
(2007) 06 GAU CK 0071
In the Gauhati High Court
Case No : Writ Petition (C) No. 221 of 2006

Arun Ghosh

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 27-06-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32

Evidence Act, 1872 — Section 115

Indian Medical Council Regulations, 2000 — Rule 30, 5, 7

Citation : (2008) GLT 238 Supp

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : S. Talapatra and B. Banerjee, for the Appellant; S. Deb, S. Chakraborty and Somik Deb, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The present petition has been preferred under Article 226 of the Constitution of India for quashing and setting aside the Notification No. F.4(7-2)/AGMC/Academic/Faculty/2006/9706-25 dated 29.4.2006 whereby the respondent No. 3, Dr. Tapan Majumder has been appointed to the post of Assistant Professor, Microbiology in Agartala Government Medical College under the Health & Family Welfare Department, Government of Tripura and for directing the respondents No. 1 and 2 i.e. the State of Tripura and the Director of Health Services, Government of Tripura to appoint him to the post of Assistant Professor in Microbiology on regular scale in reference to the select panel prepared in pursuance to the advertisement dated 20.11.2004/20.12.2004 and also for prohibiting the respondent No. 3 to act as the Assistant Professor in Microbiology and not to fill up the post of Assistant Professor in Microbiology till the Petitioner is appointed to the said post.

2. Heard Mr. S. Talapatra, learned Senior Advocate assisted by Mr. B. Banerjee, learned Counsel for the Petitioner. Also heard Mr. S. Deb, learned senior counsel

assisted by Mr. S. Chakraborty, learned Counsel for the respondents No. 1 and 2 and Mr. Somik Deb, learned Counsel for the respondent No. 3.

3. The brief facts as stated on behalf of the Petitioner are that he is in possession of degree namely, MBBS, DBMS (Path), DMCW, MD, FRCP., Ph.D. (Tripoli) and has got teaching experience of nine years in India as well as in abroad. He was initially appointed as Medical Officer, Grade-m on 28.8.1991 under the Tripura Health Services (in short "THS"). An advertisement dated 20.12.2004 (Annexure-3 to the writ petition) was published by the Director of Health Services, State of Tripura for filling up certain post of Assistant Professors in different specialities including the Microbiology. The Petitioner belonging to Microbiology applied to the post of Assistant Professor, Microbiology along with other aspirants in reference to the said advertisement. He was asked to appear before the Selection Committee vide Memorandum dated 22.3.2005 (Annexure-4 to the writ petition) on 4.4.2005. On completion of selection the State Government issued a Notification dated 26th May, 2005 (Annexure-5 to the writ petition) whereby as many as 12 persons were promoted to the post of Assistant Professor in other specialities. The State Government, in its wisdom and for reasons best known, did not fill up the post of Assistant Professor in Microbiology and subsequent thereto, as a stop gap arrangement, by notification dated 26.5.2005 (Annexure-5 to the writ petition) the Governor of Tripura was pleased to appoint the Petitioner along with other Medical Officers of "THS" in GB. Pant Government Medical College to function as full time Tutor in Microbiology. In reference to this Notification dated 26.05.2005 (Annexure-5 to the writ petition), the Petitioner joined the post of Tutor on 28.05.2005 Annexure-7 to the writ petition). For the reasons best known to the State and its authorities, the select list in reference to the advertisement dated 20.12.2004, was not acted upon and subsequent advertisement dated 28.11.2005 was published in the local Bengali daily newspaper under its name and style Dainik Sambad on 1.12.2005 (Annexure-12 to the writ petition). By the said advertisement, the Director of Health Services, Government of Tripura invited applications from the interested candidates having requisite qualifications and professional experiences as per Medical Council of India guidelines for the post Assistant Professor, Microbiology. In reference to the said advertisement, the Petitioner submitted a representation/reference on 18.12.2005 (Annexure-8 to the writ petition) to the Director of Health Services, urging that being a Government servant, relaxation in prescribed age limit of 50 years to the post of Assistant professor (Microbiology) has to be given in his favour and since, the Petitioner has already joined as "Tutor" therefore, his position and seniority in Medical College is to be maintained while filling up the post of Assistant Professor. The said advertisement dated 28.11.2005 was not acted upon by the State Government. At a subsequent stage, another advertisement dated 2.4.2004 was issued by the Director of Health Services (published on 3.4.2006 in the aforesaid newspaper namely, Dainik Sambad)(Annexure-13 to the writ petition), whereby, applications were invited to fill up the posts of Assistant Professor in 13 different specialities

including Microbiology. In the said advertisement, it was specifically indicated that the maximum age limit of the candidates was 50 years as on the date of advertisement. In reference to the said advertisement dated 2.4.2006, many candidates excluding the Petitioner, participated and the Selection Committee, after finalization of selection, issued a Notification dated 29.4.2006, selecting the respondent No. 3 for the post of Assistant Professor in Microbiology. The Petitioner, however, has neither challenged the said advertisement dated 28.11.2005 nor the Notification dated 2.4.2006 and has only challenged the appointment of respondent No. 3 issued vide Notification dated 29.4.2006.

4. Mr. S. Talapatra, learned senior counsel for the Petitioner, has contended that the Petitioner has adequate qualification for appointment to the post of Assistant Professor in Microbiology and the Selection Committee, in reference to the advertisement dated 20.12.2004, has placed him at serial No. 1 of the panel/merit list, however, in order to accommodate the respondent No. 3 to the post of Assistant Professor in Microbiology, the State Government has ignored the select list prepared by the Selection Committee in reference to the advertisement dated 20.12.2004, where, the Petitioner was shown to be at top in the merit list. Mr. Talapatra, learned senior counsel contends that the said action of the respondents is arbitrary and fraudulent more so, when during the life time of the select list, an advertisement dated 20.11.2005 for the same post was published which, however, for the reasons best known to the respondents, was not acted upon and another advertisement dated 2.4.2006 was notified (published on 3.4.2006 in Dainik Sambad) for filling the post of Assistant Professor in Microbiology by prescribing another new condition of age bar of 50 years as on the date of advertisement. The condition of prescribing the age bar was without authority as in the earlier advertisements, there was no such restriction nor any bar of maximum age limit and further that the State and its authorities are to adhere/follow the said MCI guidelines.

