



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 10th July, 2023

+

W.P.(C) 7764/2017 & CM APPL. 32058/2017 (interim directions)

ANIL KUMAR SANWARIA & ANR. Petitioners
Through: Mr. Parvinder Chauhan,
Advocate.

versus

THE SPEAKER, LOK SABHA & ORS. Respondents
Through: Mr. Pramod Gupta and
Ms. Sanya Jain, Advocates for R-1, 2 and
20.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. By this writ petition, Petitioners seek the following reliefs:-

"A. Issue writ, order or direction in the nature of certiorari thereby calling forth to this Hon'ble Court all the records pertaining to the issue involved in the present Writ Petition especially the records pertaining to the selection and appointment to the post of Executive Officers in the Lok Sabha Secretariat in pursuance of the Circular published in Sept. 2001 and Circular No. 25072 dated 18.01.2002;

B. Issue writ, order or direction in the nature of mandamus thereby directing the Respondent No. 1 & 2 to treat the examination conducted in 2002 as Limited Departmental Examination in the light of the provisions of the R&CS Order No. (PDA 741/89) dated 15.06.1989 and Circular No. 25072 dated 18.01.2002;

C. Issue writ, order or direction in the nature of mandamus thereby directing the Respondent No. 1 & 2 to appoint the Petitioners from the date on which any of persons amongst those named in the select panel issued in April 2003, was actually appointed to the post of Executive Officer, in the Secretariat;



D. Issue writ, order or direction in the nature of mandamus thereby directing the Respondent No. 1 & 2 to grant to the Petitioners all the promotions and other service benefits as have been given to Sh. H. Ram Prakash who was wrongly and illegally declared as the topper of the Select Panel;

E. Issue writ, order or direction in the nature of mandamus thereby directing the Respondent No. 1 & 2 to fix responsibility and take appropriate departmental and criminal action(s) against the guilty officers for committing illegalities, fraud, abuse of official, in the selection process;

F. Award the cost of the proceedings in favour of the Petitioners and against the Respondents."

2. Shorn of unnecessary details, facts relevant to decide the writ petition are that in September, 2001, an Advertisement No. 16(N) was issued by Joint Recruitment Cell of Respondent No.1/Lok Sabha Secretariat inviting applications for the post of Executive/Legislative/Committee/Protocol Officer. Petitioners applied against the advertisement. On 18.01.2002, Department Circular No.25072 was issued inviting applications from eligible departmental candidates, treating the said examination as Departmental Examination in the first round. Being employees of the Secretariat, Petitioners claim that they were eligible for consideration as departmental candidates.

3. It is averred in the petition that as per the Scheme of Examination, minimum cut-off marks were prescribed in January-February, 2002 for each component of Paper-I as 50%, 45% and 40% for candidates belonging to UR, OBC and SC/ST categories respectively. Similar cut-off marks were prescribed for Papers-II to V for eligibility for interview and there was no provision for relaxation in cut-off marks. In February, 2002, written exam was conducted wherein 4 candidates, who either did not have requisite qualification



or work experience, were allowed to appear. In November, 2002, Administration Branch conveyed that 23 vacancies were to be filled up in the selection process.

4. It is stated that thereafter, a merit list was prepared in accordance with the originally fixed qualifying cut-off marks and only 14 candidates including both the Petitioners were shown to have cleared all the papers on the originally fixed cut-off marks. However, with ulterior motive to select favourite candidates, who failed to pass as per the original cut-off marks, a proposal was moved to seek relaxation in qualifying marks and the proposal was accepted, as a result of which 26 ineligible and failed candidates were called for interview along with the Petitioners. In December, 2002, interviews were conducted and on 04.04.2003, the result was declared but the Petitioners were not selected.

5. As per the chronology of dates and events, representations were made by the Petitioners between April to August, 2003 but their fate was never known. On 14.09.2003, the then Speaker, Lok Sabha directed that appointments made in the Direct Recruitment ('DR') Examination be put on hold, however, the appointments were made disregarding the directions.

6. Petitioners thereafter sought information under the Right to Information Act, 2005 ('RTI Act') and received false information that even originally, the cut-off marks were 45%, 40% and 35% in individual papers and 50%, 45% and 40% in aggregate for the respective UR, OBC and SC/ST categories. When the representations within the Department did not yield any result, Petitioners filed a writ petition being W.P.(C) 2658/2014 in this Court which was disposed of



on 29.04.2014 with liberty to file a fresh petition. On 30.05.2014, the second writ petition being W.P.(C) 3470/2014 was disposed of giving liberty to the Petitioners to submit representations to Respondent No.1, which they did on 10.06.2014. In August, 2016, a Six Member Committee was set up under the Chairmanship of Respondent No.2/the Secretary-General, Lok Sabha and Lok Sabha Secretariat and finally the Committee submitted its report on 13.10.2016. The Committee again met on 27.02.2017 and allegedly made some changes in the earlier report. Getting no favourable response, Petitioners filed the present writ petition assailing the process of appointment and their non-selection.

