
(2007) 07 AHC CK 0209
In the Allahabad High Court

Bhupendra and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 309
Government of India Act, 1935 — Section 241

Citation : (2008) 5 AWC 4262

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Arun Tandon, J.—Heard Sri Vikash Budhwar, Advocate on behalf of petitioners in writ petition No. 1297 of 2006, Sri Anand Kumar Singh, Advocate on behalf of Petitioners in writ petition No. 9351 of 2006, Sri S.P. Pandey, Advocate on behalf of petitioners in writ petition No. 7105 of 2006, Sri Ashok Khare, Senior Advocate assisted by Sri V.K. Tripathi, Advocate on behalf of selected candidates (respondents) in all the writ petitions, Sri K.R. Sirohi, Advocate on behalf of High Court and District Judge, Bhadohi and learned Standing Counsel on behalf of State-respondent in all these matters.

2. These three writ petitions have been tiled for quashing the select list dated 13th January, 2006 prepared for appointment on the post of stenographer/Clerk in the judgeship of Bhadohi, as well as appointment letters issued in favour of selected candidates in pursuance thereof. Some of the petitioners were working in the same judgeship on ad-hoc basis and had appeared in the examinations. Their names, however, have not been included in the select list, under challenge. These petitioners, therefore, further seek a writ of mandamus commanding the respondents to permit the petitioners to continue till regular selections, are held in accordance with law.

3. Facts relevant for the purposes of present writ petitions are as follows:

In the judgship of Bhadohi, sanctioned strength of clerical cadre posts is 96. In terms of the High Court Circular dated 26th May, 1999, which adopts the Government Order dated 3rd September, 1995, 20% of the sanctioned Class-III posts are required to be filled by way of promotion from amongst permanent Class-IV employees of the judgship. Calculated on the said basis 19 Class-III posts in all are required to be filled by way of promotion.

4. An advertisement was published on 24th December, 2003 by the District Judge, Bhadohi inviting applications from eligible candidates against 15 posts of Clerk and 3 posts of Stenographers, said to be vacant in the judgship.

5. Bineet Kumar Mishra and another, who were working as Class-IV employees in the judgship, filed Civil Misc. Writ Petition No. 164 of 2005, (which was connected with other writ petition Nos. 16410 of 2004 and 38803 of 2004 filed by other Class-IV employees of the judgship), challenging the advertisement, as published by the District Judge on the ground that direct recruitment could not be resorted to against vacancies, which were within the promotion quota of 20% referred to above. Under interim order of this Court dated 23rd July, 2004, the District Judge was permitted to hold the selections, in pursuance to the advertisement, however, it was provided that immediately after the examinations are held, the answer books should be sealed and forwarded to the Hon''ble High Court, which inturn were to be kept in the safe custody of the Registrar General.

6. The aforesaid writ petitions were finally decided vide judgment and order dated 21st October, 2005. The Hon''ble High Court held as follows:

From the assertions made in the supplementary counter affidavit extracted above, it is dear that there were 96 posts in the clerical cadre and the total number of vacancies available for promotion as per the total strength of the clerical cadre was 19. Out of these 19 posts, 9 persons had been promoted in 1997 and the total number of vacancies available for promotion in the year 1999 was 10. These 10 vacancies which were available for promotion quota continued to remain vacant till the select list of 39 class IV employees was prepared on 30.4.2003. The names of first 6 candidates were in the order of merit and was approved by the then District Judge and two candidates at sl. Nos. 1 and 2 were appointed and thereafter the list was kept in sealed cover which was opened on 30.10.2003 by the successor District Judge. The remaining 8 vacancies are yet to be filled by promotion as per the select list dated 30.4.2003. The order of District Judge dated 4.2.2005 by which representations have been decided was based on incorrect facts and he had tried to mislead this court. However, since Sri D.L. Sharma, the then District Judge, Bhadohi has since retired, I do not propose to say anything further.

From the aforesaid facts it is clear that the vacancies advertised by the then District Judge, Bhadohi on 24.12.2003 to fill 15 posts of clerks was incorrect as it also included the vacancies of promotional quota.

Learned Counsel for the petitioners as well as respondents have agreed that the

vacancies of promotional quota be filled according to the select list of 39 candidates prepared on 30.4.2003, in order of merit. The number of class III posts of clerks advertised on 24.12.2003 shall now stand reduced by the number of vacancies which will be filled from the promotional quota. District Judge, Bhadohi, who is also present in court, shall pass appropriate orders for promotion in accordance with law and promote class IV employees to class III posts in accordance with the select list dated 30.4.2003, Annexure-S.C.A. 2 to the Supplementary Counter Affidavit filled on 19.10.2005. He is further directed to get back the answer books of the written examination held on 25.7.2004 which are lying in safe custody of the Registrar General of this Court and shall get the answer books examined and declare the result after the appointments are made in promotional quota in pursuance of select list dated 30.4.2003. The Registrar General is directed to hand over the answer books lying in his custody in pursuance of orders of this Court dated 23.7.2004 to District Judge, Bhadohi.

7. In view of the aforesaid judgment of the Hon''ble High Court the number of advertised vacancies, stood reduced to 7, so far as the posts of clerk are concerned.

8. After the answer sheets of the candidates was obtained by the District Judge, under order of this Court, the same were got evaluated and select list containing names of 20 persons, was published by the District Judge, Bhadohi on 21st December, 2005. The select list so published reads as follows:

dza0 la0

vuqdzekad

uke

firk dk uke

Jzs.kh

1-

198

vthr dqekj

Jh cPpw yky

vuq0 tkfr

2-

2369

Jh erh ehuv JhokLro

IkfRu egsUnz dqekj JhokLro

lkekU;

3-

4208

lfcj vyh

Jh fu;ker vyh

vU; fiNM+k oxZ

4-

5883

fou; dqekj f=ikBh

Jh fo"oukFk izlkn f=ikBh

lkekU;

5-

2315

euh"k dqekj

Jh feBkbZ yky

vuq0 tfr

6-

3442

jru yky JhokLro

Jh f"ko"kadj yky JhokLro

lkekU;

7-

3204

iznhi dqekj ;kno

Jh jkeukFk ;kno

vU; fiNMk oxZ

8-

5793

fo".kq ik.M+s;

Jh vfuy dqekj ik.M+s;

lkekU;

9-

942

vo/ks"k dqekj iky

Jh cStukFk iky

vU; fiNM+k oxZ

10-

4411

lejthr flag

Jh vo/ks"k izlkn flag

lkekU;

11-

5005

lqjsUnz iky flag

Jh pUnz izdk"k

vuq0 tkfr

12-

612

vHk; dqekj JhokLro

Jh enu eksgu yky JhokLro

lkekU;

13-

3139

iznhi dqekj ;kno

Jh jke vkSrkJ flga ;kno

vU; fiNM+k oxZ

14-

506

vkyksd nqcs

Jh vkUun "kadj nqcs

lkekU;

15-

4661

lqjsUnz dqekj tSly

Jh ";ke yky

vuq0 tkfr

16-

1940

d`".kkdkUr f=ikBh

Jh dk"kh izlkn f=ikBh

lkekU;

17-

5650

fouksn dqekj fo"odekZ

Jh jke "kekZ

vU; fiNM+k oxZ

18-

1469

nhid dqekj JhokLro

f"ko eksgu lgk;

lkekU;

19-

3133

izselkxj iky

Jh uUgwd iky

vU; fiNM+k oxZ

20-

109

vk"kh"k dqekj JhokLro

ds"ko yky JhokLro

lkekU;

9. It is admitted on record that as against the said select list, 10 persons in all namely, respondent Nos. 4 to 13 to writ petition No. 1297 of 2006, have been offered appointment in the judgeship.

