
(2014) 04 GUJ CK 0030

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1102 of 2013 in Special Civil Application No. 268 of 2009 and Civil Application No. 9964 of 2013 in Letters Patent Appeal No. 1102 of 2013

Dalal Abduljavid Mustufa

APPELLANT

Vs

Principal District Judge and 88 Ors.

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 2 GLH 54

Hon'ble Judges : V.M. Sahai, J;Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : Bhavesh B. Sarode, Advocate for the Appellant; Monali Bhatt and Ms. Shruti Pathak, Assistant Government Pleaders for Respondent No. 3, Mr. Kamal B. Trivedi, Advocate General Assisted by Mr. Mehul S. Shah for Respondent Nos. 1-2 and 4, Advocate for the Respondent

Judgement

Vijay Manohar Sahai, J.—The questions that arise for consideration in this appeal are:-

I. Whether in absence of any guidelines framed by the Advisory Committee of Vadodara Judgeship or by the High Court, the Advisory Committee, Vadodara and the examiners were justified in adopting an evaluation process of the answer books at the competitive recruitment examination of Class-III employees which results in discrimination between the same set of candidates?

II. Whether without intimating the candidates about the criteria of evaluation of answer-books and award of marks, the examiner could examine the extra questions and then arrive at a conclusion that which were the best answers and then take into account the marks of the best answers and award it to the candidate?

III. Whether in a competitive recruitment examination a candidate is entitled to answer more questions than what was required to be answered?

IV. Whether in a competitive recruitment examination when the question-answer booklet clearly specified that out of 30 questions only 25 are to be answered or out of 8 questions only 5 are to be answered, if a candidate flouts the instructions and answers more questions is to be benefited quo the candidate who had followed the instruction of examination and answered the required questions?

V. Whether where only 83 Class III posts of Assistants were filled reservation quota of Scheduled Caste, Scheduled Tribe quota had rightly been applied?

VI. Whether where the then Principal District Judge, Vadodara and now Registrar (Finance and Recruitment) had admitted in his affidavit-in-reply that in all recruitment examinations he had declared the list of successful candidates by evaluating all the answers where the candidate had attempted more than the required questions, by taking best of the answers into account, what is to be done?

2. This Letters Patent Appeal under Clause 15 of the Letters Patent has been filed challenging the judgment and order dated 28.8.2012 passed by the learned Single Judge in Special Civil Application No. 268 of 2009 dismissing the appellant's writ petition. In the writ petition, the appellant had prayed for quashing of the impugned select list dated 29.7.2008 with a direction to the respondents to prepare fresh select list by including the name of the petitioner. It was also prayed that all relevant documents be produced before this Court for proper adjudication. The relief prayed in the writ petition was amended and it was further prayed that specific rules, regulations and formula for recruitment, advertisement, selection procedure, select list reservation and period to keep the waiting list operative for recruitment to staff in lower/subordinate Courts. The direction was sought for framing fresh Rules by the Registrar General of this Court which was to be approved by the State Government within a reasonable time. It was also prayed that this Court may inquire about the ways and methods adopted by the respondents in preparing the list of candidates eligible for the post as per the advertisement and also to inquire that why and under what circumstances, the name of the petitioner had been deleted which was already in the select list.

3. The brief facts which emerges from the writ petition, letters patent appeal and from the records could be summarized as under:-

3.1. An advertisement was published by the Principal District Judge, Vadodara (hereinafter referred to as "PDJ") on 6.8.2004 inviting applications for various posts for preparing the select/merit list (hereinafter referred to as "select list") of the candidates for filling up the vacant posts arising from time to time in the District Court, Vadodara. In this Letters Patent Appeal, we are concerned only with the Class III post of Assistant (Junior Clerk). In the advertisement, vacancies were not specified nor it was mentioned that the select list and waiting list would be valid and remained operative for what period.

3.2. In response to the said advertisement, the petitioner applied for the post of Assistant (Junior Clerk) as an OBC category candidate. The written test was held of 100 marks and the petitioner was declared successful. He was called for computer/type test and interview on 30.8.2007. As per the tentative select list of 161 candidates which was published by the respondents on 2.11.2007, the petitioner was shown as one of the selected candidates. According to him, his name was at Serial No. 104 and he had obtained 140.66 marks. The PDJ, Vadodara issued appointment letters to 50 candidates on 2.11.2007 and thereafter by letter No. 410 of 2007 dated 3.11.2007, the select list was forwarded to the High Court for approval. On 23.11.2007, the High Court directed to stop the implementation of the select list dated 2.11.2007. The High Court directed the PDJ, Vadodara to submit information sought by it and directed that select list be kept in abeyance. The information sought for by the High Court was provided by the PDJ by letter dated 11.12.2007. Thereafter, the High Court approved the select list on 21.7.2008 of only 101 candidates and the same was forwarded to the PDJ. The appellant's name did not appear in the select list of 101 candidates. Thereafter, writ petitions being Special Civil Application No. 12323 of 2008 and Special Civil Application No. 12933 of 2008 were filed in the High Court by some other candidates wherein the High Court had directed to include 8 candidates in the select list of 101 candidates, therefore, the High Court by letter dated 5.12.2008 increased the select list to 109 candidates.

3.3. The PDJ had issued appointment orders to 83 candidates from the final select list of 109 candidates. The candidates who are below in the select list from 84 to 109, out of them, 4 candidates made applications to the High Court for giving appointment as they were in the select list. The High Court called for a comment from PDJ on 26.9.2011 and after receiving the remarks, the High Court by its letter dated 2.1.2012 informed the PDJ that the select list cannot be given effect to and not to operate it any further as the High Court had adopted the centralized recruitment process for filling up the vacancies including the vacancies of Assistant (Junior Clerk) for appointment by a centralized recruitment process and also directed that Circular dated 19.12.2011 issued by the High Court be strictly followed.

