

(2014) 12 MEG CK 0004
In the Meghalaya High Court
Case No : WP(C) Nos. 118 and 244/2014

Adelbert Kharlyngdoh

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 12 MEG CK 0004

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Judgement

T. Nandakumar Singh, J.—These two writ petitions assailing the list of the candidates recommended by the Meghalaya Public Service Commission (for short "MPSC") for appointment to the post of Grade-III Meghalaya Agricultural Service (MAS) under the Agriculture Department, Meghalaya i.e. private respondents No. 6-54 vide Notification being No. MPSC/D-5/3/2011-12/89 dated Shillong, the 28th February, 2014 on the similar question of fact and law were jointly heard for disposal by a common judgment and order.

2. Heard Mr. N Syngkon, learned counsel for the petitioners in WP(C) No. 118/2014 and Mr. S Dey, learned counsel for the petitioner in WP(C) No. 244/2014. Also heard Mr. K Khan, Addl. Sr.GA appearing for the respondents No. 1 & 2, Mr. ND Chullai, learned Sr. GA assisted by Mr. B Khyriem, learned counsel for the respondents No. 3-5, Mr. K Paul, learned counsel for the respondents No. 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 21, 24, 26, 28, 29, 30, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 48, 50, 51 and 53 and Dr. ODV Ladia, learned senior counsel assisted by Mr. P Yobin, learned counsel appearing for the respondents 23 & 27.

3. The concise fact leading to the filing of these two writ petitions, sufficient for deciding the matter in issues, is recapitulated.

4. The writ petitioners 36 in numbers in WP(C) No. 118/2014 and one writ petitioner in WP(C) No. 244/2014 are the Bachelor of Science (Agriculture) and

they are eligible for appointments to the post of Grade-III Meghalaya Agricultural Service (MAS) (Agriculture Development Officer/Horticulture Development Officer/Scientific Officer (Research) Seed Technology/Soil Testing/Seed Testing etc.).

5. The MPSC, Shillong issued an advertisement being No. MPSC/ADVT-38/1/2012-2013/1 dated Shillong, the 20th April, 2012 inviting applications from the eligible candidates for recruitment to 16 (sixteen) posts of Grade-III MAS and the applications will be received up to 5:00 PM on 25.05.2012 and no application will be entertained after the closing date. The method of selection and also essential qualifications as well as technical qualification for appointment to the said posts of Grade-III MAS were clearly mentioned in the said advertisement dated 20.04.2012. Educational qualifications for appointment to the said 16 (sixteen) advertised posts of Grade-III MAS is B.Sc. (Agriculture/Horticulture) or equivalent Degrees from a recognized Indian Universities and also the number of posts indicated in the said advertisement is tentative subject to change at the time of actual recruitment. Under Para 8 of the said advertisement dated 20.04.2012, only preliminary scrutiny of the applications and other aspects will be undertaken before the written examination and therefore, the acceptance of candidature will only be provisional. Copies of the supporting documents that they are eligible for the post will be sought only from those candidates who qualify in the written examination. When scrutiny is undertaken after the written examination, if any claim made in the application is not found substantiated the candidature will be cancelled and the Commission's decision in this regard shall be final. Under the said advertisement dated 20.04.2012, the MPSC has no power for relaxation of the conditions mentioned in the said advertisement dated 20.04.2012. As the petitioners as well as the respondents are placing heavy reliance on the conditions of the said advertisement dated 20.04.2012 in support of their cases and also the issue calls for decision in these two present writ petitions are to be decided by looking into the conditions mentioned in the said advertisement dated 20.04.2012, the relevant portions of the said advertisement dated 20.04.2012 are quoted hereunder:--

"MEGHALAYA PUBLIC SERVICE COMMISSION SHILLONG

No. MPSC/ADVT-38/1/2012-2013/1 dated Shillong, the 20th April, 2012

Applications (Off-line/On-line) in the Commission's prescribed form AF-1 are invited from genuine citizens of India who are desirous to apply in terms and conditions of this Advertisement for recruitment to the various categories of posts specified in the table below:--

Application will be received up to 5:00 PM on 25th May, 2012 and no application will be entertained after the closing date. For on-line applications through MPSC Website closing date is 23.59 Hrs on 25th May, 2012, after which the link will be disabled.

Para 1: LIST OF POSTS

Para 2: EDUCATIONAL QUALIFICATIONS

Applicants must possess the essential qualifications as detailed below subject to various specifications in the relevant service rules as on the date of Notification.

Para 8: COMMISSION'S DECISION ON ELIGIBILITY OF CANDIDATES

In view of the anticipated large number of applicants, only preliminary scrutiny of the applications and other aspects will be undertaken before the Written Examination and therefore, the acceptance of candidature will only be provisional. Candidates are advised to go through the requirements of educational qualification, age, physical standards etc. and satisfy themselves that they are eligible for the posts, before applying. Copies of supporting documents will be sought only from those candidates who qualify in the Written Examination. When scrutiny is undertaken after the Written Examination, if any claim made in the application is not found substantiated the candidature will be cancelled and the Commission's decision in this regard shall be final.

Para 9: DEBARTMENT

(a) Candidates should make sure of their eligibility to the post applied for and that the declaration made by them in the format of application regarding their eligibility is correct in all respects. Any candidate furnishing incorrect information or making false declaration regarding his/her eligibility at any stage or suppressing any information is liable TO BE BEBARRED FROM APPEARING FOR ANY OF THE EXAMINATIONS CONDUCTED BY THE COMMISSION, and summarily rejection of their candidature for this recruitment.

(b) The Commission is vested with the constitutional duty of conducting recruitment and selection as per rules duly maintaining utmost secrecy and confidentially in this process and any attempt by anyone causing or likely to cause breach of this constitutional duty in such manner or by such action as to violate or likely to violate the fair practices followed and ensured by the Commission will be sufficient cause for rendering such questionable means as ground for debarment.

(c) If any candidate is or has been found impersonating or procuring impersonation by any person or resorting to any other irregular or improper means in connection with his/her candidature for selection or obtaining support of candidature by any means, such a candidate may in addition to rendering himself/herself liable to criminal prosecution, will be liable to be debarred permanently from any exam or selection held by the Service Commissions in the country.

