

**(1993) 07 PAT CK 0052**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 2512 of 1993**

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|-------------------------------|----|------------|
| Dr. Uma Kumari and others     | Vs | APPELLANT  |
| The State of Bihar and others |    | RESPONDENT |

**Date of Decision :** 19-07-1993

**Acts Referred:**

Constitution of India, 1950 — Article 320

**Citation :** (1993) 2 PLJR 690

**Hon'ble Judges :** S.B. Sinha, J;A.N. Chaturvedi, J

**Bench :** Division Bench

**Advocate :** Angad Ojha in CWJC 2512/93, M/s Shrawan Kumar, Rajiv Nr. Singh and Nand Gopal Mishra in CWJC 2367/93, M/s Rajendra Pd. Singh, Anil Kr. Upadhaya and S. Kaushik in CWJC 2646/93 and M/s S.K. Das, Purushottam Kr. Das and Jitendra Kr. in CWJC 2927/93, for the Appellant; Swaraj Ghosh for the Bihar Public Service Commission, for the Respondent

**Final Decision :** Allowed

## Judgement

S.B. Sinha, J.—In all these writ applications the petitioners have inter alia, questioned, the result of the Screening Test Examination held by the Bihar Public Service Commission, Patna (hereinafter referred to as "the Commission") on 10.1.93 and its subsequent actions for the purpose of appointment of Ayurvedic Medical Officer on various grounds. In CWJC No. 2512 and 2646 of 1993 petitioners have filed these writ applications on the ground of various irregularities allegedly committed by the Bihar Public Service Commission. In CWJC nos. 2367 and 2927 of 1993, petitioners thereof, however, raised an additional point that they are eligible to appear at the interview on completion of period of six months of internship but all of a sudden interviews were held on 15.3.93 and subsequent dates without giving the petitioners an opportunity to complete their term of internship.

2. In these writ applications two intervention applications have been filed on behalf of the successful candidates.

3. Mr. Angad Ojha, Learned Counsel appearing on behalf of the petitioners in CWJC no. 2512/93, inter alia, has raised the following contentions :

(i) Because of rampant corruption prevailing at the Commission, there had been leakage of question papers.

(ii) The Commission got the answer books examined by senior assistants contrary to the prevailing practice of getting them examined by experts of different States.

(iii) Several controversial questions were set and in relation to some questions, there could be more than one answer.

(iv) There has been gross violation of the norms set out for selection as the Commission did not utilise the services of the experts nominated by the State except on two days at the interview.

(v) 50% marks have been allotted for interview, and thus the entire process of selection was vitiated in law.

4. All the petitioners and interveners along with many others applied for appointment to the post of Ayurvedic Medical Officer, wherefor an advertisement being Advertisement no. 24 of 1989 was published in the daily newspaper "Hindustan" on 15.9.89. No appointment to the said posts was made in the years 1989, 1990, 1991 and 1992. The screening test was held on 10.1.1993 in which the petitioners and interveners along with other candidates appeared. According to the petitioners they did extremely well but to their dismay they found that the questions were earlier leaked and the questions were supplied to the candidates who were able to pay the price therefor.

5. Our attention has been drawn to paragraphs 6, 7 and 8 of the supplementary affidavit which reads as follows :

That all the 8 experts who were requested to reach the office of the Commission on 15.3.93 in pursuance of the letter no. 191 dated 13.3.93 but they were all asked to go away and cryptic letter was given to them by the Budget Accounts Officer stating that arrangements of the other experts had already been made by the Commission.

That the experts approached the Minister, Health Services and filed an application on 15.3.93 duly signed by them.

That the Minister, Health Services, Bihar, Patna passed an order on 15.3.93 directing the Commissioner to look into the question whether the experts are to be appointed by the Health Department or by the Commission.

6. Our attention was further drawn to the fact that on the 1st day of interview experts were not allowed to assist the Commission and only on the second day the services of two experts were taken. It has further been submitted that although the questions were all objective in nature, the answers should have

been evaluated through the process of the computer but the same was not done.