7. Contentions raised on behalf of the Petitioners are manifold. It was contended that the process of appointment to the post of Executive Officer was replete with irregularities and illegalities. As per the duly approved Scheme of Examination, the process involved Paper-I (Objective type), four written papers (Papers-II to V) and personal interview. Paper-I consisted of two parts i.e. Part-A and Part-B which was the stage of preliminary examination and only those candidates who secured the requisite minimum prescribed percentage of cut-off marks in each component of Paper-I could appear for Papers-II to V. The minimum cut-off marks were prescribed as 50%, 45% and 40% for candidates belonging to UR, OBC and SC/ST categories respectively and similar cut-off marks were prescribed for Papers-II to V for eligibility to appear in the interview. 8 candidates including Respondents No.7, 8 and 9 herein failed to secure minimum qualifying marks in preliminary examination and yet were illegally selected. In addition to these 8 candidates, 17 ineligible candidates



who failed in one and/or two Papers-II to V were declared eligible to appear for the interview, the details of which have been furnished in the writ petition and which included some of the Respondents herein.

8. It was argued that relaxation in the cut-off marks was not only illegal as there was no provision in the Examination Scheme but the proposal was also not approved by the then Speaker, Lok Sabha who is the Competent Authority under the Lok Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1955 (hereinafter referred to as 'R&CS Rules'). Power to relax is only of the Appointing Authority, which is the Speaker, Lok Sabha in terms of Rule 6 of R&CS Rules. Delegation to the Secretary-General can only be to make appointments to any post other than Group 'A' post in the Secretariat but not to a Group 'A' post and therefore the Secretary-General had no power to relax the minimum qualifying cut-off percentage.

9. It was urged that the file notings dated 17.05.2002 obtained under RTI Act revealed that the sanctioned strength for the post of Executive Officer against DR quota was 27 and therefore as per Reservation Roster, 04 SC vacancies ought to have been notified. This is fortified by the fact that one Sh. Dhiraj Kumar was selected in 2000 against 01 SC vacancy and remaining 03 SC vacancies were returned vide JRC Note dated 16.10.2000. The Administration Branch thus wrongly and illegally conveyed only 02 vacancies for filling up the posts in November, 2002.

10. It was also argued that file notings revealed that against 02 SC vacancies, 05 SC candidates were available for interview while on the other hand, against 12 UR vacancies, only 03 UR candidates were



available and against 06 OBC vacancies, there was no candidate and therefore it is not understood why the need for relaxation in the qualifying percentage was felt and even assuming that there was a requirement of relaxation, it was only *qua* UR and OBC vacancies and not SC vacancies. The most blatant and glaring illegality in the selection process was selection of Respondent No.7. Even if it is assumed that relaxation was correctly granted in the minimum qualifying percentage for Paper-I, Respondent No.7 had only scored 22 out of 50 marks i.e. 44% in Part-A of Paper-I which was below the relaxed cut-off percentage i.e. 45% for UR category. Yet, her papers in the subsequent stages were evaluated and she was called for interview and finally selected.

11. It was further contended that in terms of Circular No.25072 dated 18.01.2002, examination in the first round was to be treated as departmental examination and only left over vacancies ought to have been offered to the outsiders. Only 03 SC departmental candidates including both the Petitioners had secured the laid down qualifying marks but both were ousted by cancelling the decision to treat the examination as a departmental exam. The Circular mandated preparing two separate merit lists i.e. one for departmental candidates and the other for direct recruitment, however, the procedure was not followed and the obvious reason was that names of certain candidates such as Smt. Reena Gopalakrishnan, Sh. S.R. Mishra, Sh. Satya Prakash and Sh. C. Kalyanasundaram, who were UR/OBC candidates, would not have figured in the merit list as they failed to pass the written tests as per the originally fixed qualifying marks. The Circular was, in fact, never cancelled, revoked or withdrawn during the



examination and yet its mandate was violated.

12. On the contrary and at the outset, a preliminary objection is taken by Respondents No.1 and 2 (hereinafter referred to as 'Respondents') that the writ petition is hopelessly barred by delay and laches and no relief can be granted even otherwise since with passage of time, several panels have been formed for appointment to the post in question in the years 2006, 2007, 2008, 2009 and 2011 and any relief given to the Petitioners at this stage would upset the *inter se* seniority and also adversely impact the subsequent promotions of persons appointed through these panels. It was submitted that the appointments in the present writ petition relate to the year 2003 and even assuming that the date of first writ petition is taken into consideration, the same was after 11 years from the culmination of the appointment process and writ petition deserves to be dismissed on ground of delay and laches alone. Reliance was placed in this context on the judgment of the Supreme Court in *State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others*, (2013) 12 SCC 179 and of this Court in *Suraj Pal v. Jamia Hamdard (Hamdard University)*, 2015 SCC OnLine Del 12881.

