

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 638 OF 2016

AND

WRIT PETITION NO. 664 OF 2016.

WRIT PETITION NO. 638 OF 2016

Mrs. Jenipha Elma Francis Pinto
Age 36 years,
W/o Vicky Fernandes
r/o House No. 804, Paul Wado,
Chicalim, P.O. Colvale,
Bardez, Goa.

... Petitioner.

Vs.

1. State of Goa,
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa.
2. The Chief Electrical Engineer,
Electricity Department,
Government of Goa,
Vidhyut Bhavan, 4th Floor,
Panaji, Goa.
3. Roshan Ramakant Naik,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div. VII,
Curchorem, Goa.

4. Anupa Pramod Naik,
Major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div VII,
Curchorem, Goa.
5. Prashant Chandrakant Raut,
Major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div XVI,
Margao, Goa.
6. Vishranti Dattaram Shetye,
Major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div XI,
Vasco, Goa.
7. Purnesh Manohar Gawas Kerkar,
Major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div IV,
Margao, Goa.
8. Trisha Tukaram Jadhav,
Office of the Sub Divisional Engineer,
Electricity Dept, Sub Div IV,
Taleigao, Goa.
9. Priti P. Shirgaonkar,
Major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div VI,
Mapusa, Goa.
10. Umesh Janardan Sawant,

major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div IV,
Margao, Goa.

11. Ketan Digambar Kavlekar,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div V.
Bicholim, Goa.
12. Rohit Suresh Mesta,
Major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div XIV,
Verna, Goa.
13. Shefali Rajendra Talkar,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div IV
Margao, Goa.
14. Mary Joseph,
Major of age,
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Electricity Dept, Div XIV,
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15. Shaik Irfhan Hussain,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div XI,
Vasco, Goa.
16. Mahadeo Gurudas Merkar,
major of age,

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Electricity Dept, Div V,
Bicholim, Goa.

17. Lui Grity Santamaria,
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18. Arti Vithal Jogle,
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19. Sandeep Arjun Naik,
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25. Vandana Sushant Redkar,
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26. Krupesh Chandrakant Desai,
major of age,
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Margao, Goa.
27. Abhijit Ashok Palkar,
major of age,
Office of the Sub Divisional Engineer
Electricity Dept, Sub div I,
Panaji, Goa.
28. Ketan Govind Arolkar,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div IV,

Margao, Goa.

29. Viraj V. Mandrekar,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div XVII,
Mapusa, Goa.
30. Swetalkumar Raghoba Phaldesai,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div XVI,
Margao, Goa.
31. Laximan Shantaram Haldankar,
Major of age,
Office of the Sub Divisional Engineer,
Electricity Dept, Sub Div III,
Panaji, Goa.
32. Nita Ankush Parob,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div XI,
Vasco, Goa.
33. Suraj Vasant Teli,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div I,
Panaji, Goa.
34. Devendra Sadashiv Shetye,
major of age,
Office of the Executive Engineer Elec.
Electricity Dept, Div VI,
Mapusa, Goa.

35. Mr. Vishnu Pandurang Padwal,
major of age,
H.No. 49, New Wade,
Near Temple, Vasco.
- 35.A. Videsh Vinayak Thanekar- OBC,
C/o Executive Engineer,
Elect. Div VII,
Curchorem, Goa.
36. Vishal Pradeep Kambli-SC,
C/o Executive Engineer,
Elect. Div. I, Panaji, Goa.
37. Gaureshwar T. Korgaonkar – OBC,
C/o Executive Engineer,
Elect. Div XVII
Mapusa, Goa.
38. Dattaram Harishcandra Arolkar – OBC
C/o Executive Engineer,
Elect. Div. XIV,
Verna, Goa.
39. Siddhesh Ulhas Patekar,
C/o Executive Engineer,
Elect. Div. XIV,
Verna, Goa.
40. Ankita Ashok Kambli – OBC
C/o Executive Engineer, Elect. Div XI,
Vasco, Goa.
41. Jagdish Rajendra Kamat – OBC,
C/o Executive Engineer,
Elect. Div X,
Ponda, Goa.

42. Rohan Ratnakar Naik – OBC,
C/o Executive Engineer,
Elect. Div. X,
Ponda, Goa.
43. Sonali Santosh Palyekar – OBC
C/o Executive Engineer,
Elect. Div. XI,
Vasco, Goa.
44. Ameeta R Sawant - OBC
C/o Office of the Sub Divisional Engineer,
Sub div II, under Elec. div X,
Ponda Goa
45. Devji Vasant Honawarkar - OBC
C/o Office of the Executive Engineer,
Elec div XVI,
Margao Goa
46. Sharad Damoda Naik-OBC
C/o Office of the Executive Engineer,
Elec div X,
Ponda Goa
47. Rohan Santosh Faterpekar - OBC
C/o Office of the Executive Engineer,
Sub div X,
Ponda Goa
48. Mithali Manohar Pokre- OBC,
C/o Sub Divisional Engineer,
Sub Div III under Elec. Div XVII,
Mapusa Goa
49. Sathoskar Viraj Vanmali- OBC
C/o Office of the Executive Engineer,

Sub div XVI,
Margao Goa

50. Dinesh Rama Vaghekar – ST,
C/o Sub Divisional Engineer,
Sub division II, Quepem,
under div VII,
Curchorem Goa
51. Swapnil Ranganath Kunkalienkar-ST
C/o Office of the Executive Engineer,
Sub div X, Ponda Goa.
52. Sulaksha Lingu Borkar- ST
C/o Office of the Executive Engineer,
Sub div X, Ponda Goa
53. Tyson Proto Rebello - ST
C/o the Executive Engineer,
Elec. div I, Panaji Goa
54. Elizabeth Carvalho- ST
C/o the Executive Engineer,
Elec. div I, Panaji Goa
55. Anand M. Velip – ST
C/o the Executive Engineer,
div Ill, Curchorem Goa
56. Ramesh Narayan Lamani - PH
C/o Executive Engineer,
Elect. Div I, Panaji Goa
57. Shyamsundar M. Ayer - SP
C/o Executive Engineer,
Elect. Div 1, Panaji Goa.

... Respondents.

Mr. Vijay A. Palekar with Mr. Tushar Shirodkar, Advocates for the Petitioners.

Mr. Deep Shirodkar, Additional Government Advocate for the Respondents No.1 and 2.

Mr. Shivan Desai, Advocate for Respondent No.8.

Mr. Parikshit Sawant, Advocate for the Respondents No.3 to 7 and 9 to 34.

AND
WRIT PETITION NO. 664 OF 2016.

1. Ms. Pradnya Pramod Gaonkar,
age 26 years,
D/o Pramod Gaonkar,
r/o House No. 2629,
Housing Board Colony,
Sankhalim, Goa

2. Mrs. Tripti Prakash Parab,
aged 32 years,
W/o Vallabh panchwadekar,
r/o Datta Digambar Apts.,
Flat No. S-1, 2nd Floor,
Morailem, Curchorem, Goa.