7. Mr. Rajendra Prasad Singh, Learned Counsel appearing for the petitioners in CWJC no. 2646/93 submitted that no coding or decoding of the answer books have been done. Learned Counsel submitted that the questions and answers were tagged and thus it was necessary either to get the evaluation done through the process of the computer or through outside experts. Learned Counsel has drawn our attention to the Division Bench Judgment of this Court in Sanjay Kumar Singh & others, v. Bihar Public Service Commission & Ors. passed in CWJC no. 1192/92 disposed of on 11.6.92 (reported in 1993 (1) Bihar Law Judgments page 328) and submitted that although in that case the Division Bench did not direct annulment of the result of 37th Combined Competitive Examination but guidelines were laid down therein but the same were not followed in this case. It was further submitted that selection of wrong key answers has resulted in great prejudice to the examinees and thus the entire examination must be held to be vitiated in law. Learned Counsel further contended that the selection of the candidates only on the basis of marks obtained by them in viva voce test must be held to be illegal as it is now well settled that for that purpose not more than 15 marks should be allotted. Reliance in this connection has been placed on a recent decision of this Court in Dr. Sadre Alam and Another Vs. The State of Bihar and Others, .

8. Mr. Sharwan Kumar, Learned Counsel appearing in CWJC no. 2367 of 1993 and Mr. Das appearing in CWJC no. 2927/93 inter alia, contended that although the petitioners could have completed their internship by 31st March, 1993, the Commission has arbitrarily fixed 19th March, 1993 as the date for interview. According to the Learned Counsel as by reason of the advertisement those persons who had been doing their internship were permitted to apply, a legitimate expectation arose in their mind that interview will be held after completion of their internship.

Learned Counsel in support of this contention relied upon State of Kerala and others v. K.G. Madhavan Pillai AIR 1989 Sup 49, Navjyoti Co-operative Housing Society v. Union of India AIR 1993 Sup 155 and Government of Andhra Pradesh and others Vs. HEH the Nizam VIII of Hyderabad, .

9. Learned Counsel appearing on behalf of the interveners on the other hand submitted that in these writ applications vague allegations have been made. It was submitted that if the question papers have been leaked or the question papers have been sold, the petitioners should have raised this question on the very first day. It was submitted that no grievance having been raised by the petitioners for a long time this Court should not declare the results invalid on the basis of wild allegations. It was further submitted that the stipulation contained in the advertisement to the effect that the candidate must complete six months internship on the date of interview being clear and unambiguous, the question of invoking the doctrine of legitimate expectation does not arise.

10. It was submitted that examinations were held at seven centres and in all the centres examinations were held peacefully wherein all candidates took part. It has been contended that, thus, the petitioners should not be permitted to raise any grievance after a long time.

11. Mr. Swaraj Ghosh, Learned Counsel appearing on behalf of the Commission also submitted that the answer books were coded and decoded and thus, there was no question of identification of any particular answer book. It was submitted that after the answer books were evaluated, the same were fed into computer. Learned Counsel further drew our attention to the supplementary counter affidavit filed on behalf of the Commission wherein it has been contended that as the question papers and the answer books are on plain papers and not on optical marked reserve paper, they cannot be evaluated through the process of the computer as no such facility is available in the State. It has further been stated that the Officer on Special Duty-cum-Deputy Secretary with the help of the confidential section under the direct supervision of the members of the Commission got the marks calculated according to the key provided by the question setter which was checked by the Officer on Special Duty and random checking was also done by the members of the Commission. It has further been brought to our notice that the result/calculation of marks was finally checked by the Experts Screening Committee of the confidential section of the Commission which had been doing such jobs for decades and have developed sufficient expertise therein. It was submitted that as the questions were set on objective type and the key answers were supplied, the officers of the Commission could themselves examine the answer books which was done under the supervision of the Commission. It was further submitted that when advertisement was published, the same was done on the presumption that the candidates would be fulfilling the conditions therefor and all the persons have been allowed to sit at the screening test so as to enable them to produce the relevant testimonials and certificates which they might not have been able to produce. It has been submitted that some of the candidates even did not start the internship when the advertisement was published or has just started the same and thus such candidates were not eligible to appear at the interview. It was submitted that the Commission must be given a free hand to fix a cut off date as otherwise if the date is allowed to be extended on the ground that in the meantime some persons became eligible, then for the self same reason another date for interview may have to be fixed by extending the time as by that time some more candidates may also complete their terms of internship. With regard to the key answers, it was submitted that in this case no negative marking was done and even those persons who not only have tick-marked but also had pointed out correct answer as printed in the answer book had also been given full marks. Learned Counsel submitted that even if some key answers were wrong in the sense that more than one answer would be correct, the same would not invalidate the result published by the Commission.

