

\$~

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

Reserved on: 10th January, 2019

Decided on: 21st January, 2019

+ **LPA 225/2017**

DR. PRANAB BAISHYA & ORS.

..... Appellants

Through: Mr.Arunabh Chowdhary with
Mr.Karma Dorjee, Mr.Vaibhav
Tomar & Ms.Shruti Choudhry,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Ripu Daman Bhardwaj, CGSC for
UOI/R1.
Mr.J.K.Singh with Mr.Harsh Pandit,
Advocates for R2, R4 & R5.

+ **LPA 278/2017**

ALOK KUMAR SHARMA & ORS.

..... Appellants

Through: Mr.Abhik Kumar with Mr.Siddharth
Shankar, Mr. Arun K. Sharma,
Mr.Rinku Mathur & Ms.Noopur
Dubey, Advocates.

versus

NCCT & ANR.

..... Respondents

Through: Mr. J.K.Singh with Mr. Harsh Pandit,
Advocates for R1/NCCT.

+ **LPA 288/2017**

S HEROJIT SINGH & ANR.

..... Appellants

Through: Mr.Sapam Biswajit Meitei with
Mr. Naresh K.Gaur, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Ripu Daman Bhardwaj, CGSC for
UOI/R1.

Mr. J.K.Singh with Mr. Harsh Pandit,
Advocates for R2, R4 & R5.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These appeals are directed against a common judgment dated 20th March 2017 passed by the learned Single Judge dismissing the writ petitions of the Appellants.

Background Facts

2. The background facts are that Respondent No.1 National Council for Cooperative Training (NCCT), which is responsible for training for personnel working in the cooperative sector, published an advertisement in the Employment News dated 2nd – 8th October 2010 to recruit Lecturers in 20 institutions located in various parts of the country which offer training programmes.

3. Each of the Appellants applied for the post of Lecturer. Having been found eligible, they were called for interviews in between 22nd and 26th February 2011 at two centres i.e. Delhi (for Northern India) and Hyderabad (for Southern India).

4. Following the interview each of the Appellants were selected and offered appointment to the post of Lecturer amongst the 20 institutes of Cooperative Management run by the NCCT on 14th March, 2011. *Inter alia* among the terms and conditions of appointment it was mentioned that they would be on probation for a period of two years from the date of joining and that the period of probation could be further extended at the discretion of the NCCT. It was further mentioned in condition (vii) that if during the period of probation the performance was not found satisfactory the candidate's services may be terminated with one month's notice by the NCCT without assigning any reason. They were asked to report for duties by March 2011 as their appointments were with effect from 1st April, 2011.

Report of the Enquiry Committee

5. It appears that on 16th May, 2011 the Department of Agriculture and Cooperation ordered an enquiry into the allegations of irregularities in the appointment of Lecturers in the NCCT, as certain complaints with respect to gross illegalities in the selection process of Lecturers were received and subsequently a committee was appointed by the Department. The enquiry committee scrutinised the dossiers of the selected candidates. It also scrutinised some applications of candidates who were shortlisted for the interview but were not selected as well as the applications of some other candidates who were not selected even for the interviews. The different stages of the written process were also closely examined. An enquiry report dated 10th June 2011 was submitted. *Inter alia* it noted as under:

“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.”

6. The irregularities noted in the report were as under:

“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:

(Details of individual candidates omitted to respect privacy)

(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.”

7. The other observations/findings of the enquiry report were as under:

“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.”

8. It was recommended that in view of the “extremely serious nature of the irregularities detected”, the sanctity of the entire recruitment process had been lost. It was accordingly recommended that “the recruitment process for the post of Lecturer be scrapped and the appointment of the selected candidates be cancelled.” Based on the above report of the three member Committee, on 26th September 2011, an office order was passed cancelling the appointment of each of the Appellants as Lecturer “with immediate effect.” The reason given in the said order was that the enquiry had found that the recruitment and selection of Lecturers in NCCT “has been done in violation of established procedure.” Accordingly, the appointments were cancelled.

