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

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Date of decision: 03.09.2020

+ W.P. (C) 5476/2020 & CM No. 19743/2020

MONALISA JOSHI

..... Petitioner

Through

Mr. Maanav Kumar and Ms.
Nupur, Advocates.

versus

JAWAHARLAL NEHRU UNIVERSITY THROUGH
ITS VICE CHANCELLOR & ANR.

.... Respondents

Through

Ms. Monika Arora, Standing
Counsel with Ms. Ankita Shah,
Advocate for JNU.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Hearing has been conducted through Video Conferencing.
2. Aspiring to be appointed as Assistant Professor in the Special Centre for National Security Studies (hereinafter referred to as the 'Centre'), Petitioner applied for the Post pursuant to an Advertisement issued in May 2019. Being unsuccessful in crossing the first threshold of invitation for the interview, Petitioner filed the present writ petition seeking quashing of List dated 04.08.2020, a list of candidates short-listed for interview as also a direction to the Respondents to issue a fresh list in accordance with the original criteria stipulated in the Advertisement.

3. The controversy in the present case has its genesis in the alleged change in the selection criteria, midstream, by the Respondents at the time of short-listing the candidates for interview, amounting to changing the Rules of the game after it begins. In this background the brief facts that require a mention are encapsulated hereunder.

4. Respondents published an Advertisement being Advt. No.RC/62/2019 in May 2019, inviting applications for 4 posts of Assistant Professors in the Centre. Present petition concerns with Post No.1 pertaining to an Unreserved Post for Assistant Professor. The Essential Qualification mentioned in the Advertisement for the said post to the extent it is relevant is as follows :-

“Essential Qualifications:

Assistant Professor:

Pay Level – 10 of 7th CPC Rs. 57,700/-1,82,400/-

(i). A Master’s degree with 55% marks (or an equivalent grade in a point-scale wherever the grading system is followed) in a concerned / relevant / allied subject from an Indian University, or an equivalent degree from an accredited foreign university.

(ii). Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by UGC or the CSIR, or a similar test accredited by the UGC, like SLET / SET or who are or have been awarded a Ph.D Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of M Phil / Ph.D. Degree) Regulations, 2009 or 2016 and their amendments from time to time, as the case may, be exempted from NET / SLET / SET”

5. The last date for submitting the applications was 19.08.2019. Petitioner desirous of applying against Post No.1 submitted her application on 17.08.2019. On 05.08.2020, Recruitment Cell of the University published a list of candidates short-listed for the interview. The said list dated 04.08.2020, mentioned the short-listing criteria adopted by the Respondents, wherein Master's Degree in Languages and Social Sciences was excluded.

6. Name of the Petitioner did not figure in the list of short-listed candidates and thus on the same day i.e. 05.08.2020, Petitioner sent a representation to Vice Chancellor of Respondent No.1 pointing out that the eligibility criteria mentioned in the impugned list was different from the one mentioned in the Advertisement. She also stated that she fulfilled the original criteria and rejection of her candidature in the light of the modified criteria was illegal and impermissible and thereby requested the Vice Chancellor to reconsider her candidature and shortlist her for the interview scheduled on 24.08.2020. Not getting any response on the representation, Petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

7. Learned counsel for the Petitioner contends that in the Advertisement, the Essential Qualification required was only a Master's Degree with 55% marks in the concerned/relevant/allied subject from an Indian University or an equivalent degree from an accredited foreign University. Thus anyone who possessed a Master's Degree with minimum 55% from the required University was eligible to apply and no subject was excluded. However, subsequently the Respondents in the

garb of short-listing, modified the eligibility criteria and categorically excluded Master's Degree in Language and Social Sciences. In this regard attention of the Court is drawn to the short-listing criteria, as reflected from the list which is as under:-

“Shortlisting criteria :

(i). Master's Degree in Natural Science & Allied Technology (No Language or Social Sciences candidates).”

