

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.7138 and 11120 of 2022

In the matter of an application under Articles 226 & 227
of the Constitution of India.

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W.P.(C) No.7138 of 2022

Manas Ranjan Sahu & Petitioners
Another

-versus-

State of Odisha & Others Opposite Parties

For Petitioners : M/s.Pami Rath, J. Mohanty &
S.Gumansingh.

For Opp. Parties : Addl. Government Advocate
Mr. R.N.Mishra,
P. K. Mohanty, learned Sr.
Counsel along with Mr. S. B.
Jena, learned counsel for
Odisha Public Service
Commission.

W.P.(C) No. 11120 of 2022

Somendra Mohanty & Others Petitioners

-versus-

State of Odisha & Others Opposite Parties

For Petitioners : M/s.Pami Rath, J. Mohanty &
S.Gumansingh.

For Opp. Parties : Addl. Government Advocate
Mr. R.N.Mishra,

P. K. Mohanty, learned Sr. Counsel along with Mr. S. B. Jena, learned counsel for Odisha Public Service Commission.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 16.09.2022 and Date of Order: 10.11.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. I have heard Ms. Pami Rath, learned counsel for the Petitioners, Mr. R.N.Mishra, learned Addl. Government Advocate for the State-Opposite Parties and Mr. P. K. Mohanty, learned Senior Counsel along with Mr. S. B. Jena, learned counsel appearing for the Odisha Public Service Commission.
3. Since common question is involved in both the cases, both the matters are heard analogously and disposed of by the present common order.
4. W.P.(C) No.7138 of 2022 was filed by the Petitioners with the following set of prayer:-

“It is, therefore, prayed that this Hon’ble Court may be graciously pleased to admit this writ application and Issue Rule NISI calling upon the opposite parties to show cause and if they fail to show cause or show insufficient cause then issue appropriate writ, order, direction directing

(a) To set aside or quash the written test held on 6.3.2022 and the BOOKLET of Paper I and Paper II vide Annexure-5 and 6.

(b) And to direct for re-examination strictly following at Clause 6(H) read with Annexure-A as provided in the advertisement No.13 of 2020-21 at Annexure-3.

(c) Quash all the questions which have been asked from outside the syllabus under Annexure-5 and 6,

And any other order(s) be passed as this Hon'ble Court deems fit and proper;

And for this act of kindness, the petitioner as in duty bound shall ever pray".

5. Similarly, W.P.(C) No.11120 of 2022 was filed with the following set of prayers:-

"It is, therefore, prayed that this Hon'ble Court may be graciously pleased to admit this writ application and Issue Rule NISI calling upon the opposite parties to show cause and if they fail to show cause or show insufficient cause then issue appropriate writ, order, direction directing

(a) To set aside or quash the written test held on 6.3.2022 and the BOOKLET of Paper I and Paper II vide Annexure-5 and 6.

(b) And to direct for re-examination strictly following at Clause 6(H) read with Annexure-A as provided in the advertisement No.13 of 2020-21 at Annexure-2.

(c) Quash all the questions which have been asked from outside the syllabus under Annexure-5 and 6,

And any other order(s) be passed as this Hon'ble Court deems fit and proper;

And for this act of kindness, the petitioner as in duty bound shall ever pray".

6. It is submitted that for recruitment to the post of Assistant Soil Conservation Officer in Class-II (Group-B) of Odisha Soil Conservation Service under Agriculture &

Farmers' Empowerment Department, Odisha Public Service Commission (in short 'Commission') issued an advertisement vide Advertisement No.13 of 2020-21 inviting applications to fill up 92 (Ninety two) no's of posts of Assistant Soil Conservation Officer in Class-II (Group-B) under Annexure-2.

7. Learned counsel for the Petitioners submitted that under Para-4 of the said advertisement, the educational qualification of an intending candidate was prescribed as follows:-

“4. A candidate must have possessed a Bachelor of Science Degree in Agriculture or Bachelor of Science Degree in Horticulture or Bachelor Degree in Agriculture Engineering or Bachelor of Science Degree in Forestry from any recognized University or Institutions”.

