

(2011) 01 PAT CK 0104

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 17804 and 17993 of 2009 and 5730 of 2010

Dr. Bimal Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others
 Dr. Narendra Kumar Vs
The Chancellor, Magadh University
 Dr. Narendra
Kumar Vs Chancellor of The Universities of Bihar, Magadh
University, Vice Chancellor, Magadh University and Registrar,
Magadh University

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0104

Judgement

Jayanandan Singh , J.—These three writ applications have been taken up and heard together as the issues raised in them are common. The Petitioners are primarily aggrieved with the selection process held by the Respondent University for appointment of principals on regular basis in its constituent colleges, in which Respondent Nos. 7 to 32 were selected and appointed and the Petitioners of the writ applications were unsuccessful.

2. Petitioners of the first writ application have prayed for quashing of notification contained in Memo No. 64/2009 dated 8.6.2009 (Annexure-4), by which, under the signature of the Registrar of the Respondent University, a panel of successful candidates under different categories was notified, which was meant to be taken into account for filling up future vacancies also. They have further prayed for quashing of Notification contained in Memo No. 65/2009 dated 9.6.2009 (Annexure-5), 96-01/2009 dated 27.8.2009 (Annexure-7) and 96-02/2009 dated 27.8.2009 (Annexure-8), by which, in different transactions, the Respondents have been appointed as principals of different constituent colleges of the University. Further prayer of the Petitioners is for a direction to the Respondents to advertise the post of principals afresh, after quashing the above said notification. Prayer has also been made for restraining the Respondents from joining and performing their duties and to further restrain the Respondents from

making any more appointment on the post of principal from the said impugned panel. The sole Petitioner of the 2nd case has prayed in his writ application for a direction to the Respondents to appoint him on a vacant sanctioned post of principal with all consequential benefits. The sole Petitioner of the 3rd case, though of the same name, has prayed in his writ application for a direction to the Respondents to award him three more marks for research papers and appoint him as principal with all consequential benefits. Apart from these three independent writ applications, some interventions have also been sought for in the matter by different parties. One I.A. No. 4663 of 2010 has been filed by one Smt. Kanchana Singh seeking to intervene in the 1st writ application in opposition, as she was affected by interim order passed by this Court on 21.12.2009, by which the Respondent University was restrained from making any further appointment from the existing panel. The writ Petitioner of the 2nd case has also filed an I.A., No. 5254 of 2010, in the first case to intervene as Respondent with a prayer to extend the validity of the panel, in view of the order of stay passed by this Court, in the light of the doctrine "Actus curiae neminem gravabit". He also filed two I. As, namely, I.A. No. 4490 of 2010 and I.A. No. 5132 of 2010, in his own writ application for vacating the order of stay passed by this Court in the first case and also praying for holding that period of stay of the panel should not be counted for period of validity of the panel. One more I.A. is on record of the first case, namely, I.A. No. 8443 of 2009, which was filed on behalf of the Petitioners for restraining the Respondents from appointing any person on the post of principals from the impugned panel which was taken up and considered by a Bench of this Court and interim order dated 21.12.2009 was passed restraining the Respondent University from making any further appointments from the panel..

3. The facts of the case, in brief, is that an advertisement was published by the Respondent University in the daily newspaper on 25.10.2008 (Annexure-1), whereby applications were invited from eligible candidates for their selection and appointment on the post of principals of constituent colleges of the University. The total vacancies notified through the advertisement were 22, out of which 8 were of General category, 6 of Scheduled Caste category (SC), 1 of Scheduled Tribe category (ST) and 7 of Extremely Backward Class category (EBC). The advertisement mentioned that the details of eligibility and other requirements could be found on the website of the University, address of which was given therein. It is stated that altogether 351 applications were received by the University, all of whom were called for interview, to be held from 3.2.2009 to 7.2.2009 and 11.2.2009. For the scrutiny of the eligibility of the candidates, under the orders of the Vice-Chancellor, a Selection Committee was constituted, comprising of 7 members, vide notification dated 19.1.2009 (Annexure-2). For consideration of eligibility and comparative merit of the candidates, as per Statute of the University, total marks were allotted as 100, out of which maximum 71 marks were fixed for academic qualification from matriculation onwards, 9 marks were fixed for publication of research papers, maximum up to

three in number and maximum 20 marks were fixed for interview. The candidates were interviewed on the dates fixed and, as per the yardstick, a chart was prepared by the Selection Committee (Annexure-3) of all the 351 candidates, in the seriatim of their application form numbers and category-wise, with separate columns for category, total marks for academic achievements, research paper, interview, grand total and rank. The details of the Petitioners, as appearing in the said chart, is also mentioned by the Petitioners in paragraph 14 of the writ application. Thereafter, on the basis of this chart the impugned panel was prepared, selecting 23 candidates of different categories and the impugned orders for appointment were issued.

4. The Petitioners are mainly aggrieved by selection of candidates on the basis of the said chart, award of marks for publication/research, award of marks in interview, allegedly done malafide and arbitrarily and on extraneous considerations, and preparation of the impugned panel on that basis. They have pointed out anomalies in the preparation of the said chart and the said panel. They have prepared a summary chart of selected and left over candidates which is Annexure-9 to the writ application. It is contended that it will be apparent from the summary chart that several candidates, who ought to have been placed higher than the empanelled candidates, have been deliberately left out for no conceivable reasons. It has also been contended that, persons, who had secured very high marks for academic achievements, have been deliberately allotted very low marks in interview, so that their ranking may shift down. The list of such candidates has been annexed with the writ application as Annexure-10. Another list of candidates who have secured much low marks in academic achievements, but have been allotted much high marks in the interview, has been annexed as Annexure-11 with the writ application.

