



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

**Reserved on: 20<sup>th</sup> July, 2023**  
**Pronounced on: 24<sup>th</sup> August, 2023**

+ W.P.(C) 3259/2023, CM APPL No. 14097/2023, 19816/2023 & 36265/2023

RUCHIR AGRAWAL

..... Petitioner

Through: Mr. Gagan Gupta, Mr. Sachin Gupta and Ms. Yashi Agrawal, Advocates.

versus

**PUBLIC ENTERPRISES SELECTION BOARD & ORS.**

..... Respondents

Through: Mr. V.N. Koura, Mr. S. Sirish Kumar and Mr. Nirbhay Narain Singh, Advocates for R-2.  
 Ms. Manisha Agrawal Narain, CGSC with Mr. Sandeep Singh Samaria, Advocates with Mr. Mritunjay, Director with Mr. Vikash.  
 Mr. Arvind Varma, Sr. Advocate with Mr. Rohan Thawani, Ms. Shalini Kapoor, Mr. Pratul Pratap Singh, Ms. Smridhi Sharma and Ms. Ambica Sundaram, Advocates for R-5.

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

## **J U D G M E N T**

**CHANDRA DHARI SINGH, J.**

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:



- "a) Issue interim reliefs being sought by the Petitioner by way of the present petition as given in Grounds A and B under Grounds for Interim Relief;*
- b) Issue a writ in the nature of Mandamus or any other writ, order or direction as may be deemed appropriate by this Hon'ble Court, directing Respondent No.1 to do away with the 'Qualification' clause added in **JD** qua appointment of Director (Finance) in CPSEs whereby which preference has been given to Chartered Accountants over Cost Accountant;*
- c) Issue a writ in the nature of Certiorari or any other writ, order or direction as may be deemed appropriate by this Hon'ble Court, directing Respondent No.1 to quash the list of shortlisted candidates dated 10.03.2023 qua the appointment of Director (Finance) in Respondent No.2 company;*
- d) Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the present case."*

## **FACTUAL MATRIX**

2. The brief facts of the instant Writ Petition are that the petitioner joined the respondent no.2 ('respondent Organization' hereinafter) in 1994 and is currently working as Chief General Manager (Corporate Finance & Treasury) under the H Grade. The respondent Organization is a schedule-A Central Public Sector Enterprise ('CPSE' hereinafter) in the petroleum sector with the administrative jurisdiction of respondent no. 3 ('respondent Ministry' hereinafter). The respondent no. 1 ('respondent Body' hereinafter) is a high-powered body constituted by the Government of India for appointment of top management posts in various CPSEs including the respondent Organization.



3. In the instant case, the respondent Body published an advertisement/JD 131/2022 under notification 7/69/2022-PESB dated 25<sup>th</sup> November, 2022, for the vacant post of Director (Finance) with respondent Organization. The Director (finance) in the respondent Organization is a member on the board of directors and reports to the Chairman and Managing Director of the respondent Organization.

4. The said advertisement/JD prescribed eligibility criteria being that of age, employment status, qualification, experience and pay scale for the said post. Pursuant to an internal meeting dated 19<sup>th</sup> August, 2021, it was decided to prefer Chartered Accounts over Cost Accountants, and the said advertisement/JD was in accordance with the same. The decision taken in the internal meeting was formally approved by the respondent Body and duly notified to all the CPSEs. The relevant portion of the qualification clause in the Advertisement/JD reads as follows:

*"The applicant should be a Chartered Accountant or Cost Accountant or a full time MBA/PGDM course with specialization in Finance with good academic record from a recognized University/Institution. Preference would be given to Chartered Accountant."*

4. The petitioner applied for the said position within due time, but did not get shortlisted for the interview. Thus, aggrieved by the same, the petitioner preferred the instant petition.

5. This Court *vide* interim order dated 22<sup>nd</sup> March, 2023 allowed the petitioner to appear for the interview. The relevant para of the interim order is reproduced hereinbelow-



*“7. Having heard the learned counsels for the parties and in order to balance the equities, this Court deems it appropriate at this stage to permit the Petitioner to appear in the interview scheduled on 24.03.2023 for the post of Director (Finance). It is made clear that participation of the Petitioner in the interview will be subject to final outcome of the writ petition and will not create any equity in his favour. Respondents shall permit the Petitioner for the interview, without prejudice to their rights and contentions in the present writ petition”*

6. In the said interim order, this Court had granted the interim relief on condition that the outcome of the interview shall be subject to the final outcome of the instant petition. The petitioner then appeared for the interview, and the respondent Body was directed to submit the result in a sealed cover.

7. Thereafter, this Court *vide* interim order dated 25<sup>th</sup> May, 2023 allowed the respondent to open the sealed cover and declare the results of the interview. In the same order, the respondent was also permitted to appoint the selected eligible candidates without prejudice to the instant petition. The relevant paras of the said order reads as follows:

*“3. Learned counsels for the Respondents submit that the post of Director (Finance) is an important position in the CPSE and the W.P.(C) 3259/2023 Page 2 of 2 interim order is causing a prejudice as the appointment is on a hold and therefore they seek vacation/variation of the order so that the process can be completed and appointment can be made to the said post.*

*4. Learned counsel for the Petitioner, on the other hand, submits that he has no objection to the order being varied permitting the official Respondents to declare the result of the Petitioner so that process of appointment is*



*not stalled, however, the appointment be made subject to the outcome of the writ petition with a further direction that no equity will be created in favour of the Appointee.*

*5. The Court entirely agrees with the submission made by learned counsels for the parties. It is not in the interest of either party that the process of appointment is put on hold and it also cannot be overlooked that Director (Finance) is an important position in the CPSE.*

*6. Accordingly, order dated 22.03.2023 is varied and the official Respondents are granted permission to open the sealed cover and declare the result of the Petitioner. Needless to state that in case the Petitioner is successful, he shall be appointed without prejudice to the rights and contentions of the parties to the writ petition. However, if any other candidate is appointed, his/her appointment will be subject to the outcome of the writ petition and the Appointee shall not claim any equity on the basis of the appointment, since the question of eligibility of the Petitioner for shortlisting is subjudice before this Court.”*

8. Upon non-selection in the interview, the petitioner is now seeking deletion of the preference clause as prescribed in eligibility section in the advertisement published for the vacant post of Director (finance) in the respondent Organization.