10. Civil Misc. Writ Petition No. 7105 of 2006 has been filed by Dhananjay Kumar Mishra for quashing the select list dated 13th January, 2006 pertaining to three posts of Stenographers, which contains the names of six persons as well as for quashing the consequential order of appointment issued in favour of selected candidates (respondent Nos. 4 to 7 of the writ petition) with a further prayer in the nature of mandamus commanding the respondents to not to interfere in the working of the petitioners as ad-hoc stenographers.

11. On behalf of the petitioners in all these writ petitions, it is contended that the entire selection held for the post of Stenographers as well as Clerks is a farce and in violation of the Statutory Rules applicable and replete with favouritism and nepotism.

12. The allegations made in the writ petition have been denied by way of counter affidavit to which rejoinder affidavit has also been filed. Hearing took place in the matter on various dates. Original records were also summoned and examined by the Court. The Court may deal with the selections made post-wise.

Stenographer:

13. Original answer-sheets of the candidates, who were declared successful and whose names were included in the select list along with those of petitioners were called for by the Court in original. After examining the answer-sheets this Court found that only marks have been awarded both in respect of Type Test as well as in respect of Shorthand Test, no mistakes were noticed pertaining to comma (,), full stop (.), paragraphs, spelling mistakes etc. nor the speed per minute achieved by the candidate in the test, had been calculated.

14. This Court therefore, vide order dated 20th July, 2006 required the presence of the Chairman of the Selection Committee, so as that he may assist the Court, as to how the speed per minute of the candidates has been calculated in the facts of the present case.

15. This Court may reproduce the orders passed on 3rd August, 2006 and 10th August, 2006 which read as follows:

3rd August, 2006

The then District Judge, Bhadohi as well as the Chairman of the Selection Committee are present in the Court. A statement has been made on their behalf that answer-sheets of the Short-hand and Typing Test were not evaluated by them, inasmuch as before such evaluation, they had been transferred. It is further stated that the work of evaluation of the answer sheets of the Short-hand and Typing Test was done at the time when Sri Sudhir Kumar Srivastava was the District Judge, Bhadohi.

In view of the aforesaid statement, presence of the then District Judge, Bhadohi as well as the Chairman of the Selection Committee are exempted until further order of this Court.

Let Sri Sudhir Kumar Srivastava, District Judge remain present before this Court on the next date fixed for explaining the discrepancies noticed by this Court in the order passed earlier.

List on 10th August, 2006.

This order is being passed in the presence of Sri K.R. Sirohi, learned Counsel for the District Judge, Shadohi, who shall ensure compliance thereof.

A certified copy of this order may be issued to Sri K.R. Sirohi, learned Counsel for the District Judge, Bhadohi by tomorrow i.e. 4th August, 2006.

10th August, 2006

With reference to the order dated 3.8.2006, District Judge, Bhadohi is present in the Court.

It would be appropriate that he may file his personal affidavit categorically stating as to how appointments were offered on the post of Stenographers without ascertaining that the selected candidates were possessed of the required statutory minimum speed of Shorthand and Typing. Such an affidavit must be filed by 18.8.2006. Put up on 18.8.2006.

16. Notices was also issued to M.A. Ansari, Manager of Jai Bharat Typing and Short-hand Institute, Gyanpur, Bhadohi to "remain present before this Court for explaining the figures as were noticed on the answer-sheets of Short-hand and Typing test of the candidate concerned.

17. Thereafter on 18th August, 2006 and 22nd August, 2006 the Court passed following orders:

18th August, 2006

From the affidavit filed by the then District Judge, Shri Sudhir Kumar, enclosing therewith another affidavit of one Shri M.A. Ansari, Manager, Jai Bharat Typing Institute, Gyanpur, Bhadohi this Court is satisfied that an attempt has been made to mislead the Court. The affidavit filed by Sri Ansari of the Jai Bharat Typing Institute records that he had examined the answer-sheets of candidates pursuant to shorthand and typing test held for employment in the Judgeship, the mistakes noticed in the shorthand and typing test were recorded on a rough sheet of paper and thereafter speed had been worked out.

The rough sheet had not been enclosed. The original answer-sheets are available in the Court, which do not establish any mistakes as required having been noticed or any calculation having been done for working out the speed of the candidates concerned. It is prima facie apparent that the affidavit has been prepared at the asking of the District Judge, Bhadohi to somehow or the other

explain selection made without actually determining the speed of the candidates in shorthand and typing as required under Statutory Rules.

From the answer-sheet, it is further apparent that no mistake of full stop (.) Comma(,) paragraphing, spelling etc. have been noticed. In absence of any such mistakes having been noticed, it is not possible to calculate the speed of candidate concerned.

Such act interfere with administration of justice and, therefore, must be dealt with firmly. Before any orders are passed against the District Judge, he may have one more opportunity to explain his conduct by way of better affidavit. He must also declare the authority under which evaluation was got done by a private agency, the mode of payment made in respect of such evaluation. He should enclose all other documents which may have recorded the speed of the candidates, who appeared in the selection.

List on 22.08.2006.

22nd August, 2006

Supplementary filed today may be taken on record, In continuation of the order passed by this Court dated 18.08.2006, it is desirable that Shri M.A. Ansari the Manager of Jai Bharat Typing and Shorthand Institute, Gyanpur, Bhadohi may remain present before this Court on 31.08.2006. For the said purpose, the Present District Judge, Bhadohi may take whatsoever assistance is required. A copy of this order may be served upon Shri M.A. Ansari through the District Judge, Bhadohi by 26.08.2006.

The Manager of the Institute may file his personal affidavit stating the complete facts (a) as to whether he had examined the answer sheets of shorthand and typing (b) his own educational qualifications as well as other qualifications necessary for acting as Examiner. He shall also disclose as to whether the money, said to have been paid to him for examining the answer sheets, has actually been received by him or not. It shall also be stated as to whether he was made aware about the passage, which was read out for typing and shorthand test and the time during which the said passage was read out. The time granted for transcribing/typing out the shorthand dictation recorded by the candidate may also be disclosed and the rough paper on which he is alleged to have recorded the mistake along with method for calculating the speed of the candidates may also be brought on record.