5. Elaborating the grievances of the Petitioners, learned Counsel appearing on their behalf submitted that through the advertisement altogether 22 posts of principals were advertised, out of which 8 posts had to be filled up from General category candidates, 6 from SC category candidates, 7 from EBC category candidates and one from ST category candidates. In response to the advertisement no application was received for appointment under ST category. Hence, only 21 vacancies were to be filled up on the basis of applications received. However, the Respondents have filled up 6 more vacancies out of the panel prepared, for which there was no advertisement and no applications were invited. Out of the said 6, 2 were of General category, two were of BC-II/OBC category and one was of Sikh Minority category. It was submitted that the vacancies of BC-II/OBC category and Sikh Minority category were not advertised at all and, therefore, the same could not be filled up on the basis of the advertisement published. It was pointed out that there was no mention in the advertisement that any subsequent vacancy, becoming available later on, may also be filled up from the panel prepared on the basis of the said advertisement and it was also not mentioned in the advertisement that the vacancies were likely to increase or the panel was to be kept valid for filling up future vacancies.

It was submitted that the relevant provision of the Statute, providing for the panel to remain valid for one year, was only for the purpose of filling up of any post, so advertised, remaining vacant on account of non-joining of any candidate. It was also submitted that the panel could not be used for filling up of any vacancy which may have become available after the advertisement and after the panel was prepared and finalized. It was also submitted that the panel could not be used for filling up of vacancies of any category which was not notified in the advertisement itself as, in absence of such notification in the advertisement; large number of candidates of the said category may not have applied at all. It was next submitted that the chart prepared by the Selection Committee, as contained in Annexure-3, shows that against the name of many candidates an endorsement was made that they were "not found suitable". This clearly shows that the said candidates were put out of the consideration zone only on the subjective consideration by the Selection Committee, for which no valid reasons were mentioned in the said Chart. There being no cut-off/pass marks in either academic achievements or publication/research or interview, no candidate could be put out of consideration zone merely because of some reasons which the Selection Committee, at the time of preparation of the chart, may have thought appropriate. It was also contended that the selection elsewhere, as mentioned in the counter affidavit, could not be a valid ground in law for eliminating any candidate from zone of consideration. Still, just to deprive meritorious candidates the chances of appointment, they have not been considered only on the ground that they were selected elsewhere. It is also contended that the markings of the Selection Committee like selected elsewhere service not confirmed not found suitable and not found fit by the Selection Committee in the chart against the individual names, only show that the Selection Committee, on its own whim and caprice, put candidates out of consideration zone on different grounds which were neither supported by any Act or Statute, nor by any stipulation in the advertisement. It was next submitted that the said chart prepared by the Selection Committee was not in accordance with the Bihar Reservation Act, 1991, which requires that a combined merit list of successful candidates, strictly according to their merits, irrespective of their category, is to be prepared first, and the vacancies of General category has to be filled up from this merit list strictly in seriatim and then only the left over merit list has to be segregated as per the reservation category and the vacancies of reserved category has to be filled up from such list of reserved category candidates. As against this, Annexure-3 shows that the chart, at the initial stage itself, was prepared category-wise, thus depriving many of the reserved category candidates from consideration for appointment as General category candidate on their own merits. It was also pointed out that about 14 candidates of General category had secured total 73 marks, out of whom 11 were empanelled and three were selected. It is not mentioned by the Selection Committee in the chart or in the panel as to on what consideration ranking was fixed among the said 14 candidates who had secured equal marks and under what consideration 3 out of them were appointed. It was pointed out that this also shows that the Selection

Committee, for no valid reasons, adopted pick and choose policy and picked up the 3 candidates from amongst the 14, who had secured equal marks for their appointment, as per their personal choice. It was next contended that as per the Statute, total 9 marks had to be allotted for publication/research with three marks for each paper. Thus, if three or more research papers of a candidate were published in standard journals the candidate was entitled for allotment of full 9 marks. It was submitted that Petitioner Nos. 1, 2, 4, 6 and 8 had presented more than three research papers of their's, published in standard journals, still they were not allotted full 9 marks under this head and, therefore, their comparative ranking in the merit list came down. It was also contended that the list of standard journals, recognized by the University, were not notified with the advertisement, which gave leverage to the Selection Committee not to consider a paper published by a candidate in the particular journal for awarding of marks. It was submitted that the Respondents deliberately left it vague, so that the Selection Committee may manipulate the marks under this head in favor or against a particular candidate. Learned Counsel for the Petitioners drew the attention of this Court to the marks allotted to different candidates under different heads, as appearing in the said chart (Annexure-3), and showed that in a large number of cases, candidates who had secured very high marks under academic achievements, and/or research/publication, were allotted shockingly low marks in interview. He also showed that, to the contrary, in many cases, the candidates who had secured very low marks under the head of academic achievements, and/or research/publication, were allotted very high marks in interview. He submitted that this showed that, in the interview, marks were allotted to the candidates by the Selection Committee in a planned manner, to cause illegal benefits to undeserving candidates, by ensuring that they get much higher ranking in the merit and get the appointment, whereas other deserving candidates who were not favored by the Selection Committee, were relegated to lower stages in merit by awarding them shockingly low marks in interview. It was also pointed out that, for appointment as Principal in the category of Sikh Minority, the Respondent No. 16 was selected who had secured total 57 marks only and was not a Ph.D, whereas Petitioner No. 6, who was also of the same category, had secured 73 marks, but was left out. It was submitted that the explanation, which is now being given by the Respondents in the counter affidavit, that Petitioner No. 6 was to superannuate soon and Respondent No. 16 had worked with the University as O.S.D., could not be a relevant and valid consideration in law for ignoring the preferential claim of Petitioner No. 6. It was also submitted that the Selection Committee had kept the result pending for abnormally long period of four months, only with a view to debar some of the candidates, who had appeared in the interview in other Universities also and were later on selected, and then to put them out of consideration zone only on the ground that they had been "selected elsewhere" which could not be a valid ground in law for their non-consideration. It was also pointed out that many of the Respondents who have been appointed are/were teachers of 4th-phase colleges and their services were not approved on the date of issue of the

