

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: October 06, 2021

+ W.P.(C) 6500/2021, Rev. Pet. 119/2021, CM No. 25646/2021
GINJALA VARUN REDDY

..... Petitioner

Through: Mr. P. Venkat Reddy, Mr. Prashant
Tyagi and Mr. P. Srinivas Reddy,
Advs.

versus

THE FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA

..... Respondent

Through: Mr. Rakesh Chaudhary and
Mr. Sushaar Chaudhary, Advs.
for R-1

+ W.P.(C) 9753/2021

SHALINI SINGH

..... Petitioner

Through: Mr. Aditya Maheshwari, Adv.

versus

FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA &
ANR.

..... Respondent

Through: Mr. Rakesh Chaudhary and Mr. Sushaar
Chaudhary, Advs. for FSSAI
Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Sarvan Kumar, Adv. for
UOI/R-1

AND

+ W.P.(C) 9925/2021, CM No. 30584/2021
UGALMUGALE AMOL BALU

..... Petitioner

Through: Mr. Aditya Maheshwari, Adv.

versus

FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA &
ANR.

..... Respondent

Through: Mr.Rakesh Chaudhary and Mr.Sushaar
Chaudhary, Advs. for FSSAI
Mr. Rajesh Gogna, CGSC with
Ms. Bhawna Sharma, Adv. for UOI/R-
2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

1. By this order, I shall decide Review Petition No. 119/2021 in W.P.(C) No. 6500/2021, W.P.(C) 9753/2021 and W.P.(C) No. 9925/2021.

Rev. Pet. 119/2021 in W.P.(C) 6500/2021

2. The review petition has been filed by the petitioner in W.P.(C) No. 6500/2021 seeking review of order dated July 16, 2021 whereby this Court has dismissed the writ petition on the only challenge urged by learned counsel for the petitioner. The review is being sought on the ground that there is an inadvertent mistake in the impugned order, inasmuch as the respondent Food Safety and Standards Authority of India ('FSSAI', for short) had committed an illegality by altering the final selection criteria after commencement of the selection process. The final selection is in contravention of Clause C(I) of the advertisement dated March 26, 2019, which states only written examination marks have to be taken into account for final selection, whereas the respondent

Authority has made final selection giving equal weightage to both computer-based test ('CBT', for short) and written examination in terms of Notice dated June 14, 2019. The criteria was changed after the commencement of the selection process, which is arbitrary and impermissible in terms of the judgments of the Supreme Court in *Maharashtra State Road Transport Corporation & Ors. v. Rajendra Bhimrao Mandve & Ors.*, (2001) 10 SCC 51; *K. Manjusree v. State of Andhra Pradesh & Anr.*, (2008) 3 SCC 512; *Secretary, A.P. Public Service Commission v. B. Swapna & Ors.*, (2005) 4 SCC 154, and *Hemani Malhotra v. High Court of Delhi*, (2008) 7 SCC 11.

3. That apart, the review is also sought on the ground that by the criteria of 10% weightage given to the contractual employees in the preliminary stage became 10% weightage in the final selection process and in addition 50% weightage is given to a preliminary round, the purpose of which was to screen huge bulk of applicants. This action has caused prejudice to the review petitioner, who is a meritorious candidate but was pushed down the selection list.

W.P.(C) 9753/2021

4. This petition has been filed by the petitioner with the following prayers:-

“Therefore, in the light of the facts stated, issues raised, grounds stated hereinabove, it is most respectfully prayed before this Honourable Court to:

a) Direct the Respondent Authority to issue appointment letter to the Petitioner to the post of Technical Officer, if the marks obtained by the Petitioner in the “Written

Test” alone in her respective schedule caste category and/or in the unreserved category is more than or equal that of any similarly situated candidate who has been given appointment by the Respondent Authority; and/or

b) Issue an appropriate writ quashing/setting aside the provisional merit list, dated 10/12/2020 (the “Impugned Notification”) by which list of selected candidates for the post of Technical Officer was released by the Respondent Authority; and/or

c) Direct the Respondent Authority to prepare and issue a fresh merit list for the post of Technical Officer on the basis of the marks obtained in the Written Test alone, in terms of the Advertisement Advt. No: DR-02/2019, dated 26/03/2019; and/or

d) Consequentially, quash/set aside the appointment of all the candidates to the post of Technical Officer who fall outside the fresh merit list as and when prepared by the Respondent Authority; and/or

e) Stay on any future appointment on the post of Technical Officer till the pendency of the present Petition; and/or

f) In light of the various malafides carried out by Respondent Authority, i.e. illegal recruitment for the post of Asst Director (Technical) (W.P. (C) 132/2021), altered selection criteria from that specified in the Direct Recruitment Advertisement (DR-02/2019 dated 26.03.2019) highlighted in the present Petition, it is apprehended that manipulation in written marks has also been carried out to enable back door entry. Hence kindly allow the Petitioner access to her written answer sheet for re-evaluation.