Facts in LPA 225 of 2017

9. The three Appellants in LPA 225 of 2017 i.e. Dr.Pranab Baishya (Appellant No.1), Mr.Hemanta Kumar Das (Appellant No.2) and Mr. Khoichung Rangamlan (Appellant No.3) first approached the High Court of Assam with WP (C) 5226 of 2011 questioning the above order dated 26th September 2011. By the order dated 4th February 2012, a direction was issued for a Rule to be issued and the interim orders passed earlier on 30th September and 14th October 2011 were ordered to continue during the pendency of the two writ petitions. Subsequently a transfer petition was filed by the Union of India in the Supreme Court. Under the orders of the Supreme Court, the aforementioned writ petitions pending in the High Court of Assam were transferred to this Court.

Order dated 7th August 2013

10. The Respondents were directed by an order dated 7th August 2013 to file additional affidavits which would refer to each of the Appellants and how they did not meet the qualifications/eligibility criteria and if they were wrongly selected to satisfy the specific reasons “qua each individual Petitioner why the selection is wrong/illegal.” The learned Single Judge in passing the above order gave the following reasoning:

“2 In my opinion, if any candidates, including the petitioners, are otherwise qualified as per the recruitment rules and the criteria stated in the advertisement, against such successful candidates there are no grave allegations to cancel their selection, there is no issue of the petitioners having received wrong marks in the interview, then, merely because various other persons may be disqualified on account of lack of requisite eligibility criteria or grave charges against such persons, cannot mean that other successful candidates against whom there are no allegations, can be affected by cancelling the recruitment process, more so because the successful candidates have in fact worked for around 6 months with the respondent No. 1 after they have been appointed.”

Additional affidavit

11. Pursuant thereto an affidavit dated 19th October 2013 was filed in which the position qua each of the 3 Appellants in LPA 225 of 2017 was set out. As far as the Appellants No.1 and 2 were concerned, it was pointed out that they were eligible as per the recruitment rules and each of them fulfilled the eligibility criteria. As far as Appellant No.3 was concerned, it was stated that he belonged to Schedule Tribes (ST) Community. He had an experience of 1 year and 5 months as Lecturer and was selected pursuant to relaxation. This was because there were only two applicants from the ST community out of

the total vacancies of six.

12. The Appellants filed their reply to the above additional affidavit in which they clarified that:

“There were only 5 candidates from Scheduled Tribes category who had applied for the post of Lecturer and the Screening Committee had recommended for relaxation of the criteria of experience as per Rule 3.5 of the National Council for Cooperative Training of National Cooperative Union of India, Service, Recruitment and Promotion Rules in its meeting held on 17.01.2011. The recommendation of the Screening Committee for relaxation of experience in S.T. category was duly approved by the Chairman and Director on 28.01.2011.”

Impugned order of the Single Judge

13. However, by the impugned common order dated 20th March 2017, the learned Single Judge dismissed all the writ petitions *inter alia* holding as under:

- (i) There is no need to following the principles of natural justice by giving notice to each particular candidate when the entire selection process is validly cancelled. Reference was made to the decision in ***Union of India v. O. Chakradhar (2002) 3 SCC 146.***
- (ii) Reading of the enquiry report shows that foundational facts existed for Respondent No.1 to hold that the entire selection process was vitiated. The cancellation of the entire selection process was, therefore, valid.

14. Referring to the irregularities pointed out by the enquiry report the

learned Single Judge concluded that:

“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.”

15. Learned Single Judge noted that there were observations in the enquiry report with regard to separation of tainted and untainted candidates on some specific subjects where it was observed that the entire selection process stood vitiated and such segregation is not possible. Learned Single Judge further proceeded to observe as under:

“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.”

16. The other factors that weighed with the learned Single Judge in deciding against the Appellants were as under:

- (i) The recruitment rules did not provide the prescribed procedure for selection for the post of Lecturer. It was further observed:

“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.”

