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**(2000) 03 PAT CK 0099**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 337 of 1999**

Dinesh Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 02-03-2000

**Acts Referred:**

Bihar Service Code, 1952 — Rule 54  
Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (2000) 3 PLJR 788

**Hon'ble Judges :** Shiva Kirti Singh, J

**Bench :** Single Bench

**Advocate :** M.K. Jha, V.K. Verma, in C.W.J.C. No. 337 of 1999, Jyoti Saran, in C.W.J.C. No. 4668 of 1999 and Y.V. Giri, in C.W.J.C. No. 802 of 1999, for the Appellant; Vikash Jain in C.W.J.C. Nos. 337 and 4998 of 1999, S.K. Ghosh in C.W.J.C. No. 602 of 1999, S.P. Mukherjee, Samrendra Pratap Singh, Suresh Prasad Sinha and Shashi Bhushan for Private Respondents, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Shiva Kirti Singh, J.—These three writ petitions filed under Article 226 of the Constitution of India relate to same controversy and involve common questions of law and facts and hence they have been heard together and are being disposed of by this common judgment.

2. All the 23 Petitioners in C.W.J.C. No. 337/99, four Petitioners in C.W.J.C. No. 602/99 and the sole Petitioner in C.W.J.C. No. 4998/99 have common service history and interest. For the sake of convenience general facts have been taken from records of C.W.J.C. No. 337/99 which was argued first, unless otherwise indicated in the judgment. At different points of time between 1983 to 1985 Petitioners were appointed on various Class-III posts in the Muffasil Establishment of Collectorate at Gopalganj. It appears that a common decision was taken in the year 1988 to terminate the appointments of the Petitioners and some others on the ground that they had been illegally appointed. However, before such decision dated 7.9.88 could be implemented some of the Petitioners

filed a writ petition bearing C.W.J.C. No. 250/1988 challenging the decision for termination of such appointments. That writ application was decided on 15.1.1988 (annexure-2). This Court did not interfere with the proposed order of termination since the Petitioners were holding only ad hoc appointments but observed and directed that regular vacancies should be advertised and all formalities for appointment to the available vacancies should be completed within four months from the date of the order. It was further observed that if the Petitioners also apply then the Respondents may consider the desirability of relaxing the age limit if any of them is selected. It was further observed that in case during the period of four months any appointment is felt necessary the Respondents may choose any of the Petitioners for such ad hoc appointment but such appointment shall not give any advantage in the matter of selection for regular appointment in accordance with law. The Respondents were further directed to take into account the experience gained by the Petitioners until removal by the impugned order. Against the order of this Court dated 15.1.1988 some of the aggrieved Petitioners preferred a SLP in the Supreme Court wherein by an interim order termination of Petitioners' service was stayed but the said SLP was ultimately dismissed on 10.4.95. Thereafter the concerned persons were removed from service by order dated 2.1.96 (annexure-3). That order was challenged but the writ petition bearing C.W.J.C. No. 765/96 was dismissed on 22.3.96 and a Letters Patent Appeal filed in the matter was dismissed as withdrawn on 13.8.97.

3. It further appears that some writ petitions bearing C.W.J.C. Nos. 693/88, 4395/88 and 8619/88 filed against the same order which was subject matter of C.W.J.C. No. 250/88 remained pending in this Court and after the dismissal order in the Supreme Court those writ petitions were finally disposed of by order dated 26.2.97 (annexure-8). But admittedly the services of concerned persons were terminated on 20.2.96 during the pendency of aforesaid writ petitions. In these cases also this Court held that the case was identical to the case of Petitioners of C.W.J.C. No. 250/88 and hence similar directions were required to be issued. In the order contained in annexure-8 this Court further noticed that direction given in C.W.J.C. No. 250/88 had not been carried out and in the meantime due to change in legal provisions the selection and appointment to the posts concerned was required to be based on recommendations of Bihar Public Service Commission. After due deliberation this Court held that the Procedure for selection and appointment in these cases should be in accordance with the rules which were in force on 15.1.88. Accordingly the concerned Respondents i.e. Commissioner, Saran Division, Chapra and Collector, Gopalganj were directed to ascertain the vacancies in Class-III posts which were available on 15.1.88 and to advertise the posts for being filled up in accordance with the rules as prevailing on 15.1.88. This Court further directed to consider the desirability of relaxing the age limit in case the Petitioners were found to have crossed the maximum age during their ad hoc appointments or during the pendency of the writ petitions. It was left open for the Respondents to consider and give weightage to the

experience of the Petitioners during their ad hoc appointments. The entire process of advertisement, selection and appointment was directed to be completed within four months from the date of receipt/production of a certified copy of the judgment before the Commissioner, Saran Division. An. L.P.A. against the judgment contained in annexure-8 was dismissed on 19.8.97 and connected SLP in the Supreme Court was also dismissed on 8.12.97.