8. Main plank of the argument of the learned counsel is that under the Advertisement Master's Degree was not restricted to a particular subject, the exclusion of subjects while short-listing amounts to change of the selection criteria midstream. This action of alteration in selection criteria is arbitrary and impermissible in law and has prejudiced and adversely affected the Petitioner and other potential candidates who applied for Post No.1 based on the original criteria of Master's Degrees in different subjects.

9. Reliance is placed on the judgement of the Supreme Court in ***P. Mohanan Pillai vs. State of Kerala & Ors., AIR 2007 SC 2840*** to argue that the Rules which prevailed at the time when the vacancies arise are to be adhered to and the eligibility criteria as also the procedures prevailing on the date of vacancy should ordinarily be followed. Reliance is also placed on the judgement of the Supreme Court in ***Maharashtra SRTC v. Rajendra Bhimrao Mandve, (2001) 10 SCC 51*** wherein the Supreme Court has observed that rules of the game, meaning thereby, criteria for selection, cannot be altered by the Authority concerned, after the process of selection has commenced.

10. Learned counsel submits that the Petitioner is a highly qualified academician in her field. She has a Master's Degree in Social Sciences and a Ph.D with Doctorate thesis in "Biological weapons as weapons of mass destruction : A study of Technical and Political Dimensions". Her M. Phil Dissertation was on various challenges and limitations in the operation of norms pertaining to the production, transfer and use of biological weapons. She has worked with the Ministry of Defence, Government of India (Institute of Defense, Studies and Analyses) as a Researcher for six years. She has done her B.Sc in Biology, Chemistry and Zoology and has ten years of research and teaching experience on National Security Related issues. The profile of the Petitioner is highlighted by the learned counsel to buttress his argument that the profile of the Petitioner is absolutely apt and fits into the structure of "Specialization required for the Post" as mentioned in the Advertisement and which is as follows :-

Details of the posts with Qualifications, Specializations & Desirable qualifications etc. are as under :

<i>Post No.</i>	<i>School / Centre</i>	<i>Name of the Post</i>	<i>Reservation Status</i>	<i>Qualification, Specialization & Desirable Qualifications etc.</i>
<i>1.</i>	<i>Special Centre for National Security Studies</i>	<i>Assistant Professor</i>	<i>Unreserved</i>	<i>Specialization: Emerging Technology and National Security-Cyber warfare / biological</i>

				<i>warfare for Indian Security.</i>
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11. In sum and substance the argument is that if the selection criteria had not been altered midway and the Master's Degree in Social Sciences had not been excluded, Petitioner fulfilled the eligibility criteria, both in terms of essential qualifications and specialization. It is the modified criteria that has rendered her ineligible for the interview.

12. Respondents have filed a short affidavit. Learned counsel appearing on behalf of the Respondents submits that the Essential Qualifications required for Post no.1 was a Master's Degree with 55% marks in the concerned / relevant / allied subject, besides which the candidate must have cleared the NET conducted by the UGC or the CSIR or similar tests accredited by the UGC or awarded a Ph.D degree in accordance with UGC Regulations 2016, in which case there was an exemption from NET / SLET /SET. She submits that in addition to this, against each post the required Specialization was also advertised and for the post in question in the present petition, the Specialization required and advertised was 'Emerging Technology and National Security – Cyber Warfare – Biological Warfare for Indian Security'.

13. It is submitted that since the number of applications were large, as many as 115, a short-listing criteria was followed by the Respondents and 44 candidates were shortlisted for the interview. In the short-listing criteria, Master's Degrees in Natural Sciences and Allied Technology were taken into consideration, while those in Language and Social

Sciences were not considered. Petitioner possessing a Master's Degree in Social Sciences, did not fulfill the short-listing criteria and was not shortlisted. Emphasis is laid on the words concerned/relevant/allied to argue that the Advertisement had restricted the subjects in the Master's Degree and it is wrong to contend that the field was wide open to include any or every subject.