Learned Counsel in this connection has relied upon a decision of Allahabad High

Court in Dr. Shantanu Singh v. State of U.P. and others reported in AIR 1993 Alla 85.

12. Mr. Ghosh further drew our attention to the reply of respondent no. 2 to the supplementary affidavit dt. 4.5.93 sworn by Sri Madan Mohan Pd. Srivastava, Budget cum-Accounts Officer of the Commission to the effect that it was not aware of the decision of this Court in the aforesaid CWJC 7475/92 and the interview had taken place before the said judgment was brought to its notice. It was further brought to our notice that the Supreme Court in SLP 7415/92 has issued notice on the application for special leave as also the application for stay which is contained in Annexure R/2A to the said reply. It has further been submitted that in the absence of any rule framed by the State Govt., the Commission evolved its own rule on the basis of the present prevailing system of even marking for academic achievements as for viva voce test. Mr. Ghosh, when questioned, on that point, admitted that 100% marks are allotted for viva voce test and 100% marks are allotted for academic achievements.

13. From the facts as noticed above, it is evident that the Commission has admitted that the questions were evaluated by the clerical staff. The petitioners of CWJC 2512/93 have annexed a copy of question and correct answers which is contained in Annexure 2 to the writ petition from a perusal whereof it would appear that more than one answers could be correct. The petitioners have also annexed a list of controvertial questions with their comments as contained in Annexures 5 and 9 thereto. The said Annexure 9 reads thus :

Annexure -9 : That besides list of controversial questions appended with the petition (Annexure 2) the following further six questions are controversial in nature where more than one alternative answers given are correct which vitiated the very purpose of such examination.

It is submitted that in such cases where multiple choice are given, only one has to be correct to the exclusion of the rest all otherwise the test becomes redundant and useless.

That in question no. 1 in the circulated question paper on same (annexure 2) both alternative A and B are correct. According to Charak Sutra Stlian 11 sloka, 20 "B" is correct and according to Charak Sanhita Saristhan Chapter 1 "A" is also correct.

Question no. 3. Out of 3 alternatives, A and B both are correct. A is correct according to Charak Sanhita Sutrasthan Chapter 20 slok 22. Susruta Sanhita Sutrasthan chapter 10 slok 3 also supprt it. B is correct according to Banbhattacha (one of the 3 major exponents of Ayurved, popularly known as Brihat Trayee) in Astang Hridaya Nidan Sthan Chapter 1.

Question 5 : This question is not covered in the syllabus of BAMS and hence this question should not have been asked.

Question no. 9: None of the three alternatives A, B and C are correct. Madhava

Nidan chapter IV slok 17 (4) is relevant. "Ghati Yantra Rog" is not synaym of any of the 3 alternatives. In fact, it is condition which comes almost at the last stage of the disease grahani.

Question no. 21. In this question all the first 3 alternatives are correct. (Charak Sanhita Chikitsa Sthan chapter 9 slok 49-to 56). Vaisajya Ratnwali chapter 20 slok 54 states that the same medicine are prescribed in A and B chapter 24 slok 4 of this book is also relevant.

Question 34: The first two alternatives A and B are correct. A is correct according to Astaang Sangrah (by Banbhatt) Sutra Sthan 9 slok 15. B is correct according to Raj Nighantu (which is materia medica of Ayurved) and Drabya Vigyan by P.V. Sharma page 132. Also Charak Sanhita Sutra Sthan 26 slok 99.

According to Bhav Prakash Nighantu Draksha viz Munakka are of two types one is sweet and other is sour. (slok 113 page 585 Chaukhamba Prakashan).

It is humbly submitted that all these questions have been submitted from memory and the Bihar Public Service Commission may kindly be directed to make available one copy of the question paper so that other questions also may be verified.

That out of 50 questions about 10 questions viz 24% are such which are confusing and controversial and do not adhere to the norms of such multiple choice type question. On this score alone this test examination deserves to be scrapped.

It may be that in order to cover up these wrong questions the answer sheets were examined by the clerks of the commission in office who had no knowledge of Auyrved.

Had the answer papers been sent to eminent professors of Ayurved out side of the State of Bihar as per the guidelines given by this Hon"ble Court in CWJC no. 1192/92 such mistakes would have been easily detected and the examiners would have naturally requested the Commission to scrap the Examination.