Sd/- Secretary, Meghalaya Public Service Commission, Shillong."

6. It is crystal clear from the conditions of the said advertisement dated 20.04.2012 that (i) no application will be received after 5:00 PM on 25.05.2012

and no application will be entertained after the closing date; (ii) educational qualifications is B.Sc. (Agriculture/Horticulture) or equivalent Degrees from a recognized Indian Universities; (iii) the applicants must possess essential qualifications as on the date of Notification and; (iv) acceptance of the candidates will be provisional and copies of the supporting documents will be sought only from those candidates qualify in the written examination and scrutiny will be undertaken after the written examination. The MPSC after preliminary scrutiny of the applications for the post of Grade-III MAS pursuant to the said advertisement dated 20.04.2012, published the list of the rejected candidates vide Notice/Rejection List being No. MPSC/D-5/3/2011-2012/34 dated Shillong, the 25th March, 2013 and reason(s) for rejection of the applications of the candidates are either "in-complete application" or "no required qualification". Under the said Rejection List dated 25.03.2013, applications of as many as 244 candidates which include the respondents No. 41, 30, 31 & 51 had been rejected. For easy reference, relevant portions of the said Rejection List dated 25.03.2013 are quoted hereunder:--

"MEGHALAYA PUBLIC SERVICE COMMISSION MEGHALAYA SHILLONG

No.MPSC/D-5/3/2011-2012/34 dated Shillong, the 25-Mar-2013

NOTICE REJECTION LIST

Recruitment to the post of GRADE III MEGHALAYA AGRICULTURE SERVICE (AGRICULTURE DEVELOPMENT OFFICER/HORTICULTURE DEVELOPMENT OFFICER/ SCIENTIFIC OFFICER (RESEARCH) SEED.

Reference: No. MPSC/ADVT-38/1/2012-2013/1 Dated 24-Apr-2012

This is for general information that the applications of the candidates whose names are listed below in respect of the above mentioned post are proposed to be rejected because of the reason(s) mentioned against each.

Objections if any, against the proposed action should be filed so as to reach the Controller of Examinations, Meghalaya Public Service Commission on or before the 12-Apr-2013, failing which the rejection shall be treated as final.

Sd/- Chief Controller of Examinations, Meghalaya Public Service Commission Shillong."

7. After scrutiny, the MPSC, Shillong again issued another Rejection List of the applications of the candidates vide Notice/Rejection List being No. MPSC/D-5/3/2011-2012/50 dated Shillong, the 20th June, 2013 and the reason(s) for rejection of the applications of the candidates are either "incomplete application" or "no required qualification". In that Rejection List dated 20.06.2013, the names of the 6 (six) private respondents namely, (i) Smti. Chonkame Rangsa Marak-respondent No. 48; (ii) Smti.Sierra Manda Sangma-respondent No. 43; (iii) Smti.Bingiala Laloo-respondent No. 30; (iv) Smti. Amenisha Lyngdoh-respondent No. 31; (v) Smti. Dingsai Dalbot Shira-respondent No. 40 and; (vi) Smti.

Bakhriamdor Sohliya-respondent No. 51, are included. For easy reference, the relevant portions of the said Rejection List dated 20.06.2013 are quoted hereunder:--

""MEGHALAYA PUBLIC SERVICE COMMISSION MEGHALAYA SHILLONG

No.MPSC/D-5/3/2011-2012/50 dated Shillong, the 20-Jun-2013

NOTICE REJECTION LIST

Recruitment to the post of GRADE III MEGHALAYA AGRICULTURE SERVICE (AGRICULTURE DEVELOPMENT OFFICER/HORTICULTURE DEVELOPMENT OFFICER/ SCIENTIFIC OFFICER (RESEARCH) SEED.

Reference: No. MPSC/ADVT-38/1/2012-2013/1 Dated 24-Apr-2012

This is for general information that the applications of the candidates whose names are listed below in respect of the above mentioned post are proposed to be rejected for the reason(s) mentioned against each.

Objections if any, against the proposed action should be filed so as to reach the Chief Controller of Examinations, Meghalaya Public Service Commission on or before the 10-Jul-2013, failing which the rejection shall be treated as final.

Sd/- Chief Controller of Examinations, Meghalaya Public Service Commission Shillong."

The said Rejection List dated 20.06.2013 consists of 272 candidates.

8. The Govt. of Meghalaya, Agriculture Department under the letter of the Under Secretary to the Govt. of Meghalaya being No. AGRI (E) 76/2011/57 dated 26.04.2013, requested the MPSC to consider issuing a Corrigendum, if time permits as "49 vacant posts" instead of "25 vacant posts" in the said advertisement dated 20.04.2012. On receipt of the said letter dated 26.04.2013, the MPSC issued Addendum being No. MPSC/ADVT-38/1/2012-2013/110 dated 06.05.2013 to the said advertisement dated 20.04.2012 after lapsed of one year from the date of the said advertisement dated 20.04.2012 for general information that number of vacancies in respect of the said post is 49 (forty nine). Under the said Addendum dated 06.05.2013, new applications from the candidates for the said additional posts i.e. 33 (49-16) were not called as it was the condition of the said advertisement dated 20.04.2012 that "applicants must possess the essential qualifications as detailed under the relevant rules as on the date of the Notification i.e. 20.04.2012". It would be more profitable to quote the said letter of the Govt. of Meghalaya, Agriculture Department dated 26.04.2013 and Addendum dated 06.05.2013 issued by the MPSC hereunder:--

"GOVERNMENT OF MEGHALAYA AGRICULTURE :::: DEPARTMENT

No. AGRI (E) 76/2011/57 Dated Shillong, the 26th April, 2013

From:--Smti. H Sun,

Under Secretary to the Govt. of Meghalaya.

To, The Secretary, Meghalaya Public Service Commission, Shillong.

Subject: Advertisement for recruitment to the post of MAS-III under Agriculture Department.