4. The aforesaid facts are just the background materials which show that the Petitioners were illegal appointees whose ad hoc appointments were decided to be terminated in January 1988 and their writ petitions against such a decision were also of no help to them except that they continued in service till January/February 1996. In the present writ petitions the Petitioners have challenged the subsequent process of selection, panel of selected persons contained in annexures 15 and 16 and also the appointment of private Respondents made on the basis of their position in the panels.

5. Admittedly pursuant to directions of this Court and advertisement of the posts in Class III available on 15.1.88 (as per official Respondents) were advertised through an advertisement as contained in annexure 14 in the month of May, 1988. According to the said advertisement such available posts were-31 of Assistants, 16 of Revenue Karamcharies, 3 of Stenoes and one of Jeep Driver. For all categories of posts the age qualification was fixed with reference to the date 15.1.88 but it was mentioned that the writ Petitioners could apply even if they were overage. The Petitioners as well as others applied for selection and appointment but in the panels showing the names of selected candidates according to their merit, the present Petitioners could not find any place and hence the writ petitions.

6. The main contentions on behalf of the Petitioners are following:

(i) For the purpose of fair selection the concerned Respondents should have held written test as well as interview and further, typing test should also have been held. According to the Petitioners exception to Rule 148 and Rule 151 of the Board's Miscellaneous Rules create an obligation to hold written test and interview and typing test is required as per circulars of the State Government contained in annexures X/1 and X/2 to the counter affidavit of Respondents 6 to 52.

(ii) The concerned Respondents could not have lowered down the age prescribed for recruitment with regard to general candidates by fixing age qualification, with reference to date 15.1.88. According to the Petitioners the concerned Respondent have no such power and further it has taken away an advantage given to the Petitioners only under the orders of this Court passed in the earlier writ applications.

(iii) The decision by the selection committee to grant weightage for experience by granting only one point for one year of experience is unreasonable and arbitrary.

(iv) Under the earlier orders of this Court the official Respondents were under an obligation to advertise all the vacancies available on 15.1.88 regardless of the fact that some such vacancies might have been filled up later on but the Respondents have not fulfilled this obligation because according to the Petitioners the vacancies have not been correctly worked out and they ought to have been more.

(v) Appointments given to the selected candidates suffer from procedural errors in as much as the certificate and marks of such appointees were not sent for verification by the concerned authorities before making appointments.

(vi) The entire selection process is vitiated on account of mala fide actions of Respondent No. 5, the Establishment Deputy Collector, Gopalganj Collectorate, Gopalganj who has also been made a party Respondent by name as Respondent No. 54, Purushottam Prasad Singh. According to Petitioners Respondent No. 5 was wrongly made a Member of the Selection Committee and his participation has rendered all the actions of the entire Selection Committee illegal and invalid.

7. The stand of the State and its officials is that the entire selection process has been done in a fair manner keeping in view the recruitment rules prevailing on 15.1.88, the orders of this Court and also the requirements of Articles 14 and 16 of the Constitution of India. An objection has also been raised on behalf of the State to Petitioners' right to challenge those materials which were disclosed in the advertisement such as number of vacancies and cut-off date for the purpose of age qualification, once the Petitioners had participated in this selection process pursuant to such advertisement without any protest or representation. In this regard learned Counsel for the State referred to annexure-6 to the writ petition which contains an order dated 24.9.98 passed in a contempt proceeding bearing M.J.C. No. 2430/95. The said order shows that some of the writ Petitioners relied upon the advertisement in question and sought and obtained an order from this Court for expeditious completion of the selection process. Hence, according to learned Counsel for the State the Petitioners had acquiesced to the terms of the advertisement and therefore they cannot be permitted to challenge the same.