- (ii) The second reason was that the advertisement was issued only in the employment news and not in the news papers.

17. Relying on the decision in *State of Orissa v. Mamata Mohanty (2011) 3 SCC 436* it was held by the learned Single Judge that the relaxation even if given was illegal as it should have been applied in a transparent manner. Had it been known that relaxation would be given, many more candidates would have applied. The selection committee did not have the powers to relax the extant norms. Accordingly, the learned Single Judge rejected the arguments urged on behalf of the Appellants that:

“the present case there can be segregation of tainted and untainted candidates and hence petitioners being non-tainted candidates their appointments be not cancelled. Of course 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 in fact 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.”

18. Holding the entire process selection to be vitiated, illegal and arbitrary and “in fact a dishonest collusive action” the learned Single Judge held that:

“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.”

19. It was further held that once conclusions have been drawn by the enquiry committee upon careful appraisal and due process which is justified, “even a writ court will not interfere with the conclusions of the enquiry committee, the writ petition is accordingly dismissed.”

20. It appears that after the writ petitions were dismissed on 20th March 2017 by the learned Single Judge, the Respondents lost no time in communicating to each of the Appellants that their services stood discontinued. Each of them was issued a letter dated 1st April 2017 to that effect. While issuing notices in these appeals on 18th April 2017, the Division Bench took note of the above fact and, therefore, declined to pass any interim orders.

21. This Court has heard the submissions of Mr. Arunabh Chowdhary, Advocate appearing for the Appellants in LPA 225 of 2017, Mr. Abhik Kumar, Advocate for the Appellants in LPA 278 of 2017 and Mr. Sapam Biswajit Meitei, Advocate for the Appellants in LPA 288 of 2017. Mr. Ripu Daman Bhardwaj, learned Central Government Standing Counsel appearing for Respondent No.1 and Mr. J.K.Singh, Advocate appearing for the Respondent Nos.2, 4 and 5 were also heard.

Analysis and reasons

22. In the present case, it is seen that the trigger for the letters cancelling the appointments of the Appellants was the report of the enquiry committee instituted to examine the irregularities in the process of appointment of Lecturers to the NCCT. The enquiry report has been examined earlier. In particular the enquiry report made a reference to the irregularities actually noticed. If one carefully peruses each of the instances of irregularities, some of them do not touch upon the honesty, integrity and conduct of the Appellants themselves. For instance, the failure to submit photographs along with the applications or the failure to devise a proper system for receiving applications or the failure to properly screen the documents submitted by the Appellants are all matters not involving the Appellants themselves. These were lapses on the part of the administration.

23. It was for this reason the learned Single Judge had correctly observed in the order dated 7th August 2013 that merely because some persons may be disqualified, lack requisite eligibility criteria or there are grave charges against them it could not mean that the candidature of other successful candidates against whom there are no allegations will also stand cancelled. This was also the reason why by the said order the learned Single Judge had directed the Respondents to file an additional affidavit pointing out how “each of the Petitioners do not meet the qualifications/eligibility criteria.” If any of them was wrongly selected then such additional affidavit was required to satisfy the reasons in each of their cases.

24. It is strange that having asked for the aforementioned additional

affidavit, in the final judgment which is the subject matter of challenge in the present appeals the learned Single Judge made no reference to the said additional affidavit.

25. Illustratively, if the additional affidavit filed in respect of the Appellants in LPA 225 of 2017 is perused it is seen that the reasons adduced qua each of the Appellants is as under:

- (a) Dr. Pranab Baishya “was eligible as per recruitment rules, as he fulfils the eligibility criteria prescribed in the recruitment rules and advertisement.”
- (b) Hemanta Kumar Das (Appellant No.2) “was eligible as per recruitment rules.”

