

(2002) 01 PAT CK 0101

In the Patna High Court

Case No : Letters Patent Appeal No. 496 of 2001

Arun Kumar Ojha and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Citation : (2002) 01 PAT CK 0101

Judgement

Nagendra Rai, J.—The appellants are aggrieved by the order dated 27th April, 2001 passed by a learned Single Judge of this Court in a batch of writ applications including CWJC No, 12779 of 1999 by which he, has quashed the panel of successful candidates for the post of Jeep driver pursuant to advertisement No. 1 of 1997 and directed the respondent-Bihar Public Service Commission (for short, the Commission) to take steps for fresh selection in the light of the observations made in the order. Both the appellants are successful candidates and appellant No. 1 was added as intervenor-respondent in the writ application and appellant No. 2 has directly filed the appeal challenging the order of the learned Single Judge.

2. Eradication of tuberculosis was taken up as a part of the 20-Point Programme in planned expenditure. Dr. A.A. Mallick holding a rank of Deputy Director in Health Department was the Director of the Tuberculosis Centre at Patna and activities of the said Centre was extended to various districts under the aforesaid programme. Dr. Mallick was made the Deputy Director of the Tuberculosis Eradication Scheme. There were 2250 Class III and Class IV sanctioned posts under the aforesaid scheme and Dr. Mallick was made Chairman of the Recruitment Committee. Dr. Mallick taking advantage of his official position appointed 6,000 (six thousand) persons without holding any procedure for appointment of Class III and Class IV posts. Several writ applications were filed before this Court and this Court directed the State Government to inquire into the matter and an inquiry committee was constituted and all the appointments were found to have been made in total breach of the rules governing the appointments. Thereafter, the State Government cancelled the appointments.

This Court upheld the cancellation of the appointments. Aggrieved persons challenged the matter before the Apex Court in batch of cases which were finally disposed of by the Apex Court on 16th December, 1996 and is Ashwani Kumar and Others Vs. State of Bihar and Others, . The order of this Court was upheld and the Apex Court directed the State Government to take steps for filling up the aforesaid posts after issuance of advertisement by following the procedure applicable for appointments of Class III and Class IV posts. While issuing the aforesaid direction, the Apex Court also considered human aspect and ordered that dismissed employees under the aforesaid scheme may be considered along with other candidates and certain weightage was to be given to them. It is relevant to quote the directions issued by Apex Court in the aforesaid case which are as follows.

1. Respondent State of Bihar may start at the earliest a fresh exercise for recruiting Class III and Class IV employees in the Tuberculosis Eradication Programme undertaken by the State as a part of 20 Point Programme on the available 2,250 vacancies or even more vacancies, as the case may be, preferably within three months from the receipt of a copy of this order.
2. Towards the said exercise the State will publish a notice in all the newspapers having circulation in the State inviting applications for direct recruitment to Class III and Class IV posts for filling up these vacancies in the said Programme.
3. Similarly names may also be called for from the Employment Exchange concerned for such recruitment.
4. If no statutory body composed of high-ranked officials for recruitment to Class III and Class IV employees is in vogue, the State is directed to constitute a committee consisting of three members, viz., (a) a member of the Public Service Commission; (b) a senior IAS officer, i. e., the Additional or Joint Secretary of the Health Department; and (c) a senior officer, i.e., the Director or Additional Director of Health Services, to select the candidates. The Additional or Joint Secretary of Health Department shall be the Chairman of the Committee.
5. The respondent-State will constitute such a committee preferable within three months of the receipt of this order.
6. It would be open to all the appellants or those appointed by Dr. Mallick who might not have challenged their termination orders before any competent Court until now, to apply for selection to the Class III and Class IV posts concerned. The Committee would in their cases as the first step, verify and satisfy itself of the credentials of such candidates whether they were appointed by Dr. Mallick and had worked at least for three years continuously. The Committee would also satisfy itself that such candidate or candidates had honestly and meritoriously discharged their duties as Class III and Class IV appointees at least for the said period.
7. The committee may fix total number of marks to be obtained by the

candidates for being treated to have passed the selection test. Any relaxation in the minimum eligibility marks to be obtained by the Scheduled Castes, Scheduled Tribes and other Backward Classes candidates as found necessary may also be decided by the committee. The Committee if satisfied about the credentials and other particulars of the appellants or those appointed by Dr. Mallick as mentioned in para (6) above, may allot additional marks to them for each of the three years and more for which they might have worked, at the rate of 2 marks for each completed year of continuous working, up to the maximum of 6 marks, for each candidate. Candidates appointed by Dr. Mallick who are found to have undertaken training pursuant to the Government direction dated 31-1-1987 may be awarded 2 additional marks for the training so received. Those 2 marks will be in addition to the 6 marks which are to be awarded on completion of meritorious and honest service by the employees concerned as mentioned above.

