Dr. Kumar Chandan Vs Indira Gandhi Institute Of Medical Science

Court: Patna High Court

Date of Decision: Feb. 9, 2024

Acts Referred: Constitution of India, 1950 â€" Article 14, 16, 162
Code of Civil Procedure, 1908 â€" Order 41 Rule 27
Evidence Act, 1872 â€" Section 17

Hon'ble Judges: Vipul M. Panchol, J; Rudra Prakash Mishra, J

Bench: Division Bench

Advocate: Y.V. Giri, Pranav Kumar, Shrishti Singh, S.D. Yadav, Sunil Kumar Singh, Santosh Kumar, Mithilesh Kumar, Kumari Ruchi, Utsav, Piyush Lal, Rajnikant Singh, Rakesh Kumar Singh, Manish Kumar, Bipin Bihari

Final Decision: Allowed

Judgement

I.A. No. 9 of 2023

1. The present interlocutory application has been filed by the present respondent No. 4/original petitioner under Order XLI Rule 27 of the Code of

Civil Procedure, 1908 with a prayer that he may be permitted to place on record the Letters Patent Appeal by way of additional evidence on record.

2. Heard learned counsel for the applicant/appellant/original respondent No. 4 and the learned counsel appearing for the present opponents and the

original writ petitioner.

3. Learned counsel for the applicant submits that, as per the communication dated 28.11.2023, Dr. Kumar Chandan has not submitted his DNB

Certificate in the college and he was appointed as a Lecturer on the basis of M.B.B.S. Degree. The said fact came to the notice of the present

applicant after disposal of the petition and, therefore, the said documents be permitted to be brought on record. It is further submitted that the appellant

Dr. Kumar Chandan has played fraud and from the document produced, it can be said that he has played fraud. Learned counsel, therefore, urged

that the aforesaid two documents be considered.

4. On the other hand, learned counsel for the present opponents opposed this application by contending that the aforesaid documents were not placed

before the learned Single Judge and, therefore, learned Single Judge has not discussed anything about the said documents. It is further submitted that

now totally new ground is taken by the original opponent No. 4 (the applicant herein). It is further submitted that the applicant may not be allowed to

fill in the lacunae and, therefore, the present application be dismissed.

5. Learned counsel, therefore, urged that this application may not be entertained.

6. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the material placed on

record. It would emerge that one Dr. Sachin Kumar Singh had submitted application under R.T.I. Act, 2005 to the 1st appellate authority and pursuant

to the said application, some communication was addressed to him. The applicant has failed to point out the source of information received by him. It

is not the case of the applicant that he has submitted any application under the R.T.I. Act and he has received the communication with regard to Dr.

Kumar Chandan. It is further revealed from the record that, by way of the present application, now the applicant/original respondent No.4 has tried to

put forward an entirely new story before this Court in appeal. Even, in the present application, the applicant has not alleged any fraud against the

original appellant Dr. Kumar Chandan. The aforesaid two documents suggest that this correspondence was made between Dr. Sachin Kumar Singh

and the appellate authority under the R.T.I. Act.

7. Looking to the facts and circumstances of the present case, we are not inclined to entertain the present application.

8. Accordingly, I.A. No. 9 of 2023 stands dismissed.

L.P.A. No. 318 of 2021 & L.P.A. No. 373 of 2021

Both these appeals have been filed under Clause X of Letters Patent of High Court of Judicature at Patna wherein the concerned appellants have

challenged the order dated 05.03.2021 rendered by learned Single Judge in Civil Writ Jurisdiction Case No. 20694 of 2018 (Dr. Pawan Kumar Vs.

Indira Gandhi Institute of Medical Science & Ors.).

2. As both these appeals are arising out of the common order and the issue in both these appeals is same, the learned counsels appearing for the

parties jointly requested that both these appeals be heard together and be decided by a common order.

3. L.P.A. No. 318 of 2021 has been filed by the original respondent No. 4 Dr. Kumar Chandan whereas L.P.A. No. 373 of 2021 has been filed by

original respondent No. 1 and 2 (Indira Gandhi Institute of Medical Sciences, Patna). At this stage, it is also relevant to note that I.A. No. 9 of 2023

has been filed by the original writ petitioner (opponent No. 4 herein) with a prayer that he may be permitted to produce additional evidence on record.

4. Brief facts leading to the filing of the present appeals are as under:-

4.1. The opponent No. 4 of L.P.A. No. 318 of 2021-original writ petitioner, filed the caption C.W.J.C. No. 20694 of 2019, wherein the petitioner had

prayed for following reliefs:-

Ã¢â‚¬Å“That the petitioner is filing this writ application for issuance of a writ of certiorari to quash and cancel the order of appointment of Respondent No.

3 & 4 dated 19.09.2019 issued under the signature of the Director, Indira Gandhi Institute of Medical Sciences as also for a further writ of Mandamus

commanding the respondents to consider the case of the petitioner for appointment on the post of Assistant Professor pursuant to the Advertisement

No. 04/Faculty/IGIMS/Estt./2018; be further pleased to pass such other order, orders, direction, directions as this HonÃ¢â‚¬â„¢ble Court may deem fit and

proper in the facts and circumstances of the case.Ã¢â‚¬â€‹

4.2. The Indira Gandhi Institute of Medical Sciences, Patna (hereinafter referred as Ã¢â‚¬ËœI.G.I.M.S.Ã¢â‚¬â„¢) published an advertisement No.

04/Faculty/IGIMS/Estt./ 2018 in the year 2018 for, among others, the post of Assistant Professor (Orthopaedics). In total, 4 posts were advertised, 3

posts for U.R. Category and 1 post for S.C. Category. It is the case of the petitioner that he being eligible for appointment on the said post, he was

called for interview on 03.07.2018 but when the result was published on 19.09.2018, the petitioner found his name in the waiting list. Original

respondent No. 3 and 4 were selected for appointment on the post of Assistant Professor (U.R. Category) in Orthopaedics Department. The

petitioner, therefore, filed the petition before this Court challenging the appointment of original respondent No. 3 and 4 on the ground that they have got

lesser qualification and lesser experience as compared to the petitioner but they were appointed.

4.3. The learned Single Judge, after considering the material placed on record and submissions canvassed by the learned counsels for the parties,

allowed the writ petition filed by the original petitioner and thereby appointment of original respondent No. 4 is set aside and original respondent No. 1

and 2 are directed to consider the case of the petitioner for appointment on the post of Assistant Professor (Orthopaedics, I.G.I.M.S. Patna) in

accordance with the law within a period of 3 months from the date of the receipt of the order. Original respondent No. 4 has filed L.P.A. No. 318 of

2021 whereas I.G.I.M.S. has preferred L.P.A. 373 of 2021.