8. It is also submitted that in the said advertisement under Annexure-2, the method of selection was prescribed under Para-6(a) to 6(h).

9. Learned counsel for the Petitioners submitted that Para-6(h) of the said method of selection as prescribed in the advertisement is relevant for the facts of the present case.

10. It is submitted that the details of examination and the syllabus as enclosed at Annexure-A to the advertisement is required to be followed in view of Para-6(h) of the advertisement.

11. Learned counsel for the Petitioners submitted that Annexure-A provides the syllabus for Assistant Soil Conservation Officer Examination.

12. It is submitted that as per the syllabus available at Annexure-A while Paper-I consists of 5 units from i.e. Unit-I to Unit-V, Paper-II consists of five papers i.e. Unit-VI to Unit-X.

13. It is submitted that under different Units in Paper-I and Paper-II, while prescribing the relevant syllabus, it was provided to put questions carrying twenty (20) marks in each unit starting from Unit-I to Unit-X in both the papers.

14. It is submitted that pursuant to the advertisement issued under Annexure-2, the Petitioners not only submitted their applications, but also they were allowed to take part in the written examination, which was held on 06.03.2022.

15. It is submitted that after taking the said written examination on 06.03.2022 when the petitioners found that the written examination has not been conducted in accordance with the syllabus prescribed under Annexure-A to the advertisement and more particularly as provided under Para-6(h), the Petitioners filed the Writ Petition in W.P.(C) No.7138 of 2022 on 15.03.2022 with the prayer as indicated hereinabove.

16. It is submitted that since the question papers put in the written test in both Paper-I and Paper-II were not in accordance with the syllabus prescribed vide Annexure-A to the advertisement, the Petitioners challenging such illegal conduct of the written examination filed the aforesaid Writ Petitions with the prayer to quash the written test and to held the said examination afresh strictly in accordance with

syllabus enclosed as Annexure-A to the advertisement under Annexure-2.

17. Ms. Rath, learned counsel for the Petitioners brought to the notice of this Court the discrepancies in the questions put up for the written examination more particularly as pleaded in Para-8 and 9 of the Writ Petition in W.P.(C) No.7138 of 2022. The Petitioners specifically pointed out the discrepancies with regard to the questions set up in different Units in Paper-I and Paper-II. It is submitted that required number of 20 questions were not put up in terms of the syllabus prescribed for both Paper-I & II as well as prescribed under Unit-I to Unit-X.

18. It is submitted that in terms of Annexure-A to the advertisement question from each Unit carrying 20 marks were never put up and accordingly the Petitioners were not only prejudiced but also the said examination was never conducted in accordance with the scheme of selection provided in the advertisement under Annexure-2.

19. Learned counsel for the Petitioners submitted that since it is the settled law that the examination if any is to be conducted strictly in accordance with the terms indicated in a particular advertisement, the deviation made by the Opposite Party-Commission in not conducting the examination in accordance with Clause-6 (h) of the advertisement is illegal and liable for interference of this Court.

20. Ms. Rath in support of her aforesaid submission relied on the decisions of the Hon'ble Apex Court reported in the case of;

(i) ***K. Manjusree vs. State of Andhra Pradesh and Anr. reported in 2008(3) SCC-512.***

(ii) ***Hemani Malhotra vs. High Court of Delhi reported in 2008(7) SCC-11.***

(iii) ***Maharashtra State Road Transport Corpn. And Others vs. Rajendra Bhimrao Mandve and Others reported in 2001(10) SCC 51.***

(iv) ***B.Ramakichenin Alias Balagandhi vs. Union of India And Others reported in 2008(1) SCC 362.***

21. Hon'ble Apex Court in Paras-27 & 32 of the judgment reported in the case of ***K. Manjusree vs. State of Andhra Pradesh and Anr. reported in 2008(3) SCC-512*** held as follows:-

“27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them *P. K. Ramachandra Iyer v. Union of India* 1984 (2) SCC 141, *Umesh Chandra Shukla v. Union of India* 1985 (3) SCC 721, and *Durgacharan Misra v. State of Orissa* 1987 (4) SCC 646.