8. If the candidates concerned who were earlier appointed by Dr. Mallick are found by the committee to be otherwise eligible for being appointed to Class III and Class IV posts as per the relevant rules and regulations and if on the basis of the marks allotted to them as aforesaid they become eligible to be appointed besides other competing candidates, then if they are found to have become age-barred the condition of age for recruitment of such candidates should be relaxed appropriately so as to entitle such candidates to be considered for selection.

9. The State Government shall arrange sittings of the Selection Committee preferably within two months from the last date prescribed for submitting the applications and for completion of the preliminary scrutiny of such applications. The Committee shall select all candidates on merits following the prescribed procedure in the appropriate circulars and rules and shall also follow the rules of reservation as in vogue and prepare the merit list and should submit it to the Government. While doing so that eligible candidates who were earlier appointed by Dr. Mallick and who received the marks for their past meritorious service and training as aforesaid will be considered for selection qua the other candidates in the light of the weightage of the marks as aforesaid and in that light the committee will select all the candidates on merits and will prepare the select list of candidates found fit to be appointed to the posts concerned.

10. The committee will complete the process of selection preferably within three months from the date of its sittings for selection,

11. An appropriate authority or the Government, as the case may be, will appoint preferably within three months from the date of the receipt of the merit list from the committee, the selected candidates as per roster and the merit list, on available vacancies, after due identification of the credentials of the candidates concerned as per its legally permissible procedure.

12. In the event of selection and appointment of erstwhile daily-rated employee or employees, who were inducted by Dr. Mallick, the entire proved period during

which they had worked as daily-wager and/or confirmed employees will be computed for the purpose of pensionary and other retiral benefits but they will not be entitled to claim any inter se higher seniority in the selection made by the committee or for any promotion on the basis of their previous service.

3. From perusal of the aforesaid directions of the Apex Court, it is clear that the Apex Court directed the State Government to take steps for filling up the aforesaid posts and a committee of high, ranked officials for recruitment to Class III and Class IV employees was to be constituted consisting of three members, viz., a member of the Bihar Public Service Commission, a Senior IAS Officer, and the senior Officer of the Health Department. With regard to persons appointed by Dr. Mallick, the Apex Court held that the Committee would verify and satisfy itself of the credentials of such candidates whether they were appointed by Dr. Mallick and had worked at least for three years continuously. The Committee would also satisfy itself that such candidate or candidates had honestly and meritoriously discharged their duties as Class III and Class IV appointees, at least for the said period. The Committee will also fix total number of marks to be obtained by the candidates for being treated to have passed the selection test. Relaxation should be made in the case of Scheduled Casts, Scheduled Tribes and other Backward Classes candidates. The Committee, if satisfied about the credentials and other particulars of the appellants and those appointed by Dr. Mallick, may allot additional marks to them for each of the three years and more for which they might have worked, at the rate of 2 marks for each completed year of continuous working, up to the maximum of 6 marks for each candidate. Such candidates who are found to have undertaken training pursuant to the Government direction dated 31-1-1987 may be awarded 2 additional marks for the training in addition to six marks as indicated. The age-relaxation was also given in case of such category provided they fulfil the other direction mentioned in the order. The Committee was directed to select all the candidates on merits following the prescribed procedure in the appropriate circulars and rules and also to follow the rules of reservation as in vogue and prepare the merit list and submit it to the Government. It was further ordered that in case of selection and appointment of certain daily-rate employee or employees, who were appointed by Dr. Mallick, their services rendered earlier will be counted for the purpose of pensionary and other retiral benefits, but they will not claim seniority on the basis of their previous service.