5. According to Mr. Talapatra, as per MCI guidelines, the candidates who have not crossed 65 years of age are treated as eligible to be considered to the post of Assistant Professor. The respondents did not pay any heed to the representation submitted by the Petitioner for appointing him to the post of Assistant Professor in Microbiology and in order to oust and debar the Petitioner, deliberately from the zone of consideration, such arbitrary and unreasonable parameter of prescribing upper age limit of 50 years was prescribed and for giving undue favour during the subsistence of the earlier select list, the respondents have illegally appointed the respondent No. 3, which is to be quashed as the entire action of the State and its authorities are mala fide, biased, unfair as well as unreasonable.

6. It has also been argued on behalf of the Petitioner that though initial advertisements dated 28.11.2005 and 2.4.2006 were not challenged, however, the moment the respondent No. 3 was illegally and arbitrarily appointed to the post of Assistant Professor-in Microbiology (when he was having lower merit in

the select panel list in reference to the earlier advertisement dated 20.12.2004), then challenging the appointment of respondent No. 3 is relevant even without challenging the advertisement as well as the process of selection conducted in reference to the advertisement dated 2.4.2006. Since, in the facts and circumstances, the appointment of respondent 3 is illegal, therefore, the writ petition is maintainable for quashing the appointment of respondent 3. According to Mr. S. Talapatra, the information gathered from the "Right to Information Act, 2005" shows that the Petitioner was shown at serial No. 1 in the select panel list (as revealed from Annexure-R/1 to the rejoinder affidavit). The inter se merit position, as an outcome of Selection Committee, convened on 4.4.2005 indicates the preparation of Discipline wise Panel of candidates and for the sake of convenience, the same is extracted below:

VII. Microbiology:

- (i) Dr. Aran Ghosh, THS
- (ii) Dr. Tarun Kumar Roy, THS.
- (iii) Dr. Tapan Majumder, THS.

7. Shri S. Deb, learned Senior Advocate while inviting the attention of this Court to the contents of the affidavit in opposition/counter affidavit of respondents No. 1 and 2, has submitted as below:

(i) At no point of time, the writ-Petitioner has challenged the Advertisement published in "Dainik Sambad" on its issue dated 3.4.2006 vide Notification dated 2.4.2006 (Annexure-13 to the writ petition) whereby and whereunder the upper age limit for appointment to the post of Assistant Professor in different disciplines including Microbiology as on the date of Advertisement was fixed upto 50 years (paragraph 1 of the counter-affidavit).

(ii) The respondent No. 1, in exercise of its executive power, has fixed the upper age limit, for applying to the posts of Assistant Professor in Agartala Government Medical College and the said executive action is not repugnant to and does not contradict any of the legislative actions and as such, has all the force of legislation (paragraph 3 of the counter affidavit).

(iii) On issuance of the above notification dated 2.4.2006 (Annexure-13 to the writ petition), only when the writ Petitioner was eliminated from participating in the selection process, the presentation of the present writ petition, at a subsequent stage only in the month of May, 2006, praying for appointment as Assistant Professor in Microbiology on regular pay scale as per alleged select list, prepared in pursuance to the advertisement dated 20.12.2004 (Annexure-3), ipso facto reflects the gross delay and laches attributable to the writ Petitioner and hence, on this short premise, the writ petition is liable to be dismissed.

(iv) Although on an earlier occasion, an advertisement was issued, however, the said post was not filled up. Then another notification was issued on 28.11.2005

(Annexure-12 to the writ petition), even then the writ Petitioner, did not lodge any challenge against the issuance of the said notification dated 28.11.2005, that itself would indicate that the writ Petitioner has accepted the adoption of fresh selection process for filling up the said post by the Executive Government to be legal and valid and therefore; under the principles of estoppel of fact and acquiescence, the challenge made by the writ Petitioner, as to the selection and appointment of the respondent No. 3 which has been made pursuant to the notification dated 2.4.2006 (Annexure-13), is unsustainable in law.

(v) No person as a matter of right can claim to be appointed on mere issuance of an advertisement. It is the exclusive domain of the Executive Government to prescribe and fix the upper age limit for participation in any selection process (As per paragraph 4 of counter affidavit)

(vi) It is true that an Advertisement was issued on 20.12.2004 inviting applications from interested candidates for the post of Assistant Professor, no age eligibility was prescribed in the said Advertisement. Despite participation before the Selection Committee, the Petitioner was not appointed to the post of Assistant Professor, in such a situation, the Petitioner does not have any right to be appointed to the post of Assistant Professor on the strength of the said Advertisement, when none was appointed to the post of Assistant Professor, Microbiology pursuant to the said Advertisement more so, the Petitioner was appointed to the post of "Tutor", Microbiology vide Notification dated 26.5.2005 (Annexure-6 to the writ petition) and the Petitioner without any demur joined the post of Tutor in the Department of Microbiology on 28.5.2005 (Annexure-7 to the writ petition). (As averred in paragraph 12 of the counter-affidavit).