## **SUBMISSIONS**

***(on behalf of the petitioner)***

9. The learned counsel appearing on behalf of the petitioner submitted that the decision taken by the respondent Body *vide* internal meeting dated 19<sup>th</sup> August, 2021 whereby the preference was given to the Chartered Accountants over Cost Accountants is arbitrary and in contravention of the



settled principle of law and is in violation of the Fundamental Rights of the petitioner.

10. It is submitted that the petitioner should have been given preference over shortlisted candidates because the petitioner complies with all the pre-requisite conditions as prescribed in the advertisement. It is further submitted that the said candidates shortlisted for the job are junior to the petitioner and are shortlisted only on the ground that they are Chartered Accountants.

11. It is submitted that the respondent Body failed to provide any justification to show as to why the Chartered Accountants are being preferred over Cost Accountants despite the fact that the both are considered at par in all Central and State statutes and are equally recognised by the Government of India. It is also argued that even though the advertisement/JD uses the word 'preference', it's actual effect is of such nature that it closes all the doors for the Cost Accountants to hold the post of director (Finance) both internally, externally and sectorially despite fulfilling all the mandatory requirements.

12. It is submitted that the list of shortlisted candidates published on 10<sup>th</sup> March, 2023 goes against the settled law under ***Geeta Sharma v. Public Enterprises Selection Board & Anr, 2022 SCC OnLine Del 3600*** wherein this Court had set aside the decision of preference given to the Chartered Accountants and it was held as follows:

*“22. In the light of this position, while candidates at serial nos. 6 & 7 of the impugned list of shortlisted candidates may be entitled to get preference on account of their qualifications, the petitioner was clearly entitled to get preference on two counts, one on account of her*



*higher payscale, and the other on account of her Board level position, as the other two candidates are admittedly holding the post of a General Manager in two other CPSEs. When these aspects are cumulatively considered, the only plausible interpretation which can be given to the term 'preference would be given to Chartered Accountant' must be read to imply "an added advantage". The 'preference would be given to a Chartered Accountant' could not be read in such a manner to ignore the higher payscale and the Board level position of the petitioner, which position the other candidates do not hold. I, therefore, find merit in Mr. Mehta's submission that the question of giving preference to candidates at serial nos. 6 & 7, who are Chartered Accountants, would arise only if they were otherwise equally placed as the petitioner in all other aspects. Once, the petitioner in terms of PESB guideline, was entitled to get preference not only on account of her higher payscale, but also on account of her Board position, these two candidates could not be allowed to steal a march over her and that too, by excluding her even from the interview for the selection process."*

13. It is submitted that the list of shortlisted candidates dated 10<sup>th</sup> March, 2023 ignores that the 'question' of preference arises only during the time when the selection of a candidate is to be made, and the said power rests with the Appointments Committee of the Cabinet ('ACC' hereinafter).

14. Hence, in view of the forgoing discussion, it is prayed by the petitioner that this Court may issue writ of mandamus or any other writ, order, or direction, directing the respondent Body to do away with the qualification/preference clause added in JD *qua* appointment of Director (Finance) in CPSEs, whereby the preference has been given to the Chartered Accountants over Cost Accountants.



*(on behalf of the respondent)*

15. *Per Contra*, the learned counsel appearing on behalf of the respondent No. 1 & 3 vehemently opposed the submissions made by the learned counsel for petitioner and submitted that the Chapter 2 of the Department of Personnel ('DoPT' hereinafter) guidelines dated 29<sup>th</sup> August, 2017 allows the CPSEs to decide the job description which includes qualifications, keeping in mind the functional requirements of the post for that company.

16. It is submitted that the policies related to board level appointments are formulated by the concerned authorities keeping in mind the current needs and situations.

17. It is submitted that it is a settled law that the decisions of the expert committees of the Government are not interfered with, except on the ground that the committee is not properly constituted or that the process is not duly followed.

18. It is submitted that there is a rational nexus between the basis of classification and the object intended to be achieved. The Director (Finance) has the responsibility of overall in-charge of finance, accounts and fund management of the organization and is also responsible for evolving and formulating the policies related to finance and accounts as well as implementation thereof. The Chartered Accountants are professionals Whereas, the Cost Accountant is a professional who is only responsible for ensuring that money spent by their company is well planned. Hence, the objective behind preferring Chartered Accountants is to promote all aspects of finance, accounts and funds management of the CPSEs and enable them



to formulate policies optimizing the well-being of their business, finances and accounts.

19. It is submitted that the petitioner has already admitting the fact of being aware about the internal meeting decision dated 19<sup>th</sup> August, 2021, and but still prefers to only challenge the preference clause which stems from the decision not challenged before this Court. It is further submitted that the said decision was duly approved by the expert committee and consequently notified to the respective CPSEs.

20. It is submitted that as per seniority, there are 7 eligible candidates including 2 Non-Chartered Accountant above the petitioner against the 6 slots allotted under internal category.

21. It is submitted that the petitioner has chosen not to challenge the policy adopted by the respondent Body and the prayer of getting done away with the qualification clause cannot hold any ground when the petitioner has not challenged the policy decision taken by the board from which said qualification clause was included in the JD.