5. Heard learned senior counsel Mr. Y.V. Giri for the appellant in L.P.A. No. 318 of 2021 assisted by Mr. Pranav Kumar, Ms. Shrishti Singh, Mr.

S.D. Yadav assisted by Mr. Sunil Kumar Singh for the I.G.I.M.S., Mr. Santosh Kumar assisted by Mr. Mithilesh Kumar, Ms. Kumari Ruchi and Mr.

Utsav for Respondent No. 3, Mr. Piyush Lal assisted by Mr. Rajnikant Singh, Mr. Rakesh Kumar Singh and Mr. Manish Kumar for Respondent No.

4 and Mr. Bipin Bihari for Respondent No. 5. We have also heard Mr. S.D. Yadav in L.P.A. No. 373 of 2021 assisted by Mr. Sunil Kumar Singh,

Mr. Santosh Kumar assisted by Mr. Mithilesh Kumar, Ms. Kumari Ruchi and Mr. Utsav for Respondent No. 1, Mr. Y.V. Giri assisted by Mr. Pranav

Kumar and Ms. Shrishti Singh for Respondent No. 2 and Mr. Piyush Lal assisted by Mr. Rajnikant Singh, Mr. Rakesh Kumar Singh and Mr. Manish

Kumar for Respondent No. 3.

6. Learned counsels appearing for the concerned appellants have mainly contended that the writ petitioner, having participated in the recruitment

process, be precluded from raising objections on the selection process, method of selection adopted and its outcome. In support of the said contention,

learned counsels have placed reliance upon the decisions rendered by the HonÃ¢â‚¬â„¢ble Supreme Court in the case of Ramesh Chandra Shah & Ors.

Vs. Anil Joshi & Ors., reported in (2013) 11 SCC 309. It is also submitted that when the expert committee consisting of distinguished experts in the

field have made recommendation, due consideration should be shown to the said recommendation as the experts are more familiar with the

technicalities/nature of the work. It is further submitted that only when the assessment is actuated with malice or bristols with malafides or

arbitrariness, the CourtsÃ¢â‚¬â„¢ may interfere. It is submitted that, in the present case, the writ petitioner has not made these allegations nor has there

been any findings on these issue in the impugned judgment. Thus, when no grievance had been raised against the constitution of the expert committee

and no malafides have been levelled against any member of the selection committee, CourtsÃ¢â‚¬â„¢ should be slow to interfere with the opinions

expressed by the experts. In support of these contentions, learned counsels have placed reliance upon following decisions:-

(i) Sajeesh Babu K. Vs. N.K. Santhosh & Ors., reported in (2012) 12 SCC 106.

(ii) Union Public Service Commission Vs. M. Sathiya Priya & Ors., reported in (2018) 15 SCC 796.

(iii) Basavaiah Vs. Dr. H.L. Ramesh & Ors., reported in (2010) 8 SCC 372.

7. Learned counsels appearing for the appellants would thereafter submit that it is not the function of the Courts to sit in the appeal over the decision

of the selection committee and to scrutinize the relative merits and demerits of the candidates as the Court had 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 mala fides. Setting aside selection on the ground of the so-called comparative merits of the candidates,

as assessed by the Court in the present case, is wrong and exceeds jurisdiction. In support of these contentions, learned counsels have placed reliance

upon the decision rendered by the HonÃ¢â‚¬â„¢ble Supreme Court in the case of Dalpat Abasaheb Solunke & Ors. Dr. B.S. Mahajan & Ors., reported in

(1990) 1 SCC 305.

8. Thereafter, it has been contended that though the learned Single Judge had observed that the process of appointment, opinion of expert committee

and criteria to be fixed during the process of appointment are not in dispute, yet the allotment of merits has been examined by this HonÃ¢â‚¬â„¢ble Court

like an appellate authority of expert committee or like an examiner of marks, which is contrary to the established principle of the scope of judicial

review.

9. It is also contended that there is no allegation of arbitrariness levelled by the writ petitioner against the selection committee nor any such finding is

recorded in the impugned judgment and, therefore, also the impugned order is required to be quashed and set aside.

10. It is further submitted that the advertisement prescribed only the essential qualification, vesting discretion in the selection committee to fix the

criteria over and above the minimum stipulated qualification in the advertisement. This was reflected in the application form, interview letter and

calculation sheet prepared at the time of the interview. When a committee comprising of experts was constituted which scrutinized the merits and

demerits of each candidate, it was erroneous to sit in an appeal over this decision of the expert committee. At this stage, it is also submitted that

neither did the advertisement nor the application form restricted the discretion of the expert committee to review documents certifying qualifications of

the candidates. Thus, even documents not necessarily mentioned in the application form but relevant to ascertaining the qualification of the candidate

could be evaluated by the committee at the time of interview to judge the suitability of the candidate for the post which is in public interest. Since the

advertisement, application form, interview letter, I.G.I.M.S. Rules recognized the discretion of the selection committee, it was erroneous to create an

artificial bar by treating the details furnished in the application form as the sole information to be relied on while allotting the marks. At this stage, it is

also submitted that there has been an erroneous superimposing of judicial understanding on the selection criteria in determining what journal papers

were eligible for consideration by the selection committee. In doing so, the calculation was restricted to papers of the appellant Dr. Kumar Chandan

mentioning the application form while recognizing 9 papers of the writ petitioner. It is also submitted that the advertisement as well as the application

form stipulated that the candidate should make a power-point presentation on the journal papers. Accordingly, the appellant Dr. Kumar Chandan

presented 5 papers which was rightfully considered by the selection committee in its discretion. It is clarified that the said appellant mentioned best of

2 papers in the application form as there was a limited space provided in Column at Serial No. 10 in the form. It was also clarified that unlike Serial

No. 10, in Serial No. 11, it was clearly specified that if the space provided is insufficient, then the details should be given in a separate sheet.

10.1. Thereafter, it is contended that the discretion of the selection committee is also reflected in reading of the application form along with the

interview letter. While the application form did not mention papers presented in the power-point conference, in the interview letters to all the short-

listed candidates, certificates for such papers were also sought giving an equal opportunity and notice to all such candidates. Further, it is submitted

that in observing that for a teaching post, a P.G. Degree holder should be preferred over a D.N.B. Degree holder, the selection criteria has been

effectively reviewed which is not permissible. It is also submitted that there is no finding in the impugned judgment that the appellant Dr. Kumar

Chandan has deliberately or mistakenly contributed towards discrepancies, if any, in the selection process. In fact, not fault is attributable to the said

appellant in the entire process and, therefore, since a right had accrued in favour of the appellant who has been discharging duties as Assistant

Professor (Orthopedics) since 2018, he should not be deprived and punished after a lapse of 5 years.