3.4. The appellant challenged the selection list by filing writ petition being Special Civil Application No. 268 of 2009 in the month of January, 2009. The main allegation of the petitioner was that the advertisement was not in accordance with law as actual number of vacancies was not specified in the advertisement. The respondents have violated the Rules for recruitment of Assistant. The 27% OBC quota was not provided properly and four posts reserved for OBC candidates remained vacant. Five persons who were less meritorious than the petitioner have been shown to have been selected which was contrary to law and the select list dated 2.11.2007 as approved on 21.7.2008 was prepared dehors the Rules of recruitment and gross illegality was committed by the respondents.

3.5. In the rejoinder affidavit, the appellant prayed that the percentage of reservation of OBC candidates had not been maintained as per the Government Resolution, though the petitioner is entitled for 27% reservation out of 83 selected candidates. Similarly, reservations with regard to SC and ST category candidates were also not properly given. It was also stated in paragraph 10 of the rejoinder affidavit that the candidates selected at Serial No. 26-Parmar Gitaben Navinchandra in the approved select list was shown as an OBC category candidate, but she was an SC category candidate, and she has been wrongly selected on the post reserved for OBC candidate.

3.6. A sur-rejoinder affidavit has been filed by Mr. K.C. Pandya, Registrar, District Court, Vadodara to the rejoinder affidavit filed by the petitioner wherein the allegations made in the rejoinder affidavit are denied. However, with regard to the candidate in the select list at Sr. No. 26-Parmar Gitaben Navinchandra, in paragraph 6 of the sur-rejoinder, it had been stated that from her application, it had been verified that Gitaben Parmar belongs to SC category and she had also produced Certificate of Scheduled Caste category and she has applied as Scheduled Caste category. But, by mistake, she had been shown as candidate belonging to OBC category in the select list prepared by the Advisory Committee on 2.11.2007.

3.7. The learned Single Judge by the impugned judgment and order dated 28.8.2012 dismissed the writ petition of the petitioner on the ground that fresh selection process has already been initiated by the High Court for holding centralized recruitment of Class III post of Assistant and, therefore, no direction can be issued for including the name of the petitioner in the select list. The select list cannot be quashed as the candidates have been appointed and they have not been joined as party and, therefore, no relief can be granted to the petitioner. So far as the prayer of the petitioner with regard to the direction to the High Court for framing Rules was concerned, the learned Single Judge observed that the Gujarat High Court administration has proposed the Recruitment Rules which are pending with the State Government which shall be duly considered and approved by the State Government at the earliest. The learned Single Judge did not make any mention about the claim of the petitioner with regard to the post of Gitaben Parmar and did not advert to the question whether SC candidate can be selected on OBC category post or not. Though the claim was made by the petitioner in the rejoinder affidavit, but since sur-rejoinder was filed, therefore, the respondents had an opportunity to rebut the claim made by the petitioner in the sur-rejoinder affidavit. As a matter of fact, the respondents themselves admitted the mistake. It is urged that in such a situation, the learned Single Judge ought to have considered the grievance raised in the rejoinder affidavit.

4. Be that as it may, in the interest of justice, on the prayer of the petitioner, we have summoned and examined the entire records including the answer books of 161 candidates who were declared successful in the written test and were called for the computer/type test and interview. While we were examining the answer

books, we noticed serious irregularities committed by the Advisory Committee of which the Chairman was PDJ, Vadodara.

5. Learned counsel for the appellant thereafter filed draft amendment by which the members of the Advisory Committee were joined as party, the respondent Nos. 4 to 6 in the present Letters Patent Appeal. The respondent No. 4 was Mr. P.R. Patel, the Principal District Judge, Vadodara who held the recruitment, declared results and issued appointment orders and entire recruitment for the post of Assistant (Junior Clerk) in Vadodara District took place under him. At present, respondent No. 4 is working as Registrar (Recruitment and Finance) in the Gujarat High Court.

6. On 17.10.2013, an order was passed directing respondent No. 4 to file his explanation to points A to H. Points B and C are reproduced as under:-

B) Further, where there were more questions, say for example, in General Knowledge and Arithmetic, there were 30 questions and 8 questions respectively and out of these questions, in General Knowledge, 25 questions were to be answered and in Arithmetic 5 questions to be answered. In such a situation, if the candidate has answered 30 or 8 questions respectively, what were the instructions with regard to checking the answer books. Whether in such a situation, 25 or 5 questions were to be examined or incorrect answers were to be ignored and only out of correct answers, 25 or 5 answers have to be found out.

C) Under which Rule, this was permitted by the District Judge and on such answer books, how you could declare result selecting candidates shall clearly be explained.

7. In pursuance of the said order, the respondent No. 4 filed his affidavit-in-reply on 23.10.2013 explaining in paragraph 2 and 3 the points B and C which is reproduced as under:-

2. With respect to the explanation sought vide Point B), it may be respectfully submitted that the Candidates were conveyed that each question carried "equal marks", and therefore, they were required to choose to "Answer only the required number of Questions". More number of questions were provided to the Candidates, as a means of internal option, but they were not required to attempt more than the required number of questions in the Selection concerned. No specific oral instructions were given to the examiners in this regard by the Advisory Committee.