32. In *Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve* 2001 (10) SCC 51, this Court observed that “the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. In this case the position is much more serious.

Here, not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited. That is unacceptable and impermissible”.

22. Hon’ble Apex Court in Para-15 of the judgment reported in the case of **Hemani Malhotra vs. High Court of Delhi reported in 2008(7) SCC-11** held as follows:-

“15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal”.

23. Hon’ble Apex Court in Para-5 of the judgment reported in the case of **Maharashtra State Road Transport Corpn. And Others vs. Rajendra Bhimrao Mandve and Others reported in 2001(10) SCC 51** held as follows:-

“5. The serious dispute and controversy raised relates to the claim of the Corporation that the Circular No.17 of 1996 dated 24.6.1996, only came to be issued by way of clarification and it was not only necessary to be issued but also governed the selection of Drivers in question. The Writ Petitioners, who were unsuccessful, asserted that it is the Circular dated 4.4.1995 which should govern the selection and consequently the selections ought to have been made by assigning 87½% marks for Written/Trade Test and 12½% for the oral test (Personal Interview) and results declared, accordingly. On going through the above Circular Orders, we find that the procedure for recruitment of Drivers is separate from recruitment for other categories where Written Test/Trade Test has been specifically laid down and that it is only where the Written Test and Interview are stipulated, the percentage of weightage for Written Test/Interview has been resolved by the Board, under the directions of the State Government, to be fixed at 87.5% and 12.5% respectively. The directions of the State Government

in their Letter dated 2.1.1995 only fixes the weightage to be given between marks obtained in Written Test and those in Interview and no reference is found therein of any Trade Test or Driving Test. The Resolution of the Board dated 21.3.1995 also seems to be on the same lines and is with reference to marks obtained in Written Test and Interview respectively and not otherwise. Apparently, in view of the above and in the absence of reference to Driving Test or other Trade Test too, that the Corporation claims to have issued the Circular Order No. 17/1996 dated 24.6.1996, on the basis of the earlier Circulars Nos.52/80 for pass in Driving Test to be presented to the S.T. Committee and 25/90 dated 2.7.1990 pertaining to award of marks in the Interview, by fixing the average of the marks awarded by the S.T. Sub-Committee to be the final and deciding factor in the matter of selection of a candidate. Therefore, the High Court cannot be said to be correct in holding that the Circular Order dated 24.6.1996 is illegal or arbitrary or against the orders of the State Government or the Resolution of the Board of the Transport Corporation. Instead, it would have been well open to the High Court to have declared that the criteria sought to be fixed by the Circular dated 24.6.1996 as the sole determinative of the merit or grade of a candidate for selection long after the last date fixed for receipt of application and in the middle of the course of selection process (since in this case the Driving Test was stated to have been conducted on 27.11.1995) cannot be applied to the selections under consideration and challenged before the High Court. It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court, to the extent it pronounced upon the invalidity of the Circular Orders dated 24.6.1996, does not merit acceptance in our hand and the same are set aside”.

24. Hon’ble Apex Court in Para-23 of the judgment reported in the case of **B.Ramakichenin Alias Balagandhi vs. Union of India And Others reported in 2008(1) SCC 362** held as follows:-

“23. Had Para 3.1 not been in the advertisement of UPSC it is possible that we may have taken a view in favour of the respondents since in that case it was open to UPSC to resort to any rational method of shortlisting of its choosing (provided it was fair and objective). However, in the present case, a particular manner of shortlisting has been

prescribed in Para 3.1. Hence, it is not open to UPSC to resort to any other method of shortlisting even if such other method can be said to be fair and objective”.

25. Ms. Rath also submitted that during pendency of W.P.(C) No.7138 of 2022 another set of Petitioners approached this Court in W.P.(C) No.11120 of 2022 by taking similar stand.