Reference: This Department's letter No. AGRI (E) 76/2011/16 dated 1.12.2011.

Your letter M. No. MPSC/D-5/3/2011-12/24 dated 23.4.2012.

Sir,

With reference to above, I am directed to inform you that the number of vacancies have now increase in view of the creation of new districts, retirement, etc.

In view thereof, I am directed to request you to consider issuing a Corrigendum, if time permits as "49 vacant posts" instead of "25 vacant posts".

Yours faithfully, Sd/- (Smti. H. Sun), Under Secretary to the Govt. of Meghalaya, Agriculture Department.

MEGHALAYA PUBLIC SERVICE COMMISSION SHILLONG

No.MPSC/ADVT-38/1/2012-2013/110 Dated Shillong, the 6th May, 2013.

ADDENDUM

To

This Office Advertisement No. MPSC/ADVT-38/1/2012-2013/1, Dt.20.04.2012

Consequence upon the increase in the number of vacancies as informed by Government in the Agriculture Department vide Letter No. AGRI (E) 76/2011/57, dt.26th April, 2013 in respect of the post of Grade III Meghalaya Agricultural Service (MAS) (Agriculture Development Officer/Horticulture Development Officer/Scientific Officer (Research) Seed Technology/Soil Testing/Seed Testing etc.) appearing at SL. No. 4 of Para 1 of the above referred advertisement, it is hereby notified for general information of all concerned that the number of vacancies in respect of the said post is 49 (forty nine).

Sd/- Secretary, Meghalaya Public Service Commission Shillong".

9. The MPSC issued Notice for conducting the written examination of the candidates for the said 49 posts of Grade-III MAS on 07.02.2014. Just 9 (nine) days before the written examination of the candidates scheduled to be held on 07.02.2014, the MPSC, incomplete summons of the earlier decision for conducting the written examination of the candidates and also incomplete infractions of the conditions of the said advertisement dated 20.04.2012, took a decision in a meeting held on 28.01.2014 that the written examination scheduled to be held on 07.02.2014 is cancelled and in pursuance of the said resolution,

the MPSC issued Notice being No. MPSC/D-5/3/2011-2012/85 dated Shillong, the 30th January, 2014 that the MPSC had decided to dispense with the written examination in respect of the recruitment to the post of Grade-III MAS and the selection of suitable candidates for the 49 vacancies vide Notice dated 06.05.2013, shall be made on the basis of personal interview only. The minutes of the Commission's meeting held in the Office Chamber of the Chairperson, MPSC on 28.01.2014 and the said Notice dated 30.01.2014 are reproduced below:--

"MINUTES OF THE COMMISSION'S MEETING HELD IN THE OFFICE CHAMBER OF THE CHAIRPERSON, MPSC ON 28TH JANUARY, 2014.

Present: Smt. L.R. Sangma-Chairperson

Shri. I.R. Lanong-Member

Shri. P.S. Dkhar-Member

Smt. B.W. Momin-Member

Shri. R. Raptap-Secretary

The meeting was chaired by the Honourable Chairperson. The Chairperson initiated the discussion. After a detailed deliberation, the following decisions were taken.

1. Recruitment to the post of Grade-III Meghalaya Agricultural Service:

The Commission reviewed the earlier decision taken on 8th April, 2013, in relation to the conduct of written examination scheduled to be held on 7th February, 2014. It was informed that the number of vacancies to be filled up by this recruitment has been enhanced to 49 (forty nine) vide Addendum issued under Memo. No. MPSC/ADVT-38/1/2012-2013/110 dated 6th May, 2013. The number of eligible candidates is 205. The method of selection is not specified by the Service Rules. In such cases the Commission has the discretion to decide if written test should be conducted and such decision is made on the basis of the number of eligible candidates against the available vacancies. The Commission, after taking into account the number of eligible candidates, which is 205, and the number of vacancies, which is 49, decided that the conduct of written examination is not necessary in this recruitment. Hence the written test scheduled to be held on 7th February, 2014 is cancelled. Notice to this effect shall be issued immediately. It was also decided that the personal interview shall be held from 17th to 21st February, 2014. All candidates are to be informed accordingly.

Memo No. MPSC/D-5/3/2011-2012/84-A Dt. 28th January, 2014

Sd/- Smt. L.R. Sangma Chairperson, MPSC

Copy to:

1. All Hon"ble Members MPSC for information.
2. Secretary/Chief Controller Examination/Dy.Secretary/Under Secretary/ concerned D.A. for information and necessary action.

Sd/- Smt. L.R. Sangma Chairperson, MPSC

MEGHALAYA PUBLIC SERVICE COMMISSION SHILLONG

No.MPSC/D-5/3/2011-2012/85 Dated Shillong, the 30th January, 2014

NOTICE

(Recruitment to the post of Grade III Meghalaya Agriculture Service)

This is for the general information of all concerned candidates that the Commission has decided to dispense with the Written Examination in respect of the above mentioned recruitment. The Written Examination scheduled on 7th February, 2014 is therefore cancelled. The selection of suitable candidate to the 49 vacancies notified vide No. MPSC/ADVT-38/1/2012-2013/110 dated 6th May, 2013 shall be made on the basis of personal interview only. It is further notified that the programme of the Personal Interview shall be as follows:--

Sd/- Secretary, Meghalaya Public Service Commission Shillong".

10. The State respondents in their affidavit-in-opposition stated that the Govt. of Meghalaya, Personnel & Admv. Reforms (B) Department, under the letter of the Under Secretary to the Govt. of Meghalaya dated 26.09.2013, requested the MPSC to allow the candidates, who were waiting result of the examination of B.Sc. (Agriculture/Horticulture) at the time of filing their applications, to sit for the examination and the result of this examination may be subject to submission of proof of passing the requisite examination as and when considered appropriate by the Commission. As even the U.P.S.C. in its advertisement for CSE, declares candidate eligible for the Preliminary Examination if they have appeared at an examination, the passing of which would render them educationally qualified for the Civil Services Examination. The Govt. of Meghalaya, Personnel & Admv. Reforms (B) Department had completely misunderstood the conditions of the advertisement made by the UPSC for CSE and the conditions of the said present advertisement dated 20.04.2012. For easy reference, the said letter of the Govt. of Meghalaya, Personnel & Admv. Reforms (B) Department dated 26.09.2013 is quoted hereunder:--

"GOVERNMENT OF MEGHALAYA PERSONNEL & ADMV. REFORMS (B) DEPARTMENT

No.PER(AR).116/2004/110 Dated Shillong, the 26th September, 2013.