22. It is further submitted that the petitioner has not mentioned any rule or provision to aver that the preference clause is to be applied by the ACC and only after the shortlisting of the candidates. Hence, in view of the forgoing discussion, it is submitted on behalf of the respondent that the petition is devoid of any merits and liable to be dismissed.

### **FINDINGS AND ANALYSIS**

23. Heard learned counsel for the parties and perused the records. This Court has given its thoughtful consideration to the submissions made by the



parties. At the outset, it becomes necessary to delineate the following issues on the basis of which the final outcome of the instant petition would depend.

***Issue I-** Whether Cost Accountants can be treated equivalent to the Chartered Accountants for appointment for the post of Director (Finance) in the CPSEs. If not, whether the same can be tested on the touchstone of Article 14 & 16 of the Constitution of India?*

***Issue II-***

*a) Whether this Court can issue mandamus in the instant case and set aside the minutes of the meeting when the same is not prayed by the petitioner in the pleadings? And*

*b) Whether this Court can set aside the decision taken by the expert committee formed by the Central Government for the appointment of high level positions when there is no challenge to the constitution of the expert committee?*

### **Issue I**

24. Before delving into this issue, it would be apposite to look at the extracts of the advertisement/JD in question which lays down the clause preferring Chartered Accountants over Cost Accountants. The said advertisement/JD is reproduced hereinbelow:

#### ***“3. Qualification***

*(i) The applicant should be a Chartered Accountant or Cost Accountant or a full time MBA/PGDM course with specialization in Finance with good academic record from a recognized University/Institution. Preference would be given to Chartered Accountant.*

*(ii) Officers of Organized Group 'A' Accounts Services [i.e. Indian Audit and Accounts Service, Indian Defence Accounts Service, Indian Railway Accounts Service, Indian Civil Accounts Service, Indian P&T Accounts &*



*Finance Service and Indian Cost Accounts Service] working in the appropriate-level are exempted from these educational qualifications.*

*(iii) Further, applicants from the Central Govt./Armed Forces of the Union/All India Services, will also be exempted from the educational qualifications as per (i) above provided the applicants have 'the relevant experience' as mentioned in Para 4(iii) below.*

*In respect of applicants from Organized Group 'A' Accounts Services/Central Government/Armed Forces of the Union/All India Services, Chartered Accountant/Cost Accountant/MBA/PGDM will be a desirable educational qualification.*

#### **4. EXPERIENCE:**

*(i) The applicant should have at least five years of cumulative experience at a senior level during the last ten years in the area of Corporate Financial Management Corporate Accounts in an organization of repute.*

*(ii) Applicants from Organized Group 'A' Accounts Services should have at least five years cumulative experience at a senior level during the last ten years in the area of Corporate Financial Management Corporate Accounts.*

*(iii) 'The relevant experience' in respect of applicants from Central Government/Armed Forces of the Union/All India Services would include at least seven years of cumulative experience at a senior level during the last ten years in the area of Corporate Financial Management Corporate Accounts."*

25. On perusal of the relevant portion of the said Advertisement/JD, it is made out that the preference has been given to the Chartered Accountants over Cost Accountants. Therefore, it becomes necessary to establish the difference, if any, between the both. For the same, it is pertinent to analyse



the profile and work of both Cost Accountants and the Chartered Accountants.

26. The Chartered Accountants in India are governed by the Chartered Accountants Act, 1949 and are bound by the rules and regulations laid down by the body created by an act of the Parliament. The said profession is defined under the Act as follows:

***“Section 2(1)(b) of Chartered Accountants Act, 1949-  
“chartered accountant” means a person who is a  
member of the Institute”***

27. Similarly, the Cost Accountants are registered with The Institute of Cost Accountants of India which is also a Statutory Body created by the Cost Accountants Act, 1959 and is defined under the Act as follows:

***“Section 2(1)(b) of Cost Accountants Act, 1959  
cost accountant means a person who is a member  
of the Institute”***

28. At the outset, it is established that both the professions are governed by different rules and regulations laid down by the two separate institutions which are created by two separate acts of the Parliament. It is also clear that both the statutes were established for different purposes and the professionals registered under the respective statutes have separate and distinguished work profiles.

29. The statement and objects of both the statutes also specify different roles to the respected professionals.

30. On reference to the other statutes, it is made out that some legislation treats both the professionals differently. In order to establish the same, perusal of Section 288 of the Income Tax Act, 1961 becomes important.



The said provision talks about the representation by the authorized persons which exclusively prescribes for ‘Chartered Accountants’ as explanation of the term ‘accountants’ mentioned in the said provision of the Act. The relevant portion of the said provision reads as follows:

**“Section 288, Appearance by authorised representative.....[Explanation.—In this section, “accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]”**

31. On bare perusal of the aforesaid paragraph, it becomes clear that there exists distinction between the role and responsibility of Chartered Accountants and Cost Accountants as the said provision only provides for Chartered Accountants as explanation of the term ‘accountants’ which is not replaceable with the Cost Accountants. Therefore, it is established that the Chartered Accountants are treated differently than Cost Accountants in some statutes and there can be no embargo upon the authorities to treat them differently.

32. Now, the pertinent question before this Court is whether treating two qualifications differently would amount to discrimination, thereby violating the fundamental right of the petitioner as provided under Article 14 of the Constitution of India. For the same, it is necessary to examine the differentiation carved on the touchstone of Article 14 and 16 of the Indian Constitution. The said provisions are reproduced hereinbelow:



***“14. Equality before law.—****The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*

***16. Equality of opportunity in matters of public employment.—****(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*

*(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*

*(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office 1 [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment. (*

*4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.*

*2 [(4A) Nothing in this article shall prevent the State from making any provision for reservation 3 [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]*

*4 [(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or*



*years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]*

*(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. 1 [(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]”*

33. On perusal of the aforesaid provisions, it is clear that the denial of equality by the state is prohibited and the breach of the same amounts to violation of the fundamental rights of the citizens. At the same time, the Article 16 also permits reasonable classification based on intelligible differentia. In order to analyse whether the said condition has been met in the instant case, it is imperative to look into the judicial dicta dealing with the similar issue and whether the settled position of law can be made applicable in the instant case.

