
(2019) 10 GAU CK 0007

In the Gauhati High Court

Case No : Writ Petition (C) No. 3157, 3158 Of 2017, 6719 Of 2018

Hemanga Deka And Ors

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Assam Energy Development Agency Service Regulations, 2015 — Regulation 6(c),
6(e), 13(2), 16(3)
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 10 GAU CK 0007

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : A. C. Borbora, B.P. Borah, P. J. Saikia, P. D. Nair, G. Alam, H. Rahman

Final Decision : Allowed

Judgement

1. Heard Mr. A.C. Borbora, learned senior counsel, assisted by Mr. B. P. Borah, learned counsel for the petitioners in WP(C) No. 3157 of 2017,

WP(C) No.3158 of 2017 and WP(C) No. 6719 of 2018. Also heard Mr. P. J. Saikia, learned counsel for respondent Nos. 1 to 4 in WP(C) No. 3157

of 2017, WP(C) No.3158 of 2017 and WP(C) No. 6719 of 2018; Mr. P.D. Nair, learned counsel for respondent No. 5 in 3157 of 2017 and WP(C)

No. 6719 of 2018; Mr. D. Das, learned senior counsel assisted by Mr. K. Mohammad, learned counsel for respondent Nos. 6 and 7 in 3158 of 2017.

These three petitions, WP(C) No. 3157 of 2017, WP(C) No. 3158 of 2017 and WP(C) No. 6719 of 2018 have been tagged together considering the

similarities of the issues involved, though these writ petitions relate to different posts under the same organization.

2. In W.P.(C) No. 3157/2017, the petitioner, who was already working as a Technical Officer on contractual basis in the Assam Energy Development

Agency (AEDA) and a candidate for appointment to the post of Scientific Officer, which was advertised by the Assam Energy Development Agency

on 26.10.2016, challenged the appointment of the respondent No. 5 to the said post of Scientific Officer, on various, inter alia, grounds, that no written

test was held and also the respondent No. 6 did not have the requisite qualification and the merit list was not published. The scope of challenge has

been further enlarged in W.P.(C) No. 6719/2018 filed by the same petitioner, after the petitioner came to know of the details of the marks obtained by

the candidates and merit list, on the basis of an affidavit filed by the said respondent No.5 in a miscellaneous application, I.A. No. 3512 of 2017.

3. An unreserved post of Scientific Officer was advertised on 26.10.2016.

The education qualification and experience prescribed for the said post were as follows:

â??(i) Bachelor of Engineering/ Technology in Electrical/ Electronics/ Mechanical with uniform and excellent academic career.

(ii) At least 5 (five) years work experience in the field of Renewable Energy in any Govt./Semi Govt./Public undertaking/ Organisations with

special reference to Solar Photovoltaic Systems application and design.

(iii) Candidates with aptitude in computer database and the project handling and the management will be preferred.â??

4. The other terms and conditions laid down in the said advertisement include that the short listed candidates will only be called for written test and the

date of written test would be intimated individually and also through the official website, w.w.w.assamrenewable.org.

It was further mentioned that the venue and time for the written test, practical test and oral interview will be notified by the authority in due course.

It was also mentioned that the list of the selected candidates will be published in the AEDA's website.

5. According to the petitioner the recruitment process was, however, conducted by not adhering to the aforesaid terms mentioned in advertisement

and the selection committee considered candidates who did not possess the eligibility qualification and experience mentioned in the advertisement.

6. It has been also stated that contrary to the advertisement stipulating that written test will be held, no such written test was held but only oral test

was held.

It had been stated that had the written test been held, the petitioner could have performed well in the written test, which could have materially affected the result of the recruitment process. It was the expectation of the candidates that the overall assessment for suitability of candidates would be made on the basis of written test and interview. However, in the present case, the selection was made purely on the basis of interview, though it was not so notified in the advertisement. Thus, according to the petitioner, the recruitment process, undertaken by not adhering to the specific stipulation in the advertisement that written test would be held, has been vitiated.

7. The petitioner has also claimed that the respondent No. 5 does not possess the minimum qualification/experience mentioned in advertisement, so are the other private respondents, who have been shown to be more meritorious than the petitioner in the assessment chart.

On the other hand, it has been claimed that the petitioner is the only candidate who possesses the minimum 5 years' experience in the field of renewable energy.

According to the petitioner, other candidates have attached experience certificates which pertain to a different discipline, e.g., Mechanical Engineering which is not related to the field of renewable energy.

8. It has been also submitted that even the interview which was held on the basis of which the selection committee made the recommendation, was done contrary to the norms laid down by the authority.

In this regard, learned senior counsel has referred to the minutes of the meeting of the authority held on 05.01.2017 for screening and short listing of applications for the posts of Scientific Officer, Junior Scientific Officer and Senior Accountant in the chamber of the Director, AEDA, attended by the Additional Director In-charge and the Deputy Administration Officer.

9. In the aforesaid minute, it has been recorded that there were 24 applications for the post of Scientific Officer and only eight applications were found to be acceptable. The Additional Director in charge, then opined that as the engineering students are already having sufficient knowledge of computer as they are required to use computer at every level, submission of a computer certificate may not be necessary and hence all candidates who were disqualified due to non submission of computer certificates should be included, which suggestion was agreed upon by the Director. Based upon such

decision, 10 candidates were found to be eligible for the post of Scientific Officer. It was also decided in the said meeting that considering the small number of candidates, no written test be held, but only viva voce, for selecting the candidate.