From: Smti. B. Rymmai, Under Secretary to the Govt. of Meghalaya, Personnel & Admv. Reforms (B) Department.

To,

The Secretary, Meghalaya Public Service Commission, Shillong.

Subject: Prayer for allowing to appear in the MPSC examination for the post of Agricultural Development Officer/Horticultural Development Officer.

Sir,

With reference to the subject cited above, I am directed to inform you that the Government has received a representation from some candidates that their applications were rejected by the Commission on the ground that they were not graduates at the time of submission of applications.

In this connection, it may be mentioned that even the UPSC in its advertisement for CSE, declares candidates eligible for the Preliminary Examination if they have appeared at an Examination, the passing of which would render them educationally qualified for the Civil Services Examination but where the results have not yet been declared.

On the same principle, the applications of candidates who have submitted their applications for B.Sc. (Agri) and may still have been awaiting results at the time of applying for the post may be allowed to sit for the examination/test and the result of this examination may be subject to submission of proof of passing the requisite examination as and when considered appropriate by the Commission.

This may also be extended to all such advertisement issued by the Commission in future.

Yours faithfully, Sd/- Under Secretary to the Govt. of Meghalaya, Personnel & Admv. Reforms (B) Department."

11. It is stated in the affidavit-in-opposition filed by the State respondents as well as by the private respondents in WP(C) No. 118/2014, that some of the writ petitioners of WP(C) No. 118/2014 and others had filed two representations i.e. representation dated 23.01.2014 to the Hon"ble Chief Minister, Govt. of Meghalaya and representation dated 24.01.2014 to the Hon"ble Minister In-charge Agriculture Department for conducting the selection test of the candidates for the post of Grade-III MAS pursuant to the said advertisement dated 20.04.2012 by way of personal interview only without written examination. Unfortunately, this important fact is suppressed by the writ petitioners of WP(C) No. 118/2014 while filing the writ petition. The Apex Court in A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., held that every litigants is expected to state the truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts. It is imperative that the Judges must have complete grip of the facts before they start dealing with the case. Para 23, 24,

26, 27, 28 and 29 of the SCC in A Shanmugam's case (Supra) read as follows:--

"23. We reiterate the immense importance and relevance of purity of pleadings. The pleadings need to be critically examined by the judicial officers or Judges both before issuing the ad interim injunction and/or framing issues.

24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in Dalip Singh Vs. State of U.P. and Others, :

"1. Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and people used to feel proud to tell the truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system."

26. As stated in the preceding paragraphs, the pleadings are the foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and authenticity of the matter pleaded.

27. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands.

28. It was imperative that the Judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases.

29. Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the courts should encourage interrogatories to be administered."

The Apex Court in Dalip Singh Vs. State of U.P. and Others, held that materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals.

The writ petitioners of WP(C) No. 118/2014 are imposed an exemplary cost of Rs. 10,000/- (Rupees ten thousand) only for suppressing the above fact and the said cost of Rs. 10,000/- (Rupees ten thousand) only should be deposited in the Registry of this Court within one month from the date of receipt of a certified copy of this judgment and order. The Registry shall deposit the said amount of

Rs. 10,000/- (Rupees ten thousand) only in the appropriate Head in the fund of the Social Welfare Department, Govt. of Meghalaya for utilizing the same for children home. In case of the failure to deposit the said amount of Rs. 10,000/- (Rupees ten thousand) only within the period indicated above, Writ Petition No. 118/2014, shall stand dismissed.

12. The MPSC after conducting only the personal interview of the candidates for selection for appointment to the said 49 posts of Grade-III MAS, published the list of the recommended candidates i.e. private respondents No. 6-54 vide Notification being No. MPSC/D-5/3/2011-2012/89 dated 28.02.2014. The impugned select list includes the names of the said seven private respondents i.e. (i) Smti. Bingiala Laloo-respondent No. 30; (ii) Smti. Amenisha Lyngdoh-respondent No. 31; (iii) Smti. Dingsai Dalbot Shira-respondent No. 40; (iv) Shri. Mimo Ch. Momin-respondent No. 41; (v) Smti. Sierra Manda Sangma-respondent No. 43; (vi) Smti. Chonkame Rangsa Marak-respondent No. 48 and; (vii) Smti. Bakhriamdor Sohliya-respondent No. 51, whose candidatures had already been rejected by the MPSC vide said Notifications dated 25.03.2013 and 20.06.2013. This Court (Hon'ble Mr. Justice P.C. Pant, as he then was and the present Judge of the Supreme Court) passed an interim order dated 01.04.2014 that no appointment shall be made if not already made from the impugned select list dated 28.02.2014. The interim order was made absolute and as such, till date, no appointment has been made pursuant to the said impugned select list dated 28.02.2014. Interim order dated 01.04.2014 reads as follows:--

ORDER DATED 01.04.2014 ORAL: HON'BLE PRAFULLA C. PANT, CHIEF JUSTICE

Heard.

By means of this writ petition, the petitioners have challenged the selection process and the selection of respondents No. 6 to 54, for the posts of Grade III Meghalaya Agricultural Service.

