications for filling up the various posts of Assistant Professor including one post of Assistant Professor in the Education, the petitioner(s) applied for the same. As per selection criteria, a candidate, holder of Gold Medal at Under Graduate Level or at Post Graduate Level, was also entitled to four marks.

Learned counsel for the petitioner(s) submits that the respondent-University, vide notice dated 16.02.2017 (Annexure P-3), declared the names of persons, who have been selected. Petitioner-Vanita Rose, as per criteria, obtained 41.5 marks in the academic, whereas respondent No.3/Menka, obtained 28.8. Since petitioner was expecting more marks, as per criteria i.e. four marks for holding of Gold Medal as well as for teaching experience and in this regard, submitted representation (Annexure P-4), which was replied by the University, vide intimation dated 27.02.2017 (Annexure P-5) and her marks were revised from 41.50 to 44.50. However, University did not grant weightage of Gold Medal, as Gold Medal weightage can be granted, where a person has qualified the examination i.e. M.Ed/M.A. Education, which is to be treated as Post Graduate Degree. Petitioner assailed the aforementioned communication, vide CWP No.5171 of 2017 and vide representation dated 11.03.2017 (Annexure P-7), requested the University to defer the issuance of the appointment letter. The process of interview was held on 09.03.2017 and as per result, respondent respondent No.3 was granted 17 marks in the interview and 6.5 marks for presentation and in total, secured 53.30, whereas petitioner was given 4.50 in interview and 1.50 for presentation. In order to lend support to the contentions, attention of this Court was drawn

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to Annexure P-8 i.e. marks awarded by the Selection Committee to the candidates who cleared the interview.

Mr. Nehra further submits that the aforementioned result was obtained under the Right to Information Act and intriguingly, it was noticed that Selection Committee was fully aware of the marks awarded to the various candidates out of 75 marks, as it was duly typed against the name of candidates, who were appearing before the Selection Committee and in this regard, role of favouritism and partiality cannot be ruled out. In response to the representation, the University informed the petitioner, vide communication dated 19.04.2017 (Annexure P-9) of not awarding any marks for Gold Medal in M.Phil and further intimated that appointment letter to respondent No.3, had been issued on 14.03.2017. Petitioner sought information on 11 points, vide application (Annexure P-10) and on receipt of information under RTI Act, it is ascertained that on the topic of presentation, only detail of eight (8) candidates was available with the University. Neither the detail of petitioner nor selected candidate i.e. respondent No.3, was mentioned, thus, awarding of marks for presentation is not sustainable. In fact, petitioner secured first class and first position in Master of Philosophy (Education) and on account of such achievement, was awarded Gold Medal. Reliance has been laid to the certificate dated 23.04.2017 (Annexure P-12). Some more information was also sought under RTI Act, as petitioner came to know that one candidate Ranju Malik, being holder of same very degree, was awarded five marks weightage for Gold Medal.

By referring to the aforementioned submissions and facts,

Mr. Nehra, submits that action of the University is liable to be set aside on the following grounds:-

- i) Selection Committee was aware of the result of the candidates, under one of the provision of the criteria, whereby candidates have been awarded various marks out of 75.
- ii) Selected candidate/respondent No.3, obtained two degrees at the same time, which cannot be allowed as per the notification issued by the Distance Education Council (Annexure P-15) as respondent No.3 had, simultaneously, done B.Ed. and MCA i.e. B.Ed. from June 2010 to July 2011 and MCA from 2008 to January 2011. Six months are common in two degrees.
- iii) She also obtained two degrees at the same time i.e. M.Phil Education from BPS Mahila Vishvavidyalya, Khanpur Kalan during 2014-15 and M.A. Psychology from IGNOU, New Delhi, during 2012 to 2015, but she cleverly did not mention in her application regarding acquisition of degree in MA Psychology.
- iv) As per calender of the University, a candidate, who is also another candidate for other examination in full subject, cannot simultaneously read or appear in the examination. In support of the contentions, reliance has been laid to the unreported judgment dated 01.08.2019 passed by this Court in **“Pratibha V/s Ch. Bansi Lal University Bhiwani and others”**, by relying upon the judgment of Coordinate Bench of this Court as well as of Hon'ble the Supreme Court.

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Learned counsel appearing on behalf of the petitioner in CWP No.25319 of 2017 submitted that his client, namely, Pooja Walia, scored 42.6 marks in academic and awarded 5.50 in interview and 3 marks on account of presentation on the topic.

