

---

**(2008) 09 AHC CK 0279**

**Allahabad High Court**

**Case No:** None

Dr. Ravindra Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

---

**Date of Decision:** Sept. 26, 2008

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 141, 162, 226, 234

**Citation:** (2008) 3 UPLBEC 2836

**Hon'ble Judges:** Sunil Ambwani, J; Sabhajeet Yadav, J

**Bench:** Division Bench

**Final Decision:** Allowed

---

### **Judgement**

Sabhajeet Yadav, J.

By this petition, the petitioner- Dr. Ravindra Kumar has challenged the order dated 26<sup>th</sup> December, 2007 (Annexure-7 of the writ petition) passed by the Chancellor of Sardar Vallabh Bhai Patel University of Agriculture & Technology, Modipuram, Meerut (in short the University), whereby the petitioner's appointment on the post of Assistant Professor/Subject Matter Specialist has been cancelled. The Chancellor has passed the aforesaid order in pursuance of judgement and order dated 28.3.2007 passed by this Court in Writ Petition No. 52807 of 2006 Dr. Udai Bir Singh v. State of U.P. and Ors. which was filed by Dr. Udai Bir Singh against the order dated 5<sup>th</sup> June 2006 passed by the Chancellor rejecting his representation against the appointment of the petitioner.

2. The brief facts leading to the case are that Dr. Ravindra Kumar- the petitioner and Dr. Udai Bir Singh- the respondent No. 5, along with other persons, applied in pursuance of advertisement issued by the University inviting applications for various categories of posts such as Deans and Directors; Joint Director & Professor; Associate Professor/Associate Director; Assistant Professor/Assistant Director/SMS published in Employment News dated 14-20.8.2004. Both the petitioner and

respondent No. 5 applied for the post of Assistant Professor/Subject Matter Specialist (Animal Science) at headquarters, under general category in the pay scale of Rs. 8000-13500. The qualification, mentioned in the advertisement for the post, was as follows:

**Subject Matter Specialist**

F.1, 2, 4, 5 & 6 Ph.D in subject concerned or M.Sc. (Ag) in subject concerned with 2 years experience of T/R/E after Master Degree.

3. The selection committee, on the basis of the educational qualifications and interviews, found the petitioner to be most suitable and made a recommendation for his appointment. The recommendation was approved by the Board of Management of the University. The petitioner, was issued the appointment letter on 21.3.2005. Since thereafter he is teaching in the University.

4. Dr. Udai Bir Singh-respondent No. 5 made a representation dated May 30<sup>th</sup>, 2005 u/s 23 of the Uttar Pradesh Krishi Evam Pradhyogik Vishwavidyalaya Adhiniyam, 1958 (in short the Act) before the Chancellor, challenging the appointment of the petitioner on the ground, that his academic record is better as compared to the petitioner's academic record. He submitted that Dr. Ravindra Kumar-the petitioner has not completed Ph.D degree and is only M.SC. He has not qualified National Eligibility Test (NET) conducted by ICAR or any other similar agencies. He has less experience and less publication to his credit, as compared to Dr. Udai Bir Singh. According to him, he had completed Ph.D in 1995 and is qualified NET twice in 1995 and 1998 in different subjects, which is compulsory for most of the Agricultural Universities for the post of Assistant Professor/Subject Matter Specialist or equivalent posts. The respondent No. 5 also stated that he had more than five years experience as Research Associate at the time of interview and has 50 publications in National and International journals to his credit.

5. On the said representation of respondent No. 5, the Chancellor called for a reply from the University. The University in response informed that respondent No. 5 has M.Sc. In "Poultry Husbandry", whereas the subject of post is "Animal Science". Dr. Ravindra Kumar has qualification in "Animal Science" and has teaching experience, whereas the representationist has only research experience. The Chancellor relied upon the documents and representation of the University found that Dr. Ravindra Kumar completes eligibility criteria. The Subject Matter Specialist/Assistant Professor, Animal Science is a post concerning, agriculture extension and that he was appointed in accordance with the advertised qualifications and eligibility. The representation of respondent No. 5 was consequently rejected on June 5<sup>th</sup>, 2006.

6. Feeling aggrieved against the aforesaid order dated 5<sup>th</sup> June, 2006 passed by the Chancellor, Dr. Udai Bir Singh-respondent No. 5 filed a Writ Petition No. 52807 of 2006, Dr. Udai Bir Singh v. State of U.P. and Ors. impleading the petitioner of instant writ petition as one of the party in the array of respondents. The writ petition was

heard and decided on 28.3.2007, with directions to the Chancellor to decide the points formulated by this Court within three months. The relevant portion of the order reads as follows:

We have heard counsel for the petitioner, Sri Neeraj Tripathi and Sri Anurag Khanna for the respondents. The Chancellor has recorded finding that the contesting respondent has minimum qualification for the post. There is no challenge to this finding. However, the counsel for the petitioner has submitted as follows:

(i) The petitioner is more qualified than the contesting respondent and the selection committee ought to have awarded five more marks to the petitioner as he is NET (National Eligibility Test) qualified as has been done in the case of other candidates.

(ii) The comparative merit of the parties ought to have been made after awarding these marks to the petitioner.

(iv) In case these, marks are awarded to the petitioner then he has secured more marks in the interview than the contesting respondent and he ought to have been appointed on the post.

3. The counsel for the respondent submitted that the petitioner does not have minimum qualification and as such he should not be considered for appointment on the post.

4. We have considered the aforementioned submissions of the parties. Neither the selection committee nor the Chancellor has rejected the candidature of the petitioner on the ground that petitioner does not have minimum qualification for being appointed on the post. The petitioner has also annexed the mark-sheet given by the selection committee. It shows that the petitioner was not given 5 marks for qualifying NET. In these circumstances, it is appropriate to quash the order of the Chancellor dated 5.6.2006. Respondent No. 2 may decide the representation of the petitioner afresh in accordance with law. Respondent No. 2 while deciding the representation of the petitioner will also record the finding on the following points.

(i) Whether the petitioner has minimum qualification to be appointed on the post or not?

(ii) Whether the petitioner is NET qualified or not?

(iii) In case the petitioner is NET qualified then whether the petitioner ought to have been awarded 5 more marks as has been done in the case of other candidates.

(iv) Whether the petitioner in place of contesting respondent ought to have been appointed by the University?

5. Respondent No. 2 may pass this order at an early date, if possible, within three months from the date of receipt of certified copy of this order. The Chancellor while passing the order will also give opportunity to the University as well as to the

contesting respondents.

6. With these observations, the writ petition is allowed. Dt. 28.3.2007

Sd/- Yatindra Singh, J.

Sd/- Vijay Kumar Verma, J.

7. The Chancellor, by his order dated 26.12.2007 under challenge, has considered and answered all the four points formulated by this Court, and on that basis the Chancellor changed his earlier opinion and allowed the representation of respondent No. 5 whereby he has cancelled the selection and appointment of Dr. Ravindra Kumar- the petitioner with direction to the University to appoint Dr. Udai Bir Singh-respondent No. 5 in his place, hence this petition.