(vii) While making the said representation dated 18.12.2005 (Annexure-8 to the writ petition), the Petitioner pleaded that he accepted and joined the post of Tutor in the Department of Microbiology and claimed that he is the only Health Service candidate rendering services in the Department of Microbiology for benefiting the department for the next visit of the personnel of the Medical Council of India and prayed that he hoped that he would be absorbed in the post of Assistant Professor based on his position, seniority in the Medical College on priority basis. In the said representation, he challenged the Advertisement dated 1.12.2005 (Annexure-12 to the writ petition). The Petitioner on the contrary, joined the post of Tutor without any demur. [In reference to paragraph 13 of the counter-affidavit].

(viii) In reference to the Advertisement dated 20.12.2004 (Annexure-3 to the writ petition), no appointment was made because the appointment to the said post of Assistant Professor in the Department of Microbiology was felt not necessary to be made as till that time, the grant of MCI permission for opening of the Medical College in Agartala was only for first year class and the subject Microbiology not being a subject in the first year class and as such, no appointment was made to the post of Assistant professor of Microbiology. [As stated in paragraph 15 of the Counter-affidavit]

(ix) It would be clear that at the inception, no post of Assistant Professor or Lecturer in Microbiology was felt to be created and such appointment was felt necessary only at the time of first renewal inspection. In that view of the matter, no appointment to the post of Assistant Professor was made at the inception and the advertisement for appointment to the post of Assistant Professor was made before the renewal inspection.

The Petitioner has wrongly contended that he was not appointed to the post of Assistant Professor in Microbiology only to accommodate the respondent No. 3 in a subsequent exercise. Since none was appointed pursuant to the Advertisement dated 20.12.2004 (Annexure-3 to the writ petition), there was no question of any comparative evaluation inter se. [As stated in paragraph 15 of the counter-affidavit].

(x) As per the MCI guidelines, an Assistant Professor should have 5 (five) years' teaching experience to be eligible for Associate Professor. Then again he has to do another 4 (four) years before being qualified to be a Professor. An Assistant Professor has to put in at least 9 (nine) years before he reaches the top. Thus, the early one starts the better. The objective was to create an eligible group and get their services for a longer period. In fact the overriding concern was to have a cadre of State's own Teaching Faculty and this prompted the consideration to have an upper age limit for filling up the post of Assistant Professor. Normally, till 65 years, one can be appointed/engaged as Assistant Professor. But this would not be in the larger interest of the Medical College or the State. Situation prevailing here is distinctly different from other States like West Bengal, Assam, Karnataka, etc. No Government decision is ever taken to deprive any particular individual. Upper age limit was decided keeping in mind the greater interest of the State. [As stated in paragraph 16 of the counter affidavit]

8. Such similar submissions, as referred above, have also been made by Mr. Somik Deb for and on behalf of the respondent No. 3. It has also been submitted through his affidavit in-opposition/counter affidavit that a close scrutiny of the facts and circumstances pleaded in the writ petition, discloses that the Petitioner was aggrieved by the fixation of the upper age limit, but curiosity, no prayer whatsoever has been made for canceling/quashing the said fixation of upper age limit for participation in the selection process.

Although the advertisement (Annexure-3 to the writ petition) was issued, inviting applications for appointment to the posts of Assistant Professors/Lecturers for the posts including Microbiology, but no selection/appointment was made thereafter as no post, as per MCI criteria in Microbiology, was to be filled at the inception in the College. The publication of advertisement simpliciter does not create any right in favour of any person for being appointed to any post as it is absolutely for the Executive Government to decide as and when a particular post would be filled up.

The Petitioner himself, has formed an erroneous impression that he was selected

for appointment to the post of Assistant Professor in Microbiology as allegedly he was at the top of the select list and the name of the respondent No. 3 was far below him are wholly without any sum and substance.

A close scrutiny of the notifications dated 28.11.2005 and 2.4.2006 reveals that as per the conditions prescribed in the said notification, the Petitioner was ineligible even to participate in the selection process.

9. Mr. Somik Deb, learned Counsel for the respondent No. 3, has submitted that the writ petition filed by the Petitioner is not maintainable on account of delay and laches as on his own showing, even if it is accepted that he was selected allegedly by virtue of having been placed at serial No. 1 in the select/panel list in reference to the advertisement dated 20.12.2004 (Annexure-3), then prayer for appointment in the writ petition filed only in May, 2006, suffers from the defect of inordinate delay and laches and hence, the same does not warrant any interference. In reference to the said contention, the following decisions were cited:

(a) In. P.S. Sadasivaswamy Vs. State of Tamil Nadu, paragraph 2, it was held that a person aggrieved by an order of supersession by a junior, should approach the writ court within six months or at the maximum, within one year at the most of such promotion.

(b) In Shri Ramesh Kumar and Others Vs. Technological Institute of Textiles and Others, paragraph 1, it was held that in the event, an approach is made after an efflux of four months or more, on account of delay and laches, the writ petition is liable to be dismissed.

(c) In Kailash Chand Sharma Vs. State of Rajasthan and Others, paragraph 46.3, interference under Article 32 of the constitution of India, was declined on the premise that the writ petition was filed nearly after one year from the judgment of the High Court and no explanation has been tendered, for not approaching the High Court at an early point of time.

10. As submitted on behalf of the respondent No. 3, the writ petition, applying the principles of estoppel by conduct and the statutory mandate envisaged u/s 115 of the Indian Evidence Act, is not maintainable for the following reasons:

The Petitioner, vide his representation (Annexure-8 to the writ petition), responded to the advertisement (Annexure-12 to the writ petition) where the age limit of 50 years was stipulated. By the same, he contended that he may be favoured with age relaxation on the premise that he is a Government servant. As such, it is crystal clear that the Petitioner once having submitted himself to the jurisdiction of the Selection Committee cannot be permitted to turn round and challenge the selection process on the ground of arbitrariness in respect of fixation of age-limit. Reference has been made to the following decisions by Mr. Somik Deb the learned Counsel for the respondent No. 3 in this context:

(a). In Supdt. of Taxes, Dhubri and Others Vs. Onkarmal Nathmal Trust and

Others, paragraph 23, explained the meaning and purport of the doctrine of estoppel by conduct, by propounding that the aforesaid doctrine means that if one party, by his words or conduct willfully causes another party to believe in the existence of certain state of things and induces him to act on that plea, or to alter his previous position, the former party is concluded from averring against the latter party a different state of things as existing at that time.