4. It appears that in pursuance of the aforesaid direction of the Apex Court, the State Government took steps and constituted a Committee and issued an advertisement for appointment of Class III and Class IV posts under 12 categories on 5-5-1997. Apart from general condition which were applicable to all categories, for appointment of Jeep driver other qualification prescribed for was that the candidates must be a trained driver having VIIth class passed. In the meantime, it appears that a contempt application was filed before the Apex Court with regard to non-compliance of the direction passed by it earlier and by order dated 3rd November, 1997 passed in the case of Ram Pravesh Singh v.

K.N. Singh and Anr., which is reported in (1998) 9 SSC 432 the Apex Court modified direction No. (IV) of the earlier judgment and held that all the applications which have been received in pursuance of the advertisement made by the State Government on 5-5-1997 shall stand transferred for being processed further to the Bihar Public Service Commission with a direction to examine them expeditiously and complete the selection process for Class III and Class IV posts covered by the earlier judgment. The Apex Court further directed the High Court of Patna to monitor of selection process by the Commission in terms of the direction issued by the Court. It is relevant to quote the said direction of the Apex Court.

It is further directed that in case of any procedural difficulty, the parties will be at liberty to approach the High Court of Patna. The High Court is requested to monitor the selection process by the Bihar Public Service Commission in terms of the directions given by this Court earlier.

5. In pursuance of the aforesaid advertisement, the former employees including the writ petitioner of CWJC No. 12779 of 1999 out of which the present appeal arises and the fresh candidates applied for the post of driver. There were about 6,000 candidates for 119 posts of driver. For other posts advertised large number of candidates also applied. Thereafter, the Commission to meet the aforesaid situation in accordance with its own procedure decided to hold a preliminary test to shortlist the candidates and fix 50 marks as qualifying marks for the preliminary test. Several writ application being CWJC No. 5396 of 1993, CWJC No. 5193, MJC No. 5888 of 1993 and MJC No. 4137 of 1993 were filed by the former employees and others raising several objections with regard to procedure followed by the Commission including the set-up of question papers for holding a preliminary test. Important objections raised in the aforesaid writ applications were as follows:

(a) While holding the preliminary test, the Commission has not given weightage of 8 marks to the former employees in view of the direction of the Apex Court.

(b) No written test can be held by the Commission for appointment to Class III and Class IV posts.

(c) Questions paper set up in the preliminary test are such that it cannot be answered by the candidates (Class IV post) and thus, they are arbitrary and unreasonable.

(d) The Commission is acting discriminately in holding written test in case of appointment to some post and not holding so for the other posts.

6. The said objections were disposed of by a Monitoring Bench of this Court consisting of Hon''ble Mr. Justice B.P. Singh as he then was and Hon''ble Mr. Justice R.M. Prasad by order dated 11-5-1999.

7. With regard to objection No. 1, the Division Bench held that the former employees should be given weightage of 8 marks and they can be declared

successful in the preliminary test if they secure 42 marks. It further held that such weightage, in view of the order of Apex Court will be given only at the time of appointment. Relevant part of the order is as follows:

We, therefore, direct the Commission that those candidates from the open market who obtain 50 marks or more at the preliminary test shall be called for the main examination. Those candidates who were earlier appointed by Dr. Malik and who have applied pursuant to the order of the Supreme Court and have secured 42 marks or more shall be called for the main test. This "will not mean that the Commission has accepted their claim to grant of eight marks by way of weightage. This matter will be subsequently considered by reference to the record of service of each candidate at the stage of appointment. The petitioners will not be allowed to plead at any subsequent stage that eight marks by way of weightage has conceded in their favour.

8. With regard to second objection, the Division Bench considered two letters of the State Government dated 3rd December, 1980 and 17th August, 1971 and held that former letter contains the procedure for appointment of Class IV post in the mufasil offices and not in the Health Department and the letter dated 17th August, 1971 do not prohibit the holding of written test and accordingly, it was held as follows:

We do not find anything unreasonable in the holding of written test, particularly when such large number of candidates have offered themselves for appointment.