3. With respect to the explanation sought vide Point No. C), it may be respectfully submitted before the Honourable Court that, in the 1957 Rules (Recruitment Rules for Recruitment to Class-III and IV Services in the Subordinate Judicial Services [contained in the Appendix to Government of Bombay, Home Department, Resolution No. MIS. 1055/62546-III, Sachivalaya dated 26/12/1957]), there was no specific provision laying down the "style" of the Question Paper. In the circumstances, it may be most respectfully submitted

before the Honourable Court, that it was within the prerogative of the Recruiting Authority, to devise/formulate/afford mechanisms as was thought to be equitable to all, yet providing for a leeway to the Candidate by giving internal options, in the Written Examinations, which were "Descriptive Type" in nature of the administration of "Test", which was essentially to ascertain the qualities in a candidate like "Vocabulary Power", expression in clear language, in context of the subject, etc. in case of a particular candidate was not well conversant, with one topic in a given subject, these "internal options mechanism" would provide a leeway, for such exercise in another topic, in the alternative.

Since this option was given to all Candidates, it is respectfully submitted that, it was administered equitably, without giving extra time for answering extra questions. As per prevailing practice, the Candidates who attended more questions than required, the correct answers or the answers in which the Candidates could secure more marks, came to be taken into consideration, while preparing the Select List.

8. The respondent No. 4 was permitted to inspect the record. The impleadment of 83 selected and appointed candidates was allowed. On 21.10.2013, the appointed selected candidates were impleaded as respondent Nos. 7 to 89 and notices were served on the respondents and they were heard on 23.10.2013 and the answer books were examined before them. It is relevant to point out over here that the answer books were examined with the help of officials of District Court, Vadodara and Mr. Mehul S. Shah, learned counsel appearing for the High Court and Ms. Monali Bhatt, learned Assistant Government Pleader, only key answers of English subject was found and key answers for General Knowledge and Arithmetic were not on the record. We are conscious of the fact that we cannot assume the role of the examiners and, therefore, whatever marks the examiner had awarded to the candidates, we have accepted that and we have not re-examined the answer books and substituted the marks. We undertook the exercise of examining the answer books with a view to satisfy ourselves whether any irregularity in evaluation of the answers given by the candidates was committed or not. Further, while examining the answer books, it was found that some candidates have given correct answers, but it has been shown as wrong and some candidates have given wrong answers, but it has been marked as correct answers. The principle we have adopted is that if a candidate had attempted more than the required number of questions, then the first required answers were to be examined. On this principle we have got the charts prepared. The Registry was directed to prepare the charts with regard to marks obtained and the merit position as per our directions dated 21.10.2013. We further clarified the directions on 23.10.2013 as to how the charts have to be prepared. The selected candidates on 24.10.2013 through Mr. M.S. Shah, learned counsel appearing for the High Court have informed the Court that the Court may take into consideration that they have already served for a period of more than five years and hardship which may be suffered by them may be considered. We had examined large number of answer books with the help of learned counsel for the

parties as well as staff of the Vadodara District Court and the Registry of High Court and after hearing the counsel for the parties, judgment was reserved on 24.10.2013.

9. On 25.11.2013, Mr. Mehul S. Shah, learned counsel appearing for the High Court as well as for the other respondents made a mention before us that since the judgment has not yet been delivered, therefore, he wants to further argue the matter and on his request, we fixed 27.11.2013 for further arguments in the Letters Patent Appeal. On 27.11.2013 the learned counsel for the respondent No. 4 Mr. Mehul S. Shah filed an affidavit of respondent No. 4 dated 24.10.2013 which was taken on record wherein in paragraph 1, it was stated as under:-

1. In continuation of the earlier Affidavit-in-reply dtd. 23-10-2013, I would like to submit that all the examining bodies of Gujarat State following similar guideline as issued by the Ganpat University for examining and assessing answer books. The relevant paras of Guideline are reproduced hereinbelow:

In case the examinee has solved more sub-questions than asked for, the marks obtained for all sub-questions shall be entered in the top of the margin as mentioned above. The total marks of the best combination of sub-questions shall be considered as marks obtained by the examinee. The marks allotted to the sub-question/s ignored shall be encircled indicating that these marks are to be omitted from the total of that question.

If an examinee has attempted more questions than he/she is required to answer all the answers shall be assessed and the marks of all questions shall be entered on the cover page of answer book. However, while totaling the marks of the maximum marks combination should be taken into consideration.

Learned counsel for the appellant Mr. Bhavesh B. Sarode has urged that Ganpat University is a private University and its guidelines cannot be considered to be fair so far as the examination conducted by the High Court or Courts subordinate to it is concerned in the matters of recruitment of subordinate Courts. Therefore, the Court on 27.11.2013 on the arguments of learned counsel for the parties asked the respondent No. 4 to explain further points No. A to L by filing his affidavit. Points No. A, B, C, D, E, F, G, H, I, J on which the explanation was sought from respondent No. 4 are reproduced as under:-

A) The respondent No. 4 shall explain as to whether he got the answer books examined under the guidelines issued by Ganpat University and whether the guidelines issued by Ganpat University has been followed in all the centralized examinations conducted in the State of Gujarat by the High Court of Gujarat or subordinate Courts for recruitment to the posts of Class II (English & Gujarati Stenographers Grades I and II), Class III including Drivers and Class IV.

B) The respondent No. 4 shall also explain as to how the guidelines issued by Ganpat University which is a private University are being followed by the other Universities across the Gujarat State and Gujarat State Secondary and Higher

Secondary Education Boards. If the guidelines of Ganpat University are so followed, then the material showing that the guidelines of Ganpat University are so followed shall be produced.