It is pleaded on behalf of the petitioners that an advertisement dated 20.04.2012 was issued for making appointment to the post of Grade III Meghalaya Agricultural Service (for short MAS), along with other posts of various departments. Copy of said advertisement (Annexure 1) discloses clearly in para 8 that written examination was to be held for the selection of the posts advertised. It is pointed out that the respondents Meghalaya Public Service Commission (for short MPSC) by whom advertisement was issued, fixed 07.02.2014 as date of written examination for the above mentioned posts for which notice dated 30.01.2014 was issued. Copy of said notice is also annexed with the writ petition (Annexure 3). On behalf of the petitioners, it is submitted that call letters were sent to the candidates. Learned counsel for the petitioners argued that the respondents MPSC arbitrarily changed the selection procedure and invited the candidates to appear for interviews without holding written examination, which were held between 07.02.2014 to 21.02.2014 vide impugned rejection list dated 25.03.2014. It is also submitted that vide impugned notification dated

28.02.2014 (Annexure 7), the respondents No. 6 to 54 were declared selected which included even the names of those candidates whose applications were rejected vide communication dated 25.03.2013 (Annexure 5) and notice dated 20.06.2013 (Annexure 6) after the scrutiny. The seven of such candidates, according to the petitioners, are respondents No. 30 Smti Bingiala Laloo (qualified after the last date of notification/advertisement), respondent No. 31 Smti Amenisha Lyngdoh (qualified after the last date of notification/advertisement), respondent No. 40 Smti Dingsai Dalbot Shira (qualified after the last date of notification/advertisement), respondent No. 41 Shri Mimo Ch. Momin (incomplete application), respondent No. 43 Smti Sierra Manda Sangma (qualified after the last date of notification/advertisement), respondent No. 48 Smti Chonkame Rangsa Marak (qualified after the last date of notification/advertisement) and respondent No. 51 Smti Bakhriamdor Sohliya (qualified after the last date of notification/advertisement).

Learned senior counsel for the respondents MPSC submitted that since the petitioners have participated in the selection process as such they cannot challenge the selection. However, this Court is of the view that had the respondents not made clear in the advertisement that the written test will be held what the learned counsel for the respondents pleaded could have been accepted. But the petitioners are candidates who in pursuance to advertisement have applied for the posts and it has been pleaded that in blatant violation of the terms of the advertisement, the selection has been made, as such this Court is unable to accept the argument advanced on behalf of the respondents.

Admit the writ petition.

Learned counsel for respondents No. 1 and 2 and learned senior counsel for respondents No. 3,4 and 5 pray for and are allowed four weeks" time to file their counter affidavits.

Also issue notices to respondents No. 6 to 54, who may also file their counter affidavits within a period of four weeks, and the petitioners are directed to take steps with full particulars of the private respondents for getting notices served.

Having heard learned counsel for the petitioners and learned counsel for respondents No. 1 and 2 and learned senior counsel for respondents No. 3,4 and 5, considering the prima facie case made out in favour of the petitioners, as an interim measure, it is directed that no appointment shall be made, if not already made, from the impugned select list (Annexure 7) challenged in the writ petition, till the next date of listing.

List after four weeks.

(Prafulla C. Pant) CHIEF JUSTICE"

13. The core questions call for decision in the present two writ petitions are:--

"(i) When did the selection process starts?

(ii) Is the selection process to be conducted in compliance of the terms and conditions mentioned in the concerned advertisement dated 20.04.2012?

(iii) Could the rule of the game or terms and conditions of the selection be changed after the game/selection process already started when no relaxation clause or power of the selection committee/Commission to relax or deviate the rules of the game is mentioned in the concerned advertisement dated 20.04.2012?

(iv) Whether the un-communicated inter departmental correspondences could be basis for deviation of the terms and conditions of the concerned advertisement dated 20.04.2012?;

(v) Is the said Addendum dated 06.05.2013 to the advertisement dated 20.04.2012 issued by the MPSC one year after the advertisement dated 20.04.2012 for notifying the additional vacancies i.e. 33 (49-16) without giving opportunity to the candidates who acquired essential qualification for appointment to the post of Grade-III MAS between the earlier date of advertisement dated 20.04.2012 and date of Addendum dated 06.05.2013 for applying for the said additional posts illegal or violative of Articles 14 & 16 of the Constitution of India? and

(vi) Are the writ petitioners who appeared selection test barred by the principles of estoppels/or waiver and acquiescence to file the present writ petitions challenging the illegality committed by the MPSC and the State respondents in selecting the candidates for the post of Grade-III MAS advertised in the said advertisement dated 20.04.2012?."

14. Selection Process:

It is well settled in service jurisprudence that the selection process begins with the issue of advertisement. For this well settled position of law, it may not be required to refer to a catena of decisions of the Apex Court and it would be sufficed to refer to the decision of the Apex Court in A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, .

15. Last date of eligibility ("relevant date for fulfillment of the eligibility criteria for appointment to the posts advertised in the particular advertisement"):

"It is well settled that recruitment of a post must be made in the terms of the advertisement operating in the field. The essential qualification must be possessed by a person as on the date of issuance of the Notification or as specified in the rules and only in absence thereof, the qualification acquired till the last date of filing the application. For this settled position of law, we may refer to the four decisions of the Apex Court in (i) U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, ; (ii) Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, ; (iii) Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, and; (iv) Bedanga Talukdar Vs. Saifudaullah Khan and Others, ."

16. The Apex Court in Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, held that possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In the absence of any rules or any specific date having been fixed in the advertisement, the law would be the last date for filing the application. Paras 11, 15 & 20 of the SCC in Ashok Kumar Sonkar's case (Supra) read as follows:--

"11. The question as to what should be the cut-off date in absence of any date specified in this behalf either in the advertisement or in the reference is no longer res integra. It would be last date for filing application as would appear from the discussion made hereinafter.

15. It was held: SCC pp.21-22, para 6)

"So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, . The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview."

20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer

would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application."

The Apex Court in *M. C. Bindal Vs. R.C. Singh and others*, held that the Public Service Commission has to consider and to get itself satisfy as to which of the candidates has fulfilled the requisite qualifications specified in the advertisement. The Apex Court had set aside the candidates who were appointed without requisite qualifications and directed to re-advertise.