9. With regard to third objection that the questions are arbitrary and unreasonable the said objection was also rejected and in paragraph 7 of the said judgment, it was held as follows:

So far as the first submission is concerned, we have gone through the question set for the candidates. As against a question asked, several answers have been suggested and the candidate is required to select the correct answer. Counsel for the Public Service Commission submitted that the Government has taken a police decision that in regard to appointment against class IV posts, the educational standard expected of an appointee is that of Class VII. He has produced before us the text books prescribed for Class VII and submitted that answer to most of the questions will be found in these books which are prescribed for Class VII, and therefore, it is not fair on the part of Counsel to submit that the questions are too difficult for the candidates to answer. We find that the answers to the most of the questions can be found in these books prescribed for Class VII, many of the questions relate to general knowledge. It is no doubt true that a few questions here and there are difficult for Class VII students to answer but that, in our opinion, does not make any difference because the questions set, if they are difficult, they are so for all the candidates. Most of the questions can be answered by candidates who have read up to Class VII, but few of them can be answered by only those candidates who have either studied beyond Class VII and who have improved their knowledge by reading books or improving their general

knowledge in any other manner. The purpose of a competitive test is not to award a certificate for having achieved any particular grade. The purpose of such written test is to test the relative merit of the candidates, with a view to selecting the best amongst them. Those few question which are somewhat difficult are the ones that will ultimately determine the relative merit of the candidates, because those which are easier may be answered by almost everyone. It is, therefore, necessary in a test like this to set some questions which are such that only the best amongst the candidates will be able to answer, if a person obtains higher marks on the basis of superior knowledge, that cannot be said to arbitrary or unreasonable. We, therefore, find no merit in the first submission urged on behalf of the petitioners.

10. With regard to fourth objection, it was held that to avoid any criticism, it will be appropriate if a written test is also held for all candidates and adding the marks obtained in the written test to the marks awarded to them in the interview and for their academic qualifications. In other words, this Court directed for holding of written test or interview after the preliminary test for selection to Class III and Class IV posts. The relevant part of the order is as follows:

To avoid such criticism, it would be appropriate if a written test is also held for such candidates, and adding the marks obtained in the written test to the marks awarded to them in the interview and for their academic qualifications, the final selection is made, We direct accordingly. It will be open to the Bihar Public Service Commission to prescribe the marks for written test, interview and marks for academic qualifications but we suggest that not more than 20 marks should be awarded for viva-voce test. However, the details will have to be worked out by the Bihar Public Service Commission. We may only indicate that a fair apportionment of marks can be done on the basis of awarding a maximum of 50 marks in the written test, and 30 marks for the academic qualifications of the candidates concerned.

11. The preliminary test was held on 9-1-1999 and the result of successful candidate of preliminary test was declared on 12-9-1999 and 117 candidates were declared as successful candidates in preliminary test for the post of driver though the number of vacancies were 119. Thereafter, CWJUC No. 12779 of 1999 out of which this appeal arises was filed by the writ petitioner-respondent to cancel the result of preliminary test published by the Commission as well as the entire selection process of the post of Jeep driver. The main ground urged on behalf of the writ-petitioner respondent was that the question set by the Commission were out of capacity of the candidates for the post of driver. Nothing was asked in the said examination with regard to experience and knowledge of the driving. A copy of the question paper was also annexed as Annexure-6 to the writ application. In other words, the writ petitioner-respondent challenged the selection process on the ground that the question papers put in preliminary test have no nexus with the requirement for the post of driver.

12. The stand of the Commission as it appears from the counter-affidavit and

reply to the supplementary affidavit filed by the writ petitioner is that the Commission having received the application for 12 different posts in pursuance of the advertisement found that the candidates were large in number and accordingly, in conformity with its own rules of procedure decided to hold a preliminary test with a view to shortlist the candidates. In the preliminary test, question of Class VII standard were set and the preliminary test was accordingly held. The aggrieved candidates moved before the Monitoring Bench and raised an identical grievance which was rejected. The Commission has followed the rules and regulations framed by the State Government and in terms of the conditions incorporated in the advertisement, it conducted the preliminary test. According to terms of the advertisement for Class IV post, the candidates were required to possess a sound health and should know cycle, riding and should be able to write his name and read subject on the files and should have passed Class VII examination apart from being a trained driver. Six thousand candidates had applied for 119 posts of Jeep driver and as such it was not possible to take the test of driving for all of them which would have rendered the said selection process farce and meaningless. With a view to make the aforesaid selection in a most effective manner, a decision was taken to hold a preliminary test to shortlist the candidates and accordingly, the screening test was held and the candidates who were shortlisted were subjected to the rules adopted by the State Government through its appointment department for selection of the candidates for appointment on Class IV Post. It was further stated that the preliminary test was only aimed to shortlist the number of candidates on the basis of minimum eligibility. The marks obtained in the said preliminary test only entitled a candidate to appear in the final selection process where the driving skill and the physical fitness was to be tested.