C) The respondent No. 4 shall explain as to whether he has given instructions to the examiners to examine the answer books as per the guidelines of Ganpat University and award marks and whether the candidates were made aware about the guidelines of the Ganpat University so that if a student attempts all questions or sub questions, in that case, best combination of such questions or sub-questions can be considered by the examiner. If it would have been known to all the candidates, then there was no violation of Article 14 of the Constitution of India. But if it was assumed by the Advisory Committee of District Court, Vadodara or the respondent No. 4 who was the Chairman of the Advisory Committee of District Court, Vadodara that guidelines of Ganpat University would apply and on that basis, some oral or written instructions were given by him, the respondent No. 4 shall clearly explain the same. If oral instructions were not given by the respondent No. 4 and the answer books were to be examined strictly as per the instructions given on the answer books, then how the division was permissible shall be explained by the respondent No. 4 since in paragraph 1 of the affidavit dated 24.10.2013, the respondent No. 4 has clearly stated that all the examining bodies of Gujarat State are following similar guideline as issued by the Ganpat University for examining and assessing answer books.

D) The respondent No. 4 shall further explain as to whether if the guidelines issued by Ganpat University were followed by the High Court as well as Subordinate Courts, then whether these guidelines were approved by the High Court or not. Further, the candidates were intimated as to whether such guidelines are to be followed. The respondent No. 4 shall further explain as to what is the difference between the "question" and "sub question".

E) The respondent No. 4 shall further explain as to whether the guidelines issued by Ganpat University were followed by the High Court in recently held examinations for the Class III including Drivers & Class IV posts or where the candidates had answered more questions than required, only the first required questions were examined and considered.

F) The respondent No. 4 shall further explain as to whether the guidelines issued by Ganpat University were followed by the High Court in the examinations conducted for the posts of Civil Judge (Junior Division) or Principal District Judge.

G) Furthermore, in the earlier affidavit dated 23.10.2013, the respondent No. 4 has not mentioned as to why when the candidate of reserved category had secured more marks than the general category candidate, he had not been included in the General Category. Furthermore, in the advertisement, why it has not been mentioned as to how many posts were for general category candidates and how many posts were for reserved category candidates. This shall clearly be explained by the respondent No. 4.

H) It shall further be explained by the respondent No. 4 that if we accept the criteria adopted by the Advisory Committee of District Court, Vadodara which conducted the examination, then why result of Candidate at Serial No. 1 being Application No. 7262 who secured 157.33 marks as per the Advisory Committee of District Court, Vadodara and according to our calculation, by not taking best of the questions to be answered, he secured 154.33 marks, was not selected in the main result.

I) It shall clearly be explained by respondent No. 4 that in the list of non-selected candidates, candidate at Serial No. 1643 whose Application Number is 5436 who secured 46 marks in the written test as per the Advisory Committee of District Court, Vadodara and according to our calculation, he secured 43 marks. In either of the case, as per the eligibility criteria fixed by the Advisory Committee of District Court, Vadodara, a candidate has to secure 40% marks in aggregate in the written test and though this candidate had secured more marks than required, why he was not called for the computer/type test and oral interview and why he has been shown as absent in the written test though the answer book of the said candidate is available on the basis of which the officials of the District Court, Vadodara have got the chart prepared.

J) Further, at page 42 of the chart of the unsuccessful candidates, candidate mentioned at Serial No. 1869 of general category got 42 marks in the written test as per the Advisory Committee of District Court, Vadodara and according to our calculation, he had secured 40 marks which is minimum passing qualifying marks for appearing in the computer/typing test and oral interview. Hence, why he has not been called for the computer/typing test and oral interview and on the contrary, he has been shown to have failed in the written test. This shall be clearly explained by the respondent No. 4 that as Chairman of the Advisory Committee of District Court, Vadodara, what he was doing as the above instances would clearly show that the candidates who are eligible to appear in the computer/typing test and oral interview were not called for and even one of such candidate being Application No. 7262 was not shown in the select list and the other candidate being Application No. 5436 was shown absent though the has attended in the examination and his answer book is available.

10. The respondent No. 4 in compliance of order dated 27.11.2013 filed his further affidavit on 11.12.2013 wherein he has stated in paragraph A that the answer books were not examined under the guidelines issued by Ganpat University. He further stated that guidelines issued by Ganpat University had not been followed in any of the recently conducted centralized recruitment by the High Court of Gujarat for recruitment to the post of Class II (English and Gujarati Stenographers Grade I & II), Class III, including drivers and Class IV. In paragraph B of the affidavit, he has stated that guidelines of Ganpat University are not followed by other University and Gujarat State Secondary and Higher Secondary Education Boards. Further, in paragraph B, he has filed letters of various Universities as it appears that the respondent No. 4 has sought