... Petitioners.

Vs.

1. State of Goa,
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa.
2. The Chief Electrical Engineer,
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 H.No. 49, New Wade,
 Near Temple, Vasco.

... Respondents.

Mr. Vijay A. Palekar with Mr. Tushar Shirodkar, Advocate for the Petitioners.

Mr. Arun Talaulikar, Additional Government Advocate for the Respondents No. 1 and 2.

Mr. Shivan Desai, Advocate for the Respondent No.8.

Mr. Parikshit Sawant, Advocate for the Respondents No.3 to 7 and 9 to 34.

**Coram:- M. S. SONAK &
 SMT. M. S. JAWALKAR, JJ.**

**Reserved on: 25th November, 2020
 Pronounced on: 02nd December, 2020**

COMMON JUDGMENT: (Per M. S. Sonak, J.)

Heard Mr. Vijay A. Palekar alongwith Mr. Tushar Shirodkar, the learned Counsel for the petitioners, Mr. Deep Shirodkar, the learned Additional Government Advocate for the respondents No.1 and 2 in Writ Petition No. 638 of 2016, Mr. Arun Talaulikar, the learned Additional Government Advocate for the respondents No.1 and 2 in Writ Petition No. 664 of 2016. Mr. Shivan Desai, the learned Counsel appears for the respondent No.8 in both the petitions and Mr. Parikshit Sawant, the learned Counsel appears for the respondents No.3 to 7 and 9 to 34 in both the petitions.

2. The learned Counsel for the parties agree that the issues involved in both these petitions are identical and therefore they may be disposed of by common judgment. They request that the Writ Petition No.638 of 2016 may be treated as the lead petition.

3. The petitioners challenge the selection and appointments of the respondents no.3 to 57 to the posts of Assistant Data Entry Operator (ADEO) in preference to the petitioners and seek appropriate writ to strike down such selection/appointment. The petitioners also seek appropriate writ to direct the respondent State to appoint the petitioners to the posts of ADEO with retrospective effect and with all consequential benefits.

4. Mr. Palekar, the learned Counsel for the petitioners

submits that the selection process post declaration of the results of the written test is in breach of the Government's OM dated 05.03.2007 which was binding. He submits that the selection criterion was changed post declaration of such results and this amounts to a change of the rules of the game after the game has fairly advanced. He relies on *Tushar Deshmukh V/s. State of Maharashtra*¹; *Ms. Rita Yorung & Another v/s. State of Arunachal Pradesh & Others*²; *Ramjit Singh Kardam & Others v/s. Sanjeev Kumar & Ors.*³; *Bishnu Biswas & ors. V/s. Union of India*⁴; *K. Manjushree v/s. State of Andhra Pradesh*⁵; and *Himani Malhotra v/s. High Court of Delhi*⁶.

5. Mr. Palekar submits that even the changed criterion was ex facie arbitrary and unconstitutional. He pointed out that the changed criterion ignored merit based on written tests and almost entirely emphasized on marks in oral interviews and extracurricular activities. He points out that 50 marks out of 100 were arbitrarily allotted to candidates who possessed the minimum essential qualifications of SSCE, thereby increasing the actual weightage to interview marks to 30%. He submits that this was impermissible, considering the nature of the posts to which appointments were to be

¹ 2013 (3) Mh.LJ 673

² 2010 (2) GauLT 276.

³ 2020 0 AIR (SC) 2060.

⁴ 2014 5 SCC 774.

⁵ AIR 2008 SC 1470

⁶ AIR 2008 SC 2103

made. He submits that 10% of marks were arbitrarily allotted to extracurricular activities when this criterion found no mention in the Recruitment Rules or the advertisement issued.

6. Mr. Palekar pointed out that the changed criterion was never in the public domain and was disclosed only after the institution of Writ Petition No. 638 of 2016. He submits that in such a situation, the principle of estoppel will not apply. He submits that the selection process post declaration of the results of written test is vitiated by legal malice, and, therefore, these petitions deserve to be allowed, if necessary, by molding the reliefs, which may have been slightly widely worded.

7. Mr. Palekar submits that though the challenge is to the appointment of 56 appointees, the petitioners, do not seriously press challenge to the appointment of respondents no. 14 and 22 because even after the adoption of the existing and the correct process, these respondents, might still find a place in the merit list. He further submits that this challenge is mainly to the general category appointees, since, the petitioners belong to the general category and will gain nothing even if the appointments to the reserved category are struck down.

8. Mr. Shirodkar, the learned Additional Government Advocate for the respondents No.1 and 2 in Writ Petition No.638 of

2016, at the outset submits that both these petitions deserve to be dismissed because the petitioners took their chance in the selection process and only because they were unsuccessful thereat, the present petitions have been instituted. He submits that the principle of estoppel is clearly attracted in such a situation. He relies on ***Madan Lal And Others v/s. State of J & K And Others***⁷ and ***Ashok Kumar And Another v/s. State of Bihar And Others***⁸.

9. Mr. Shirodkar, without prejudice, submits that minor deviation from the OM dated 05.03.2007 does not vitiate the entire selection process. He submits that criterion adopted was uniformly applied and further, the same was fair and based on objective parameters. He submitted that the pleadings of malafides are vague and not meant against any specific persons. He submits that only 15% marks were allotted for the oral interview and there is no presumption that those who may have done well in the written test must get higher marks at the interview or vice versa. He submits that the selection based on a similar criterion was upheld by this Court in ***Umesh K. Naik & Ors. V/s. State of Goa and connected matters***⁹ and ***Daulatrao V. Rane Sardessai V/s. State of Goa & Ors***¹⁰.

10. Mr. Arun Talaulikar, the learned Additional Government

⁷1995 3 SCC 486

⁸(2017) 4 SCC 357

⁹ Writ Petitions No.78, 79, 91 and 505 of 2013 decided on 25.03.2014

¹⁰ 2013 (2) ABR 208

Advocate appearing for the State in the Writ Petition No. 664 of 2016 adopted the arguments of Mr. Shirodkar in Writ Petition No. 638 of 2016.

11. Mr. Shivan Desai and Mr. Parikshit Sawant, the learned Counsel for the appointees from the general category also adopted the submissions of Mr. Shirodkar. They further submitted that the pleadings in these petitions are vague and lack foundation. They submitted that malafides have not been alleged by the petitioners and in any case not made good by impleading any specified persons as parties to these petitions. They pointed out that there is a presumption in favour of administration that power has been exercised bonafide and in good faith. They relied on ***Ratnagiri Gas And Power Private Limited v/s. RDS Projects Limited and Others*¹¹**.