26. When it came to Appellant No.3 who belongs to the ST category it was noted that his previous experience was one year and five months and the relaxation in terms of experience was recommended by the Screening Committee and approved by the Chairman NCCT whereas in terms of Rule 3.5 of the SRMP Rules of NCCT 1984 the approval should have been given by the NCCT Committee (Council). It was stated that Appellant No.3 “was ineligible for appointment as per the recruitment rules.”

27. Thus it will be seen that as far as the Appellant Nos.1 and 2 in LPA 225 of 2017 were concerned they were not ineligible on any of the grounds mentioned in the enquiry report. In other words Appellant Nos.1 and 2 were certainly not ‘tainted’ in any manner.

28. Even Mr. Khoichung Rangamlan (Appellant No.3) was not found to have indulged in any malpractice or irregularity. In fact if the learned Single Judge had discussed the above affidavit and sought a proper explanation from the Respondents it would have been plain that only five candidates of the ST category had applied for the post of Lecturer. The Screening Committee had recommended relaxation of the criteria of experience and its meeting held on 17th January 2011 in the chamber of Shri R.K.Singh, Chief Director (Cooperative), Ministry of Agriculture. The NCCT Employees Recruitment and Promotion Rules specifically state that the essential experience for the post of Lecturer was one year. The decision of the Managing Committee was duly approved by the Chairman and Director.

29. In this context a reference may be made to the OM dated 5th September 1975 of the Department of Personnel regarding relaxation of the experience qualification for SCs and STs where the direct recruitment is by a process otherwise than through the UPSC. The recommended clause reads as under:

“The qualification regarding experience is relaxable at the discretion of the competent authority in the case of candidates belonging to the Scheduled Castes or Scheduled Tribes, if at any stage of selection the competent authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them. The appointing authority shall record the reasons for relaxing the qualifications regarding experience in writing while doing so.”

30. Reference may also be made to the Employees' Service Recruitment and Promotion Rules of NCCT of 2013 which permits such relaxation. Rule 3.5

reads as under:

“3.5 Qualifications and experience are relaxable at the discretion of the Council in case of candidates belonging to Scheduled Castes and Scheduled Tribes, if at the stage of selection, the council is of the opinion that sufficient number of candidates of these communities possessing requisite qualifications and experience are not likely to be available to fill up the vacancies reserved for them.”

31. Therefore, as far as the SC and ST candidates are concerned relaxation and experience need not have been viewed as being illegal resulting in cancellation of the entire candidature. There was no justification, therefore, for the Learned Single Judge to overlook the above factual position and simply conclude that the selection of Appellant No.3 was also tainted in the manner suggested in the enquiry report.

Position in LPA 278 of 2017

32. Turning to the cases of the other Appellants in the connected appeals similar additional affidavits were filed by the Respondents before the learned Single Judge in their cases as well. In LPA 278 of 2017 there were 15 Appellants who had filed WP (C) 729 of 2011 aggrieved by the cancellation of their appointments. The additional affidavit filed by the Respondents pursuant to the order dated 7th August 2013 of the learned Single Judge dealt with each of these Appellants. In the case of Appellant No.1 (Alok Kumar Sharma), Appellant No.3 (Mahesh Kumar Verma), Appellant No.4 (Surender Kumar), Appellant No.5 (Amandeep), Appellant No.9 (U Homiga), Appellant No.12 (G Jayanthi), Appellant No.15 (V Alagu Pandian) each of them was found to be eligible for appointment as he or she had the requisite experience and fulfilled all other eligibility criteria. In other

words, none of the above Appellants appointment was tainted in any manner whatsoever.

33. As regards Appellant No.2 (Rajiv Kumar), Appellant No.13 (A Eswaramoorthy), Appellant No.14 (Ravindra D Jadhao), they were SC candidates who had been granted relaxation for number of years of experience by invoking Rule 3.5. As already noticed, this was validly done by the Respondents. Consequently, even these Appellants could not be held to be disqualified in any manner.