information from the Universities with regard to guidelines for evaluation of answer sheets and the answer given by Gujarat University dated 6.12.2013 by the In-charge Registrar Dr. B.V. Patel has been annexed wherein it has been stated that if more than required questions are attempted, all the answers are assessed and the total marks of best possible combination is considered as marks obtained, Hemchandracharya North Gujarat University, Patan has also informed by letter dated 5.12.2013 written by Controller of Examination Dr. G.J. Thakkar that if the examinee has attempted all the five questions out of which only two are required to be answered, in that case, the examiner assesses all the five answers and the examiner enters the highest scored marks of the option in the mark sheet but the University has not granted the guideline regarding the facts stated in the letter. Controller of Examination, Saurashtra University by his letter dated 6.12.2013 has informed the respondent No. 4 that there are no guidelines of awarding marks when a student attends more than the required number of questions. The Maharaja Sayajirao University, Vadodara by letter written by Officer on Special Duty (Registrar) dated 9.12.2013 has informed that where a student attempts more than the required number of questions, the best combination of answers are taken. The respondent No. 4 has also filed Gujarat Subordinate Services Selection Board guidelines to be followed by the examiners for assessing the answer sheets wherein in paragraph 4, it has been mentioned that if a candidate answers more questions than asked, the highest mark of those questions are to be taken into consideration. The respondent No. 4 has further stated that Maharashtra State Board of Technical Education, Mumbai wherein in paragraph 6.1.10 and 6.1.11 where it has been mentioned that if any examinee attempts more questions than he is required to answer, all questions shall be assessed, but the maximum desirable number of questions shall be taken into consideration and the lowest mark given in the questions shall be ignored. However, in paragraph C, the respondent No. 4 has clearly admitted that no instructions whatsoever were given to the candidates nor to the examiners with regard to guidelines of awarding marks when a student had attempted more than the required number of questions nor the Advisory Committee has given or issued any communication. In paragraph D, the respondent No. 4 has stated that the guidelines issued by Ganpat University had not been approved by the High Court nor the candidates were informed about such guidelines. In paragraph E, it has been stated that in recent examinations held by the High Court for Class III including drivers and Class IV posts, the guidelines issued by Ganpat University were not followed though objective type questions which were asked in Stenographer examination and other examinations conducted by the High Court. The process of evaluation adopted during the recruitment process as aforesaid has acted to the disadvantage of the candidates who have not flouted the instructions regarding the number of questions to be attempted by the candidates. The recruitment Rules of 1957 which were governing the field when the recruitment process was undertaken by the Committee under the Chairmanship of respondent No. 4 do not leave any room for discretion to evolve evaluation pattern to be adopted by the recruitment authority. The recruitment

authority could not have adopted the evaluation pattern without obtaining the approval of the High Court, thereby the respondent No. 4 has acted in an autocratic manner resulting into the prejudice to the candidates who have followed the instructions about answering the questions.

11. The respondent No. 4 in his further affidavit filed on 11.12.2013 in paragraph H has stated that candidate at Serial No. 1 being Application No. 7262 who has secured 157.33 marks due to oversight and mistake could not be included in the final select list. So far as other candidates are concerned at Serial No. 1642 whose application No. 5436, he has replied that since the office was preparing the data sheets, due to inadvertence mistake or oversight, he was marked as absent. The oversight happened due to the fact that there were massive number of candidates whose data was to be compiled and prepared and the respondent No. 4 or the Advisory Committee had no reason to doubt the entries made by the office or to cross-check it. So far as candidate at Sr. No. 1869 of the general category was concerned, it is stated that instead of feeding 14 marks, only 10 marks have been entered in the relevant column, due to which there was difference of four marks resulting in final effect of a deficit of four marks to the candidate which was due to inadvertent mistake or whatsoever. This happened due to massive number of candidates as it was not possible at all to crosscheck each and every entry with regard to marks obtained by the candidates.

12. Another order was passed by this Court on 12.12.2013 directing the respondent No. 4 to answer queries raised by the Court as mentioned in paragraph A to C which are reproduced as under:-

A) Whether the Advisory Committee of Vadodara District which conducted the examination approved the method of evaluation of answer books that where a candidate has answered more questions than required, then all the questions will be examined and best of the answers would be chosen for awarding marks. Whether all the candidates who appeared in the examination were made aware about such evaluation process?

B) Whether the respondent No. 4 who is at present working as Registrar (Recruitment & Finance), Gujarat High Court, is following the same procedure of evaluation of answer books (which was followed by him in the District Court, Vadodara) with regard to the examinations conducted by the High Court of Gujarat for Class III (including Drivers), Class IV Posts, Judicial Magistrate First Class posts or higher judiciary service and whether all the candidates who appeared in the examination were made aware about such evaluation Process?

C) What is the method of evaluation of answer books approved by the High Court either by its Chamber or by the Standing Committee or by the particular Examination Committees which were holding the examination shall be produced before this Court and if there is no instructions by either of the aforesaid Committees, then what method is being adopted by the respondent No. 4 on his own for evaluation of answer books in the recently held recruitment for the Class

III (including Driver) and Class IV posts and under what authority, such measures were taken by the respondent No. 4?

13. The respondent No. 4 filed further affidavit in compliance of order dated 12.12.2013 on 9.1.2014 wherein in paragraph 1, it was stated that the evaluation of answer books have been made by the examiners by scribing the best possible combination of marks obtained by the candidates against the attempted questions which was followed by the Advisory Committee. But at no point of time, the candidates were made aware of such evaluation process. So far as the other examinations held by the High Court for staff members of subordinate Courts or the High Court, the same procedure was followed while preparing the result but the candidates were not made aware about such evaluation process as stated in paragraph 2 of the affidavit. In paragraph 3 of the affidavit, it has been stated that neither the Chamber nor the Standing Committee nor any particular Examination Committee of High Court has earlier given any directions with respect to method of evaluation of answer books in such situation. In the absence of any such directions, as per the past practice, evaluation of answer books was done by the examiners and result was prepared. Even in the recruitment to the post of District Judge (25%), where the candidate has attempted more than the required number of questions, the answers have been assessed by the evaluators which were placed before the Committee and the Committee has considered the best combination of marks of the candidates.

14. We have heard Mr. Bhavesh B. Sarode, learned counsel appearing for the appellant. Mr. Kamal B. Trivedi, the learned Senior Counsel assisted by Mr. Mehul S. Shah, learned counsel appearing for respondent Nos. 1, 2, 4, 5 and 6 and Ms. Monali Bhatt and Ms. Shruti Pathak, learned Assistant Government Pleaders.