13. Without prejudice to the said objection, it was argued that Lok Sabha Secretariat ('LSS') has a distinct and independent status as it is created under Article 98 of the Constitution of India. According to the well-settled convention, the orders applicable to other Ministries of the Government of India do not *ipso facto* apply to officers and staff of LSS, unless specifically adopted. Posts in the Secretariat are excluded from the purview of UPSC and the Secretariat directly recruits persons under the orders of the Presiding Officer whenever



necessity for recruitment arises. In exercise of powers under Article 98(3) of the Constitution of India, R&CS Rules were framed and promulgated w.e.f. 01.10.1955 by the President of India in consultation with the Speaker, Lok Sabha and have the force of law. These Rules confer wide powers on the Speaker with regard to the affairs of the Secretariat, particularly, recruitments, promotions, etc. and neither the powers of the Speaker have been questioned nor the R&CS Rules have been challenged in the present petition and it is thus not open to question the appointment process undertaken in consonance with the Rules.

14. In response to the contentions of the Petitioners, it was argued that the Scheme of Examination consisted of five written papers followed by personal interview held in 2002. Second proviso to Rule 6 of R&CS Rules provides that after holding DR Examination, an opportunity may be given to suitable officers within the Secretariat by holding Departmental Competitive Examination. In 1997, the practice of holding Departmental Examination at the time of conducting Open Recruitment Examination was started and in continuation thereof, Circular dated 18.01.2002 was issued. However, before declaring the result, the matter had to be reconsidered since this practice was not as per the R&CS Rules under which the two kinds of examination cannot be clubbed and therefore on 03.04.2003, the then Secretary-General approved discontinuation of this practice. On 03.04.2003, a panel of 19 persons was approved but the Petitioners did not find place in the panel as they failed to secure the requisite marks. Petitioners approached this Court in W.P.(C) 2658/2014 and the writ petition was dismissed as withdrawn to file a fresh petition but a statement was



made before the Court that they did not wish to assail the appointments of private Respondents No.7 to 22 therein. Subsequently, another writ petition was filed which was dismissed on 30.05.2014 granting liberty to the Petitioners to file a fresh representation within two weeks.

15. On a joint representation made by the Petitioners, a High-level Committee of Senior Officers of LSS was constituted on 04.08.2016. The Committee examined in detail all the grievances made by the Petitioners, on each of the aspects, which included cancelling of the decision to treat the examination as Departmental Competitive Examination; relaxing the minimum qualifying percentage in different stages of the examination; number of SC vacancies notified and preparation of final result. The Committee found no illegality/irregularity in the selection process and the decision of the Committee which was considered and approved by the Speaker, Lok Sabha on 07.03.2017 was conveyed to the Petitioners vide Memorandum dated 08.03.2017. Process of selection/examination can be interfered with by the Court under Article 226 of the Constitution of India on limited grounds in judicial review. Once there is no illegality in the process of examination i.e. the decision making process, no further interference can be made. Insofar as appointments of the private Respondents are concerned, Petitioners have already stated in the earlier round of litigation that they will not assail their appointments and therefore writ petition deserves to be dismissed on all the aforesaid grounds.

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



17. The first issue that is required to be examined by the Court is the preliminary objection raised by the Respondents that the writ petition is barred by delay and laches and ought not to be entertained, particularly, on account of the fact that in the meantime several panels have been made and a number of people stand selected over the years, whose seniority and subsequent promotions will be adversely impacted if the writ petition is allowed. To adjudicate on this issue, it would be pertinent to look closely at the list of dates and events. Written examination was conducted between 08.02.2002 to 10.02.2002 followed by interviews on 27.12.2002 and 28.12.2002. Result was declared on 04.04.2003. Between 21.11.2006 to March, 2014, Petitioners were exhausting the remedies of making representations/appeal and seeking information under the RTI Act. In 2014, two writ petitions were filed which were disposed of with observations as aforementioned. Representations were made by the Petitioners pursuant to which LSS constituted a High-level Committee which gave its report on 13.10.2016 and after final approval, the decision was communicated to the Petitioners on 08.03.2017 and present writ petition was filed soon thereafter in 2017. Giving this chronology of dates, Petitioners had responded to the preliminary objection by arguing that there was no delay as the Respondents were examining the grievances of the Petitioners till 2017. Reliance was placed on the judgments in *Union of India and Others v. N. Murugesan and Others*, (2022) 2 SCC 25; *Smt. Kaberi (Dutta) Santra & Ors. v. The State of West Bengal & Ors.*, 2014 SCC OnLine Cal 20867; *S.S. Bola and Others v. B.D. Sardana and Others*, (1997) 8 SCC 522; *State of M.P. and Others v. Nandlal*



Jaiswal and Others, (1986) 4 SCC 566; Ramchandra Shankar, Deodhar and Others v. State of Maharashtra and Others, (1974) 1 SCC 317 and G.P. Doval and Others v. Chief Secretary, Government of U.P. and Others, (1984) 4 SCC 329.