8. In support of his first contention learned Counsel for the Petitioners placed reliance upon the relevant provisions in Bihar Board's Miscellaneous Rules, 1958 (hereinafter referred to as the Rules) and upon a Division Bench judgment of this Court in the case of Rekha Prasad v. State 1984 B.B.C.J. 833 to submit that such provisions in the rules which existed prior to 26.1.1950 and were adopted as statutory rules under notification dated 26.4.50 have statutory force and therefore such provisions must be followed by the State in the matter of selection and recruitment to the posts in question notwithstanding subsequent circulars and policy decision of the State Government regulating such recruitments. In that case this Court was considering the question as to whether typing test is required under the rules or not for recruitment to such posts. This Court noticed that some of the amendments to the rules had been made by decision under the Executive power of the State and therefore, it held that such

Executive decision can only supplement and cannot supplant the rules. On the question falling for determination, this Court held that passing of typing test was not essential to the recruitment process laid down in the rules. To this extent, learned Counsel for the State has also placed reliance on this very judgment. A perusal of the circulars contained in annexures-x and x/1 shows that as per clause-1(CHHA) of annexure-X/1 dated 3rd. December 1980, for the posts in question, typing test was necessary but as per Clauses (6) and (7) of later circular dated 29.11.1983 (annexure-X/2) knowledge of typing was desirable but not essential and hence even those who may not qualify in typing test but were otherwise eligible were to be recruited with a condition that they would have to pass the typing test within a period of two years otherwise their services shall be terminated. Thereafter came the Division Bench judgment of this Court in the case of Rekha Prasad (supra) that test in type-writing may count as an additional qualification but it was not an essential qualification under the rules.

9. In these cases the Respondents claimed to have acted as per circulars dated 3rd. December, 1980 and 29.11.83 in the matter of applying the appropriate selection process inforce on 15.1.1988. The circular dated 3rd. December, 1980 shows that for appointment to Class-3 posts the applicants were not required to take any written or oral test and the merit list had to be prepared on the basis of marks obtained by the applicants in their school and college examination. It is not in dispute that this process of selection is in practice since 1976 and continued for several years till provision was made much after 1985 for holding of competitive examination and interview for such appointments. A perusal of judgment of this Court dated 26.2.97 (Annexure-8) shows that at that time the selection had been entrusted under the new rules to Bihar Public Service Commission. The stand of the Respondents at that point of time was that the advertisement and selection had to be made by Bihar Public Service Commission but the Petitioners insisted that they had a right to be considered for selection as per rules inforce on 15.1.1988 and such plea was allowed by this Court in the interest of justice.

10. Now the Petitioners have placed reliance upon exception to Rule 148 and Rule 151 of the Rules to submit that there must be a written examination as directed by the aforesaid exception to Rule 148 and there should also be an oral examination as per Rule 151. A plain, reading of aforesaid rules shows that the aforesaid contentions have no merit. Exception to Rule 148 comes into play if no candidate is available with the qualification prescribed in Clause (a) of the aforesaid rule. Clause (a) is in following terms:

(a) He must have passed the Matriculation Examination or must hold the School leaving certificate for high schools. He must also have a good knowledge of Hindi written in Devanagari script, which is language of the State.

(i) Government recognise the final passing out of examination of the Indian Mercantile Marine Training Ship "Dufferin" and certain examinations of National Universities mentioned in Appendix-Z and also the Junior Cambridge Examination

and the Indian Army first class English certificate as equivalent to the Matriculation examination for purposes of entry into public service in this province.

(ii) As knowledge of type writing is valuable for almost all clerks it should count as an additional but not indispensable qualification.

(iii) Preference will be given to candidates who are natives of the province or domiciled therein, if otherwise qualified.

It is not the case of the Petitioners that there were no sufficient candidates available with the qualification prescribed in Clause (a) as noticed above and hence their insistence upon an examination in terms of exception to Rule 148 is misconceived.

11. The relevant part of Rule 151 provides that the Commissioner or the District Officer shall examine all the applications or wherever possible shall see and examine all applicants and the certificates. This provision is clearly in two parts. Under the first part the concerned authority has a mandatory duty to examine all the applications but the second part is clearly directory. No doubt wherever possible the concerned authority should see and examine all applicants and their certificates but this part of the Rule 151 cannot be construed so as to read a mandatory obligation to hold an oral test or viva voce examination of the applicants. The contention of Seamed counsel for the Petitioners that written test and interview should be accepted as most fair method of evaluation of merit of the applicants is also misconceived. This Court cannot take upon itself the task of formulating policies to determine as to what would be most fair method of selection for the posts in question. Such a method has to be determined either by the Legislature or by the Government in exercise of its executive powers and this Court, when called upon to do so, has to examine only the legality and constitutionality of such provision or policy decision. In this regard, learned Counsel for the Petitioner relied upon two judgments of the Supreme Court: (1) Lila Dhar Vs. State of Rajasthan and Others, (2) Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, . In my view none of those two judgments of the Apex Court are of any help to the Petitioners in these cases. The courts often point out the object of process of selection for recruitment and those factors should be taken into consideration for fairness in selection process, specially where rules are silent but the courts cannot take upon themselves the task of prescribing methods of selection. In this regard learned Counsel for the State has rightly submitted that the policy decision of the State laying down the method and process of selection for Class-III posts in question held the field for a long time and even in these cases they are not under challenge. No fault can be found in the selection process as the same was uniformly applied to all the applicants and award of points on the basis of marks obtained in school or college examinations cannot per se amount to an unfair or arbitrary method of selection. In absence of any acceptable basis on facts, the selection process in this case has to be accepted as proper and valid. Declining standards of school