Notification containing the Panel and their subsequent appointment vide Notification dated 9.6.2009. It was also pointed out that, in particular, Respondent Nos. 8, 9, 10, 11, 14 and 16 were not confirmed on that date in service and their services were confirmed as teachers of the University only after their appointment as principals of the constituent colleges, which clearly vitiated the entire selection process and the appointments made on that basis. It was also pointed out that against the name of one candidate namely, Dr. Pramila Pathak (application No. 24) a note was made in the chart (Annexure-3) that her services were not confirmed. Hence, she was not considered, whereas above said Respondents were considered and appointed, although their services also were not confirmed on their date of appointment. It was further pointed out that Respondent No. 7 was appointed as teacher in 2003 only and his service was also not confirmed and there was already a vigilance enquiry pending against him. Still ignoring all these he was appointed.

6. In support of his submissions, learned Counsel for the Petitioners relied upon the judgments of the Apex Court in the case of State of Bihar and another Vs. Madan Mohan Singh and others, , Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, , The State of Orissa v. Raj Kishore Nanda [2010 (3) PLJR (SC)165], Public Service Commission, Uttaranchal v. Mamta Bisht [2010 (3) PLJR (SC) 100] and Rakhi Ray v. High Court of Delhi [2010 (2) PLJR (SC) 26]. In respect of criteria to be adopted for selection of candidates having obtained equal marks in aggregate, learned Counsel for the Petitioners relied upon the judgment of Pandey Venktesh Prasad Sinha, Binod Kumar Jaiswal Vs. The State of Bihar and Others, . Learned Counsel appearing for the Petitioner in CWJC No. 5730 of 2010 adopted the submissions made by learned Counsel in the first case and submitted that his Petitioner was also having 76 marks, but was not considered, whereas other candidates having the same marks were considered and appointed without any rationale behind the same and also submitted that his Petitioner had submitted 3 publication/research papers, published in recognized journals and, therefore, his Petitioner should have been allotted full 9 marks under that head.

7. Besides, learned Counsels who appeared for the State of Bihar, the Chancellor of the Universities and for Magadh University, Mr. Rambalak Mahto, Mr. Vinod Kumar Kantha, Mr. Y.V. Giri, Mr. D.K. Sinha, Senior Advocates, and some other advocates, appeared for different sets of private Respondents. On behalf of the Respondents it was submitted that the writ petitions were not maintainable, as the Petitioners had participated in the selection process and, after having failed to get selected, have challenged the process. In support of this submission, reliance was placed on the judgments of the Apex Court in the case of Dhananjay Malik v. State of Uttrakhand [2008(2) ST 328] and in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, . It was also submitted that the Respondent University was at liberty to fill up future vacancies and vacancies under a particular category, though not indicated in the advertisement itself, as there was clear stipulation in the advertisement itself that the University

reserved the right to change/cancel the advertisement. In support of this submission reliance was placed on a judgment of the Apex Court in the case of *Suvidya Yadav v. State of Haryana* : [(2002)10SCC 269]. In respect of appointments made under the OBC category, it was submitted that the same was done in accordance with reservation policy of the State. It was further submitted that the appointment of Sikh Minority candidate was made in terms of the agreement with the college in question, entered into at the time of its take over by the University and Petitioner No. 6 was not considered for the said post because she was going to superannuate very soon. It was also submitted that the marks allotted in the interview were on the basis of assessment of managerial ability and administrative skills" of the individual candidates. It was also contended that the Petitioners should have moved the Chancellor raising their grievances before coming to this Court. Mr. Mahto, learned Senior Counsel, appearing for some of the private Respondents pointed out that the Respondents, who were appointed, had secured higher marks than the Petitioners in the respective category. Therefore, Petitioners were, in fact, not affected by the appointment of the Respondents. Mr. Kantha, learned Senior Counsel, appearing for some other private Respondents submitted that the advertisement was not sine qua non for the purposes of Section 57 of the Act. He further submitted that the Selection Committee was not bound by the advertisement and it could prepare the panel beyond the posts advertised and it had unfettered powers to adopt its own procedure and recommend the names. He submitted that when the Statute provided for keeping the panel alive for a year, definitely the vacancies becoming available later in the year could be filled up from the panel. He also submitted that, since the Petitioners had all participated, they could not raise any grievance with regard to non-publication of vacancies in the advertisement in respect of OBC category and Sikh Minority category. Mr. D.K. Sinha, learned Senior Counsel and Mr. Rajendra Giri, learned Counsel, submitted that approval of service was of no consequence, as the only essential requirement for a candidate for consideration of his case for appointment was that he should be a teacher. Therefore, a teacher working with temporary status and working in an affiliated college could also be considered. For this submission, they relied upon the judgment of a Full Bench of this Court in the case of *Dr. (Sushri) Rajni Bala Agrawal Vs. Lalit Narain Mithila University and Others* . Mr. Giri, learned Senior Counsel for some of the Respondents, assisted by Mr. Rajendra Giri, learned Counsel, also submitted that the Petitioners had an alternative remedy before the Chancellor in terms of Section 9 (4) of the Bihar State Universities Act, 1976. They submitted that vacancies beyond the advertised number could also be filled up from the panel and, in support of this submission, they relied upon the case of *Prem Singh and Others Vs. Haryana State Electricity Board and Others*, and the case of *Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another*, . Mr. Rajendra Giri, learned Counsel, tried to distinguish the case of *Rakhi Ray (Supra)* on the ground that the said case was of a reverse situation and the Apex Court had only held that it could not direct future vacancies to be filled up from the panel prepared,