17. In the advertisement dated 20.04.2014, it is clearly mentioned that the application will be received up to 5:00 PM on 25.05.2012 and no application will be entertained after closing date and also in Para 2 of the said advertisement dated 20.04.2012 mentioned that the applicants must possess the essential qualifications as on the date of Notification i.e. 20.04.2012. These are the terms and conditions of the said advertisement dated 20.04.2014. The MPSC themselves had earlier admitted that the applicants must possess the essential qualifications as on the date of Notification i.e. 20.04.2012 or last date of receiving the application. By issuing Rejection/Notice of the Rejection List of the candidates for rejecting the candidates, who were qualified after the last date of Notification/advertisement dated 20.04.2012 vide the said Notifications dated 25.03.2013 and 20.06.2013, the MPSC also had admitted that the said seven private respondents namely, (i) Smti. Bingiala Laloo-respondent No. 30; (ii) Smti. Amenisha Lyngdoh-respondent No. 31; (iii) Smti. Dingsai Dalbot Shira-respondent No. 40; (iv) Shri. Mimo Ch. Momin-respondent No. 41; (v) Smti. Sierra Manda Sangma-respondent No. 43; (vi) Smti. Chonkame Rangsa Marak-respondent No. 48 and; (vii) Smti. Bakhriamdor Sohliya-respondent No. 51 were not qualified on the date of Notification or advertisement dated 20.04.2012 and accordingly, they are not qualified for appearing the selection test for the post of Grade-III MAS advertised in the said advertisement dated 20.04.2012 and Addendum dated 06.05.2013.

18. Are the writ petitioners barred by the principles of estoppel or waiver and acquiescence:--

The Apex Court in a catena of cases held that the respondents who do not possess the requisite qualifications under the rules or the essential eligibility criteria for the post mentioned in the advertisement are not eligible candidates; and there cannot be estoppels against the law as such, failed candidates cannot be stopped from challenging the illegality in preparation of the select list. The Apex Court in *Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others*, 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 *Munindra Kumar and others Vs. Rajiv Govil and others*, (See also *Ku. Rashmi Mishra Vs. Madhya Pradesh Public Service Commission and Others*, .

19. In *Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others*, , it was held: (SCC p. 148, para 32)

"32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status - the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise."

It was further observed: (SCC p. 149, para 34)

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, 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 there was some lacuna in the process."

20. We are, however, not oblivious that there are certain exceptions to the aforementioned Rules but we are not concerned therewith in the present case."

The Apex Court in *Raj Kumar and Others Vs. Shakti Raj and Others*, held that:--

"16. The entire procedure is also obviously illegal. It is true, as contended by Shri. Madhava Reedy, that this Court in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is stopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also

conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law."

The Apex Court in *Dr Prit Singh Vs. S.K. Mangal and Others*, held that:

"13. We fail to understand as to how the Vice-Chancellor who himself was of the opinion that the appellant did not possess the requisite qualifications for the post of Principal and who had refused to approve the said appointment, later approved the same appointment on November 13, 1987 with effect from October 16, 1987. It has rightly been submitted on behalf of the respondents that the Vice-Chancellor approved the appointment after October 15, 1987 when the amendment was made in the prescribed qualifications for the post of Principal of a recognized College of Education. If he was not eligible for appointment in terms of the prescribed qualifications on the date he was appointed by the Managing Committee subject to the approval of the Vice-Chancellor, then later he cannot become eligible after the qualifications for the post were amended. As such we are in agreement with the view expressed by the High Court, that on the date of the appointment the appellant did not possess the requisite qualifications and as such his appointment had to be quashed."

19. Selection criteria or Rules of the game:--

It is well settled that the selection criteria or rules of the game cannot be changed when the game is under process. In the present case, the game was under process i.e. the process of selection when the MPSC through a process not permissible under the law, amended mode of selection of the candidates mentioned in the advertisement dated 20.04.2012. We may refer to the decisions of the Apex Court in (i) *K. Manjusree Vs. State of A.P. and Another*, ; (ii) *Ramesh Kumar Vs. High Court of Delhi and Another*, and; (iii) *State of Orissa and Another Vs. Mamata Mohanty*, . The Apex Court in *Ramesh Kumar's* case (*Supra*) held that:

"14. Similarly, in *K. Manjusree Vs. State of A.P. and Another*, , this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible."

(emphasis supplied)

The Apex Court in *State of Orissa and Another Vs. Mamata Mohanty*, held that:

"50. In the absence of an enabling provision for grant of relaxation, no relaxation

can be made. Even if such a power is provided under the statute, it cannot be exercised arbitrarily. (See Union of India (UOI) Vs. Dharam Pal Etc., Such a power cannot be exercised treating it to be an implied, incidental or necessary power for execution of the statutory provisions. Even an implied power is to be exercised with care and caution with reasonable means to remove the obstructions or overcome the resistance in enforcing the statutory provisions or executing its command. Incidental and ancillary powers cannot be used in utter disregard of the object of the statute. Such power can be exercised only to make such legislation effective so that the ultimate power will not become illusory, which otherwise would be contrary to the intent of the legislature. (Vide Matajog Dobey Vs. H.C. Bhari, and State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others,

51. More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over. (Vide K. Manjusree Vs. State of A.P. and Another, and Ramesh Kumar Vs. High Court of Delhi and Another, .)"

20. The rules of the game/mode of selection of the candidates mentioned in the said advertisement dated 20.04.2012 for appointment to the 49 posts of Grade-III MAS are twin tests i.e. written examination and viva voce. Rule 4 of the Meghalaya Agricultural Service Rules, 1996 (for short "the said Rules of 1996") provides the composition of the service and the service shall consist of (i) Senior Grade (ii) Grade-I (iii) Grade-II and (iv) Grade-III. Rule 7 of the said Rules of 1996 provides that the appointment to any post in the Grade-III of the service shall be made by direct recruitment on the result of the examination conducted by the Commission. Rule 11 of the said Rules of 1996 provides as to how the examination for direct recruitment under Sub-Rule (4) of Rule 7 shall be conducted by the Commission. For easy reference, Rules, 4, 7 & 11 of the said Rules of 1996 are quoted hereunder:--

"4. Composition of the Services:--(1) The services shall consist of the following Grades namely:--

(i) Senior Grade

(ii) Grade-I

(iii) Grade-II

(iv) Grade-III

(2) Each of the categories of posts as listed in Schedule I shall form an independent cadre. Members of the lower cadre shall have no claim for appointment to any of the higher cadre except in accordance with the provisions made in these rules.