List on 01.09.2006. Interim order to continue till then.

18. On 31st August, 2006 Mr. M.A. Ansari, appeared before the Court and his statement was recorded in the order dated 31st August, 2006, which reads as follows:

31st August. 2006

Mr. M.A. Ansari, Manager of Jai Bharat Typing and Shorthand Institute, Gyanpur,

Bhadohi, is present in the Court. He has made a statement that along with the shorthand and typing answer sheets of the candidates, he was neither supplied the passage from which the dictation was given nor the time in which such dictation was read out, was disclosed. He further states that the time granted for writing of the shorthand dictation as well as in respect of Typing Test was also not disclosed to him. On his request, subsequently the passage from which the dictation was given, was handed over. After going through the passage, which was handed over to him, he calculated the speed on the presumption that the passage was read out in 5 minutes and the time given for transcribing the same was presumed as 10 minutes. He further stated:

I had examined the answer sheets of shorthand and typing test, at the residence of District Judge. Bhadohi. The total number of answer sheets of shorthand and typing test, which were examined by him, were 390 that were examined in a span of 7 days only. I visited the residence of District Judge at 10:00 a.m. In morning, continued to examine the answer sheets till 1.00 p.m. (afternoon), then there was a break of one hour. I returned at 2:00 p.m. For examining the answer sheets again, which continued till 5:00 p.m.

The rough sheets on which I calculated the speed of the candidates concerned was destroyed by me one the same day. Such rough sheets were never handed over to the District Judge, Bhadohi.

Lastly he stated that for transcribing the passage, in long hand by the students after shorthand dictation, no time limit prescribed by the District Judge was brought to his knowledge at any time.

On being asked as to what the figures recorded on the answer sheets of the shorthand and typing test i.e. 42 out of 100 and 44 out of 100 (total 86 out of 200) depicted. Mr. M.A. Ansari made statement that the said marks depicted the speed of the candidates concerned.

On further being asked as to what was the speed, according to the figures, recorded by him, he was unable to answer. Sufficient time was granted to him to explain the same, but no response could be received. After great hesitation, he finally admitted that the figures recorded on the first page of the answer sheet depict the marks awarded to the candidates concerned, and not their speed. He has further stated that the calculation, which has been done by him in the Court on two sheets (which have been kept on record), were only an attempt to somehow or other explain the alleged speed of the candidates.

It is further stated that he may be time till tomorrow i.e. 1st September, 2006 to file an affidavit seeking pardon for the mistaken facts stated in the calculation sheets today in the Court as well as in earlier affidavit filed by him.

Put up tomorrow i.e. 1st September, 2006.

An affidavit filed by Mr. M.A. Ansari, Manager of Jai Bharat Typing and Shorthand Institute, Gyanpur, Bhadohi today may be taken on record.

19. On 1st September, 2006 affidavit was filed by Mr. M.A. Ansari, however, on the request of District Judge the case was adjourned to 5th September, 2006. On 5th September, 2006 and 6th September, 2006 following orders were passed:

5th September, 2006

The District Judge, Bhadohi Sri Sudhir Kumar Srivastava is present in the Court. He has made a statement that he is not aware of the speed achieved in the shorthand and typing test by the selected candidates for the post of Stenographers. He further states that speed, if any, was worked out by the Manager of Jai Bharat Typing and Shorthand Institute. It is further categorically stated that he is not aware as to what was the typing and shorthand speed achieved by the candidates to whom he has offered appointment as Stenographer.

In the statutory rules pertaining to appointment on the post of Stenographer in the Establishment of the Subordinate Courts, specifically Rule 5(c) of the Subordinate Civil Courts Ministerial Establishment Rules, 1947, provides as follows:

5(c). he possesses in the case of a candidate for the post of stenographer a diploma or certificate from a University or a recognized short hand and typewriting institution, showing that he possesses a speed of at least 100 words per minute in shorthand and 35 words per minute in typewriting.

It is surprising that the District Judge has no knowledge of the aforesaid statutory rules inasmuch as he is not able to inform the Court that the selected candidates have achieved the minimum speed as prescribed under Rule 5(c). Counsel for the District Judge Sri K.R. Sirohi states that having regard to the marks awarded by the examiner, who has examined the answer sheets of shorthand and typing test, a merit list was prepared and on the basis of the said merit list appointments were offered to the candidates on the posts of Stenographer. He is not able to establish as to how candidates, who secured highest marks in the merit list, have achieved requisite prescribed speed as required under Rule 5(c).

In view of the aforesaid, this Court has no hesitation to record at this stage that the District Judge as well as Counsel for the District Judge are not in a position to explain as to how requirement of Rule 5(c) has not been satisfied before offering appointment. Let the District Judge, Bhadohi shall file his personal affidavit by tomorrow categorically stating as to why he has offered appointment to the selected candidate without ensuring compliance of Rule 5(c).

Put up tomorrow i.e. 06.09.2006.

6th September, 2006

The statement made by the District Judge in paragraph 3 of the counter affidavit hat he believed that the candidates had the required speed as per the provisions

of Rule 5(c) of U.P. Subordinate Civil Courts Ministerial Establishment Rules, 1947 is apparently a statement made without any basis.

Further the statement that on the basis of marks awarded in respect of shorthand and typing test, he had offered appointment as per the merit disclosed, is also based on complete non consideration and ignorance of the Division Bench Judge of this Court. This Court has specially hold that mere filing of certificate qua the minimum speed prescribed in Rule 5(c) of the aforesaid Rules, is not necessarily sufficient. If the Rules necessarily requires that the candidate must also achieve the required minimum speed in the test held before he can be offered appointment.

The aforesaid stand of the District Judge shall be dealt with further at the time of final disposal of the Writ Petition. Counsel for the respondent, Shri Neeraj Upadhyaya is directed to summon all the applications received in respect of the post of Stenographer, in respect of the selections in question and to produce the same before the court on 12.09.2006.

Put up on 12.09.2006.

Appearance of the District Judge, Shri Sudhir Kumar Srivastava is exempted unless directed otherwise.

It is open to the respondent as well as to the petitioner to apply for copies of the affidavit filed by the General Manager of the Jai hind typing Institute as well as that filed by the District Judge, Shri Sudhir Kumar Srivastava in the present writ petition, as well as to obtain copies of the orders which have been passed by this Court from time to time so that they may be aware of the facts which are on record.

20. Again on 12th September, 2006 following order was passed:

12th September, 2006

The original forms of the selected candidates for the post of Stenographer produced today by Shri K.R. Sirohi, counsel for the High Court as well as District Judge concerned, have been examined by this Court. It is apparent that except for one Shri Indra Deo, certificates of all other selected candidates do not state that the candidates had minimum prescribed speed in shorthand.