The writ petitioners also appeared in the Preliminary test, but they were unsuccessful and they cannot be now allowed to challenge the eligibility criteria as prescribed in the advertisement.

13. The State had also filed counter-affidavit and supplementary counter-affidavit. According to it, for recruitment on Class IV posts, the Personnel and Administrative Reforms Department issued circular No. 16441 dated 3-12-1980 which was modified by letter No. 3577 dated 25-4-1997 and the minimum educational qualification was fixed starting from Class VII to Matric or non-Matric, besides other eligibility for the purpose of selection as had been laid down in the circular No. 13984 dated 17-8-1971 and 16441 dated 3-12-1980. There is no provision of any written test or the interview or the selection against IV pdst, on the other hand, according to the said circulars, a year wise panel should be prepared through a selection committee in which priority should be given to the applicants who have higher age. For the post of driver, the Personnel and Administrative Reforms Department issued a guideline on 31-7-1997 and it provided that appointment to the post of driver shall be made in accordance with the guidelines fixed for the technical post vide resolution No. 5939 dated 18-6-1993 (parachha). The said resolution No. 5939 provided that selection for

the technical post shall be made through a duly-constituted selection committee and the merit list shall be prepared on the basis of marks obtained by the candidates in the selection test. Two copies of the aforesaid circulars have been annexed as Annexure-H/1, H/2 and I to the supplementary counter-affidavit tiled on behalf of the State. It was further stated that the post of driver is although Class III post on account of pay scale but for the purpose of educational qualification the post of driver is Class IV grade post. It was further stated that the post, of driver being technical post it required a driving test, acuity of vision test/colour blindness test, knowledge of Mechanics and also clearing and carrying abilities and first aid mechanism for the purpose of selection. Academic qualification for the post of driver is required to the extent that a driver must be in a position to read and write out the bills pertaining to spare parts, lubricants, filling of log books of the vehicle, etc. He must have knowledge of reading manuals of driver training, etc. and must have a Medical Certificate with regard to him mental and physical fitness including colour blindness and normal acuity of vision.

14. The appellant No. 1 being one of the successful candidates in the preliminary test filed the intervention application in the writ application and he was added as a party as stated above, he supported the stand of the Commission.

15. The learned Single Judge after having considered the materials on record and after having heard learned Counsel for the parties held that the merit list prepared on the basis of written cast held on 9-1-1999 is not in accordance with law and accordingly, quashed the panel of successful candidates for the post of Jeep Driver pursuant to Advocate No. 1/97 and directed the Commission to take steps for fresh selection in accordance with law.

16. The learned Counsel appearing for the appellants submitted that the writ petitioner has challenged the panel of successful candidates without adding them as party in the writ application. They were necessary party and without giving them an opportunity of hearing, this Court should not have quashed the panel of successful candidates. He also submitted that in exercise of power under Article 226 of the Constitution of India, the learned Single Judge has exceeded his jurisdiction in holding that the questions set up for preliminary test have no nexus with the post for which the test was held. He further submitted that the points which have been raised and decided in the writ application were already considered in detail by a Division Bench of this Court in earlier writ applications which was monitoring the case and in such a situation, the learned Single Judge should not have decided the said questions and taken a contrary view in the matter. He lastly submitted that the writ petitioner-respondent having appeared in the preliminary test and thus having taken chance cannot be allowed to challenge the process of holding of a preliminary test after being unsuccessful in the test, in support of his submissions, he referred to several decisions of the Courts which will be referred at appropriate place.

17. The learned Counsel appearing for the Commission supported the stand

taken before the learned Single Judge. However, he informed the Court that pursuant to the direction of the learned Single Judge fresh steps have been taken for appointment in terms of advertisement.

18. The learned Counsel appearing for the the writ petitioner-respondent submitted that the questions put in the preliminary test had no nexus at all with requirement for a post of driver and the learned Single Judge rightly on that ground quashed the merit list.