8. The Chancellor found that since the respondent No. 5 was called for interviews, it will be treated that he possesses the qualifications given in the advertisement. An attempt has been made to show that the master's degree of Dr. Udai Bir Singh is in the subject of "Poultry Husbandry", whereas he has conducted research and was awarded Ph.D in "Animal Breeding" and thus it cannot be said that he did not possess minimum qualifications. Dr. Udai Bir Singh holds NET certificates and there is no doubt or dispute about it. The University had informed that at the time of selection, he did not include the certificates of having passed NET examinations and thus he was not given any marks for NET certificate. The representationist has stated that he had included the certificates with the application form, and had produced these certificates. He had clearly mentioned in his application that he had twice passed NET examinations and produced a copy of the application, which shows that he had passed NET examinations in 1995 in "Animal Genetics and Breedings and in 1998 in "Poultry Science". Since the representationist has clearly stated in his application about the NET certificates of 1995 and 1998, it is not possible that he had not produced the certificates. Even if it is accepted that he had not produced the certificates, since he had mentioned in his application that he had passed NET examinations, the selection committee could have asked him to produce these certificates. In these circumstances, it cannot be believed that he did not produce the NET certificates and thus the reply of the University is not worth accepting. In the given circumstances, Dr. Udai Bir Singh should have been given five additional marks for NET qualification and if these marks were given to him, he is found to have secured higher marks than Dr. Ravindra Kumar, the selected candidate and stood selected for the post.

9. The counter and rejoinder affidavits have been exchanged and with the consent of parties, the matter was heard.

10. Heard Shri P.S. Baghel, learned Counsel for the petitioner. Shri P.K. Ganguli appears for respondent Nos. 2 and 3. Sri Neeraj Tripathi appears for the Chancellor of the University. Shri R.N. Singh, learned Senior Advocate assisted by Shri G.K. Singh appears for respondent No. 5.

11. Shri P.S. Baghel submits that the qualifications of respondent No. 5, is M.Sc. (Ag) in "Poultry Husbandry" and thus he did not possess necessary and essential qualifications and was not eligible for the post of Subject Matter Specialist/Assistant Professors in "Animal Science". He submits that the selection committee could not have ignored the essential qualifications for the post. He further submits that the mention of the NET qualifications in the application form was not sufficient to award additional marks unless the certificates were annexed to the application. He submits that the certificates were never produced and thus the selection committee did not commit any error in failing to award five additional marks to him. He made an attempt to submit that none of candidates were awarded five additional marks for the NET-examinations who did not submit their certificates. He would also submit in alternative that the selection committee exceeded its jurisdiction in awarding marks for NET examinations, and in fact once the minimum qualifications are provided, no marks are required to be awarded for additional qualifications unless any weightage is given to such additional qualification. The essential qualifications, being the same for all the applicants, the selections should have been based only on interview in which the petitioner secured 50 marks, whereas Dr. Udai Bir Singh secured only 42 marks out of 60. Shri Baghel submits that the award of marks for additional qualifications and experience are wholly unnecessary and that the selection committee found the petitioner Dr. Ravindra Kumar to be more suitable candidate. The Chancellor has erred in interfering in the selection only on the ground that five additional marks for NET certificate, which was not essential qualification for the post, were not awarded to Dr. Udai Bir Singh. The selection committee could not have changed the criteria. The Court, therefore, should interfere and set aside the order of the Chancellor.

12. Contrary to it, Shri R.N. Singh, learned Counsel for the respondent No. 5, has submitted that once the petitioner has participated in the same process of selection, it is not open for him to challenge said process and at any rate awarding of 5 marks to Dr. Udai Bir Singh for having NET certificate by the Chancellor of the University cannot be faulted with in given facts and circumstances of the case. He further submits that the respondent No. 5 is M.Sc. (Ag) in "Poultry Husbandry" and has to his credit a Ph.D degree in "Animal Breeding" and apart from this, he possesses NET certificate in the subjects of "Animal Genetics and Breedings", in 1995 and "Poultry Science" in 1998. The Chancellor found that Dr. Udai Bir Singh-respondent No. 5 has been awarded Ph.D in Animal Breeding, therefore it cannot be said that he did not possess prescribed minimum qualifications for the post. His submission in nutshell is that having Ph.D. in Animal Breeding, M.Sc. (Ag) degree in Poultry Husbandry, Net certificate in Animal Genetics and Breeding and in Poultry Science, it can not be said that Dr. Udai Bir Singh did not possess the prescribed minimum qualification for the post in wake of fact that on account of those degrees he was called in the interview and participated in the process of selection.

13. In view of the rival submissions of learned Counsel for the parties, the first question which arises for our consideration is that as to whether Dr. Udai Bir Singh respondent No. 5 has prescribed minimum qualification to be appointed on the post or not? In this connection it is necessary to point out that this question was formulated by this Court in Writ Petition No. 52807 of 2006 earlier filed by Dr. Udai Bir Singh and the Chancellor was directed to decide the same. On the basis of material placed by the University, the Chancellor has taken the view that since Selection Committee of the University had called Dr. Udai Bir Singh to appear in interview held for selection, therefore, it cannot be said that Dr. Udai Bir Singh did not possess prescribed minimum essential qualification for the post. Another reason to hold Dr. Udai Bir Singh having possessed prescribed minimum essential qualification for the post given by the Chancellor is that since Dr. Udai Bir Singh has possessed M. Sc. (Ag) degree in Poultry Husbandry and Ph. D. degree in Animal Breeding, therefore, it can not be said that he did not possess minimum qualification for the said post.

14. In the advertisement in question the post of Subject Matter Specialist/Assistant Professor in Animal Science HQ was mentioned at item No. F-2 and the essential qualification for the said post was given as Ph.D in subject concerned or M.Sc. (Ag) in subject concerned with two years experience of Teaching/Research/Extension after Master degree, which means, in order to become eligible for selection and recruitment for the post in question a candidate must possess minimum essential qualification as given in the advertisement i.e. Ph. D. degree in Animal Science or M.Sc. (Ag.) degree in Animal Science with two years experience of teaching/Research/Extension after Master degree. The aforesaid advertisement is on record as Annexure-I of the writ petition. Except the aforesaid qualification shown in the advertisement, learned Counsel appearing for the parties could not point out any statute or regulation of the University under which any other qualification different from qualification shown in the said advertisement has been prescribed for the post in question. Therefore, we have to assume the said qualification shown in the advertisement as minimum essential qualification prescribed for the said post.

15. However, learned Counsel for the petitioner Sri P.S. Baghel has submitted that Dr. Udai Bir Singh respondent No. 5 has not possessed minimum essential qualification for the post according to the said advertisement, therefore, the question has to be examined in the light of his submission but before that, it would be useful to refer few decision of the Hon"ble Apex Court wherein the scope of judicial review in respect of prescription of qualification for recruit or for admission to a course of study has been dealt with.

16. In [J. Ranga Swamy Vs. Government of Andhra Pradesh and Others](#), while considering the scope of judicial review in connection of prescription of qualification for recruitment, the pertinent observations made in Para 6 of the decision Hon"ble

Apex Court are as under:

6. ...It is not for the Court to consider the relevance of qualifications prescribed for various posts. The post in question is that of a Professor and the prescription of a doctorate as a necessary qualification therefore is nothing unusual. Petitioner also stated before us that to the best of his knowledge, there is no doctorate course anywhere in India in radiological physics. That is perhaps why a doctorate in nuclear physics has been prescribed. "There is nothing prima facie preposterous about this requirements. It is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed for the post in question. It will be open to the petitioner, if so advised, to move the College, University, Government, Indian Medical Council or other appropriate authorities for a review of the prescribed qualifications and we hope that, if a doctorate in nuclear physics is so absolutely irrelevant for the post in question as is sought to be made out by the petitioner, the authorities concerned will take expeditious steps to revise the necessary qualifications needed for the post appropriately. But, on the qualifications as they stand today, the petitioner is not eligible to the post and cannot legitimately complain against his non-selection.