but if it was actually done, the circumstances had to be considered and the Court could mould the relief to be granted to the parties. Learned Counsels for the Respondents also submitted that the marks in interview was allotted by an expert body and, therefore, this Court could not sit over the same and question the wisdom of the expert body in this respect. In support of the said submission they relied upon the judgment of the Apex Court reported in *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, ; *Durga Devi and another Vs. State of H.P. and others*, and *National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others*, .

8. Before considering the submissions of learned Counsels for the parties, this Court considers it appropriate to notice certain provisions of the Statute approved by the Chancellor and contained in Governor's Secretariat memo No. 2187 dated 30.6.2008 (copy whereof is Annexure-1 to the writ application of CWJC No. 5730 of 2010). By this Statute the Selection Committee, as constituted by the Bihar State Universities (Amendment) Act, 2007 under substituted Section 57 of the Bihar State Universities Act, 1976, was empowered to perform functions of the Bihar State University (Constituent Colleges) Service Commission in respect of selection for appointment to the post of teachers and officers (other than Vice Chancellor, Pro-Vice Chancellor, Registrar and Dean of faculty) of the Universities. Clause 7 of this Statute provides for composition of a Selection Committee for recommendation for appointment on the post of principal for multiple subject faculty colleges. Clause 13 of the Statute gives details of the total maximum marks which could be allotted to the candidates in the process of selection and prescribes that the marks in respect of career and interview shall be in the ratio of 80%:20%. In the clause, the 80% marks has been sub-divided by clearly laying down different marks, faculty-wise, to be allotted on the basis of different qualifications, viz. Matriculation, Intermediate, Bachelors, Master, M. Phil and Ph.D/NET, as also 9 marks allotted for research papers. The manner for allotment of marks for different qualifications has been further laid down by indicating the marks to be allotted on the basis of division of the candidate secured in a particular examination. At the bottom of the Statute the note makes it clear that three marks were to be allotted for research paper published in standard (referred) journal/journals, to a maximum of 9 marks, provided the materials paper/papers were not part of either M. Phil or Ph.D. thesis. The 2nd note provides that, in addition to the 80% marks allotted to career, maximum 20% marks were to be allotted on the basis of performance in interview.

9. This Statute makes it obvious that the Committee, which is constituted in the University u/s 57 of the Act, by 2007 Amendment, has a statutory status and is to perform statutory functions. By Clause 1 itself, it has been empowered to perform the same functions, as was being performed by Bihar State University (Constituent Colleges) Service Commission earlier, in respect of the appointment of teachers and officers of the University, barring the Vice Chancellor, Pro-Vice Chancellor and Dean of the faculty. It goes without saying that the appointments

had to be made on the basis of open advertisement. Therefore the Committee, which is a perpetual body, in terms of Section 57, is empowered to fix terms and conditions for eligibility etc. to be included in an advertisement for selection and recommendation for appointment of such teachers and officers for which it is empowered. The Committee is, therefore, clearly responsible for initiating the process of appointment on vacancies available under the University as may be informed by functionaries of the University. Hence, the process of selection which this Committee is to hold has necessarily to start with the publication of advertisement finalized by it. Therefore, the submissions of Mr. Kantha, that the Selection Committee was not bound by the terms of the advertisement have no legs to stand on. Moreover Article 16 of the Constitution itself makes an advertisement sine qua non for any appointment under the State, as defined under Article 12. Clearly, therefore, an advertisement was a sine qua non for recommendation for appointment by the Selection Committee on the posts of teachers and officers for which it has been empowered under the said Statute. Hence, this submission also of Mr. Kantha, in this regard, has no force.

10. True it is that the Statute does not lay down any procedure for proceeding in the matter and the Committee could adopt its own procedure. But the fact that the said procedure has to be in conformity with the requirements of Articles 14 and 16 cannot be doubted to the least. The Statute clearly lays down in detail the manner of allotment of marks for different qualifications acquired in the career and for published research paper, which the Committee has to necessarily apply in connection with the consideration of cases of individual applicants. The minutest details in this respect taken care of in the Statute, makes it clear that no discretion is left out to the Committee to assess the academic qualifications and the research work of a candidate in any other manner. The only discretion left out by the Statute, to be exercised by the Committee in respect of assessment of performance of a candidate, is in respect of 20% marks allotted for interview. Therefore, it is clear that the Statute does not leave out any scope for the Selection Committee to adopt any other procedure for assessment of eligibility, suitability and merit of the candidate for appointment on the post of teachers or officers of the University. Learned Counsels for the Respondents have submitted that the Petitioners had an alternative remedy before the Chancellor, referring to Clause (iv) of Section 9 of the Bihar State Universities Act, 1976, which has rightly been disputed by learned Counsel for the Petitioners. From a bare reference to the provisions of the earlier Section 57 of the said Act, it will be apparent that the Constituent Colleges Service Commission, which was an independent body constituted under the Bihar State University (Constituent Colleges) Service Commission Act, 1987, was assigned to perform same functions, as assigned to the State Public Service Commission in respect of appointment to State services under Article 320 of the Constitution of India, in respect of appointments on the post of teachers and officers (other than Vice Chancellor, Pro-Vice Chancellor and Dean of faculty of the University). However, by Act 21 of 2007, the expressions "The Bihar State University (Constituent