Per contra, Mr. Anurag Goyal, learned counsel appearing on behalf of the respondent/University supported the action of Selection Committee, but did not deny the revision of marks from 41.5 to 44.5. As regards the availability of marks to the notice of Interview Committee, he submitted that the proceedings of selection committee and appointment of the Assistant Professor were uploaded on the University web-site along with Executive Council Resolution No.50 passed in meeting held on 11.03.2017 (Annexure R-2/1). Selection Committee awarded marks on the basis of performance of candidates. Since petitioner-Vanita was/is holder of M.Phil/JRF/Ph.D. as additional education and as per selection criteria, maximum eight marks can be awarded under the head of Additional Education, whereas, petitioner has been awarded four (4) marks on having M.Phil and four (4) marks for Ph.D degree, by considering the eligibility on the basis of National Eligibility Test (NET), thus, in such circumstances, claim of additional four (4) marks as Gold Medal in M.Phil, is not justified and rightly not acceded by the Selection Committee. All applications were scrutinized by the Committee consisting of the Members i.e. Dean of concerned Faculty, Head of the Department, Senior Most Professor, Registrar. As per result sheet, one candidate, namely, Ranju Malik, was awarded five (5) marks for M.Phil (Gold Medal).

As regards presentation of topic of their own choice, some

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candidates presented through power point presentation mode and others extempore. Presentations of the candidates displayed directly from the laptop or through E-mail. Awarding of 44.5 by Scrutiny Committee was uploaded on University web-site and also intimated separately.

As regards obtaining of two degrees, reliance was placed to the Resolution No.48 dated 09.06.2011, clarifying that a student pursuing any of the programmes offered by the University or any other University will be permitted to pursue any of the programmes being run by the Directorate of Distance Education of the University simultaneously.

Mr. Jasbir Mor, learned counsel appearing on behalf of respondent No.3, denied the allegations of favoritism or non-transparency in the selection process. Selection was done by eight (8) members of different institutions headed by Vice Chancellor of the University. Details have been given in paragraph No.1 of the preliminary submission of the written statement, which are as follows:-

1	<i>Prof. Bijender K. Punia, Vice Chancellor</i>	<i>Chairman</i>
2	<i>Dr. K.C. Arora, HES-I, Retired Principal, 697, Sector 15-A Hisar</i>	<i>Chancellor's Nominee</i>
3	<i>Prof. K. Srinivas, Prof./CT, National University of Educational Planning and Administration (NUEPA) (Ministry Woman Resources Development, Govt. of India), New Delhi</i>	<i>Subject Expert</i>
4	<i>Prof. Sandhya Gihar, Dean, Faculty of Education, Indira Gandhi National Tribal University, Amarkantak (MP)</i>	<i>Subject Expert</i>
5	<i>Prof. Rajendar Yadav, Department of Education, Kurukshetra University, Kurukshetra</i>	<i>Member</i>
6	<i>Prof. Bhagat Singh, Dean Faculty of Education, MD University, Rohtak</i>	<i>Member</i>

7	<i>Prof. Jitender Kumar, Head Deptt. Of Education, M.D. University, Rohtak</i>	<i>Member</i>
8	<i>Sh. Jitender Kumar Bhardwaj, Registrar</i>	<i>Member</i>

In such circumstances, there could not be any doubt of integrity and sincerity of the Officers. His client i.e. respondent No.3 had a good and excellence academic record, which has been detailed in the following tabulation:-

<i>Degree/class</i>	<i>Board/University</i>	<i>Year of Passing</i>	<i>Aggregate</i>
<i>Ph.D. (Edu.)</i>	<i>BPS MV Khanpur Kalan Sonipat</i>	<i>Pursuing</i>	<i>-</i>
<i>M.Ph. Education</i>	<i>-do-</i>	<i>2015</i>	<i>80.81% (Gold Medal)</i>
<i>M.Ed.</i>	<i>M.D.U. Rohtak</i>	<i>2012</i>	<i>68.21%</i>
<i>M.A. Psychology</i>	<i>IGNOU</i>	<i>2015</i>	<i>62.69%</i>
<i>M.C.A</i>	<i>MDU, Rohtak</i>	<i>2011</i>	<i>69.62%</i>
<i>B.Ed.</i>	<i>MDU, Rohtak</i>	<i>2005</i>	<i>58.82%</i>
<i>B.Sc. (IT) and Psychology</i>	<i>MDU, Rohtak</i>	<i>2005</i>	<i>58.82%</i>
<i>12th</i>	<i>HBSE</i>	<i>2002</i>	<i>59.80%</i>
<i>10th</i>	<i>-do-</i>	<i>1998</i>	<i>63.66%</i>

He denied that respondent No.3 failed poorly in the academic record, that cannot be a ground for setting aside over all result of the candidates, including of the academic record, qualification, experience and performance in interview. There can be chances that a candidate secures higher marks in academic, but may fail in the interview and not able to achieve expected marks. Selection Committee rightly declined awarding of four marks for obtaining Gold Medal in M.Phil, thus, urges this Court for dismissal of writ petitions.