7. Method of recruitment:--(1) Appointment to any post in the senior Grade of

the service shall be made by promotion from amongst the members of the service holding the next lower posts in the grade and those belonging to Grade-I as specified in the Schedule-II and included in the Select List approved under sub-rule (4) of rule 9.

(2) Appointment to any post in the Grade-I shall be made by promotion from amongst the members of the service holding the next lower post in that grade and those belonging to Grade-II as specified in Schedule-II and included in the Select List approved under sub-rule (4) of rule 9.

(3) Appointment to any post in the Grade-II shall be made by promotion from amongst the members of the service belonging to Grade-III as specified in Schedule-II and included in the Select List approved under sub-rule (4) of rule 9.

(4) Appointment to any post in the Grade-III of the service shall be made by direct recruitment on the result of the examination conducted by the Commission.

11. Direct Recruitment:--(1) Examination for direct recruitment under sub-rule (4) of rule 7 shall be held at such intervals as the Appointing Authority may in consultation with the Commission from time to time. The date on which and the place at which the examination shall be held shall be fixed by the Commission.

(2) The examination shall be conducted by the Commission in accordance with such syllabus as the Appointing Authority may from time to time make in consultation with the Commission.

(3) Out of the vacancies to be filled up on the result of each examination, there shall be reservation in favour of candidates belonging to Schedule Caste and Schedule Tribes to the extent and subject to the conditions as the Government may from time to time prescribe.

(4) On the basis of the result of the examination, the Commission shall prepare a list of all successful candidates in order of merit, which shall be determined in accordance with the aggregate marks obtained by each candidates and if two or more candidates obtained equal marks the Commission shall arrange them in order of their relative merit which shall be determined in accordance with the general suitability of the candidates for appointment to the post. The number of persons to be included in the list shall be according to the actual vacancies that are likely to occur during the recruitment year plus 10 percent of the actual vacancies or 2 names whichever is more. The list shall be forwarded to the Appointing Authority.

(5) The inclusion of a candidates" name in the list confer no right to appointment unless the Government is satisfied after such enquiry as may be considered necessary that the candidate is suitable in all respect for appointment to the post and that appointment to any post in the service is subject to availability of vacancy."

On conjoint reading of Rules 4, 7 & 11 of the said Rules of 1996, it is clear that

Grade-III MAS is the entry point of service and appointment to any post in the Grade-III MAS, shall be made by direct recruitment on the result of the examination conducted by the Commission. The Apex Court in a catena of cases held that twin tests i.e. written test and viva voce test are the best tests for the young candidates for appointment in the first entry point of service and admission to a college. In the present case, post in the Grade-III service of the MAS is not only the entry point of service but also appointment shall be from the young candidates between the age of 18-27 years and also not the senior service.

21. The Apex Court in *Lila Dhar Vs. State of Rajasthan and Others*, held that in a case of admission to a college, greater weight has to be given to the performance of the candidate in the written examination and in the case of service to which recruitment has necessarily be made from persons of mature personality, interview test may be the only way, subject to the basic and essential academic and professional requirements being satisfied. In the present case, the appointment to the entry point of the service of MAS i.e. Grade-III MAS are to be from the young candidates aged between 18-27 years. Para 6 of the SCC in *Lila Dhar's* case (Supra) reads as follows:--

"6.Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview test must be minimal. That was what was decided by this Court in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, , *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied."

The Apex Court in *Kiran Gupta & Ors v. State of U.P. & Ors*: (2007) 7 SCC 719 had followed the ration laid down in *Lila Dhar's* case (Supra) and also considered the decision of the Apex Court in *Dr. Keshav Ram Pal, Reader and Head of Sanskrit Department and Offg. Principal, Lajpat Rai Post-graduate College, Sahibabad, Distt. Ghaziabad, U.P. Vs. U.P. Higher Education Services Commission, Allahabad and others*, , *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, and *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, held that the oral interview for selection to senior post may be the only test but for the young candidates, whose personality is yet to develop and it is too early to identify the personal qualities are to be subjected to written test and interview for appointment to the junior post or to the entry point

of service by direct recruitment. Paras 22, 23 & 24 of the SCC in Kiran Gupta's case (Supra) read as follows:--

"22. But, where oral interview alone has been the criteria for selection/appointment/promotion to any posts in senior positions the question of higher percentage of marks for interview does not arise. Therefore, we think it an exercise in futility to discuss these cases - Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, - relied upon by Mr. Goswami, which deal with admission to educational institutions/schools and also cases where prescribed method of recruitment was written test followed by an interview - Ashok Kumar Yadav and Others Vs. State of Haryana and Others, , D.V. Bakshi and others etc. etc. Vs. Union of India and others, and Krishan Yadav and another Vs. State of Haryana and others, .

23. However, it will be apt to refer to the decision of a three-Judge Bench of this Court in Lila Dhar Vs. State of Rajasthan and Others, . There, the impugned selection for the posts of District Munsifs under the Rajasthan Judicial Service Rules was made by the Rajasthan Public Service Commission. The ratio of marks allocated for written test and interview was 75:25. Speaking for the Court, Justice O. Chinnappa Reddy pointed out: (SCC Headnote)

"In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. Therefore, the ratio of the decisions in Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, cases in this regard cannot be applied in case of service to which recruitment has necessarily to be made from persons of mature personality. In such services interview-test may be the only way, subject to basic and essential academic and professional requirements being satisfied."

That case has been consistently followed in various judgments of this Court. We refer to a few of them here.

24. In Dr. Keshav Ram Pal, Reader and Head of Sanskrit Department and Offg. Principal, Lajpat Rai Post-graduate College, Sahibabad, Distt. Ghaziabad, U.P. Vs. U.P. Higher Education Services Commission, Allahabad and others, referring to the view taken by this Court in Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, that the importance to be attached to the interview-test must be minimal, this Court commented that in the case of services to which recruitment had necessarily to be made from persons of mature personality, interview-test might be the only way, subject to basic and essential academic and professional requirements being satisfied and that subjecting such persons

to a written examination might yield unfruitful and negative results, apart from it being an act of cruelty to those persons."