Thereafter, the scrutiny committee proceeded to lay down the method of giving marks to the candidates.

For the post of Scientific Officer, 20 (twenty) marks were allotted for educational qualifications and 5 (five) marks for experience and remaining 75 marks for interview.

As regards 5 (five) marks for experience, these were to be distributed as follows:

(i) 5 years of experience but below 6 years : 1 mark

(ii) Above 6 years but below 7 years : 2 marks

(iii) Above 7 years but below 8 years : 3 marks

(iv) Above 8 years : 5 marks

10. It has been submitted by the learned senior counsel for the petitioner that even the aforesaid norms laid down by the authority in the meeting held on 05.01.2017 were not adhered to, giving scope for favouritism.

11. It has been submitted by learned senior counsel for the petitioner that though the authority had laid down separate marks for the education

qualifications (20 marks) and the work experience (5 marks), the Selection Committee at the time of interviewing the candidates clubbed both these

criteria together under a common head as academic and work experience and gave the marks without indicating as to how much each of the

candidates was awarded in respect of academic qualification and for work experience separately, as these were two separate criteria to be

considered.

Accordingly, it has been submitted that clubbing these two criteria and awarding consolidated marks is not permissible, being contrary to the aforesaid

norms laid down by the authority themselves.

12. It has been submitted by the learned senior counsel that even though there were supposed to be four members in the Selection Committee, one

was absent and only 3 (three) members proceeded to interview the candidates, which according to the learned senior counsel is not permissible for, if

four members were to constitute the Selection Committee, no reason has been

assigned why the fourth member was absent.

13. Learned senior counsel for the petitioner further submits that none of the candidates other than the petitioner fulfilled the essential condition as regards possession of five years of experience in the field of renewable energy. It has been submitted that if the said experience/qualification is to be discounted, that will leave merely the requirement of bachelor degree in the subject concerned, in which event all those who do not have the experience could have also applied who, however, were prevented from applying for the said post of Scientific Officer because of the stipulation in the advertisement of having minimum 5 years of work experience. As such, appointment of any person without fulfilling the essential qualification would be illegal.

In this regard the learned senior counsel for the petitioner has relied on the decision of the Honâ??ble Supreme Court in the case of Raman Dayaram

Shetty vs. International Airport Authority India & Ors. reported in (1979) 3 SCC 489 ,in which the Honâ??ble Supreme Court held the Para-34 as

follows:

â??It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of

administrative law, the 1st respondent was not entitled to act arbitrarily in accepting the tender of the 4th respondents, but was bound to

conform to the standard or norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a

registered IInd Class hotel or restaurant and having at least 5 yearsâ?? experience as such should be eligible to tender. It was not the

contention of the appellant that this standard or norm prescribed by the 1st respondent was discriminatory having no just or reasonable

relation to the object of inviting tenders namely, to award the contract to a sufficiently experienced person who would be able to run

efficiently a IInd class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a

standard or norm for running a IInd Class restaurant should be awarded was laid down, the 1st respondent was not entitled to depart from

it and to award the contract to the 4th respondents who did not satisfy the condition of eligibility prescribed by the standard or norm. If

there was no acceptable tender from a person who satisfied the condition of eligibility, the 1st respondent could have rejected the tenders

and invited fresh tenders on the basis of a less stringent standard or norm, but it could not depart from the standard or norm prescribed by

it and arbitrarily accept the tender of the 4th respondents. When the 1st respondent entertained the tender of the 4th respondents even

though they did not have 5 yearsâ?? experience of running a IInd Class restaurant or hotel, it denied equality of opportunity to others

similarly situate in the matter of tendering for the contract. There might have been many other persons, in fact the appellant himself claimed

to be one such person, who did not have 5 yearsâ?? experience of running a IInd Class restaurant, but who were otherwise competent to

run such a restaurant and they might also have competed with the 4th respondents for obtaining the contract, but they were precluded from

doing so by the condition of eligibility requiring five yearsâ?? experience. The action of the 1st respondent in accepting the tender of the

4th respondents, even though they did not satisfy the prescribed condition of eligibility, was clearly discriminatory, since it excluded other

person similarly situate from tendering for the contract and it was plainly arbitrary and without reason. The acceptance of the tender of the

4th respondents was, in the circumstances invalid as being violative of the equality clause of the Constitution as also of the rule of

administrative law inhibiting arbitrary action.â??

14. W.P.(C) No. 3158 of 2017, the two petitioners have challenged the appointments of the respondent Nos. 6 and 7 to the two posts of Junior

Scientific Officers, one unreserved and one reserved for OBC/MOBC.

15. Their main grievances are that though in consonance with the advertisement, the marking pattern was devised by the scrutiny committee by

allocating marks separately for past academic performances in various examinations (20 marks) and for work experience (5 marks), the selection

committee clubbed these together. According to the petitioners the aforesaid exercise, therefore, does not correctly reflect the marks obtained by the

candidates under these two separate parameters, apart from the fact that it is contrary to the own guidelines laid down by the scrutiny committee for

the purpose of relative assessment of the candidates, and hence, is illegal.

16. Other ground raised is that the marks obtained in the written test by the candidates were revealed to the members of the selection committee at

the time of interview, thus prejudicing the minds of the members of the committee, and also giving scope for favouritism and manipulation.