14. It is argued that the post of Assistant Professor, in question, was earmarked for Emerging Science and Technology related skills in Teaching and Research. Required Specialization thus focused exclusively on Natural Sciences and Technology and the Master's Degree being a minimum qualification as per UGC Rules, Degree in Science or Technology was considered apt. The criteria of short-listing adopted by the Screening Committee and supported by the IQAC meets the requirements of the Specialization as advertised. The impugned list reveals that candidates have been shortlisted on the basis of their Master's Degree in Science or Technology i.e. in Physics, Chemistry, Life Sciences, Computer Science and Engineering, Defense and Strategic Studies, Remote Sensing and GIS, Information Technology and Environmental Sciences.

15. Learned counsel further submits that no fault can be found with the Respondents in having adopted a short-listing criteria when the number of applications were large. In Clause 12 of the Advertisement it was mentioned that where the number of applications is large, and it will not be convenient or possible to interview all the candidates, the University, in its discretion, may restrict the number of candidates to a reasonable

limit on the basis of qualifications/experience higher than the minimum prescribed in the Advertisement.

16. In rejoinder learned counsel for the Petitioner relies on the short affidavit filed in response to the affidavit of the Respondents, wherein it is brought out that the Centre is interdisciplinary in its character and the Advertisement accordingly enabled all those who possessed a Master's Degree to apply, irrespective of the subject and thus the Petitioner with a Degree in Social Science was eligible. Learned counsel points to the minutes of the 145th AC Meeting of the Centre wherein it was recorded as under:

“Primarily interdisciplinary in character, the students from both Science and Social Science background can be imparted degrees in National Security Studies. The idea to include students from science background is to make them investigate the role of science and technology in tackling evolving threats to India's national security.”

17. Taking the argument forward in this background, it is canvassed that keeping in view the special character of the Centre, which was conceived for imparting Degrees in the field of National Security Studies, subject such as Social Sciences, which encompasses in it study relating to History, Political Science etc. shall be covered in the expression “relevant / concerned / allied” fields.

18. Rebutting strenuously the contentions of the Respondents that candidates have been shortlisted only on the basis of Master's Degree in Natural Sciences and Allied Technology, it is argued that two of the candidates in the impugned list, namely, Kapil Dhanraj Patil at Seriatim

27 and Abhishek Kumar Singh Visen at Seriatim 36 are shown to have their Master's in Defense and Strategic Studies, which clearly points to the arbitrariness in the action of the Respondents. Elaborating the argument it is contended that Kapil Dhanraj Patil has received his Master's Degree from Pune University which offers MA/M.Sc in Defense and Strategic Studies. Attention is drawn to the Brochure of the University for this Programme, wherein the Programme includes subjects such as Geopolitics, Indian Military History, Defense Economics etc. which are all interdisciplinary fields. This according to the counsel does not qualify as a Degree in Natural Sciences or Allied Technology. Syllabus, subjects and the curriculum in different Semesters, as reflected from the Brochure, shows that he does not fulfill the requisite short-listing criteria.

19. It is further argued that the Petitioner's qualification and experience at the Master's level may not be strictly in Natural Sciences, but has a significant overlap with Defense and Strategic Studies. Respondents cannot on one hand consider the Petitioner ineligible on the ground that she does not have Master's Degree in Natural Sciences and Allied Technology and yet shortlist two candidates who do not have Master's Degree in Science or Technology. Moreover, if this was the requirement, it should have been so spelt out in the Advertisement itself with specific exclusion of Social Sciences.

20. Last but not the least it is argued that the short-listing criteria required the University to select on the basis of qualifications or experience, higher than the one prescribed in the Advertisement and the

Petitioner meets even this parameter as her higher qualifications of M.Phil and Ph.D are in the field of Biological Weapons, as reflected from her Curriculum Vitae, placed on record.

