

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**WPST 44 of 2022
With
IA No. CAN 1 of 2022**

**Basudeb Ghosh & Ors.
Vs.**

The State of West Bengal & Ors.

Appearance:

For the Petitioners	:	Mr. Subir Sanyal, Adv. Mr. Dibyendu Chatterjee, Adv. Mr. Pritam Majumdar, Adv. Mr. Rahul Deb Goenka, Adv.
For the State	:	Mr. Raja Saha, Adv. Mr. Biswabrata Basu Mallick, Adv. Mr. Sayan Ganguly, Adv.
For the PSC	:	Mr. Abhratosh Majumdar, Adv. Ms. Shraboni Sarkar, Adv.
For the Private Respondents	:	Mr. Kamalesh Bhattacharya, Adv. Mr. Anindya Bhattacharya, Adv.
Judgment on	:	23.12.2022

Harish Tandon , J.

The instant writ petition is filed assailing the judgment and order dated 28th February, 2022 passed by the West Bengal Administrative Tribunal in OA No. 170 of 2021 whereby and whereunder the said tribunal application was dismissed.

As many as 582 persons have joined together and filed the instant writ petition challenging the aforesaid order of the Tribunal on various grounds. It is undisputed that the aforesaid writ petitioners though participated in the selection process but were not included in the list of the successful candidates and thereafter approached the Tribunal by filing OA No. 170 of 2021 challenging the entire selection process.

All the writ petitioners belong to a different categories like Unreserved category, SC category, ST category, OBC-A and OBC-B category and the Sportsman category and applied their candidature in pursuance of the advertisement no. 15/2018 uploaded on the Website of the Public Service Commission on 13.6.2018 for the post of Fire Fighter in the West Bengal Fire Services under the Department of Fire and Emergency Services, Government of West Bengal. The total vacancies for the said post was declared as 1452 and the breakup whereof was also indicated in the said advertisement relating to Unreserved category, SC category, ST category, OBC-A category, OBC-B category, Ex-serviceman and Meritorious Sportsperson category. The essential qualification enshrined in the said advertisement includes the minimum educational qualification to be Madhyamik pass or its equivalent and the physical test, the endurance test.

The desirable qualifications mentioned therein requires a certificate from an industrial training institute in any of the following discipline namely, Civil Engineering, Electrical Engineering, Mechanical Engineering, Automobile Engineering and Swimming certificate from any Government recognized club or the institute.

Basically the examination was indicated to be held on the basis of the written examination, the physical measurement test and endurance and personality test. The written test was earmarked for 80 marks and the list was published in the first week of September, 2019 indicating the candidates provisionally qualified for physical measurement/endurance test without disclosing the marks obtained by each of such candidates in the written test. It is averred in the said application that the said list does not contain any decision of the PSC on the cut-off marks/qualifying marks of the written test. After the physical measurement/endurance test, a list of 5375 candidates were published without disclosing the marks obtained by such candidates therein nor any cut-off marks was declared by the conducting authority. The said list was published disclosing the roll numbers of the aforesaid candidates who have qualified for interview and the name of the writ petitioners were also included in the said list and they appeared therein.

The moment the writ petitioners did not find their names in the final list published by the Public Service Commission (for short, 'PSC') it raises a doubt in their mind that the said recruitment process has not been conducted in a fair manner. The Tribunal application further proceeds that despite their efforts having made to access the Official Website of the PSC

they could not find their individual marks to have been disclosed in the aforesaid written test, physical measurement test and interview which ought to have been disclosed by the said Commission. The writ petitioner in the said Tribunal application further disclosed a candidate by the name of Mintu Ghosh having a Roll no. 0722105 whereas the said roll number was assigned to one Biswajit Ghosh who has been finally empanelled for appointment as Fire Operator. It is further averred in the said Tribunal application that certain candidates who were called for the interview contained the roll number of 6 digits whereas all the other are allotted the roll numbers having 7 digits and such disparity is evident from the record. It is further stated that the candidate, who applied under OBC-B category has been selected in unreserved category without disclosing the particulars and the details with regard to the merit of such candidate which is smacks the lack of transparency in the process of public recruitment.

Another allegation which was made in the said Tribunal application pertains to the inclusion of the name of the certain candidates under the meritorious sportsman category when they have submitted the certificate of the other sports which does not find place in the advertisement; even a person having no sports certificates were included within the said category and empanelled thereunder which is impermissible in law. The candidates who have applied under the general category in the list published for the interviews have been shown selected in the merit list under the reserved category.

Such being the basic facts pleaded in the Tribunal applications various orders were passed by the Tribunal from time to time directing the

PSC to disclose the individual marks of the candidates and publish the fresh list including the OMR sheet in order to find out whether there was any discrepancies and/or illegality or lack of transparency and fairness in the recruitment process relating to public employment. All such orders are duly complied with and ultimately by an impugned order the Tribunal dismissed the said application having held such point unsubstantiated.