17. In [State of Rajasthan and Others Vs. Lata Arun](#), , while considering the equivalence of prescribed qualification in Para 12 of the decision Hon"ble Apex Court has held as under:

12. From the ratio of the decision noted above it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for Courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.

18. In view of aforestated legal position we have to examine as to whether Dr. Udai Bir Singh respondent No. 5 has possessed the aforesaid minimum essential qualification for the post or not? In this connection, it is to be pointed out that in the counter affidavit filed by Dr. Udaibir Singh in instant writ petition he has enclosed application form submitted by him for the post in question as Annexure-CA-I, wherein he had mentioned his educational qualifications as Ph. D. in subject of Animal Breeding and M.Sc. (Ag.) in Poultry Husbandry. Apart from it, he had also mentioned his experience as Research Associate for about 5 years and 5 months. Besides aforesaid educational qualifications and experience he had also mentioned that he has certificates of National Eligibility Test (N.E.T.)-1995 in Animal Genetics and Breeding and National Eligibility Test (N.E.T.)-1998 in Poultry Science. In our opinion, in view of law laid down by Hon"ble Apex Court herein before neither the Ph. D. degree in Animal Breeding can be held to be same as Ph. D. degree in Animal Science or to be at par with or equivalent to the Ph. D. degree in Animal Science nor M.Sc.(Ag) degree in Poultry Husbandry possessed by Dr. Udai Bir Singh respondent

No. 5 can be held to be same as M.Sc. (Ag) degree in Animal Science or at par with or equivalent thereto as prescribed educational qualification in concerned subject in advertisement. In absence of any statute or Regulation indicating that the aforesaid degrees possessed by Dr. Udai Bir Singh are same as degree of Animal Science or equivalent to the degree of Ph.D. in Animal Science and M. Sc.(Ag.) Degree of Animal Science neither selection committee nor chancellor on representation of Dr. Udai Bir Singh could equate the Ph.D. Degree of respondent No. 5 in Animal Breeding with the Ph.D. degree in Animal Science and M.Sc.(Ag.) degree in Poultry Husbandry with the M.Sc. (Ag.) degree in Animal Science. We are of the opinion that this Court also in the process of judicial review can not equate the aforesaid two degrees possessed by respondent No. 5 with the Ph.D. And M.Sc.(Ag.) degree of Animal Science.

19. In our view the prescription of educational qualification for recruitment to a particular post is within sole domain of rule making authority prescribing the rules of recruitment. Unless the validity of rules of recruitment is under challenge on the grounds available for such challenge, this Court in the process of judicial review of a particular selection can neither relax the rules of recruitment by prescribing different eligibility qualification or criteria for selection or examine the relevance of prescribed qualification or substitute or equate any other qualification for prescribed qualification for a post. Similarly it is also not open for the selection committee or any other authority for the reasons given hereinbefore and a little later to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority. Therefore, it is not understandable how the selection committee had called Dr. Udai Bir Singh in interview and how the chancellor has held him qualified for the post merely on account of fact that he was called in interview and he has possessed Ph.D degree in Animal Breeding by treating the aforesaid degree as same or at par with Animal Science without pointing out any statutory provisions to aforesaid effect, when he did not possess prescribed qualification for the post as shown in the advertisement.

20. Similarly Nation Eligibility Test (NET) certificate possessed by Dr. Udai Bir Singh Respondent No. 5 in subject of Animal Genetics and Breeding and in Poultry Science were neither prescribed as essential qualification nor prescribed as alternative or optional qualification of Ph. D. degree in subject concerned nor as additional preferential qualification for the post either in the advertisement or under any statute regulating the recruitment for the post in question, therefore, in our considered opinion, possessing (NET) certificate of 1995 in Animal Genetics and Breeding and (NET) certificate of year 1998 in Poultry Science could be of no avail to the respondent No. 5. More so, the aforesaid (NET) Certificates in Animal Genetics and Breeding and in Poultry Science can also not be equated with the degree of either Ph. D. in Animal Science or M.Sc. (Ag) in Animal Science, therefore, the view taken by the selection committee in calling the respondent No. 5 for interview in selection in question and chancellor in holding the respondent No. 5 as eligible and qualified for the post appears to be wholly erroneous, misconceived and contrary to



the view taken by us, accordingly can not be sustained.

21. It is no doubt true that since few years back in almost all the Universities of State of U.P. NET Certificate was made essential qualification for appointment on the post of lecturers of the University and for some time NET Certificate was made optional or alternative qualification at par with or equivalent to the Ph.D. Degree for appointment on said post, but unless the same is made applicable by statute or rules of recruitment for the post in question, the same can not apply automatically in respect of selection in question. Therefore, in our opinion, in absence of any such statute or rules of recruitment for the post in question, NET Certificates possessed by Dr. Udai Bir Singh in Animal Genetics and Breeding and in Poultry Science can not be treated to be either at par with or equivalent to Ph.D. Degree in which he has obtained the aforesaid certificates or at par with the Ph. D. degree in Animal Science as prescribed educational qualification for the said post as shown in advertisement in question.

22. Now next question arises for consideration is that as to whether Dr. Udai Bir Singh respondent No. 5 could be awarded 5 more marks in the selection in question as other candidates who possessed NET Certificate, or not, if it is found that he has possessed aforesaid certificate on the date of advertisement or while making application for the said post? In this connection it is note-worthy to mention that aforesaid question was framed by this Court while deciding earlier writ petition filed by Dr. Udai Bir Singh and Chancellor was directed to decide the same, in response to which, the Chancellor has held that from the records, it is clear that Dr. Udai Bir Singh has possessed NET Certificate but selection committee had failed to award 5 additional marks to him as awarded to the other candidates having possessed such certificates and while awarding 5 more marks, he found Dr. Udai Bir Singh stood selected for the post and cancelled the selection and pursuant appointment of the petitioner but in our opinion, the aforesaid question formulated by this Court could not be answered by the Chancellor in correct perspective. Virtually the aforesaid question was formulated by this Court in earlier writ petition filed by Dr. Udai Bir Singh-respondent No. 5 with assumption that selection committee while holding said selection could award 5 additional marks in interview to those candidates who possessed NET Certificate in subject concerned, without examining the issue as to whether in given facts and circumstances of the case, 5 additional marks could be awarded to such candidates who possessed NET Certificate or not?

23. Before advertng to the aforesaid question, it would be useful to refer some statutory provisions of the Act and statutes of the University which have some material bearing with question in issue. Section 28 of the Act enumerates the matters to be dealt with the statutes which inter alia provides as under:

Statutes.

28. Subject to the provisions of this Act, the Statutes may provide for any matter and shall in particular provide for the following:

(d) the classification and manner of appointment of teachers;

24. Chapter XIII of the statute of the University deals with appointment of teaching and non-teaching staff of the University. Clause 1(a) of this chapter provides that all appointment shall be made strictly on the basis of merit. Clause-2 stipulates that appointments to various categories of posts in the University shall be made as herein after prescribed. Clause-3 of which provides that no selection for any appointment under these statutes shall be made except after advertisement of the vacancies in atleast three newspapers having adequate circulation in the country. Clause-4 of this chapter deals with composition of selection committee for holding selection for recruitment against various posts. Clause-4(d) deals with the constitution of selection committee for appointment of a Professor, Associate Professor, Assistant Professor or teacher as under:

Clause 4(6).- The Selection Committee for the appointment of a Professor, Associate Professor, Assistant Professor or teacher shall consist of:

(i) The Kulpati who shall be the Chairman thereof;

(ii) The Dean of the Faculty concerned;

(iii) One Head of the Department to be nominated by the Kulpati.