In view of Rule 5 of the Establishment Rules, 1947, as well as in view of the conditions mentioned in the advertisement inviting applications, the applications filed by these candidates were liable to be rejected at the threshold as they were not accompanied by a certificate as required under the Rules/advertisement qua the minimum speed of the candidates concerned in shorthand.

Not only such applications have been processed, the candidates have been invited for selections and have ultimately been selected. Counsel for the District Judge as well as the selected candidates have been permitted to examine the applications in the Court itself. They have not been able to dispute the facts as

recorded herein before.

Let an affidavit be filed by the District Judge as well as selected candidates categorically stating as to whether their candidature could have been entertained for the post of stenographer in view of the Rule 5 of the Establishment Rules, 1947/conditions mentioned in the advertisement or not.

Original applications of the selected candidates may be retained by the Bench Secretary, the other records may be returned.

Put up on 05.10.2006 for further hearing.

21. The original answer-sheets, as already noticed above, only depict the marks said to have been obtained by the candidate concerned. They do not depict the speed of the candidate concerned. The applications themselves were not accompanied by a certificate from any recognised Institute or University, which would establish that the candidate had the required minimum speed of typing and short-hand, as per the Rule 5(c) of the Subordinate Civil Courts Ministerial Establishment Rules. 1947.

22. The Hon"ble High Court in practically similar circumstances in the case of Vidyadhiraj Pandey and Ors. v. State of U.P. and Ors. (Civil Misc. Writ Petition No. 164 of 2005) and other connected writ petitions decided on 25.5.2006, has held as follows:

...However, it was contended on their behalf that this Court in exercise of power under Article 226 of the Constitution of India may not cancel the entire selection inasmuch as the selectees who have been beneficiary of irregularities and illegalities can be weeded out and the selection of the remaining candidates can be saved. In that regard reliance has been placed upon the judgment of the Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, . It is further contended that this Court may not travel beyond the pleadings in the present writ petition and, therefore, may examine the merit of the writ petition including the selections held only with reference to the allegations made in the writ petition. It is also contended that this Court cannot act as an expert body and therefore should not re-evaluate the answers as given by the candidates qua the selections in question.

Lastly it has been contended that the petitioners themselves, having been inducted in the service through back door without following the procedure known to law, are not entitled to any equitable relief under Article 226 of the Constitution of India. More so, in the facts of the present case where they had participated in the selection along with the selected candidates but could not compete.

Since this Court has already examined the answer sheets of all the selected candidates in the presence of their counsels and has noticed irregularities, which could not be explained, and this Court, being Court of record as well as the Court which exercises power of superintendence under Article 227 of the Constitution

of India upon subordinate judiciary, without confining itself to the pleadings of the parties, feels it just and proper to record the discrepancies as are writ large on the record of the selection proceedings.

It is, therefore, established that the process adopted for judging the speed of the selected candidates by the respondent officers qua shorthand and type test is only a farce. The speed of the candidates can not be ascertained unless the method fixed/settled for such calculation is adopted. It is, therefore, held that the respondent authorities have not calculated the speed of the selected candidates in respect of the type and shorthand in Hindi nor they are in a position to establish that the selected candidates possessed the prescribed minimum speed as per the advertisement.

From the advertisement it is apparently clear that the selections for the post of Stenographer was to be held on the basis of merit secured in the written examination maximum marks where of had been prescribed as 200. However selected candidates were required achieve the maximum speed in Shorthand/Typing in the test to be held for the said purpose before they could be offered such appointment. The advertisement did not contemplate any marks being fixed for Shorthand/Typing test or for the merit list being prepared with reference to the total marks obtained in the written test as well as in the Shorthand/typing test. The procedure adopted in the facts and circumstances of the present case for appointment on the post of Stenographer whereby merit has been determined on the basis of the marks obtained in the written test as well as Shorthand/Typing test (which according to the respondent was of maximum 50 marks each) is de-hors the terms and conditions mentioned in the advertisement.

23. It is established that in none of the answer-sheets pertaining to Shorthand and Typing Test, any mistake has been noticed relevant for the purposes of judging the speed of the candidate concerned, nor speed achieved by the candidate has in fact been calculated. The marks recorded on the answer-sheets are based on mere calculation done by the Manager of Private Typing and Shorthand Institute, who himself is possessed of a diploma in short-hand and typing from another private institute. The Court fails to understand as to how a private person could have been handed over the responsibility to evaluate the speed of the candidates, who had appeared for selection/appointment against the post of Stenographer in the judgeship and as to how such a person, who himself is not possessed of degree or diploma in short-hand and typing from any recognised institute, could have been permitted to evaluate the answer-sheets.

24. Although under the Subordinate Civil Courts Ministerial Establishment Rules, 1947 the word "recognised" qualifying the words "Short-hand and Typing Institute" has not been defined/explained nor it has been stated as to who has the competence to recognize such institute, yet in the opinion of the Court meaning has to be attached to the word "recognised" and not every institute, which imparts education in Short-hand and Typewriting can be said to be covered within the definition of recognised Short-hand and Typing Institute.

25. In the opinion of the Court it is necessary that under Rule-5(c) of Subordinate Civil Courts Ministerial Establishment Rules, 1947, the word "recognised" must necessarily mean that such institutes of Short-hand and Typing, which have either received recognition from any statutory body or by the State Government or at least from the Hon'ble High Court on administrative side. Certificates granted by such recognised institutes alone can be accepted to be valid for the fulfillment of statutory requirement of Rule-5(c) of Subordinate Civil Courts Ministerial Establishment Rules, 1947. In no case a private institute run by a private person without having recognition from any statutory body" State Government or from the Hon'ble High Court can be said to be covered within the meaning of recognised Short-hand and Typing institute as per Rule-5(c) , therefore, any certificate issued by such private institutes qua the speed of the candidate concerned in respect of short-hand and typing is of no legal value, nor can it be accepted by the authority concerned.

26. This Court, therefore, holds that a private person like Mr. M.A. Ansari, who himself is not possessed of any degree/certificate from any recognised institute, has absolutely no authority of law to act as the examiner in respect of short-hand and typing test conducted for appointment on the post of Stenographers in the judgeship.

27. Irrespective of the findings recorded herein above, it is also recorded, at the pain of repetition that neither the District Judge nor the Selected candidates could demonstrate that they could achieve prescribed minimum speed in respect of short-hand and typing test in the examination held in pursuance to the advertisement in question.

28. The advertisement dated 24th December, 2003 itself provided that candidate must be possessed of following minimum speeds:

(a) Hindi Short-hand 100 word per minute

(b) Hindi Typing 35 word per minute and,

(c) knowledge of English Short-hand and typing was treated as an additional qualification.