Mr. Sanyal, learned Advocate appearing for the writ petitioner submits that there has been gross irregularities in the recruitment process which were disclosed in a Tribunal application and subsequently discerned from the pleadings filed before the Tribunal which has not been dealt with by the Tribunal as it proceeded simplicitor on the basis that the unsuccessful candidate cannot turn around and challenge the selection process. It is further submitted that though the challenge was founded on a limited sphere but the respondent in their affidavits filed before the Tribunal raised serious questions relating to selection process as well as the course of action adopted therein and therefore, the principle that the unsuccessful candidate after participating in the selection process cannot challenge the same, is not applicable in the instant case. Mr. Sanyal vehemently submits that the candidates who applied under the general category which would appear from the list of interviews, subsequently published, have been shown successful and included in the panel of a reserved category which is impermissible in law. Mr. Sanyal further submits that subsequent disclosure of the applications of the respective candidates in terms of the order of the Tribunal, also revealed that some of the candidates had been provided a roll number and some in enrollment number which led to a

presumption of such application being filed after the last date to accommodate certain candidates. He further submits that the answer shown in the answer keys published in terms of the order of the Tribunal are incorrect in respect of the aforesaid three questions and since the negative marking was applied in the written test the candidates must be awarded the marks for incorrect answers and there is no difficulty on the part of the Court in interfering with the selection process even after the candidate participated therein as held by the Supreme Court in case of ***Richal and Ors. Vs. Rajasthan Public Service Commission and Ors. Reported in (2018) 8 SCC 81.***

Mr. Sanyal further submits that the advertisement published for initiation of the selection process to fill up the Post of Fire Man clearly indicate the marks allotted under the Sportsman category and it would be evident from the disclosure of the marks in terms of the order of the Tribunal that despite having certificate indicated in the said advertisement, no marks were allotted to various candidates in order to keep him out of the zone of appointment. He further submits that the candidates who do not have the Sportsman certificate have been accommodated in the Sportsman category which is apparent from the disclosure of the marks of all the candidates and such illegality once made patent is a clear example of nepotism and favouritism. Mr. Sanyal would submit that it is clearly stipulated in the advertisement that the candidate offering his candidature under a reserved category must obtain the certificate issued by the Competent Authority before the last date of submission of the application and it would appear from the disclosure made by the respondents that the

candidate who obtained certificate after the last date of submission of an application have been accommodated in the respective reserved category. It is further submitted that one of the candidates who offered his candidature under OBC-A category submitted the document issued by the competent authority under OBC-B category that too after the last date of submission of the application but have been shown selected under OBC -A category. It is, thus, submitted that one such example may lead to presumption that there may be many such candidates who do not have the requisite reserved category certificate were accommodated in the reserved category or the certificate issued after the last date of submission of the application have been favoured with the appointment. Mr. Sanyal submits that the aforesaid plea was taken before the Tribunal but there is a complete silence in this regard and therefore, the order of the Tribunal warrants interference. A further plea is taken on the modalities adopted by the Public Service Commission in relation to a tie in the aggregate marks obtained by the candidate by offering the appointment to the candidate who obtained higher marks in the interview whereas the normal rule to be adopted in this regard should be that the candidate who is senior in age must get an opportunity to appointment. He thus, submits that the entire selection process, modalities and the procedures adopted are contrary to the ordinary rule of the procedures followed in a selection process and therefore, the entire selection process should be cancelled and/or set aside and the authority must initiate a fresh selection process by following the rules and the norms.

On the other hand, Mr. Majumdar, learned senior Advocate appearing for the Public Service Commission submits that the Advertisement no.

15/2018 contained an exhaustive procedures including the eligibility and desirable qualifications for appointment to the post of Fire Operator in the Department of Fire and Emergency Services, Government of West Bengal and the said examination was held on the basis of the marks obtained in the written examination, personality test and desirable qualification, earmarking the respective marks to be allotted in this regard and after complying the aforesaid mandates given in the said advertisement the result was published and the successful candidates were recommended for an appointment. However, Mr. Majumdar, the learned Senior Advocate further submits that the PSC was conscious that there may be a chance of wrong disclosure or production of requisite certificates not in conformity with the said advertisement and therefore, Clause 11 was included in the said recommendation indicating that if any stage even after the issuance of the letter of recommendation for appointment, the candidate is found ineligible in terms of the said advertisement, his candidature will be cancelled without any further reference to the PSC. According to Mr. Majumdar, the learned Senior Advocate that issuance of letter of recommendation does not confer an absolute right into the appointment and the appointing authority may cancel the candidature if the candidate is found ineligible in terms of the said advertisement. To refute the contention of the petitioner on the modalities and the procedure adopted in case of a tie of the aggregate marks to give preference to the marks obtained by the candidate in interview, Mr. Majumdar, learned Senior advocate submits that such methodology was adopted since 2007 in terms of a Full Commission Decision dated March 28, 2007 and all the candidates were aware of such procedure and participated