11. Alternatively, it has been submitted that even if there were certain discrepancies in the selection process, at the best, the matter may have been

remanded to the original respondent I.G.I.M.S. for reconsideration by the selection committee. Re-calculation of marks of 3 candidates and

recommendation of the writ petitioner for consideration by the original respondent authority was judicial overreach which has caused grave prejudice

to the appellant Dr. Kumar Chandan. It is submitted that several other candidates had applied to the posts and re-assessment by the expert committee,

if any, of the marks allotted to all the candidates and not merely to three candidates would only confirm the merits of the candidates who had applied

for the post. It is submitted that in the case of Baidyanath Yadav Vs. Aditya Narayan Roy & Ors. reported in (2020) 16 SCC 799, the HonÃ¢â‚¬â„¢ble

Supreme Court issued a direction to the selection committee to re-assess the names of all candidates by giving due consideration to all relevant

documents instead of calculating the marks itself.

12. Learned senior counsel appearing for the present respondent No. 3 in L.P.A. No. 318 of 2021 i.e. Dr. Nishant Kashyap has mainly submitted that

the original writ petitioner has not challenged the preparation of the merit list on the basis of the selection procedure but confined the challenge to the

criteria for awarding of marks. The selection of Dr. Nishant Kashyap to the post of Assistant Professor was not disturbed by the impugned order

passed by the learned Single Judge and the appointment of appellant in L.P.A. No. 318 of 2021 was set aside. Therefore, Dr. Nishant Kashyap has

not separately filed the Letters Patent Appeal. It is contended that the Court should be extremely reluctant to substitute its own view as to what is

wise, prudent and proper in relation to the recommendations of the selection committee comprising of professional men possessing technical expertise

and rich experience of actual day to day working of medical institutions and hospitals. It is further submitted that in the case of Neelima Mishra Vs.

Harinder Kaur Paintal & Ors. reported in (1990) 2 SCC 746, the HonÃ¢â‚¬â„¢ble Supreme Court has observed that in the matter of appointments in the

educational field, the Court generally does not interfere. It has been further observed that High Court should show due regard to the opinion expressed

by the experts constituting the selection committee and its recommendation. At this stage, learned counsel has also submitted that the Court while

exercising the powers of judicial review cannot step into the shoes of selection committee or assume an appellate role to examine whether the marks

awarded by the selection committee are excessive and not corresponding to their performance in the interview. The assessment and evaluation of the

performance of the candidates appearing before the selection committee should be best left to the members of the committee. It is also submitted that

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 mala fides affecting the selection etc. In support of the said contention, learned

counsels has placed reliance upon the decision rendered in the case of Dalpat Abasaheb Solunke & Ors. Vs. Dr. B.S. Mahajan & Ors. (supra).

13. Learned senior counsel would further submit that in the absence of systematic irregularities which denudes the legitimacy of the selection exercise,

the entire selection cannot be set aside. It was within the exclusive domain of the expert committee to decide whether more marks should be assigned

to the candidates or not and, hence, it cannot be the subject-matter of an attack before a Writ Court. It is also contended that when a selection

committee recommends the selection of a person, the same cannot be presumed to have been done in an erroneous or mechanical manner in absence

of any allegation of favoritism or bias that a presumption arises as regards the correctness of the decision of a selection committee and the party who

makes the allegation of a bias or favoritism is required to prove the same. Thus, in the absence of mala fides against the members, the selection by a

selection committee cannot be doubted. In support of the said contention, learned senior counsel has placed reliance upon the decision rendered by the

HonÃ¢â‚¬â„¢ble Supreme Court in the case of Union of India & Ors. Vs. Bikash Kuanar reported in (2006) 8 SCC 192.

14. Thereafter, it has been submitted that the contention of the writ petitioner with regard to the attack on Column (V) and (VII) of evaluation sheet is

essentially an attack on subjective criteria employed by the selection committee in assessing the suitability of candidates. He submitted that the said

contention is untenable since the assessment and evaluation should be best left to the members of the selection committee.

15. Lastly, it has been submitted that the contention of the writ petitioner to the effect that the case is based on admitted facts is also not correct and

the same is misleading. In absence of clear, unambiguous and unconditional admission of the present respondent No. 1 Dr. Nishant Kashyap, the claim

of the writ petitioner cannot be said to be admitted. Learned counsel has referred Section 17 of the Evidence Act which defines admission. Learned

counsel, therefore, urged that the learned Single Judge committed an error while passing the impugned order and, therefore, the same is required to be

quashed and set aside.

16. Learned counsel appearing for the respondent No. 4 in L.P.A. No. 318 of 2021 (Original Writ Petitioner - Dr. Pawan Kumar) has contended how

the selection committee has awarded more marks to the present appellant and respondent No. 3 and how the respondent No. 4 was awarded less

marks wrongly by the said committee. Learned counsel has referred Column No. (V), (VI), (VII), (VIII) and (IX) of the evaluation sheet and

thereafter pointed out in detail that the selection committee has committed an error by giving more marks to the original private respondents and less

mark was awarded to the original writ petitioner. It is submitted that, therefore, the learned Single Judge as rightly quashed the appointment of the

appellant of L.P.A. No. 318 of 2021, who was the original respondent No. 4, in the writ petition. It is further submitted that as there were two posts in

which the direction was given to original respondent to consider the case of the original writ petitioner, the appointment of respondent No. 1 i.e. Dr.