34. The Hon’ble Supreme Court had elaborated the scope of reasonable classification created for superior qualification in the case of ***State of Mysore v. P. Narasinga Rao, (1968) 1 SCR 407*** in following manner:



*“4. The relevant law on the subject is well settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. This Court in dealing with the extent of protection of Article 16(1) observed in General Manager, Southern Rly. v. Rangachari [1962 (2) SCR 586, 596] :*

*“Thus construed it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression ‘matters relating to employment’ in Article 16(1).... This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or (2) does not prohibit the prescription of*



*reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens who enter service.... In this connection it may be relevant to remember that Article 16(1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment.”*

*The argument was stressed on behalf of the respondent that success in the SSLC examination had no relevance to the post of tracer and the tracers of the erstwhile State of Hyderabad who were allotted to the new State of Mysore were persons similarly situated and there was no justification for making a discrimination against only some of them by creating a higher pay scale for tracers who had passed the SSLC examination. It was contended for the respondent that all the tracers who were allotted to the new State of*



*Mysore were persons who were turning out the same kind of work and discharging the same kind of duty and there was no rational basis for making two classes of tracers, one consisting of those who had passed the SSLC examination and the other consisting of those who had not. In our opinion, there is no justification for the argument put forward in favour of the respondent. It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured, Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection. It is true that the selective test adopted by the Government*



*for making two different classes will be violative of Articles 14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability of the candidate for the post or for employment to public service as such. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is therefore not right to say that in the appointment to the post of tracers the Government ought to have taken into account only the technical proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidates who have a better educational qualification besides technical proficiency of a tracer. The relevance of general education even to technical branches of public service was emphasised long ago by Macaulay as follows:*

*“Men who have been engaged, up to one and two and twenty, in studies which have no immediate connection with the business of any profession, and the effect of which is merely to open, to invigorate, and to enrich the mind, will generally be found, in the business of every profession, superior to men who have, at eighteen or nineteen, devoted themselves to the special studies of their calling. Indeed, early superiority in literature and science generally indicates the existence of some qualities which are securities against vice-industry, self-denial, a taste for pleasures not*



*sensual, a laudable desire of honourable distinction, a still more laudable desire to obtain the approbation of friends and relations. We, therefore, think that the intellectual test about to be established will be found in practice to be also the best moral test that can be devised.”*

*(Hansard, Series, 3 CXXVIII, 754, 755)*

*In our opinion, therefore, higher educational qualifications such as success in the SSLC examination are relevant considerations for fixing a higher pay scale for tracers who have passed the SSLC examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Articles 14 or 16 of the Constitution.”*

35. In the case of ***T.R. Kothandaraman v. T.N. Water Supply & Drainage Board***, (1994) 6 SCC 282, the Hon’ble Supreme Court examined the classification created for separate qualification and held that the nature of the job does permit the Government to prefer better qualified persons if the job entails the work to be handled specifically by a person having specific qualification. The relevant para of the judgment is reproduced below:

*“25. The writ petitioners and appellants, among whom is the Engineering Diploma-holders' Association, have challenged the decision of the Tamil Nadu Electricity Board which amended the Board's Service Regulations fixing ratio of 3:1 for promotion to the post of Assistant Engineers (Electrical) between the Junior Engineers (Electrical) and Supervisors (Electrical Grade-I) — the former being degree-holders and latter diploma-holders.*



*26. The aforesaid shows that the classification is based on higher educational qualification and the same has to receive our approval because for certain types of work the Supervisors are not sufficiently qualified, whereas Junior Engineers are. The nature of the work performed by the two classes of post holders and the higher educational qualification of the degree-holders did permit the Electricity Board to classify the two groups differently for the purpose of their promotion. As to the ratio of 3:1, we have applied our mind and we have come to the conclusion that we may not interfere with the same because of the fact that any different view would create almost a chaotic situation in the working of the Board as the Board's decision, which is of 1974 has held the field for about two decades and any disturbance at this stage would not to be conducive to the functioning of the Board inasmuch as the number of persons to be affected would be in thousands, as it has been stated in paragraph 22 of the counter-affidavit filed on behalf of the Board in CA No. 559 of 1991 that the number of qualified diploma-holders and degree-holders in all branches would be in region of 1000; Junior Engineers Grade-I about 2000 and Assistant Engineers also 2000."*

36. In the case of ***Chhattisgarh Rural Agriculture Extension Officers Assn. v. State of M.P., (2004) 4 SCC 646***, the Hon'ble Supreme Court allowed the state to differentiate for the appointment on the basis of different qualifications and held that the state cannot be said to have acted illegally in granting a higher pay scale for the higher qualification. The relevant part is reproduced herein:

*"13. Pay Commissions are constituted for evaluating the duties and functions of the*



*employees and the nature thereof vis-à-vis the educational qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in its wisdom and in furtherance of a valid policy decision may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso appended to Article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employees by framing appropriate rules. The State in terms of the said provision is also entitled to give a retrospective effect thereto. A policy decision had been adopted by the State that the post of Extension Officers shall be filled up only by graduates. Such a policy decision ex facie cannot be termed to be arbitrary or irrational attracting the wrath of Article 14 of the Constitution of India. A dying scale was provided by the State for the non-graduates. Fresh recruitments were to be made only from amongst the persons who held the requisite educational qualification. With a view to avoid any discrimination between the new recruits and the serving employees who possessed the same qualification, the State cannot be said to have acted illegally in granting a higher scale of pay also for the existing degree-holders.*