17. Other ground also has been raised alleging that allotment of 75 marks out of 200 marks were for the viva voce, is excessive.

It has been contended that allotting excessive marks in viva-voce is contrary to the law laid down by the Honâ??ble Supreme Court.

18. Other issues have been also raised contending that the final select list was never published in the official website.

It has been also submitted that the relevant service rules which has force of law, i.e., Regulation 6 (e) read with Regulation 16(3) of the Assam

Energy Development Agency Service Regulations, 2015, provides that all appointments shall be approved by the governing body which has not been

done in the present case.

Accordingly, it has been submitted that since the authorities have not followed the statutory rules, the appointments are illegal.

In this regard the learned senior counsel for the petitioners has relied on the decision of the Honâ??ble Supreme Court in the State of Uttar Pradesh

vs. Singhara Singh and Ors reported in AIR 1964 SC 358.

19. Learned senior counsel for the petitioners also relied on the decision of the Honâ??ble Supreme Court in aforesaid decision to contend that if the

Rules provide to follow certain procedure, the same has to be followed in the manner it has been prescribed. As such, non-adherence to the

prescribed procedure would be illegal.

20. In response, Mr. P.D. Nair, learned counsel for the respondent no.5 in W.P.(C) No. 3157 of 2017 and 6719 of 2018 has stated that as regards the

contention of the petitioner that no written test was held, the same was permissible in view of the service rules. He contends that under Regulation

6(c) of the Assam Energy Development Agency Service Regulations, 2015, it has been provided that the selection committee may hold written test or

interview or both thus giving a discretion to the selection committee to not to hold written test also, and in the present case, it has been submitted that

the authorities of the AEDA in its meeting held on 05.01.2017 had resolved that considering the few number of eligible candidates who had applied for

the post of Scientific Officer, the authorities decided to hold only viva-voce test and not to hold the written test.

It has been submitted that the decision not to hold written test was pursuant to a decision of the authorities as also enabled by the service rules as

mentioned above, and the aforesaid decision of the authority taken on 05.01.2017 has not been challenged by the petitioner.

21. As regards the contention of the petitioner that the select list was not published in the website, it has been submitted that the result of the selection

list was known to the petitioner very well and on the basis of the said result, the petitioner had submitted a representation on 24.05.2017 which he

could not have filed if he had not known the result of the selection process. In any event, non-publication of the result could not have prejudiced the

right of the petitioner. Hence, the petitioner cannot challenge the recruitment process on that ground.

22. As regards the allegation that one of the selection committee members, namely, Dr. Sadhan Mahapatra was biased in favour of the respondent

no.5 on the ground that he was the research guide of the respondent no.5 in Tezpur University, it has been clarified by the respondent no.5 that the

fact is incorrect as he did his research under the guidance of one Dr. Tapan Kumar Gogoi and not under Dr. Sadhar Mahapatra. As such, the

aforesaid ground is also without any basis.

23. Coming to the second writ petition i.e., WP(C) No.6719/2018, the learned counsel for the respondent no.5 submits that the aforesaid writ petition

was filed after a lapse of 1 year of the filing of the first petition in WP(C) No.3157/2017.

It has been submitted by the learned counsel for the respondent no.5 that the petitioner had obtained an interim order in WP(C) no.3157/2017 by

concealing the fact that the respondent no.5 had already been appointed and joined the service.

24. Learned counsel for the respondent no.5 also submits that the petitioner himself also does not fulfil the eligibility criteria though he claims that the

selected candidate does not fulfil. It has been contended that, in fact, the respondent no.5 is more experienced than the present petitioner. The

petitioner seeks to justify his eligibility on the strength of a certificate which was issued only on 03.02.2018 which was issued more than 1 year after

11.11.2016 which was the last date of submission of application and accordingly, it has been submitted that any document submitted after last date of

submitting the application could not have been taken into account. Further, the petitioner has no experience in the field of renewable energy. On the

other hand, the respondent no.5 had been teaching in the related subject and also had an experience to work in an Energy Institute (TERI), which is

one of the leading institutions in the related field of renewable energy.

25. Further, it has been submitted that it cannot be said that any prejudice has been caused to the petitioner by the aforesaid procedure adopted by the

selection committee and furthermore, since the petitioner had taken part in the recruitment process, he cannot take a U-turn now and challenge the

selection process now as he is estopped from doing so.

26. Further, apart from the petitioner no other candidates or any person had challenged the selection process on the ground of non-fulfilment of the

working experience or the relaxation thereof before the selection committee.

27. It has been submitted that the petitioner had not pleaded the grounds taken in course of the hearing.

28. As regards W.P.(C) No. 3158 of 2017 relating to appointment of Junior Scientific Officers, learned Senior counsel for the private respondents

submits that the contention of the petitioners that the selection process ought to have been made only on the basis of the written test merely because

they had obtained higher marks in the written test cannot be sustained for the reason that the advertisement itself provided for written test as well as

oral test and as such, selection committee by making the selection on the basis of the performance of written test and oral test cannot be objected.

29. Learned Senior Counsel also submits that the petitioners were called for interview and they participated in the interview after they were short-

listed on the basis of the result in the written test. As such, having failed in the selection process they cannot turn around now and insist for making the

selection purely on the basis of the written test. In this regards, he made reference to the decision in Madan Lal & Ors. vs. The State of Jammu &

Kashmir & Ors., 1995 (3) SCC 486 as well as the decision rendered by the Division Bench of this Court in Dulumoni Bordoloi Vs. Jhandeep Rabha

and 6 Ors., in WA 82/2008.