18. Looking at the chronology of dates as mentioned above, this Court finds that after the declaration of the result on 04.04.2003, Petitioners sought information under the RTI Act in 2006 and thereafter in 2011. Representation was made in 2011 which was referred to the Grievance Redressal Committee in 2012 and the matter was closed in April, 2013. Appeal was made to the Speaker, Lok Sabha against the closure and in 2014, it was learnt that the appeal was not placed before the Speaker on account of inappropriate language used in the appeal. Ordinarily, the writ petition ought to have been dismissed as nothing substantial was done by the Petitioners between 2003 to 2014 as there was nothing stopping them from approaching the Court all these years. The filing of the writ petitions in 2014 also cannot give any advantage to the Petitioners as the writ petitions were withdrawn, the first one, to file a fresh petition and the second one, to make a representation. The only factor, however, that persuades this Court to hold in favour of the Petitioners that the writ is not barred by delay and laches is the fact that on a joint representation made by the Petitioners, LSS constituted a High-level Committee which looked into the grievances made and rendered its Report, which was approved by the Speaker, Lok Sabha on 07.03.2017 and the decision was conveyed to the Petitioners vide Memorandum dated 08.03.2017 and the writ was filed in the same year. Therefore, the writ petition cannot be dismissed on ground of delay and laches.



19. Having so held, this Court finds merit in the second contention of the Respondents pertaining to the adverse impact on those who were appointed in the meantime under the five select panels for the years 2006/2007/2008/2009 and 2011 if the writ petition is entertained and allowed at this belated stage. Needless to state that if the Petitioners succeed, their appointments shall date back to 2003 and the seniority will have to be fixed with their batch which will unsettle the *inter se* seniority of those subsequently appointed and even promoted in the meantime. A seniority settled for nearly two decades would be unsettled as a inevitable consequence of entertaining and allowing this writ petition. None of them are even parties to this writ petition. Supreme Court has repeatedly affirmed that long settled seniorities should not be unsettled. [Ref.: *Shiba Shankar Mohapatra and Others v. State of Orissa and Others*, (2010) 12 SCC 471; *S. Sumnyan and Others v. Limi Niri and Others*, (2010) 6 SCC 791 and *Union of India and Others v. Chaman Rana*, (2018) 5 SCC 798].

20. Even otherwise, having examined the averments in the counter affidavit in which there is a detailed narrative of the consideration of each of the grievances raised by the Petitioners, this Court finds that there is no merit in the writ petition. Before embarking on considering the merits of the contentions, it is important to delineate the scope and ambit of judicial review by Courts under Article 226 of the Constitution of India to interfere in matters relating to examination process and/or recruitment/selection. There is a wealth of judicial precedents, a reading of which leads to only one irresistible conclusion that matters of appointment and selection are best left to expert bodies and Courts cannot function as Appellate Courts over the decisions of



selection bodies as this is neither their expertise nor domain. Interference is permissible on limited grounds such as illegality or an apparent material irregularity in constitution of the Selection Committees or proved *malafides* or serious procedural violations, which vitiate the entire process, etc. In this context, I may refer to a recent judgment of the Supreme Court in ***Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others, 2023 SCC OnLine SC 344***, where there is reference to several earlier judgments of the Supreme Court on this aspect, relevant passages of which are as follows:-

“Points for Consideration:

64. *Having regard to the submissions of the learned Senior Counsel and learned counsel for the respective parties, the following points would arise for our consideration:*

i) *Whether the High Court of Jammu and Kashmir at Srinagar erred in quashing and setting aside the the selection process conducted on 8th September, 2009, for appointment of drug inspectors in the State of Jammu and Kashmir, and the appointments published on 12th November, 2009?*

ii) *What order?*

Selection Process for Public Employment : Interference by Courts:

65. *Before proceeding further, it is necessary to preface our judgment with the view that Courts in India generally avoid interfering in the selection process of public employment, recognising the importance of maintaining the autonomy and integrity of the selection process. The Courts recognise that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice for us if we were to venture into reviewing the decision of experts who form a part of a selection board. The law on the scope and extent of judicial review of a selection process and results thereof, may be understood on consideration of the following case law:*

i) *In Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan, (1990) 1 SCC 305 : AIR 1990 SC 434, this Court clarified the scope of judicial review of a selection process, in the following words:*



“9...It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc.....”