*14. Article 14, it is trite, does not forbid a reasonable classification.*

*15. Article 14 forbids class legislation but permits reasonable classification subject to the conditions that it is based on an intelligible differentia and that the differentia must have a rational relation to the object sought to be achieved. (See Saurabh Chaudri v. Union of India [(2003) 11 SCC 146 : (2003) 9 Scale 272] .)”*



37. In *Govt. of W.B. v. Tarun K. Roy*, (2004) 1 SCC 347, the Hon'ble Supreme Court held that a violation of fundamental right would not arise when the persons are not similarly placed. The relevant paragraph is as follows:

*“20. Question of violation of Article 14 of the Constitution of India on the part of the State would arise only if the persons are similarly placed. Equality clause contained in Article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable differentia. The doctrine of equal pay for equal work, therefore, is not attracted in the instant case.”*

38. On perusal of the relevant paragraphs of the aforementioned judgments, it is clear that the state can create classifications based on the qualifications. Therefore, it is well within the power of the state to create separate classification based on the reasonable differentia.

39. In the instant case, it is already established that the Cost Accountants and the Chartered Accountants are not similarly placed as the same are defined and governed under two separate statutes of the Parliament. On perusal of the Section 288 of the Income Tax Act, 1961, it is also made out that some legislations do specifically provide for 'Chartered Accountants' instead of the Cost Accountants as an explanation to the term 'Accountant'. Hence, the difference in both the profiles has already been established.

40. The job of Director (Finance) pertains to financial management of the business, where both accounts and finances, inventory, income tax, audit assurance etc need to be supervised by them. For the same, Chartered Accountants are best suited persons as the work of Cost Accountants only



entails supervision of the expenses by the company. The role of the Cost Accountants is also limited to oversee expense reports and analyze data regarding the purchases made by the company. If we compare the nature of the job, it is clear that the Chartered Accountants are better placed to perform the said job as the work is not only limited to the supervision of expenses but also requires management of audits, budgets and providing financial advice. Therefore, the Chartered Accountants can be termed as better qualified for the said job in the respondent Organisation.

41. Thus, it is crystal clear from the above discussion that the Cost Accountants and the Chartered Accountants cannot be similarly placed for appointment to the post of Director (finance) in the respondent Organization and treating them differently does not amount to discrimination and violation of fundamental rights as enshrined in the Constitution of India.

42. Therefore, on establishment that no prejudice was caused to the petitioner by preferring Chartered Accountants over the Cost Accountants, and the classification as created for the post of Director being well within the bounds of the respondent Body, this Court is inclined to answer the issue in favour of the respondents and against the petitioners.

43. Accordingly, issue no. 1 is decided.

## **Issue II**

44. In the instant petition, the petitioner seeks issuance of mandamus for quashing of the preference clause described in the Advertisement/JD. Therefore, in order to decide the sub-issue i), it is pertinent to discuss the nature and scope of mandamus in order to understand whether this Court can issue the writ for setting aside the decision of the expert committee



which stems out from the minutes of the meeting dated 19<sup>th</sup> August, 2021 not under challenge before this Court.

45. The writ of mandamus has been defined in *Halsbury Statutes of England, Vol 11, (3rd Edition) p. 84* in the following manner:

*“The order of mandamus is an order of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice, and accordingly, it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right ”*

46. On perusal of the aforesaid definition, it is clear that the writ of mandamus is a command issued from the courts to direct the Subordinate Courts, Organisations or the State to perform a duty which they are bound to do by virtue of the nature of the public office they hold.

47. The scope of mandamus has also been explained by the Hon’ble Supreme Court in a catena of judgments. In the case of *CAG v. K.S. Jagannathan, (1986) 2 SCC 679*, the Hon’ble Supreme Court discussed scope of mandamus and held that the Courts can issue mandamus where a government or a public authority has failed to exercise the discretion conferred upon it. The Hon’ble Court held as follows:

*“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass*



*orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”*

48. On perusal of the said judgments, it is clear that the Courts have wide scope under Article 226 for issuance of mandamus and are empowered to direct the Government to get done away with a decision which is illegal in nature thereby causing injustice to a party.

49. In the instant case, even though it is contended that this Court while exercising its power under Article 226 of the Indian Constitution can set aside the preference clause from the said Advertisement/JD, it is imperative to satisfy the question of whether the writ of mandamus can be issued to direct the respondents to do away with the preference clause inserted in the



Advertisement/JD when the decision of the expert committee stemming from the meeting dated 19<sup>th</sup> August, 2021, is not under the challenge before this Court.

50. Therefore, it is imperative to refer to the settled position of law with regards to the said issue. In ***Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491***, the Hon'ble Supreme Court had discussed the purpose of pleadings at length and held that allowing a particular relief without there being a prayer for the same would lead to miscarriage of justice. The relevant paragraph is reproduced herein:

*“12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.*

*13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or*



*its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.”*

51. In ***Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi***, (2010) 1 SCC 234, the Hon’ble Supreme Court discussed the scope of Writ Court and held that even though the courts have wide discretion in deciding the writs, they cannot grant a relief not prayed by the petitioner. The relevant paragraph is as follows:

*“29. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not*



*afterwards be allowed to sue in respect of the portion so omitted or relinquished.”*

52. On perusal of the aforesaid judgments, it is evident that even though the scope of mandamus is very wide, courts cannot ignore the principles governing grant of relief. It is a well settled principle of law that the courts should not delve into the aspects which are related to reliefs not prayed by the petitioner and it is fundamental that a relief can only be granted in a case when it is prayed by the petitioner. Therefore, any relief, not prayed by the petitioners, cannot be granted by this Court under Article 226 of the Constitution.