(iv) Two experts to be nominated by the Kuladhipati.

Provided that if the Kulpati (Vice-Chancellor) is for any reason, not available to participate in any meeting of the Selection Committee constituted under Clause (d), then in the case of Associate Professors, Assistant Professors and equivalent Posts, he may, by general or special orders require the Prati-Kulpati (pro-Vice-Chancellor) or the Dean of the Faculty concerned to preside over the Selection Committee and perform functions of the Chairman.

25. However, Clause 5 provides that where Kulpati is satisfied that in special circumstance selection committee can not be constituted in the manner provided under Clause-4 of this chapter, he can constitute selection committee in such a manner as he thinks fit. The provisions of Clause-5 are as under:

5. Where the Kuladhipati is satisfied that in the special circumstances of the case a Selection Committee can not be constituted in accordance with the provisions of Clause (4) he may direct the constitution of the Selection Committee in such manner as he thinks fit.

26. Clause 6 of Chapter XIII of the Statute provides methods or manner in which panel of experts is to be drawn by the Chancellor (Kuladhipati) of the University, which reads as under:

6. (a) A panel of six or more experts in each subject of study shall be drawn up by the Kuladhipati after consulting the corresponding faculty in Indian Universities or such other academic bodies or research institutions in or outside Uttar Pradesh as the Kuladhipati may consider necessary. Every expert nominated by the Kuladhipati under Clause (4) shall be a person whose name is born on such panel.

(b) The panel referred to in Sub-clause (a) shall be revised every two years.

(c) Kuladhipati may intimate in specified order a larger number of names of experts than required under Clause (4) for serving as his nominees on the Selection Committee. In such a cases on any person whose name appears higher in the specified order not being available for a meeting of the Selection Committee, person whose name appears nearest lower in the specified order shall be requested to serve on the Committee.

Explanation I:

For the purpose of this clause a branch of subject in which a separate course of study is prescribed for a post-graduate degree shall be a separate subject of study.

Explanation II:

Where the post of teacher to be selected is common to more than one subject of study, the expert may belong to any of such subjects of study.

27. Clause 7 and 8 of Chapter XIII of the statues deals with the subsequent process of selection as under:

7. The Selection Committee shall, by majority of its total membership, recommend one or more but not more than three names for each post to the Kulpati and where more than one names are recommended, the order of preference shall also be indicated.

8.(a) where the Kulpati approves the name or any of the names recommended by the Selection authority, he shall make the appointments, and where such appointment is subject to the approval of the Board or the appointing authority, the Kulpati shall make recommendation to the Board for such approval or appointment as the case may be.

(b). where the Kulpati does not approve the name or any of the names recommended by the Selection Committee, or as the case may be, the Board does not approve the recommendation of the Kulpati, the post shall be re-advertised.

28. It is significant to mention that under the statute of the University merely composition of selection committee with limited procedure or manner of selection has been provided under which the selection committee shall by majority of its total membership recommend one or more but not more than three names for each post to the Kulpati (Vice Chancellor) of the University and where more than one names

are recommended, the order of preference shall also be indicated, who shall thereupon take subsequent steps as provided in Clause 8 Chapter XIII of statute. But there is nothing to indicate that how the suitability of candidate would be determined by the Selection Committee from amongst eligible candidates?

29. It transpires from the records that selection was held from amongst the candidates who were found eligible and qualified for the post, in opinion of the Selection Committee on the basis of interview alone. Total 100 marks appear to have been allocated for interview. No guidelines were provided for allocation of said 100 marks in interview. There is nothing to indicate that aforesaid 100 marks could be awarded by selection committee on overall assessment of personality test of candidates in a single lot or said marks could be awarded to the candidates by dividing or bifurcating it, in several heads including academic records of the candidates. The provisions of statute of the University is completely silent in respect of the manner or the method of determination of suitability of candidates. Therefore, in such situation, it is very difficult for us to come at accurate conclusion at this stage. In such eventuality, before coming to any conclusion, we have to examine the scope of powers of selection committee in respect of determination of either eligibility or suitability of the candidates, hereinafter.

30. In [P.K. Ramachandra Iyer and Others Vs. Union of India \(UOI\) and Others](#), the appointment was to be made under the rules framed by Indian Council of Agricultural Research. According to Rules, final merit would be drawn according to aggregate marks in written test plus viva voce. No power was given to the Selection board to prescribe additional qualification. The Selection Board prescribed minimum 40 marks for being qualified in viva voce test was found not permissible and it was held that the selection committee does not even have inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. The pertinent observations made in para 44 of the decision are extracted as under:

44. ...On a combined reading of Rules 13 and 14, two things emerge. It is open to the Board to prescribe minimum marks which the candidates must obtain at the written test before becoming eligible for viva voce test. After the candidate obtains minimum marks or more at the written test and he becomes eligible for being called for viva voce test, he has to appear at the viva voce test. Neither Rule 13 nor Rule 14 nor any other rule enables the ASRB to prescribe minimum qualifying marks to be obtained by the candidate at the viva voce test. On the contrary, the language of Rule 14 clearly negatives any such power in the ASRB when it provides that after the written test if the candidate has obtained minimum marks, he is eligible for "being called for viva voce test and the final merit list would be drawn up according to the aggregate of marks obtained by the candidate in written test plus viva voce examination. The additional qualification which ASRB prescribed to itself namely, that the candidate must have a further qualification of obtaining minimum marks in

the viva voce test does not find place in Rules 13 and 14, it amounts virtually to a modification of the Rules. By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reasons that such deviation from the rules is likely to cause irreparable and, irreversible harm. It however does not appear in the facts of the case before us that because of an allocation of 100 marks for viva voce test, the result has been unduly affected. We say so for want of adequate material on, the record. In this background we are not inclined to hold that 100 marks for viva voce test was unduly high compared to 600 marks allocated for the written test. But the ASRB in prescribing minimum 40 marks for being qualified for viva voce test contravened Rule 14 inasmuch as there was no such power in the ASRB to prescribe this additional qualification, and this prescription of an impermissible additional qualification has a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidate at written test plus viva voce test. Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate, who may figure high-up in the merit list was likely to be rejected on the ground that he has not obtained minimum qualifying marks at viva voce test.

31. Similarly, in [Umesh Chandra Shukla Vs. Union of India \(UOI\) and Others](#), it was observed that selection committee does not possess any inherent power to lay down its own standard in addition to what is prescribed under the rules. In a recruitment under Delhi Judicial Service, High Court resolved to add two marks to the marks obtained in each paper by way of moderation on the ground that a few candidates who had otherwise secured very high marks might have to be out of zone of consideration for final selection by reason of their having secured one or two marks below the aggregate or qualifying marks prescribed in a particular paper. It was held that addition of two marks by way of moderation to the marks obtained in written paper or to the aggregate marks particularly when there was no complaint either about the question papers or about the mode of valuation would indirectly amount to an amendment in the rules of recruitment, which could be made under Article 234 only, accordingly such action was found liable to be struck down. The pertinent observations of Hon'ble Apex Court in para 13 and 14 of the decision are as under:

13. Addition of any marks by way of moderation to the marks obtained in any written paper or to the aggregate of the marks in order to make a candidate eligible to appear in the viva voce test would indirectly amount to an amendment of Clause (6) of the Appendix. Such amendment to the Rules can be made under Article 234 only by the Lt. Governor (Administrator) after consulting the High Court in that regard.