in the proceeding being conscious of the same and therefore cannot challenge the said modalities. He further submits that the said Full Commission Decision indicates that even in case of a tie in the marks allotted in the interview the PSC has recommended the name of the candidate who were senior in age. To buttress the aforesaid submission he relied on a decision of the Division Bench of the Madras High Court in case of **A. Saravanan vs. Tamil Nadu Public Service Commission and Anr., decided on 16.12.2008** and a judgment of the Supreme Court rendered in case of **Lila Dhar vs. State of Rajasthan and Ors., reported in (1981) 4 SCC 159**. He further submits that giving weightage to an interview marks and an endurance test in a selection process to fill up the post of a Fire Operator cannot be said to be impermissible and therefore, the contention of the petitioner in this regard is untenable.

Mr. Majumdar further submits that so far as the Question no. 50 is concerned the correct answer is 'D' as disclosed in the answer keys subsequently published in compliance to an order of the Tribunal. Though there is a printing mistake in the said answer but was announced at the beginning of the written examination disclosing that the correct answer would be 'D' and therefore, it cannot be said that because of the printing mistake which was subsequently rectified by announcement, the entire selection process is liable to be quashed. In support of the aforesaid contention, Mr. Majumdar relies upon a judgment of the Supreme Court rendered in a case of **Union of India & Ors. vs. Rajesh P.U., Puthuvalnikathu & Anr., reported in (2003) 7 SCC 285**. Mr. Majumdar further submits that so far as the other two questions are concerned the

expert have opined the correct answer in the answer key and the Court should not interfere with the opinion of the expert either by applying its own knowledge or borrowing something from the other text. He thus, submits that the judgment of the Supreme Court in ***Richal and Ors. (supra)*** was taken into consideration in a later judgment of a Three-Judge Bench rendered in case of ***Vikesh Kumar Gupta & Anr. vs. State of Rajasthan & Ors., reported in (2021) 2 SCC 309*** and held that the decision taken in ***Richal and Ors. (supra)*** can only be applied where the expert committee appointed by the court opined on the correctness of the questions and cannot be applied to a situation which is not in parity therewith. Mr. Majumdar further submits that the persons offered their candidature under the general category have not been included into a reserved category. He further submits that the candidates who offered their candidature under the reserved category have been recommended under the said category and therefore, the allegation of the petitioner by disclosing 5 names in their pleading is unfounded. He further submits that so far as one of the candidates namely, Chinmoy Ghosh is concerned, the OBC certificate was amended and the said candidate submitted the same at the time of interview and accordingly was recommended after being satisfied over the genuinity and authenticity of the said documents. Mr. Majumdar arduously submits the cut off marks in each categories were uploaded in terms of the order of the Tribunal and the moment the petitioners found themselves out of the zone of appointment, they have taken a rebound and challenged the entire selection process by prevaricating their stand at the different stages of the proceedings which is impermissible. He further submits that 10 marks

were allotted under the desirable qualifications and the candidates who have submitted their certificates strictly in terms of the advertisements were awarded marks whereas the person who do not own such certificate were allotted no marks which cannot be faulted with. He thus, submits that the contention of the petitioner in all such regard is untenable and the instant writ petition should be dismissed.

Mr. Bhattacharya, the learned advocate appearing for the proposed added respondents who are the successful candidates adopts the argument of Mr. Majumdar. He submits that being a successful candidate they are the necessary and proper party in a proceeding initiated by the unsuccessful candidate challenging the selection process and therefore, they should be added as a respondent in the instant proceeding.

On the conspectus of the aforesaid submissions advanced before us, the challenge to a selection process is basically thrown on the following grounds:

Firstly, some of the candidates who offered their candidature under the general category which would be evident from the panel of interview, subsequently published in terms of the order of the Tribunal, were accommodated and shown as selected candidate for appointment in a reserved category.

Secondly, the aforesaid three questions are shown the wrong answers in the answer keys published by the PSC and since the modalities of negative marks had been adopted in the examination, the candidate must be given the appropriate marks for the right answer.

Thirdly, the candidates who offered their candidature under the reserved category produced the certificate issued by a competent authority after the last date of submission and therefore, the PSC ought to have rejected their candidature under such category.

Fourthly, the person having no Sportsman certificate has been accommodated in the Sportsman category.

Fifthly, the authority have wrongly gave weightage to the marks obtained in the interview in case of tie but should have adopted the methodology of recommending the person, senior in age.