19. Before advertng to the submissions advanced at the Bar, the admitted facts are to be stated. Large number of illegal appointments were cancelled by the State Government and the said order was upheld by the Supreme Court and steps for fresh appointments were taken in pursuance of the direction issued by the Apex Court as quoted above. The Commission was entrusted with the task of selection of Class III and Class IV post in Tuberculosis Eradication Programme. The Commission was directed to select candidates on merits following the prescribed procedure in the appropriate circulars and Rules and was also directed to follow the rules of reservation as in vogue. There was no provision for written test for appointment of Class IV post as is evident from the circular dated 3-12-1980 which applied in case of Class IV post in Mufassil offices. Later on, in 1997 the procedure was prescribed for appointment of driver, according to which the appointment on the post of driver has to be made in accordance with the guidelines fixed for the technical post vide resolution No. 5939 dated 18-6-1993 and Circular No. 7003 dated 31-7-1997. According to the said resolution, appointment on technical post shall be made through duly constituted selection committee and merit list shall be prepared on the basis of marks obtained by the candidate in the select list. It is also an admitted position that the Commission has already taken a decision that when the candidates for a particular post are large in number, then to reduce the number of candidates for appearing in the main test examination, it will hold a preliminary test to shortlist the candidates. The Commission was directed by the Apex Court to proceed with the selection process and fix total number of marks to be obtained by candidates for being treated to have passed the selection test. The Commission, accordingly, held the preliminary test to shortlist the candidates. The said procedure was challenged by the candidates who had applied in pursuance of the said advertisement in the writ applications and the matter was disposed of by a Division Bench of this Court as noticed above. The Division Bench of this Court upheld the aforesaid procedure and provided that in case of ert while employees, the qualifying marks will be 42 giving weightage of 8 marks I terms of the order of the Supreme Court. In other words, the qualifying marks for the general candidates fixed at 50 by the Commission was valid, but in the case of erstwhile employees, it was reduced to 42 marks. Holding of written test was also challenged before the Monitoring Bench on the basis of the circular dated 3rd December, 1980 issued by the Department of Personnel and Administrative Reforms Swell as circular dated 17th August, 1971. The Division Bench considered the aforesaid circulars and held that the circular dated 3rd December, 1980 was not applicable as it

related to appointment in Muffasi offices and not in the Health Department which is not a Mufassil office and further held that the circular dated 17th August, 1971, does not prohibit the holding of written test. The Division Bench of this Court held in clear terms that when., large number of candidates have applied, with a view to making fair selection it is necessary to hold a written test so that everything is not left to the subjective satisfaction of the Selection Committee. It. further held that if such a further written test is not held by Judge the relative merit of the candidates, the same story will be repeated which we wish to avoid because in. that event, there will be no method of objectively Judging the relative merit of the candidates.

20. The candidates similarly situated had also challenged the questions set up in the preliminary test on the ground that such questions cannot be answered by a candidate who is aspiring for appointment against Class IV post before the Monitoring" Bench and the same was also decided by the aforesaid order. The Monitoring Bench having gone into the questions observed that answer to most of the question can be found in those books prescribed for Class VII. Many of the question relate to general knowledge. It is no doubt true that a few question here and there are difficult for Class VII students to answer but that, in our opinion, does not make any difference because the questions, set, if they are difficult, they are so for all the candidates. Most of the questions can be answered by candidates who have read up to Class VII, but few of them can be answered by only those candidates who have either studied beyond Class VII and who have improved their knowledge by reading books for improving their general knowledge in any other manner. The purpose of a competitive test is not to award a certificate for having achieved any particular grade. The purpose of such written test is to test the relative merit of the candidates, with a view to selecting the best amongst them. Those few questions which are somewhat difficult are the ones that will ultimately determine the relative merit of the candidates, because these which are easier may be answered by almost everyone. It is, therefore, necessary in a test like this to set some questions which are such that only the best amongst the candidates will be able to answer. If a person obtains higher marks on the basis of superior knowledge, that cannot be said to arbitrary or unreasonable. The Monitoring Bench also held that to avoid such criticism, it would be appropriate if a written test is also held for such candidates, and adding the marks obtained in the written test to the marks awarded to them in the interview and for their academic qualifications the final selection is made and accordingly, directions were issued. It further directed the Commission to prescribe the marks for written test, interview and marks for academic qualifications but not more than 20 marks should be awarded for viva-voce test.