and college examinations may persuade the concerned authorities to adopt a new policy for selection and recruitment but awarding of points on the basis of marks already obtained does not involve exercise of subjective discretion as in an oral test rather it provides for a wholly objective method of awarding points. Hence, I find no force in the first contention advanced on behalf of the Petitioners and the same is accordingly rejected as one without merit.

12. For the purposes of supporting his second contention, the learned Counsel for the Petitioners submitted that relaxation of age was ordered to be considered only for the Petitioners as would appear from annexures 2 and 8 but the concerned Respondents have, by fixing the cut-off date for age qualification as 15.1.88 indirectly granted relaxation of age to all the applicants who may have been overage on the last date fixed for application by the advertisement of May, 1998 (annexure-14). Learned Counsel for the Petitioners also pointed out to some of the circulars as well as to the provisions in the rules and in Bihar Service Code which prescribe age qualification for such posts. There is no doubt that normally an applicant must be within the prescribed age limit on the last date of application and therefore the case laws cited on this point need no mention. However, the appointing authority may indicate a different cut-off date for such purpose in the advertisement itself and in that case the court may be called upon to decide whether such action is fair, reasonable and permissible under law.

13. The main grievance of the Petitioners in this regard is that by fixing 15.1.88 as the cut off date the concerned Respondents have deprived the Petitioners learning extra points on the ground of advance age. Under prevailing recruitment rules an applicant who is above 25 years of age is granted extra points for higher age, upto permissible limit and such extra points have been granted to the Petitioners but the Petitioners are aggrieved because such extra points have so been earned by other applicants and the selected candidates who could apply May, 1998 because the cut-off date as 15.1.88. The Petitioners want to be exclusive gainers on the ground of age their further grievance is that Rule 148(b) of the rules prescribes the maximum age for such appointments as 25 years only and therefore no person other than the Petitioners should have been considered (sic) case he was more than 25 years of age on the date of application. According to Petitioners the later policy decision and circulars of the Government extending the maximum age up to 35 years could not have been applied because the rules are statutory in nature and no authority could relax the prescribed age qualification for persons other than the Petitioners. With regard to the aforesaid grievances, the stand of the Respondents is that as per earlier orders of this Court, the observation was merely to consider granting of age relaxation in favour of Petitioners there was no bar that persons who had post the opportunity of being considered for such appointment on account of delay should not be accorded similar treatment it was further submitted on behalf of the Respondents that since this Court directed to fill-up the vacancies in class- III posts available up to 15.1.88 and also directed to apply recruitment rules then prevailing in place of current practice of selection through Bihar Public Service Commission

hence other persons of requisite age qualification in May, 1998 could not have been permitted to compete with the Petitioners as per selection process prevalent on 15.1.88. Hence to make the selection process meaningful and workable as well as in order to meet the obligations arising from Articles 14 and 16 of the Constitution of India the Respondents authorities had no option in the matter except to take the fiction created by adoption of 15.1.88 as the relevant date for recruitment, to its logical end. This inevitably resulted into the decision evidenced by the advertisement contained in annexure-14. Thus, according to Respondents they had no choice in the matter but to allow persons eligible in age on 15.1.88. They alone could justifiably compete with the Petitioners as per rules prevailing on 15.1.88 otherwise the Petitioners alone could have competed for all the available vacancies. It was further submitted that the Petitioners have not suffered any adverse effects on account of such a decision and as per earlier orders of this Court they were entitled only for consideration for age relaxation and not for any undue weightage on account of advance age. I find sufficient merit in the aforesaid submissions advanced on behalf of the Respondents, particularly on behalf of the State which has a constitutional obligation to honour Articles 14 and 16 of the Constitution of India not only in letter but also in spirit. The submissions advanced on behalf of the Petitioners on the basis of Rule 148(b) of the rules is of no help to the Petitioners because if that interpretation will be accepted then the Petitioner's case also for relaxation of age on the date of application will be considered only to be rejected on account of being in teeth of statutory rules having no provisions for relaxation. It may be useful to note here that Rule 54 of Bihar Service Code gives power to the State Government to relax the age limit for entry into pensionable service of Government and exercising that power, for more than two decades the State Government has fixed different age requirement than that prescribed in Rule 148(b) of the rules. This fact is admitted in the pleadings of the Petitioners and it is neither necessary nor desirable that such settled position should now be re-examined more so when the Petitioners have not suffered any injury on that account, rather they have themselves benefited from such provision for relaxation of age. The power of relaxation provided by Rule 54 of Bihar Service Code has been delegated as per Appendix-I to the Code in favour of all the departments of Government as well as all heads of department which include Commissioner of Division. By annexure-8 this Court has directed the Collector, Gopalganj and the Commissioner, Saran Division, Chapra to ascertain the vacancies and advertise the posts. The advertisement contained in Annexure-14 has been issued by the District Employment Officer, Gopalganj but it mentions that the same has been done in the light of order passed by this Court. Annexure-19 to the writ petition is a letter from the office of the Divisional Commissioner dated 16th November, 1998 and that shows that the Divisional Commissioner was aware of the entire matter so that recruitment may take place as per letter and spirit of this Court's order. There is nothing on the record to prove that the decision with regard to cut-off date for age qualification as contained in the advertisement did not have approval of the Divisional Commissioner. On this point there is no direct