(b) In *G. Sarana Vs. University of Lucknow and Others*, paragraphs 7 and 15, the doctrine of estoppel by conduct was elaborately discussed. It was conclusively held that a candidate, having voluntarily appeared in the selection process cannot, be permitted to turn round and question the constitution of the selection committee.

(c) In *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, paragraph 24, relief was denied on the premise that the writ Petitioner appeared for the examination without protest. On becoming not successful, he had made a challenge. Such challenge was held to be barred under the doctrine of estoppel by conduct. Relevant portion of paragraph 24 is quoted below:

24. Moreover, this is a case where the Petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realized that he would not succeed in the examination....

(d) In *State of Rajasthan Vs. Rajendra Kumar Rawat and Others*, paragraph 7, the law propounded in *Om Prakash Shukla (supra)* was reiterated. It was held that the doctrine of estoppel by conduct stands in the way of a party who, voluntarily approaches as a candidate before the selection committee and has been declared unsuccessful. Paragraph 7 is quoted below for reference:

...7. There is no dispute that the respondents had offered themselves as candidates before the Public Service Commission and have not been successful. On that footing it has been contended relying upon the decision of this Court in the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* that the persons of this category are no more entitled to lay claim on the basis of termination of their employment under Rule 30. We agree that the same is the position in learned Counsel for the Petitioner.

(e) In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, paragraphs 9 and 10 also, following *Om Prakash Shukla (supra)*, the principle underling the doctrine estoppel by conduct was elaborately dealt with. It was held that the said principle debars a party from challenging the selection process after he has voluntarily appeared in the selection process and has emerged out unsuccessful.

In *Radhey Shyam Singh and others, etc. Vs. Union of India and others*, paragraph 5 also, the earlier decision rendered in *Om Prakash Shukla (supra)* was reiterated.

(f) In *A.P. State Financial Corporation Vs. Vajra Chemicals and others*, paragraph 24 the principle of estoppel by conduct was applied, holding that the conduct of the company precluded it from questioning the sale. Operative portion of paragraph 24 reads as under:

...24. It is not in dispute that the Corporation has paid the Vysya Bank the amount covered by the certificate out of the balance of the sale proceeds that remained with the Corporation. This conduct of the Company precludes it from questioning the sale....

(g) In *Mangej Singh and Others Vs. Union of India (UOI) and Others*, , paragraph 5, the earlier decisions rendered in *Om Prakash Shukla (supra)* and *Madan Lai (supra)* were referred to and relied upon.

(h) In *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, , paragraphs 8 and 9, it was held that the aspirant, having submitted himself to the jurisdiction of the selection committee and taking chance of having favourable recommendation from the said committee cannot, be permitted to turn round and question the constitution of the selection committee.

(i) In *G.N. Nayak Vs. Goa University and Others*, paragraph 22, applying the principle of estoppel by conduct, it was held that the candidate cannot be permitted to contend that the eligibility criteria were wrongly framed. Paragraph 22 is reproduced below:

...22...According to Respondent 5, the amendment of the qualifications for the post of Professor of Marine Science was illegal. It was contended that under Statute 8, it is the Executive Council which has to prescribe the qualifications after considering the recommendations of the Academic Council. According to Respondent 5, the qualifications which were prescribed in the 1995 advertisement and handout issued to the Applicants in connection therewith had not been prescribed by the Executive Council nor recommended by the Academic Council. Whether this is so or not, this is not a grievance which could have been raised by Respondent 5. He knew that there was a change in the eligibility criteria for the post yet he applied for the post and appeared at the interview without protest. He cannot be allowed to now contend that the eligibility criteria were wrongly framed....

(j) In *Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others*, the principle underlying estoppel by conduct was discussed in elaborate details in paragraphs 30, 31, 32, 33 and 34 whereunder, it was observed that in the event, a party submits himself to the jurisdiction of the selection committee, he would be precluded from assailing the selection made by such committee.

(k) In *B.L. Sreedhar and Others Vs. K.M. Munireddy (Dead) and Others*, in elaborate details, in paragraphs 12 to 31, the principle underlying estoppel by conduct was analysed in reference to Section 115 of the Indian Evidence Act.

(l) In *K.H. Siraj Vs. High Court of Kerala and Others*, paragraphs-72 to 74, it was

held that the writ Petitioners were disentitled to get any relief on the premise that they had participated in the selection process without any protest and therefore, they cannot be permitted to challenge the selection process.