g) Such other and/or further order/orders be passed as to this Honourable Court may deem fit and proper.”

5. The case of the petitioner in the petition is that the FSSAI issued an advertisement dated March 26, 2019, inviting applications on direct recruitment basis for several posts including for the post of Technical Officer ('TO', for short). The petitioner applied for the said post. As per Clause C(I) of Scheme of selection of the advertisement, the selection for the post of TO was to run through two stages; (i) CBT and; (ii) written test.

6. It is also stipulated that the marks scored in the written examination and interview together will be counted for the final selection. The advertisement also stipulated in Clause B(VI) that persons on contract in the services of the FSSAI on the date of notification of the Recruitment Regulations shall be eligible for weightage in selection process. The weightage was prescribed to be given on two parameters viz. number of years of service rendered in the Authority (30% weightage) plus Performance Appraisal (70% weightage). The performance appraisal was to be done by a committee nominated by FSSAI.

7. The weightage, as mentioned was to be added at the first level of selection as applicable to each post and the total combined weightage on account of both should not exceed 10% of the total score for the entire selection process. It is the case of the petitioner that on June 14, 2021, a notice was issued with the subject "*Tentative Schedule of Examination for Direct Recruitment in FSSAI*". In terms of the said notice, altogether a different criterion for final selection was prescribed, which was in contrast with Clause C(I) of the Scheme of Selection of the Advertisement dated March 26, 2019. The criteria mentioned in

the notice sought to give equal weightage to CBT and Written Test for the final selection to the aforesaid posts, in violation of the advertisement.

W.P.(C) 9925/2021

8. The facts in this writ petition are identical to the facts as narrated above in W.P.(C) No. 9753/2021. The only difference is that in this petition, the petitioner has applied for the post of Central Food Safety Officer ('CFSO', for short) in OBC category.

9. Suffice to state, reply to the review petition as well as counter affidavits to the writ petitions have been filed by the respondent FSSAI. I intend to deal with the case of the respondent FSSAI in the submissions made by Mr. Rakesh Chaudhary, learned counsel for the respondent FSSAI to avoid repetition.

Submissions in Rev. Pet.119/2021 in W.P.(C) 6500/2021:-

10. Mr.P. Srinivas Reddy, learned counsel for the petitioner in review petition would submit that the criteria of selection could not have been changed after the selection process has started. According to him, the selection process starts from the date of calling of applications. In support of this submission, he has relied upon the judgment of the Supreme Court in the case of *A.A.Calton v. The Director of Education & Anr., 1983 SCALE (1) 316*.

11. That apart, he stated action of the respondent in altering the conditions of advertisement is in violation of Article 14, 16 of the Constitution of India and the Recruitment Regulations,

therefore, rule of estoppel will not apply against the petitioner. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***Bedanga Talukdar v. Saifudullah Khan and Ors., (2011) 12 SCC 85***. He stated that power to issue corrigendum or addendum doesn't include the power to relax because corrigendum can be issued to correct mistakes and addendum can be issued to supplement the advertisement or provide additional material. He stated that 50% weightage has been given to a screening stage qualification exam i.e. CBT. The said decision has been taken without any basis and is therefore arbitrary and unreasonable. Even in reply to the review petition, no justification is forthcoming for granting excessive weightage. By doing so, merit has been compromised, by giving weightage to a mere screening test, that too without there being any rationale. A calculated effort was made after receiving a huge volume of applications to grant weightage in the final selection to the contractual employees with a sole objective to favour the contractual employees. According to him, Recruitment Regulation 11(2) has been violated with only written examination or interview or both may be prescribed for selection process. The public notice granting weightage to CBT is in contravention of said regulation. In support of his submission that principle of estoppel would not apply, he has relied upon ***Dr. (Major) Meeta Sahai v. State of Bihar & Ors., (2019) 20 SCC 17***, and ***Ramjit Singh Kardam & Ors. v. Sanjeev Kumar & Ors., 2020 SCC Online SC 448***.