21. I have heard the learned counsels for the parties and examined their rival contentions.

22. At the outset it needs to be mentioned that when the petition was filed the interviews were stated to be scheduled on 24.08.2020. During the pendency of the petition, the interviews for the post in question have been conducted and the Respondents have recommended a candidate for appointment, although the Court was informed that the appointment letter has not been issued so far.

23. Controversy in the petition relates to appointment to the post of Assistant Professor in the Centre, more particularly Post No. 1. As per the Advertisement requisite Essential Qualification was a Master's Degree with 55% marks or an equivalent grade in a point scale, wherever the grading system is followed. On a nuanced scrutiny, it cannot be overlooked that 'Master's Degree' is qualified by the words 'concerned/relevant/allied subject'. The question that begs an answer is what is the true interpretation and implication of these words and the answer, in my view, is not far to seek.

24. The author of the Advertisement has cautiously stipulated in the Advertisement itself the Qualifications, Specializations and Desirable Qualifications etc. against each post. Against Post No.1 the Specialization prescribed is 'Emerging Technology and National

Security-Cyber warfare / biological warfare for Indian Security’. It is the Specialization, which in my view, would give colour and complexion to the words concerned/relevant/allied subject. The three words connote the relative degree of proximity with the requirements of the post in question which can only be determined keeping in background, the specialization. Purpose and intent is to give discretion to the Competent Authority to choose the ‘subject’ keeping in mind the specialization of the post, starting from ‘concerned’ to ‘relevant’ and then ‘allied’. It is clear that only those who possess the Essential Qualification of a Master’s Degree either in the concerned or allied or the relevant subject are eligible for the post. Advertisement has to be read as a whole and in my considered view the Essential Qualifications required for the post cannot be isolated from the required specialization.

25. The proposition that an Advertisement has to be read as a whole to give a meaningful interpretation to the requirements therein, is settled by the Supreme Court in ***Punjab University vs. Narinder Kumar (1999) 9 SCC 8***, relevant para of which is as follows:-

“7. Sub-clause (a) on which emphasis has been placed by the High Court as well as by the first respondent who appears in person before us, prescribes a good academic record with at least 55% marks or an equivalent grade at Master's Degree level in the relevant subject. This clause deals with a good academic record and the minimum marks which the candidate should have obtained at the Master's Degree level. The words “relevant subject” do not throw any light on the question as to what are the relevant subjects for the post of a Lecturer in any specified subject. Presumably, the subjects at the Master's Degree level have some bearing on the subject for which the Lecturer is being

appointed. In the present case, the Lecturer is being appointed in Gandhian Studies. In this context, the column dealing with “Desirable/Essential Qualifications” becomes directly relevant. It is under this column that the University has, in the advertisement, specified the subjects in which MA Degree should have been obtained. These are, therefore, the relevant subjects as far as the MA Degree is concerned. Specific subjects in which MA Degree should have been obtained are separately listed for the post of Lecturers in Gandhian Studies. There it is set out that the candidates should hold an MA Degree in one of the following subjects: (a) Gandhian and Peace Studies, (b) History, (c) Political Science, (d) Sociology, (e) Economics, and (f) Public Administration. Obviously, therefore, an MA Degree in any of these subjects is an acceptable qualification provided the degree obtained has the requisite academic standard as prescribed under the general qualifications at ‘A’. If we accept the contention of the first respondent that only an MA Degree in Gandhian and Peace Studies is the requisite qualification for applying for the post of a Lecturer in Gandhian Studies, then the rest of the subjects in which an MA Degree is acceptable as set out in the advertisement would be entirely redundant, and there would be no sense in listing those subjects in the advertisement at all. Since the advertisement makes it clear that all the subjects which are set out are relevant subjects for the purposes of the post of Lecturer in Gandhian Studies, we cannot accept the contention of the first respondent that an MA Degree in the other subjects which are listed, apart from Gandhian and Peace Studies, will not make a candidate eligible for the post of Lecturer in Gandhian Studies. The High Court placed emphasis on the general qualifications under A (a) relating to good academic record. Undoubtedly, the good academic record is required “in the relevant subject”. But for the purposes of determining which is the relevant subject, the subsequent part of the advertisement cannot be ignored. The High Court, therefore, was not right in coming to the conclusion

that an MA Degree in any of the other subjects listed under the head “Lecturer of Gandhian Studies” would not be an acceptable qualification and the only acceptable qualification would be an MA in Gandhian and Peace Studies.”