53. In the instant case, the petitioner has prayed for issuance of writ of mandamus to do away with the preference clause as added in the Advertisement/JD, but has not challenged the minutes of the meeting through which the said decision of preference stems out. The petitioner has also not preferred the option of modification of the prayer and has only sought to do away with the said preference clause. Hence, this Court cannot interfere in the decision taken by the expert when the same has not been under challenge in the instant petition.

54. Therefore, in light of the settled principles regarding both issuance of mandamus and principles governing the grant of reliefs, this Court is not inclined to delve into an issue which is not prayed for in the petition. Therefore, this sub-issue is also answered in favour of the respondents.

55. Now, coming to sub-issue ii), where the question of whether this Court can set aside a decision taken by the high level expert committee needs to be decided.



56. Based on the foregoing discussion, it is evident that the petitioners have challenged the preference clause where preference has been given to the Chartered Accountants over Cost Accountants. It is also clear that the said decision to prefer one set of professionals over others was taken and approved by the respondent Body. The respondent Body is a high-powered body constituted by the Government of India for appointment of top management posts in various CPSEs, including the respondent Organization. Therefore, it is imperative to analyse whether the respondent Body committed material illegality by taking the said decision.

57. On perusal of the material on record, it is clear that the petitioner has neither raised any question regarding the constitution of the expert committee, nor prayed for the reconstitution of the expert committee which decided the said preference clause. Therefore, the only question before this Court is whether the decisions taken by the expert committees can be set aside without there being any illegality in the constitution of the expert committee.

58. In *Secy. (Health) Deptt. Of Health and F.W. v. Anita Puri (Dr.)*, (1996) 6 SCC 282, the Hon'ble Supreme Court held that the courts should leave it to the decision of the experts whenever there is an expert committee constituted to fill a high level position. The relevant part of the judgment is reproduced herein:

*“9. The question for consideration is whether such sub-division of marks by the Commission on different facets and awarding only 2½ marks for higher qualification can be said to be arbitrary? Admittedly, there is no statutory rule or any guideline issued by the Government for the Commission for the purpose of evaluation of merit*



*of the respective candidates. When the Public Service Commission is required to select some candidates out of a number of applicants for certain posts, the sole authority and discretion is vested with the Commission. The Commission is required to evolve the relative fitness and merit of the candidate and then select candidates in accordance with such evaluation. If, for that purpose the Commission prescribes marks for different facets and then evaluates the merit, the process of evaluation cannot be considered to be arbitrary unless marks allotted for a particular facet is on the face of it excessive. Weightage to be given to different facets of a candidate as well as to the viva voce test vary from service to service depending upon the requirement of the service itself. In course of the arguments before us the learned counsel for Respondent 1 had submitted that the awarding of 20 marks for viva voce and 20 marks for general knowledge out of 100 marks must be held to be on the face of it arbitrary giving a handle to the Public Service Commission to manipulate the selection and, therefore, the High Court had rightly come to the conclusion that it was arbitrary. We are unable to accept this contention. This Court in the case of Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] , while considering the case of selection, wherein 33% marks was the minimum requirement by a candidate in viva voce for being selected, held that it does not incur any constitutional infirmity. As has been stated earlier the expert body has to evolve some procedure for assessing the merit and suitability of the applicants and the same necessarily has to be made only by allotting marks on different facets and then awarding marks in respect of each facet of a candidate and finally evaluating his merit. It*



*is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus considered, we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.”*

59. In **UPSC v. M. SathiyaPriya, (2018) 15 SCC 796**, the Hon’ble Supreme Court set aside the exercise undertaken by the Tribunal and the High Court to reassess the recommendations of a Selection Committee constituted by the UPSC for appointment by promotion to the Indian Police Service and held as follows:

*“17. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In our considered opinion, when a High-Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit*



*over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters.”*

60. On perusal of the aforesaid judgments, it is made out that the expert committees are constituted of individuals who are well versed with the nature of tasks to be performed by the persons appointed to the high level position and the said decisions need not be interfered with by the courts in normal circumstances.

61. In the instant case, it is clear that the petitioner has not questioned the constitution of the respondent Body rather, has only challenged the preference clause inserted in the qualification section of the Advertisement/JD notified by the respondent Body for the vacant post of Director (Finance) in the respondent Organization.



62. Hence, it is a settled principle of law that the decisions taken by such experts need not be questioned until and unless there is clear bias on part of the experts and *malafide* is established by adducing sufficient evidence or the constitution of the committee is under challenge which is not the case in the instant petition.

63. Therefore, in light of the foregoing discussion and the settled principle of law, this Court does not find any compelling reasons to get into the decision made by the expert committee as it is assumed that the experts looked into all the aspects relating to the selection process and then decided to prefer the Chartered Accountants over Cost Accountants and this sub-issue is also answered in favour of the respondents.

64. Since both the sub-issues are decided in favour of the respondents, this issue in entirety is answered in favour of the respondents.