Colleges) Service Commission" and "Bihar Inter University Board" and their references were deleted from the 1976 Act as well as from the Statute/Ordinance/Regulation. Simultaneously, Sections 57 and 57A of the said 1976 Act were substituted by new sections whereby, in substituted Section 57, the role of recommendation for appointments under the University was assigned to a "Selection Committee" constituted under the new section itself. Thus, clearly the Selection Committee, constituted under the provisions of new Section 57 of the 1976 Act, is an independent body and has been bestowed with an independent statutory status under the Act, not subject to any control of the University. The jurisdiction of the Chancellor as contained in Clause (iv) of Section 9 empowers the Chancellor to annul any proceeding of order of the "University" which may not be in conformity with the Act, Statutes, Ordinance or Regulation. In view of the status of the Selection Committee, flowing from the new Section 57 of the 1976 Act, any act, decision or action of the Selection Committee cannot be considered as any act of the University and, therefore, will clearly not be amenable to the jurisdiction of the Chancellor. Learned Counsels for the Respondents have not pointed out any other provision of the 1976 Act in support of their submissions in this regard. In the circumstances, their submission in respect of availability of alternative remedy to the Petitioners is also misconceived.

11. The second objection to the maintainability of the writ application of the Petitioners, raised by the learned Counsels for the Respondents on the ground that the Petitioners had participated in the selection process, is also misconceived. In the case of Dhananjay Malik (*supra*), relied upon by them, the advertisement itself was under challenge, which the Apex Court rightly held was not available to the Petitioners, as they had responded to the advertisement and, on the basis of that so-called defective advertisement, had taken a chance to succeed. In the present case, the cases of the Petitioners are to the contrary. Their specific grievance is that the Selection Committee and University have not acted strictly in terms of the advertisement and Statute and have included the names in the panel arbitrarily, on pick and choose basis and applying different standard in respect of different candidates etc. This obviously could be known to them only when the panel, as contained in Annexure-4, was published by the University and the appointments made there from. The Petitioners had no occasion to challenge any step taken in the selection process earlier, as they were not aware of the details of the steps taken and, in particular, the marks allotted to them and other candidates by the Selection Committee. It is not the case of the Respondents that at every stage the Selection Committee had published the individual marks, allotted to individual candidates under different heads and hence the Petitioners were in a position earlier to question the same. Moreover, apparently the selection and appointment of the candidates under categories of OBC and Sikh Minority, which reserved categories were not mentioned in the advertisement, could not be known to the Petitioners before. Only after publication of the panel and appointment made, Petitioner No. 6 got

the locus standi to challenge the appointment of Respondent No. 16 as, she also being of the Sikh Minority and having secured higher marks, was not considered, only on the basis that she was to superannuate soon, which, by no stretch of imagination could be a valid consideration for rejection of her case.

12. So far as submissions of learned Counsels for the Respondents, that the approval of services of the applicants as teacher was of no consequence, is also not quite correct. The reliance placed by them on the Full Bench judgment of this Court in the case of Dr. Rajni Bala Agrawal (Supra) is misconceived. It is true that if a temporary appointment, even in an affiliated college, matures into a permanent appointment, the entire length of service of the incumbent has to be taken into consideration for fixation of seniority, promotion etc. The Statute provides that for appointment of principal a candidate has necessarily to be a teacher in a University. In respect of the Respondents referred to earlier, whose services were not confirmed, the specific objection of the Petitioners is that they were teachers of 4th-phase colleges. The history of 4th-phase colleges is quite different from general colleges. It is well known that the validity or otherwise of the appointment of teaching and non-teaching staff in 4th-phase colleges was contested by the parties up to the Apex Court. The Apex Court constituted a one Man Commission of a retired Hon'ble Judge of the Court namely, Justice Sri S.C. Agrawal to examine and report in respect of each and every teaching and non-teaching staff of such colleges. After examining the case of each and every employee of each and every 4th-phase college, the Commission submitted its report with its recommendations which was approved and affirmed by the Apex Court in its order reported in State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, and directed the Universities to take action in accordance with recommendations of the Commission. Hence the said Respondents, being teachers of 4th-phase colleges, required a seal of approval to the validity of their appointment, in terms of the recommendations of the Commission, before they could be considered as legally appointed teachers of the University, may be in an affiliated college, for consideration of their cases for their appointments as principals in constituent colleges. The chart also shows that at least in respect of applicant No. 23, Dr. Pramila Pathak, this was made a ground for putting her out of consideration.

13. It is settled law that terms of advertisement for appointment are determining factors for scope and limitation of consideration of candidates for appointment. In the case of Suvidya Yadav (supra), relied upon by learned Counsel for the Respondents, the advertisement specifically contained a stipulation that the number of posts advertised were subject to variations. The judgments of the Apex Court in the case of Prem Singh (supra) and Benny T.D. (supra), relied upon by other learned Counsels for the Respondents, are also of no help to the Respondents as, in very clear terms, it has been held therein that vacancies becoming available after final recommendation of the selection body could not be filled up from the names so recommended. The Respondent University has admitted in its counter affidavit that the vacancies, which were filled up beyond