Point : 1

By an advertisement no. 15 of 2018 the Post of the Fire Operator in the Department of Fire and Emergency Services, Government of West Bengal was sought to be filled up. The total number of vacancy was 1452 out of which 707 vacancies were kept under Unreserved category, 309 vacancies under Scheduled Caste category, 93 vacancies under Scheduled Tribe category, 157 vacancies under OBC- A category, 74 vacancies under OBC-B category, 80 vacancies under Ex-Serviceman category, 32 vacancies under the Meritorious Sportsperson category. Large number of candidates applied under the respective categories in terms of the said advertisement and appeared in the written examination. The said advertisement clearly stipulated that the examination shall be held in three stages with the allocation of marks for each stages wherein the 80 marks was fixed for written test and 10 marks for physical measurement test and endurance test respectively. It was mentioned in the said advertisement that the

discretion is vested in the Commission to fix the qualifying marks in the written examination and the final list shall be published on the basis of the total marks obtained in the written examination, the desirable qualification and the personality test. After the written examination the merit list was prepared and 11630 candidates were called for desirable qualification test which was held in six categories and the candidate must qualify in at least four categories and such candidates would be qualified for the interview. 5090 candidates were found eligible and successful for the interview which was held between 28th December, 2020 to 1st February, 2021 by 7 Interview Board constituted for such purpose and each Board comprised of a nominee of the Chairman as presiding Member and an Advisor. After completion of the aforesaid process the aggregate marks obtained by each of the candidates were shown in respective categories and the recommended list was subsequently published in the Website of the Commission. The list of the candidates recommended for recruitment to 1452 posts as disclosed in the pleading indicated three columns disclosing the serial number, roll number and the category. Immediately after the challenged was made before the Tribunal and a submission was made on behalf of the writ petitioner herein that though the petitioners were found successful in the written test and qualified the interview but the list of the recommended candidate would show that the recommendation is made more than the declared vacancies and therefore, it would be necessary that the PSC must disclose and publish the marks obtained by the candidates in the written test and the interview. It was further submitted that the OMR sheet should also be uploaded on the Website in order to ascertain that there has been a transparency and

fairness in the selection process. By an order dated 19th March, 2021, the Tribunal directed the Commission to upload the marks obtained by all candidates in the written test and the interview and shall also publish the OMR sheet in the Website of the Commission within 10 days therefrom. Pursuant to the said order, the Public Service Commission published written marks and the interview marks along with the OMR sheet of each of the candidates. When the Tribunal application came up on 31st of August, 2021, the writ petitioner pointed out to the Tribunal that such disclosure was made clubbing the marks obtained in the physical efficiency test and desirable qualification and therefore, they have not disclosed the marks obtained by the candidates in each of such category which is desirable in order to rule out any possibility of the nepotism and favouritism. The Tribunal after considering the aforesaid submission and in order to eradicate any kind of an extraneous factor to play in the recruitment process directed the PSC to publish the segregated marks obtained by the candidates in physical efficiency test and desirable qualifications. The aforesaid orders are narrated hereinbefore for the simple reason that the above point does not appear to have been taken before the Tribunal nor we could find any discussion or reference to the same in the impugned judgment. The said point is taken for the first time in the instant writ petition solely on the basis of the panel published by the PSC in terms of the order of the Tribunal indicating the category in which the respective candidates are recommended for appointment. There are two panels which are disclosed before us in one such panel the category has been disclosed against each of the candidates who offered their candidature under the

reserved category on the other hand, no category is shown in relation to a general category candidate but the candidate who offered their candidature under the reserved category were shown under such category. It propelled the petitioner to contend that when the said panel does not disclose any category it is presumed that the candidature of a respective candidate is under the general category as it discloses the reserved category candidate. Five such instances have been shown where there is no category mentioned in the said panel yet they find place in the reserved category. The answer appeared to be vague from the stand of the Public Service Commission. They have taken a stand that those candidates have been shown in the respective categories and there is no departure therefrom. On a bare look the panel disclosed and published by the PSC does not reveal any remark that their candidature is under the general category whereas the candidate under the reserved category have been shown under such category which implies that in absence of any remark the candidature is considered under the general category and therefore, their inclusion under the reserved category raises a serious concern. However, a shelter is sought to be taken that mere recommendation does not confer any right of appointment in terms of Clause 11 of the advertisement and the authority after verification of the documents may decline to appoint such candidate if found ineligible. The documents disclosed in course of the proceeding for some of the candidate would reveal that they offered their candidature under respective category. It appears from the order passed by the Tribunal that certain discrepancies were noticed and detected when the entire panel was published which was subsequently rectified and there is no document which

is forthcoming and disclosed before us that the aforesaid 5 candidates did not offer their candidature under the reserved category rather the documents disclosed before us would galore that such candidates offered their candidature under the reserved category and the mere mistake does not confer any right. The mistake was rectified subsequently and the application uploaded by the aforesaid candidates ruled out the possibility of any irregularity and/or illegality in accommodating such candidates in a reserved category. The affidavit-in-opposition filed by the PSC before us discloses the application filed by the aforesaid 5 candidates which according to the writ petitioners offered their candidature under the general category revealed otherwise. The aforesaid candidates submitted the application under the respective category and therefore, merely mistake in not disclosing the category in the panel which was subsequently rectified cannot render the entire selection process invalid. We thus, do not find any substance in a said point nor the petitioners are able to substantiate the same.