29. It is apparent that none of the candidates along with their applications form had enclosed, any certificate which could depict that they had the speed of 100 words per minute in Hindi Short-hand and 35 words per minute in Hindi typing, nor the records established that they had achieved the minimum speed of 100 words per minute in Hindi Short-hand test and 35 words per minute in Hindi typing test held in pursuance to the advertisement in question.

30. Rule 5(c) of the Subordinate Civil Courts Ministerial Establishment Rules, 1947 makes it mandatory, for a candidate to be possessed of the prescribed minimum speed before he can be offered appointment. This legal position was well known to Sudhir Kumar, the then District Judge, Bhadohi, responsible for evaluation of the answer sheets, as is apparent from paragraph Nos. 3 to 5 of

the affidavit filed by him on 6th September, 2006, which are being quoted herein below:

3. That the deponent craves leave of this Hon'ble Court to submit that Rule 5 of 1947 prescribes the academic qualifications which a person desirous of seeking appointment to the post in the Ministerial Establishment of the Subordinate Courts. Sub-rule (c) of Rule 5 envisages the qualification of a candidate of a post of Stenographer and it is prescribed therein that such candidate who possess Diploma or a Certificate from any University or Short hand and Typing Institute showing that he possess a speed of at least 100 words per minute in short hand and 35 words per minute in typing. Such certificate in the present case were furnished by the candidates along with their applications, which they had submitted in pursuance to the advertisement As such when the candidates had furnished certificate to establish their academic qualifications, they have subject to the test on typing and short hand. Such tests were conducted by the erstwhile District Judge, Bhadohi at Gyanpur. The examination was conducted under the supervision of the erstwhile District Judge. So far the deponent is concerned, he simply got the answer books examined. So far as answer books of short hand and typing, they have got examined by the experts who were managers of Jai Bharat Short hand and Typing Institute, Gyanpur. The said examiner after having examined the answer books, had awarded marks on the basis of which merit list was prepared and the deponent in turn offered appointments strictly in order of the merit.

4. That the deponent did not himself examine the answer books of the test which was conducted under the supervision of the erstwhile District Judge. So far as the answer books of the post of Stenographer is concerned, the deponent in right earnest appointed one expert namely Sri M.A. Ansari, who was the Manager of the Jai Bharat Short hand and Typing Institute, Gyanpur. The deponent bona-fidely believed that he was the expert on the subject and also bona-fidely believed that he must have assessed the answer sheets adopting of traditionally accepted principles of assessment of the answer books of short hand and typing test.

5. That since the deponent personally does not possessed knowledge of the subject of the short-hand, he had no option but to rely the confidence of the person deputed to examine the answer books short hand and typing to whom the petitioner believed to be the expert of the subject. So far as the deponent is concerned, he simply relied upon the marks which has been awarded by the person deputed to examine the answer books and offered the appointment strictly in accordance with the merit.

31. It is, therefore, held that the judicial officers of the District Court, Bhadohi despite being fully aware of the Statutory Rules and the terms of the advertisement, had made a mockery of the aforesaid provisions while holding selections for the post of Stenographer as well as while offering appointment in pursuance thereof. The entire selection for the post of Stenographers in the

judgeship of Bhadohi subsequent to the Advertisement dated 24th December. 2003 are held to be a farce and a mere paper transaction.

Clerks:

32. This Court may now deal with the selection and appointments on the post of clerks.

33. The Court may refer to the legal provisions, which regulate the appointment on the post of Clerks in Subordinate Courts within the State of Uttar Pradesh. It is admitted to the parties that appointment on the post of Clerks in Subordinate Courts is regulated by Subordinate Civil Courts Ministerial Establishment Rules, 1947 as framed in exercise of powers under Clause-B of Sub-section-1 and Clause-B of Sub-section 2 of Section 241 of the Government of India Act, 1935 read with Rules for Recruitment of Ministerial Staff to the Subordinate Offices in Uttar Pradesh, 1950. The said 1950 Rules have been framed in exercise of powers under Article 309 of the Constitution of India. The Hon'ble Supreme Court of India in the case of Om Praknsh Shukla v. Akhilesh Kumar Shukla and Ors. reported in AIR 1986 SC 1943, has held that Rule 9 to 12 of Subordinate Civil Courts Ministerial Establishment Rules, 1947 stand superseded by the Rules for Recruitment of Ministerial Staff to the Subordinate Offices in Uttar Pradesh, 1950. The Hon'ble High Court on administrative side issued a circular on 2nd January, 1987 directing all the subordinate courts to follow the Recruitment of Ministerial Staff to the Subordinate Offices in Uttar Pradesh Rules, 1950 on Class-III posts. Amendment in Rule-6(2) of 1950 Rules, which lays down the procedure for appointment on the post of Clerk as has been provided vide circular dated 1st November, 1973.

34. With reference to the aforesaid Rules, it is admitted to the parties, that appointment on the post of Clerk in Subordinate courts in the State of Uttar Pradesh has to be made on the basis of the competitive examination in respect of the vacancies which are outside the promotion quota. The detail procedure for the competitive examination has been laid down in Rule-6 of 1950 Rules as amended upto to date and reads as follows:

6. Subject of the tests: - (1) The competitive tests shall comprise a written test as well as an oral test.

(2) The subjects of the tests and the maximum marks on each subject shall be as follows:

Subject Marks ORAL (i) Personality 25 (ii) General Knowledge and suitability for the 25 particular post. WRITTEN (i) Simple drafting (in Hindi) 50 (ii) Essay and precis writing (in Hindi) 50 (iii) Simple Drafting and precis writing (in English) 50 OPTIONAL (i) Typewriting in English and Hindi 50 (II) Shorthand in Hindi and English 50 NOTES

Candidates must take one of the abovementioned optional subjects, but may take both, if they so choose.

35. From the aforesaid Statutory rules referable to Article 309 of the Constitution of India, it is apparently clear that competitive test is to comprise of following parts:

(a) Oral test (50 marks),

(b) written test and it is to comprise of two parts

(i) compulsory papers (150 marks) and

(ii) optional papers (50 marks).

Total marks being 250.

36. On record is a circular issued by the Registrar of the Hon"ble High Court dated 9th February, 1995, which reads as follows:

Hon"ble the Chief Justice and Judges have considered the matter of marks obtained by Candidates appearing in optional subjects in addition to the compulsory. subjects, in recruitment tests held under the U.P. Subordinate Courts Ministerial Establishment Rules, 1947 ns amended from time to time and it has been decided that the marks obtained by a candidate appearing in the optional subjects on his possessing the prescribed speed in shorthand and typewriting, may not be added to the marks obtained in the written test for the purposes of the merit list, which shall be prepared after conducting examination both in compulsory and optional papers, but while preparing the Register of selected candidates under Rule 14(1) of the U.P. Subordinate Courts Ministerial Establishment Rules, 1947, an entry be made in remarks column against the name of the Candidate who has qualified also as a stenographer or as a typist.