Nishant Kashyap has not been disturbed by the learned Single Judge. However, it is submitted that the said private respondent has not challenged the

findings recorded by the learned Single Judge by filing separate appeal. It is further submitted that out of 100 marks, 25 marks are allocated for

interview, whereas 75 marks are allocated under different heads i.e. Column No. (III) to Column No. (IX) of the evaluation sheet. It is submitted that

for Column (III) to Column (IX) objective satisfaction of the selection committee is required, whereas for the interview, subjective satisfaction of the

selection committee is to be considered. It is submitted that the petitioner has challenged the subjective satisfaction of the selection committee while

awarding less marks to the petitioner and awarding more marks to the original private respondents and, therefore, the learned Single Judge has gone

into the said objective satisfaction of the selection committee which is, in fact, work of the said committee which is of an administrative nature and

when the learned Single Judge has found irregularity in awarding marks by the selection committee, learned Single Judge has quashed the appointment

of the Dr. Kumar Chandan and direction has been issued to the original respondent authorities to consider the case of the original writ petitioner for

the appointment. At this stage, it is pointed out that a separate I.A. has been filed by the original writ petitioner in the present appeals on the ground

that the appellant Dr. Kumar Chandan has committed fraud for obtaining the appointment for which he was, in fact, not eligible. Learned counsel has

referred the averments made in the said application which is filed for producing additional evidence. Learned counsel has urged that the separate I.A.

filed by the original writ petitioner for producing additional evidence be allowed as the fraud vitiates everything. It is submitted that the said fraud was

noticed by the original writ petitioner after filing of the appeals and when the appellant Dr. Kumar Chandan has obtained the appointment by fraud, his

appointment is required to be set aside. Learned counsel, therefore, urged that both these appeals be dismissed.

17. Learned counsel appearing for the appellant Dr. Kumar Chandan has submitted that the I.A. filed by the original writ petitioner in the present

proceeding is not tenable and may not be entertained. It is further submitted that powers under Order 41 Rule 27 of the Civil Procedure Code can be

exercised in exceptional circumstances and when the original writ petitioner has filed such application at this belated stage, this Court may not

entertain the same. It is also submitted that before Learned Single Judge, such contention was not taken, hence, Learned Single Judge has not gone

into that aspect.

18. Having heard learned counsels appearing for the parties and having gone through the material placed on record, it would emerge that the original

writ petitioner challenged the appointment of original private respondents and it was also prayed that writ of mandamus be issued commanding the

respondent authorities to consider the application of petitioner for appointment on the post of Assistant Professor in pursuance to the advertisement in

question. It is required to be noted that, at this stage, the petitioner did not challenge the merits/selection list and only raised grievance about the

appointment of the private respondents. From the order impugned, passed by the learned Single Judge, it is revealed that the learned Single Judge has

minutely examined the merits and demerits of the original petitioner and of private respondents and thereafter recorded findings that under a particular

head, the selection committee ought to have awarded particular marks to the petitioner and ought not to have given marks to the original private

respondents under particular heads. Thus, the learned Single Judge has sit in an appeal over the decision of the selection committee by carrying out the

aforesaid exercise. Thus, in the present appeals, we have to consider whether the course adopted by the learned Single Judge in carrying out such

exercise in detail is in accordance with the law laid down by the HonÃ¢â‚¬â„¢ble Supreme Court or not.

19. At this stage, we would like to refer the decisions upon which the reliance is placed by the learned counsels for the parties. In the case of Union

Public Service Commission Vs. M. Sathiya Priya & Ors. (supra), the HonÃ¢â‚¬â„¢ble Supreme Court has observed in Paragraph 17-22 as under:-

Ã¢â‚¬Å“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.

18. We are conscious of the fact that the expert body's opinion may not deserve acceptance in all circumstances and hence it may not be

proper to say that the expert body's opinion is not subject to judicial review in all circumstances. In our constitutional scheme, the decision

of the Selection Committee/Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous

consequence and one must remind oneself of the famous words of Lord Acton Ã¢â‚¬Å“Power tends to corrupt, and absolute power corrupts

absolutelyÃ¢â‚¬. The aforementioned principle has to be kept in mind while deciding such cases. However, in the matter on hand, it is

abundantly clear from the affidavit filed by UPSC that the Selection Committee which is nothing but an expert body had carefully examined

and scrutinised the experience, Annual Confidential Reports and other relevant factors which were required to be considered before

selecting the eligible candidates for IPS. The Selection Committee had in fact scrutinised the merits and demerits of each candidate taking

into consideration the various factors as required, and its recommendations were sent to UPSC. It is the settled legal position that the courts

have to show deference and consideration to the recommendations of an Expert Committee consisting of members with expertise in the field,

if malice or arbitrariness in the Committee's decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not

supposed to convert tribunals and courts into appellate authorities over the decision of experts. The constraintsÃ¢â‚¬"self-imposed,

undoubtedlyÃ¢â‚¬"of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become

rudderless.

19. No doubt, the Selection Committee may be guided by the classification adopted by the State Government but, for good reasons, the

Selection Committee may evolve its own classification which may be at variance with the grading given in the Annual Confidential Reports.

As has been held by this Court in UPSC v. K. Rajaiah [UPSC v. K. Rajaiah, (2005) 10 SCC 15 : 2005 SCC (L&S) 738] , the power to

classify as Ã¢â‚¬Å“OutstandingÃ¢â‚¬, Ã¢â‚¬Å“Very GoodÃ¢â‚¬, Ã¢â‚¬Å“GoodÃ¢â‚¬ and Ã¢â‚¬Å“UnfitÃ¢â‚¬ is vested with the Selection Committee. That is a function

incidental to the selection process. The classification given by the State Authorities in the Annual Confidential Reports is not binding on the

Selection Committee. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is

desirable that in a case of grading at variance with that of the State Government, reasons be recorded. But having regard to the nature of

the function and the power confined to the Selection Committee underÃ, Regulation 5(4), it is not a legal requirement that reasons should be

recorded for classifying an officer at variance with the State Government's decision. It is relevant to note that no allegations of malice or

bias are made by the first respondent at any stage of the proceedings against the Selection Committee or UPSC.

20. This Court has repeatedly observed and concluded that 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 or an umpire to examine

the recommendations of the Selection Committee like a court of appeal. This discretion has been given to the Selection Committee only, and

the courts rarely sit as a court of appeal to examine the selection of a candidate; nor is it the business of the court to examine each

candidate and record its opinion. Since the Selection Committee constituted by UPSC is manned by experts in the field, we have to trust their

assessment unless it is actuated with malice or bristles with mala fides or arbitrariness.