I have heard learned counsel for the parties and appraised the paper book.

Assailing of appointment of respondent No.3, as noticed above, is on many accounts, but on going through the record, I am of the view that awarding of marks by the selection committee cannot be a ground for upholding appointment of respondent No.3, on plain and simple reasoning, as the marks obtained by all the candidates, on account of academic qualification was made known. The law with regard such position is no longer *res integra*. This Court, while dealing with identical question in two writ petitions bearing CWP Nos.21111 of 2017 and 15842 of 2019, by relying upon judgments of Hon'ble Supreme Court and Coordinate Bench of this Court, quashed the result of Selection Committee and directed to undertake exercise again without disclosure of marks obtained by candidates in written examination. In order to lend support the aforementioned findings, it would in the fitness of things to extract criteria, admission on the specific pleadings as well as other documents.

"SELECTION CRITERIA FOR THE POST OF ASSISTANT PROFESSOR(S)

Sr. No.		Max Marks
	Total Marks	100
A	Academic Record and Experience	43(Max)
1.	ACADEMIC RECORD (M.A/M.Sc./M.Com/MBA/MCA/M.Tech)	--
	· Upto 75% marks,(0.5 mark for each additional completed percentage beyond eligibility)	07 (Max.)
	· Above 75%marks(01mark for each additional completed %)	05 (Max.)
2	GOOD ACADEMIC RECORD	09 (Max.)

	· Throughout Ist Division in all Exams. (i.e. Matric/10+2, Graduation, Post Graduation) (3 marks for each First Division)	09
	· Ist Division in 2 Examinations	06
	· Ist Division in 1 Examination	03
3	GOLD MEDAL OBTAINED	04 (Max.)
	· At UG Level**	04
	· At PG Level (Only for qualifying subject)**	04
4	WEIGHTAGE FOR ADDITIONAL/HIGHER QUALIFICATIONS	08 (Max.)
	· JRF	02
	· M.Phil(completed)	04
	· Ph. D. (Thesis submitted)	04
	· Ph.D (Awarded)	07
5	TEACHING/POST DOCTORAL RESEARCH EXPERIENCE	10 (Max.)
	· PG level/UG level teaching experience (for each academic session subject to a minimum of 150 days) without availing any scholarship/fellowship from any funding agency.	01 marks
	· Post Doctoral Experience(minimum of one year)	02 (for each year)
B	RESEARCH PERFORMANCE	32 (Max.)
1	*RESEARCH PAPER(S)/BOOKS PUBLISHED	14 (Max.)
(i)	Research paper(s) in refereed/peer reviewed Journal(s) indexed in International Databases	02 marks for each publication
(ii)	Research paper(s) in refereed/peer reviewed Journal(s) with ISSN number	1 mark for each publication
(iii)	Book(s) on the subject(text or reference) published with ISBN number	03 marks per book subject to max 05 marks
(iv)	Chapter(s) in books with ISBN number	01 mark for each chapter
2.	RESEARCH PAPER(S) PRESENTED	05 (Max.)
(i)	International Seminar/Conference/Symposium	01 mark each

(ii)	National Seminar/Conference/Symposium	0.5 mark each
3.	PATENT(S)	03 (Max.)
(i)	International	02 per patent
(ii)	National	01 per patent
4.	QUALITY OF PUBLICATIONS	10
(i)	Impact Factor(IF) of Publications (Thomson Reuter only)	50% of Total Impact Factor
(ii)	H-Index (Google Scholar /Scopus/Research Gate)	50% of Total H-Index
C	INTERVIEW & PRESENTATION	25 (Max.)
(i)	Presentation on the Topic of the Subject	07
(ii)	Interview	18
	GRAND TOTAL	100

Annexure P-3, is result dated 13.06.2017. University, under the process of recruitment to the post of Assistant Professor in the Department of Education, notified the result of the candidates found to be ineligible or eligible, as per information provided by them in their application forms and subject to the verification of original documents i.e. education qualification, age, experience and category certificate and NOC. For the sake of brevity, Annexure P-3, reads thus:-