15. The questions (i) to (iv) are intertwined, therefore, we have taken up all the first four questions together. A perusal of the reply filed by the respondent no. 4 clearly demonstrates that each questions carried equal marks. More number of questions were provided to the candidates as a means of internal option, but they were not required to attempt more than the required number of questions asked in the concerned section. It is relevant to notice that for examining the answer books, no specific written or oral instructions were given to the examiners by the Advisory Committee or its members. In paragraph 3, the respondent No. 4 has taken a somersault that what had been stated in paragraph 2. It had been stated that if more questions were attended by the candidates, correct answers in which the candidates secured more marks came to be taken into consideration by the examiners while preparing the merit list. The statement made in paragraph 2 and 3 are self contradictory.

16. For better understanding of the case, we deem it necessary to point out over here that in the section General Knowledge, 1 marks were fixed for each question. Total 30 questions carrying equal marks were asked out of which only 25 questions were to be answered. In Arithmetic section, 8 questions were asked each carrying 5 marks out of which only 5 questions were to be answered. In

English, section question No. 1 and 2 were of 5 marks each. In Question Nos. 3, 4 and 5 of English section, in each question of five marks, 8 questions each carrying of equal marks were asked out of which only 5 questions were to be answered. Neither in the instructions given to the candidates nor under the Rules of recruitment nor in the answer books, it was provided that if a candidate attempts more questions, then only his correct answers would be examined or will be taken into consideration. The candidates who had attempted only 25 questions in General Knowledge and who had followed the instructions mentioned in the answer books was at a disadvantage if he has correctly followed the instructions mentioned in the answer book that only 25 questions out of 30 has to be answered. He had to leave five questions unanswered. If he gives three wrong answers, and twenty two correct answers, he would score 22 marks, whereas a candidate who attempts 29 questions and gives four wrong answers and twenty five correct answers would score full 25 marks.

17. Similarly, 5 questions out of 8 questions have to be answered in Arithmetic Section and question nos. 3, 4 and 5 of English Section. Hence, the candidate who had strictly followed the instructions would be at loss because if any of his answer to the question was wrong, his marks would be reduced and he would score less number of marks following the instructions mentioned on the Question Answer book. A candidate who does not follow the instructions mentioned on Question-Answer book by not following the instructions answers more question had a greater chance to be successful in the recruitment examination. Considering the disadvantageous position of those candidates who had followed the instructions with those candidates who had flouted the instructions by attempting more questions than required only their correct answers were examined. We, with the help of officials from the Vadodara District Court who had brought the records and the Registry of High Court, got prepared a chart which mentions that if the marks would have been correctly awarded as per the instructions mentioned on the Question and Answer book and where the candidate was required to attempt only 25 questions and if he has answered 26 questions or more than that in General Knowledge, then his first 25 answers were required to be examined and the other answers after 25 were not to be considered at all.

18. Similarly, the statement showing new grand total of 161 candidates who were in the select list which showed that if the answer books were properly evaluated and no undue favour were shown to a candidate who was following the instructions of the examination which was mentioned in the answer book. The select list chart prepared by the registry in the first column shows the Serial Number which the candidates new merit position. The second column is caste category to which the candidate belongs. The third column is the application number of the candidates as the officials of Vadodara District Court were able to trace the record and answer books of either written test or computer/type test or oral interview only on the basis of application number. Column 4 of the chart mentions the Roll number of the candidate. Column 5 shows his position in the

previous merit list prepared by PDJ, Vadodara as approved by the High Court which is under challenge.

19. The column 6 has six sub-columns. In General Knowledge, in the first sub-column, total attempted questions by the candidate had been mentioned, in the second sub-column shows the answers which were true or correct, in the third sub-column, F which means the answers which were false or wrong, in the fourth sub-column mentions the earlier marks obtained by the candidates awarded by the Selection Committee, District Court, Vadodara, the fifth sub-column shows that following the instructions mentioned on the Question-Answer booklet, the candidate was only entitled for new marks by applying the principle of first 25 questions. The sixth sub-column shows the total difference of marks of the candidates in the General Knowledge section. Similar method had been followed in Arithmetic and English Question Nos. 3, 4 and 5 has been mentioned in the chart. Thereafter, the marks mentioned on the original answer books in the 4 subjects/sections are mentioned, the grand total is shown of the earlier written examination and thereafter, deductions of marks from the total marks have been shown and after that the new marks which candidate should get is mentioned. Marks of computer type test and oral interview have been mentioned which was awarded by the Selection Committee. The final marks which a candidate should get had been mentioned in the end. This exercise was taken up by us in the open Court and the Charts were prepared with the help of officials of District Court, Vadodara and the Registry of High Court, Mr. Mehul S. Shah, learned counsel appearing for High Court and Ms. Monali Bhatt, learned Assistant Government Pleader.

20. The select list of 161 candidates prepared by the Advisory Committee, Vadodara on 2.11.2007 and the subsequent list of 109 candidates approved by the High Court are being attached as Appendix I and II to this judgment. The chart of 161 candidates which we have got prepared is being attached herewith as Appendix III to this judgment. The chart of remaining 2837 candidates who were not selected, got prepared by this Court is being attached as Appendix IV to the judgment.

21. There are shocking revelations in the chart. If we see the marks of non-selected general category candidate, Application No. 7262, Roll No. 5331, who according to the newly prepared chart was at number 1 of the select list of non-selected candidates (Appendix IV) had secured a new grand total of 154.33 marks whereas the last selected and appointed general category candidate as per the result declared by the respondent No. 4 upto 83 candidates demonstrates that the candidate at select list no. 83, Application No. 9520 is a general category candidate who had secured only 126 marks and he had been appointed. If we take his previous marks of application No. 9520, his grand total was only 141 marks, whereas application No. 7262 had secured a grand total of 157.33 marks.