14. So far as the contention of rampant corruption in holding the examination is concerned, even the petitioners could obtain a photostat copy of the question papers with correct answers; one of which is contained in Annexure 5 to the writ application and other is contained in Annexure 12 to the reply to the counter affidavit filed by the petitioners in CWJC no. 2512/93.

15. It is accepted that the experts were at first not appointed by the State. The Commission took assistance of experts of its choice on 15th and 16th March, 1993 but on 17th March, 1993 the Health Commissioner wrote a letter to the Commissioner to inquire as to whether the Govt. has appointed any expert and then on 19th March, 1993, two experts were summoned for holding the interview. The Bihar Public Service Commission has filed a reply to the supplementary affidavit filed on behalf of the petitioners wherein inter alia, it has

been stated as follows :

That in reply to the statements made in paras 5, 6, 7 and 8 of the supplementary affidavit it is to be stated that the Commission appoints expert for interview either by itself or requests the Govt. to assign experts from the concerned department. In this case the Commission had on its own appointed some experts as also 8 experts were assigned by the Government at the Commission's request. On the first day of interview i.e. on the 15th March, 1993 the services of all the experts were not required and accordingly, they were so informed.

They were also informed, that on the subsequent dates if their services are required, they shall be accordingly, informed and requested to assist at the interview.

That, thereafter, i.e. on 17th, 18th and 19th March, 1993, some of the experts assigned by the Govt. were requested to assist the Commission at the interview and accordingly, two experts assigned by the Govt. namely, Dr. D.D. Mishra and Dr. Bali Ram took part in the interview on those days.

16. The statements made by the Commission are not at all satisfactory. Besides being vague, it does not state as to why and under what circumstance, the services of experts were not requisitioned for the viva voce test held on 15.3.93 and 16.3.93.

17. The Commission, has also not controverted the allegations made in annexures 5 and 9 filed on behalf of the petitioners. In reply to the counter affidavit filed on behalf of the Commission, the petitioners have stated thus :

That more than ten questions were such that more than one alternative answers are correct as per the authentic of texts which has already been narrated in the application and the supplementary affidavit as annexures 5 and 9 respectively.

That it is humbly submitted that when more than one alternative of a question are correct answers, the paper setter must have marked only one alternative as the correct one and when the examinee puts tick mark against the other correct alternative, he will be awarded Zero (0). Thus he will naturally be put to disadvantage. Such questions are more than ten out of fifty questions which are controversial in nature. Therefore, the statements made in the counter affidavit in para 4 is not based on facts, and it is controverted.

18. In the case of Kanpur University and other v. Samir Gupta and others (AIR 1983 Sup 1230), the Supreme Court, in a similar situation, after considering the contentions raised by the students as also by the University held as follows :

The finding of the High Court raised question of great importance to the student community. Normally one would be inclined to the view, especially if one has been a paper setter and an examiner that the key answer furnished by the paper setter and accepted by the university as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the

University has not published the key answer along with the result of the test no controversy would have arisen in the case. But that is not a correct way of looking at these matters which involve the future of hundred of students who are aspirants for admission to professional courses. If the key answers were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answers has unravelled an unhappy state of affairs to which the university and the State Govt. must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not computer but the human system.

19. The Supreme Court, thereafter, proceeded to hold :

the students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text books. Those text books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answers but if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer that is to say, with an answer which is demonstrated to be wrong.

The Supreme Court, thereafter observed thus :

If the State Govt. wants to avoid a recurrence of such lapses, it should compile under its own auspices a text book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test. Education has more than its fair share of politics which is the bane of our Universities. Numerous problems are bound to arise in the compilation of such a text book, for various applicants will come forward for doing the job and forces and counter forces will wage a battle on the question as to who should be Commissioned to do the work. If the State can succeed in overcoming those difficulties the argument will not open to the students that the answer contained in that text book which is prescribed for the test is not the correct answers.

20. Shantanu Singh v. State of U.P. and others reported in AIR 1993 Alla 85 upon which defiance was placed by Mr. Ghosh has no application in the present case. In that case a counter affidavit was filed to the effect that after the examinations were over in order to ensure that no mistake or discrepancy occurred in the question-responses., particularly the most appropriate response that formed the key answer, senior teachers in Medical Science were requested to go through the question books and the key answers. They were directed to examine the discrepancies, if any, with the key answers. A committee was constituted with the Pro-Vice Chancellor and necessary changes were made in the key answer sheet which formed the basis of computer based evaluation of the answer sheets

of the candidates and it was ensured that no candidate was put to any disadvantage in award of marks because of any discrepancy, ambiguity, or duplicity of the response causing disadvantage on this account.