21. In Union of India v. A.K. Narula [Union of India v. A.K. Narula, (2007) 11 SCC 10 : (2008) 1 SCC (L&S) 656] , this Court in similar

circumstances observed thus: (SCC p. 17, para 15)

Ã¢â‚¬Å“15. The guidelines give a certain amount of play in the joints to DPC by providing that it need not be guided by the overall grading

recorded in CRs, but may make its own assessment on the basis of the entries in CRs. DPC is required to make an overall assessment of the

performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of

assessment is vitiated either on the ground of bias, mala fides or arbitrariness, that the selection calls for interference. Where DPC has

proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no

arbitrariness in the process of assessment by DPC, the court will not interfere (vide SBI v. Mohd. Mynuddin [SBI v. Mohd. Mynuddin,

(1987) 4 SCC 486 : 1987 SCC (L&S) 464] , UPSC v. Hiranyalal Dev [UPSC v. Hiranyalal Dev, (1988) 2 SCC 242 : 1988 SCC (L&S) 484]

and Badrinath v. State of T.N. [Badrinath v. State of T.N., (2000) 8 SCC 395 : 2001 SCC (L&S) 13]). The Review DPC reconsidered the

matter and has given detailed reasons as to why the case of the respondent was not similar to that of R.S. Virk. If in those circumstances, the

Review DPC decided not to change the grading of the respondent for the period 1-4-1987 to 31-3-1988 from Ã¢â‚¬Å“goodÃ¢â‚¬ to Ã¢â‚¬Å“very

goodÃ¢â‚¬, the overall grading of the respondent continued to remain as Ã¢â‚¬Å“goodÃ¢â‚¬. There was no question of moving him from the block of

officers with the overall rating of Ã¢â‚¬Å“goodÃ¢â‚¬ to the block of officers with the overall rating of Ã¢â‚¬Å“very goodÃ¢â‚¬ and promoting him with

reference to DPC dated 13-6-1990. In the absence of any allegation of mala fide or bias against DPC and in the absence of any

arbitrariness in the manner in which assessment has been made, the High Court [A.K. Narula v. Union of India, 2005 SCC OnLine P&H

1162 : (2005) 5 SLR 215] was not justified in directing that the benefit of upgrading be given to the respondent, as was done in R.S.

Virk.Ã¢â‚¬â€‹

22. In M.V. Thimmaiah v. UPSC [M.V. Thimmaiah v. UPSC, (2008) 2 SCC 119 : (2008) 1 SCC (L&S) 409] , this Court, after considering

various judgments on the subject, observed thus: (SCC pp. 135-36, para 30)

Ã¢â‚¬Å“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. Ã¢â‚¬Â¦Ã¢â‚¬â€‹

20. In the case of Baidyanath Yadav Vs. Aditya Narayan Roy & Ors. (supra), the HonÃ¢â‚¬â„¢ble Supreme Court has observed in Paragraph-

4,4.1.,4.2.,4.3 & 10 as under:-

Ã¢â‚¬Å“4. At the heart of the dispute before us for consideration lies the scope of judicial review of the process governing the selection of non-

SCS officers to IAS, for which it is important to take stock of the position governing judicial review of selections made by a duly constituted

expert body.

4.1. It is by now well settled that the scope of such review is limited, and the tribunal or court cannot reassess the merit of the individual

candidates. As observed by a two-Judge Bench of this Court in M.V. Thimmaiah v. UPSC [M.V. Thimmaiah v. UPSC, (2008) 2 SCC 119 :

(2008) 1 SCC (L&S) 409] : (SCC p. 131, para 21)

Ã¢â‚¬Å“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.Ã¢â‚¬â€‹

4.2. This view has subsequently been affirmed by this Court in various decisions, including the recent decision of a two-Judge Bench of this

Court in M. Sathiya Priya [UPSC v. M. Sathiya Priya, (2018) 15 SCC 796 : (2019) 1 SCC (L&S) 146] , of which one of us was a member.

In this decision, this Court, while setting aside the reassessment undertaken by the Tribunal and the High Court [UPSC v. M. Sathiya Priya,

WP No. 15367 of 2010, order dated 24-6-2013 (Mad)] of the recommendations made by the Selection Committee to UPSC for appointments

to be made to the Indian Police Service by promotion, observed as follows: (SCC p. 812, para 17)

Ã¢â‚¬Å“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 [UPSC v. M. Sathiya Priya, WP No. 15367 of 2010, order

dated 24-6-2013 (Mad)] 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.Ã¢â‚¬â€‹

4.3. It can be concluded from the above that it was not for the High Court to address questions of comparative merit of the candidates, and

neither is it appropriate for us to do the same. All we may look into is whether there was any serious violation of statutory rules, or any bias,

mala fides or arbitrariness in the entire selection process. To address this question, it is essential to revisit the process prescribed for the

selection of non-SCS officers to IAS.

10. In any case, we find that the direction [Aditya Narayan Roy v. Union of India, 2018 SCC OnLine Pat 6164] issued by the High Court

directing the State Screening Committee to recommend Respondent 1's name to UPSC was completely without jurisdiction. Upon reaching a

finding of arbitrariness in the selection process, the Court could at the most have issued a direction to the State Screening Committee to

reassess the names of all candidates by giving due consideration to all relevant documents. As already observed above, it was not for the

Court to sit in judgment over the merit of the candidates and substitute its reasoning for that of the Screening Committee. Be that as it may,

in light of the above discussion, we conclude that there is no case to direct the reconsideration of the seventeen candidates before the

Screening Committee, or to interfere with the appointments already made for the selection year 2014.Ã¢â‚¬‹

21. In the case of Basavaiah (Dr.) Vs. Dr. H.L. Ramesh & Ors. (supra), the HonÃ¢â‚¬â„¢ble Supreme Court has observed in Paragraph 13, 20, 21 and

38 as under:-

Ã¢â‚¬Å“13. The Committee appointed by the University thoroughly scrutinised the qualification, experience and published works of both the

candidates and made its unanimous recommendations in favour of their appointments. The University also clearly stated that the

appointments of the appellants were made in consonance with the terms of the provisions of the Act. Admittedly, for the selections to the post

of Readers, an Expert Committee was constituted and thereafter, its recommendations were accepted by the University and orders issued

accordingly. No one had any grievance so far as the constitution of the Expert Committee was concerned and no mala fides have been

levelled against any member of the Expert Committee.

20. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinised the

qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our

considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee

consisting of five experts. The Expert Committee had in fact scrutinised the merits and demerits of each candidate including qualification

and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the

University.