26. It is submitted that while this Court in its order dated 23.03.2022 in W.P.(C) No.7138 of 2022 passed an interim order directing that the selection process shall continue however the selection list shall not be published without leave of this Court, in W.P.(C) No.11120 of 2022 similar order was also passed vide order dated 06.05.2022.

27. Accordingly, it is submitted that in view of such interim order passed by this Court, though the result of the written examination was published on 20.04.2022 and the interview was conducted on 21.04.2022 in terms of the notice issued under Annexure-A/2 to the counter filed by the commission, but the final selection list has not been published.

28. Ms. Rath, submitted that since the Examination-in-question was not conducted in accordance with the syllabus vide Annexure-A to the advertisement, as pleaded in Para-8 & 9 of the Writ Petition, in W.P.(C) No.7138 of 2022 and Para-9 & 10 of the Writ Petition in W.P.(C) No.11120 of 2022, the prayer made by the Petitioners to quash the said written examination held on 06.03.2022 is required to be considered by this Court.

29. It is also submitted that by taking such view, this Court may direct the Commission to conduct a fresh

examination strictly in terms of Para-6(h) of the advertisement under Annexure-2.

30. Mr. P. K. Mohanty, learned Senior Counsel along with Mr.S.B.Jena, on the other hand made his submission basing on the stand taken in the counter affidavit. Though it was not disputed by the learned Senior Counsel appearing for the Commission that the method of selection prescribed under Para-6(a) to 6(h) read with Annexure-A to the Advertisement No.13 of 2020-21 was required to be followed, but nowhere it was prescribed that 20 questions from each unit will be put up in the written test of Asst. Soil Conservation Officer.

31. It is also submitted that since the syllabus is multi-disciplinary, there is area of overlapping and accordingly questions are set across the syllabus by question setters, who are experts in the subject.

32. It is also submitted that since the candidates will be evaluated out of 200 marks, 20 marks indicated at the end of each unit is only indicative and not conclusive.

33. It is also submitted that the said prescription in Annexure-A was intended to emphasize that the question will be put from each unit and hence no segment of the syllabus should be ignored.

34. It is also submitted that unit wise allotment of 20 marks, since is indicative and not a prescriptive one, no illegality has been committed by the Commission in conducting the written examination with the question set up by the experts.

35. Mr. Mohanty, learned Senior Counsel also submitted that the Commission requested the subject experts to prepare the question papers on the basis of method of selection prescribed in Para-6 of the advertisement.

36. It is also submitted that after publication of the written result on 20.04.2022, pursuant to the notice issued on 21.04.2022 under Annexure-A/2, interview of the selected candidate has already been conducted and because of the interim order passed by this Court, the Commission has not published the final result of the selected candidates.

37. Learned Senior Counsel also submitted that as provided in the notice dated 13.08.2021 under Annexure-B/2 to the counter, since the Petitioners never submitted their objections on the erroneous questions within the time stipulated therein, the prayer made in the present writ petition cannot be entertained by this Court.

38. This Court after going through the stand taken in the counter affidavit filed in both the cases, when was not satisfied with the plea taken by the Commission with regard to the conduct of the written examination, an Additional Affidavit was filed on 29.08.2022. In the said Additional Affidavit while reiterating the stand taken in the counter affidavit, it was indicated that after acceptance of the applications pursuant to the advertisement issued under Annexure-2, subject experts were requested to set the questions in both Paper-I and II of 100 marks each.

39. It is also indicated that in order to maintain optimum level of secrecy and confidentiality, after the questions were

received from the experts in sealed cover, the same were never opened by any of the Officer concerned and accordingly there was no scope to access the questions prior to conduct of the written examination. However, it is submitted that 20 marks indicated at the end of each unit is only indicative and not conclusive and it is intended to emphasize that the question will be put in each unit and no segment of syllabus should be ignored.