22. Similarly, two candidates belonging to SC category who are at Serial No. 5

and 6 in the non-selected merit list, they had in fact received overall 135 marks each and they both were required to be selected as SC category candidates though they have been shown to be not selected.

23. The candidate Application No. 5436 at Serial No. 1643 is a general category candidate who had secured 46 marks in the written test which we have reduced to 43 marks upon examination of his answer book which is available on the record, but in the written test, he had been shown to have been absent. Therefore, this candidate had not been called for computer/type test and interview.

24. Similarly, candidate at Serial No. 1869 is a general category candidate. He had initially secured 42 marks in written test which we have reduced to 40 marks, which is 40% marks in aggregate out of total 100 marks. But this candidate was not called for computer/type test and has been shown to have failed.

Moreover, the appellant had applied under the reserved category of OBC among other candidates under this category. One candidate-Parmar Gitaben Navinchandra had applied under the reserved category of SC. On perusal of the record of the examination process, to our utter shock, it is revealed that though the said Parmar Gitaben Navinchandra applied under the reserved category of SC, in the approved select list, she was shown as an SEBC category candidate. The respondent No. 4 has admitted this mistake in his affidavit-in-reply and has tried to explain it away under a spacious plea of "inadvertent mistake". It appears that the respondent No. 4 in an attempt to be over enthusiastic has committed blunders after blunders as demonstrated by us herein above and has in the process, seriously jeopardized the prospect of some of the deserving meritorious candidates.

25. In University Grants Commission and Another Vs. Neha Anil Bobde (Gadekar), , the Hon"ble Apex Court has observed that it is open to the examining body to lay down any qualifying criteria which had nexus to the object sought to be achieved. Paragraph 12 of the decision the Hon"ble Apex Court had extracted the guidelines for taking objective test which is reproduced as under:-

12. UGC, under that Notification, announced that NET would be held on 24th June, 2012 and the candidates were directed to read the notification carefully before submission of the application form. Clause 3 refers to the condition of eligibility and Para 7 of the Notification deals with the Scheme and date of test. Operative portion of Para 7 is given below for easy reference:-

7. SCHEME AND DATE OF TEST:

i) The UGC-NET will be conducted in objective mode from June 2012 onwards. The Test will consist of three papers. All the three papers will consist of only objective type questions and will be held on 24th June, 2012 (SUNDAY) in two separate sessions as under:-

Paper-I shall be of general nature, intended to assess the teaching/research aptitude of the candidate. It will primarily be designed to test reasoning ability, comprehension, divergent thinking and general awareness of the candidate. Sixty (60) multiple choice questions of two marks each will be given, out of which the candidate would be required to answer any fifty (50). In the event of the candidate attempting more than fifty questions, the first fifty questions attempted by the candidate would be evaluated.

(Emphasis supplied by us)

Paper-II shall consist of 50 objective type compulsory questions based on the subject selected by the candidate. Each question will carry 2 marks.

Paper-III shall consist of 75 objective type compulsory questions from the subject selected by the candidate. Each question will carry 2 marks.

The candidate will have to mark the responses for questions of Paper-I, Paper-II and Paper-III on the Optical Mark Reader (OMR) sheet provided along with the Test Booklet. The detailed instructions for filling up the OMR Sheet will be sent to the candidate along with the Admit Card.

26. These guidelines of UGC lay down that if in an objective examination, out of 60 questions the candidate was required to answer any 50. In the event of the candidate attempting more than fifty questions, the first fifty questions attempted by the candidate would be evaluated. The necessary corollary that follows that after evaluating first 50 answers, the other answers were not to be evaluated. The guidelines of the UGC appears to us to be reasonable.

27. In the case in hand, it had been stated by the respondent No. 4, the candidates were conveyed that each question carried "equal marks", and therefore, they were required to choose to "Answer only the required number of Questions". More number of questions were provided to the candidates, as a means of internal option, but they were not required to attempt more than the required number of questions in the Selection concerned. No specific oral instructions were given to the examiners in this regard by the Advisory Committee. The respondent No. 4 had further stated that he had not issued any directions to the examiners to examine best of the required number of answers where the candidate has attempted more questions. On the contrary, he had in his affidavit stated that as per the instructions, only correct answers were to be taken into account. If the practice was prevailing for examining best of the answers, he ought to have issued written instructions to the candidates and instructions to the examiners that the best of the answers were required to be considered and the candidate was free to attempt all the questions. But, admittedly, he had not issued any instructions either to the candidate or to the examiners as per the prevailing practice. If the view of the respondent No. 4 in the affidavit is that as per prevailing practice only where the questions were 30 out of which only any 25 were to be answered. Similarly, where the questions were 8 out of which only any 5 were to be answered. We cannot comprehend