14. We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from

the minimum already prescribed by the Rules in its Appendix.

32. Both the decisions rendered in Ram Chandra Iyer (supra) and Umesh Chandra Shukla (supra) were followed by Hon"ble Apex Court in [Durgacharan Misra Vs. State of Orissa and Others](#), and limitations of selection committee were pointed out that it had no jurisdiction to prescribe minimum marks, which a candidate had to secure in a viva voce test. In paras 12 and 16 of the decision it was held that Public Service Commission must select candidates according to the rules of recruitment. It cannot prescribe additional requirement for selection, either as to eligibility or as to suitability. The pertinent observations made in paras 12 and 16 of the decision are extracted as under:

12. In the light of these decisions the conclusion is inevitable that the Commission in the instant case also has no power to prescribe the minimum standard at viva voce test for determining the suitability of candidates for appointment as Munsifs.

16. ...The Commission which has been constituted under the Rules must, therefore faithfully follow the Rules, it must select candidates in accordance with the Rules. It cannot prescribe additional requirements for selection either as to eligibility or as to suitability. The decision of the Commission to prescribe the minimum marks to be secured at the viva voce test would, therefore, be illegal and without authority.

33. Again in Dr. Krushna Chandra Sahu and Ors. v. State of Orissa and Ors. AIR 1996 SC 352 , the question of determination of suitability of candidate and criteria for such determination in reference to Orissa Homoeopathy Medical Teaching Service Rules 1980 for appointment of junior teacher was under consideration. While placing reliance upon [Sant Ram Sharma Vs. State of Rajasthan and Another](#) , in para 33 of the decision the Hon"ble Apex Court has held that If the statutory Rules, in a given case, have not been made, either by the Parliament or the State Legislative, or, for that matter by the Governor of the State, it would be open to the appropriate Government (the Central Government under Article 73 and the State Government under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the Rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. In para 34 of the aforesaid decision it was held that in the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be determined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homoeopathic Medical Officers, as the basis of determining their suitability. In para 35 of the said decision the Hon"ble Apex Court has held that the members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309. It is basically the function of the rule making authority to provide

the basis for selection. In para 36 of the decision the Hon"ble Apex Court has further held that the Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication.

34. Thereafter in para 36 and 37 of the said decision the Hon"ble Apex Court has quoted the law laid down by Hon"ble Apex Court in earlier decisions rendered in Ram Charandra Iyer's case (supra), Umesh Chandra Shukla's case (supra) and Shri Durgacharan Misra's case (supra) and reiterated the view taken therein. In para 38 of the decision it has been observed that rule making function under Article 309 is legislative and not executive as laid down by Hon"ble Apex Court in [B.S. Yadav and Others Vs. State of Haryana and Others](#), For this reason also the Selection Committee or Selection board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection. The pertinent observations made in para 38 of the decision are extracted as under:

38. It may be pointed out that rule making function under Article 309 is legislative and not executive as was laid down by this Court in [B.S. Yadav and Others Vs. State of Haryana and Others](#), . For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection.

35. The aforesaid view taken in Dr. Krushna Chandra Sahu's case (supra) has been again reiterated in [Hemani Malhotra Vs. High Court of Delhi](#), The pertinent observations made by Hon"ble Apex Court in para 9 of the decision are quoted as under:

9. From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for viva voce. Therefore, prescribing minimum marks for viva voce was not permissible at all after written test was conducted. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce, test was illegal.

36. From a close analysis of legal position enunciated by Hon"ble Apex Court herein before, it is clear that the members of Selection Board or Selection Committee have no jurisdiction to lay down any criteria for selection either as to eligibility of candidates or as to suitability of candidates, unless they are authorised specifically in that regard by rules made for the purpose. The Selection Committee does not

have even inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. The prescription of qualification for eligibility and suitability of candidates for recruitment in respect of a particular post is sole domain of rule making authority. The Selection Committee must select the candidates in accordance with rules. It cannot prescribe additional requirement for selection either as to eligibility or as to suitability of candidates by its own. Therefore, in view of aforesaid legal position, in given facts and circumstances of the case, the Selection Committee was required to hold the selection in conformity with the procedure prescribed under the statute of the University inasmuch as eligibility qualification prescribed in the advertisement in question. But before we proceed to examine the merit of the selection in question, we may indicate the scope of judicial review of such selection.

37. In [Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others](#), it has been observed that the decision of selection committee can be interfered with only on limited grounds namely that there was illegality or material irregularity in constitution of committee or in its procedure vitiating the selection or proved malafide affecting the selection etc. The aforesaid decision of Hon'ble Apex Court has been reiterated in para 30 of the decision rendered by Hon'ble Apex Court in Krushna Chandra Sahu's case (supra). Therefore, we have to examine that as to whether the selection in instant case is vitiated by any of these factors as also by the basis, mode and procedure adopted by selection board in adjudging the suitability of candidates for said selection?

38. Now coming to the merits of the selection, we find that statute of the University does not authorise the selection committee to hold selection either on the basis of marks in any written examination plus interview or total percentage of marks obtained by the candidate in qualifying examination plus marks obtained in the interview or on the basis of any number of marks allocable to the interview alone, instead thereof selection committee by majority of its total membership is obliged to recommend one or more names but not more than three names for each post to the Kulpati of the University and where more than one names are recommended, the order of preference has to be indicated by the selection committee but the statute of the University is completely silent with regard to the standards or norms or basis for determination of suitability of the candidates. It appears that in absence of any statute or other administrative instruction in this regard, the selection committee by its own, evolved a norm to determine suitability of candidates on the basis of interview alone and total 100 marks were prescribed for such interview.

39. It transpires from the record and result sheet of selection as contained in Annexure- VIII of the writ petition that selection committee has bifurcated or divided the aforesaid 100 marks for interview broadly into two heads, whereby 40 marks were allocated to the academic records of the candidates and 60 marks were fixed for oral interview or viva voce test. Out of total 40 marks fixed for academic records



of the candidates, it was further bifurcated into two different heads; namely qualification and experience. In the head of qualification, separate column for allocating the marks for High School, Intermediate, B.Sc, M.Sc. Ph.D degree and NET certificates were prepared. And thereafter separate columns for experience, research, publication and articles were drawn against the names of candidates. The result sheet prepared by the selection committee (Annexure-VIII of the writ petition) shows that the candidates were awarded maximum 5 marks for having passed High School examination, Intermediate, B.Sc. And M.Sc. Examination in first division for each such examinations, and four marks for passing in second division. Apart from it, 5 marks were awarded for having Ph.D. Degree and 5 marks for N.E.T. certificate. Thus, in the aforesaid column of qualification total would come to 30 marks and remaining 10 marks would go to the column of experience.