40. Learned Senior Counsel also produced before this Court, the sealed packet containing the letters issued by Commission to the experts for preparation of question for the recruitment to the post of Asst. Soil Conservation Officer in terms of the advertisement issued under Annexure-2 vide letter dated 23.06.2021. This Court finds from the said letter dated 23.06.2021 that the commission while requesting the experts to prepare the questions also enclosed Annexure-A to the said letter i.e. the syllabus prescribed for Paper-I and Paper-II unit wise.

41. Mr. Mohanty, learned Senior Counsel accordingly submitted that since the Commission had no occasion to know the questions set up by the experts pursuant to the request made vide letter dated 23.06.2021, the Commission cannot be held responsible for any deviation, if any.

42. Mr. Mohanty, learned Senior Counsel in support of the aforesaid submissions relied on the decisions of the Hon'ble Apex Court reported in;

- (i) AIR 1974 SC-1631.**
- (ii) AIR 1965 SC-491.**
- (iii) AIR 2020 SC-5383.**
- (iv) AIR 1987 SC-454.**

43. Hon'ble Apex Court in Para-15 of the judgment in the case of **Mohammed Shujat Ali & Others vs. Union of India (UOI) & Others** reported in **AIR 1974 SC-1631** held as follows:-

“15. This contention has been adequately dealt with in the judgment given by the division Bench of the Andhra Pradesh High Court on 23rd February, 1960 in Writ Petition No.. 645 of 1967 and other allied petitions and the judgment of the Full Bench impugned in these appeals. We are substantially in agreement with the reasons which have weighed with the Division Bench and the Full Bench in rejecting this contention. It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standard, 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. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government. Here in the present case it cannot be said that the view taken by the Government of Andhra Pradesh that US and OCE certificates of the Osmania Engineering College were not equivalent to US or OCE diploma of the College of Engineering, Guindy or LCE, LME or LEE diploma of any other recognised institution suffered from any of these infirmities. It was based on the recommendation of an expert high powered body like the State Board of Technical Education consisting of distinguished administrators, educationists and technical experts against whom nothing could be alleged on behalf of the petitioners/appellants. The State Board of Technical Education included inter alia Principals of different engineering ,colleges in the State, the Secretary of the Regional Committee of the All India Committee on Technical Education, retired Chief Engineers as also Chief Engineers in office who would be expected to be familiar with the academic standards and practical content of the different qualifications and the decision taken by the Government of Andhra Pradesh on the basis of the recommendation of the

State Board of Technical Education could not be regarded as unreasonable or perverse, or manifestly wrong nor could it be said to be mala fide or based on extraneous or irrelevant considerations. Indeed, the Government of Andhra Pradesh could not do better than relay on the recommendation of the State Board of Technical Education. The Full Bench as well as the Division Bench of the Andhra Pradesh High Court have in fact shown in their respective judgments, on a comparison of the duration and content of the respective courses, that US and OCE certificates of the Osmania Engineering College, were, both from the point of view of academic learning as also from the point of view of practical experience, inferior to US or LCE diploma of the College of Engineering, Guindy or LCE, LME or LEE diploma of any other recognised institution. It may also be pointed out that even in the erstwhile State of Hyderabad itself, US and OCE certificates of the Osmania Engineering College were not treated on a par with LCE, LME or LEE diploma. Firstly, an Overseer holding US or OCE certificate of the Osmania Engineering College was required to put in at least six years service before he could be eligible for promotion as Supervisor while a Sub-Overseer holding LCE or LME diploma did not have to put in any minimum qualifying service for the purpose of promotion as Supervisor. Secondly, US or OCE certificate of the Osmania Engineering College was regarded as sufficient qualification only for recruitment to the post of Overseer, while LCE or LME diploma qualified for recruitment not only to the post of Sub-Overseer but also to the post of Supervisor. It is, therefore, not possible to overturn the decision of the Government of Andhra Pradesh denying equivalence of US and, OCE certificates of the Osmania Engineering College with LCE, LME or LEE diplomas. It may be noted that the Central Government also affirmed the decision of the Government of Andhra Pradesh by its letter dated 17th March, 1966. Even if it be assumed that the Central Government had the exclusive power under the States Reorganization Act, 1956 to bring about integration of services in the reorganized State of Andhra Pradesh, this decision of the Central Government, contained in the letter dated 17th March, 1966 is sufficient to meet the requirement of the statute and it must be upheld for the same reasons as the decision of the Government of Andhra Pradesh. There was a further ground of attack levelled against the decision of the Central Government, albeit faintheartedly, and that was that the decision of the Central Government was arrived at solely on the basis of the communication dated 9th January, 1965 addressed by the Additional Secretary to the Government of Andhra Pradesh to the Secretary to the Government of India, Ministry of Home Affairs without giving any opportunity to the non-graduate Supervisors from the