challenge in the writ petitions. For the aforesaid reasons I am not persuaded to accept the second contention of the Petitioners and the same is accordingly rejected.

14. So far as the third contention of the Petitioners is concerned the grievance of the Petitioners is on two counts. According to the Petitioners weightage for experience was decided by the selection committee without any power to do so. Secondly, the decision of the selection committee to award one point for one year of completed service as weightage for experience earned by the Petitioners was not adequate and fair. According to Petitioners the weightage ought to have been higher so as to give the Petitioners considerable advantage. They have compared the weightage generally available to all the candidates on account of advance age with weightage for experience to advance the argument that weightage for experience ought to have been higher than what has been decided by the selection committee.

15. It is not in dispute that the District Collector of Gopalganj is the appointing authority and as required by the circular dated 30th December, 1980 (Annexure-X/1) he was a member and Chairman of the selection committee. The question for grant of weightage for experience arose in this case only on account of orders of this Court contained in Annexures-2 and 8 while passing the order dated 26.2.97 as contained in Annexure 8 this Court clearly held that those cases were identical to C.W.J.C. No. 250/1988 and therefore decided to issue similar directions as in order dated 15.1.88 contained in annexure 2. In the operative portion of the order it was left open for the Respondents to consider and give weightage to the experience of the Petitioners during their ad hoc appointments. So far as stand that as directed by this Court the vacant posts in Class-III that existed on 15.1.88 in Gopalganj Collectorate have been advertised after taking into account and keeping in mind the subsequent appointments made later on. Learned Counsel for the State further explained the situation in this regard by referring to Annexure-1 of C.W.J.C. No. 4998/99, the letter of appointment to the Petitioner in that case. The said appointment letter shows that the post in question was purely temporary. Thus, learned Counsel for the State explained that all the posts on which the Petitioners had been appointed on ad hoc basis were not substantive posts and hence no fault should be found in the number of vacancies advertised by the Respondents only because all the posts held by the Petitioners on ad hoc basis could not be advertised for reasons demonstrated above.

16. In the facts of the case I find no material to accept the contention of the Petitioners that the vacancies determined and advertised by the Respondents as vacancies in the Class-III posts available on 15.1.88 in Gopalganj Collectorate is wrong or incorrect.

17. The next contention of the Petitioners is that the authorities acted in an irregular manner in not sending the certificates and marks submitted by the selected candidates for verification from the concerned authorities before issuing

the appointment letters. To highlight the consequence of such action example of one Sitaram Prasad, Respondent No. 6 has been pleaded in paragraph 36 of the writ petition to show that in fact he has passed matriculation examination in the year 1973 showing his date of birth at that time as 20th January, 1955 but in the present selection process he has produced, a marksheet showing that he has passed the matriculation examination in the year 1982 with 70 per cent marks. The counter affidavit filed on behalf of Respondent Nos. 6 to 52 does not give any reply to the aforesaid allegation concerning Respondent No. 6. The stand of the official Respondents as appears from paragraph 29 of their counter affidavit is that the merit list had to be prepared on the basis of original marksheet and testimonial submitted by the applicants without getting them verified from concerned Boards and Universities only because the process of selection and appointment was required to be carried out within a limited time allowed by this Court. Their further stand is that now all the marksheets and testimonials have been sent to the concerned authorities for verification and if some wrong is found then the appointment of the concerned candidates will be cancelled. In view of aforesaid stand this contention needs no further discussions. Lack of such action at proper time will not vitiate the selection process or the meritlist but may affect the appointments of some individual candidates. Therefore, the concerned Respondents are directed to complete the process of verification of marksheets and testimonials of the selected and appointed candidates at an early date and preferably within four months from the date of this judgment and in case the allegation against Respondent No. 6 is found correct or if the marksheet or other relevant particulars of any other appointed candidate is found false or incorrect then immediate action should be taken for cancelling their appointment and against the consequent vacancy the candidature of other applicants should be considered in accordance with merit and appointment should be offered to such persons without any delay.