12. Mr. Desai and Mr. Sawant submitted that mere deviation from the OM dated 05.03.2007 can never be sufficient to vitiate the selection process. They pointed out that a valid criterion was adopted for shortlisting which is, in fact, advocated by the OM dated 05.03.2007. They pointed out that the criterion so adopted was fair, objective and uniformly applied and therefore there is nothing wrong in the selection process. Mr. Desai and Mr. Sawant pointed out that the petitioners had taken their chance in the selection process, and

¹¹ (2013) 1 SCC 524.

therefore, were now estopped from challenging the selection process. They pointed out that the reliefs claimed by the petitioners that merit must be determined solely based on the marks obtained in the written test were contrary to the advertisement which had provided that the selection will be based on written test and oral interview. They pointed out that the anomalous situation would arise since the petitioners were not pressing the challenge against the appointments to the reserved category and therefore, to avoid such an anomalous situation, the petitions deserve to be dismissed in their entirety.

13. Mr. Parikshit Sawant pointed out that the marks for oral interview were only 15% and the contention-based upon award of 50 marks towards minimum essential qualification has already been rejected by this Court in ***Richard Fernandes v/s. Deputy Director of Administration & Ors.***¹². He also submitted that only a few candidates have been awarded marks for extracurricular activities and it was not even the case of the petitioners that they had any certificates to prove participation in extracurricular activities but the same were excluded from consideration.

14. For all the aforesaid reasons the learned Counsel for the respondents submitted that both these petitions deserved to be dismissed.

¹² Writ Petition No.319 of 2007 decided on 24.06.2014

15. The rival contentions now fall for our consideration.

16. In both these petitions, we are concerned with the direct recruitment to the post of Assistant Data Entry Operators (ADEOs), which are Group D, Non-Ministerial, Non-Gazetted posts. The recruitment to these posts is governed by the Government of Goa, Office of the Chief Electrical Engineer, Group D, Non-Ministerial, Non-Gazetted Posts, Recruitment Rules, 2006 (said Rules).

17. The educational and other qualifications required for direct recruitment to the posts of ADEOs are as follows:

“Essential:

- (1) Secondary School Certificate Examination or equivalent qualification from a recognized Institution.*
- (2) Certificate in Computer for a minimum period of 3 months from a recognized institution.*
- (3) Knowledge of Konkani.*

Desirable:- Knowledge of Marathi.”

18. Accordingly, by advertisement dated 26.02.2015, applications were invited from eligible candidates to fill up 56 posts of ADEOs. Out of these, 32 posts were earmarked for the general category and 24 posts for various reserved categories.

19. The advertisement, in clause 7 provided for “*mode of*

selection” in the following terms:-

“The selection process will consist of following:

i) Written examination

ii) Oral interview”

20. Similarly, the advertisement, in clause 8 gives information about the certificates or evidence which the applicants were required to provide along with their applications. Clause 8 of the advertisement reads as follows:-

“8. The applicants should submit their applications in the office of the Chief Electrical Engineer, Govt. of Goa, Vidyut Bhavan, 4th floor, Panaji on or before 20/03/2015 on all working days from 02/03/2015 between 10.30 a.m. to 1.00 p.m. and 2.30 p.m. to 5.00 p.m. along with the attested copies of testimonials viz educational qualifications, proof of age, experience certificate, Caste certificate issued by the respective Dy. Collector and social status certificate, certificate regarding 15 years residence in Goa issued by the respective Mamlatdar, Valid Employment Exchange Registration card.”

21. Shri Dipak Bhajekar, the Chief Electrical Engineer, has filed a response dated 26.08.2016 on behalf of respondents No.1 and 2 in these matters wherein, he pointed out that in all 9627 applications were received for consideration to the 56 posts of ADEOs. Upon initial scrutiny, about 8951 applications were found to be in order.

22. By memorandum dated 27.05.2015, the petitioners and other eligible applicants were informed that the test of 2 hours duration had been fixed on 07.06.2015 from 02:30 pm to 04:30 pm at the specified centers and that only those candidates who passed the written test will be called for the oral interview. This memorandum gave full details about the proposed written test which reads as follows:

“The written test paper will have five sections (all objective type) as under:-

- 1. Section-I, Arithmetic and Calculations (10 Marks)*
- 2. Section-II, General Knowledge (20 Marks).*
- 3. Section-III, History and Civics (Indian Freedom Struggle, Goa's Freedom Struggle, Parliament and Legislative Assembly.) (15 Marks).*
- 4. Section-IV, Knowledge of General English (15 Marks).*
- 5. Section V, Computer Knowledge (40 Marks).”*

23. The written test was accordingly held on 07.06.2015 and the marks obtained thereat were made public on 10.01.2016. The petitioner, in Writ Petition No.638 of 2016 secured 65 marks, and the petitioner in Writ Petition No.664 of 2016 secured 82% marks. The selected candidates, except respondents No.14, 22, and 34 secured between 45% to 52% marks in the written test. The selection process therefore should have proceeded following the detailed guidelines set out in OM dated 05.03.2007 to which reference shall be made hereafter.

24. However, the response on behalf of the respondents disclosed that on 11.01.2016, i.e., a day after the publication of the results of the written test, a note was moved to the Government proposing a new criterion for the further selection process, which criterion, totally deviates from the existing criterion set out elaborately in the OM dated 05.03.2007.

25. This note dated 11.01.2016 proposed the following changed criterion after the selection process had fairly advanced:-

(A) The marks obtained in the elaborate written test were to be mostly ignored or rather, taken into account for only shortlisting such a general category candidate who may have received 45% or more marks (passing marks);

(B) All the candidates securing a minimum of 45% marks in the written test were to be called for an oral interview and in respect of such candidates, the criterion for selection was to be as follows:

a) Possessing SSC examination or equivalent... 50 marks

*b) Possessing HSSC examination or equivalent .. 02 marks
(in addition to 50 marks)*

*c) Possessing Graduate or equivalent .. 03 marks
(in addition to 50 marks)*

d) Knowledge of Computers

(i) Course duration upto 3 months and above .. 03 marks

(ii) Course duration upto 6 months and above .. 05 marks

(iii) Course duration of 1 year and above .. 10 marks

(e) Extra curricular activities in the field of sports, Art &

<i>Culture</i>	<i>.. 10 marks</i>
<i>(i) If represented at SSC, HSSC/Graduate /University level</i>	<i>.. 05 marks</i>
<i>(ii) if represented at District/State level</i>	<i>.. 07 marks</i>
<i>(iii) if represented at National/International level</i>	<i>.. 10 marks</i>
<i>(f) Work experience</i>	<i>... 10 marks</i>
	<i>(1 marks for each year)</i>
<i>(g) Oral interview</i>	<i>... 15 marks.”</i>

26. Now, there is no dispute that the impugned select list and the impugned appointment orders are based on the aforesaid changed criterion adopted or approved by the respondents No.1 and 2 on 12.01.2016, i.e. much after the commencement of the selection process in terms of the advertisement dated 26.02.2015. There was no defence whatsoever raised to the contention that the changed criterion was adopted after the commencement of the selection process or rather, at the stage when the selection process had fairly advanced. According to us, this is clearly a case where the rules of the game were changed after the game had not only commenced but had fairly advanced.