erstwhile Hyderabad State to put forward their case. This charge is plainly unsustainable as it is evident from paragraph 9 of the affidavit dated 27th July, 1970 filed by K. P. Singh, Under Secretary to the Government of India, Ministry of Home Affairs in reply to Writ Petition No. 85 of 1969, and it can hardly be disputed, that the representations made, by the non-graduate Supervisors from the erstwhile Hyderabad State against the decision of the Government of Andhra Pradesh contained in the Order dated 3rd October, 1960 were forwarded to the Central Government and it was after giving due consideration to these representations on the basis of the recommendations of the Advisory Board which consisted of experts, that the Central Government affirmed the decision of the Government of Andhra Pradesh by its letter dated 17th March, 1966. The present contention of the petitioners/appellants. must, therefore, be rejected”.

44. Hon’ble Apex Court in Para-14 of the judgment in the case of **The University of Mysore & Others vs. C.D. Govinda Rao & Others** reported in **AIR 1965 SC-491** held as follows:-

“14. Before we part with these appeals, however, reference must be made to two other matters. In dealing with the case presented before it by the respondent, the High Court has criticised the report made by the Board and has observed that the circumstances disclosed by the report made it difficult for the High Court to treat the recommendations made by the experts with the respect that they generally deserve. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be.

The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to

it for its decisions. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show 'that the High Court applied tests 'Which would legitimately be applied in the case of writ of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinions expressed by the Board & its recommendations on which the Chancellor has acted.

In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.”

45. Hon’ble Apex Court in Para-16, 23.v, 24.4.viii, 31, 34 and 36 of the judgment in the case of **Anand Yadav & Others-vs. State of Uttar Pradesh and Others** reported in **AIR 2020 SC-5383**, held as follows:-

“16. In view of the postponement of the examination, in terms of order dated 12.10.2018, an interim order was passed provisionally permitting the candidates with M.Ed. to participate in the selection process, but the result was to be produced in a sealed cover to the Court, as and when the same was ready. It was clarified that this order was confined only to those persons who were parties / intervenors / impleaders and were before the Court on that date, as all of them were stated to have submitted the applications before the cut-off date of 14.7.2016. The latter aspect was clarified by an order dated 10.12.2018 that the cut-off date would be reckoned as 5.8.2016, since the same had been modified by the competent authority itself. Any other grievances regarding rejection of an application on

account of the same not being in conformity with the eligibility criteria were opined not to form a part of the proceedings before this Court and would have to be assailed in separate proceedings.

23.v. The UGC/respondent No. 4 had issued a public notice stating that equivalence of degrees is decided by the employing organization and in the present case, respondent No. 2 being the employing organization, sought the opinion of the expert panel, and thereafter took a decision, which was impugned in the writ petition, permitting M.Ed. degree as an eligible qualification for appointment. Thus, the correctness of such a decision, based on the view of experts, ought not to be questioned or gone into in judicial review.

24.4.viii. The expert opinion dated 15.5.2014 was obtained from Professors of Rajarshi Tandon Open University, Allahabad and Allahabad University in pursuance of advertisement No. 46 of 2014. Candidates with M.Ed. degree were found not entitled to participate in the selection process. The qualifications in the 2014 and the 2016 advertisements are the same. The expert panel constituted for purposes of advertisement No. 47 of 2016, which is in question, gave their opinion without basing it on any data and without comparing the syllabus of both the courses.