21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee

consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published

work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not

to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a

very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would

normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the

courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its

constraints and limitations in academic matters.Ã¢â‚¬â€‹

22. In the case of Dalpat Abasaheb Solunke & Ors. Vs. Dr. B.S. Mahajan & Ors. (supra), the HonÃ¢â‚¬â„¢ble Supreme Court has observed in

Paragraph 11 & 12 as under:-

Ã¢â‚¬Å“11. The next reason given by the High Court for setting aside both the appointments is that the appellants were comparatively less

meritorious. This is what the High Court has stated on the point in paragraphs 17 and 18 of its judgment:

17. Ã¢â‚¬Å“A bare look at bio-data at Ex. B and scrutiny statement, it would unmistakably indicate that except respondent 7 all were duly

qualified and eligible to be considered for the post of Chief Extension Education Officer and Deputy Director, Central Farm for short

duration.Ã¢â‚¬â€‹

18. Ã¢â‚¬Å“Coming to the comparative merits as disclosed in bio-data Ex. B, the correctness which was not disputed by any respondent, it is

clear that as many as four candidates including the petitioner in WP 3363 of 1981 were eligible to be considered/appointed as Chief

Extension Education Officer but for the reasons best known to the University why no attempt whatsoever was made on the part of the

University to advertise the said post between 1975 and 1980. The comparative table of merits at Ex. B unmistakably indicates that the

petitioner was M.Sc. First Class and he was working as Agricultural Supervisor from July 8, 1959 to April 18, 1963; as Agricultural Officer

from April 19, 1963 to May 12, 1968; as Lecturer from May 13, 1968 to August 13, 1970; as Reader from June 1, 1971 onwards and at the

relevant time i.e. in the year 1980 he was Associate Professor. As against this respondent 7 has completed his M.Sc by Research and claims

to have earned 3.81 points which according to him was a First Class. He was Agricultural Officer from March 28, 1971 to May 31, 1973, ...

from May 31, 1973 to July 14, 1975, as Superintendent from May 15, 1975 to June 11, 1978 and as Assistant Professor from June 14, 1978

onwards in the pay scale of Rs 700-1600. As against this the petitioner was Reader from May 1, 1971 and it was not disputed that the

Reader's post was higher in cadre and pay scale to the Assistant Professor. As stated earlier even the other candidates who were serving in

the University were also eligible as they had put in more than 5 years service after post-graduation (M.Sc.). It is in this context we have to

consider the advertisement for filling the vacancies that was issued in the year 1980....Ã¢â‚¬‹

12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their

appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the

Selection Committee and to embark upon deciding the relative merits of the candidates. 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 scrutinize the relative merits of the candidates. Whether a

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 vitiat- ing the selection, or proved mala fides

affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the

relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In

sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as

assessed by the court, the High Court went wrong and exceeded its jurisdiction.Ã¢â‚¬‹

23. In the case of Om Prakash Poplai and Rajesh Kumar Maheshwari Vs. Delhi Stock Exchange Association Ltd. & Ors. reported in (1994) 2 SCC

117, the HonÃ¢â‚¬â„¢ble Supreme Court has observed in Paragraph 5 as under:-

Ã¢â‚¬Å“5. It is significant to note that the selection of members by the Expert Committee had to be done on the basis of objective criteria taking

into consideration experience, professional qualifications and similar related factors. In the present case, 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 that 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 two members nominated

by the Central Government it is difficult to accept the contention that they acted in an unreasonable or arbitrary fashion. The constitution of

the Expert Committee itself shows that Shri Bansal was not in a position to influence the other members of the Committee so as to tilt the

balance in favour of the members of his fraternity, that is, the Chartered Accountants. The allegation that as many as 69 selected persons

who were Chartered Accountants found their way in the select list merely because Shri R.N. Bansal was a Chartered Accountant and

favoured persons belonging to his fraternity must be rejected for want of reliable material on record. It is true that amongst the Chartered

Accountants selected by the Expert Committee there are those who had passed in 1985, 1987 and 1988, as for example, Mahesh Chand

Gupta, Satish Kumar Chhabra, Anup Jain, Ashok Gupta, Arun Kumar and Shyam Lal Sharma. Merely because a large number of Chartered

Accountants were selected and merely because some of them had recently qualified is no ground to set aside the selection. The respondents

have rightly emphasised that since Chartered Accountants had special knowledge of the working of financial institutions and the mechanics

of public issue of shares as well as dealings with the Controller of capital issues, etc., they could fare better at the interview, being abreast

with law, guidelines and policies of the Central Government in this behalf. So also, merely because the petitioner/appellant had past

experience of Stock Exchange working and was a highly educated person is no ground to doubt the integrity of the members of the Expert

Committee and their selection. It must be realised that the majority marks were given on the basis of the objective criteria and the interviews

were arranged to ascertain the knowledge of the candidates in regard to current developments in the field of capital issues, bonus issues,

shareholder service and the like. It must not be forgotten that the court's role in such matters is limited and it does not function as an

appellate authority over the selection done by an expert body unless it is shown by cogent and convincing evidence that the selection was

biased, capricious, whimsical or arbitrary. General allegations of the type made cannot, in our opinion, nullify the selection process unless

concrete facts are established to show that the members of the Expert Committee had at the behest of Shri Bansal favoured the Chartered

Accountants. Similarly, it must be shown that the members of the Expert Committee were biased against the petitioner/appellant; however,

none could be pointed out by counsel. We, therefore, find it difficult to uphold the contention of the petitioner/appellant in this behalf.

Insofar as Smt Nirmala's selection is concerned we think her explanation is quite satisfactory. Similarly, so far as the petitioner Kamlesh

Kumar Jain is concerned he too has not laid any foundation, besides stating his educational qualifications and past experience, to enable

this Court to doubt the selection process. His request for enhancing the number of members is not a matter in regard to which this Court

would like to issue a mandate. It is a matter of policy which, as we have pointed out earlier, was worked out carefully after extended

correspondence between the Delhi Stock Exchange and the Central Government and in such matters of policy this Court is always reluctant

to interfere.Ã¢â‚¬â€‹

24. In the case of Sadananda Halo & Ors. Vs. Momtaz Ali Sheikh & Ors. reported in (2008) 4 SCC 619, the HonÃ¢â‚¬â„¢ble Supreme Court has held in

Paragraph 65 as under:-

Ã¢â‚¬Å“65. We also do not approve of the approach adopted by the learned Single Judge of the High Court as going all the way into the facts

and the microscopic details not via the pleadings of the parties but on the basis of an unnecessary investigation. We also disapprove of the

logic of relying on the findings arrived at only on the basis of sample survey. Such selection of large number of candidates could not have

been set aside on the basis of sample survey. No evidence was available before us as to the proportion of this so-called Ã¢â‚¬Å“sample

surveyÃ¢â‚¬â€‹.Ã¢â‚¬â€‹

25. In the case of Srinivas K. Gouda Vs. Karnataka Institute of Medical Sciences & Ors. reported in (2022) 1 SCC 49, the HonÃ¢â‚¬â„¢ble Supreme

Court has observed in Paragraph 25, 25.1, 25.2 & 26 as under:-

Ã¢â‚¬Å“25. The Division Bench of the High Court set aside [Ramesh v. Karnataka Institute of Medical Sciences, 2017 SCC OnLine Kar 6516]

the appointment of the appellant on two grounds:

25.1.First, the marks provided for candidates at the interview and for experience category were held to be arbitrary. To arrive at this

conclusion, the Division Bench referred to the entire select list and found alleged discrepancies in the allotment of the marks for experience

and a pattern where all the selected candidates were given higher marks for experience and at the interview.