18. The last contention of the Petitioners is based upon allegation of mala fide against Respondent No. 54, Purushottam Prasad Singh, the Establishment Deputy Collector, Gopalganj and also upon his inclusion as a member of the selection committee and his participation in the selection process as such member. As noticed earlier Respondent No. 54 has also been made Respondent No. 5 in his official capacity. In paragraphs 33 to 35 of the writ petition personal bias, prejudice and interestedness in some selected candidates have been alleged against Respondent No. 54. It has been alleged that he influenced the District Collector to adopt the rule requiring selection on the basis of matriculation marks and also in the decision to award limited weightage for experience. Allegation of favouritism and also of working for pecuniary gains have been levelled against him. The other grievance relating to inclusion of Respondent No. 54 in the selection committee has been levelled in the reply to the counter affidavit.

19. From the ordersheet in C.W.J.C. No. 337/99 it appears that an interlocutory application for interim stay of appointment of Respondents 6 to 52 was pressed

on 13.1.1999 and by order passed on that date notice was issued on the said Respondents, i.e. Respondent Nos. 6 to 52. Such notices were of course ordered to be served on the concerned Respondents through the Establishment Deputy Collector (Respondent No. 5). On 25.2.99 Mr. Shashi Bhushan, Advocate appeared in the case and filed vakalatnama on behalf of Respondent Nos. 6 to 52 but apparently on account of inadvertent error, in the order dated 25.2.99 it was recorded that Mr. Shashi Bhushan has filed vakalatnama on behalf of private Respondent Nos. 6 to 54. Thereafter C.W.J.C. No. 602/99 appears to have been treated as the main case in which an order Was passed on 5.10.99 and all the three cases were admitted for hearing as analogous cases. In C.W.J.C. No. 602/99 the Respondent No. 5, the Establishment Deputy Collector was not made a party by name and since all the private Respondents of that case, Respondents No. 6 to 37 had appeared by 5.10.99, the order passed on that date in C.W.J.C. 602/99 recorded the facts that since the Respondents have appeared therefore no notice need be issued. None pointed out that Respondent Nos. 53 and 54 of C.W.J.C. No. 337/99 who are the Collector and the Dy. Establishment Collector, Gopalganj respectively, made parties by name, had not been served with any separate notice nor had appeared in the case. This remained the position till the matters were finally heard.

20. As Respondent No. 5, Pumshottam Prasad Singh in his official capacity has filed counter affidavit on behalf of Respondent Nos. 4 and 5. The said counter affidavit was sworn on 17.3.99 i.e. prior to admission of the case for hearing but the same was filed much later on 19.1.2000. The reasons for such delay are not apparent but in paragraph 3 of the counter affidavit it was stated that the counter affidavit is being filed to oppose admission and therefore only the essential facts were being replied. Unfortunately, the counter affidavit does not contain parawise reply but in para-28 there is a reference to allegations against Respondent No. 54 and thereafter it has been asserted that in compliance of the direction of this Court appointments had been made in accordance with the prevalent rules of 1988 and no irregularity has been committed by the official Respondents alleged as such.

21. In C.W.J.C. No. 602/99 a more detailed counter affidavit sworn by Respondent No. 5 on 16.3.99 was filed on the same date. A careful perusal of the said counter affidavit reveals that the said counter affidavit which is a parawise reply to the writ petition is in fact a reply to G.W.J.C. No. 337/99. Paragraphs 35 and 36 of the said counter affidavit by their contents reveal that the reply was in fact being made to concerned paragraphs including paragraphs 33, 34 and 35 of C.W.J.C. No. 337/99 and not to those paragraphs of C.W.J.C. No. 602/99 whose contents are entirely different. In paragraphs 35 and 36 of this counter affidavit the deponent has reiterated in the same terms as in paragraph 28 of the counter affidavit in C.W.J.C. 337/99 that no irregularity has been committed by official Respondents alleged as such.