65. Having dealt with both the issues in the earlier paragraphs, it is crystal clear that the petitioner cannot be granted the relief. However, he has relied upon the decision of the Coordinate bench of this Court in ***Geeta Sharma v. Public Enterprises Selection Board & Anr (Supra)*** and vehemently argued that the said case deals with the similar issues and can be relied upon by this Court to allow the prayer sought by the petitioner. Therefore, it is pertinent to analyse whether the decision given by the Coordinate bench in the said case is binding on the cases dealing with the similar issues and if the said case be held as the settled position of law with regards to the preference given to the Chartered Accountants. In the aforesaid case, this Court interpreted a similar advertisement preferring Chartered Accountants over Cost Accountants for the post of Director (Finance) in a CPSE and held that the preference given to the Chartered



Accountants cannot be read alone while ignoring the other factors. The relevant paragraphs of the said judgment are reproduced herein:

*“18. Learned counsel for the petitioner has vehemently urged that the phrase ‘preference would be given to Chartered Accountant’ as used in the advertisement, cannot imply that all other factors, including the post on which the applicant is presently working as also his/her payscale, must be ignored. On the other hand, learned counsel for respondent nos. 1 and 3 have urged that once, sufficient number of Chartered Accountants were available in the external category, from which category only two candidates were required to be shortlisted, the respondents were justified in giving preference to the two Chartered Accountants, who have been placed at serial nos. 6 and 7, even though they are drawing lower payscale vis-à-vis the petitioner, who is admittedly not a Chartered Accountant. The short question before this Court, therefore, is as to what is the implication of the term ‘preference’ as used in the advertisement. Does it imply that every applicant who is a Chartered Accountant will be given preference vis-à-vis a non-chartered accountant, irrespective of the post held, or the payscale drawn by the applicant?”*

*19. Having given my thoughtful consideration to this issue, I am of the opinion that, while determining what the term ‘preference’ as used in the advertisement would mean, it would be also necessary to consider the guidelines issued by the respondent no. 1 itself for determining the inter-se seniority of the applicants in the same pay scale for purposes of shortlisting. I may, therefore, now refer to the PESB guidelines regarding Board Level Appointments in CPSEs. The relevant extract of the PESB guidelines titled as “Revision of policy of determination of inter-se seniority amongst candidates of sectoral and external category of CPSE”, reads as under:*



***“Revision of policy of determination of inter-se seniority amongst candidates of sectoral and external category of CPSE***

*The practice in the PESB for determining inter-se seniority of the applicants in the same pay scale for the purposes of shortlisting in external and sectoral categories of CPSEs that amongst eligible candidates under each category, preference is given to number of years of working in a higher pay scale. After reviewing this practice, with effect from 31.05.2017, the following practice was adopted:*

- a. Preference will be given to applicants holding a higher pay-scale.*
  - b. If pay scale of the applicants is same then -*
    - (i) Board level applicants will be given preference over applicants who are below the Board level.*
    - (ii) If two Board level applicants are holding the same pay scale then Chairman/CMD/MD would get preference over the Director. The inter-se seniority between two or more Chairman/CMD/MD or two or more Directors will be determined with respect to date of holding the same pay scale.*
  - c. Similarly, if pay scale of two or more applicants is same then applicants working just below the Board (e.g. Executive Director in a schedule ‘A’ CPSE) would get preference over the applicants working at other levels. If two just below Board level executives are holding the same pay scale then inter-se seniority will be determined with respect to date of holding the same pay scale.*
  - d. The inter-se seniority of below the Board level executive holding same pay scale would continue to be determined with respect to date of holding the same pay scale.*
- 2. The policy (para c above) was put in place to give preference to senior-most candidates in the below Board level but while implementing the provision, it has been*



*observed that information of candidates working at ranks just below the Board is not available with the PESB as also that ranks at below Board varies from CPSEs to CPSEs. Difficulties are also being encountered in receiving timely and accurate information in this regard from CPSEs leading to delays and ambiguity in shortlisting.*

*3. The policy regarding determination of the inter-se seniority of the applicants for the purpose of shortlisting of executives holding the same pay scale in the sectoral/external category have now been revisited and it was decided that-*

*a. Preference will be given to applicants holding a higher pay-scale.*

*b. If pay scale of the applicants is same then -*

*(i) Board level applicants will be given preference over applicants who are below the Board level.*

*(ii) If two Board level applicants are holding the same pay scale then Chairman/CMD/MD would get preference over the Director. The inter-se seniority between two or more Chairman/CMD/MD or two or more Directors will be determined with respect to date of holding the same pay scale.*

*c. The inter-se seniority of below the Board level executive holding same pay scale would continue to be determined with respect to date of holding the same pay scale. If date of holding pay scale is same, then the inter-se seniority will be determined w.r.t. date of birth i.e. older getting preference over the younger applicant.”*

*20. A perusal of paragraph ‘a’ of the aforesaid guideline clearly shows that preference has to be given to the applicants drawing a higher pay scale. Similarly, paragraph ‘b (i)’ of these guidelines clearly prescribes that, if payscale of the applicants under consideration is same, then Board level applicants will be given preference over the applicants who are below the Board*



*level. Thus, these guidelines also envisage granting of preference to applicants in certain situations. Firstly, preference is to be given to candidates having higher pay scale and, secondly, preference is to be given to board level applicants vis-à-vis applicants who are below the board level.*

*21. In the present case, it is undisputed that the petitioner is not only drawing the payscale of Rs. 1,60,000/- to Rs. 2,90,000/- which is higher than the payscale of both the other candidates in the external category, who are drawing the pay scale of Rs. 1,20,000/- to Rs. 2,80,000/-. It is also admitted that, while the petitioner is holding a Board level post of Director in a Schedule-B CPSE, the two shortlisted candidates in the external category are working as General Managers, one in the Noida Metro Rail Corporation Limited, and the other in Electronics Corporation of India Ltd. Thus, if the preference as envisaged in the guidelines, which the respondents do not deny are equally applicable for shortlisting of candidates for the post of Member (Finance) in respondent no. 2, are applied to the present case, it is evident that the petitioner was entitled to get preference not only by the virtue of her higher payscale, but also by virtue of her holding a Board level position since August 2018.*

*22. In the light of this position, while candidates at serial nos. 6 & 7 of the impugned list of shortlisted candidates may be entitled to get preference on account of their qualifications, the petitioner was clearly entitled to get preference on two counts, one on account of her higher payscale, and the other on account of her Board level position, as the other two candidates are admittedly holding the post of a General Manager in two other CPSEs. When these aspects are cumulatively considered, the only plausible interpretation which can be given to the term 'preference would be given to Chartered Accountant' must be read to imply "an added*