25.2. Second, the Division Bench held that the advertisement issued by the first respondent did not mention the criterion of work experience

but only provided the minimum educational qualifications. Thus, it held that the rules of the game were changed after the process had

started. The appointment of the appellant was set aside by the Division Bench by finding that the additional selection criteria devised and

the marks provided in those criteria were arbitrary. As observed earlier, the selection list was not challenged by the respondent. His only

ground for challenge was that he had to be selected since he was Ã¢â‚¬Å“more meritoriousÃ¢â‚¬ as he had better qualifying marks. Therefore,

determining the legality of the selection list and perusing the entire selection list to determine whether the selection of the appellant was

arbitrary was erroneous as the Division Bench transgressed the limits of challenge in the writ petition.

26. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court of Karnataka dated 31-

3-2017 [Ramesh v. Karnataka Institute of Medical Sciences, 2017 SCC OnLine Kar 6516] .

Pending application(s), if any, stand disposed of.Ã¢â‚¬â€‹

26. In the case of Bedanga Talukdar Vs. Saifudaullah Khan & Ors. reported in (2011) 12 SCC 85, the HonÃ¢â‚¬â„¢ble Supreme Court has observed in

Paragraph 29 & 32 as under:-

Ã¢â‚¬Å“29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all

appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no

arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly

in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same

has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is

specifically reserved. Such a power could be reserved in the relevant statutory rules.

Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules,

it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be

necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and

compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in

Articles 14 and 16 of the Constitution of India.

32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the

facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement

unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the

rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our

notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent 1 on the

basis of identity card submitted after the selection process was over, with the publication of the select list.Ã¢â‚¬â€‹

27. In the case of Biju K.K. Vs. Cochin University of Science and Technology, Kochi & Ors. reported in (2022) 8 SCC 349, the HonÃ¢â‚¬â„¢ble

Supreme Court has observed in Paragraph 2, 4, 7 & 8 as under:-

Ã¢â‚¬Å“2. That the appellant hereinÃ¢â‚¬"original writ petitioner was serving as Technical Assistant Grade II on daily wages in the School of

Engineering under the Cochin University of Science and Technology. That he was continued in service as daily wager by giving periodical

breaks. Thereafter he applied for the post of Technical Assistant Grade II in terms of Notification dated 24-7-2010 issued by the respondent

University. He was placed much below in the rank list as he was awarded less marks on experience ignoring his earlier services rendered

as daily wager. Therefore, he approached the High Court by way of Writ Petition No. 27538 of 2012. All the other employees in the rank

list were also made party to the writ petition.

4. So far as the case of the writ petitioner is concerned, the learned Single Judge was of the opinion that as the Selection Committee has

followed certain criteria and forwarded the same in respect of all the candidates awarding the marks on experience, cannot be said to be

arbitrary and it is not open for the Court to exercise the power under judicial review and decide otherwise. That it was submitted on behalf

of the writ petitioner that even the 6th respondent was not having the requisite qualification and was not fulfilling the eligibility criteria as

he was not having the experience in the Computer Science Lab. The learned Single Judge again observed that the Selection Committee

found that the experience certificate submitted by Respondent 6 did satisfy the criteria, and there was no reason to interfere with the same.

7. It is required to be noted that what was challenged was the decision of the Selection Committee and therefore, the High Court was not

justified in not deciding the same on merits on the ground that when the Selection Committee has taken a decision, in exercise of powers

under judicial review, the High Court is not required to interfere with the same. Under the circumstances to the aforesaid extent the matter

has to be remanded to the learned Single Judge.

8. In view of the above and for the reason stated above, the present appeal succeeds in part. The impugned judgment and order passed by

the Division Bench and the learned Single Judge are hereby quashed and set aside. The matter is remitted to the learned Single Judge to

consider the writ petition afresh on whether the Selection Committee was justified in awarding the marks on experience ignoring the

services rendered by the appellant as daily wager and also whether Respondent 6 was fulfilling the requisite eligibility criteria as per the

advertisement, namely, Ã¢â‚¬Å“Ist Class Diploma in Computer Science and 3 years' experience in respective laboratories of Engineering

Colleges/UniversitiesÃ¢â‚¬â€‹.Ã¢â‚¬â€‹

28. In the case of Dipitimayee Parida Vs. State of Orissa & Ors. reported in (2008) 10 SCC 687, the HonÃ¢â‚¬â„¢ble Supreme Court has observed in

Paragraph 4, 7, 11 & 14 as under:-

Ã¢â‚¬Å“4. A Circular Letter dated 7-10-1998 was furthermore issued by the WECD Department of the Government of Orissa for selection of

Anganwadi workers laying down minimum educational qualifications and as also other criteria therefor; the relevant clause whereof reads

as under:

Ã¢â‚¬Å“8. Candidates who have been included in the panel mentioned above, will be called for an interview and marks will be awarded to them

in the following manner:

(a) Percentage of marks obtained in the matriculation examination or percentage of marks obtained in the written test for non-matriculates

as may be relevant.

(b) 3 marks if the candidate is intermediate or equivalent or has higher qualification.

(c) 5 marks if the candidate belongs to SC and ST categories.

(d) 3 marks if she is married and additional 3 marks if she is a widow or a divorcee (i.e. where marriage has been dissolved by a court

decree) provided she resides in that village.

(e) Marks to be awarded for experience out of a maximum of 5. The experience relevant for this purpose will be experiences in any area of

the duties of Anganwadi worker acquired in government employment or in employment in a programme under a registered voluntary

organisation funded by the State/Central Government for this purpose.

(f) Marks obtained in the interview which will be out of a maximum of 10 marks.

Note.Ã¢â‚¬"Marks awarded to candidate in accordance with sub-clauses (a) to (e) shall be notified prior to holding of interview.Ã¢â‚¬â€‹

7. Respondent 5 also filed an application for her recruitment as an Anganwadi worker. She secured 49.8% marks in HSC examination + 3

marks in intermediate + 3 marks for marriage + 2 marks for viva voce examination, thus, totalling 57.8% marks.