26. This leads to the next question as to whether a particular subject is the ‘concerned, relevant or allied subject’ and clearly this can only be decided by the academicians and the experts in the field and not by the Court. It has been repeatedly affirmed that the Court is not an expert in academic matters and cannot have any expert knowledge to decide the equivalency or relevancy of a subject prescribed in an Advertisement. In this context, I may usefully refer to a passage from the judgement of the Supreme Court in ***Medical Council of India vs. Sarang and Ors. (2001) 8 SCC 427*** which is as follows:-

"6. In matters of academic standards, courts should not normally interfere or interpret the rules and such matters should be left to the experts in the field. This position has been made clear by this Court in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491: (1964) 4 SCR 575], State of Kerala v. Kumari T.P. Roshana [(1979) 1 SCC 572: (1979) 2 SCR 974] and Shirish Govind Prabhudesai v. State of Maharashtra [(1993) 1 SCC 211]. The object of the said Regulation appears to be that although the course of study leading to the IInd professional examination is common to all medical colleges, the sequence of coverage of subjects varies from college to college. Therefore, the requirement of 18 months of study in the college from which the student wants to appear in the examination is appropriately insisted upon. Migration is not normally allowed and has got to be given in exceptional circumstances. In the absence of such a stipulation as contained in Regulation 6(5), it is clear that the migrated

student is likely to miss instruction and study in some of the subjects, which will ultimately affect his academic attainments. Therefore, the strained meaning given by the High Court, which actually changes the language of Regulation 6(5), is not permissible. Thus we disagree with the view taken by the High Court and state that the correct interpretation is as given by the Medical Council of India, set forth above by us."

27. In **Zonal Manager, Bank of India, Zonal Office, Kochi & Ors. v. Aarya K. Babu**, (2019) 8 SCC 587, Supreme Court observed as follows:-

"16. Further it is not for the Court to provide the equivalence relating to educational qualifications inasmuch as the said issue has been settled by the Constitution Bench of this Court in the decision relied upon by the learned counsel for the appellants in Mohd. Shujat Ali v. Union of India [Mohd. Shujat Ali v. Union of India, (1975) 3 SCC 76 : 1974 SCC (L&S) 454] wherein it is held that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government."

28. The stand of the Respondent in the Affidavit is that on account of large number of applications, a short-listing criteria had been adopted wherein the selection was narrowed down to candidates possessing a Master's Degree in Natural Sciences and Allied Technology. Learned counsel for the Respondent argues and in my view, rightly so, that the

words concerned, allied and relevant have to be interpreted in a manner that the subject of the Master's Degree co-relates to the required specialization, as the post in question requires Teaching and Research in an extremely technical field of Emerging Technology and National Security. It is a settled law that the author of the Advertisement is the best person to know and understand the selection criteria he had intended to earmark for selection.

29. Learned counsel for the Petitioner, drawing the attention of the Court to the Advertisement, wherein the required 'essential qualification' has been stipulated, vehemently argues that once the original Advertisement does not restrict the canvass to any particular subject, it is not open to the Respondents to exclude Social Sciences, while short-listing, as this would amount to changing the rules of the game, midstream. There cannot be any debate on the proposition of law that once the selection criteria is laid down, the same cannot be altered or modified midway, as that would amount to changing the rules of the game after the goal post is set. However, in the present case, there has been no change of criteria midway as alleged by the Petitioner. The contention of the Petitioner could have been accepted in case the Advertisement mentioned specific subjects in the Master's Degree and thereafter the subjects were changed or where the Advertisement specifically included Social Sciences, but the same was excluded, after the selection process had begun. In the present Advertisement there is neither an inclusion nor an exclusion of a specific subject. Keeping in view the nature of the post and the character of the Centre which has