30. As regards the contention of the petitioners that the recruitment process is

vitiated because of non-publication in the website, it has been submitted

it is merely an irregularity which does not vitiate the merit of the selection process.

31. As regards the contention of the petitioners that though there were supposed to be 4 (four) members in the Selection Committee and only 3

member Selection Committee selected the candidates, the Regulation 13(2) itself provides that quorum of a meeting would be 3 and as such, absence

of the 4th member would not vitiate the recruitment process.

32. As regards the contention that the marks given for viva-voce was on a higher side and that it has not conformed to the 1:3 ratio as held in

Jasbindar Singh and Ors vs. The State of J & K reported in (2003) 2 SCC 13,2 it has been submitted that there cannot be any straitjacket formula to

hold that if the marks allotted for interview is more than one third of the total marks, it will be vitiated.

33. Having heard the learned counsel for the parties, this Court view that the dispute of the parties is centred around the advertisement issued for both

the posts of Scientific Officer and Junior Scientific Officer and the decision taken by the scrutiny committee in their meeting held on 05.01.2017.

34. The relevant portions of the advertisement as regards the eligibility criteria for the post of Scientific Officer read as follows:

â??2. Educational qualification and experience:

â?¢ Bachelor of Engineering/ Technology in Electrical/ Electronics/ Mechanical with uniform and excellent academic career.

â?¢ At least five years work experience in the field of renewable energy in any Govt./ Semi Govt. / Public Undertakings/Organisations with

special reference to Solar Photovoltaic Systems application and design.

â?¢ Candidates with aptitude in computer that a base and project handling and management will be preferred.

3. Terms and conditions:

â?¢ the candidate must be an Indian citizen and permanent resident of Assam.

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â?¢ shortlisted candidates only will be called for written test. The date of written test will be intimated individually and also through or

website www.asamrenewable.org

â?¢ â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|.

â?¢ â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|

â?¢ the undersigned reserves the right to reject or modify the advertisement and to cancel or postpone the written test/interview without

assigning any reason thereof.

â?¢ â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|..

Ã the list of selected candidate will be published in the AEDA's website www.asamrenewable.org.

35. As regards the post of Junior Scientific Officer, the educational qualifications required have been stated in the advertisement as follows:

â??2. Educational Qualification:

â?¢ Bachelor of Engineering/ Technology in Electrical/ Electronics/ Mechanical with uniform and excellent academic career.

â?¢ Candidates with experience in Renewable Energy field during their course or later would be preferred.â??

As regards other terms and conditions in the advertisement, these are similar as provided for Scientific Officer quoted above.

36. The minute of the meeting held on 05.01.2017 for screening and shortlisting of the applications for the posts of Scientific Officer, Junior Scientific

Officer and Senior Accountant held in the Director's chamber of AEDA reads as follows:

â??The following members were present in the meeting:

1. Director â?" AEDA
2. Additional Director i/c â?" AEDA
3. Dy. A.O. â?" AEDA

Dy. A.O. has informed in the meeting that in response to advertisement, we have received 231 nos. of applications for the post of Junior

Scientific Officer and 24 nos. of applications for the post of Scientific Officer. Out of 231 applications, only 100 applications are found

suitable/acceptable for the post of Jr. Scientific Officer on the basis of all advertisement. Details of statement on the basis of applications

are placed at Sl. 15 of concerned file.

Further, out of 24 application, only 8 nos. are found suitable/acceptable for the post of Scientific Officer which are placed at Sl. 16c of the concerned file.

The Additional Director i/c opined that as Engineering passed students are already having sufficient knowledge of computer and the

required to utilize computer at every level submission of a computer certificate is found to be not necessary. Hence, we should include all

candidates who were disqualified due to non-submission of Computer certificate. Director agreed with the views of Addl. Director i/c, AEDA

and advised Dy. A.O. to prepare a new list including those candidates who have not submitted any computer certificate. Dy. A.O. informed

the members that after considering the above total candidates for the post of Junior Scientific Officer and Scientific Officer would be 151

and 10 respectively.

Considering the minimum number of candidates for S.O. which is 10 only, the members decided to hold only viva-voce and decided not to

hold written test.

Further, for the post of J.S.O., members of the meeting decided to give total 20 marks (5 marks each for HSLC, HS, BE/B. Tech,

ME/M.Tech) and 5 marks for experience as follows; a) experience below one year â?" 1 marks, b) experience above one but below two

years â?" 2 marks, c) experience above two but below three years â?" 3 marks, d) experience above 3 years and above â?" 5 marks, 100

marks were written examination and regarding viva-voce- it was discussed that the engagement of the candidates was primarily intended for

smooth execution of the rooftop solar project which demanded expertise in specialised areas of grid interfacing solar power; in order to

derive knowledge of the candidate in this specialised sector more stress should be laid upon in obtaining knowledge of the candidate in

area through viva-voce and as such more weightage should be given on higher side during evaluation. Hence, it is decided to give 37.5%

(i.e. 75 marks out of 200 marks) for viva-voce. Hence, total marks for the post of Jr. Scientific Officer will be 25 (Edu. And Exp.)+ 100

(written test) +75 (Viva-voce) = 200 marks

And for Scientific Officer same 20 marks instead above for educational

qualification and for experience five marks as follows:- a)

experience above five years but below six years- 1 mark, b) experience above six years but below seven years -2 marks, c) experience

above seven years but below eight years - 3 marks, d) experience above eight years and above -5 marks and 75 marks for viva-voce only

as meeting decided not to hold written test for S.O. as stated above.