31. We may also notice another important aspect, i.e., the employer ultimately being the best judge of who should be appointed. The choice was of respondent No. 2. who sought the assistance of an expert committee in view of the representation of some of the appellants. The eminence of the expert committee is apparent from its composition. That committee, after examination, opined in favour of the stand taken by the appellants, and respondent No. 2 as employer decided to concur with the same and accepted the committee's opinion. It is really not for the appellants or the contesting respondent to contend how and in what manner a degree should be obtained, which would make them eligible for appointment by respondent No. 2.

34. We say so in view of the fact that matters of education must be left to educationists, of course subject to being governed by the relevant statutes and regulations. It is not the function of this Court to sit as an expert body over the decision of the experts, especially when the experts are all eminent people as apparent from the names as set out. This aspect has received judicial imprimatur even earlier and it is not that we are saying something new. We may refer to the pronouncement in *Zahoor Ahmad Rather &*

Ors.10 in this behalf which has dealt with the dual aspects: (a) it is for the employer to consider what functionality of qualification and content of course of studies would lead to the acquisition of an eligible qualification; and (b) such matters must be left to educationists.

36. We may note that, sometimes, without looking into the real ratio decidendi, a judgment is followed as a precedent. This is what appears to have happened in the impugned order. There are even some other judgments of the High Courts, which in turn were then sought to be relied upon to canvas a proposition that there is a widespread acceptance of M.Ed. not being equivalent to M.A. (Education). That they are two different degrees is obvious; this is even recognised by the NCTE while emphasising the subtle distinction between the two degrees as one being a master's degree but not a professional degree, while the other being a professional degree. If the two degrees are identical, there is no question of equivalence. The issue of equivalence only arises when there are two different degrees and what is to be decided whether for certain purposes they can be treated as equivalent. This is exactly what has happened as a result of the respective expert committees set up by respondent Nos. 2 & 5. The employer, i.e., respondent No. 2, had accepted the recommendation of the expert committee. The UGC has also taken a stand that insofar as the two degrees are concerned, both are post graduate degrees, and the equivalence authority being respondent No.5 has also opined on the basis of an expert committee, that the two can be treated as equivalent for the post of Assistant Professor in Education. Thus, it is neither for the contesting party, i.e., respondent No.3, nor for this Court to sit as a court of appeal over the decision of the experts. We may also note that respondent No.3 has in fact been selected in the 2014 selection process as per the final list released on 22.5.2018".

46. Hon'ble Apex Court in Para-23, 24 & 25 of the judgment in the case of **Ashok Kumar Yadav & Others vs. State of Haryana & Others** reported in **AIR 1987 SC-454** held as follows:-

"23. That takes us to the next ground of challenge which found acceptance with the Division Bench. This ground of challenge was strenuously urged on behalf of the petitioners and it was sought to be supported by reference to the decision of this Court in *Ajay Hasia v. Khalid Mujjubudin*. The contention of the petitioners under this

ground of challenge was that in comparison to the marks allocated to the written examination, the proportion of the marks allocated to the viva voce test was excessively high and that introduced an irredeemable element of arbitrariness in the selection process so as to offend Articles 14 and 16 of the Constitution. It is necessary in order to appreciate this contention and to adjudicate upon its validity to consider the relative weight attached by the relevant rules to the written examination and viva voce test. We have already referred to the Punjab Civil Service (Executive Branch) Rules 1930 as applicable in the State of Haryana. Rule 9 of these rules prescribes that a competitive examination shall be held in accordance with the Regulations set out in Appendix 1 for the purpose of selection by competition of candidates to the Haryana Civil Service (Executive Branch) and other allied services and under Regulations 1 and 5 every ex-service officer has to appear in a written examination in 5 compulsory subjects carrying in the aggregate 400 marks and a viva voce test carrying 200 marks and likewise, every candidate belonging to the general category has to appear in a written examination in 8 subjects carrying in the aggregate 700 marks and for him also there is a viva voce test carrying 200 marks. The argument of the petitioners was that in case of ex-service officers the marks allocated for the viva voce test were 200 as against 400 allocated for the written examination so that the marks allocated for the viva voce test came to 33.3% of the total number of taken into account for the purpose of making selection. So also in the case of candidates belonging to the general category, the marks allocated for the viva voce test were 200 as against 700 allocated for the written examination with the result that the marks allocated for the viva voce test came to 22.2% of the total number of marks for the competitive examination. This percentage of 33.3% in the case of ex-service officers and 22.2% in the case of other candidates was, according to the Division Bench, unduly high and rendered the selection of the candidates arbitrary. The correctness of this view has been challenged before us on behalf of the respondents.