been developed with an objective and purpose, the Advertisement consciously qualified and co-related the Master's Degree to the specializations required against each of the post, leaving it to the discretion of the Competent Authority to decide the subjects in the Master's Degree that would be most suited to the post. It cannot therefore be argued that there is an exclusion of Social Sciences so as to change the rules of the game. Petitioner is reading the words Master's Degree with 55% marks in isolation and bereft of the words which qualified the Master's Degree in the Advertisement.

30. Learned counsel also sought to argue that the Petitioner has a Master's Degree in Social Sciences wherein certain subjects such as History are same as in Technology or Defense & Strategic Studies or Environmental Sciences and thus Petitioner cannot be held ineligible. This argument falls for twofold reasons. Firstly, it is not for this Court to interpret as to which subject would be relevant or most suited to the requirements of a particular post and this decision has to be left to the Respondents with their expert knowledge and technical knowhow in the field. Secondly, only because some subjects like History are taught as a part of the Degree course in Social Sciences and is also a part of the curricula in course relating to Technology or Defense & Strategic Studies or Environmental Sciences, cannot ipso-facto lead to a conclusion that the Master's Degree in Social Sciences would make the Petitioner eligible for the post, where in the expert opinion of the Respondents Science and Technology are the relevant subjects.

31. A similar issue had arisen before the Supreme Court in ***Ganapath Singh Gangaram Singh Rajput v. Gulbarga University, (2014) 3 SCC 767*** wherein the advertisement invited applications for appointment to the post of Lecturer in Master's in Computer Application. The Appellant had acquired M.Sc degree in Mathematics and was selected. Respondent, Shivanand possessed a Post Graduate Degree in Computer Application but was not selected and filed a writ petition challenging the appointment of Ganpat. The advertisement in the said case required as minimum qualification, a good academic record with at least 55% marks in the relevant subject. Learned Single Judge of the High Court dismissed the writ petition filed by Shivanand observing as follows:-

“8. ... The use of the word ‘relevant subject’ in relation to the qualification for Lecturers' post is the bone of contention between the parties. It is also Shri Chandrashekar's assertion that it should relate only to a Masters degree in Computer Applications and nothing else, while, the University would contend that it could also mean such of those who have secured a Masters degree in Mathematics. It is not in dispute that the Head of the Department, MCA is held by a person who is also a PhD holder in Mathematics. It is not in dispute that Mathematics is also the subject which is taught in the Masters degree in Computer Applications course. What one can reasonably infer from the pleadings of the parties is that ‘relevant subject’ could mean candidates who possessed Masters degree in such of those subjects as are offered in the MCA course. Mathematics being one of the subjects, it cannot be said that Masters degree in Mathematics was not a “relevant subject” and it was only a Masters degree in Computer Applications.

It would be very unreasonable to hold 'relevant subject' to mean only a Masters in Computer Applications. It would also be irrational to conclude that the non-mention of the specific educational qualification for the post of Lecturer in MCA could lead to only one conclusion that a candidate with a Masters degree in Computer Applications, alone, would meet the requirement."

32. Aggrieved by the judgement, Shivanand preferred an Appeal before the Division Bench and his submission found favour with the Division Bench and it was observed as follows:-

"28. This is nothing short of trickery and fraud on persons applying to the post. The University had perhaps deliberately or with a design to achieve this result of selecting a person with postgraduate qualification in Mathematics, though it had called for applications to fill up the post of Lecturer in MCA course. That is why the action of the University falls short of the constitutional mandate of the State being in conformity with Articles 14 and 16(1) of the Constitution of India, affording equal opportunity to all eligible candidates. In fact the method of selection made by adopting this procedure, is so flawed that it can never pass the test before a Court, more so while in exercise of jurisdiction of judicial review of administrative action. We say so for the reason that the post notified for being filled up by the University in MCA course should be one with reference to the vacancy and the vacancy can only be in a particular subject of the department and cannot be generally with reference to the course."