27. The record very well bears out and no serious dispute was even raised that the criterion existing at the time of the commencement of the selection process vide advertisement dated 26.02.2015 is to be found in the OM dated 05.03.2007. This

criterion was very much in the public domain. Since we are satisfied that the changed criterion constitutes not some minor but substantial deviation from the existing criterion prescribed in the OM dated 05.03.2007, it will be appropriate to transcribe the contents of the OM dated 05.03.2007 in their entirety, for convenience of reference.

“No.1/6/83-PER(VOL.II)Pt.(a)
Government of Goa,
Department of Personnel,
Secretariat, Porvorim-Goa.

Dated:05/03/2007.

OFFICE MEMORANDUM

Whereas Recruitment Rules prescribe qualifications, method of recruitment like, age, etc. for filling up of various posts by direct recruitment, there are no modalities prescribed for direct recruitment. It is observed that different departments follow different methods. This has resulted in litigation and delays in selection. Hon. Supreme Court in number of cases, issued directions in certain cases regarding criteria to be followed. Based on judgments of Hon. Supreme Court the following guidelines shall be followed by all Competent Authorities while making direct recruitment as per Recruitment Rules:-

a) Any process of selection for entry into public service must strive to secure the best and the most suitable persons for the job avoiding patronage and favouritism. For this, impartial and objective selection based on merit is the essential foundation of any useful and efficient public service. Hence open competitive examination is the ideal mode of recruitment.

b) The competitive examination may be based exclusively on written examination or it may be exclusively on interview or it may be a mixture of both. It is entirely for the State

Government to decide what kind of competitive examination would be appropriate in a given case.

c) However, there is undetectable manipulations of results through remote control tactics which are masked as viva voce tests, resulting in the sabotage of the purity of proceedings. Hence oral interviews as such are not bad, but polluting them by assigning undue weightage to attain illegitimate ends is bad. The marks for oral interviews must be minimal so as to avoid charges of arbitrariness.

d) The Government while designing competitive examination must decide on the pattern of the examination (oral, written, marking scheme etc) based on the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors it must be decided by experts in the field. Further, weightage to oral interview is also to be decided based on these factors.

e) However, broadly any selection for public employment may fall in two categories:-

(i) Recruitment to posts requiring raw graduates or persons with lower qualifications and without any experience as per the Recruitment Rules e.g. Non Gazetted Group C and D posts.

(ii) Recruitment to posts requiring much higher qualifications than mere graduation and with sufficient experience in the particular field as per the Recruitment Rules, e.g. posts like Medical Surgeon, Vice Chancellor, Assistant Professor.

f) In the first category, where the mind of the candidates are not fully developed and their personalities are not mature, heavy reliance must be placed on written examination. In such cases, greater weightage has, per

force, to be given to the performance in the written examination and the importance attached to the interview must be minimal. In all cases, the Department should notify and bring to knowledge of all candidates regarding selection procedure to be adopted.

g) In the second category, where candidates are persons of mature personality and or of known expertise achieved through dint of experience, interview test may be given more weightage or may even be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results apart from it being an act of cruelty to those persons.

h) There cannot be any thumb rule regarding the precise weightage to be given to oral interviews. It must vary from service to service according to minimum educational qualifications, prescribed experience, age group, etc. However, oral interview must not be given exaggerated weightage for proven or obvious oblique motives or for making it arbitrary. Further, a higher weightage for oral interviews may be considered, if it is a long standing practice from the past, which must be well notified and documented practice. For such higher weightage, the marking scheme must be a part of the RRs of Advertisement for recruitment and should be in public domain for long.

i) In either category of recruitment, it is not right and advisable to call all candidates for interviews. There is no obligation on the Government, to call for the viva voce test all candidates who satisfy the minimum eligible requirements. It is better to advertise this fact that candidates will be shortlisted based on merit for calling them for interview.

j) Shortlisting is necessary as very large number of

candidates appear for government jobs. If thousands of candidates are to be interviewed, it will be time consuming an arduous exercise for DSC which has senior officials of various Departments and mostly headed by the Heads of Departments. This will have a crippling effect in the administration as vital time of senior officials will be consumed on interviews of unmanageable number of candidates. Secondly, the ability of the DSC to properly judge the competitive merit through thousands of oral responses will also breakdown and the recruitment procedure will be arbitrary. Thirdly, it is practically impossible to select from thousands of candidates merely on oral interviews without written test. Fourthly, there is likelihood of bias vitiating the selection process if disproportionately high number of candidates are called for the interviews.

k) hence it is essential and desirable to shortlist candidates based on merit. This can be done through a common screening test (written test with objective or subjective questions as decided and as notified by the DSC.)

l) In order to have proper balance between objective assessment of the written examination and subjective assessment of personality by a viva voce test, the number of candidates to be called for interview in order of marks obtained in the written examination would not exceed twice or at the highest, thrice the number of vacancies to be filled.

m) As regards the division of marks under different heads, i.e. personality, knowledge, composure, etc. it is for the interviewing body to take a general decision whether to allocate marks under the different heads or to award marks in a single lot.

n) Oral interviews alone should not be the exclusive basis for recruitment, unless preceded by shortlisting

based on merit. If interview is to be the sole criteria, written test must be considered as qualifying test and the Government must have this clearly stated that upon completion of the elimination test, selection would be made on the basis of viva voce test only (preferably in the RRs). Moreover, interview should not be the sole guiding factor since reliance thereon will only lead to "a sabotage of the purity of the proceedings."

*Shortlisting is permissible for determining the number of candidates to be called for selection. If written examination is held for the purpose there is no question of setting a benchmark. The first 50 applicants in the written examination will be the candidates for selection where there are 50 vacancies and there are say 1000 applicants. However, If the selection process entails a written test, then another written test will have to be held. This can be **avoided by** declaring to all the candidates that the examination marks secured in the written test for shortlisting will be considered as marks in the written test for selection.*

o) If the recruitment rules of the government are silent on any particular point, the Government/DSC should fill up the gap and supplement the rules and issue instructions not inconsistent with the rules already framed or not inconsistent with the various court rulings. Any such supplementary rules/schemes/instructions must be well documented and notified."

28. The aforesaid OM dated 05.03.2007 was circulated to all the HODs/Competent Authorities with directions to follow the guidelines contained therein while making direct recruitment in terms of the Recruitment Rules. The OM dated 05.03.2007 itself

provides that the same was issued so that the practice of different departments following different methods is curtailed and the resulting litigation and delays in the selection are avoided. The OM dated 05.03.2007 itself states that the Hon'ble Supreme Court in several cases has issued directions regards the criterion to be followed for selection. Based on the judgments of the Hon'ble Supreme Court the guidelines have been framed and will have to be followed by all Competent Authorities while making direct recruitment in terms of the Recruitment Rules.