*advantage". The 'preference would be given to a Chartered Accountant' could not be read in such a manner to ignore the higher payscale and the Board level position of the petitioner, which position the other candidates do not hold. I, therefore, find merit in Mr. Mehta's submission that the question of giving preference to candidates at serial nos. 6 & 7, who are Chartered Accountants, would arise only if they were otherwise equally placed as the petitioner in all other aspects. Once, the petitioner in terms of PESB guideline, was entitled to get preference not only on account of her higher payscale, but also on account of her Board position, these two candidates could not be allowed to steal a march over her and that too, by excluding her even from the interview for the selection process.*

*23. In my considered view, the respondent nos. 1 and 3 have clearly misinterpreted the clause envisaging preference to be given to Chartered Accountants, as laid down in the advertisement, by ignoring all other relevant and material factors. The petitioner is a highly qualified professional who has been holding a Board level position since August 2018 in a scheduled-B CPSE, and she also holds a doctorate degree. It will indeed be a travesty of justice if she is altogether excluded even from consideration for selection for the post of Member (Finance) in respondent no. 2, and that too by giving preference over her to two 'below Board level officers' in the impugned list under the external category."*

66. On perusal of the aforesaid paragraphs, it is clear that the petitioner in the aforesaid case was Director (finance) in another CPSE and was ignored despite the fact that the other selected candidates were below board level employees. While interpreting the preference clause in that case, the coordinate bench of this Court had relied upon the internal meeting decision dated 31st January, 2018 whereby it was decided by the committee to prefer



board level employees while filling up vacancies to be taken by the external and sectoral candidates.

67. At this stage, it is established that the aforesaid case relied upon by the petitioner revolves around different circumstances all together and there exist stark differences in both the cases. Firstly, the above reproduced judgment is related to vacancy for external candidates and nowhere discusses the aspect of vacancies arising for the internal candidates in the organizations. Secondly, the petitioner in the referred case was a board level employee drawing a salary similar to the grade pay of the post for which she had applied. However, in the instant case, the petitioner is a below board level employee.

68. In the instant petition, it is clear that the issue is limited to the vacant position for insiders. The petitioner applied for the said position in the internal vacancy and not the external one. Furthermore, it is placed on record that there are 7 eligible candidates above him against 6 slots allotted under internal category and there are 2 non-chartered accountant candidates senior to the petitioner. Thus, the petitioner cannot rely upon the judgment given in context of external vacancy arising in the CPSEs.

69. At last, it is pertinent to mention that even though the petitioner's plight is regarding the qualification clause of the said advertisement/JD, he still chose to apply for the vacant position but challenged the preference clause only after not getting shortlisted in the interviews.

70. This Court *vide* interim order dated 25<sup>th</sup> May, 2023, allowed the petitioner to appear for the interview, but the petitioner was not selected for the further process. Therefore, it can be said that earlier, the petitioner had conveniently ignored the preference clause but decided to challenge the



same after non-selection for the said post. The judicial dicta related to the similar issue is amply clear. In the case of ***Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285***, the Hon'ble Supreme Court has dealt with the issue in following manner:

*“24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination.”*

71. In ***Madan Lal v. State of J&K, (1995) 3 SCC 486***, the Hon'ble Supreme Court discussed the issue of selection process challenged by the parties once they fail in getting selected for the vacant posts and held as follows:

*“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged*



*successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285: 1986 SCC (L&S) 644 : AIR 1986 SC 1043] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”*

72. On perusal of the aforesaid cases, it is amply clear that the parties cannot impugn the rules of the game where they had already chosen to take the fair chance by applying to the said vacant position. Therefore, it is crystal clear that the petitioner took a fair chance by applying for the position and has approached this Court when he failed to get appointed.

73. Therefore, in light of the application of the settled principle of law as enunciated in the above discussed cases, it is made out that the petitioner did not come to this Court with clean hands, rather only preferred the instant petition when his application was rejected by the respondents.

74. Furthermore, this Court *vide* interim order dated 25<sup>th</sup> May, 2023 had allowed the petitioner to appear for the interview, but the petitioner was still not selected for the said position. Therefore, the petitioner cannot be granted relief and appointed to the post as the principle of estoppel is attracted which precludes the petitioner from questioning the selection process.



## **CONCLUSION**

75. The foregoing paragraphs clearly establishes the case in favour of the respondents. Firstly, the respondent Body has not violated the fundamental right of the petitioner by creating separate classification for better qualification. Secondly, even though the scope of issuance of mandamus under Article 226 of the Constitution of India is wide, the same cannot be issued to grant a relief not prayed by the petitioners. Thirdly, it is a well settled principle that the respondent Body being an expert committee need not be questioned on the aspects of decision taken, rather can only be reconstituted or looked into whenever there is material irregularity with the decision or constitution of the said expert committee. At last, the judgment relied upon by the petitioner cannot be relied upon for deciding the instant case as the facts and circumstances of both the cases are materially different and the said referred judgment does not hold binding value of any nature in the present case.

76. The CPSEs are entrusted to work efficiently and generate profits for the government. For the same, the respondent Body needs to appoint better qualified candidates to run and oversee the operations of the said entities. Therefore, in view of the above said discussion on facts as well as law, this Court does not find any cogent reasons for granting relief to the petitioner.

77. Accordingly, the instant petition is devoid of merits and is dismissed.

78. Pending applications, if any, also stands dismissed.

79. The judgment be uploaded on the website forthwith.

**(CHANDRA DHARI SINGH)**  
**JUDGE**

**AUGUST 24, 2023/PA/AV**