"Eligible Candidates:

Sr. No.	App. No.	Name & Father's Name	Remarks	Mark s
1	37	Dr. Pooja Walia D/o Sh. Satish Walia	Eligible	42.6
2	7	Vanit Rose D/o Sh. Jai Ashok Malik	Eligible	41.5
3	28	Indu Bala D/o Sh. Surinder Singh	Awards of Ph.D as well as eligibility subject to the verification of Ph.D degree by COE of concerned University as per UGC regulations 2009	40.4

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4	3	<i>Suman D/o Sh. Sahib Singh</i>	<i>Awards of Ph.D. As well as eligibility subject to the verification of Ph.D degree by COE of concerned University as per UGC regulations 2009</i>	28.8
5	9	<i>Menka D/o Sh. Balga Nand</i>	<i>Eligible</i>	28.8
6	17	<i>Kavita D/o Sh. Krishan Lal</i>	<i>Eligible</i>	28.4
7	16	<i>Dr. Manju Bala D/o Sh.</i>	<i>Awards of Ph.D. As well as eligibility subject to the verification of Ph.D degree by COE of concerned University as per UGC regulations 2009</i>	28
8	38	<i>Chandan Bala D/o Late Sh. Ramesh Chander Manchanda</i>	<i>Eligible</i>	26.2
9	31	<i>Rekha Rani D/o Sh. Raj Singh</i>	<i>Eligible</i>	25
10	36	<i>Dr. Rinku Rani D/o Sh. Om Parkash Ahlawat</i>	<i>Eligible</i>	21
11	8	<i>Dr. Jai Parkash S/o Sh. Ram Chander</i>	<i>Awards of Ph.D. As well as eligibility subject to the verification of Ph.D degree by COE of concerned University as per UGC regulations 2009</i>	18.3
12	2	<i>Monika Nandal D/o Sh. Raj Singh Nandal</i>	<i>Eligible</i>	17
13	23	<i>Pramila Kumari D/o Sh. Parkash Chander</i>	<i>Eligible</i>	17
14	10	<i>Neetu Dabas D/o Sh. Jai Singh</i>	<i>Awards of Ph.D. As well as eligibility subject to the verification of Ph.D degree by COE of concerned University as per UGC regulations 2009</i>	16.5
15	19	<i>Suman D/o Sh. Dharampal</i>	<i>Eligible</i>	14.3

16	10 A	Savita D/o Sh. Sukram Pal	Awards of Ph.D. As well as eligibility subject to the verification of Ph.D degree by COE of concerned University as per UGC regulations 2009	13.5
17	41	Naveen Kumar S/o Sh. Bishan Lal	Eligible	11.5
18	40	Priti Mala D/o Sh. Jagphool Singh	Eligible	7.5

The aforementioned result, thus, did not remain secret as it was also in the knowledge of the Selection Committee. It is a matter of record that after receipt of the representation of petitioner-Vanita Rose, her marks obtained on the basis of the aforementioned criteria, were increased 41.5 to 44.50, which fact has not been denied by Mr. Anurag Goyal, learned counsel representing the University.

It would also be apt to extract categoric averment in paragraph 14(ii) of the writ petition and corresponding paragraph of written statement on behalf of respondent(s)-University, which reads as under:-

"Para 14 (ii) of the writ petition.

(ii) That moreover very strangely on obtaining the documents under the Right to Information Act petitioner has come to know that the interview committee were already aware of the marks a candidate has obtained out of 75 as per the criteria mentioned in the advertisement before the interview had begun. In fact, the marks obtained by the various candidates who were called for interview were duly printed against their names and given to the interview committee. Therefore the interview committee awarded marks as per their whims and fancies in order to select the respondent No. 3 on the post of Assistant Professor (Education). A perusal of the result sheet annexed as Annexure P-8 would show that the

petitioner who had obtained 44.50 marks out of 75 as per the criteria and was at the top of all the candidates who applied for the said post, was only granted 1.5 marks out of 7 for presentation on the topic and only 4.5 marks out of 18 marks in the interview whereas respondent No. 3 who had obtained only 29.8 marks out of 75 as per the criteria was awarded 6.5 marks out of 7 for presentation on the topic and 17 marks out of 18 in interview. Therefore, due to this arbitrary awarding of marks the petitioner got a total of 50.50 marks whereas respondent No. 3 obtained 53.30 marks.

Also, it is pertinent to mention here that if the petitioner is awarded four marks for gold medal her total would come out to be 54.50 and therefore, she would be appointed on the post of Assistant Professor (Education).