The meeting decided to stick to other terms and conditions as mentioned in the advertisement. Further. meeting decided to hold viva-voce for

S.O. and written test and viva-voce for Senior Accountant on 22/01/2017.

The meeting ended with vote of thanks from the Director at 1:30 PM Sd/-

Director,

AEDA??

37. First this Court will proceed to examine the issues raised in the writ petitions, W.P.(C) No. 3157 of 2017 and W.P.(C) No. 6719 of 2018 relating to

the post of Scientific Officer.

Though various issues have been raised in these two petitions, this Court would first consider the contention of the petitioner that the private

respondent no. 5 does not fulfil the essential qualifications required for appointment to the post of Scientific Officer. It has been contended that the

respondent no. 5 does not possess minimum five years work experience in the field of renewable energy any Govt./Semi Govt./ Public Undertakings/

Organisations with special reference to Solar Photovoltaic Systems application and design.

38. As regards this contention, this Court has examined the certificate of experience produced and relied on by the respondent no. 5 in the interview.

The said certificate of experience dated 30.09.2016 was issued by Girijanand Chowdhury Institute of Management and Technology (GIMT).

It reads as follows,

??This is to certify that Mr. Dwipen Konwar; S/o Mr. Ranjit Konwar has worked in our urban in the designation of Assistant Professor

since August 2011 in Pay Band III (Rs.15600-Rs.39,100 with AGP: Rs.6,000 Current CTC is Rs.50658/Month). He is dedicated and loyal

Employee of our Organisation. He was/is engaged with following accountabilities in our organisation during last five years of service.

1. Superintendent of examination under Gauhati University at GIMT- Tezpur centre (From August 2012 to Jan 2015)
2. Deputy Centre In-Charge under Assam Science and Technology University, Guwahati (From August 2013 to Jan 2015)
3. Supervisor of Laboratory (Graduate Level) (From August 2011 to till date)
4. Preparing question for Laboratory apparatus/Instrument purchase, purchasing class timetable, preparing documents for AICTE affiliation process (From August 2011 to till date)
5. In Charge (Institute level) â?" National Board of Accreditation - New Delhi (From August 2015 to till date)

I wish him success for his future endeavour.

Thank you

Yours Trulyâ??

39. The other certificate issued by the Energy and Resources Institute, New Delhi on 08.06.2011 reads as follows,

â??This is to certify that Mr. Dwipen Konwar has been associated with us as a trainee from 16th August 2010 to 30th April 2011. During

this period, he has worked on the project, â??Design and Simulation of commercial absorption chiller in Delhiâ??s climateâ? with the

Renewable Energy Technology Application area of Energy and Environment Technology Development Divisionâ??

40. In view of the above, this Court will examine whether the aforesaid certificates would substantiate the claim of the respondent no. 5 or the official

respondents that the respondent no. 5 was indeed eligible having possessed the necessary essential qualifications required.

As can be seen from the advertisement, one must have minimum five years of work experience. Further, the said work experience must be relatable

to and in the field of renewable energy with specific reference to solar photovoltaic systems application and design.

As per the certificate dated 30.09.2016 relied on by the respondent No. 5 though it shows certain work experience, it does not deal with any activities

in the field of renewable energy, much less relating to solar photovoltaic systems application and design. This certificate is essentially about his

teaching or work experience as an Assistant Professor in a management and technological institute. Nothing has been shown that the said Institute

was dealing with any work related to renewable energy and with specific reference to solar photovoltaic systems application and design. The

experience certificate issued on 30.09.2016 relates to his activities as an Assistant Professor of the Institute and other related functions and nothing to do with any activity relating to renewable energy.

As regards the other certificate dated 08.06.2011 issued by the Energy and Resources Institute, New Delhi, the respondent no.5 can be said to have

gained certain work experience relating to renewable energy. However, it is only for a period of about eight months, which falls short of the five years

of work experience required as mentioned above.

41. It is now too well settled in service jurisprudence that it would be impermissible to appoint anyone in public service, if he does not possess the

essential qualifications. The appointing public authority cannot take the plea that because of urgent necessity, authorities can appoint anyone who does

not possess the essential qualification. If any appointment is to be made by relaxing the essential qualification, it has to be done by notifying in advance

that certain essential qualification could be relaxed. Even then such relaxation would be permissible only if it is done by the competent authority and

duly advertised in advance. Such relaxation of essential qualification during recruitment process, after the essential qualifications had been duly notified

will not be permissible.

42. This Court agrees with the submission made by the learned senior counsel for the petitioner relying on the decision of the Honâ??ble Supreme

Court in Airport Authority (supra). The principle laid down in the aforesaid case is that there might have been many persons who do not have the

requisite qualification and who might have applied had the advertisement indicated that this work experience is not an essential qualification and as

such, might have competed but have been precluded from doing so because of the aforesaid condition and they could not apply. In the present case, if

it was known to the public that the aforesaid requirement of experience in work could be relaxed, there could have been large number of candidates

who could have applied for the same post. But they have not been given such opportunity. Thus, it is violative of Article 14 and 16 of the Constitution

of India. But they have not been given the said opportunity, thus, it is violative of Article 14 and 16 of the Constitution of India.