22. The aforesaid facts emerging from the order sheet and the records of these

cases have been noted only with a view to reach a conclusion on the related issues as to whether Respondent No. 54 against whom allegations of mala fide have been levelled and pressed in his personal capacity had received any notice of this case in his personal capacity or not and whether in the facts of the case after conclusion of the hearing and after noticing the relevant facts emerging from the records any further notice should be issued to Respondent No. 54 or it can be accepted that even as Respondent No. 5 he has denied the allegations of mala fide levelled in the writ application against Respondent No. 54. There is no difficulty in holding that Respondent No. 54 has not been issued or served with any notice in his individual capacity. Having given anxious consideration to all the salient and relevant aspect of these cases, I am of the view that no useful purposes will be served by issuing notice to Respondent No. 54 at this stage and the denial made by him in his official capacity as Respondent No. 5, in the peculiar facts of the case, may be accepted as denial by Respondent No. 54. I have reached this conclusion keeping in view the fact that Respondent No. 54 was not the appointing authority and he had taken no independent decision in this matter. Further, the decision to hold selection as per rules prevalent on 15.1.88 was that of this Court. The prevailing rule of selection provided for selection on the basis of marks in the matriculation examination without any written test or interview and the decision to award one point for each year of service as weightage for experience was that of the entire selection committee headed by the appointing authority, the District Collector superior to Respondent No. 54 in rank, status and power. Even if the allegations of mala fide are considered on their merit, it is not at all clear as to how Respondent No. 54 could influence the District Collector. In the judgment of the Apex Court in the case of Pratap Singh v. State of Punjab AIR 1964 SC 72, while dealing with the allegation of bad faith, the majority judgment expressed itself in no uncertain terms that he who seeks to invalidate or nullify any act or order has to establish the charge of bad faith, an abuse or a misuse by Government of its power. No doubt mala fide is difficult to be established by direct evidence and it can be deduced as a reasonable and inescapable inference from proved facts. In case of C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, the Apex Court noted that tendency to level allegations of mala fide without any basis in fact is on the increase and consequently it has become the duty of the Court to scrutinise these allegations with care so as to avoid being influenced in any manner by them, in cases, where they have no foundation in the fact. In view of such authorities, I have gone through the materials on record with regard to allegations of mala fide I do not find that the proved facts in this case lead to irresistible inference of bad faith which could have in any way influenced the decision taken by either the District Collector or the selection committee.

23. The other contention of the Petitioners is that inclusion of Respondent No. 5 as a member of the selection committee has rendered all the decision of the selection committee illegal and bad in law. Before proceeding to examine this contention I would like to mention that this plea has been raised through a reply

to counter affidavit filed on 24.1.2000 in the midst of hearing. Learned Counsel for the Petitioners insisted that a reply even at this late stage be accepted and taken on record on the ground that although copy of the counter affidavit of Respondent Nos. 4 and 5 have been served in April 1999 but actually the counter affidavit was filed in court on 19.1.2000, a day after hearing had started. Such plea on behalf of the Petitioners was fit to be rejected but the rejoinder affidavit was taken on record only in the interest of justice and that led to an unnecessary adjournment of two weeks at a stage when even arguments in reply were almost over. However, nothing more need be mentioned in this regard.

24. With regard to constitution of the selection committee provided through an executive decision contained in circular dated 3rd. December, 1980 (Annexure-X/1), the first stand of the Petitioners as appears from their reply to the counter affidavit is that power of appointment being vested in the District Collector, no such committee should have been formed to affect that power. This point was not seriously placed and it deserves to be rejected because the purpose of selection committee as mentioned in the circular is only for preparation of merit list. The merit list as per said circular has to be prepared on the basis of marks obtained by the applicants in their schools/college examinations. In such circumstances the selection committee in no way encroaches upon the power of the appointing authority, the District Collector who himself is the Chairman of the committee. The other grievance of the Petitioner is that according to the circular besides the District Collector who is to be the Chairman there are only two other members prescribed for the said committee whereas in this case admittedly the total number of members of the selection committee was four which included the Establishment Deputy Collector, Respondent No. 5. It is not in dispute that Respondent No. 5 also, participated in the meeting of the selection committee as is clear from minutes of the proceeding which have been annexed as annexure-C to the counter affidavit of Respondent Nos. 4 and 5. The reason given for inclusion of Respondent No. 5 in the supplementary counter affidavit is that services of Respondent No. 5 were required by the Chairman of the selection committee to maintain properly the documents related with the appointment Procedure. As Establishment Deputy Collector, Respondent No. 5 or 54 was incharge of Establishment section that processes the establishment work including appointment of Government servants. The decisions of the selection committee were unanimous and according to Respondents the circular providing for selection committee did not prohibit inclusion of any extra member nor any consequence of such inclusion has been given in the circular.