29. This is not a case of some minor deviations from the guidelines set out in the OM dated 05.03.2007 but this is a case where practically most of the stipulations in this OM have been violated with impunity. Besides, in the detailed response filed by the Chief Electrical Engineer on behalf of himself and the Government, there is no explanation whatsoever for bypassing the stipulations in the OM dated 05.03.2007 and changing the criterion for selection amid the selection process. This is also not a case where the changed criterion can be regarded as fair or transparent. Rather, even, the changed criterion is quite arbitrary resulting in the sabotage of purity of the selection post the declaration of the results of the written test on 10.01.2016. This is precisely what the stipulations in the OM dated 05.03.2007 sought to prevent and this is precisely what respondents No.1 and 2 have achieved by adoption of the changed criterion after the selection process was at a fairly advanced stage.

30. In the context of the emphasis or the weightage to be given to the written test and the oral interviews, clause (e) of the OM dated 05.03.2007 has made a broad distinction between two categories of posts in public employment. The first category relates to posts requiring raw graduates or persons with lower qualifications and without any experience as per the Recruitment Rules e.g. Non-Gazetted Group C and D posts. The second category refers to posts requiring much higher qualifications than mere graduation and with sufficient experience in the particular field as per the Recruitment Rules, e.g. posts like Medical Surgeon, Vice-Chancellor, Assistant Professor.

31. Clause (f) of the OM dated 05.03.2007 then proceeds to provide that if the posts belonging to the first category, where the mind of the candidates are not fully developed and their personalities are not mature, *heavy reliance must be placed on the written examination*. In such cases, greater weightage has, perforce, to be given to the performance in the written examination and *the importance attached to the interview must be minimal*. In such cases, the Department should notify and bring to the knowledge of all candidates the selection procedure to be adopted.

32. In the facts of the present case, there can be no dispute that the post of ADEO for which the minimum qualification prescribed was

only SSCE and which was a Group D post, fell within the first category referred to in clause (e) of the OM dated 05.03.2007. Merely because one or two candidates like respondent No.8 whom Mr. Desai represents, may or may not have had 13 years' experience, the nature of the post for which the recruitment was being made does not change. Therefore, this is certainly a case where the recruitment was to the first category of posts requiring persons with lower qualifications and without any experience as such e.g. Group D posts. Therefore, in terms of clause (f) of the OM dated 05.03.2007, greater weightage had, perforce to be given to the performance in the written test and the importance to be attached to the interview had to be minimal.

33. The changed criterion, as noted earlier, has virtually ignored the performance in the written test and the importance attached to the oral interview is far from minimum. The marks in the written test have been virtually ignored for determination of merit. Marks are looked at, only to determine whether the candidate has secured 45% passing marks (for general category) or not. This is not some minor but a substantial deviation from the stipulations in the OM dated 05.03.2007.

34. Clause (c) of the OM dated 05.03.2007 speaks about undetectable manipulations of results through remote control tactics

which are masked as viva voce tests, resulting in the sabotage of the purity of proceedings. This clause proceeds to state oral interviews as such are not bad, but polluting them by assigning undue weightage to attain illegitimate ends is bad. Therefore, the marks for oral interviews must be minimal to avoid charges of arbitrariness.

35. Clause (h) of the OM dated 05.03.2007 then provides that there cannot be any thumb rule regarding the precise weightage to be given to oral interviews. It must vary from service to service according to minimum educational qualifications, prescribed experience, age group, etc. However, an oral interview must not be given exaggerated weightage for proven or obvious oblique motives or for making it arbitrary. Further, a higher weightage for oral interviews may be considered, if it is a long-standing practice from the past, which must be well notified and documented practice. For such higher weightage, the marking scheme must be a part of the Recruitment Rules of Advertisement for recruitment and should be in the public domain for long.

36. The changed criterion adopted after the selection process had fairly advanced, gives exaggerated weightage to the oral interview and conversely dilutes almost entirely weightage to be given to the performance in the written examination. This is totally contrary to what is provided in the OM dated 05.03.2007. Since the OM dated

05.03.2007 itself acknowledges that the same is based on the judgments of the Hon'ble Supreme Court in such matters, the respondents No.1 and 2 could not have breached such stipulations with impunity without offering any justification whatsoever and that too at a stage where the selection process was fairly advanced.

37. The indication of 15 marks out of 100 towards oral interview in the changed criterion, amounts to paying mere lip service to the stipulations provided by several judgments of the Hon'ble Apex Court as also the Government's OM dated 05.03.2007 that the marks for oral interviews in such cases must not exceed 15%. The changed criterion has allotted 50 marks out of 100 to the candidates who possessed minimum essential qualification of SSCE. This means that all the candidates who were called to attend oral interviews have been doled out these 50 marks. By adopting this subterfuge, the actual weightage for the oral interview marks stands enhanced to 30%. This is impermissible not only in terms of the various judgments of the Hon'ble Supreme Court but the Government's OM dated 05.03.2007 which is based upon such judgments of the Hon'ble Supreme Court.

38. Mr. Sawant however, submitted that the contention similar to the aforesaid was rejected by the division bench of this Court in **Richard Fernandes** (supra). Upon consideration of this

decision, we are satisfied that this contention was not rejected by the division bench of this Court, but, rather, certain observations therein support the view which we have now taken in this matter.

39. In **Richard Fernandes** (supra), the division bench of this Court was concerned with recruitment to the post of Junior Engineer (Mechanical). Neither the recruitment rules nor the advertisement prescribed any written examination for selection to the post of Junior Engineer. The selections were to be made entirely on the prescribed criteria which had allocated 55 marks for the basic qualification of Diploma/Degree. Out of the balance 45 marks, 15 marks were allocated for an oral interview and it was contended that this was contrary to the law laid down by the Hon'ble Supreme Court in ***Ashok Kumar Yadav & Ors. v/s. State of Haryana & Ors.***¹³ and several other decisions because the weightage, in reality, would then be 33.33%.

40. The division bench accepted that by excluding the 55 marks for the basic qualification of Diploma/Degree, the State had allocated almost 33% marks for the oral interview. However, the division bench held that the rulings about the allocation of a maximum of 15% marks for viva voce apply to a case where there is no written test prescribed and the selection is made based on academic performance and oral interview. The division bench held

¹³ (1985) (4) (SCC) (417)

that particularly concerning higher posts, there is no hard and fast rule that the marks to be allocated for viva voce or interview can never exceed 15%.

41. The aforesaid means that the position might have been different in case of a selection where a written test was prescribed in addition to an oral interview. In the present case, the advertisement clearly prescribed that the selection was to be based on a written test and oral interview. Besides, here the recruitment was not to some high posts, but to a Group D post for which the minimum qualification was only SSCE. To such a selection process, the various rulings of the Hon'ble Supreme Court would clearly apply and weightage to oral interview marks could not have exceeded 15%.

42. Even respondents No.1 and 2 were aware of this position and therefore, portrayed that only 15% marks are allocated for interviews. However, by practicing subterfuge, weightage to the extent of 30% was accorded to the oral interview. Thus, what was directly prohibited was sought to be indirectly passed off as valid. This amounts to arbitrariness since the weightage for interviews, in a selection of this nature could have never exceeded 15%. The Petitioners were made aware of such changed and arbitrary criterion only after the institution of Writ Petition No. 638/2016.