43. In view of the above finding of this Court that the respondent no. 5 does not fulfil the essential qualification as regards possession of five years of work experience for appointment to the post of Scientific Officer, this Court has no option but to declare that the selection and appointment of the respondent no. 5 as Scientific Officer is illegal and accordingly, the impugned selection process held by the selection committee for the post of Scientific Officer on 29.03.2017 published on 29.03.2017 are set aside, and as a consequence, the appointment order dated 23.05.2017 issued in favour of the respondent no.5 is also set aside.

44. This Court would like to clarify that unless the other candidates also possess the five years work experience, they cannot be considered for appointment to the post of Scientific Officer.

45. As regards the eligibility of the petitioner, it is not the stand of the respondent authorities that the petitioner is not eligible for appointment to the said

post of Scientific Officer. The documents and certificates relied upon by the petitioner do suggest that he possesses the said requirement of work

experience in the field of renewable energy. On the other hand, as regards the work experience of other candidates, they also do not seem to possess

the said five years work experience in the field of renewable energy. These candidates other than the petitioner seem to be working as Assistant

Professors in Mechanical Departments of the respective institutes and not really having experience in the field of renewable energy and as such,

allotting certain marks out of five marks earmarked for 'Work Experience' becomes irrelevant. Awarding of 5 (five) marks under the category

of 'Work Experience' would be permissible only if one completes five years of work experience in the field of renewable energy with specific

reference to solar photovoltaic systems application and design. Having work experience in the field of renewable energy is not sufficient for the

purpose of appointment to the post of scientific officer. Such work experience in the field of renewable energy must be with reference to solar

photovoltaic systems application and design.

However, this Court is not making any conclusive finding as to whether the petitioner and other candidates were also eligible or not as regards the

fulfilment of the essential qualification of five years of work experience is

concerned, for the reason that the petitioner or the other candidates were not recommended by the Selection Committee for appointment to the post of Scientific Officer.

46. At the time of hearing, the learned counsel for the state also had faintly suggested that in fact none of the candidates possesses the requisite qualification of work experience. However, considering the urgent requirement of the service of a Scientific Officer, the authorities proceeded to

select the best amongst the available candidates. This course of action adopted by the authorities to appoint an ineligible candidate, being impermissible

in law, cannot be accepted and hence such a submission is liable to be rejected.

47. For the reasons discussed above, the writ petitions, W.P.(C) No. 3157 of 2017 and W.P.(C) No. 6719 of 2018 are allowed, by setting aside the

appointment of the respondent no. 5 as Scientific Officer as held above.

The respondent authorities are directed to hold a fresh recruitment process for appointment to the post of Scientific Officer by re-advertising the post.

48. Coming to the third writ petition, W.P.(C) No. 3158 of 2017, relating to appointment to two posts of Junior Scientific Officer, this Court has

considered the rival contentions of the contending parties.

One particular issue has caused a deep concern to this Court.

It has been alleged by the petitioners that when the Selection Committee proceeded to hold interview of the candidates and award marks on the basis

of educational qualifications, work experience, during the interview the selection committee were provided with marks obtained by the candidates in

the written test.

This submission of the petitioners is substantiated by the records produced before this Court. The minutes of the Selection Committee meeting held on

29.03.2017 for the posts of Junior Scientific Officer, AEDA clearly mentions that the list of candidates qualified in the written test held on 26.03.2017

with results sheet had been provided to the members of the committee.

The relevant portions of the minutes of the Selection Committee held on 29.03.2017 read as follows:

â??The Member Secretary produced before the committee all relevant papers and documents of the candidates called for the viva-voce/

interview as under:

(a) Advertisement Notice published News Paper on 28.10.2016,

(b) List of candidates qualified in the written test held on 26.03.2017 with results sheet, (emphasis added)

(c) Original applications and certificates etc. of the candidates.

The committee examine the above-mentioned documents and also the result of the written test.

49. Thus, from the above proceeding, it is evidently clear that the members of the Selection Committee were shown the marks obtained by the

respective candidates in the written test when they were being interviewed. It may be also noted that the interview carried 75 out of 200 marks, that

is, 37.5%. Thus, the marks allotted for interview was substantial which had the potential of substantially affecting the final results. From the

assessment sheet of the candidates prepared by the members of the Selection Committee made available before this Court, it is seen that though the

petitioners have obtained the highest marks of 92 in the written test, they fared poorly in the interview resulting in exiting from the competition finally.

Of course, this Court is not suggesting that the members of the Selection Committee had deliberately given low marks to these petitioners so as to oust

them from the fray. Without any cogent and tangible material evidence to that effect this Court cannot arrive at any such conclusion.

However, the question which had been raised by the petitioners is of a fundamental nature, that goes to the root of any fair selection process.