ii) In a similar vein, in *Secy. (Health) Deptt. Of Health & F.W. v. Dr. Anita Puri*, (1996) 6 SCC 282, this Court observed as under as regards the sanctity of a selection process and the grounds on which the results thereof may be interfered with:

“9. ... 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.....”

iii) This position was reiterated by this Court in *M.V. Thimmaiah v. Union Public Service Commission*, (2008) 2 SCC 119, in the following words:

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...”

xxx

30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and



constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions.....”

iv) Om Prakash Poplai and Rajesh Kumar Maheshwari v. Delhi Stock Exchange Association Ltd., (1994) 2 SCC 117, was a case where an appeal was filed before this Court challenging the selection of members to the Delhi Stock Exchange on the ground that the Selection Committee formed for the aforesaid purpose, arbitrarily favoured some candidates and was thus, against Article 14. This Court rejected the allegation of favouritism and bias by holding as under:

“5. ...the selection of members by the Expert Committee had to be done on the basis of an objective criteria taking into consideration experience, professional qualifications and similar related factors. In the present cases, we find that certain percentage of marks were allocated for each of these factors, namely, educational qualifications, experience, financial background and knowledge of the relevant laws and procedures pertaining to public issues etc. Of the total marks allocated only 20 per cent were reserved for interviews. Therefore, the process of selection by the Expert Committee was not left entirely to the sweet-will of the members of the Committee. The area of play was limited to 20 per cent and having regard to the fact that the members of the Expert Committee comprised of two members nominated by the Central Government it is difficult to accept the contention that they acted in an unreasonable or arbitrary fashion.....”

66. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.



67. Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective criteria employed by the selection board/interview panel in assessing the suitability of candidates, namely, (i) that the candidates who had done their post-graduation had been awarded 10 marks and in the viva-voce, such PG candidates had been granted either 18 marks or 20 marks out of 20. (ii) that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water.

68. The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:

i) In *Manish Kumar Shahi v. State of Bihar*, (2010) 12 SCC 576, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.

ii) In *Ramesh Chandra Shah v. Anil Joshi*, (2013) 11 SCC 309, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:



“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

iii) Similarly, in Ashok Kumar v. State of Bihar, (2017) 4 SCC 357, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twenty-seven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared a list. The High Court declined to approve the Select List on the ground that the ratio of full marks for the written examination and the interview ought to have been 90 : 10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks - 90 and qualifying marks - 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

“13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of



entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100, this Court held that: "18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724)".

69. *It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.*

70. *This Court in Sadananda Halo has noted that the only exception to the rule of waiver is the existence of mala fides on the part of the Selection Board. In the present case, we are unable to find any mala fide or arbitrariness in the selection process and therefore the said exception cannot be invoked.*

xxxx

xxxx

xxxx

xxxx

78. *In light of the pertinent selection procedure that was followed, we are unable to hold that the same was mechanical or casual or suffered from irregularities which were so grave or arbitrary in nature so as to justify quashing the entire selection process. Further, we are unable to trace the requirement of individual rolls being signed and verified by the members of the Selection Board, to any statute or rule. Therefore, we cannot sustain the finding of the High Court that the entire selection process was vitiated by such irregularity. The High Court was not justified in quashing and setting aside the entire selection process, more so when sixty-four candidates including the appellants had been serving on the said post for over a decade."*



21. The contentions of the Petitioners need to be examined on the anvil of the principles elucidated by the Supreme Court on the scope of interference in a recruitment/selection process.

22. At this stage, it is pertinent to note that when W.P.(C) 2658/2014 was disposed of on 29.04.2014, a categorical statement was made on behalf of the Petitioners that they would not assail the appointment of the private Respondents as Executive Officers, pursuant to their selection in 2003. When this writ petition was listed for the first time on 04.09.2017, learned counsel for the Petitioners had reiterated that Petitioners will not challenge the appointments of Respondents No.3 to 19 herein and would file an affidavit detailing the reliefs the Petitioners shall be pressing in the writ petition. Pursuant thereto, affidavit dated 19.09.2017 was filed in which the Petitioners undertook to give up relief 'E' in the writ petition. Insofar as the objection of delay and laches was concerned, in the order dated 01.10.2018, the Court observed that the issue of delay and laches was highly contestable and it may not be appropriate to treat it as a preliminary issue and adjudicate thereon at the initial stage of proceedings. The objection was kept open to be decided when the writ petition is taken up.

23. Respondents have stated in the counter affidavit that a High-level Committee was constituted headed by Secretary-General, Lok Sabha and LSS to examine the grievances ventilated by the Petitioners against the Scheme of Examination and the process of selection. Copy of the report has been appended to the counter affidavit, which the Court has perused. The terms of reference of the Committee were as follows:-



“2. The Committee was mandated to go into the following aspects of the above-cited representations and tender their opinion thereon:

(i) The implications of Departmental Circular No. 25072 dated 18 January, 2002, pertaining to Departmental Examination for the posts of EO/LO/CO/PO and Research/Reference Officer in Lok Sabha Secretariat;

(ii) The exact number of vacancies in SC category available for filling up through the examination under reference for the posts of EO/LO/CO/PO and Research/Reference Officer.