12. One of the plea of Mr. Reddy is that CBT is a mere

screening test, which is forthcoming from the advertisement / notification itself. The advertisement states that only written examination marks are to be counted for final selection, hence only purpose to be served by CBT was to screen candidates. In the end, he stated that the pleas made by the petitioner are within the ground for review of order dated July 16, 2021.

Submissions in W.P.(C) Nos. 9753/2021 & 9925/2021:-

13. Mr. Aditya Maheshwari, learned counsel for the petitioner in both the writ petitions would make similar pleas, as was made by Mr. Reddy. According to him, by giving weightage of 50% to CBT and 10% weightage for contractual candidates in the final merit list, the respondent Authority has violated the provisions of Food Safety and Standards Authority of India (Recruitment and Appointment) Regulations, 2018 ('FSSAI Regulations', for short). In this regard, he has referred to Regulation 11(2) of the FSSAI Regulations, which according to him, gives the limited discretion to the respondent Authority to stipulate as to whether written examination or interview or both to be a part of the selection process. Therefore, there has been no mention of CBT in the FSSAI Regulations at all and hence the same cannot be a part of the selection process. That apart, even the power to relax any of the provisions of these regulations has been given to the Central Government and not to the FSSAI. He stated, any merit list prepared / recruitment done contrary to the Regulations governing such recruitment, cannot be sustained and is required to be set-aside. He refers to the judgment of the Supreme Court in the case of *P.K. Ramachandra Iyer & Ors. v.*

Union of India & Ors., (1984) 2 SCC 141. His submission was also that FSSAI has illegally and arbitrarily changed the scheme of examination after the recruitment process has already begun for the post of TO / CFSO. In this regard, he stated that as per the advertisement dated March 26, 2019, the respondent Authority had prescribed two stages of examination i.e., CBT and Written Test. However, it was prescribed that for the purpose of final selection, marks scored only in written test will be counted. Arbitrarily, on June 14, 2019, which is after the last date of receipt of online applications, the respondent Authority changed / altered this scheme of selection and gave equal weightage of 50% to both CBT and Written Test in complete violation of the advertisement, dated March 26, 2019. He relied upon the same judgments, as relied upon by Mr. Reddy and as such, are not repeated for the sake of brevity.

14. That apart, it is his submission by changing the scheme of selection midway by way of notice dated June 14, 2019, the respondent Authority, with a *malafide* intention, has given undue benefit to the contractual employees and caused grave prejudice to the petitioner herein. This is a similar submission made by Mr. Reddy, which I have already noted above and hence, need not be repeated. In substance, it is his submission, by giving the weightage to the contractual employees in the final merit list, the petitioner has been put to disadvantage. He also reiterated the submission made by Mr. Reddy that the purpose of CBT was only to screen out the less meritorious candidates and not to add the marks of the same in the final merit.

He also stated that the principle of estoppel by conduct or acquiescence has no application in the facts of the present case. He also relied upon the judgment in the case of **Raj Kumar & Ors. v. Shakti Raj & Ors., (1997) 9 SCC 527**, and **Meeta Sahai (supra)**. He seeks the reliefs, as prayed for by the petitioner(s) in these petitions.

15. On the other hand, Mr. Rakesh Chaudhary, learned counsel for FSSAI would contend that the review petition filed by the petitioner is totally misconceived. The order dated July 16, 2021, is a reasoned order. According to him, Clause C(I) of the advertisement dated March 26, 2019, when read jointly with Table clearly shows that for the post of TO (and also CFSO), all the candidates including the petitioner(s) had to and also have undertaken CBT and written examination; no prejudice has been caused to the petitioner(s) at all. In fact, in the order dated July 16, 2021, passed in W.P.(C) 6500/2021 this Court had noted the contention of the petitioner himself ‘.....*that the process of Selection was to be through CBT + Written Examination.....*’. The admitted facts by the petitioner himself do not permit the petitioner to retract from the same and to invent a fresh ground for success of the writ petition on the basis of misconception and afterthoughts.