24. This Court speaking through Chinnappa Reddy, J. pointed out in *Liladhar v. State of Rajasthan* that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public services. But the question is how should the competitive examination be devised? The competitive examination may be based

exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Ashok Kumar Yadav And Ors. Etc. Etc vs State Of Haryana And Ors. Etc. Etc on 10 May, 1985 "In the very nature of things it would not be within the province or even the competence of the court and the Court would not venture into such exclusive thickets to discover ways out, when the matters are more appropriately left" to the wisdom of the experts. It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may posts and appointments where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly high percentage of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters and not any courts. The experts bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test.

25. *it is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by a viva voce test, much depending on the constitution of the interview Board".*

47. Heard learned counsel for the Parties at length. Perused the materials available on record. This Court after going through the same finds that the syllabus for conducting the written examination was enclosed as Annexure-A to the advertisement issued under Annexure-2.

This Court further finds that the method of selection prescribed under Para-6(a) to 6(h), prescribes the details of examination and syllabus as enclosed in Annexure-A was to be followed.

48. Therefore, this Court taking into account the stand taken by the Petitioners in both the writ petitions and the stand taken by the Commission in the Counter Affidavit as well as in the Additional Affidavit finds that the written examination has not been conducted in accordance with the prescribed syllabus vide Annexure-A. But the Commission has shifted the onus on the experts. This Court further finds while requesting the experts to prepare the question papers in both Paper-I and II vide letter dated 23.06.2021 the syllabus prescribed vide Annexure-A to the advertisement was also provided to the said experts. But this Court finds that the question papers in Paper-I and Paper-II have not been prepared in accordance with the syllabus prescribed vide Annexure-A. This Court is of the view that the Commission has simply shifted the burden on the experts, while not disputing the fact that the questions were not set up in accordance with the syllabus and an evasive stand has been taken that equal distribution of mark is not prescribed anywhere categorically and the unit wise allotment of 20 marks is only indicative and not a conclusive one. The decisions relied on by learned Sr. Counsel appearing for the Commission as per the humble view of this Court is not applicable to the facts of the present case.

49. Therefore, taking into account the stand taken in the writ petition vis-à-vis the decisions relied on by the learned

counsel for the Petitioners, this Court is of the view that the written examination conducted by the Commission on 06.03.2022 has not been conducted in accordance with the prescribed syllabus enclosed vide Annexure-A to the advertisement nor the required 20 no's of questions carrying 1(one) mark each from each of the Units from Unit-(I) to (X) have been set-up.

50. Since the Commission has not conducted the selection in terms of the advertisement issued under Annexure-2, placing reliance on the decision cited by Ms. Rath, learned counsel for the Petitioner, this Court is inclined to held that the written examination conducted by the Commission on 06.03.2022 has not been conducted in accordance with the terms of the advertisement. While holding so, this Court is inclined to quash the said written test held on 06.03.2022 and consequential publication of the select list vide Annexure-A/2. While quashing the written examination as well as select list published under Annexure-A/2, this Court directs the Commission to conduct a fresh written examination in accordance with the syllabus prescribed vide Annexure-A and relied on to be followed under Para-6(h) of the advertisement. This Court directs the Commission to conduct a fresh written examination and proceed thereafter strictly in terms of the advertisement issued under Annexure-2.

51. With the aforesaid observations and directions, both the Writ Petitions are disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 10th of November, 2022/Subrat (Sr. Steno)