21. Thus, all the objections raised by the candidates similarly situated with regard to holding of preliminary test, written test, questions set up in the preliminary test and the procedure to be followed for selection of the candidates after preliminary test were considered by the Monitoring Bench and thereafter, directions were issued to the Commission to proceed with the process of

selection as stated above.

22. The learned Single Judge having noticed the previous order of the Monitoring Bench came to the conclusion that the scope of monitoring was limited to removal of procedural difficulties, if any, in the matter of implementation of the directions and the Monitoring Bench was supposed merely to ensure that the selection process was in accordance with the direction issued earlier by the Supreme Court. The learned Single Judge held that the decision of the Monitoring Bench with regard to nature and level of the examination for Class IV post of driver was outside the scope of monitoring and as such, the said decision was not binding on him. He further held that whether the questions set in the examination had no relevancy for selection for the post of driver was not canvassed before the Monitoring Bench and as such it is open to the decided and accordingly, considered the question papers and came to the conclusion that they have no nexus or relevancy for selection to the post of driver and held that the preliminary test held on 9-1 -1999 was not in accordance with law.

23. As stated above, the point which has been raised in the writ application that the questions in the preliminary test were hard, arbitrary and unreasonable were gone into by the Division Bench and it has found that the questions were up to the level of Class VII standard. The said question was within the scope of monitoring as ordered by the Supreme Court. The Apex Court had requested the High Court to monitor the selection process by the Commission in terms of direction given by it. The selection process starts from the issuance of the advertisement up to the final selection. If during selection process, a candidate makes a grievance regarding questions set in the preliminary test, then that matter has to be decided by the Monitoring Bench and it cannot be said that that was beyond the scope of monitoring. We find ourselves unable to agree with the aforesaid view taken by the learned Single Judge with regard to said matter.

24. No doubt, the order dated 11-5-1999 has been passed by a Division Bench of this Court while monitoring the case, but that was done after hearing all the parties concerned and once a Division Bench of this Court has decided and held that the questions set up were not arbitrary and the Commission should proceed with the process of selection, the learned Single Judge should not have reconsidered the aforesaid matter and taken a contrary view in the matter.

25. Regarding the first point raised on behalf of the appellant that the writ petition itself should be dismissed in not impleading the necessary party is concerned, the law is well settled that the persons who are vitally affected if are not made parties respondents to the writ applications, the Court should not proceed without insisting on such person or some of them being made parties in the representative capacity. In the case of Prabodh Verma and Ors. v. State of Uttar Pradesh and Ors. AIR 1985 SC 167, the Apex Court held in paragraph 51 as follows:

50 (1) A High Court ought not to hear and dispose of a writ petition under Article

226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

26. The same view has been reiterated in the case of *Bhagwanti and Ors. v. Subordinate Services Selection Board, Harayan and Anr.* . In that case, the selection of successful candidates and appointments of some successful candidates were challenged. Neither the selected candidates nor those who were issued appointment letters were impleaded as parties before the High Court. The High Court set aside the selection and the appointments without hearing the persons concerned. The Apex Court set aside the order on the ground that no order to the detriment of a person can be passed without hearing him.

27. In this case, admittedly the writ petitioners-respondent have challenged the process after list of successful candidates were, published but without adding them as party and as such, the writ application was defective for not impleading the necessary party. However, the appellant No. 1, one of the successful candidates himself appeared and filed an intervention application and presented the case of the successful candidates and as such, he may be treated to have been representing the successful candidates in representative capacity and as such on the ground of not impleading the other successful candidates, the writ application cannot be dismissed.

28. Whether the questions set up in the examination can be held to be arbitrary and unreasonable for the reason that it has no nexus with the requirement of the post of for which the test was held. As stated above, the qualification for the post of driver was Class VII. The preliminary test was being held only for the purpose of shortlisting the candidates and not for the purpose of final selection and as such putting the questions up to the standard of VII as well as including the question of general knowledge for the purpose cannot be said to be arbitrary and unreasonable. The Division Bench of this Court as stated above has already gone into, the questions and has found that the questions set up in the examination cannot be held to be irrelevant or arbitrary, At this stage, we would like to mention that the Bihar Public Service Commission is an autonomous body and it has to act independently, fair and impartially. The important role of the Commission has been noticed by the Apex Court in the case of *Ashok Kumar Yadav and Ors. v. State of Harayana and Ors.* (1985) 5 SCC 417 and it has been held that it occupies a pivotal place of the importance in the State and the integrity and efficiency of its administrative apparatus depends considerably on the quality of the selections made by the Public Service Commission.