the vacancies notified in the advertisement, had become available after the panel was prepared and appointments were made by Annexure-5. It is true that the Statute makes a panel, notified by the Selection Committee, valid for one year. But that validity is only for the purposes of appointments in case of non-joining, unless it is clearly mentioned in the advertisement itself that the panel prepared on the basis of the advertisement shall be valid for a future period and for anticipated vacancies. It is settled law that a selection process comes to an end after a panel is finally published and recommended to the appointing authority for appointments there from against the vacancies advertised. Clearly no post falling vacant subsequent to the same could be filled up from the said panel as neither the post was under consideration in the process of selection nor was it intended and notified at the initial stage itself, by making a stipulation in the advertisement itself for knowledge to all the applicants that the vacancy position may increase, by the same being available even subsequent to the selection process coming to an end. It is true that under certain circumstances, the vacancies arising after advertisement, and prior to the selection process coming to an end, have been allowed by the Courts to be filled up pursuant to that very selection process. But the vacancies, which were not available even on the date of final publication of the panel, have not been allowed by the Courts to be filled up from that panel. The reliance of the Respondents in this respect on the stipulation made in the advertisement, to the effect that the University had the right to change/cancel the advertisement, is misconceived. Any change in the advertisement was necessarily to be notified to the candidates through a corrigendum issued and published in the same newspaper in which the original advertisement was published. The change, by no stretch of imagination, could be a private affair at the level of the University, without making it known to the candidates and the applicants.

14. It is true that this Court cannot sit-over, as an appellate authority, over the marks awarded by an expert body in interview to the individual candidates. In this respect, reliance placed by learned Counsels for the Respondents on the judgments of the Apex Court is correct. But, if from the marks awarded, a clear pattern is discernible which shows that the same has been done in a planned manner to give undue advantage to some candidates and create disadvantage for others, this Court can surely form an opinion that the marks awarded by the expert body to the individual candidates in interview was not on objective and valid considerations. The Petitioners have annexed the chart as Annexure-11 in respect of marks secured by the private Respondents under different heads. The marks mentioned against the name of individual Respondents in this chart tallies with that of in the chart prepared by the Selection Committee, as contained in annexure-3. Therefore, the correctness of the figures in Annexure-11 cannot be doubted. This chart Annexure-11 contains the names of 20 out of 27 private Respondents and the marks secured by them under different heads. From perusal of this chart, it becomes clear that 20 Respondents, whose names figure in this chart, were in fact allotted much low marks in academic achievement, but

were awarded much high marks in the interview. The total maximum marks for interview was 20. Out of the said 20 Respondents, whose names figure in this Annexure-11, 8 were awarded 18 marks, 3 were awarded 17 marks, two were awarded 16 marks, 3 were awarded 15 marks and 1 each were awarded 11 and 12 marks. On the other hand, under the head of academic achievement, for which total maximum marks were 71, except for 3 i.e. Respondent Nos. 7, 11 and 22, who were allotted 60, 61 and 63 marks respectively, rest had been allotted much less than that. The chart shows that Respondent No. 16 had been allotted as low as 33 out of 71 marks, but was awarded 18 marks in interview out of 20. Similarly Respondent No. 13 had secured only 49 marks out of 71, but was awarded 18 marks out of 20 in interview. Similarly in the case of other Respondents also, who were allotted marks in 50's for academic achievement, marks awarded in interview were quite high. As against this, Petitioners have annexed a list, as contained in Annexure-10, containing the names of the candidates who had been allotted much high marks for academic achievements, and in 60's out of 71, but were awarded marks in interview only in single digit. The Respondent University has taken a stand in the counter affidavit that in the interview the Selection Committee judged the administrative acumen and managerial ability of the candidates. No details are available in the counter affidavit of the University as to, on an average, for how much time one candidate was interviewed and in what manner the Selection Committee was able to judge the administrative acumen and managerial ability of the individual candidates.

15. One important aspect of the matter needs to be clarified separately. As noticed above the Selection Committee constituted by legislation as per the new Section 57 of the Bihar State Universities Act, 1976 has stepped into the shoes of Bihar State (Constituent) Colleges Service Commission which in turn was to function as a Commission for the University services on the lines of the State Public Service Commission contemplated under Article 320 of the Constitution. Thus, the newly created Selection Committee is to perform statutory functions in respect of appointments to be made in University on the lines of the Commission. This function of the Selection Committee is independent and not under control of the University, or any other authority under the law. Therefore, the moment vacancies of the post of teachers and officers of the University are identified and notified, the same has to be treated by the Selection Committee as requisition and then it is required to initiate the process for filling up of those vacancies, by getting advertisement published on all India basis inviting applications from all eligible candidates for their consideration, in conformity with the spirit of Articles 14 and 16 of the Constitution. The moment an advertisement is published, and till the final merit list is prepared, and final recommendation is made by the Selection Committee to the University, the University officials, particularly the Vice Chancellor of the University, has no individual role to play in the process, though he may be ex-officio Chairman of the Committee. All decisions, at all stages, in the process of such selection, has to be of the Committee itself and any delegation of power by the Committee to the Vice Chancellor, if at all made,

may only amount to abdicating its constitutional functions by the Committee. In the process of selection the Committee is required to receive applications, scrutinize the same, hold tests or evaluations, hold interview, prepare a final combined merit list of all candidates finally found eligible for appointment, prepare the panel of general category candidates in the light of the vacancies notified for recommendation of their appointment, prepare panels of candidates of each reserved category from the merit list for recommendation of their names for their appointment under the reserved categories and prepare waiting list of candidates of different categories, if required. The Petitioners have pointed out defects and errors committed by the Committee in the process of selection and preparation of the final panel in this case and apparent anomaly in award of marks in interview to the candidates. Therefore, onus lay on the Respondents to satisfy this Court that at each and every stage the Committee had taken steps for final recommendation of the names to the University for appointments strictly as required in law, and no errors, mistakes or lapses were committed by it. In view of the Constitutional mandate under Articles 14 and 16, the correctness of the procedure adopted and the steps taken by the Selection Committee had to be established by the Respondents themselves.