34. As far as Appellant No.6 (Manish Kumar Mishra), Appellant No.7 (Upnish Yadav) and Appellant No.8 (Dr.M Jayaprakash) it was pointed out that they had inadequate teaching experience and, therefore, were ineligible to be appointed. This again was not an instance of any malpractice on the part of these Appellants. In any event, they could have easily been issued a show cause notice and given an opportunity to explain before taking a decision on cancelling their appointments. It was not a question of concealment of any facts by them.

35. In this context the order passed on 4th February 2012 by the Guwahati High Court that the NCCT should not have acted mechanically on the basis of the advice given by the DOAC and should have applied their own mind to the available materials before ordering cancellation of appointment was relevant. Thus, even in the second set of appeals it is seen that none of the candidates was really 'tainted'.

Position in LPA 288 of 2017

36. In third LPA 288 of 2017 there are two Appellants i.e. S Herojit Singh (Appellant No.1) and Seiminthang Khongsai (Appellant No.2). The additional affidavit filed in their cases again did not point out any illegality committed by either of them. As far as S Herojit Singh (Appellant No.1) is concerned, the affidavit dated 17th October 2013 confirmed that he had the requisite teaching experience and is eligible for appointment. He belongs to the OBC category and was also physically handicapped.

37. As far as Appellant No.2 is concerned he too belongs to the OBC category but he had inadequate teaching experience. The certificate attached by him showed him as having worked as a Lecturer in a college in Manipur in the year 2007 – 08 whereas in his application he had claimed that he was a Lecturer in 1996 – 97. It was mentioned that “the difference in the dates of experience is glaring.” However, in this case too a show cause notice ought to have been issued to the said Appellant before cancelling his candidature as he may have had an explanation to offer.

Discussion of case law

38. At this stage the Court would like to refer to the case laws cited at the bar. In ***Mahipal Singh Tomar v. State of Uttar Pradesh (2013) 16 SCC 771*** the need for issuance of individual notices particularly when it was not a case of malpractice by en masse copying or collusion has been found, was emphasized.

39. In ***Inderpreet Singh Kahlon v. State of Punjab (2006) 11 SCC 356*** the Supreme Court found fault with the failure by the High Court to segregate

the tainted from the non-tainted candidates. It was observed as under:

“41. If the services of the appointees who had put in 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 go to the root of the matter which vitiate 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 have been found to be part of the fraudulent purpose or the system itself was corrupt

118. Undoubtedly, in the selection process, there have been manipulations and irregularities at the behest of R.S. Sidhu, the then Chairman, Punjab Public Service Commission. On a careful scrutiny of the facts and circumstances of the case, in my considered opinion, the High Court ought to have made a serious endeavour to segregate the tainted from the non-tainted candidates. Though the task was certainly difficult but by no stretch of imagination, was it an impossible task.

119. The peculiar facts of this case which need to be highlighted are that some of the candidates have worked for about three years and their services were terminated only on the basis of criminal investigation which was at the initial stage. The termination of their services as a consequence of cancellation of selection would not only prejudice their interests seriously, but would ruin their entire future career.”

40. In *Onkar Lal Bajaj v. Union of India*(2003) 2 SCC 673 the Supreme Court observed that *en masse* cancellation was worse than the problem. In *Joginder Pal v. State of Punjab* (2014) 6 SCC 644 the Supreme Court

emphasised the importance of segregating the tainted candidates from the untainted ones and not *en masse* cancel the entire selection.

41. The reliance by the learned Single Judge on the decision in ***Hitendra Singh v. Punjabrao Deshmukh Krishi Vidyapeeth (2014) 8 SCC 369*** appears to be misplaced. There the Justice Dhaba Committee had issued notices to each of the selected candidates and gave them hearing and this entire process took three and a half years to complete. The enquiry was a thorough one. It was in those circumstances that the Supreme Court observed that there was no need to again issue individual notices to each of the effected candidates.