Point : 2

The aforesaid points were taken before the Tribunal that the answers disclosed in answers keys in relation to the Question nos. 50, 58 and 36 of 'A' service of the mention booklet are wrong and therefore, the right answer as shown in the certain text book should have been adopted and marks to be awarded accordingly. The Tribunal discarded the aforesaid contention in the following:

“33. With regard to the allegation of wrong key answers in question No. 50, 58 and 36 of ‘A’ service of mention booklet with the condition of negative marking, it is to be noted that while the applicants strenuously on the basis of the certain texts submitted that the key answers are wrong and the learned advocates for the respondents, including the private respondents, also on the basis of some other texts had refuted it, as key answers were prepared by the experts, Court cannot interfere in the answers formulated by them and thus, the said argument cannot be accepted.”

Even before us it is contended that certain text books have indicated the answers to the aforesaid questions which does not tally with the answers disclosed in the answers keys and therefore, such answer should be treated to be wrong. The reliance is placed upon the judgment of the Supreme Court in ***Richal and Ors. (supra)*** where the Apex Court held:

“15. The key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations. To err is human. There are various factors which may lead to framing of the incorrect key answers. The publication of key answers is a step to achieve transparency and to give an opportunity to candidates to assess the correctness of their answers. An opportunity to file objections against the key answers uploaded by examining body is a step to achieve fairness and perfection in the process. The objections to the key answers are to be examined by the experts and

thereafter corrective measures, if any, should be taken by the examining body. In the present case we have noted that after considering the objections final key answers were published by the Commission thereafter several writ petitions were filed challenging the correctness of the key answers adopted by the Commission. The High Court repelled the challenge accepting the views of the experts. The candidates still unsatisfied have come up in this Court by filing these appeals.”

In ***Vikesh Kumar Gupta and Anr. (supra)*** the Three-Judge Bench of the Supreme Court was considering a case where the issue was raised relating to the answers disclosed in the answer key relating to 5 questions to be erroneous. The Apex Court has an occasion to consider the judgment rendered in ***Richal and Ors. (supra)*** and deprecated the practice of re-evaluation and/or scrutiny of the questions by the Court. It is held that the court should not show deference to the opinion of an expert who have a knowledge and expertise in the respective field by substituting their own views as the judge cannot have an expertise in all the academic subjects. The Three-Judge Bench of the Supreme Court distinguished the judgment of the ***Richal and Ors. (supra)*** solely on the count that in the said case the court did not enter into the correctness of the questions and the answers but relied upon the opinion of the expert committee in the following:

“14. Though re-evaluation can be directed if rules permit, this Court has deprecated the practice of re-evaluation and scrutiny of the questions by the courts which lack expertise in academic matters. It is not permissible for the High Court to

examine the question papers and answer sheets itself, particularly when the Commission has assessed the inter se merit of the candidates. Courts have to show difference and consideration to the recommendation of the expert committee who have the expertise to evaluate and make recommendations.

15. Examining the scope of judicial review with regards to re-evaluation of answer sheets, this Court in Ran Vijay Singh v. State of UP held that the Court should not re-evaluate or scrutinise the answer sheets of a candidate as it has no expertise in the matters and the academic matters are best left to academics. This Court in the said judgment further held as follows:

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse-exclude the suspect or offending questions.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of 8 years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination-whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get

admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and large impact of all this is that public interest suffers.

16. In view of the above law laid down by this Court, it was not open to the Division Bench to have examined the correctness of the questions and the answer key to come to a conclusion different from that of the expert committee in its judgment dated 12.3.2019. Reliance was placed by the appellants on Richal v. Rajasthan Public Service Commission. In the said judgment this Court interfered with the selection process only after obtaining the opinion of the expert committee but did not enter into the correctness of the questions and answers by itself. Therefore, the said judgment is not relevant for adjudication of the dispute in this case.

The Court should be slow and show deference to the opinion of an expert who have excelled in their respective field unless there are a strong reason therefor. Neither the sympathy nor the compassion can play any role in the matter of re-evaluation of the answers scripts. The assessment by the Court itself to examine the correctness of the answers in the answer key should be guarded against as it may sometime delay the finalization of the appointments in the public posts.