Corresponding para of the written statement:

14. That the contents of this para and sub paras are wrong and hence denied. However the detailed position already explained in the Preliminary submissions & foregoing paras that may be reiterated here."

However, on going through preliminary objection, there is no such explanation or denial of the declaration of result, vide Annexure P-3, and its availability or otherwise, of the same before the Selection Committee.

The tenor and mode, in which, Selection Committee has awarded marks, can be exemplified from the perusal of Annexure P-8, whereas petitioner-Vanita Rose, obtained 44.5 marks out of 75 marks by the Scrutiny Committee, whereas in the presentation and interview containing of 25 marks, have been awarded 1.5 marks and 4.50 marks respectively, selected candidate i.e. respondent No.3, obtained 29.8 out of 75 and under presentation and interview 6.5 and 17 marks, respectively. Awarding of

marks is not sustainable and cannot be justified as Selection Committee, in my view, should have been prevented from the scrutiny and notice, at the time of interview.

Now coming to case law on this point, I would refer to relevant findings rendered in the judgment cited supra, which reads as under:-

"In such circumstances, I am of considered view that element of biasness and arbitrariness cannot be ruled out. Procedure of seeking information of academic qualification in proforma remained a mystery in written statement of respondents No.1 to 3. It would be apt to reproduce paras 12 and 13 of judgment rendered in Poonam Vs. Chaudhary Charan Singh Haryana Agricultural Univesity and others 2017(3) RSJ 55 and same reads as under:-

"12. Learned counsel for the petitioner submitted that petitioner is entitled for additional marks for the academic awards. Perusal of the record, it is evident that petitioner possesses academic award at the degree/graduate level only one and she relying on under graduate level award and also contended that she stood first in the post graduation etc. The same cannot be accepted for the reasons that academic award is with reference to graduate level, therefore, rightly the selecting authority has awarded 4 marks to the petitioner. Therefore, the above contention of the petitioner is hereby rejected. It was further contended that petitioner is more qualified than the 2nd and 3rd respondents as she has secured qualifications academic and additional marks to the extent of 43.88, whereas the 2nd respondent 35.75 and the 3rd respondent 39.50, therefore, awarding of 6 marks in the interview to the petitioner and so also awarding 14 and 12 marks respectively to the 2nd and 3rd respondents for 15 marks

are highly arbitrary and illegal. It was further contended that for the following qualifications, fixed marks have been assigned while introducing criteria for award of marks, namely, qualifications academic + additional, experience, academic awards, publications in relevant field and quality of publications. For these heads, straightway candidates would get particular marks, whereas performance and expression in interview, it is the discretion of the interviewer committee. Before the interviewer committee, selecting authority should not have made available marks awarded to the aforesaid heads. In providing marks awarded for the aforesaid heads the interviewer committee has led to arbitrary in awarding marks as is evident from the interview marks awarded to 11 candidates 9 of 12 except 2nd and 3rd respondents, rest of them have been awarded below 8 marks, whereas the 2nd and 3rd respondents have been awarded 14 and 12 marks respectively for 15 marks which has led to arbitrariness in awarding marks. Therefore, on this count also, the 2nd respondent's selection and appointment to the post of Assistant Professor (HDFS) is liable to be set aside.

13. Learned counsel for selecting authority submitted that selection and appointment of the 2nd respondent is in accordance with the procedure and she is more merited than petitioner, therefore, petitioner has not made out a case to interfere. It was further submitted that expert committee was constituted for the purpose of awarding marks, therefore, there is no infirmity whatsoever. Said contention is not tenable in view of fact that the 2nd respondent has been awarded marks for experience certificate, such experience certificate is subsequent to the last date for submission of

applications and further 2nd respondent has not produced character certificate as per the instructions given to the candidates. Therefore, there is serious lacuna in the selection and appointment of the 2nd respondent.”

The University preferred review application in CWP No.21111 of 2017, on a different ground as Committee was not the same, which had the benefit of result obtained under the qualification, but was different one, thus, pendency of review application in the writ petition, would not affect adjudication of present cases.

Keeping in view the aforementioned facts, present writ petitions are allowed and Annexure P-8, dated 09.03.2017, is set aside. Respondents/University is directed to redo interview process by constituting a separate committee, which shall not have benefit to take into consideration marks awarded to each candidate in respect of qualifications. Let the aforementioned exercise be done within a period of two months from the date of receipt of certified copy of this order.

20.09.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No