I am, therefore, to ask you to kindly ensure strict compliance of the Court's decision in the matter in connection with all recruitment test held under the U.P. Subordinate Courts Ministerial Establishment Rules, 1947, as amended from time to time.

37. From the records, provided by the District Judge, it is apparently clear that the selection on the post of Clerk in the judgeship Bhadohi has taken place only on the basis of marks received in written test held in respect of the compulsory papers only. There has been no oral test of the personality, general knowledge and suitability for the particular post as contemplated by Rule-6(2) of 1950 Rules. Similarly it is further admitted on record that absolutely no examination has been held in respect of optional papers, namely, Typewriting in English and Hindi and Shorthand in Hindi and English.

38. It is admitted to the District Judge, Bhadohi that a candidate for recruitment on Clerical post has necessary to appear in compulsory papers as well as in at least one of the optional papers. However, with reference to the Circular issued by the Registrar of the Hon"ble High Court dated 9th February, 1995 quoted herein above, it has been contended that the marks obtained in the optional papers are not required to be added for the preparation of the merit list. Suffice

is to reproduce Paragraph-11 of the affidavit filed on behalf of the District Judge, Bhadohi dated 1st December, 2006, which reads as follows:

11. That from the rules as amended from time to time and the circulars issued by this Hon''ble Court the position which emerges is that while making the recruitment in the subordinate courts on class III posts the candidates are to be subjected to the test in compulsory subjects and at least one optional subject. However, the marks which a candidate may secure in optional subject is not required to be added in the marks obtained in the written test for the purposes of ascertaining the merit.

39. This Court may emphasize that the Hon''ble Supremo Court as well as Division Benches of the Hon''ble High Court have repeatedly hold that if law requires something to be done in a particular manner, it is to be done in the manner prescribed or not at all. Reference Professor Ramesh Chandra v. State of Uttar Pradesh and Ors. Civil Misc. Writ Petition No. 51370 of 2005, decided on 11th June, 2007, wherein the Division Bench of this Court has held as follows:

When the Statute provides for a particular procedure, the authorities has to follow the same and cannot be permitted to act in contravention of the same. It has been hither to uncotroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. (1) State of Uttar Pradesh Vs. Singhara Singh and Others, (2) A.K. Roy and Another Vs. State of Punjab and Others, and (3) Chandra Kishore Jha v. Mahavir Prasad (1998) 8 SCC 266

The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusio alterius", meaning thereby that if a statute provides for a thing to be done in a particular, then it has to be done in that manner and in no other manner and following other course is not permissible. This maxim has consistently been followed, as is evident from the cases referred to above. A similar view has been reiterated in Haresh Dayaram Thakur Vs. State of Maharashtra and Others, ; Delhi Administration Vs. Gurdip Singh Uban and Others, ;Dhananjaya Reddy v. State of Karnataka etc. etc. (2001) 4 SCC 9 ; Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, Prabha Shankar Dubey v. State of Madhya Pradesh AIR 2004 SC 486 ; and Ram Phal Kundu Vs. Kamal Sharma,

40. Absolutely no oral test has, taken places Similarly no optional test in respect of optional papers has been held. No reasons for such a deviation from the Statutory Rules has been brought to the knowledge of the Court nor the learned Counsel for the respondents were able to justify as to how the Statutory provisions could be bye-passed in respect of selections held.

41. In view of non-compliance of the statutory provisions and the procedure prescribed therein, qua recruitment on the post of Clerk as noticed herein above, the entire selections are rendered illegal.

42. As already noticed above the number of vacancies for the post of clerk as per the Advertisement dated 24th December, 2003 stood reduced to 7, in view of the judgment and order of this Court dated 21st October, 2005 passed in Civil Misc. Writ Petition No. 164 of 2005 and other connected writ petitions. Therefore, it is only against those 7 advertised vacancies appointments could have been made.

43. For the reasons best known to the District Judge, he published a merit list of 20 candidates. Out of this list of 20 persons, appointment has been offered to 10 candidates. Explanation furnished for appointment in excess to the advertised vacancies is contained in paragraph-35 of the counter affidavit filed on behalf of respondent Nos. 2 and 3, dated 24th February, 2006, which reads as follows:

35. That in reply to the contents of para 36 of the writ petition it is submitted that it had already been published in the notification of vacancy that vacant posts may increase or decrease, the 10 candidates out of 20 were given employment against vacancy enhanced due to one retirement and two deployment of class-III employees in two Fast Track Court. It is wrong to say that 10 candidates were called upon at the residence/Bungalow on 23.12.2005 and they were handed over appointment letter and their joining reports were accepted. Appointment letter of the candidates were issued through dispatch register and some were got received in the office and their joining reports too were accepted in the office.

44. Absolutely no details about the date on which the subsequent vacancies have been caused nor any explanation has been furnished as to how subsequent vacancies could have been filled on the basis of selection held in pursuance to the advertisement of the year 2003. This Court has repeatedly held that appointment in excess of the advertised vacancies is per se illegal. Reference The District Judge and The Hon"ble High Court of Judicature Vs. Sri Anurag Kumar, Deepak Nigam, Narendra Kumar Khare and Sri Tarun Pratap Yadav, and 2006 (1) ESC 666 para 52 & 53; Dinesh Kumar, Etc. Etc. v. State of U.P.

45. In view of the aforesaid, the appointment made in excess of the advertised vacancies (which stood reduced to 7 in terms of the judgment and order of this Court dated 21st October, 2005) is per se illegal and unsustainable in the eyes of law.

46. The Court has also examined the original answer sheets of the selected candidates. Keeping in mind that this Court cannot act as an expert for re-evaluation of the answers given by the students concerned, no such exercise is being undertaken by the Court, the illegalities, which are so fundamental that any reasonable man can take note of the same on mere glimpse of the answer-sheets are only being received hereunder.

(a) Roll Nos. 109, 4208, 4411, 5793

47. Question No. 5 of the written examination reads as follows:

5. Write a letter to your brother to go on a tour.

Or

Write a letter of complaint to the General Manager of Railways regarding non-delivery of a registered parcel.

48. Answer given to this question by all the four candidates with Roll Nos. 109, 4208, 4411, 5793, are more or less identical and same silly mistakes have been recorded in the letters written by all the four candidates. The Court may only reproduce the language of one of the letters, which reads as follows:

I come to know that your college committee has made a programme per tour you should know that every tour provides severae knoweges and expences, which is very necessary for life, it you have dificiency of money then inform me. I snail provide all the expendatures. With all the love and best wishes.

Your brother.

49. The Court records that the letter written, practically in the same language with same silly mistakes is in itself sufficient to established that there has been mass-copying or at least use of unfair-means qua these four selected candidates. It is beyond comprehension of a common man that these four persons sitting separately, while answering the same question, which is Inform of letter writing, would use the same language, and committed same Mistakes.