(iii) The application of principle of lowered cut-off while computing results of the Preliminary Examination as well as the Main Examination.

(iv) Preparation of a combined merit order with candidates shortlisted on second principle also duly included.”

24. On the aspect of implications of Circular dated 18.01.2002 pertaining to Departmental Examination, the Committee observed as follows:-

“The Committee noted that given the inherent infirmities in the practice and its likely potential of creating confusion, the matter was examined immediately in the aftermath of the Open Examination under reference for the posts of EO/LO/CO/PO and Research/Reference Officer and the then Secretary-General ordered forthwith discontinuation of this practice. No Departmental Circulars have been issued for Open Examinations, thereafter.

The proviso to Rule 6.2 was introduced in the R&Cs Rules in 1989. As per proviso to Rule 6.2, a separate examination may be conducted to give opportunity to departmental officers having prescribed qualifications. However, this proviso could not be deemed to extend to conducting a single examination for departmental candidates and open direct candidates, and thereafter give appointment to departmental candidates in preference to open direct candidates. The circular, therefore, would be bad in law and goes beyond the proviso to Rule 6.2.

The Committee were of the opinion that the practice of issuing departmental circular was not in consonance with and was beyond the proviso made in Rule 6.2 of R&CS Order PDA-741/89 dated 15 June, 1989 as it made giving preference to departmental candidates mandatory in all examinations which was neither the intent of the proviso nor in institutional interest. Further, such action



on the part of Joint Recruitment Cell may appear to be arbitrary and beyond the Rules. For these very reasons the practice of issuing departmental circular for departmental candidates before holding a direct recruitment examination was discontinued with the approval of the then Secretary-General vide orders dated 03.04.2003.

The Committee were also of the opinion that apart from the debatability of the universal/mandatory applicability of the proviso to Rule 6.2 as explained above another germane question is as to whether an internal Departmental Circular could afford any preferential treatment in appointment to the Secretariat employees without being hugely discriminatory to the open candidates who had no prior information about this dispensation. The Committee, therefore, felt that such a dispensation would neither be just nor equitable and against principles of natural justice.”

25. On the next issue of number of vacancies in SC category notified for filling up the posts of Executive Officer, the Committee observed that the contention of the Petitioners was based on the surmise that for Open Examination, 2000, previous to the one in question, 04 SC vacancies were available and since 01 SC candidate was declared successful, 03 SC vacancies were available in the present examination. Having examined the available records, the Committee did not find any merit in the contention as follows:-

“Number of SC Vacancies

On the question of exact number of SC vacancies that were required to be filled up through the Open Examination under reference, the Committee observed that the contention of the representationists was based on the surmise that for Open Examination (2000), previous to the one in question, four Supreme Court vacancies were available. Since one SC candidate was declared successful in that Examination, three SC vacancies were available for being filled up through the Open Examination under question.

From the available records, the Committee observed that the Advertisement for the Open Examination in question issued in August, 2001 merely stated 'the number of vacancies will be determined later.

In October, 2002 and January 2003, 02 SC vacancies were conveyed by Administration Branch-I to Joint Recruitment Cell.



From the available records, it appears that the vacancies communicated to the Joint Recruitment Cell in the year 2000 seem to have been overstated in respect of SC category. The proposal for promotion in the year 2003 which is available in the records indicates that the sanctioned strength in the DR quota in the grade of EO/LO/CO/PO and Research/Reference Officer was 25 and as per Reservation Roster 03 posts would be earmarked for SC candidates. With the Supreme Court candidate of 2000 examination already occupying one of these posts, there is a shortfall of only 02 candidates which was duly indicated to the Joint Recruitment Cell by Administration Branch-I.

The Committee were of the opinion that as per the records placed before them the number of available SC vacancies for the examination in question was 02 and there appears to be no mala fide intention on the part of anybody whatsoever while communicating the number of vacancies to Joint Recruitment Cell."