42. In the present case, however, none of the present Appellants had any opportunity to participate in the enquiry. It was only after the order passed by the learned Single Judge on 7th August 2013 that their individual cases were examined by the Respondents and as noticed hereinbefore many of them were not found to be disqualified at all.

43. In ***Union of India v. Rajesh PUAIR 2003 SC 4222*** the Supreme Court emphasised the need to segregate the tainted from the untainted candidates.

It was observed as under:

“In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose

selections were not found to be, in any manner, vitiated for any one or other reasons. Applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go by to contextual considerations throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.”

44. Likewise in *Girjesh Shrivastava v. State of MP (2010) 10 SCC 707* the Supreme Court observed that “even if there was some illegal beneficiaries from their selection process they should have been weeded out instead of striking down the entire selection process.”

45. In *Vikas Pratap Singh v. State of Chattisgarh AIR 2013 SC 3414* the Supreme Court observed as under:

“20. The pristine maxim of *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or malafide. (See: *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v. M. Tripura Sundari Devi*, (1990) 3 SCC 655, *P. Chengalvaraya Naidu v. Jagannath and others*, (1994) 1 SCC 1 and *Union of India and others v. M.*

Bhaskaran, 1995 Suppl. (4) SCC 100). It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bonafide of the candidate in such appointment and length of service of the candidate after such appointment (See: *Vinodan T. and Ors. v. University of Calicut and Ors.*, (2002) 4 SCC 726; *State of U.P. v. Neeraj Awasthi and Ors.* (2006) 1 SCC 667).”

46. In the present case, none of the Appellants has been shown to have indulged in any irregularity. It was repeatedly urged by Mr. Bhardwaj that the candidature should have been cancelled on the ground of ‘collusion’ however, none of the additional affidavits filed by the Respondents pursuant to the order dated 7th August 2013 is any instance of such collusion on the part of the any of the Appellants pointed out. The learned Single Judge appears to have observed broadly that the process of selection was vitiated by “a dishonest collusive action” and that there were “illegalities existing which go to the root of the matter”. However, there is no basis in the record to support such a finding.

Conclusions

47. For the aforementioned reasons this Court sets aside the impugned judgment of the learned Single Judge and issues the following directions:

I. The impugned letters of cancellation of appointments of the following persons are set aside:

- (i) Dr.Pranab Baishya, Mr.Hemanta Kumar Das and Mr. Khoichung Rangamlan (Appellants 1 to 3 in LPA 225 of 2017).
- (ii) Appellant No.1 (Alok Kumar Sharma), Appellant No.2 (Rajiv Kumar), Appellant No.3 (Mahesh Kumar Verma), Appellant No.4 (Surender Kumar), Appellant No.5 (Amandeep), Appellant No.9 (U Homiga), Appellant No.10 (P Rajabalachandran), Appellant No.12 (G Jayanthi), Appellant No.13 (A Eswaramoorthy), Appellant No.14 (Ravindra D Jadhao) and Appellant No.15 (V Alagu Pandian) in LPA 278 of 2017; and
- (iii) S Herojit Singh (Appellant No.1 in LPA 288 of 2017)

II. Each of the persons in para (I) above will be restored their appointments and while they need not be paid arrears of salary for the period when they were not in service, the said period will be treated as a continuation of their service without a break for all other purposes including seniority and emoluments.

III. As regards the remaining Appellants in the aforementioned appeals, each of them will be issued a show cause notice by the Respondents within a period of 4 weeks from today setting out the precise facts concerning their alleged ineligibility supported by the relevant materials which formed the basis of the enquiry proceedings as well as a copy of the enquiry report, be given sufficient opportunity to reply to the show cause notice, and to be heard in person.

IV The entire exercise as in III above be completed within a period of 3 months from today. Reasoned written orders will be passed and communicated to each of the said persons by the Respondents and if such persons are aggrieved by such orders it will be open to them to seek appropriate remedies in accordance with law.

48. The appeals are disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 21, 2019

tr