11. It has been submitted for and on behalf of the respondent No. 3 that mere inclusion of the name of a candidate in the select list, does not create any indefeasible right in favour of such candidate even though the vacancies exist. Mr. Somik Deb has referred the following decisions in support of his submissions:

(a) In the case of *Shankarsan Dash Vs. Union of India*, (Constitution Bench), it was held that even if a number of vacancies are notified for appointment and adequate numbers of candidates are found fit, the successful candidate does not acquire an indefeasible right to be appointed. While deciding the issue, the previous authorities were scanned and it was held that mere selection of a candidate does not, amount to accrual of any right in his favour to claim appointment to a post. It was further held that unless the relevant Recruitment Rules casts an obligation on the State to fill up such vacancy by such selected candidate, the State is under no legal obligation and/or duty to fill up all or any of the vacancies. Only in the event, the State chooses to fill up the vacancy, it has to act in accordance with the comparative merit list of the candidates, (b) In *Union Territory of Chandigarh Vs. Dilbagh Singh and others*, paragraphs 11 and 12, it was held that a candidate who finds a place in the select list as a selected candidate for appointment to a civil post, does not acquire an indefeasible right to be appointed to such post in the absence of any specific Rule, compelling the State to make such appointment in favour of such selected candidate nor can the selected candidate claim to have any grievance against his non-appointment. Paragraphs 11 and 12 of the decision are extracted as below:

...11. In *Shankarsan Dash v. Union of India* a Constitution Bench of this Court which had occasion to examine the question whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list (select list) of candidates for such post has answered the question in the negative by enunciating the correct legal position thus: (SCC pp. 50-51, Para 7)

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment

test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the State of Haryana v. Subhash Chander Marwaha; Neelima Shangla (Miss) v. State of Haryana or Jitender Kumar v. State of Punjab.

12. If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily....

(c) In Jai Singh Dalal and Others Vs. State of Haryana and Another, , paragraph 7, an identical issue fell for consideration wherein it was observed that mere inclusion of a candidate in the select list does not vest a right in his favour, and it was open for the Government not to fill up the post/vacancy in spite of the existence of the vacancy. Relevant portion of paragraph 7 reads thus:

...7...The candidates, therefore, did not have any right to appointment. There was, therefore no question of the High Court granting a mandamus or any other writ of the type sought by the Appellants. The law in this behalf appears to be well settled. In the State of Haryana v. Subhash Chander Marwaha this Court held that the mere fact that certain candidates were selected for appointment to vacancies pursuant to an advertisement did not confer any right to be appointed to the post in question to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment. In the background of these facts this Court came to the conclusion that the mere fact that the candidates were chosen for appointment in response to the advertisement did not entitle them to appointment. To put it differently, no right had vested in the candidates on their names having been entered on the select list and it was open to the Government for good reason not to make the appointments therefrom and fill in the vacancies. In a recent decision in Shankarsan Dash v. Union of India the Constitution Bench of this Court reiterated that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to appointment against the existing vacancies. It was pointed out that ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on then-selection they do not acquire any right to the post. The State is under no legal duty to fill up all or any of the vacancies by appointing candidates selected for that purpose. Albeit, the State must act in good faith and must not exercise its power mala fide or in an arbitrary manner. The Constitution Bench referred with approval the earlier decision of this Court in Subhash Chander.

Therefore, the law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection and appointment on revised criteria. Therefore, the Petitioners cannot even claim that they were selected for appointment by the HPSC. It is, therefore, clear from the settled legal position that the Petitioners had no right to claim that the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the HPSC....

(d) In *Babita Prasad and Others Vs. State of Bihar and Others*, paragraphs 10, 16, 17 to 20, 25 and 26, it was propounded that mere inclusion of a name in the select list does not clothe a candidate with the locus standi to urge for a Mandamus upon the Government for filling up the said post by him nor does the Government have any obligation/duty towards such selected candidate for filling up such post.

(e) In *Union of India Vs. S.S. Uppal and another*, paragraph 17, the law propounded in *Shankarsan Dash* fell for consideration and in consonance with the above verdict, conclusion was reached. Paragraph 17 reads thus:

17.....Weightage in seniority cannot be given retrospective effect unless it was specifically provided in the rule in force at the material time. In the case of *Shankarsan Dash v. Union of India* 3 it was pointed out by this Court that the existence of vacancies did not give any legal right to a selected candidate....

(f) Such similar views were reiterated in the subsequent decisions of *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, paragraphs 5 and 6 *All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc.*, paragraphs 8, 10 and 11, *State of U.P. v. Bibhakar Dwivedi* (2003) 12 SCC 62 , paragraph 11, *Baitarani Gramiya Bank Vs. Pallab Kumar and Others*, paragraphs 23, 29, 34 and 35, *State of Orissa and Others Vs. Bhikari Charan Khuntia and Others etc.*, paragraphs 7 and 8 & in *Punjab State Electricity Board and Others Vs. Malkiat Singh*, paragraphs 4, 5 and 6.

(g) In the said decision of *Malkiat Singh* (supra), there was a noticeable departure from the earlier authorities i.e. to say, the law has been made more stringent. While in the earlier decisions, it can be seen that it was culled out that the decision for not filling up the post would not be susceptible to judicial scrutiny unless it is arbitrary. In the said decision in paragraph 6, it has been held that judicial intervention in the matter would be inappropriate unless the selected candidate makes out a case of malafide for such non-appointment, (h) *Food Corporation of India and Others Vs. Bhanu Lodh and Others*, paragraphs 13 and 14 *Union of India (UOI) and Others Vs. Kali Dass Batish and Another*, paragraphs 15 and 16, as well as in *State of U.P. and Another Vs. Om Prakash and Others*, paragraphs 19 and 20, it has been the consistent view of the Hon'ble Supreme Court that mere inclusion of the name of a candidate in the merit list does not, confer an indefeasible right in his favour to be appointed.

12. In *R.S. Mittal Vs. Union of India (UOI)*, where the person after being selected and put in the panel of the selected candidates was not to be denied the appointment without a proper reason however, in peculiar facts and circumstances, relief was refused by the Supreme Court by observing in Para 10 as below:

10. Although a person on the select panel has no vested right to appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or on its whims decline to make the appointment. When the Selection Board has selected a person and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to the candidate at SI. No. 1 of the select list within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Governments approach in this case was wholly unjustified.