26. Coming to the third issue i.e. lowering the cut-off percentage for computing the results of the preliminary and the main examination, the Committee noted as follows:-

"Principles of Cut off

The Committee noted that JRC was normally keeping cut offs at 50% for UR, 45% for OBC and 40% for SC/ST vacancies in each paper/component. However, since JRC was not getting candidates at these cut offs some time, the following principle regarding cut off to be followed for examinations conducted by JRC had been approved by the then Secretary-General, Lok Sabha on 24 February, 2001:

xxxxx

(i) The present practice of cut-off percentages viz. 50%, 45% and 40% for UR, OBC and SC/ST categories respectively in each paper/component may be followed, and if the vacancy still remains unfilled, we may:-

(ii) Prescribe 50%, 45% and 40% for UR, OBC and SC/ST categories in aggregate and 45%, 40% and 35% for UR, OBC and SC/ST in each individual paper/component i.e. 50% in aggregate and 45% in each paper for UR and so on and so forth.

xxxxx

This decision was in vogue till 5 October, 2005 when the then SG approved that cut-off thresholds of 50%, 45% and 40% for UR, OBC and SC/ST, respectively may only be followed.



As per R&CS Order No. 855/94 dated 17 January, 1994 reproduced hereunder, SG was competent authority for taking such decisions at that point of time.

“Subject to the delegation of powers made from time to time under rules 6 & 14 of the Lok Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1955, all matters connected with the administration of the Lok Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1955 shall be disposed of by the Secretary-General or Additional Secretary whosoever is in charge of the Administration:---”

The Committee further noted that in Advertisement No. 16(N) pertaining to the said post minimum qualifying marks were not prescribed. The Call Letter mentioned the following in this context:

“The Secretariat will have full discretion to fix the minimum qualifying marks in each component of Paper-I. Papers II to V of only those candidates will be evaluated who obtain the minimum qualifying marks in Paper-I.”

The Committee also noted from the records placed before them that there is no basis in the contention of the representationists about Papers I A and B being Preliminary Examination. The Call Letter ibid mentions that the Examination will consist of five papers. The candidates were required to qualify each paper/component of all the five papers.

Accordingly, the Committee noted that descriptive type papers of about 68 candidates, who had secured marks below the first principle threshold in Paper-I had also been evaluated.

Similarly, once it was known after evaluation of the descriptive type papers that only 14 persons were available at first principle against 23 advertised vacancies, the second principle was invoked which yielded another 29 candidates who were also called for the interview. The Committee also noted that the merit list was prepared based on the aggregate scores in written examination and the interview.

The Committee have been informed that all recruiting agencies including UPSC and SSC resort to need based adjustments, both upwards and downwards, in cut off thresholds to ensure an ideal number of candidates with a view to avoid recruitment process going waste. In the instant case, the posts had remained unfilled for long time and there was a pressing need for putting officers in position.”

27. The next issue that the Committee was mandated to examine was preparation of a combined merit list and on this aspect, the Committee came to a finding that the merit order was prepared on the



basis of total marks obtained by the entire bandwidth of candidates under consideration and there was no anomaly. Finally, the Committee concluded as follows:-

“CONCLUSION

1. Departmental Circular

As per available records, five departmental circulars for open examinations had been issued including the instant examination. This was done on the basis of a decision taken at the level of Joint Secretary incharge in 1997. The practice was in vogue around that time, but was discontinued subsequently since it was against equity and natural justice. Furthermore, by applying different criteria and giving advantage to the departmental candidates in the process over the open candidates would have been discriminatory and would not stand scrutiny of law as it might happen that less meritorious departmental candidates would get selected overlooking the more meritorious open candidates thereby compromising the element of merit.

The practice of issuing departmental Circulars for open examinations was not in consonance with and was beyond the relevant proviso in Rule 6.2 of R&CS Order No. PDA-741/89 dated 15 June, 1989 as it did not reflect the intent of the said proviso and would have compromised with merit apart from being bad in law and against principles of natural justice.

2. Number of SC vacancies

As per the available records the number of vacancies available in SC category for being filled up in the instant examination was 2 (two).

3. Principles of Cut off

With a view to ensure a larger bandwidth of candidates are available for subsequent stage(s) of examination so that the vacant positions do not go abegging a two tier cut off system was being followed. This was done with the approval of the then SG, who was, as per the then delegation of powers under the R&CS Rules, competent authority for deciding upon the matter. In the first instance the cut-offs were pegged at 50%, 45% and 40% for UR, OBC and SC/ST vacancies, respectively. In the second principle the cut offs were pegged at 5% less at 45%, 40% and 35% for UR, OBC and SC/ST vacancies, respectively in each paper with the aggregate, however, remaining at 50%, 45% and 40%, respectively for three categories.

The second principle was invoked only when the number of candidates available at the first cut off was perceived to be



insufficient to fill a reasonable number of available vacancies.

The same practice was followed in the instant examination. Thus, 29 additional persons were brought into reckoning by invoking the second principle at the descriptive examination stage for 23 vacancies for the post of EO/LO/CO/POs against only 14 available when result was compiled based on first principle. It is, therefore, apparent that the extension in bandwidth of candidates by resorting to second principle was done with a view to ensure a larger number of candidates for the Interview.

4. Preparation of Result

The result was prepared by merit ordering all candidates under consideration. The said procedure already had the approval of HS in September, 2001 in the context of another examination.