16. That apart, Clause 6 of the Advertisement dated March 26, 2019, clearly provides for issuance of Addendum / Corrigendum and wording of para 3 of the Notice dated June 14, 2019, clearly shows that the same is an Addendum to the Advertisement dated March 26, 2019, to further clarify the

manner and formula for preparation of the merit list. That apart, the timeline / chronology, amply shows that the Addendum issued vide Notice dated June 14, 2019, was issued prior to the stages of selection and it cannot be said that the criteria of selection has been altered in the middle or after the process of selection has commenced, as alleged by the petitioner. He also relied upon Regulation 6 of the FSSAI Regulations to contend that Regulation 6 specifies that the General conditions specified in Sub-Regulations (1) to (6) shall apply to all appointments and this includes the Food authority shall lay down the procedure for appointment. Regulation 6.1 as reproduced above, clearly means that at any point of time, for an appointment to be made, the Food Authority / FSSAI shall lay down the procedure / methodology for the said appointment, which the respondent FSSAI has done for the subject posts also.

17. According to Mr. Chaudhary, the purpose of written examination is testing of understanding of concepts by the candidates. Written examination can be taken in various forms and Competent Authority at FSSAI has the discretion in accordance with Regulation 11(2) to decide on the same. CBT is also a form of written examination, where the traditional filing of OMR sheets has been replaced by the computer based speedy assessment. The primary contention of the petitioner that the notice dated June 14, 2019, has substantially changed the selection criteria is misconceived and without any basis. The said notice has not changed the criteria of selection but has clarified the weightage of marks allotted to each stage of selection.

Nowhere in the advertisement, it is mentioned that the CBT is only qualifying in nature and this contention of the petitioner that the CBT is only for screening purposes is based on assumptions and is without any basis. The contentions raised by the petitioners are afterthoughts on being declared unsuccessful, as the intention of FSSAI to include marks of all stages in the total score of the candidates is also very clear from the language of Clause VI of the advertisement which clearly states that 10% weightage given to the contractual candidates is *out of total score of the entire selection process*. Each selection stage was given some marks and the final merit list was to be prepared out of the total marks scored by the candidates. He also stated that the notice dated June 14, 2019, apart from prescribing weightage to the various stages of selection also mentioned the dates on which the examination were scheduled; number of applications and ratio in which applicants will be called for written test and interview. This was an important notice with respect to the advertisement and all candidates interested were under an obligation to be acquainted of the notices issued by FSSAI in respect of the recruitment process. The contention that the petitioner came to know this notice only through order dated July 16, 2021, in W.P.(C) No. 6500/2021 signifies a negligent attitude of the petitioner. FSSAI in order to maintain transparency and ensuring equality of opportunity amongst the candidates had released the notice approximately one month before the scheduled date of examination. Hence, the contention of the petitioners that the notice has been issued with *malafide* intention is wrong and

vehemently denied.

18. That apart, there is a delay of 7 / 9 ½ months in filing the present petitions. In this regard, he stated that the merit list admittedly was published by FSSAI on December 10, 2020. He also relied upon the following judgments in support of his contention:-

- (i) ***D. Sarojakumari v. R. Helen Thilakom & Ors., (2017) 9 SCC 478;***
- (ii) ***Dr. G. Sarana v. University of Lucknow & Ors., (1976) 3 SCC 585;***
- (iii) ***Madan Lal & Ors. v. State of J&K & Ors., (1995) 3 SCC 486;***
- (iv) ***Manish Kumar Shahi v. State of Bihar & Ors., (2010) 12 SCC 576;***
- (v) ***Ramesh Chandra Shah & Ors. v. Anil Joshi & Ors., (2013) 11 SCC 309;***
- (vi) ***Madras Institute of Development Studies & Anr. v. K. Sivasubramanian & Ors., (2016) 1 SCC 454.***

He seeks the dismissal of the review petition and the writ petitions.

19. Having heard the learned counsel for the parties and considered the record, the issue which arises for consideration in these writ petitions and review petition is whether the respondent FSSAI has carried out the selection to the post of TO, and CFSO validly / properly.

20. The submissions of the learned counsel for the parties can

be summed up as under:

- (i) The Regulation 11(2) of the Regulation of 2018 has been violated as only written examination or interview or both could have been prescribed for making selection process.
- (ii) FSSAI has illegally and arbitrarily changed the scheme of examination after the recruitment process has already began for the post of TO, and CFSO.
- (iii) For the purpose of final selection marks secured only in written test were to be considered but arbitrarily on June 14, 2019, which is after the last date of receipt online application, the FSSAI has changed / altered the scheme / criteria by giving equal weightage of 50% to both CBT and written test, which caused prejudice and affected the result of the petitioners.