13. In *Munna Roy Vs. Union of India (UOI) and Others*, the Supreme Court, after acknowledging that mere inclusion in select list, does not confer any right in favour of the selected candidate and no Mandamus could be issued but the Court could interfere when an administrative authority took a decision on erroneous reasons namely dubious method was suspected in the selection inasmuch as the candidate was a graduate, whereas, the minimum qualification for selection was matriculation and when the reason was described as arbitrary, irrational and not germane. In those circumstances, the decision to cancel the panel on this score could be set aside. In view of the observations made by the Supreme Court in *R.S. Mittal (supra)* as well as in *Munna Roy (supra)*, the action of respondents No. 1 and 2, in preparing the select/panel list pursuant to the advertisement dated 20.12.2004 (Annexure-3 to the writ petition) in, not appointing the Petitioner and subsequently, appointing the respondent No. 3 is arbitrary, illegal, discriminatory and the same are in derogation to the spirit of Article 14 of the Constitution, as contended on behalf of the Petitioner, cannot be accepted.

14. In *Vinodan T. and Others Vs. University of Calicut and Others*, , the Supreme Court has held that the appointments to the vacancies must be made in accordance with law, if any, and the appointing authority can not scrap the panel of select list during the period of its validity except for well-founded reasons. It also observed in Para 14 as below:

14. The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made.

15. In *S. Renuka and Others Vs. State of Andhra Pradesh and Another*, the Supreme Court while acknowledging the decision made in above two cases e.g. *R.S. Mittal (supra)* and *Munna Roy (supra)*, has however, held that no right accrues in favour of a person merely because a person is selected and that his or her name is put on a panel and the candidates have no right to claim the appointment.

16. In (2003) 2 UPLBEC 1697 *State of Andhra Pradesh and Ors. v. D. Dastagiri and Ors.*, the Supreme Court has taken the similar view and has held that no vested right accrue to the candidates to be appointed even if selection process was completed.

17. Mere inclusion of the name of a candidate in the select list does not confer any right of appointment in favour of such candidate in view of the following decisions; *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, *Hanuman Prasad and Others Vs. Union of India (UOI) and Another*, ; *Syndicate Bank and Ors. v. Shankar Paul and Ors.* AIR 1977 SC 3091 ; *Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others*,

18. Mr. Somik Deb, the learned Counsel for the respondent No. 3, has further contended that selected candidates have right to appointment only against "vacancies notified" and that too during the life of the select list as the panel of selected candidates cannot be valid for indefinite period. He further submits that empanelled candidates "in any event cannot have a right against future vacancies." In this context, he derives support from the decisions of the Supreme Court in *Union of India and Ors. v. Ishwar Singh Khatri and Ors.* 1992 Supp. (3) SCC 84 , wherein it has been held that selected candidates have right to appointment only against "vacancies notified" and that too during the life of the select list as the panel of selected candidates cannot be valid for indefinite period. Moreover, empanelled candidates "in any event cannot have a right against future vacancies." Mr. Somik Deb, by relying upon *State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986* and others, submits that it has held that "a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment." Empanelment is at the best a condition of eligibility for purposes of appointment, and the same by itself does not amount to selection or create a vested right to be appointed unless relevant service rules provides to the contrary.

19. It is settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. Vide *J. J. Ashok Kumar Vs. State of A.P. and Others*, ; *State of Bihar and others Vs. Md. Kalimuddin and others*, ; *State of U. P. and others Vs. Harish Chandra and others*, and *State of U.P. Vs. Ram Sawrup Saroj*, . It has been held therein that if the selection process is over, select list had expired and appointments had been made, no relief can be granted by the court at a belated stage.

However, in *Purushottam Vs. Chairman, M.S.E.B. and Another*, the Supreme Court has held as under:

The right of the Appellant to be appointed against the post to which he has been selected, cannot be taken away on the pretext that the said panel, in the meanwhile, expired and the posts had already been filled up by somebody else. Usurpation of post by somebody else is not on account of any fault the part of the Appellant but on the erroneous decision of the employer himself. In that view of the matter, Appellant's right to be appointed on the post has been illegally taken away by the employer.

The Supreme Court held that in such a situation, the party should be given the relief. The aforesaid judgment had been delivered by a Bench consisting of two Hon'ble Judges of the Supreme Court and that too without taking note of the judgments referred to hereinabove..

20. A Bench of Three Hon'ble Judges of the Supreme Court, in *Sushma Suri Vs. Govt. of National Capital Territory of Delhi and Another*, dealing with a case wherein the Court had been approached at the stage when the process of selection had started but by the time the matter was decided, the selection process stood concluded and the appointments had been made, observed as under:

However, we are not in a position to give any relief to the Appellant before us now because when she commenced the litigation, the recruitment process was still going on and it had gone too far ahead. In fact, the same has been completed and selected candidates had already been appointed and they had reported for duty in different places and they are not impleaded as parties in these proceedings, it would not be proper to upset such appointment.

21. There can be no dispute that wherever there is a conflict in two judgments of the Court; the judgment of the larger Bench would prevail. Vide *Rameshwar Shaw v. Distt. Magistrate Burdwan and Anr.* AIR 1964 SC 335 : *The State of U.P. Vs. Ram Chandra Trivedi*, : *N. Meera Rani Vs. Government of Tamil Nadu and Another*, *N.S. Giri Vs. The Corporation of City of Mangalore and Others*, *Coir Board Ernakulam and Anr. v. Indira Devai P.S. and Ors.* (2001) 1 SCC 224 *S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others*, ; *Lily Thomas, Vs. Union of India and Others*, ; & *S.H. Rangappa Vs. State of Karnataka and Another*,

Thus, in view of the above observations, it could safely be concluded that in view of the larger Bench judgments, no appointment can be made after expiry of the Select List.