40. So far as allocation of aforesaid marks upto the level of B.Sc. degree is concerned, having regard to the scheme of statute in context of selection for the post of teacher in the University although such procedure was also not desirable in given facts and circumstances of the case, but such procedure could not transgress the limit of prescribed minimum qualification for the post and could not apparently and directly infringe any provisions of the relevant statute of the University but so far as allocation of 5 marks each for M.Sc. (Ag.) and Ph.D degree are concerned, in our opinion, allocation of such marks to the candidates towards their academic qualification would amount to amendment and addition in educational qualification prescribed for the post, for the simple reason that in the advertisement in question the essential minimum educational qualification prescribed for the post is as Ph.D. degree in concerned subject or M.Sc. (Ag) in subject concerned with two years experience of Teaching/Research/Extension after Master degree. In our opinion, the expression "or" used between the aforesaid two qualifications has to be read disjunctively and not conjunctively. It implies that in order to become eligible for the post in question a candidate must possess either of the two qualifications, he need not to possess both the qualifications i.e. M.Sc. (Ag) degree with two years experience and Ph.D. degree. Therefore, if any number of marks could be awarded to aforesaid qualifications, the same should have been equal number of marks to the candidates for having either Ph.D. degree in concerned subject or M.Sc. (Ag) degree in concerned subject with two years experience. It was not open for the selection committee to award marks to a candidate for having M.Sc. (Ag) degree with two or more years experience and also for having Ph.D. degree in concerned subject allocable to the aforesaid degree in addition thereto. In other words, a candidate having Master degree in subject concerned with two years experience and also Ph.D. degree in concerned subject could not be awarded marks for both such degrees simultaneously instead thereof he could be awarded marks allocable to either for Ph.D. degree or for M.Sc. (Ag) degree with two years experience and no further marks could be awarded for having NET certificate or having more experience than requisite two years experience, as the NET certificate was neither

essential nor alternative nor optional nor preferential additional qualification prescribed for the post carrying any weightage of marks with it.

41. In case the aforesaid course adopted by selection committee is taken to be correct in that event of the matter, a candidate having M. Sc (Ag) degree in concerned subject with two years requisite experience would get the marks allocated to the aforesaid degree and if he possess Ph.D degree in concerned subject in addition to M.Sc. (Ag) degree, would also get the marks allocated for the aforesaid degree in addition to marks allocated to his/her Master degree, in that eventuality the Ph.D. degree would not remain as minimum essential alternative or optional qualification for the post; but it would turn to preferential/additional qualification carrying weightage of marks allocated to such degree so also with the case of a candidate having possessed NET certificate in addition to Master degree with two years experience. Similar situation would also arise in event of candidate having more than two years experience after Master degree, if further marks are awarded separately for experience of more than two years and for publication of research works. Therefore, in our opinion, the aforesaid approach of selection committee in awarding certain marks to the candidates having M.Sc. (Ag) degree in concerned subject with two years requisite experience and further in addition thereto awarding marks allocable to Ph.D. degree in concerned subject and NET certificates inasmuch as awarding further marks for having more than two years experience, and research works and publications is beyond the scope of the statute of the University inasmuch as would amount to amendment and change in prescribed minimum essential qualification advertised for the post during the process of selection after advertisement. For this simple reason, the action of Chancellor in awarding 5 additional marks to the respondent No. 5 for having possessed NET certificates is contrary to the view taken by us and cannot be sustained.

42. It is no doubt true that the aforesaid 5 additional marks was awarded by the Chancellor of the University to the respondent No. 5 for having possessed NET certificate in pursuance of a direction given by this Court in writ petition earlier filed by him on finding that since the other candidates who possessed NET certificates were awarded additional 5 marks for the aforesaid certificates, therefore, the action of selection committee in not awarding 5 marks to the respondent No. 5 is illegal. In our opinion, the aforesaid finding of Chancellor was not based on examination of issue in accordance with law, rather it was on mere assumption, without examining that as to whether the such other candidates were legally entitled for the aforesaid additional 5 marks for having possessed NET certificate or not. From the perusal of earlier judgement rendered by this Court in writ petition filed by the respondent No. 5, it appears that Chancellor was directed to decide the representation of respondent No. 5 in accordance with law, therefore, in our opinion the chancellor was required to decide the admissibility of aforesaid 5 marks to the NET certificate by examining the issue according to law. At this juncture, we may refer some

decisions of Hon"ble Apex Court in this regard. In [Chandigarh Administration and another Vs. Jagjit Singh and another,](#) the Hon"ble Apex Court has held that mere fact that authority has passed a particular order in case of another person similarly situated can never be the ground for issuing a writ in favour of petitioner on the plea of discrimination. The order in favour of other person might be legal and valid or it might not be, that has to be investigated first before it can be directed to be followed in case of petitioner. If the order in favour of person is found to be contrary to law or not warranted in facts and circumstances of his case it is obvious that such illegal or unwarranted order cannot be made basis of issuing a writ compelling the authority to repeat the illegality or to pass another unwarranted order.

43. Similar view has been taken by Hon"ble Apex Court in para 30 of the decision rendered in [State of Bihar and Others Vs. Kameshwar Prasad Singh and Another,](#) wherein Hon"ble Apex Court has observed that the concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, other cannot claim the same illegality or irregularity on the ground of denial thereof to them. The pertinent observations made by Hon"ble Apex Court in para 30 of the said decision are extracted as under:

30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits.

44. in this regard the Hon"ble Apex Court in [Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others,](#) held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition tiled in the High Court. The pertinent observations are as under:

Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a Claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.

45. Again in [Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others](#), the Hon"ble Apex Court has considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.

46. In [State of Haryana and Others Vs. Ram Kumar Mann](#), Hon"ble Apex Court observed:

The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e. benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality u/s 14 for reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right.

47. In view of aforestated legal position, we are of the opinion that unless it is found that other candidates who have been awarded 5 additional marks for NET certificate were legally entitled for the said marks and the respondent No. 5 has been illegally discriminated whereas he was also legally entitled to be awarded additional 5 marks for having possessed NET certificate, it was not open for the Chancellor to award 5 additional marks to the respondent No. 5 in the interview for having possessed NET certificate, despite aforesaid direction given by this Court which clearly indicates that the Chancellor was directed to decide the issue only in accordance with law. Since we have held that allocation of 5 additional marks to the candidate having possessed NET certificate in concerned subject is contrary to the qualification prescribed in the advertisement, rather would amount to amendment in prescribed qualification after advertisement during the course of selection by the Selection

Committee, therefore, Chancellor has no authority under law to award 5 additional marks to the respondent No. 5 for having possessed NET certificate even assuming that his NET certificates were in concerned subject accordingly view taken by the Chancellor of the University contrary to the view taken by us cannot be sustained.

48. Besides this, from perusal of para 4 of the judgement rendered in writ petition earlier filed by respondent No. 5 it appears that a finding to the effect that neither the selection committee nor the Chancellor has rejected the candidature of respondent No. 5 on the ground that he does not have minimum qualification for being appointed on the post has been recorded by this Court, but in our opinion the the aforesaid finding was not recorded by this Court on conscious consideration after examining the issue in the light of statute of the University inasmuch as in the wake of advertisement in question. In this connection we may refer the case of [Arnit Das Vs. State of Bihar](#), wherein the Hon"ble Apex Court has held that a decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgement is not ratio decidendi. This is the Rule of sub-silentio in the technical sense, when a particular point of law was not consciously determined. In our opinion, this Court in earlier writ petition filed by respondent No. 5 did neither consider the impact of minimum educational qualification prescribed in the advertisement nor has determined the aforesaid issue on conscious consideration and so also with regard to the other questions formulated by this Court to be decided by the Chancellor of the University, as such the aforesaid decision of this Court cannot be held to have effect of binding precedent. Besides this, the issues itself were left to be decided by the Chancellor, therefore, it can also not be held to be binding either on the parties or on this Court on principle of res-judicata.