that how the best of the answers could be considered where a candidate has attempted more questions than required as per the instructions on the Question-Answer Booklet. Such a course adopted by the advisory committee or the examiners would be violative of Article 14 of the Constitution of India, inasmuch as, those candidates who have attempted only 25 out of 30 or 5 out of 8 questions that were required to be answered as mentioned in the Question-Answer Booklet, by following the clear instructions on the booklet, quo those candidates who had attempted more questions than required or all the questions and their all answers were evaluated and wrong answers were omitted and their best answers were considered and accordingly merit list was prepared and appointment orders were issued. Admittedly, the candidates were not informed at any stage that they may answer all the questions and only their best answers would be taken into account. The instructions mentioned on the Question-Answer Booklet were nothing but the rule under which the recruitment examination was held. We are of the considered opinion that the candidates were not permitted to attempt more questions than required and if the candidate had attempted more than the required questions, his first 25 or 5 questions attempted by the candidate were required to be evaluated. The necessary corollary that follows that after evaluating first 50 answers, the other answers were not to be evaluated and for other extra answers no marks could be awarded to him. The best of the answers principle would not apply as it would be contrary to instructions mentioned on the Question-Answer Booklet which were nothing but the rule under which the recruitment examination was held. Further, between same set of candidates, two different criteria for taking examination and evaluation of answer book adopted or applied, by the respondent no. 4 is hit by Article 14 of the Constitution. In the present days, public employment has very scarce. The opportunities in public employment are very few while the seekers of such employment are many. Under such scenario, those who are entrusted with the exercise of undertaking recruitment process for the public employment have to exercise the utmost care in ensuring equality between the persons seeking public employment. The interest of justice demands the Principal District Judge, Vadodara shall again prepare the result of Class III posts of Assistant which is under challenge in this appeal by applying the criteria that where the candidates had attempted more questions than required his first 25 or 5 answers or as the case may be, would be considered in the written test. The charts got prepared by us are appended as Appendix I, II and III to this judgment. It shall be open to the Principal District Judge, Vadodara to consider the charts annexed with the judgment and he may verify the same also from the records.

28. Now, coming to the Vth question of reservation, since the result has to be again considered by the Principal District Judge, Vadodara, therefore, he will consider the Government Resolutions mentioned in the judgment as well as any other Government Resolution which was applicable and thereafter declare the result. We need not go any further in the question of reservation.

29. This brings us to the last question whether where the then Principal District

Judge, Vadodara and now Registrar (Finance and Recruitment) had admitted in his affidavit-in-reply that in all recruitment examinations he had declared the list of successful candidates by evaluating all the answers where the candidate had attempted more than the required questions, by taking best of the answers into account, what is to be done. We have considered the arguments of learned counsel for the parties and the affidavits filed by respondent No. 4. Since before us, there is no challenge to other examinations conducted by the High Court, this question is not required to be answered by us and we leave the question open.

30. Before the High Court took over the recruitments in the Cadre of Class III and IV of the subordinate judiciary, the recruitment was governed by the Recruitment Rules, 1956 of the erstwhile Bombay High Court issued by Resolution No. MIS. 1055/62546-III, Sachivalaya, Bombay dated 26.12.1957. Rule 4 of the Recruitment Rules, 1956 provides regarding constitution of the Advisory Committee for recruitment of staff.

31. As noted in the foregoing, we had undertaken an extensive exercise not only of examining the answer books, but we have also perused the minutes of the Advisory Committee. To our shock, we find that the respondent No. 4-the Principal District Judge, Vadodara had without obtaining prior permission of the High Court constituted the Advisory Committee consisting of Officers according to his own choice in flagrant disregard of the above stated Rule of the Recruitment Rules. The constitution of such an Advisory Committee, in our view, leads to only one inference and that is he wanted his own pliable Officers so that he can manipulate the recruitment process according to his own choice and convenience. As a matter of fact, according to our view, this irregularity goes to the root of the recruitment process rendering the recruitment vulnerable.

32. We have examined and discussed the whole process of recruitment undertaken by the respondent No. 4 in extenso. The above discussion demonstrates that though the appellant had raised serious contentions as to the process of recruitment in the writ petition, the learned Single Judge has fallen in error in disposing Special Civil Application No. 268 of 2009 preferred by the appellant for quashing and setting aside the impugned select list on the ground that it has become infructuous in as much as decision has already been taken by the Chamber of the High Court to scrap all the select list prepared by the District Courts in the State for recruitment. The crucial question finally falls for our determination is as to what should be the ultimate off-shoot of the whole exercise undertaken by us. The advertisement for recruitment was given in the year 2004 and the process of recruitment was concluded in the year 2008 and the selected candidates are working in the District Court, Vadodara and Courts subordinate thereto since then. The successful candidates who are working in the District Court, Vadodara would have become age-barred for a Government job. Under the circumstances, if the whole process, though vulnerable and deserves to be scrapped and set aside, we are of the opinion that it would not be expedient to do so as it would be too harsh for the successful candidates as most

of the successful candidates who are now actually working on the establishment of District Court, Vadodara would be rendered jobless without any future prospect of competing for Government job. We have given our thoughtful consideration to this aspect and we have ultimately come to the conclusion that the ends of justice would meet if the Principal District Judge, Vadodara is directed to reshuffle the select list in view of the observations made by us herein above. Accordingly, the Principal District Judge, Vadodara is directed to reshuffle the select list of Class III posts of Assistant by applying the prevailing norms of reservation for various reserved categories and the criteria that where the candidates had attempted more questions than required, his first 25 or 5 answers or as the case may be, would be considered in the written test.

33. Though the appellant has made serious allegations about the process of recruitment undertaken by the Advisory Committee of the District Court, Vadodara, the learned Single Judge has dismissed the writ petition on the grounds stated by us in the beginning of this judgment. In our considered opinion and in view of the foregoing discussion, we feel that the impugned judgment needs to be interfered with in the present appeal.

34. In the result, the appeal succeeds and stands allowed to the aforesaid extent. The judgment and order dated 28.8.2012 passed by the learned Single Judge in Special Civil Application No. 268 of 2009 is quashed and set aside. We hereby accordingly direct the Principal District Judge, Vadodara to reshuffle the select list of Class III posts of Assistant by applying the prevailing norms of reservation for various reserved categories and the criteria that where the candidates had attempted more questions than required, his first 25 or 5 answers or as the case may be, would be considered in the written test. Parties to bear their own costs.

In view of disposal of main appeal, Civil Application does not survive and it is accordingly disposed of.