21. Insofar as the review petition being Rev. Pet.119/2021 is concerned, I may state that the review is primarily being sought to the order dated July 16, 2021, passed by this Court in the writ petition. From the perusal of the order, it is clear that in para 4, the Court has noted the only submission urged by the counsel for the petitioner. In para 5 this Court has also referred to the exact submissions of the counsel.

22. The submission of the learned counsel for the petitioners was not the same as sought to be urged in the review petition now. The grounds raised in the review petition were not even urged during the course of hearing of the writ petition. Be that as it may, as the above writ petitions have been filed challenging the selection process on identical grounds, I deem it appropriate to

hear the review petition as well. To understand the above submissions made by the learned counsel for the petitioners, it is necessary to state in brief some relevant facts.

23. In 2018, the Ministry of Health and Family Welfare framed Regulations of 2018. Regulation 11(2) on which reliance has been placed by the learned counsel for the parties reads as under:

“(2) The candidates possessing the educational qualifications and experience as specified in the Schedule and other provisions under these regulations shall be eligible for direct recruitment through selection process. The competent authority may at its discretion, where it considers desirable, also stipulate whether written examination or interview or both to be a part of the selection process.”

24. On March 26, 2019, the respondent issued an advertisement for making certain selections for various posts including the post of TO, and CFSO. Clause VI reads as under:

“VI. All persons on contract in the services of the Authority on the date of notification of the Recruitment Regulations shall be eligible for weightage in selection process. The weightage shall be given on two parameters viz. number of years of service rendered in the Authority (30% weightage) plus Performance Appraisal (70% weightage). The performance appraisal shall be done by a committee nominated by Appointing Authority. The weightage as above shall be added at the first level of selection as applicable to each post and the total combined weightage on account of both parameters (i.e. no. of years of relevant experience plus Performance Appraisal) should not exceed 10% of the total score for the entire selection process.”

25. Reliance has also been placed on the advertisement of which (I) stipulates **(a scheme of selection)** as under:

“I. Selection for the aforementioned posts will be done as per the stages given below. Marks scored in written test and Interview together will be counted for final selection. Further, the Authority reserves the right to introduce additional stage of examination which would be notified at suitable time, if considered necessary.”

The chart below the above stated provision is reproduced hereunder:

<i>Post Advertised</i>	<i>Pay Level of the Post advertised</i>	<i>Stages of Selection</i>
<i>Technical Officer</i>	7	<i>CBT + Written Examination</i>
<i>Central Food Safety Officer</i>	7	<i>CBT + Written Examination</i>

26. The advertisement also states that the candidates in their own interest are required to keep on visiting the Authority's website www.fssai.gov.in for further updates. On March 14, 2019, a notice was issued by the FSSAI wherein in para 3 the following has been stated:

“3.Weightage assigned for Computer Based Test, Written Exam and Interview

Wherever all the three stages, i.e., Computer Based Test (CBT), Written Exam and Interview is prescribed the weightage assigned for CBT, Written Exam and Interview shall be 50%, 35% and 15% respectively. Where only Written Test and Interview is prescribed weightage assigned for Written Exam and Interview shall be 85% and 15% respectively. Further, where only CBT and Written

Test are prescribed, weightage assigned for CBT and Written Exam shall be 50% and 50% respectively.”

27. I may also state that in para 7 of that notice, FSSAI reiterated that the candidates are advised in their own interest to regularly visit the official website of FSSAI, i.e., www.fssai.gov.in for updates. The aforesaid notice states that the CBT shall be held on July 24, 2019, July 25, 2019, and July 26, 2019, and written exam in September / October 2019.

28. It is the conceded case of the petitioners herein that they did appear in the CBT exam and qualified the same for the next state of written examination. The merit panel of the result was prepared on December 10, 2020. It is noted that there was no challenge / objection to the notice dated June 14, 2019, by the petitioners nor to the merit panel prepared on December 10, 2020, in any form including in the form of a representations. The plea of the counsel for the review petitioner / petitioners is that he / they, has / have come to know about the issuance of notice dated June 14, 2019, only during the hearing held in the writ petition on July 16, 2021 / from the order dated July 16, 2021.