Moreover, as brought out previously in this Report the procedure adopted was in consonance with the principles of equity and natural justice and in the interest of merit based recruitment.”

28. In its limited scope of interference in judicial review, this Court finds no illegality or apparent material irregularity with the procedure adopted and particularly taking into account the fact that on the representations of the Petitioners, Respondents constituted a High-level Committee comprising of Senior level Officers who independently looked into the records and came to a conclusion that none of the objections of the Petitioners were justified. Interestingly and significantly, Petitioners have not laid any challenge to the report and it is not even their stand that any of the members of the Committee were disqualified to be a part of the Committee or nurtured any bias against the Petitioners or were partial towards any of the selected candidates. Additionally, Respondents have stated in the counter affidavit that Call Letters were issued to the candidates wherein it was mentioned that examination will consist of five papers and candidates were required to qualify each paper/component of the five papers. Nowhere in the Call Letters, it was mentioned that Paper-I will be treated as Preliminary Examination. On 24.02.2001, the then



Secretary General had approved a two tier cut-off system with a view to ensure that the vacancies do not remain unfilled. The cut-off percentages of 50%, 45% and 40% were prescribed for UR, OBC and SC/ST vacancies, respectively. However, in case the number of candidates available at these cut-offs were perceived to be insufficient to fill up the available vacancies, 5% less cut-offs in individual paper/component i.e. 45%, 40% and 35% for UR, OBC and SC/ST vacancies, respectively, were prescribed with the aggregate marks remaining at 50%, 45% and 40%, respectively, for the three categories. This decision was in vogue till 05.10.2005 when the then Secretary General approved the decision that the cut-off thresholds of 50%, 45% and 40% for UR, OBC and SC/ST vacancies, respectively, be followed. It is further stated that in the examination in question, out of 1164 candidates who were issued call letters, 333 candidates appeared in Paper-I which included 60 common candidates who had applied for both the posts. Papers II to V of 218 candidates (including about 60 additional candidates by invoking the system of 5% less cut-offs) were got evaluated. At the cut-off percentages of 50%, 45% and 40% for UR, OBC and SC/ST vacancies, respectively, for 23 vacancies for the posts of Executive/Legislative/Committee/Protocol Officer, only 14 candidates were available and for 12 vacancies for the post of Research/Reference Officer, only 05 candidates were available. 04 candidates, out of these, were common. Thus, only 15 candidates were available for appearing in the Personal Interview for filling up 35 vacancies for both the posts. No candidate was available for 06 OBC vacancies for the post of Executive/Legislative/Committee/Protocol Officer and 03 SC and 05 UR vacancies for the



post of Research/Reference Officer. Secretary General approved the proposal to call 61 candidates (including common candidates for both the posts) for the Personal Interview by following the system of 5% less cut-offs in individual paper/component i.e. 45%, 40% and 35% for UR, OBC and SC/ST vacancies, respectively, with the aggregate marks remaining at 50%, 45% and 40%, respectively, for the three categories.

29. Having carefully examined the stand of the Respondents taken in the affidavit and having perused the Committee's report as well as the other documents placed on record, this Court is unable to agree with the contentions of the Petitioners that there was any illegality/irregularity in the Scheme of Examination or the process of selection. Insofar as allegations of bias are concerned, suffice would it be to state that only bald and vague allegations have been made by the Petitioners in the writ petition. It is repeatedly asserted that fraud has been played in the selection and some ineligible candidates were permitted to appear at all stages and some of them were even selected. While the Petitioners do name some of the candidates who, according to them, were given a favourable treatment, however, there are no pleadings which indicate that Petitioners have levelled allegations against any particular person in LSS who was biased against them or favourably disposed to the selected candidates. No person has been impleaded as a party against whom allegations have been levelled pertaining to the selection process. It is trite that where *malafides* are alleged, then mere assertion or a vague statement is insufficient. Vague allegations that certain acts were done by a person in position with ulterior motive cannot be accepted without proper pleadings and sufficient proof, both



of which are conspicuously absent in the writ petition. It was held in *Ratnagiri Gas and Power Private Limited v. RDS Projects Limited and Others, (2013) 1 SCC 524*, that a judicial pronouncement declaring an action to be *malafide* is a serious indictment of the person concerned and can lead to adverse civil consequences against him. Courts have to be therefore slow in drawing conclusions on the allegations of *malafide* and only where based on the material placed before the Court or facts that are admitted, leading to inevitable inferences supporting the charge of *malafides* that the Court should record a finding to that effect.

30. For all the aforesaid reasons, this Court finds no reason to interfere in the process of appointment to the posts in question and the writ petition along with the pending application is dismissed, being devoid of merit.

JULY 10, 2023/kks

JYOTI SINGH, J