22. The Court has no competence to issue a direction contrary to law, (vide *Union of India and Another Vs. Kirloskar Pneumatic Company Limited*, ; *State of U. P. and others Vs. Harish Chandra and others*, and *Dr. Anand Prakash Mishra (supra)*).

23. In *State of Punjab and others Vs. Renuka Singla and others*, dealing with a similar situation, the Supreme Court has observed as under:

We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.

24. Similarly, in *Karnataka State Road Transport Corporation v. Ashrafulla Khan and Ors.* JT 2002 (2) SC 113, the Supreme Court has held as under:

The High Court under Article 226 of the constitution is required to enforce rule of law and not passed order or direction which is contrary to what has been injected by law.

25. On a conspectus of the judicial pronouncements referred above, it can be safely deduced that mere inclusion of a candidate's name in the select list does not, by itself confer any indefeasible right in his favour to claim appointment nor State is obliged to fill up such vacancy by such selected candidate even though the vacancy was in existence. Unless, a case of gross arbitrariness and malafide (both inclusive) is made out by a candidate, judicial interference under Article 226 of the Constitution of India is neither warranted nor the High Court can issue a Mandamus upon the State Government to fill up such a post.

26. A person only has a right to be considered for the employment being eligible as per the rules. He cannot raise any grievance provided the person has participated in the selection process and a person having lesser merit in the same category is offered appointment as an outcome of the same selection which has been acknowledged and finalized by the State Government.

27. In respect of the effect of prescription of age limit in the advertisement when the age limit is not prescribed/silent in the service rules, Mr. Somik Deb has referred to the following decisions:

(a) In *Union of India (UOI) and Another Vs. Parameswaran Match Works and Others*, the Hon'ble Supreme Court has considered the employment of a cut-off date. Although the said matter related to the levy of excise duty and exemption thereof basing on a particular date, in fact, in the said case, the classification based on a particular date, was adjudicated upon. In paragraph 10, it has been held that a classification founded on a particular date, maybe reasonable and that the choice of a date as a basis for classification cannot, always be dubbed as arbitrary even if no particular reason is forthcoming of the choice, unless it is shown to be capricious or whimsical in the circumstances. A reading down of the aforesaid authority would unmistakably show that the burden to prove that the employment of the cut-off date is whimsical and/or arbitrary, lies on the propounder. For ready reference, relevant part of paragraph 10 is quoted hereunder:

...10...That a classification can be founded on a particular date and yet be reasonable, has been held by this Court in several decisions see *Hatisingh Mfg.*

Co. Ltd. v. Union of India, Dr. Mohammad Saheb Mahboob Medico v. Deputy Custodian-General, Bhikuse Yamasa Kshatriya (P) Ltd. v. Union of India and Daruka & Co. v. Union of India. The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide off the reasonable mark See Louisville Gas Co. v. Alabama Power Co. per Justice Holmes....

(b) In Jasbir Rani and Others Vs. State of Punjab and Another, at paragraphs 11, 12, 13 and 14, it was held that the State Government cannot be faulted for fixing a cut-off date in the advertisement. While reaching the said conclusion, it was held that unless a relevant Recruitment Rules prescribes a specific cutoff date, or prohibit are fixation of such cutoff date, a cut-off date can be employed by way of advertisement and in the event, such cut-off date is employed by way of advertisement, in absentia of any prescription/prohibition under the Rules, judicial interference is unwarranted. For reference, relevant portions of paragraphs 11 to 14 are reproduced below:

...11. No doubt, the Rule does not provide a cut-off date by which an Applicant is to satisfy the prescribed eligibility qualification pertaining to age. In the absence of a statutory provision in that regard the date has to be fixed at the time of issuing the advertisement....

12. Coming to the contention raised by Shri R.K. Jain that prescribing a cut-off date prior to the date of appointment for the purpose of satisfying the eligibility qualifications pertaining to age is impermissible under the rule, we are not inclined to accept the contention. Rule 5, as we read it, merely prescribes the eligibility qualification (minimum and maximum) pertaining to age for appointment to the post of Panchayat Secretary. The Rule neither prescribes a cut-off date nor bars fixing of such a date by the authority competent for making the appointment. In the absence of any such provision it cannot be held that Rule 5 even by implication prohibits fixing a cut-off date regarding the age.

13. This Court in the case of Bhupinderpal Singh v. State of Punjab I disapproving of the practice prevalent in the State of Punjab to determine the eligibility with reference to the date of interview, made the following observations: (SCC pp. 267-69, paras 13-14)

13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar, A.P. Public Service Commission v. B. Sarat Chandra, District Collector and Chairman, Vizianagram Social Welfare Residential School Society v. M. Tripura Sundari Devi, Rekha Chaturvedi v. University of Rajasthan, M.V. Nair (Dr.) v. Union of India and U.P. Public Service Commission, U.P. Allahabad v. Alpana the High Court has held (i) that the cutoff date by the reference to which

the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with....

14...In our opinion the authorities of the State should be tied down to the principles governing the cut-off date for testing the eligibility qualifications on the principles deducible from the decided cases of this Court and stated hereinabove which have now to be treated as the settled service jurisprudence.

14. The position that emerges from the discussions in the foregoing paragraphs is that the State Government cannot be faulted for fixing a cut-off date in the first advertisement and in the circumstances of the case in adopting the same cut-off date in the second advertisement....

(c) In *Shankar K. Mandal and Others Vs. State of Bihar and Others*, the Hon'ble Supreme Court has observed that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking public appointment, is the date appointed by the relevant service rules and in absence of any such cut-off date appointed by the rules, such cut-off date shall be appointed in the advertisement, calling for applications. It is, therefore, clear that when no cut-off date is prescribed by the relevant service rules, it is open to the Executive Government to apply/employ such cut-off date by way of advertisement.