43. The changed criterion then allotted 10 marks out of 100 for extracurricular activities in the field of Sports, Art, and Culture. Neither the Recruitment Rules nor the advertisement even remotely referred to this weightage for extracurricular activities. The advertisement did not even require any of the candidates to produce any certificate or testimonials regarding such extracurricular activities. Yet, marks were allotted for extracurricular activities to several of the selected candidates. Mr. Sawant's contention that some of the selected candidates have not received any marks towards extracurricular activities, even if correct, does not mitigate the arbitrariness involved in introducing this criterion after the selection process had fairly advanced and that too, without, making such criterion known in the Recruitment Rules or the advertisement. The response filed by the Chief Electrical Engineer offers no justification whatsoever for the introduction of such criterion and that too, in such a manner.

44. Mr. Shirodkar, Mr. Desai, and Mr. Sawant submitted that even in the absence of stipulations in the Recruitment Rules or the advertisement, it is open to adopt some fair and transparent criterion for shortlisting of candidates where the number of applicants is far greater than the number of posts advertised. They pointed out that such principle of shortlisting is to be found in the OM dated 05.03.2007 as well and such principle has been approved

by the Hon'ble Supreme Court in ***B. Ramakichenin v/s. Union of India***¹⁴.

45. There can be no dispute about the proposition that in a selection of this nature where, as against 56 advertised posts, almost 8951 valid applications were received, some criterion for shortlisting of candidates was required to be adopted. In fact, this is also what is provided by the OM dated 05.03.2007. Unfortunately, however, the respondents have breached with impunity the criterion for shortlisting provided in the OM dated 05.03.2007 and thereby rendered farcical even the process for shortlisting which was required to be followed in the present selection.

46. Clause (i) of the OM dated 05.03.2007, in terms provides that it is not right and advisable to call all the candidates for the oral interview. There is no obligation on the Government, to call for the viva voce test, all the candidates who satisfy the minimum eligibility requirements. However, it is better to advertise the fact that candidates will be shortlisted based on merit and only the meritorious shortlisted candidates will be called for the oral interview.

47. Clause (j) of the OM dated 05.03.2007 provides that shortlisting is necessary as a very large number of candidates appear

¹⁴ (2008) 1 SCC 362

for government jobs. If thousands of candidates are to be interviewed, it will be a time-consuming and arduous exercise for DSC which has senior officials of various Departments and mostly headed by the Heads of Departments. This will have a crippling effect on the administration as a vital time of senior officials will be consumed on interviews of an unmanageable number of candidates. Secondly, the ability of the DSC to properly judge the competitive merit through thousands of oral responses will also breakdown and the recruitment procedure will be arbitrary. Thirdly, it is practically impossible to select from thousands of candidates merely on oral interviews without a written test. Fourthly, there is a likelihood of bias vitiating the selection process if a disproportionately high number of candidates are called for the interviews.

48. The above means that the Government, had itself set out cogent reasons as to why it is necessary to adopt the objective shortlisting criteria so that the most meritorious candidates are selected in the selection process. However, at least in the present case, the Government by changing the criterion midway has acted contrary to its reasoning reflected in clause (j) of the OM dated 05.03.2007.

49. On the aspect of shortlisting, clause (k) of the OM dated 05.03.2007 provides that it is essential and desirable to shortlist candidates based on merit. This can be done through a common

screening test (written test with objective or subjective questions as decided and as notified by the DSC.) In this case, the advertisement had made it clear that the selection would be based on a written test and an oral interview. The manner in which the written test was to be conducted and the syllabus therein was also made known to all the eligible candidates who were called to attend the written test. The purpose of such a written test was to determine merit, both in terms of the advertisement issued as well as the existing selection criterion reflected in the OM dated 05.03.2007. Yet, after the results of the written test were announced, respondents No.1 and 2 changed the criterion and styled the written test as a test for shortlisting of candidates who may have secured above 45% marks thereat.

50. There may have been nothing wrong in prescribing the benchmark of 45% for general category candidates. However, the prescription of such a benchmark would only mean that the candidates who do not clear such benchmark will not be called for the oral interview, even though, they may find a place in the numerical zone of consideration as prescribed in clause (l) of the OM dated 05.03.2007. This is what is provided in clause(n) of the OM dated 05.3.2007. The elaborate written test with a syllabus having direct nexus to the nature of the post to be filled in, could not have been ignored in this manner when it came to determining the merit of the candidates for appointment to the post of ADEOs.

51. Clause (l) of the OM dated 05.03.2007 provides that to have a proper balance between objective assessment of the written examination and subjective assessment of personality by a viva voce test, the number of candidates to be called for interview *“in order of marks obtained in the written examination would not exceed twice or at the highest, thrice the number of vacancies to be filled”*.

52. In the present case, the order of marks obtained in the written test has been totally ignored on account of the changed criterion adopted midway in the selection process. Secondly, in terms of clause (l) of the OM dated 05.03.2007, the maximum of 96 candidates, in order of marks obtained in the written test could have been called for the oral interview to fill up 32 general category posts. Mr. Palekar pointed out that candidates at Sr. No. 96 to 109 have secured the same marks. Therefore, the numerical zone of consideration could have extended up to 109 candidates in the order of marks obtained in the written test. Such shortlisting, which would have been meaningful, was in fact contemplated by the OM dated 05.03.2007.

53. Instead, the changed criterion introduced after the selection process was fairly advanced, resulted in inviting almost 598 candidates for selection to the 56 vacancies of ADEOs. This means that as against the prescribed ratio of a maximum of 1:3 for

determination of the numerical zone of consideration, respondents No.1 and 2, adopted the ratio of 1:10, in the name of “shortlisting”. The arbitrariness involved in the selection process, post the stage of the declaration of the results of the written test is therefore writ large in the adoption of such a criterion for shortlisting. In fact, the criterion adopted, militates against the very concept of shortlisting.

54. Mr. Shirodkar did try to point out that the memorandum dated 05.03.2007 by which the petitioners and other eligible candidates were called upon to attend the written test, had indicated that only candidates who passed the written test will be called for the oral interview. He also pointed out to annexure -I on page 48, which is possibly the cover page of the results of the written examination held on 07.06.2015 to point out that even this annexure indicates that the candidates in different categories will be shortlisted for oral interviews based on securing minimum passing marks of 45% for the general category and 40% for the reserved category.

55. According to us, these two annexures at the highest indicate that the minimum passing marks for general category candidates were to be 45%. These two annexures at the highest indicate that the benchmark or the passing marks for the written test were made known to the candidates. However, from this, no candidates could infer that the marks obtained by them in the

elaborate written test were to be ignored in the selection process and almost the entire emphasis to be laid on the changed criterion. Besides, as noted earlier, from the annexure referred to by Mr. Shirodkar, what can be inferred is that the general category candidates who failed to secure 45% in the written test, will not have to be called for an oral interview, even if they fall within the numerical zone of consideration as provided in clause (l) of the OM dated 05.03.2007. From the two annexures, it cannot be inferred that all the general category candidates who secured 45% in the written test will be called for the oral interview even though, they find no place in the zone of consideration which was to be determined based on the order of marks obtained in the written test.