33. The Division Bench therefore allowed the appeal and quashed the appointment of Ganpat, which judgement was then challenged by Ganpat before the Supreme Court.

34. The main contention of the Appellant therein was as under:-

“14. The main thrust in the appellant's contention is that when an expert body i.e. the Board of Appointment consisting of high academicians, has found Ganpat eligible and qualified and which has been approved by the Syndicate, another expert body, the High Court ought not to have acted as a court of appeal, examined the pros and cons and come to the conclusion that Ganpat did not possess the requisite qualification. There is no difficulty in accepting the broad submission that academic issues must be left to be decided by the expert body and the court cannot act as an appellate authority in such matters. It deserves great respect. When two views are possible and the expert body has taken a view, the same deserves acceptance. However, to say that expert body's opinion deserves acceptance in all circumstances and is not subject to judicial review does not appeal to us. In our constitutional scheme the decision of the Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind itself of the famous words of Lord Acton “power corrupts and absolute power corrupts absolutely”.

35. The Supreme Court, analyzing the issue, disagreed with Ganpat that his Master's Degree in Mathematics was a relevant subject and observed that it shall not make any difference even if Mathematics was taught as one of the subjects in the Master's of Computer Application Course. The Supreme Court held as under:-

“20. Having set the legal position in the right perspective, we now proceed to consider the facts of the present case.

21. As is evident from the advertisement, applications were invited for filling up various posts in different subjects including the post of Lecturer in MCA. The advertisement

requires postgraduate degree in the “relevant subject”. The relevant subject would, therefore, in the context of appointment to the post of Lecturer, mean postgraduate degree in MCA. In our opinion, for appointment to the post of Lecturer, Masters degree in Mathematics is not the relevant subject. The advertisement requires Masters degree in “relevant subject” and not “appropriate subject”. In the present case, the Board of Appointment has not stated that postgraduate degree in Mathematics is the relevant subject for MCA but in sum and substance it is equivalent to a postgraduate degree in MCA for the reason that Mathematics is one of the subjects taught in MCA. This, in our opinion, was beyond the power of the Board of Appointment.

22. It shall not make any difference even if Mathematics is taught in the Masters of Computer Application course. The learned Single Judge, in our opinion, gravely erred in upholding the contention of Ganpat and the University that “relevant subject” would mean “such of those subjects as are offered in the MCA course”. If Mathematics is taught in a postgraduate course in Commerce, a Masters degree in Commerce would not be relevant for appointment in Mathematics or for that matter in MCA. There may be a situation in which Masters degree in MCA is differently christened and such a degree may be considered relevant but it would be too much to say that a candidate having postgraduate degree in any of the subjects taught in MCA would make the holders of a Masters degree in those subjects as holder of Masters degree in Computer Application and, therefore, eligible for appointment.

23. The language of the advertisement is clear and explicit and does not admit any ambiguity and, hence, it has to be given effect to. Since the appellant Ganpat did not have a Masters degree in Computer Application, in our opinion, he was not entitled to be considered for appointment as Lecturer in MCA. We are aghast to see that when a

candidate possessing Masters degree in MCA is available, the Board of Appointment had chosen an unqualified and ineligible person for appointment in that subject. Its recommendations are, therefore, illegal and invalid. The natural corollary thereof is that the University acting on such recommendation and appointing Ganpat as Lecturer cannot be allowed to do so and that the Division Bench of the High Court was right in setting aside his appointment. In our opinion, an unqualified person cannot be appointed, whoever may be the recommendee. We are of the opinion that the Division Bench of the High Court was right in holding that Ganpat was not eligible for appointment of Lecturer in Masters of Computer Application.”