49. Now, coming to the remaining part of allocation of marks by selection committee in interview under the head of oral interview or viva voce test, although we do not find any illegality or material irregularity in allocation of 60 marks under this head out of total 100 marks meant for oral interview but in such eventuality, further question arises for consideration as to whether on account of aforesaid part of illegality in the process of selection, entire selection is vitiated or the said selection can be saved by segregating good part of selection from bad part and excluding bad part from it? In order to solve this problem, we may import the analogy of the doctrine of severability of statute, which means that when some particular provision of a statute offends against a constitutional limitation (section or clause) is severable from the rest of the statute, only that offending provision will be declared void by the court and not entire statute but further question arises for consideration is that what would be real test of such severability?

50. In this connection, it is to be pointed out that a Constitution Bench of Hon"ble Apex Court in [The State of Bihar Vs. Sir Kameshwar Singh](#), had occasion to consider

the doctrine of severability and in para 62 of the decision observed that the real question to decide in all such cases is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive or whether on a fair review of the whole matter it can be assumed that legislature would have enacted at all that which survives without enacting the part that is ultra vires. In the [The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia,](#), another Constitution Bench of Hon"ble Apex Court had considered the doctrine of severability and while taking note of the earlier decisions rendered in [Romesh Thappar Vs. The State of Madras](#), [Chintaman Rao Vs. The State of Madhya Pradesh](#), and [R.M.D. Chamarbaugwalla Vs. The Union of India \(UOI\)](#), without expressing opinion of preference with one or other decisions, in para 18 of the judgement observed that "there is conflict of decision on the question of severability in the context of an offending provision, the language whereof is wide enough to cover restrictions both within and without the limit of constitutionally permissible legislation. One view is that it cannot be split up if there is possibility of its being applied for purposes not sanctioned by the Constitution and other view is that such a provision is valid if it is severable in its application to an object which is clearly demarcated from other object or objects falling outside the limits of constitutionally permissible legislation and the provisions of section so inextricably mixed up that it is not possible to apply the doctrine severability so as to enable us to affirm the validity of a part of it and reject the rest."

51. In [Harakchand Ratanchand Banthia and Others Vs. Union of India \(UOI\) and Others](#), the applicability of doctrine of severability has again come for consideration of Hon"ble Apex Court in para 24 of the decisions the observations were made as under:

24. The only other point that remains to be decided is whether as a result of some of the sections of the impugned Act being struck down, what is left of the impugned Act should survive or whether the whole of the impugned Act should be declared invalid. We are of opinion that the provisions which are declared invalid cannot affect the validity of the Act as a whole. In a case of this description the real test is whether what remains of the statute is so inextricably bound up with the invalid part that what remains cannot independently survive or as it is sometimes put whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that is ultra vires. The matter is clearly put in Cooley on Constitutional Limitations, 8<sup>th</sup> edn. At p. 360:

It would be inconsistent with all just principles of constitutional law to adjudge these enactments void because they are associated in the same Act, but not connected with or dependent on others which are unconstitutional . Where, therefore, a part of a statute is unconstitutional, that fact does not authorise the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so

connected together in meaning, that it cannot be presumed the legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable, so that the first may stand though the last fall. The point is not whether they are contained in the same section; for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained.

52. Now, before applying the aforesaid legal principle in given facts and circumstances of the case, it is to be pointed out that in Dr. Krushna Chandra Sahu's case (supra) Hon"ble Apex Court has held that in order to be a suitable for appointment of a teaching post a candidate must have at least three qualities; he should have thorough knowledge of the subject concerned, he should be organised in his thoughts and he should possess the art of presentation of his thoughts to the students and in [Lila Dhar Vs. State of Rajasthan and Others](#), , it was observed that in case of service to which recruitment is necessarily to be made for persons of mature personality, interview test may be the only way subject to basic and essential academic and professional requirements. It was further observed that the totality of impression created by the candidates on interviewing body may give a more accurate picture of the candidates personality and awarding marks under different heads may lead to a distorted picture of the candidate. Having regards of the scheme underlying the relevant provisions of statute of the University, in our opinion, allocation of marks under different heads of the interview based on academic records was wholly unnecessary, particularly when the candidates of mature personality having basic essential academic requirement for the post were called for interview and any other qualification was neither made as additional preferential qualification or carried any weightage of marks to be assigned on such academic or educational qualification, therefore, further allocation of marks on academic records of the candidates like quality point marks in interview besides marks of oral interview would not only give distorted picture of candidate's personality, rather appears to be contrary to the intent and object of the relevant provisions of statute of the University, as such marks secured by the candidates on the basis of oral interview can neither be held to be dependent on the marks of academic records nor by excluding the marks allocated on academic records in interview, it can be said that the marks awarded to the remaining part of the interview cannot independently survive. Therefore, in our opinion, valid part of selection can be saved by excluding the invalid part from it which is quite distinct and severable from invalid one without quashing the entire selection.

53. Now, coming to the record of the Selection Committee, that is result of selection (Annexure-VIII of the writ petition), it is clear that out of 60 marks allocated for oral



interview, the petitioner has secured highest 50 marks and respondent No. 5 Dr. Udai Bir Singh has secured only 42 marks. No other candidate has secured more than 50 marks in oral interview out of 60 marks in the said selection, therefore, if the marks of academic records are excluded, the petitioner would remain selected as initially selected by the selection committee. Besides this, the selection committee has not recommended any other candidate in order of preference and the petitioner alone was recommended by the Selection Committee. Even if we proportionately increase the 60 marks to the extent of 100 marks, the marks which could have been secured by the petitioner would come to 83.33 marks and the respondent No. 5 Dr. Udai Bir Singh would secure only 70 marks out of 100 marks in said interview. In such a situation, the initial selection held by the selection committee cannot be faulted with.

54. Lastly, now coming to the first submission of Sri R.N. Singh, learned Counsel for the respondent No. 5 that once the petitioner has participated in the process of selection without protest, it is not open for him to challenge the said process of selection on becoming unsuccessful in said selection, apparently looks very attractive but in our opinion, in given facts and circumstances of the case is without substance. The aforesaid contention of learned Counsel for the respondent appears to be based on the observations made by Hon"ble Apex Court in [Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others](#), [Madan Lal and Others Vs. State of Jammu and Kashmir and Others](#), *Marripati Nagaraja and Ors. v. Government of Andhra Pradesh and Ors.* 2007 AIR SCW 6861 and [Dhananjay Malik and Others Vs. State of Uttaranchal and Others](#),

55. In [Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others](#), respondent No. 1 who appeared for competitive examination for clerical post in Ministerial Establishment of Subordinate courts was not successful. Aggrieved by the result of examination he filed writ petition before this Court on the ground that examination was not held in accordance with the relevant rules. High Court allowed the writ petition and quashed the selection held for the post. Against the decision of this Court, successful aggrieved candidates preferred appeal before Apex Court. On examination of relevant rules Apex Court found that selection was held in accordance with law and restored the selection in question. However, in backdrop of the aforesaid facts of the case the Apex Court observed that "moreover this is a case where petitioner in writ petition should not have been granted any relief. He had appeared in the examination without protest. He had filed writ petition only after he had perhaps realised that he would not succeed in the examination." In our opinion, the facts of the instant case are quite distinguishable from the aforesaid case. Here in this case, the petitioner was initially selected by the Selection Committee. Therefore, he could not be held to be aggrieved by any sort of illegality committed by Selection Committee including awarding 5 additional marks to other candidates, who possessed NET certificate in concerned subject, despite thereof they were not found suitable for selection and they were, in fact, also not recommended by the



Selection Committee and only single name of petitioner was recommended to the Vice-Chancellor, in pursuant thereof he was appointed on the post. Respondent No. 5 was unsuccessful candidate and was not initially selected, thus had challenged the selection before this Court. In pursuance of direction given by this Court, the Chancellor while deciding the representation of respondent No. 5 has set aside the selection and appointment of the petitioner. Thereafter the petitioner filed the instant writ petition. Thus, the petitioner had no occasion to challenge the process of selection earlier to the impugned order passed against him by the Chancellor.