56. Now we come to the objections raised very strenuously on behalf of all the respondents based upon the principle of estoppel. The learned Counsel for the respondents forcefully urge that since the petitioners had taken part in the selection process, i.e. appeared for the oral interviews, they were not entitled to challenge the selection process on the principle of estoppel. Although there can be no dispute on the proposition advanced, in the facts and circumstances of the present case, the principle of estoppel will not be attracted simply because this is a case where the changed criterion was introduced after the selection process had fairly advanced and, secondly, and most importantly, such changed criterion was made

known to the petitioners only after the Writ Petition No.638 of 2016 was quite hurriedly instituted in this Court.

57. The record indicates that the petitioner, invoking the Right To Information Act, 2005 had repeatedly sought the details of the criterion adopted in the present selection process post the declaration of the results of the written test on 10.01.2016. However, such information was denied to the petitioners and quite hurriedly the appointment orders were issued in favour of the selected candidates.

58. The record indicates that the Information Officer vide Order dated 04.07.2016 denied the information to the petitioners on the specious plea that the recruitment process was yet to be completed and therefore information sought for by the petitioners was premature. However, on 24.06.2016 the appointment orders had already been issued to the selected candidates and therefore, it could not have been said that the information sought by the petitioners was “premature”. It is apparent that the information about the changed criterion or information that there was a change in the criterion after the selection process had fairly advanced was not made known to either the petitioners or possibly any of the candidates. The petitioners were entitled to expect that the Government or the DSC would proceed with the further selection

process in terms of its OM dated 5.3.2007. In such circumstances, the State obviously cannot raise the plea of estoppel in these matters.

59. In a somewhat similar situation, both, this Court as well as the Hon'ble Supreme Court struck down selections where rules of the game were changed after the commencement of the game and refused to entertain the plea of estoppel. The rulings relied upon by the respondents herein were distinguished as inapplicable to a situation of this nature.

60. In **Tushar Deshmukh** (supra) the division bench of this Court comprising B. R. Gavai, J as His Lordship then was and A. P. Bhangale, J ruled that the principle of estoppel cannot apply where some criteria other than the criteria existing on the date of commencement of the selection process was sought to be applied midway. On this basis, the decisions of **Madan Lal** (supra), **Ashok Kumar** (supra) were distinguished by the division bench of this Court. Finally, it was held that it was impermissible to change the selection criteria after the commencement of the selection process, and the Maharashtra Public Service Commission (MPSC) was directed to proceed with the selection process by applying the existing criteria.

61. In **Ms. Rita Yorung** (supra) the division bench of

Gauhati High Court comprising Justice Chelameshwar as His Lordship then was, and Arun Chandra Upadhyay, J, was concerned with the selection process for the post of Tourist Information Officers. The executive instructions at the time of the commencement of the selection process had provided for a minimum qualification marks of 45% in the written test and restricted the number of candidates to be called for the viva-voce test to 3 times the available vacancies for recruitment, i.e. in the ratio of 1:3. However, after the conclusion of the written test, the criteria of shortlisting was changed and instead of inviting only 24 candidates in the ratio of 1:3 in terms of executive instructions dated 21.08.2006 for selection of the 8 posts of Tourist Information Officers, the respondents called almost 51 candidates for the viva voce test.

62. In the challenge to the selection ultimately made, the respondents, relying on **Madan Lal** (supra) and ***Dhananjay Malik & Ors. v/s. State of Uttaranchal & Ors***¹⁵ urged that the petitioners were estopped from raising such a challenge after participating in the selection process. The Division Bench, distinguished the rulings in **Madan Lal** (supra), **Ashok Kumar Yadav** (supra), and **Dhananjay Malik** (supra) by noting that the principle of estoppel will not apply because the criterion for selection was changed after the selection process commenced and the petitioners were able to obtain the details of such changed criteria by resorting to the provisions of the RTI Act

¹⁵ 2008 4 SCC 171

only after the declaration of the results of the selection. The Division Bench ultimately held that calling candidates for viva voce, beyond 3 times the number of available vacancies ($7 \times 3 = 24$) being ex facie illegal and arbitrary could not have been overlooked.

63. The aforesaid decision of the Division Bench of the Guwahati High Court applies on all fours in the facts of the present case. In terms of the Office Memorandum dated 05.03.2007, a maximum of about 96 candidates in the order of merit based upon the marks secured at the written examination could have been called for the oral interview held in the year 2016. This is because the total number of advertised posts for the general category was 32 and in terms of clause (e) of the Office Memorandum dated 05.03.2007, the number of candidates to be called for interview in order of marks obtained in the written examination were not to exceed twice or at the highest, thrice the number of vacancies to be filled.

64. In **Bishnu Biswas** (supra), the Hon'ble Supreme Court, clearly held that the rules of the game cannot be changed after the conduct of the written test. The Hon'ble Apex Court also noted that how marks were awarded in the interview to the candidates indicated a lack of transparency. The candidate who secured 47 marks out of 50 in the written test had been given only 20 marks in the interview while a large number of candidates got equal marks in the interview

as in the written examination. The candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. Taking cognizance of all these circumstances, the Hon'ble Apex Court summarised the law on the issue and upheld the directions of the High Court to continue with the selection process from the point it stood vitiated. The Hon'ble Apex Court held that where the statutory rules prescribed to a particular mode of selection it has to be given strict adherence.

65. In **K. Manjushree** (supra), the Hon'ble Apex Court held that the selection criteria have to be adopted and declared at the time of commencement of the recruitment process and the rules of the game cannot be changed after the game is over. The Competent Authority, if the rules do not restrain, is competent enough to prescribe the minimum qualifying marks for written examination as well as for an interview. But such exercise should be done at the time of initiation of the process. Change of criteria amid the selection process is not permissible.

66. In **Himani Malhotra** (supra), the Hon'ble Supreme Court has held that it was not permissible for the employer to change the criteria in the midst of the selection process.

67. The law on this subject has been expounded in great detail by the Hon'ble Supreme Court in **Ramjit Singh Kardam** (supra) rendered on 08.04.2020. In this case, as well, the respondent State as well as the selected candidates had urged that the petitioners who participated in the selection process ought to be held as estopped from challenging the selection process. The Hon'ble Supreme Court noted that when the Commission had not published any criteria based on which the candidates were going to be subject to the selection process and candidates participated in selection without knowing criteria of selection, they cannot be shut down from challenging the selection where ultimately they came to know that the Commission, step by step has diluted the merit in the selection.

68. The Hon'ble Apex Court ruled that when the candidate is not aware of the criteria under which he was subjected in the process and the said criteria was first time published along with the final result, he cannot be estopped from challenging the entire process of selection. The Hon'ble Apex Court held that where glaring irregularities are committed in the procedure to get candidates for examination the principle of estoppel or acquiescence has no application. On this basis, the Hon'ble Supreme Court distinguished its earlier ruling in **Madan Lal** (supra) and several other decisions. In this case, the Hon'ble Supreme Court also approved its earlier view in **Bishnu Biswas** (supra).