50. Similarly in respect of question No. 6, which is an unseen passage, candidates were required to write a precise of the passage in not more than 50 words and to give it a title. Precy written and title given by all the four candidates is one and the same. Title given is "Ujain, the city of judgment". The precy written is in two paragraphs of approximately 70 words (when the maximum words prescribed was 50 only) practically in same words and same language. The Court may reproduce the precy written by one of the candidates, which reads as follows:

Title-(Ujjain the city of judgment)

The place where the great peoples born becomes hystorical and remembered for ever. Ujjain is famous for the judgment of Vikramaditya and poet Kalidas. Vikramaditya was a greatest judae. His judgment is wise and satisfactory that robbers and thieves were gating shockat that Time, and peoples were happy.

It mean that in a place society where the judgment is transparent and happy and become developed.

51. The Court records that except for cheating/use of unfairmeans there cannot be a precy identical in language with same silly mistakes and with same title qua 4 different candidates (who have all been selected and appointed).

(b) Roll Nos. 198. 3204. 3442:

52. Similarly Roll Nos. 198, 3204, and 3442 (who have all been selected) have answered question No. 5 in same language and style, have addressed the letter

to same person, namely, "Sonu". The Court may only reproduce the language of the letter written by one of the candidate, which reads as follows:

My dear brother Sonu.

Hope this find you is best I am quite find we hope the some to you, you must be I last to know that my under class is going on tour to visit Agra and Phatehpur Sikari on coming Sunday. It should be my pleasure if you join the tour. Kindly please come to my hostel on Saturday.

Your brother "A"

53. The Court holds that same mistakes in a letter written practically in the same language and addressed to same person by name, is itself sufficient to established that there has been mass-copying or at least use of unfair-means qua these three selected candidates. It is beyond comprehension of a fair and a reasonable man that three persons sitting separately and answering the question, which is inform of letter writing, would use the same language, and committed same mistakes as well as address the letter to a person by the same name.

54. In respect of question No. 6 (unseen passage) all the aforesaid three candidates have recorded the same title, the precy written is also identical. The Court may reproduce the precy writing by one of these candidates, which reads as follows:

Title "Great Vikramaditya"

Ujjain is a old city. It was capital of King Vikramaditya. He was a famous king. He was known for his judgment. He could decide most difficult cases very wisely criminals could not escape punishment.

55. By no stretch of imagination except for cheating/ copying the precy of unseen passage of candidates can be identical. Therefore, this Court with all authority at its command, records that unfair means has been resorted to in respect of aforesaid three candidates qua question Nos. 5 and 6 also.

(c) Roll No. 3133:

56. In respect of Roll No. 3133 the Court may record that answers given to question Nos. 5 and 6 make absolutely no sense, yet 12 marks each have been awarded.

(d) Roll No. 4661:

57. There is apparent over-righting in respect of marks awarded to question No. 6., No title to the passage has been given yet 18 marks have been awarded.

(e) Roll No. 3139:

58. In respect of question No. 6, candidate was required to make a precy not

more than 50 words, however, precy in fact written by candidate runs into 35 words, yet 9 marks have been awarded. Title given to the passage is incorrect. Spelling of the title as given is also incorrect.

59. Similarly in respect of question No. 5 there is apparent over-righting in respect of marks originally awarded. It appears that originally 8 marks were awarded, figure 1 has been subsequently added, so as to read as 18. The answer to question No. 1 (a), (b), (c) and (d) of Part-D is either wrong or not given, yet 1 1/2 marks have been awarded. Answer to question No. 2 of part-D is wrong, yet one mark has been awarded after scoring out 0 (zero), which was earlier recorded.

Roll No. 2369:

60. In respect of question No. 6 there is apparent over-righting in respect of marks originally awarded. It appears originally 2 marks were awarded and figure 1 was subsequently added so as to read 12. Precy written by the candidate makes no sense yet 12 marks have been awarded. Similarly in respect of question No. 5, letter written by the candidate makes no sense yet 13 marks have been awarded and there is apparent over righting in respect of marks so awarded.

(g) Roll No. 5650:

61. Answer given to question No. 5 is apparently out of contest, yet 12 marks have been awarded. In respect of question No. 6. candidate has reproduced the entire unseen passage, yet 9 1/2 marks have been awarded, treating the entire passage as precy, as already noticed above, the precy was required to be written in not more than 50 words.

(h) Roll No. 506:

62. There is apparent over-righting in respect of marks awarded to question Nos. 2, 3 and 6. Similarly letter written in response to question No. 5, yet 9 marks have been awarded. Similarly precy written by the candidate is in 65 words i.e. beyond the maximum 50 words, yet 9 marks have been awarded.

(i) Roll No. 1940:

63. There is apparent over-righting in respect of question Nos. 1, 4, 5 and 6. Letter written by the candidate makes absolutely no sense yet 8 marks have been awarded. Similarly the little and precy written by the candidate to the unseen passage also make no sense yet 8 marks have been awarded.

(j) Roll No. 2315:

64. In respect of question No. 6 the precy written by the candidate runs into approximately 120 words yet 9 1/2 marks have been awarded.

(k) Roll No. 5005:

65. In respect of question No. 5, letter written by the candidate makes absolutely no sense yet 9 1/2 marks have been awarded. Similarly the tittle and precy written by the candidate to the unseen passage also make no sense yet 9 marks have been awarded.

66. In view of the illegalities noticed on such a large scale pertaining to the selected Stenographers and the selected Clerks, as detailed above, this Court has no hesitation to record that selections held are far from being free and fair. This Court is satisfied that ulterior considerations/outside pressures have weighed with the Selection Committee/District Judge concerned in respect of the selection in question otherwise there was no occasion for such large number of irregularities being deducted.

67. It is no doubt true that the Hon"ble Supreme Court of India in the case of Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, has held that if the beneficiaries of irregularities or illegalities can be segerated then an attempt must be made to save the selection of the candidates whose selection is not vitiated. The principle laid down by the Hon"ble Supreme Court of India referred to above, cannot be doubted. However, the judgment of the Hon"ble Supreme Court itself notices an exception namely, if there are widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole, the selections in their entirety must go.

68. In the facts of the case, as already noticed above, not only the procedure prescribed under the Statutory Rules has been violated, the records established use of unfair-means and favoritism, awarding of marks in arbitrary manner without application of mind, therefore, this Court feels that such selection, which are farce and mere a paper transaction, must go as a whole. This Court feels that no purpose would be served by saving selections which are an out come of an spoiled system. The Hon"ble Supreme Court in the case of State of U.P. and others Vs. U.P. State Law Officers Association and others, has held that there is no public interest involved to save illegal appointments, which are based on a spoiled selection. The relevant portion of the judgment of the Hon"ble Supreme Court is being quoted herein below:

There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoiled system. There need be no legal anxiety to save them.