Admittedly and also desirably, the Selection Committee has to assess the candidates independently of the marks obtained by the candidates in the

written test as the same has no nexus with the performance in the interview. It is not necessary that a candidate who has done extremely well in the

written test will also do equally well in the interview. Similarly, a candidate who has not done well in the written test may do well in the interview. At

the same time, a person who has done well in the written test may do as well in the interview. The markings given by the members of the interview

board has no reference to the marks obtained by the candidates in the written test. That is the reason, why there is no necessity or requirement of

furnishing the marks obtained by the candidates in the written test to the members of the Selection Committee who are holding the interview. This is

not only desirable but also necessary in the opinion this Court to ensure a fair assessment of the candidates during the interview by the members of the interview board. It is for the reason that the members of the interview board can independently assess the suitability of the candidates purely on the basis of the performance in the interview uninfluenced by the performance of the candidate in the written test. However, when the result of the written test is made known to the members of the interview committee, there is a distinct possibility of the member or members of the Committee being influenced or affected or swayed by the marks obtained by the candidates in the written test, more so if any of the member or the members happen to know any of the candidates appearing before them in the interview. Whether any member of the said interview board knew any of the candidates is a matter of fact, and in absence of any specific assertion to the effect, the possibility of having knowledge cannot be ruled out. It is for these reasons that a fair selection process would demand that the result of the written test be not made known to the members of the interview board so as to obviate any suspicion or doubt of any bias or prejudice on the part of the members of the interview board account of prior knowledge of the marks obtained by the candidates in the written test.

50. Recruitment process for appointment to public employment is a solemn and sacred process and must be undertaken with the utmost seriousness it deserves for it involves public trust and confidence. Article 14 of the Constitution guarantees equality before law and Article 16 of the Constitution of India mandates that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Equality before law and equality of opportunity as contemplated under Article 16 of the Constitution presupposes absence of any bias or influence, for attaining which goal, maintenance of confidentiality of the recruitment process is sine qua non. It is not sufficient that there is actually lack of bias or prejudice but the authorities must also ensure that there is no apprehension or possibility of any such bias or prejudice taking place in the recruitment process. The recruitment process must not only be fair and just but also must be seem to be fair and just. There should be no scope for anybody to entertain any doubt or apprehension about the purity of the recruitment process being undertaken. Therefore, in the present case, even if

the petitioners are not able to demonstrate actual bias on the part of the members of the selection committee, if they are able to show that there was a distinct possibility of any such bias or prejudice, this Court is of the view that, in such an event it would be sufficient to vitiate the selection process.

51. In the present case, as mentioned above, there was no need or necessity on the part of the authorities to make available the marks obtained by the candidates in the written test to the members of the Interview Board as the marks obtained in the written test had no relevance for proper assessment of the candidates in the interview by the Selection Committee. This Court fails to understand why there was any need to furnish the marks obtained by the candidates in the written test to the members of the Selection Committee. The distinct possibility of the members of the selection committee being influenced by the marks obtained by the candidates in the written test so as to have the effect of changing the merit position on the basis of the marks obtained by the candidates in the written test cannot be totally ruled out. In fact, the petitioners in their representation dated 24.5.2017 had expressed the apprehension that one of the experts was from Tezpur University and more than 4 (four) candidates were from Tezpur University. It may be noted that the Respondent no. 6 (Kabyashree Dutta) had completed her M.Tech from Tezpur University and the Expert Member of the Selection Committee, Dr. Sadhan Mahapatra was an Assistant Professor from Department of Energy from Tezpur University. If that is so, this Court would hold that furnishing of marks obtained by the candidates in the written test to the members of the interview board would have the potential and possibility of muddying the purity of the interview process, thus vitiating the selection process as there would be a distinct possibility of bias, even if the same has not been proved or shown to have actually occurred. On this ground alone, this Court is inclined to interfere with the recruitment process in respect of the two posts of Junior Scientific Officers.

52. In the present case, it is not a case of suspicion of bias but a distinct possibility or real danger of bias. As regards the possibility of bias or the real danger of bias vitiating an administrative action, it was held by the Hon'ble Supreme Court in N.K. Bajpai v. Union of India, (2012) 4 SCC 653 as follows:

48. Bias must be shown to be present. Probability of bias, possibility of bias

and reasonable suspicion that bias might have affected the decision are terms of different connotations. They broadly fall under two categories i.e. suspicion of bias and likelihood of bias. Likelihood of bias would be the possibility of bias and bias which can be shown to be present, while suspicion of bias would be the probability or reasonable suspicion of bias. The former lead to vitiation of action, while the latter could hardly be the foundation for further examination of action with reference to the facts and circumstances of a given case. The correct test would be to examine whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias, in the circumstances of a given case. If it falls in the prior category, the decision would attract judicial chastisement but if it falls in the latter, it would hardly affect the decision, much less adversely.â??

53. It may be also noted that the real question is not whether a member of the interview board was in fact proved to have acted with bias, for it is difficult to prove the state of mind of a person. What is to be seen is whether there is a reasonable ground for believing that he was likely to have been biased.

It was held by the Honâ??ble Supreme Court in *G. Sarana (Dr.) v. University of Lucknow*, (1976) 3 SCC 585 as follows:

â??11. Again as held by this Court in *A.K. Kraipak*â??s case reiterated in *S. Parthasarathi v. State of Andhra Pradesh*⁶ and followed by the High Court of Jammu and Kashmir in *Farooq Ahmad Bandey v. Principal, Regional Engineering College*⁷, the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In a group deliberation and decision like that of a Selection Board, the members do not function as computers. Each member of the group or board is bound to influence the others, more so if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner.â??