69. The decision of the Hon'ble Apex Court in **Ramjit Singh Kardam** (supra) also answers the respondents' contention on the issue of malafides. True, in this case, the petitioner may not have been successful in establishing malafides against any particular officer or authority. However, this is not only the ground, based on which the selection process can be challenged. The selection process can also be challenged based on malice-in-law as opposed to malice-in-fact. The Hon'ble Supreme Court held that the malice-in-law has been dealt as “something done without lawful cause” or the malafide exercise of statutory power for a purpose foreign to which it is in law intended. The Hon'ble Supreme Court in the case before it held that the power to devise the mode of selection and to fix to the criteria for selection was entrusted on the commission to further the object of selection on merit to fill up the post in the State in consonance with the provisions of Articles 14 and 16 of the Constitution of India. When the alteration of the criteria has been made, which has obviously affected the merit selection, the allegations which have been made in the writ petition against the Commission for conducting the selection are allegations of malice-in-law and not malice-in-fact.

70. The ruling in **Umesh Naik** (supra) turns on its own peculiar facts which are in no manner comparable to the facts in the present case. There, this Court was concerned with appointments to

several posts of different nature. For most of such posts there was no bar to adoption of a selection process which did not require any written test. Despite all this, the Court reiterated that the ideal mode for recruitment ought not to be based only on oral interviews. Besides, the issue of change of selection criterion after the selection process had fairly advanced was not involved in this matter. Therefore, the ruling in **Umesh Naik** (supra) can be of no assistance to the respondents in the present matters.

71. **Daulatrao Sardesai** (supra) only lays down that there can be no general or invariable principle that the candidates who score high marks in the written test must secure high marks at the interviews or vice versa. In the present matters, since we are not proceeding based upon any such inference, this ruling is not really any answer to the various issues raised by the petitioners in these matters.

72. For all the aforesaid reasons, we are satisfied that the petitioners in the present case, cannot be denied any relief by invoking the equitable principle of estoppel.

73. This petition was instituted before the information about the changed criteria was furnished to the petitioner despite repeated requests for the furnish of the same. No sooner, it was realized that

the selection process might be challenged by the petitioner, it appears that the process of issuance of appointment orders was fast-tracked. In such circumstances, there is no point in criticizing the pleadings in the petition. Even otherwise all material pleadings are on record and no prejudice whatsoever is demonstrated by any of the respondents. The contention that any foundational pleadings are absent, therefore, cannot be accepted.

74. The prayers in the petition seek 100% weightage only on the marks in the written test. Such relief may not be available, since, the advertisement had clearly stated that the selection would be based on the written test and interviews. However, this is not a ground to dismiss the petition or to deny the petitioners reliefs in the molded form. Ultimately, it is for the Court to mold the relief or, in a given case, to grant some relief in narrower terms than may be prayed for in the petition.

75. The petitioners can also not be non-suited for pressing their challenge only qua the appointments to the general category. If prayer clause (a) of the petition, as amended, is perused then, it is clear that the appointments to both, the general as well as the reserved categories have been challenged. However, there is nothing wrong with the contention of Mr. Palekar that the petitioners were not desirous of pressing the challenge qua the reserved category

candidates because they do not belong to this category and have nothing to gain by quashing the appointment to such category.

76. Mr. Palekar pointed out that the petitioners are not pressing the challenge to the appointment of respondents No.14 and 22 in the general category, because, according to them, even after the adoption of the existing and correct criteria set out in the OM dated 05.03.2007, such respondents, deserve to be appointed as ADEOs. On account of such a fair approach on the part of the petitioners, they cannot be denied reliefs, even though, in the molded form.

77. According to us, there were no infirmities in the selection process up to the stage of conduct of the written test on 07.06.2015 and the declaration of results on 10.01.2016. However, thereafter, in terms of the Government's OM dated 05.03.2007, to ensure a proper balance between objective assessment of the written examination and subjective assessment of personality by a viva voce test, the number of candidates to be called for interview, in the order of marks obtained in the written examination could not have exceeded twice or at the highest, thrice the number of vacancies to be filled. This is what is clearly provided in clause (l) of the OM dated 05.03.2007 which was deviated from by respondents No.1 and 2 by the adoption of a changed and arbitrary criterion in the midst of the selection process and without any good justification whatsoever. Therefore by applying

the principle of severability, necessary directions can be issued to respondents 1 and 2 to proceed with the selection process from the stage from which it deviated.

78. Thus, for all the aforesaid reasons, we dispose of these petitions by making the following Order:-

ORDER

- (A) The selection and appointments of respondents Nos. 3 to 34 (both inclusive) to the posts of ADEOs in both the writ petitions are quashed and set aside.
- (B) The respondent nos. 1 and 2 are directed to prepare a select list of candidates falling within the ratio of 1:3 as provided in clause (I) of the OM dated 05.03.2007 based on merit to be determined in the order of marks secured in the written test results declared on 10.01.2016 and the marks out of 15 allotted for the oral interview awarded by the DSC in this selection.
- (C) The respondent nos. 1 and 2 are further directed to issue appointment orders to the 32 most meritorious candidates based upon the select list to be made as aforesaid, subject no doubt to such candidates complying with usual requirements like medical examination, verification of character and

antecedents, etc. as may be already prescribed;

- (D) In case any of the respondents in these petitions find a place in the merit list or select list as aforesaid, then, such respondents shall be deemed to be continued in service from the dates of their initial appointment. The formal quashing of their appointment shall then not be construed as any break in service for any purposes whatsoever;
- (E) If the petitioners or any other candidates are appointed in pursuance of the aforesaid directions, then, they are granted liberty to represent to the respondent nos. 1 and 2 for grant of deemed date of appointment for purposes of seniority, qualifying service, pay fixation, pay revision, retiral benefits, etc. However, the petitioners or such candidates shall not be entitled to claim any arrears of salary from such deemed date, if granted.
- (F) The respondents, whose appointments we have now struck down may be permitted to continue in service up to 31st Janaury 2021 on the same terms and conditions but without claiming any equities.
- (G) The exercise of preparation of select list and issuance of fresh appointment order must be completed by respondents Nos. 1 and 2 as

expeditiously as possible and in any case on or before 31st January 2021. The fresh appointment orders to be made effective from 1st February 2021.

79. In the facts of the present case, there shall be no order for costs.

80. All concerned to act based on an authenticated copy of this Order.

M. S. Jawalkar, J.

M. S. Sonak, J.

msr.

81. At this stage, Mr. D. Shiroadkar, the learned Additional Government Advocate, Mr. Shivan Desai and Mr. Parikshit Sawant seek a stay on the directions issued in this Order for a period of 8 weeks.

82. Since we have already protected all the respondents till 31st January, 2021, there is no necessity of grant of any further stay. Accordingly, the request made by the learned Counsel is disposed of.

M. S. Jawalkar, J.

M. S. Sonak, J.

msr.