11. The matter relating to recruitment of Anganwadi workers is not governed by any statute. Recruitments are made pursuant to a scheme

framed by the Central Government. The State, therefore, while making recruitments in such projects in exercise of its jurisdiction under

Article 162 of the Constitution of India, may issue such guidelines and/or circulars as it may deem fit and proper. The said guidelines are

ordinarily binding on all the functionaries working in terms of the Ã¢â‚¬Å“schemeÃ¢â‚¬ including the Selection Committees constituted for the

recruitment of Anganwadi workers.

14. We had adverted to this aspect of the matter so as to enable us to consider the submissions made by Mr Pradhan that the criterion of

one's marital status was not relevant. It is one thing to say that the criteria fixed by the State for the purpose of the recruitment of

Anganwadi workers are illegal or ultra vires but it is another thing to say that although they are valid, in their application some relaxation

could be granted. When marks are fixed specifying the criteria in the rule, the same should be strictly followed. The Selection Committee was

not conferred with any power to grant relaxation. Stages for grant of marks having been fixed; one committee could not usurp the

jurisdiction of the other. If the contention of the respondents is correct, then, for all intent and purport, the marks awarded by the

interviewing committee to the appellant would be 12 out of 10, which was impermissible.Ã¢â‚¬â€‹

29. In the case of Tajvir Singh Sodhi & Ors. Vs. The State of Jammu and Kashmir & Ors. reported in 2023 LiveLaw (SC) 253, the HonÃ¢â‚¬â„¢ble

Supreme Court has observed in Paragraph 12 & 13 as under:-

Ã¢â‚¬Å“12. 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 vs. Dr. B.S. Mahajan, 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 48 or its procedure vitiating the selection, or proved malafides affecting the selection etcÃ¢â‚¬Â¦..Ã¢â‚¬â€‹

ii) In a similar vein, in Secy. (Health) Deptt. Of Health & F.W. vs. 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 evaluationÃ¢â‚¬Â¦Ã¢â‚¬Â¦.Ã¢â‚¬â€‹

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

words:

Ã¢â‚¬Å“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... 49

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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 decisionsÃ¢â‚¬Â¦Ã¢â‚¬â€‹

iv)Ã, OmÃ, PrakashÃ, PoplaiÃ, andÃ, RajeshÃ, Kumar Maheshwari vs. 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:

Ã¢â‚¬Å“5. Ã¢â‚¬Â¦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 50 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 fashionÃ¢â‚¬Â¦Ã¢â‚¬â€‹

12.1. 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.

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 51 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.

13. 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 5 th 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 vs. 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 vs. 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:

Ã¢â‚¬Å“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 vs. 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 53 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 54 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)"".

13.1. 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 55 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.

13.2. 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. Ã¢â‚¬‹

30. From the aforesaid decisions rendered by the HonÃ¢â‚¬â„¢ble Supreme Court, it can be said that in the matter of appointments in the academic field,

the Court generally does not interfere and the Court should show due regard to the opinion expressed by the experts constituting the selection

committee and its recommendation. The Court should normally very slow to pass orders in its jurisdiction because matters falling within the jurisdiction

of educational authorities should normally be left to the decision and the Court should interfere with them only when it thinks it must do in the interest

of justice. It is further held that 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 it procedure vitiating the selection or proved mala fides affecting the selection etc. Further,

it has been held that when a selection committee recommends the selection of a person, the same cannot be presumed to have been done in an

erroneous or mechanical manner in the absence of allegation of any favoritism or bias. In absence of mala fides against the members, the selection by

selection committee cannot be doubted. Further, in absence of systematic irregularity, which denudes the legitimacy of the selection exercise, the

entire selection cannot be set aside. It is also held that it is not the function of the CourtsÃ¢â‚¬â„¢ to hear appeals over the decisions of a selection

committee and to scrutinize the relative merits of the candidates, the Court has no such expertise. The decision of the selection committee can be

interfered with only with limited grounds such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating

the selection or proved mala fides.

31. Keeping in view the aforesaid decisions rendered by the HonÃ¢â‚¬â„¢ble Supreme Court, if the facts of the present case as discussed hereinabove

and the reasoning recorded by the learned Single Judge are carefully examined, it would reveal that the learned Single Judge has observed that none

of the points with regard to the process of appointment, opinion of the expert committee and criteria to be fixed during the process appointment are in

dispute in the present case and thereafter observed that, therefore, the law laid down by the Apex Court in the cases cited before the learned Single

Judge are not helpful to the original respondents. Thus, learned Single Judge has, on one hand, made the aforesaid observation that process of

appointment is not in dispute, opinion of expert committee is also not in dispute and criteria fixed during the process of appointment is also not in

dispute, however, on the other hand, the learned Single Judge has discussed in detail why more marks were required to be given to the petitioner and

how the selection committee has awarded more marks to the private respondents. Learned Single Judge scrutinized each and every head of the

evaluation sheet and more particularly the head No. (V) to (X) and thereafter observed that the selection committee has wrongly awarded more

marks to the private respondents and less marks to the petitioner and thereby, passed the impugned order.

32. We are of the view that in the present case, selection committee of eight members, who were experts in the field, have assessed 22 candidates

and awarded marks under different heads to each of the 22 candidates by adopting the similar criteria. It would not be open for this Court to go into

detail and then to scrutinize the decision taken by the selection committee. We are of the view that awarding of the marks under head (III) to (IX)

cannot be said to be mechanical exercise or mere administrative work or clerical work of the selection committee and while awarding marks under

different heads, the committee has to consider the relevant aspects. It appears that the learned Single Judge has carried out the impugned exercise as

if the learned Single Judge was deciding the appeal filed by the original petitioner against the decision of the selection committee. As observed

hereinabove, such as exercise of sitting in an appeal over the decision of the selection committee is not permissible. It is well settled that the scope of

judicial review is very limited in these type of cases and the decision of selection committee can be interfered with only under certain circumstances

as held by the HonÃ¢â‚¬â„¢ble Supreme Court. In the present case, the petitioner has not alleged any malafides, bias or favoritism on the part of the

selection committee nor there is any illegality or irregularity in appointment of the selection committee and the procedure adopted by the said selection

committee. Even the decision of the selection committee cannot be termed as arbitrary and, therefore, we are of the view that learned Single Judge

has, by going into the detail and scrutinizing the marks, given to the petitioner and the private respondent under each head was beyond the purview of

the judicial review. Accordingly, the impugned order passed by the learned Single Judge is required to be set aside.

33. In view of the aforesaid discussion, both these appeals stand allowed. The impugned order passed by the learned Single Judge is set aside.