29. In this case, the Apex Court entrusted the said process of selection to the Commission. The Commission set up the questions taking into consideration the qualification for the post of driver. Once the expert body had set up the questions for particular post, the High Court cannot in exercise of power of judicial review

sit as an appellate forum and take upon itself to decide as to whether the questions are of Class VII standard or not. If this Court feels any doubt about the matter connected with regard to questions set up in the examination, then it should send the matter to the expert body and take opinion before coming to the conclusion about the controversy raised in the case. In the case of Subash Chandra Verma and Ors. v. State of Bihar and Ors. 1995(1) PLJR (SC) 39 screening test for filling up vacancies to the post of Medical Officers (Ayurveda) in the State of Bihar was challenged. One of the grounds was that several controversial questions were set up and in relation to one question, there could be more than one answers, Dealing with the same matter, the Apex Court held that the High Court should have appointed an expert body before declaring the questions to be a controversial one. In this connection, it is relevant to refer paragraph 36 of the said judgment which runs as follows:

Normally speaking, the High Court should have appointed an expert body and obtained its opinion about the confusing or controversial nature of questions. For reasons best known it was not done. It has merely chosen to accept the version of the writ petitioners before it. The reason why this Court has repeatedly pointed out such matters being referred to an expert body and its opinion sought, is that in academic matters like this, Courts do not have the necessary expertise.

30. Admittedly, the writ petitioner/respondent has appeared in the preliminary test along with other candidates and was declared unsuccessful and only thereafter, he challenged the publication of the panel of successful candidates. Once having taken a chance in the selection and having appeared in the selection test, the writ petitioner cannot be allowed to challenge the holding of a preliminary examination. In this connection, reference may be made to the judgment of the Supreme Court in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , it was held that the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.

31. A Division Bench of this Court in the case of Ganesh Prasad Yadav and Ors. v. Sfafe of Bihar and Ors. 1995 (2) PUR 170 held in paragraph 24 thereof that once the unsuccessful candidates appeared in the preliminary test and taken their chance in the selection process, cannot be allowed to challenge the holding of preliminary test.

32. Thus, I am of the opinion that the learned Single Judge was not right in holding that the preparation of list of successful candidates on the basis of question in preliminary test was unreasonable and arbitrary.

33. Setting aside the judgment of the learned Single Judge does not solve the entire controversy arisen in this case. It is admitted position that only 117 candidates secured qualifying marks in the preliminary test. Thereafter, no test,

written or oral was held to test the candidates for selection on the post of driver and the Commission sent the aforesaid names to the government for appointment. The Commission has not acted according to the rules and circulars of the State Government as noticed above and the direction given by the Apex Court and the Monitoring Bench by order dated 11-5-1999. Accordingly to the direction of the Monitoring Bench, after preliminary test, written test and interview were to be held for final selection. The resolution of the State Government governing procedure regarding the appointment of technical post of driver provides that the selection has to be made on the basis of merit list which shall be prepared on the basis of marks obtained by the candidates in the selection test. Admittedly no selection test of the nature written or oral in terms of the direction of the Apex Court was held to make the final selection. While holding the test for the post of driver, the Commission has to test the candidates with reference to the requirement of the post. Accordingly, no appointment can be made on the basis of panel of successful candidates on the basis of preliminary test held by the Commission on 9-1-1999. The Commission is now directed to hold the selection test in the manner as indicated above and thereafter, to prepare a final list of successful candidates for appointment on the post of driver. In case, on final selection if the candidates are less than notified vacancies, the Commission may take fresh steps for appointment in terms of the direction of the Apex Court and the directions of the Monitoring Bench.

34. In the result, the order passed by the learned Single Judge dated 27th April, 2001 is set aside and now the Commission is directed to take further steps-in accordance with the directions issued above for appointment to the post of driver. There shall be no order as to costs..

R.S. Garg, J.

35. I agree.