In the instant case, the reliance was sought to be made on certain text disclosing the opinion but there is a complete lack of evidence produced before us that such view/opinion of the author of the said text book are uniformly accepted in an academic field. The opinion may differ on a perception and the logics given by the author of the text which cannot be said to be sacrosanct for all purposes. The expert body who have conducted the selection process and expressed their opinion in the form of an answers to the questions, such opinion should not be likely discarded nor the Court should accept the views of the other author in their publications. Relying on the opinion of an author of a text book when the answers are accepted by the others and the expert has opined the same to be corrected, it will have a cascading effect in accepting the opinion of the one and discarding the larger opinion. The expert body have opined the correctness of the questions and the answers assigned to it which should not be likely interfered except on impeccable evidences produced which disproves the same. There is a complete lack of materials produced by the writ petitioner in the instant case and in view of the ratio laid down in **Vikesh Kumar Gupta and Anr. (supra)** we do not find any justification in accepting the contention of the writ petitioner. Apart from the same, the judgment rendered by the larger Quorum Bench distinguishing the judgment of the lesser quorum on facts has a binding efficacy provided the parity in facts has manifestly seen.

Point : 3

The said point has been taken that certain candidates who have been shown in the merit list submitted the certificate in relation to a reserved category after the closing date of submission of online application. As

discussed above, there is a clear stipulation in the said advertisement that the candidate claiming to be SC, ST, BC (Non Creamy Layer) or Meritorious Sportsperson may not have a certificate issued, on or before closing date of submission of online application in support of his/her claim, from the competent authority of West Bengal as specified below. It is further indicated in the said advertisement that for the SC, ST and the Backward Classes candidate the certificate must be issued by Sub-Divisional Officer of the Sub-Division concerned in Kolkata, the District Magistrate, South 24-Parganas or Additional District Magistrate, South 24-Parganas, as may be authorised by the District Magistrate, South 24-parganas, on behalf of the District Welfare Officer, Kolkata and Ex-officio Joint Director, Backward Classes Welfare in terms of the various departmental orders depicted therein. It was clearly mentioned in the said advertisement that at any stage even after the issue of a letter of recommendation for appointment, a candidate is found ineligible in terms of the said advertisement, his candidature shall be cancelled without any further reference. Paragraph 9 of the said advertisement is indicative of the fact that the candidate must fulfil the essential qualification by the closing date. In the advertisement at multiple places it is highlighted that the candidate must submit the certificate in relation to a category or a desirable qualification from a competent authority on or before the closing date of submission of online application and in the event, it is not so, the candidature is liable to be cancelled despite the name is included in the merit list.

It is, therefore, imperative on the authority to adhere to the mandate given in the said advertisement and a departure therefrom is impermissible.

the moment it is stipulated that the candidate must obtain such certificate prior to the closing date of the submission of the online application, the authority ought to have rejected his candidature on being found that the certificate is issued after the said closing date nor the authority could have awarded any marks under the desirable qualification to bring such candidate within the zone of appointment. The rule of game is to be played fairly and strictly within its precincts as the departure therefrom may entail the entire process liable to be vitiated. We have been shown the certificate of certain candidates whose names are found in the merit list issued by an authority after the closing date. We have been taken to various certificates produced in course of the hearing wherefrom it appeared that some of the certificates are obtained after the closing date yet they have been included in the merit list against a particular reserved category *albeit* their application ought to have been rejected in terms of the mandate given in the said advertisement. In a public employment not only the equality or the equal opportunity for offering the candidature is the hallmark of the constitution but the transparency and fairness are other factors which are required to be adhered by the public authorities. The modalities and the conditions of the recruitments whereas disclosed in the advertisement are required to be followed in the entire process of selection and the authorities cannot deviate therefrom. The PSC has a more onerous duty to make a scrutiny of the documents while preparing the list of the successful candidates and cannot act in a careless manner as it has a larger impact on the deserving candidates seeking a public employment on merit. We hastened to add that the PSC has acted casually in preparation of the merit list without verifying

the documents and such recourse cannot seek a blessing of the Court solely on the ground that the delay in the selection process has a cascading effect on the aspiration of the candidates who are found successful in all tier of examination. We thus held that the merit list contained severe discrepancies and need to be revisited.