69. Accordingly the selections/appointments made on the post of Stenographers and Clerks in pursuance to the advertisements dated 24th December, 2003 in the Judgeship at Bhadohi are quashed in their entirety.

70. Having come to the conclusion that the selections made on Class-III posts of Stenographers and Clerks in the Judgeship of Bhadohi are a farce and therefore unsustainable, the further relief claimed by some petitioners qua their

continuance on ad-hoc basis may be examined.

71. The petitioners have admittedly been appointed on ad hoc basis without following any procedure known to law, their entry into the system is also through back door. The practice of entry through back door and thereafter continuance for years together on ad hoc basis must also be brought to an end. The petitioners have not been working since December, 2005, (since the termination of their ad hoc appointments after declaration of the result of the selection), such petitioners cannot be granted a relief of again being restored on ad hoc basis, after the present selections are quashed by this Court.

72. In the opinion of the Court, the petitioners are also not entitled to be permitted to seek any relief of re-induction in the judgeship even after the Impugned selections are quashed.

73. Since the selected candidates will not be entitled to continue once their appointments are quashed under this judgment, there may be some difficulty in the normal working of the Judgeship, accordingly the following directions are being issued:

(a) Selections and appointments made on the posts of Stenographers and Clerks in pursuance to the advertisement dated 24th December, 2003 are hereby quashed quashed.

(b) The candidates already appointed in pursuance to the said selection shall not be permitted to continue any further.

(c) The petitioners are refused the relief of reinstatement or for a fresh ad hoc appointment, on the basis of their earlier ad-hoc engagement.

(d) The District Judge, Bhadohi shall initiate steps for fresh selections (on the basis of earlier advertisement) for the posts in question on or before 1st August, 2006 and for the said purpose he may publish an advertisement in newspapers informing the candidates, who had applied earlier in response to advertisement dated 24th December, 2003 to appearance in selections on the date to be notified, with their old admit cards. In case admit cards have been lost, candidates may be issued duplicate admit cards by the Registry of the District Court.

(e) All possible assistance, financial or otherwise, shall be provided by the Registry of the High Court for ensuring that the fresh selections are held within two months. The result of the selection so held shall be notified within a period of 15 days from the date the selection are held, fresh appointments may be offered Immediately thereafter.

(f) If some difficulty arises in day-to-day working of the Judgeship, the District Judge may engage such number of Class-III employees, as may be necessary, on daily wage basis for a fixed period only.

74. This leads the Court to the issue as to whether judicial officers, who were

involved in mass Irregularities qua the selections, should be permitted to go scot free or appropriate action be recommended against them. Although repeated requests have been made on behalf of the judicial officer for taking a lenient view in the matter, the Court is not inclined to accept their request for the following reasons:

(a) Judiciary is the third pillar of democracy and in the present scenario every citizen of the country looks up to the judiciary for safeguarding its interest, property and other rights. High Court has been repeatedly punishing officers and employees of the government departments and other establishments who have deliberately acted de horse the Statutory Rules and contrary to fairness expected from them. It is high time that the High Court may clean its own house so that the faith of the common Indian in the Highest Judiciary of the state is not shaken.

75. It would be appropriate that the records of the present writ petition along, with answer sheets of the selected candidates, which have been examined by this Court, as well as copy of this judgment may be placed before the Hon''ble the Chief Justice by the Registrar General within two weeks from today for appropriate action being taken in the matter in accordance with law against the judicial officers responsible.

76. This Court may also take note of series of petitions which are being filed on judicial side in this Court questioning the propriety and legality of the selections made in various judgeship which are under the control and supervision of the Hon''ble High Court. Reference-

(i) Writ Petition No. 18363 of 2005 (Judgeship of Bareilly)

(ii) Writ Petition No. 43372 of 2005 (Judgeship of Mirzapur)

(with three more petitions)

(iii) Writ Petition No. 10341 of 2005 (Judgeship of J.P. Nagar)

(with four more petitions)

(iv) Special Appeal No. 720 of 2005 (Judgeship of Hathras)

(with five other petitions)

(v) Special Appeal No. 1467 of 2005 (Judgship of Baghpat)

(with four other petitions)

(vi) Writ Petition No. 164 of 2005 (Judgeship of Kaushambi)

(vii) Present three writ petitions (Judgeship of Bhadohi)

77. This Court has been called upon repeatedly to exercise extraordinary jurisdiction under Article 226 of the Constitution of India to correct the mistakes committed in respect of the selections, which are said to be in flagrant violation of the rules and based on unexplained considerations. It is in this background the

Division Bench of this Court in the case of District Judge, Baghpat and Anr. v. Anurag Kumar and Ors. reported in The District Judge and The Hon"ble High Court of Judicature Vs. Sri Anurag Kumar, Deepak Nigam, Narendra Kumar Khare and Sri Tarun Pratap Yadav, had made a specific recommendation that necessary amendments in the rules may be made subject to the approval of Hon"ble The Chief Justice so that selections on Class-III Ministerial posts in Various District Judgeships may be conducted by the High Court itself.

78. The extent of malpractices noticed in the facts of the present writ petition make the need of such central selections more imperative/compelling and therefore this Court would again request the Hon"ble The Chief Justice to consider the recommendations, made by the Division Bench at the earliest possible.

79. These writ petitions are partly allowed with cost of Rs. 10,000/- to be paid by Sri Sudhir Kumar, the then District Judge, Bhadohi (now posted as District Judge, Mirzapur). The cost be paid through Bank Draft drawn in favour of Registrar General of this Court, within one month from today. In case of default, the District Magistrate of Mirzapur shall ensure recovery of the same as land revenue from the aforesaid person. A compliance report shall be submitted through the Registrar General. The money so collected shall be placed in the fund of "High Court Legal Services Committee, Allahabad.

80. The Registrar General is directed to place the records of this petition alongwith the judgment before the Hon"ble The Chief Justice as indicated above.

Note-

1. Answer sheets of all the selected and appointed candidates for the post of Stenographers (examined by this Court) are kept in sealed Envelop-A.
2. Answer sheets of all the selected and appointed candidates for the post of Clerks (examined by the Court) are kept in sealed Envelop-B.
3. Hand written calculation done by Sri M.A. Ansari, Manager of Jai Bharat Short-hand and Typing Institute, Gyanpur, Bhadohi are kept in sealed Envelop-C.
4. Question papers of Short-hand and Typing Test, Clerk Test as well as key-answer of objective test for the post of Clerk are kept in sealed Envelop-D.
5. Original records qua vacancy and select list of Class-III employees are kept in sealed Envelop-E.

81. All the aforesaid shall be part of the record of Writ Petition No. 1297 of 2006 and may be handed over to the authority concerned under orders of Hon"ble The Chief Justice as and when further investigation or departmental enquiry is initiated.

82. The District Judge Bhadohi is permitted to receive other records of selections, which were summoned by this Court earlier from the Bench Secretary.