36. Therefore, in my view, merely because some subjects taught in Social Sciences overlap with some subjects in the Master’s Degree Course in Science or Technology cannot inure to the advantage of the Petitioner. For the same reason, the argument of the Petitioner with respect to the two shortlisted candidates, namely Kapil Patil and Abhishek Kumar Singh fails.

37. Learned counsel for the Petitioner has taken pains to take the Court through the Brochure of the Pune University to show that even in the Post Graduate course of Defense and Strategic Studies, Indian Military History was taught in the first Semester as also that there were various subjects which were very close and overlapping with the subjects taught in the Post Graduate Course of Social Sciences. It is pertinent at this stage to notice that during the course of the argument, counsel for the Petitioner drawing the attention of the Court to the Brochure has pointed out that the Post Graduate Degree offered by the Pune

University was both M.A. and M.Sc and therefore the claim of the Respondent that they have shortlisted based on Post Graduate Degree in Science is belied. Confronted with this Ms. Monika Arora counsel for the Respondent, on instructions, rebuts this contention and submits that both the candidates possess M.Sc Degree. Thus even on this count the Petitioner cannot succeed.

38. It is apparent from a perusal of the List of shortlisted candidates that the same has been prepared by the Respondent on the basis of the Master's Degree in field of Science and Technology, closely related to and/or allied with the required specializations. There is no dispute between the parties that the University had clearly prescribed in Clause 12 of the Advertisement that where the number of Applications is large and it will not be convenient or possible to interview all the candidates, the University, at its discretion may restrict the number of candidates to a reasonable limit on the basis of qualification or experience higher than the minimum prescribed in the Advertisement. Supreme Court in case of ***University of Delhi v. Waseem Begum in LPA Nos. 236-39/2006 decided on 06.05.2010*** has upheld the power of short-listing and observed that it is for the academic body to devise ways and means to find out the best suitable candidates for the concerned post. Reliance was placed on the judgement of the earlier Bench of the Supreme Court in ***B. Ramakichenin Alias Balagandhi v. Union of India & Ors. (2008) 1 SCC 362*** wherein the Supreme Court held as under:-

“15. It is well settled that the method of shortlisting can be validly adopted by the selection body vide M.P. Public Service Commission V. Navnit Kumar Potdar

(vide paras 6,8,9 and 13) and Govt. of A.P. v. P. Dilip Kumar.

16. Even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the selection body can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of shortlisting can be resorted to by the selection body, even though there is no mention of shortlisting in the rules or in the advertisement."

39. In ***Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar and Ors. in Civil Appeal No. 6103/1994 decided on 19.09.1994*** the Supreme Court upholding the power of the Competent Authority to resort to short-listing criteria held as under:-

"6. The question which is to be answered is as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates amongst the applicants. In most of the services screening tests or written tests have been introduced to limit the

numbers of the candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.”

xxx

xxx

xxx

“8. The sole purpose of holding interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva-voce test if large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint. The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview. It appears that Union Public Service Commission has also fixed a ratio for calling the candidates for interview with reference to number of available vacancies.”

xxx

xxx

xxx

“9. ...In this background it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed

and evaluated. It need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of shortlisting is part of process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences. If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8(3)(c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c) places a bar that no person having less then five years of practice as an Advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8(3)(c) of the Act.”

40. In view of the dicta of the Supreme Court, no fault can be found with action of the Respondent in resorting to a short-listing criteria nor can it be held that the criteria so adopted was wrong. Respondents have shortlisted 44 candidates based on their subjects and fields in Master’s

Degrees, aligning with the specialization of the post and this Court cannot substitute its own wisdom to direct the Respondent to include the Master's Degree in Social Science, as a criteria for short-listing.

41. In view of the above, there is no merit in the present petition and the same is accordingly dismissed along with the pending Application.

SEPTEMBER 03, 2020

yo/yg

JYOTI SINGH, J