The Constitution Bench in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, observed that it would be desirable if the interview of the candidates is tape recorded. Relevant portions of Para 20 of the SCC in *Ajay Hasia's* case (Supra) reads as follows:--

"20. We think that it would also be desirable if the interview of the candidates is tape-recorded, for in that event there will be contemporaneous evidence to show that what were the questions asked to the candidates by the interviewing committee and what were the answers given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee."

22. The decision of the MPSC and the State Govt., in contravention of the terms and conditions mentioned in the said advertisement dated 20.04.2012, for dispensing the written examination by allowing the candidates, who are not qualified on the date of the Notification as mentioned in the said advertisement dated 20.04.2012 itself is perverse. Regarding this point, reference may be made to the decisions of the Apex Court in (i) *State of Rajasthan and Others Vs. Union of India and Others*, and (ii) *Makhan Singh Vs. State of Punjab* (and connected appeals), .

23. ADDENDUM Dated 06.05.2013

Admittedly, the Addendum dated 06.05.2013 to the advertisement dated 20.04.2012 for notifying the additional posts of 33 i.e. (49-16) issued by the MPSC one year after the advertisement dated 20.04.2012 does not give any opportunity to apply for the additional posts to the candidates who acquired qualifications for appointment to the post of Grade-III MAS between the advertisement dated 20.04.2012 and the date of Addendum dated 06.05.2013. The Apex Court in *Hoshiar Singh Vs. State of Haryana and Others*, held that:--

"10. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable."

The Addendum dated 06.05.2013 is not legally sustainable and violative of Articles 14 & 16 of the Constitution of India.

24. Un-communicated correspondence:

It is also settled law that the un-communicated order/official correspondences have no force and not valid in the eye of law and no claims can be made on the basis of the un-communicated orders/official correspondence. The interdepartmental correspondence dated 26.09.2013 in the present case is not valid in the given case. Over and above, interdepartmental correspondence cannot be issued after the selection process had already been started by issuing advertisement dated 20.04.2012 wherein, it is clearly prescribed that applicants must possess the essential qualifications or educational qualifications for appointment of Grade-III MAS as on the date of Notification i.e. 20.04.2012. The Apex Court in (i) Tagin Litin Vs. State of Arunachal Pradesh and another, and (ii) State of West Bengal etc. Vs. M.R. Mondal and Another, had considered and discussed the un-communicated Govt. orders.

The Apex Court in Tagin Litin's case (Supra) held that:

"11. It is settled law that, in order to be effective, an order passed by the State or its functionaries must be communicated to the person who would be affected by that order and until the order is so communicated the said order is only provisional in character and it would be open to the authority concerned to reconsider the matter and alter or rescind the order. (See: Bachhittar Singh Vs. The State of Punjab, ."

The Apex Court in Mr. Mondal's case (Supra) held that:

"16. An order passed but retained in file without being communicated to the plaintiff can have no force or authority whatsoever and the same has no valid existence in the eye of the law or claim to have come into operation and effect. No reliance can be placed on the same to even assert a claim based on its contents. If its utility depended upon a decision to be taken on the performance of the plaintiff by the competent authority, neither the authority could be compelled to take a decision or any concrete rights could be said to have been acquired by the plaintiff, to warrant the grant of the type of directions given in this case. It is really surprising that the discretionary power to grant injunction, be it of prohibitory or mandatory nature, has been availed of to bring into existence and force upon the State a new contract, which could never have been the intention of the State itself."

25. The Apex Court in K.H. Siraj Vs. High Court of Kerala and Others, held that the appellants/petitioners, who are not eligible are not entitled to contest the validity of the select list. In the present case, admittedly, the writ petitioners are all eligible candidates and they cannot be stopped by the principle of estoppel in challenging the select list i.e. impugned select list dated 28.02.2014, which was prepared illegally inasmuch as, there cannot be estoppel against the law.

26. For the foregoing reasons, those questions call for decision mentioned in above Para 13 are decided in favour of the petitioners and against the respondents. Now the further question is "can sympathy for the selected candidates i.e. private respondents be the ground for departing from the law"?.

It is fairly settled law that sympathy cannot be the ground for departing from the law. For this settled law, it would be sufficed to refer to the decisions of the Apex Court in (i) Uttar Haryana Bijli Vitran Nigam Ltd. and Others Vs. Surji Devi, and (ii) Gurdeep Singh Vs. State of Jammu and Kashmir and others, . The Apex Court in Surji Devi's case (Supra) reads as follows:-"16. The scheme relating to grant of Family Pension was made under a statute. A person would be entitled to the benefit thereof subject to the statutory interdicts. From a bare perusal of the provisions contained in the Punjab Civil Services Rules, Volume 2 vis-?-vis the Family Pension Scheme, it would be evident that the respondent was not entitled to the grant of any family pension. The husband of the respondent was a work-charge employee. His services had never been regularized. It may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the regularization scheme but sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law. [See Maruti Udyog Ltd. Vs. Ram Lal and Others, , State of Bihar and Others Vs. Amrendra Kumar Mishra, , Regional Manager, SBI Vs. Mahatma Mishra, , State of Karnataka and Others Vs. Ameerbi and Others, , and State of M.P. and Others Vs. Sanjay Kumar Pathak and Others,].

The Apex Court in Gurdeep Singh's case (Supra) reads as follows:--

"12..... That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardize the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analyses embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of respondent 6 in the sports category was, on the material placed before us thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion is misuse of power. While we have sympathy for the predicament of respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of respondent. 6. We do so though, however, reluctantly"

27. In the result, the impugned select list dated 28.02.2014 is hereby quashed and set aside, WP(C) No. 118/2014 is allowed subject to the payment of Rs. 10,000/- (Rupees ten thousand) only as cost within the period indicated above, WP(C) No. 244/2014 is also allowed and parties are directed to bear their own costs.