56. In [Madan Lal and Others Vs. State of Jammu and Kashmir and Others](#), the Hon'ble Apex Court has pointed out that when the petitioners appeared at the oral interview conducted by the members of concerned commission who interviewed the petitioners as well as contesting respondents, the petitioners took a chance to get themselves selected at the said oral interview, therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. The Hon'ble Apex Court further pointed out that if the candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

57. In Madan Lal's case one of the challenge before Apex Court was with regard to assessment and allocation of marks in interview by the Selection Board. It was contended by counsel appearing for petitioners that when a candidate is orally interviewed, the members of Committee should assign separate marks for different faculties of concerned candidate namely intelligence, general knowledge etc. as laid down in the rule and that does not appear to have been done by interviewing committee and hence the entire viva voce test is vitiated. In support of the said contention the reliance was placed by the counsel appearing for the petitioner on a decision of Hon'ble Apex Court in [Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others](#), while repelling said contention in para 12 of the decision the Apex Court observed that it is not possible to agree with this contention. So far as Rule 10 (1-b) is concerned, it does not provide for any separate assessment of marks for candidates at viva voce examination facultiwise i.e. on intelligence, general knowledge etc. listed in the said rule. On contrary it appears that as per said rule while conducting viva voce examination the Committee has to keep the view on main object of assessing such candidates in the light of guidelines given therein. In other words, the Interviewing Committee has to keep in view the over all performance of the candidates at oral interview and while doing so their intelligence, general knowledge, personality, aptitude and suitability have to be kept in centre. The rule merely lays down the object of assessing such candidates in viva voce examination and Peeriakaruppan's case was distinguished on the ground that in the said case the instructions to the Selection Committee was to allocate marks in

interview on the basis of five distinct tests and failure to allocate marks under each head or distinct test was held illegal by the Hon"ble Apex Court and decision rendered in Lila Dhar"s case which was approved by Constitution Bench of Hon"ble Apex Court in [Ashok Kumar Yadav and Others Vs. State of Haryana and Others](#), was followed, therefore, the aforesaid observation of Apex Court in Madan Lal"s case should be understood in the context of aforesaid case and has no application in the case of the petitioner.

58. In *Marripati Nagaraja v. Government of Andhra Pradesh* 2007 AIR SCW 6861, the Hon"ble Apex Court has held that appellants had appeared at the examination without any demur. They did not question the validity of fixing the said date before appropriate authority, they are, therefore, stopped and precluded from questioning the selection on that score. In the aforesaid case fixation of date for second screening test was inter alia challenged on the ground that the petitioners had been granted very limited time for appearing in the second screening test. In that factual backdrop of the case the Hon"ble Apex Court has held that when they appeared in the process of selection without taking aforesaid objection at a relevant stage, and all candidates were given same time for preparation, as such they cannot be permitted to challenge the said process of selection subsequently on being unsuccessful in the said selection. In our opinion, the aforesaid case is also distinguishable on facts.

59. In [Dhananjay Malik and Others Vs. State of Uttaranchal and Others](#), an advertisement was issued on 24.6.2002 for Garhwal Region for the selections and appointment of the Physical Education Teachers (L.T. Grade). The requisite qualification indicated in the advertisement is B.P.E. or Graduate with Diploma in Physical Education. The unsuccessful candidates in the interview challenged selected candidates on various grounds. One of the grounds was that the advertisement and selection were not based in accordance with the Rules called U.P. Subordinate Educational (Trained Graduate Grade) Service Rules, 1983 (in short "the rules"). The writ petition filed by them was dismissed by learned Single Judge. On appeal by unsuccessful candidates the order of Single Judge was reversed and appeals were allowed. Thereafter they approached the Hon"ble Apex Court. The Hon"ble Apex Court has held that the petitioner-respondents participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the rules. They could have challenged the advertisement and selection process without participating in the selection process, this has not been done.

60. In Dhananjai Malik's case the challenge was made on the ground that eligibility criteria is contrary to the service rule. After examining the service rule and Government orders issued in that regard, Apex Court has found that there is no illegality in fixation of eligibility criteria for said selection. More over, knowing well once the petitioners of the aforesaid case have participated in the said selection, they cannot be permitted to challenge subsequently on becoming unsuccessful. It was also observed that requisite qualification indicated in the advertisement if at all was contrary to the service rule, it was open for them to challenge the same before participating in said selection. In that context the Hon''ble Apex Court has held that since the petitioners did not challenge the same at appropriate stage, therefore, they are stopped from challenging the same. Contrary to the aforesaid case, here in instant case, we have held that Selection Committee has held the selection contrary to the advertised eligibility criterion and since the petitioner was a successful selected candidate and also appointed in pursuance of said selection, therefore, he had no occasion to challenge the same prior to the impugned order was passed by this Chancellor cancelling his selection and appointment. Therefore, in our opinion, said principle of estoppel would not apply in the instant case.

61. Before parting with the question in issue we may make it clear that the proposition that once the candidates participate in any process of selection without any demur, they are stopped from complaining that the selection process was not in accordance with law, in our opinion, should not be taken in absolute terms. The proposition of law laid down by Hon''ble Apex Court in Om Prakash Shukla's case (supra), Madan Lal's case (supra) and Dhananjai Malik's case (supra) should be understood in context of the facts and circumstances of the aforesaid cases. The facts of the instant case are quite distinguishable from the aforesaid cases. Besides this, the aforesaid proposition was laid down by Hon''ble Apex Court on principle of estoppel and acquiescence, which are rules of evidence. In case the aforesaid proposition is to be taken in absolute terms, in that eventuality no candidate would be able to challenge the process of selection on becoming unsuccessful in said selection. In our opinion, therefore, the decisions of Selection Committee no doubt can be challenged only on limited grounds indicated hereinbefore but it cannot be held as absolute proposition that at any rate it cannot be challenged by unsuccessful candidate.

62. In view of the aforesaid discussion, we are of the considered opinion that the impugned order dated 26<sup>th</sup> December, 2007 passed by the Chancellor of the University cancelling the selection and appointment of the petitioner on the post in question cannot be sustained and the same is hereby quashed. Since the petitioner is continuously working on his post from the date of his initial appointment dated 21.3.2005 at the strength of interim order passed by this Court, therefore, he shall treated to be continue in service with effect from the date of his initial appointment ignoring the impugned order dated 26<sup>th</sup> December, 2007. passed by the Chancellor of the University and he shall be given a consequential benefits of service on

account of continuity of his service

63. With the aforesaid observation and direction, writ petition succeeds and is allowed.

64. There shall be no order as to costs.