29. Having noted the relevant facts above, coming to the submissions made by the counsel for the petitioners, insofar as the submission of the learned counsel for the petitioners that Regulation 11(2) of the Regulations of 2018 has been violated, inasmuch as the Regulation states that only written examination and interview may be prescribed for selection process but the prescribing CBT and also weightage for CBT is in contravention of the said Regulation. This plea is contested by Mr. Chaudhary

by relying upon Regulation 6.1 which clearly means that at any point of time, the Authority shall lay down the procedure for appointment.

30. That apart, the plea that the purpose of written examination is to test the understanding of concepts of candidates. The written examination can be taken in various forms and Competent Authority at FSSAI has the discretion in accordance with the Regulation 11(2) to decide on the same. In other words, the CBT is also a form of written examination where the number of filing of OMR sheet has been replaced by computer based speedy assessment is appealing.

31. In other words, the FSSAI has construed the CBT to mean a written examination as stipulated in Regulation 11(2) of Regulations of 2018. So, it must be stated by prescribing CBT the FSSAI has not violated the regulations. Surely, it is a decision, which has justification. To that extent the decision to include CBT in the process of selection cannot be faulted. The advertisement clearly refers to CBT as a form of selection process. That apart, the petitioners have also appeared in the same and cleared the same to come to the second stage. This submission of the counsel for the petitioners is rejected.

32. The second submission of the learned counsel for the petitioners is that by issuing a notice dated June 14, 2019, the respondent FSSAI has substantially changed the selection criteria. The submission of Mr. Chaudhary is that by notice dated June 14, 2019, the respondent FSSAI has only clarified weightage of marks allotted to each stage of selection. That

apart, he stated, nowhere in the advertisement it is mentioned that the CBT is only qualifying in nature. What is important is the language of clause 6 of the advertisement which I have reproduced above which clearly states that 10% weightage given to the contractual candidates is out of total score of the entire selection process. This entire selection process included the process of CBT and the written examination for the post of TO/CFSO.

33. That apart, it is relevant to note that this notice dated June 14, 2019, was issued much before the schedule date of the CBT i.e., on July 24, 2019, July 25, 2019, and July 26, 2019, and also written examination of September / October, 2019. It cannot be said that the notice was issued to give benefit to contractual employees, as sought to be contended by the counsel for the petitioners.

34. The further plea of the counsel for the petitioners, the purpose of final selection marks secured only in written test will be counted which has been altered by giving the equal weightage of 50% to both CBT and written test would also not hold good in view of the fact that such a criteria has been incorporated much before the exam could take place and the same was in conformity with the words *“and the total combined weightage on account of both parameters (i.e., number of years of relevant experience plus performance appraisal) should not exceed 10% of the total score of the entire selection process”* which includes CBT / written examination.

35. That apart, what is important is that the advertisement

notice clearly stipulate that every candidate was required to acquaint oneself about the development in the recruitment process by accessing website of the FSSAI. In fact, even the notice dated June 14, 2019, stipulated so. But at no point of time, did the petitioners raised any issue. No doubt, the principle of estoppel would not come into play if the selection process is in violation of any Statutory Rules / Regulations but, I have already said that there is no violation of Regulations. If that be so, Mr. Chaudhary is right in stating, that the petitioners are estopped from challenging the selection / criteria. The judgments relied upon by the counsel in *Meeta Sahai (supra)*, *Ramjit Singh Kardam & Ors. (supra)* and *Raj Kumar & Ors. (supra)* have no applicability, in the facts. The judgments relied upon by the counsel for the petitioners in *Maharashtra State Road Transport Corporation & Ors. (supra)*, *K. Manjusree (supra)*, *Secretary, A.P. Public Service Commission (supra)*, *Hemani Malhotra (supra)*, *A.A.Calton (supra)*, and *Bedanga Talukdar (supra)* have also no applicability in the facts.

36. The judgment, in the case of *Maharashtra State Road Transport Corporation & Ors. (supra)*, can be differentiated on facts as in the said case the Supreme Court observed that the criteria sought to be fixed to determine the merit or grade of a candidate for selection cannot be altered by the authorities concerned in the middle or after the selection process has commenced. As far as the reliance on the case of *A.A.Calton (supra)*, is concerned, though the proposition in this case that the selection process commences from the stage of calling for

applications is not disputed, however, the same does not aid the case of the petitioners as the dispute in the present matter is different. Similarly, the position in the case of ***Bedanga Talukdar (supra)*** is also on a different factual background and is not applicable in this case.