Point : 4

The said advertisement not only discloses the essential qualifications but also the desirable qualifications earmarking the marks allotted under the aforesaid category. The desirable qualification as indicated in the said advertisement are firstly, the candidate must have a minimum one year experience in fire fighting in any Government Department or Organization or Public Sector Undertaking or Autonomous Bodies; the certificate from Industrial Training Institute in any of the following disciplines namely, Civil Engineering, Electrical Engineering, Mechanical Engineering and Automobile Engineering; Swimming certificate from any Government recognized club or institute. The said advertisement further disclosed the marks allotted under the said desirable qualification wherein for one year experience in fire fighting in any Government Department or Organization 5 marks were allotted on the certificate from the Industrial Training Institute in any of the above disciplines, 3 marks were allotted and for swimming certificate from any Government recognized club or institute, 2 marks were allotted. The plea is taken that in the list published on the order passed by the Tribunal containing the breakup of the marks, candidates were allotted marks under the desirable qualifications when they did not produce such certificate; on the other hand, no marks have been allotted to the candidates

which included some of the petitioners despite the certificates having produced before the authority. We have been taken to a stand of the respondent on the aforesaid facts pleaded in the application filed before the Tribunal and there is no hesitation in our mind that the reply appears to be vague. Ancillary to the aforesaid plea the vital fact which cannot be brushed aside as discerned from the advertisement is that the candidate claiming the marks under the aforesaid category must have the certificate issued on or before the closing date of the submission of online application. For the purpose of the record it is mentioned that the last date for submission of the said application was fixed on 3.7.2018. As normal corollary the candidate having a desirable qualification and entitled to be awarded the marks in terms of the said advertisement must obtain the certificate from a competent authority prior to 3rd July, 2018. The advertisement would further reveal that so far as the meritorious sportspersons are concerned, the certificate must be issued by a competent authority mentioned therein as under:

<i>Area</i>	<i>Competent Authority</i>
<i>International Competition</i>	<i>Secretary of the National Federation/National Association of the Sports concerned.</i>
<i>National Competition</i>	<i>Secretary of the State Association of the Sports concerned.</i>
<i>Inter-University Tournament</i>	<i>Dean/Director of Sports or other Officer in overall charge of Sports of the University concerned.</i>
<i>National Sports/Games for School Education</i>	<i>Director or Deputy Director in overall charge of Sports/Games for Schools in the Directorate of School Education, West Bengal.</i>

we have been taken to the disclosure of the certificates in relation to one of the candidates namely, Jayanta Sarkar who is one of the petitioners in the instant writ petition where he has submitted the certificate having acquired from the Industrial Training Institute in the Mechanical category

along with the certificate issued by a competent authority that he belonged to a reserved category as well. However, no marks were awarded under the desirable qualification which would be evident from the list published by the PSC various other instances which have been disclosed in the pleading where despite having a certificate issued by a competent authority no marks have been allotted under the desirable qualifications. The aforesaid discrepancies are evident and apparent from the record as indicated above the answer given in the reply filed by the PSC is vague. The authority cannot deviate from the modalities to be adopted in terms of the advertisement nor any deviation therefrom can be appreciated though the allegations are galore that many candidates who have been shown in the final merit list either having no certificate under the desirable qualifications nor such certificates were issued prior to the closing date for submission of an application. There is an apparent discrepancy we noticed in preparation of the merit list and the allegations of the writ petitioners cannot be ruled out or brushed aside. Some of the candidates who have obtained the certificate from a swimming institute/club either after the closing date or such certificates are issued by the authority not an authority disclosed in the advertisement. The aforesaid certificate could not be taken into account while awarding the marks under the desirable qualification and the candidates who have obtained the certificate from duly notified authorities have not been awarded any marks. There appears to be a lack of transparency in awarding the marks and therefore, the Court cannot be a mute spectator in this regard.

Point : 5

The aforesaid point has been taken any pleading but neither of the parties would be able to produce the relevant document where the Public Service Commission has adopted the methodology in recommending the name in case of a tie. However, the Counsels have accepted the aforesaid proposition and it is not in dispute that such methodology was adopted and the recommendations have been made by the PSC. It is undisputed that the PSC has recommended the candidate in case of a tie in the aggregate marks on the basis of the marks obtained by such candidate in interview. Such adoption propelled the aforesaid point to be taken by the petitioner which, according to them, is contrary to the settled norms. It is arduously contended by the petitioners that the normal procedure which is adopted in case of a selection process when several the candidates scored same aggregate marks, the seniority in age should be the guiding factor and not the marks obtained in the interview. The aforesaid submission is augmented with the notion in the mind of the petitioners that there is a possibility of favouritism to certain candidates by awarding the higher marks in the interview though they could not excel their performance in the written test. On such admitted position we venture to decide the aforesaid point on the facts eminently in existence as it would have some bearing in the fairness and the transparency of the selection process.