16. In the present case, no merit list has been produced on record by the Respondents and it is not known whether the Selection Committee had at all prepared a final combined merit list or not. This Court notices that Annexure-3, the list available on the record with the signature of members of the Committee, is not a merit list. This list is only a chart with details of marks allotted to all the 351 applicants under different heads in seriatim of their application numbers and in separate category they had applied. The "chart" also shows that no ranking was allotted to the individual candidates, as per their marks, by it. Thus it is apparent that this exercise was only a ground work on the basis of which final combined merit list had to be prepared by the Selection Committee wherefrom only the final panel of candidates to be recommended for appointment had to be prepared. There is nothing on record to show that the Selection Committee did this. The vital link in the process, between the chart of the names of the candidates with details of marks, without their ranking, as contained in Annexure-3, and panel notified by the University, as contained in annexure-4, namely, a combined final merit list is missing in the case. There is no pleading on record and no document available with the affidavits of any party to show that such a final combined merit list was prepared by the Selection Committee, on the basis of which the panel was prepared as notified by the University, vide Annexure-4. From the note at the bottom of Annexure-4, it appears that, up to three days prior, the Vice Chancellor, in the capacity of Chairman of Selection Committee, had passed orders and had issued directions. This clearly shows that final merit list and panel was not prepared by the Selection Committee and, if at all, it was left to the discretion of the Vice-Chancellor, in the capacity of Chairman of the Selection Committee, to select the names for inclusion in the panel and notify the same. This was clearly beyond the authority vested in him by the

Statute, even though he was in the capacity of Chairman of the Selection Committee, and any delegation of powers to him by the Selection Committee, if at all there was, clearly amounted to abdication of its functions by the Committee not warranted in law. This clearly vitiates the entire selection process and goes to the root of the matter.

16. Learned Counsel for the Petitioners has pointed out specific errors, anomalies and lack of objectivity by the members of the Selection Committee. The factual aspects in respect of the same were placed before this Court in detail by producing different charts to make things clear, to which there has been no explanation by the Respondents. The main plank of resistance of the Respondents to the challenge of the Petitioners has been that the Petitioners were individually not aggrieved and, therefore, their writ application was not maintainable. The fact that the Petitioners have challenged the entire selection process, the assessment of publication/research paper as per the yardstick laid down in the Statute, the lack of objectivity in awarding of marks in interview, does make the writ application maintainable on their behalf. For instance the Petitioners have pointed out that as many as 14 candidates had secured 76 marks, but how the names of 3 Respondents were filtered out for appointment is not clear. They have shown, by producing a chart, that the three Respondents, who had also secured 76 marks along with the other 11 candidates, had been awarded 18 marks out of 20 in interview, whereas they had as low as 49, 55 and 52 marks respectively for academic achievement and 9, 3 and 6 respectively for publication/research. The Petitioners have shown that the majority of the Respondents, who were appointed, had comparatively been awarded such high marks in the interview. They have also asserted that though many of the candidates had produced three or more publications of their research work in standard/recognized journals, they were not allotted full 9 marks by the Selection Committee. These uncontroverted facts clearly establish that the action of the Selection Committee in the process of selection was not fair, objective and flawless. In respect of comparative weight and preference to be given between written test and interview in case of a tie, this Court finds the following observations of the Division Bench in the case of Pandey Venkatesh Pd. Sinha (supra) as useful guide:

8. It is not possible to lay down a rigid formula for resolving this for universal application to all kinds of appointments. Some appointments are made without holding any written examination at all; as for example, the direct appointment to a post of Additional District and Sessions Judge made by the High Court on the basis of the interview. But, generally appointments are made on the basis of a written examination followed by a viva voce test allocating higher marks at the written test and lower to the oral part. In my view, in all such cases, preference must be given to the candidates obtaining higher marks in the written examination. The observations made by the Supreme Court in Ashok Kumar Yadav's case (supra) although in the context of the proportion to be allotted to the written examination and viva voce test, are helpful in the present case also

as they refer to their "relative weight". The view of Glenn Stahl in his book on Public Personal Administration referred to in paragraph 25 of the Supreme Court judgment pointing out disadvantage in viva voce tests is illuminating. The difficulty of developing a valid and reliable oral test and the difficulty of securing a reviewable record thereof cannot be ignored. Judicial notice must be taken of the fact that the public in general is suspicious of corrupt, nepotistic and extraneous considerations weighing at such tests. It is true that viva voce tests also have their own advantages; but do they outweigh the factors in favor of the written examination? I do not think so and my view is reinforced by the circumstance that in all such selective processes in which the choice is made on the basis of both written examination and viva voce test, the marks reserved at the interview are invariably lower than those for the written part.

(Emphasis supplied)

17. It cannot be disputed that transparency and accountability are call of the day. Every public functionary must act responsibly, fairly, objectively and with maximum possible transparency, in consonance with the spirit of the Constitution and statutory provisions. In the matter of public employment, to conform with the requirements of Articles 14 and 16, the selection process must be flawless, open and objective, giving equal opportunity and equality in the matters of consideration to all eligible candidates. In case fairness of a selection process is called in question in a court of law, it is the authority concerned which has to establish its actions as strictly satisfying the test of Articles 14 and 16. Any infraction in the same, leading to breach of the Constitutional mandate, is bound to lead to invalidity of the entire selection process. It is not the question of consideration of the individual candidates and the comparative rights between two individuals. It is the question of inspiring confidence of the people in the process adopted, by making it transparent to the maximum and flawless. In this case the Respondents and particularly the Selection Committee constituted as per the substituted Section 57 of the Bihar State Universities Act, 1976 have failed to do so.