In that case it was found that only some questions were ambiguous and contained more than one correct answers and as such full 10 marks were awarded in those questions and no negative marking was done in respect thereof. It is in that situation the learned Single Judge of the Allahabad High Court held that the examinees were not prejudiced by the wrong key answers.

Such is not the position here. It is not submitted that either any attempt was made by the Commission to find out the correct key answer and to examine the discrepancy nor 10 marks had been given to all the questions which could have more than one answers. Neither any committee of experts was constituted nor the Commission tried to find out as to whether there existed any discrepancy in the key answers. In this case, even the evaluation is not computer based.

21. In this case the petitioners have contended that out of 15 questions 12 are such that can be more than one correct answers and Annexure 5 to the writ application depicts the confusing and wrong questions. The petitioners, therefore, cannot suffer for the follies on the part of the Commission. It is further contended that the Commission has also deviated from its past practice of sending the question papers outside the State for their evaluation. It is true that the questions which were put in the examination were objective in nature but it is really surprising as to how the answer books were permitted to be evaluated by the employees of the Commission.

22. The Commission has been established in terms of Article 320 of the Constitution of India. It has thus, a constitutional duty to perform. The Commission, as a constitutional body, is not only expected to ensure that a free and fair examination takes place but has also a duty to see that its fairness is not subjected to any question. In *Ashok Kumar Yadav and ors v. State of Haryana and others* reported in AIR 1987 Sup 454, it was held :

The basic principle underlying this rule is that justice must not only be done must also appear to be done. It is also important to note that this rule is not confined to cases where judicial power *stricto sensu* is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of the parties. Justice is not the functions of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standard applied to authorities exercising judicial powers are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their function in a fair and just manner.

23. A Division Bench of this Court in *Sanjay Kumar Singh's case* 1993 (1) B.L.J.

328) (supra) took notice of the fact that the Commission has not yet framed any rule nor has framed any guideline and opined that it should evolve such a methodology so as to ensure a free and fair examination.

24. It appears that the direction of this Court had fallen in deaf ears. The petitioners have produced before this Court a xeroxed copy of the answer book together with the question papers where the questions and answers appear. The Commission has not denied the authenticity of the said answer books. It, therefore, lends credence to the allegation made by the petitioners to the effect that the question papers were available. It is true, as has been submitted by Mr. Ghosh on behalf of the Commission as also by Mr. Singh appearing on behalf of the interveners that the petitioners did not question about the so called irregularities before the publication of the result. But in my opinion the rule of estoppel cannot be applied in this case as the petitioners have brought on records many materials to show that irregularities and illegalities have been committed by a constitutional body. Further, the Commission itself has admitted that even in the viva voce test, assistance of the experts appointed by the State of Bihar on 15th and 16th of March, 1993 were not taken but only on 18th March, 1993, services of two experts were requisitioned. It is highly disturbing to notice that the Commission on its own showing had been taking such decisions which do not answer the test of reasonableness or fairness.

25. In this case it has also been admitted that 100 marks had been allotted for academic achievements. Mr. Ghosh conceded that the marks obtained in the written examination held for carrying out the screening of the candidates had not been taken into consideration for the purpose of selection of candidates. It is, therefore, evident that 50% had been allotted for interview and 50% of the total marks had been allotted for academic achievements only. It is now well known by reason of various decisions of the Supreme Court of India that allotment of 50% marks for viva voce test cannot be held to be reasonable.