The importance of the interview being one of the facets of the selection process has been succinctly highlighted in a judgment rendered by the Supreme Court in ***Lila Dhar vs. State of Rajasthan & Ors., reported in (1981) 4 SCC 159*** It is held that although the written examination assess the candidate is knowledge on the subject and his intellectual ability; on the

other hand the interview may be a valuable guide to assess the candidate's overall intellectual and the personal qualities. The person may be theoretically sound and evaluated on the basis of the written test whereas the interview assess the candidate on the other facet namely, alertness, resourcefulness, dependableness, cooperativeness, clear and logical presentation, capability to interact and discuss and above all adoptability with the new norms of the system on the basis of his decision founded on ones intellectual and the moral integrity which are the essential features of the proper selection. The Apex Court held:

“To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which the recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview test, catch a glimpse of future personality.”

Ultimately, the Apex Court held that merely because of due weightage was given to an interview tests the selection itself cannot be struck down in the following:

“8. The second ground of attack must fail for the same reason as the first ground of attack. The Rules themselves do not provide for the allocation of marks under different heads at the interview-test. The criteria for the interview-test has been laid down by the Rules. It is for the interviewing body to take general decision whether to

allocate marks under different heads or to award marks in a single lot. The award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, as we said, it is proven or obvious that the method of marking was chosen with oblique motive. ”

The judgment of the Division Bench of the Madras High Court in **A. Saravanan (supra)** may also throw some light on the above aspect where in it is held:

“5. It appears that there is no specific rule/guideline laid down as to who amongst equals should be called for the viva voce test if they obtain the same marks in the written test. We are of the view that in the absence of any specific rule or guideline, it is always open to the selecting authority, the Tamil Nadu Public Service Commission herein, to adopt a reasonable criteria which will not be arbitrary or in violation of Article 14 of the Constitution of India. In cases where more candidates obtain the same marks in the written test, if the person of a higher age is given preference over another person of a lesser age in being called for to appear in the viva voce test on the

basis of the candidate and post ratio, it cannot be held to be arbitrary. ”

Unhesitatingly, the subject recruitment process is in relation to an appointment of a fire operator requiring more alertness, promptness and the physical capability and the presence of mind to tackle in adversity including the physical endurance which is being assessed by way of an interview. Such responsible and highly skilled posts may sometimes require the younger generations to be recommended in case of a seniority and therefore if the weightage has been given to an interview by which the evaluation is done on the overall assessment on the aforementioned qualities, the decision of the authority cannot be said to be arbitrary warranting the selection process to be cancelled. To borrow the expression from the ***Lila Dhar (supra)*** on the nuances of the written test and the interview it is held that “the written examination assesses the man’s intellect and the interview test the man himself and the ‘twain shall meet’ for a proper selection.”

The Public Service Commission has adopted a methodology of giving weightage to the marks obtained in the interview in case of a tie which cannot be said to be unreasonable, irrational and/or arbitrary. The Commission have further taken into account that in case of a further tie, the person who is senior in age should be recommended which cannot be said to be impermissible albeit we find that the nature of the work assigned to the said posts requires converse approach. We thus do not find any merit in the aforesaid points.

On the conspectus of the findings and/or reasons assigned herein below, the following directions are passed:-

(i) The PSC shall publish a fresh merit list after scrutinising the certificates not only pertaining to caste but also under the desirable qualification submitted by each candidates and shall ensure that such certificates are in conformity with the conditions incorporate in the advertisement i.e., certificates issued by a competent authority mentioned therein and shall also ensure that the said certificates if found in order are issued by a competent authority on or before the closing date for submission of online application i.e. 3.7.2018.

(ii) After scrutiny of the certificate in terms of the direction above the candidates who are included in the fresh merit list to be published, the PSC shall disclose such certificates of the successful candidates on the website portal for access to all the candidates.

(iii) So far as the category of Meritorious Sportspersons are concerned the PSC after making a verification and scrutiny of the certificates shall allot the requisite marks as disclosed in the advertisement and shall also publish the break up marks of each candidates in addition to the fresh merit list. The relevant certificates issued by the competent authority as mentioned in the said advertisement shall also be uploaded in the web portal of the PSC.

(iv) The PSC shall ensure that the certificates submitted by the candidates under the reserved category as well as Meritorious Sportspersons are in conformity with the conditions laid down in the advertisement and in

the event, the same is not issued by a competent authority or issued after the closing date for submission of online application i.e. 3.7.2018 shall reject the said applications and such candidate shall not be treated under the reserved category but may be included under the unreserved category if the marks secured by them entitled him within the zone of appointment.

(v) No appointment shall be given to the candidates on the basis of the merit list already published in terms of the order of the Tribunal until the fresh publication of the merit list in terms of this order.

(vi) The PSC shall complete the exercise within two months from the date and shall invite the objections if there be any thereupon, within a week therefrom.

(vii) In the event, the objections are received; the selection committee shall consider such objections and upload its decision on the portal within fortnight from the last date of the submission of such objection.

On this term, the writ petition is disposed of.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasejit Biswas, J.)