18. In the circumstances, this Court has no option but to quash the entire selection process held by the Respondents pursuant to the advertisement, as contained in Annexure-1, and the subsequent steps taken by the Respondents including the preparation of panel and appointment of the Respondents as regular principals of the respective constituent colleges and direct the Respondents to initiate a fresh process of selection of candidates for appointment on the vacant post of principals of the constituent colleges in the University on regular basis. Accordingly this Court does that and directs the Selection Committee to proceed afresh in the following manner:

(A) (i) The advertisement for filling up post of principals of constituent colleges under the University must be published within one month from today.

(ii) The advertisement must include all the sanctioned vacant posts of principals

of the constituent colleges of the University as available on the date of advertisement which shall also include the posts held by the Respondents.

(iii) It shall be mentioned in the advertisement that as per the Statute, the panel, finally prepared and published by the Selection Committee, shall be valid for one year.

(iv) It may be also mentioned in the advertisement that the vacancies which may accrue during the period of the validity of the panel may be filled up from the panel of respective category for which the vacancy may be earmarked.

(v) The details of the categories of any anticipated vacancy likely to arise during the period of validity of the panel shall also be mentioned in the advertisement.

(vi) It shall also be mentioned in the submit an affidavit that their publication or research papers are not a part of either their M. Phil or Ph.D. thesis.

(B) The Selection Committee shall allow a reasonable time to the applicants to submit their application forms. The same shall be scrutinized, in the light of the self assessment chart, if submitted, and a detail final chart of marks allotted to each applicant under the head of academic achievements and under the head of publication/research shall be prepared and signed by all the members of the Selection Committee and shall be put on the web-site of the University for the knowledge of the applicants and a reasonable time shall be allowed for the individual applicants to get the marks allotted cross checked in their presence, if they so desire.

(C) Thereafter the date of interview shall be fixed and notified on the web-site of the University as well as in the manner prescribed, for the knowledge of the respective candidates for their appearance on the dates fixed for respective candidates.

(D) For the purposes of transparency and to ward off any public suspicion of nepotism and extraneous consideration weighing with the Selection Committee, the interview of all the candidates shall be video-recorded in full and the marks shall be awarded to the candidates by the members of the Selection Committee then and there. A notice shall be put on the notice board on the date of interview that, if requested in writing, any individual candidate shall be supplied with the information with regard to average of the total marks awarded to him in interview in writing and on the same day he is interviewed, which shall be supplied the same day upon such request. The C.D. of video recording, in original, shall be preserved till the validity of the panel, or till the final conclusion of any dispute, in connection with the selection process, which ever may be later.

(E) On completion of the interview, a consolidated merit list of all the candidates shall be prepared within two weeks of the last date of interview and shall be signed by all the members of the Selection Committee and put on website of the University. Within further two weeks thereafter, panel of general category candidates, as well as of reserved categories shall be prepared and forwarded to

the University, under the signature of all the members of the Selection Committee, for proceeding with issue of appointment letters.

(F) The entire process must be completed with issue of appointment letters by the University within six months from today.

(G) The Selection Committee may include such other stipulation in the advertisement and may take such other step in the selection process as it may deem fit and proper for the purpose of transparency of the process and to instill confidence in the candidates in respect of fairness in action on their part.

(H) The Selection Committee shall be at liberty to approach this Court if they find any difficulty in implementing any of the directions, as issued by this Court above, for necessary modification or further direction.

(I) The Respondents may notify the Selection Committee in accordance with law for the purpose, by nominating new members as per its constitution, if necessary, to start the process of selection after advertisement.

19. However, before parting with the judgment, this Court must express that it feels it in-equitable to dislodge the private Respondents overnight from the posts of principals on which they are functioning now for over a year and a half. This Court also feels that this will also not be in the interest of the respective Institutions and their day to day functioning. Therefore, this Court directs that, notwithstanding quashing of the selection process and the panel, by virtue of their appointment, they shall continue to function as acting principals of the respective colleges, with liberty to them to apply afresh for consideration of their cases in response to the advertisement published in terms of the orders as above. They shall continue as acting principal till the fresh selection process comes to an end with submission of a fresh panel by the Selection Committee to the University and appointment letters are issued by the University against the available vacancies of the principals of the respective colleges. But as Acting Principal they shall discharge their duties only in respect of running of the institution and shall be responsible for its administrative control only. It is made clear that, in capacity of an Acting Principal, if they issue any orders creating any financial implications for the college and/or the University, it shall come into operation and shall be implemented only after the same is duly endorsed and certified by the Registrar of the University.

20. In case, at the end of fresh selection process the name of the any of the Respondents is again recommended by the Selection Committee and he is found eligible for appointment, the University shall issue orders confirming his/her services from the initial date of first appointment itself. On the other hand, the Respondents, who fail to get appointed again in the process, shall stand removed automatically upon issue of the appointment letter in favor of the incumbent, who is recommended by the Selection Committee and found eligible for appointment by the University in the college concerned. Selection Committee, is not issued within the time, as aforesaid, all the Respondents shall stand stripped

of their status of Acting Principals and shall stand dislodged from the concerned college.

21. The entire process in this respect, as directed by this Court above, must be completed within six months from today. In case, the process is not completed and final orders for appointment of candidates, as per the fresh panel submitted by the As a result, the first writ application is allowed and the other two writ applications and all interlocutory applications are disposed of in the light of the aforesaid observations and directions.

22. Let a copy of this judgment be served on learned Counsel for the University for immediate communication to the Respondent Vice-Chancellor.