26. A Division Bench of this Court in *Dr. Sadre Alam & anr. v. State of Bihar and others* (supra) disposed of on 12.3.93 [1993 (1) P.L.J.R. 729] upon consideration of a number of Supreme Court decisions reported in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , held :

As observed in *Lila Dhar* (supra) and *Ashoka Kumar Yadav* (supra) there cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination which must vary from service to service according to its requirements the minimum qualification prescribed and so on. The requirement of the service in the case of professionals, such as doctor, cannot be the same as in the case of officers of executive services. The personality factor has certainly a more important role to play in the administrative service than in the professional service. The merit of the doctor has to be primarily judged on the basis of his performance in the qualifying examination whether at the Board/University/Institute level or the competitive examination held for the purpose of recruitment. His personality which is to be

evaluated in the interview has comparatively a small role to play in the discharge of his duty as a professional doctor compared to his counterparts in the executive service. Seen in this light there can be hardly any justification to equate the performance of a candidate in the different examinations with his performance in the viva voce test and assign them equal marks. It has to be kept in mind that the underlying idea to restrict the marks and fix maximum percentage for the viva voce test is to eliminate the vagaries of arbitrariness and reduce the chances of subjective and, indeed in some cases, extraneous consideration to the minimum. If in the matter of selection of officers in the administrative service the viva voce test is not to be allocated more than a certain percentage of the total marks where personality of the candidates counts more, it is difficult to countenance how the viva voce test for appointment as Unani Medical Officers can be assigned 50% of the total marks. It is true that the maximum percentage (of the total marks) has not been worked out on the basis of the written examination forming part of the recruitment process but, in my opinion, the mere fact that written tests are not held for appointment of Unani Medical Officers cannot be a ground to justify allocation of as high as 50% marks for the viva voce, vis-a-vis the marks to be obtained by the candidate on the basis of his academic qualifications.

27. In terms of the findings aforementioned, the Division Bench commanded upon the respondents not to issue any notification of appointment pursuant to the recommendations made by the Commission. The Division Bench held that equity does not stand in the way of passing any appropriate consequential orders. It further observed that if any selection is made, and consequently any appointment is made on the basis of an illegal recruitment process and pursuant to a policy decision regarding allocation of marks for the viva voce test which cannot be said to be the decision of the Commission, the same has to be held to be illegal and a nullity.

28. Apart from the aforementioned Division Bench decisions, the Supreme Court recently in *Jai Shankar Prasad, Adv. Vs. State of Bihar and Others*, noticed the sordid state of affairs prevailing in the Commission.

29. In C.W.J.C. No. 2367 of 1993 and 2927 of 1993 the main thrust of contention raised on behalf of the petitioners was that they could not have been denied appearance at the viva voce test only on the ground that they had not completed the internship period. As noticed hereinbefore, Mr. Shrawan Kumar submitted that the candidates had legitimate expectation that the interview would be held upon completion of their internship.

In this case, the doctrine of legitimate or reasonable expectation cannot have any application, whatsoever. The doctrine of "legitimate expectation", short of legal rights should not be allowed to form the basis of a course of action to question an administrative action.

See-R.C. Poudyal v. Union of India & ors, reported in *Judgments Today* 1993 (2)

S.C. 1.

As the petitioners had no right to appear at the interview as they did not fulfil the criteria therefor, the question of invoking the principles of natural justice did not arise.

See- Union of India and another Vs. W.N. Chadha, .

30. Mr. Ghosh is correct in his submission that the petitioners cannot be said to have any legal right to appear at the interview unless and until they fulfil all the conditions therefor. He rightly submitted that even some of the candidates did not even start internship when the advertisement was published and some of them had just started and, therefore, they could not have their any legitimate expectation that the interview would take place only upon allowing them to complete their internship.

It is also relevant to mention here that the advertisement was published in the year 1989 whereas the screening test was held in January, 1993 and the interview had been held from 15th March, 1993 to 19th March, 1993. It is, thus, evident that the candidates even could not complete internship during the intervening period of three years 8 months.

31. However, in view of the aforesaid findings arrived by us, the examination must be directed to be cancelled and the Commission is hereby directed to take a fresh examination by evolving such procedure which, according to it, may seem fit and proper but subject to the condition that the marks to be allotted for viva voce test should not exceed 15% of the total marks.

32. The State Government is hereby commanded not to appoint any person on the basis of the recommendations of the Commission, if any, made on the basis of examination in question held by it. The Commission is hereby also directed to hold a fresh examination upon taking a policy decision with regard thereto and in view of the fact that now various other candidates have also become eligible, a fresh advertisement should be issued. The examinees who have, however, appeared pursuant to the advertisement in question, may not apply again and their applications should be treated to be applications for appointment made in pursuance of the new advertisement. We hope and trust that the Commission would finalise the process of recommendations within six months. For the reasons aforesaid, these writ applications are allowed. However, in the facts and circumstances of the case, there will be no order as to costs.

A.N. Chaturvedi, J.

I agree.