...5... There was no definite material before the High Court as to what were the eligibility criteria so far as age is concerned. No definite material was placed before the High Court and also before this Court to give a definite finding on that aspect. What happens when a cut-off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment and the effect of any non prescription has been considered by this Court in several cases. The principles culled out from the decisions of this Court see *Ashok Kumar Sharma v. Chander Shekhar*, *Bhupinderpal Singh v. State of Punjab* and *Jasbir Rani v. State of Punjab*) are as follows:

(1) The cut-off date by reference to which the candidate, seeking a public employment, must satisfy the eligibility requirement is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be

received by the competent authority....

(d) In the case of K.H. Siraj Vs. High Court of Kerala and Others, paragraph 62, it was held that in absence of any prohibition under the relevant rules, conditions may be prescribed by way of execution fiat (i.e. instructions/notifications) for achieving the purpose and object of the rules. In other words, it has been held that in the absence of any express prohibition, it is open to the executive to make/frame such notification to supplement the rule with a view to achieve the purport, underlying the rules. It was further held that standards may be laid down in the advertisement for selection by way of advertisement and no fault can be attributed to the Executive Government for taking such course of action. For reference, paragraph 62 is quoted below:

...62...Thus it is seen that apart from the amplitude of the power under Rule 7 it is clearly open for the High Court to prescribe benchmarks for the written test and oral test in order to achieve the purpose of getting the best available talent. There is nothing in the rules barring such a procedure from being adopted. It may also be mentioned that executive instructions can always supplement the Rules which may not deal with every aspect of a matter. Even assuming that Rule 7 did not prescribe any particular minimum, it was open to the High Court to supplement the rule with a view to implement them by prescribing relevant standards in the advertisement for selection. Reference may be made to the decision of this Court in State of Gujarat v. Akhilesh C. Bhargav....

On a plain reading of the aforesaid decisions referred by Mr. Somik Deb, it is clear that in the event, no prescription is made under the relevant service rules nor any prohibition is laid down for fixation of cut-off date, a cut-off date may be employed by advertisement and such employment of cut-off date does not warrant judicial interference under Article 226 of the Constitution of India.

28. On the point, when the writ Petitioner has not challenged the advertisement, whether the subsequent action i.e. selection can be subjected to scrutiny, it has been submitted by Mr. Somik Deb on behalf of the respondent No. 3 that the Petitioner in his writ petition has deliberately chosen, not to challenge the advertisement as contained in Annexure-13 of the writ petition. In that view of the matter, the select list prepared is only the culmination of the selection process and therefore, no challenge maybe allowed to be sustained to the select list without a challenge to the initiation of the selection process as well as the selection of the candidate. On this short premise also, the writ petition is liable to be dismissed. This Court, after careful consideration, finds sufficient force in the submission of learned Counsel for the respondent No. 3.

29. Mr. Somik Deb, the learned Counsel for the respondent No. 3, further refers to the following decisions. In J. J. Ashok Kumar Vs. State of A.P. and Others, in spite of the fact that gross injustice was done in the selection process as was noticed by the Apex Court, the selection was left undisturbed on the premise that the selection had already taken place and the candidates were selected and

appointed and proceeding on the said premise, interference was refused.

...He should have been given weightage of 5% marks and the Tribunal was unjustified in dismissing his petition. We find force in his contention. Any candidate who appeared for the selection even for direct recruitment would be eligible to be considered for the weightage provided to candidate having NCC qualification. But since the selection has already been over and candidates were selected and appointed, we cannot give the benefit to the Petitioner.

30. In the case of *R.K. Jain v. Union of India* (1993) 4 SCC 119 paragraph 74, it was held that in service jurisprudence, only the non-selected/non-appointee can maintain a writ petition for issuance of a Writ of Mandamus and/or Writ of is extracted hereunder:

...74. Shri Harish Chander, admittedly was the Senior Vice President at the relevant time. The contention of Shri Thakur of the need to evaluate the comparative merits of Mr. Harish Chander and Mr. Kalynsundaram a seniormost member of appointment as President would not be gone into in a public interest litigation. Only in a proceedings initiated by an aggrieved person it may be open to be considered. This writ petition is also not a writ of quo warranto. In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the Petitioner, public-spirited person.

31. It is settled that unless a candidate possesses the requisite qualification for appointment to a post, he is not entitled to challenge the selection process. In *K. Shekar Vs. V. Indiramma and Others*, it was observed that if a candidate lacks the qualification for appointment, at his instance, challenge is unsustainable.

32. In view of the aforesaid analysis, I find force in the submissions of the learned Counsel for the respondents. The State Government cannot be directed to appoint a person to a post only on the ground of inclusion of a candidate in the select panel list even if the Petitioner might have been shown as successful in one selection process in reference to the advertisement dated 20.12.2004 more so, when the same select list was not acted upon and subsequently, in terms of different advertisement, the post of Assistant Professor, Microbiology was filled up. The State Government, in its wisdom, chose not to give effect to the selections in reference to the earlier advertisements except those selection in question which was conducted in reference to the advertisement dated 2.4.2006. Prescribing the age limit is not in derogation to the Medical Council of India Rules and when the Petitioner was not even qualified and eligible as required under the advertisement dated 2.4.2006 and has not participated in the selection process in reference to the advertisement dated 2.4.2006 and, for the reasons best known to him, has also not challenged the said advertisement and he is only aggrieved by the outcome of the said selection and the appointment of respondent 3. Therefore, being a non-participant, without challenging the

advertisement dated 2.4.2006, the Petitioner has no locus standi to challenge the outcome of selection, whereby the respondent No. 3 has already been appointed and started functioning. In view of the above discussions and observations, I do not find any force in the submissions of learned Counsel for the Petitioner.

33. The writ petition being devoid of any merit is dismissed. No costs.