25. In the context of aforesaid submission, on behalf of the Petitioners reliance was placed upon a Division Bench judgment of Bombay High Court in the case of Dr. Gorakh Nath Mishra v. Goa Universities and Ors. 1989 (1) S.L.J. 66. In this case the selection committee was governed by statute of the University and admittedly the Registrar of the University was not a member of the selection committee and the court found that the Registrar had acted as a member of the selection committee for the impugned selection. In such circumstances the Court

held that since a person not authorised to act as member of the selection committee had acted as such and had participated in the decision making process of the committee hence the selection by the committee stood vitiated in law. Reliance was next placed upon a Division Bench judgment of Orissa High Court in the case of Dr. Santosh Kumar Dash v. State of Orissa 1986 L.I.C. 65. In this case the constitution of selection board was governed by statutory rules and since the constitution of selection board was not in accordance with requirement of the rules, the selection was set aside. Lastly, reliance was placed upon a judgment of this Court in the case of Mahesh Chandra Jha v. State of Bihar 1989 PLJR 275. In the said judgment learned Single Judge agreed with the proposition of law laid down by the Division Bench of Orissa High Court in the case of Dr. Santosh Kumar Mishra (supra) and further highlighted a settled principle of law that if a person while discharging some statutory function associates himself in deliberations with some other persons, though incapable of doing so in terms of the provisions of statute or otherwise, then the decision of the entire body becomes vitiated. I am in respectful agreement with the law expressed in the aforesaid judgments. In all the aforesaid judgments the courts were apparently dealing with statutory provisions governing composition of selection body committee and on the ground of impugned action being contrary to statutory provisions, the same was struck down as illegal. In this case the statutory appointing authority is the District Collector and a selection committee to help him in preparation of merit list is provided by an executive decision contained in circular dated 3.12.1980 Annexure-X/1 issued by the Chief Secretary, Government of Bihar. The aforesaid circular is not at all statutory in nature and for this reason, in my view the aforesaid judgments cited on behalf of the Petitioners cannot have any application. No doubt in absence of statutory provisions the executive decision of Government may occupy the field left vacant but such executive instructions cannot have the same status as statutory provisions have. Although the Government is normally expected to follow its own policy decision but the effect of non-compliance with such executive decision cannot be same as that of non-compliance with statutory provisions. For good and sufficient reasons the executive authorities may depart from the Procedure laid down in the executive decision. In the present case inclusion of Respondent No. 5 as 4th member of the selection committee is a surplus act not strictly in accordance with the circular contained in Annexure-x/1 but the explanation given by the Respondents for such action does not appear to be bad in law or arbitrary. The limited role of the selection committee in terms of the circular has already been noticed above and hence in the facts and circumstances of the case, I am unable to hold that the inclusion of Respondent No. 5/54 in the selection committee is illegal or that his participation in the proceedings of the selection committee as a member has rendered the entire selection process illegal.

26. By referring to Annexure-C to the counter affidavit, the minutes of the proceedings of the selection committee, learned Counsel for the Petitioners submitted that one of the members, the District Welfare Officer was absent after

28.8.98 and therefore on this count also the subsequent decision of the selection committee should be held to be invalid. A perusal of the circular contained in annexure x/1 shows that the circular does not provide the effect of absence of any member of the selection committee on the proceedings and decisions of the committee. In such circumstances, in my view, absence of one of the members of the selection committee cannot be accepted as a ground to invalidate the proceedings and decisions of the selection committee. This submission on behalf of the Petitioners is also found to be without any merit.

27. On behalf of the State as well as the private Respondents some judgments were cited and arguments were advanced that Petitioners cannot be permitted to challenge the terms of selection mentioned in the advertisement as well as the selection process on the grounds of estoppel and acquiescence. Learned Counsel for the Petitioners also gave their replies to such submission. However, since, I have dealt with all the submissions of the Petitioners on merit and have not thought it proper to preclude them from challenging the selection process on the grounds of estoppel and acquiescence, hence I do not deem it necessary to discuss the case laws cited by the parties on this aspect of the matter.

28. For all the aforesaid reasons, find no merit in these writ petitions and the same are accordingly dismissed but with observations and directions as mentioned earlier with regard to verification of marks and certificates of selected candidates within a fixed time. In the circumstances of the case there shall be no order as to costs.