37. The Supreme Court in the case of ***K. Manjusree (supra)*** had held as under:

“18.The resolution dated 24.7.2001 was amended on 21.2.2002 and it was decided to have only minimum qualifying marks in the written test and not for the oral examination. This is evident from the subject placed for consideration on 21.2.2002 and the resolution on the subject. The subject for consideration was: Minimum qualifying marks in the written examination. The resolution stated that the minimum qualifying marks was 50% for open category, 40% for Backward Classes and 35% for Scheduled Tribes in the written examination. It did not prescribe any minimum for the interviews. Nor was it understood as prescribing any minimum marks for the interview. That the Administrative committee and Full Court intended and in face proceeded on the basis that there would be no minimum marks for the interview is evident from the fact that in regard to recruitment of 6 posts in 2001-2002, the minimum qualifying marks of 50%, 40% and 35% were applied only for the

written examination and no minimum qualifying marks were applied in respect of interviews. We are informed that for the 2001- 2002 selections, the procedure adopted was that all candidates who passed the written examination by securing the minimum marks were called for interview and the interview marks were added to the written examination marks for the purpose of preparing the merit list and for the purpose of selection. No minimum marks were applied for interview and no candidate was excluded on the ground of not securing any minimum marks in the interview. It is also not in dispute that even in the earlier selections (held prior to 2001-2002) the High Court had applied minimum marks for interviews. Therefore the only inference is that when the Administrative Committee resolved on 30.11.2004 that the minimum qualifying marks for OC/BC/SC/ST shall be as prescribed earlier what it meant and provided was that there will be minimum qualifying marks for the written examination only, that is 50% for OC, 40% for BC and 35% for ST. It may however be mentioned that though minimum of 35% was prescribed only for ST candidates in regard to 2001-2002 selections, that percentage was adopted and applied in the written examination for both SC and ST candidates by the resolution dated 30.11.2004.”

Needless to state that in the said facts the written examination had already taken place and the change in selection procedure was affected only after the written exams and before the interview / viva-voce. It is trite law that it is impermissible to change the Rules of the game once the game has been played. This judgment was relied on by the Supreme Court in ***Hemani Malhotra (supra)***. In the present case it is an admitted position that no written examination has taken place. Surely, the advertisement cannot run contrary to the Statutory Rules. This Court is of the opinion that the change of the rules of the game before it is played is permissible especially when the earlier rules run contrary to the Statutory Rules.

38. In the judgment of ***Secretary, A.P. Public Service Commission (supra)***, the Supreme Court in that case was concerned with the filling up of the vacancies from the wait list. While allowing the appeal, the Supreme Court had held that no appointments beyond the advertised number can be made and the norms of selection cannot be altered after the selection process has started since in that case there was an amendment during the selection process, the Court came to the conclusion that all amendments are to have a prospective effect. Needless to state, the selection process in the said case was already finished and the subsequent vacancies were to be filled through a fresh selection procedure. Hence, this case has no applicability on the facts of this case.

39. Reliance on the judgment of ***P.K. Ramachandra Iyer & Ors. (supra)***, provides no succour to the petitioners' case as the

Supreme Court therein had held that once it is established that there is no power to relax the essential qualifications the entire process of selection of the candidates was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly prescribed and cannot be otherwise exercised. Thus even this judgment can be differentiated.

40. That apart, I am not inclined to interfere with the selection process when admittedly the petitioners have approached this Court after almost 7 / 9 ½ months from the date of declaration of the merit panel. That apart, none of the selectees / persons appointed on the post of TO, and CFSO have been made party respondent herein as any conclusion in favour of the petitioners shall have a bearing on their appointments. Further the selection was not confined to the posts of TO, and CSFO but other posts as well. So, any conclusion in favour of the petitioners shall affect the selection to the other posts as well. I do not find any merit in the review petition and the writ petitions, the same are dismissed.

CM No. 25646/2021 in Rev. Pet.119/2021 in W.P.(C) 6500/2021

CM No. 30584/2021 in W.P.(C) 9925/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 06, 2021/ak/aky