6: (1974) 3 SCC 459

7. 1975 J & K LR 427

54. It may be also mentioned that by "bias", this Court does not necessarily mean or is restricted to any actual act of favouritism or malice by the member(s) of the interview board towards any particular candidate. "Bias" can also mean a situation where the member(s) of the interview board form(s) an opinion about the candidate on the basis of the marks obtained by the candidates in the written test and a distinct possibility of adjusting the marks to be given in the interview keeping in mind the marks obtained by the candidates in the written test so as to substantially change the merit position based on the written test. In the present case, the members of the interview board had the scope and opportunity to scale up or down the marks to be given in the interview after having knowledge of the marks obtained by the candidates in the written test. With the prior knowledge of the marks obtained by the candidates in the written test, the members of the interview board had the scope of varying the marks to be given to the candidates in the interview. Thus, there is distinct possibility of swaying the opinion of the members of the interview board of the performance of the candidates on the basis of the marks obtained by the candidates in the written test. Comparative merit of the candidates on the basis of written test ought to have been kept away from the members of the interview board so as to enable them to have fair and transparent assessment of the candidates independently, uninfluenced by the performance of the candidates in the written test. That would be the true scope and purpose of conducting an interview and to prevent any "bias".

It is this distinct possibility of formation of opinion by the members of the interview board on the basis of the marks obtained by the candidates in the written test, which may adversely affect the independent assessment of the candidates in the interview which can also be termed to be a kind of bias.

As mentioned above, it is not necessary that the actual bias has to be proved, and the mere distinct possibility of bias as discussed above will be sufficient to vitiate the interview and the selection process.

55. This Court is of the view that where the recruitment process consists of both written test and interview, the marks obtained by the candidates in the written test or any other parameters, ought not to be made known to the

members of the interview board, so as to have fair and independent and uninfluenced assessment of the candidates during the interview and so as to avoid any possibility of the members of the interview board being influenced by the marks obtained by the candidates in the written test and other parameters not related to interview.

56. Accordingly, for the reasons discussed above, this Court would set aside the proceedings of the Selection Committee held on 29.03.2017 for

appointment to the two posts of Junior Scientific Officer and consequently, select list dated 29.03.2017 and the appointment of Respondents no. 5 and

6 as Junior Scientific Officers vide order dated 23.05.2017 are also set aside.

57. Having held that the said recruitment process for appointment to the two posts of Junior Scientific Officer is vitiated, what should be the future

course of action to fill up these two posts. One possible course of action is to nullify the entire recruitment process and initiate a fresh recruitment

process which would involve holding of written test again, which course of action, may however cause certain hardships to the candidates who had

already written the test. The other course of action is to direct the authorities to hold a fresh interview. However considering the peculiar facts and

circumstances as discussed above, when the result of the written test held is already in public domain and if the respondent authorities were to hold a

fresh interview, it may not make any difference, for the members of the Selection Committee are already aware of the marks obtained by the

candidates in the written test. Therefore, the legal vice which is sought to be remedied will become illusory if the Selection Committee is directed to

hold a fresh interview.

Adopting the second course of action, could have avoided inconveniences and hardships to the candidates who have already appeared in the written

test, but under the circumstances, it may not perhaps be the best option. The result of the written test is known not only to the members of the

Selection Committee but also to all the candidates and the world at large. As such, there is no more confidentiality about the result of the written test.

Under the circumstances, the distinct possibility of the members of the interview board, even if reconstituted of being influenced by the result of the

written test, cannot be completely ruled out. Hence, this Court is of the opinion that though holding of a fresh written test and the interview again may

entail and cause hardships to the candidates and inconvenience to the appointing authority, it would perhaps be the best option available under the circumstances, in order to uphold the sanctity and purity of the recruitment process for public employment and enhance public confidence.

Credibility as well as the public confidence on the recruitment process conducted by the state authorities may ensure transparency, confidentiality and purity of the recruitment process is of paramount importance and is certainly a facet of the valuable right to equality and of opportunity in matters of public employment as guaranteed under Articles 14 and 16 of the Constitution of India.

Written test and interview are two vital components of a recruitment process. While the written test would normally assess the knowledge of the candidates in the particular field, interview covers a larger area of the knowledge and personality of the candidates. Though the shortlisting of candidates for interview may be based on the performance in the written test, yet it would be expected that the assessment of the candidates made in course of the interview would be independent of the performance of the candidates in the written test. Assessment of a candidate in the written test and assessment of a candidate in the interview are of different and independent nature. Thus, for having a fair and independent assessment of the candidate during the interview, it ought not to be allowed to be influenced by the performance of the candidate in the written test by which may be ensured by not disclosing the marks obtained by the candidates in the written test to the members of the interview board.

58. Accordingly, this Court would direct the respondent authorities to hold a fresh written test and thereafter, after necessary shortlisting of candidates, the interview of the shortlisted candidates be held again.

As it is desirable that the marks obtained by the candidates in the written test be not made known to the members of the interview board, it is directed that if any official of the Assam Energy Development Agency is privy to the marks obtained by the candidates, he ought not be a member of the interview board. For example, if the Director, AEDA is to be a member of the interview board, he ought not to have any knowledge or have access to the marks obtained by the candidates in the written test, though he may be part of the recruitment process and a member of the Selection Committee.

He can have access to the marks obtained by the candidates in the written test only after the interview is over for preparation of the select list.

It is also desirable that the members of the interview board be reconstituted with fresh members, as far as practicable in the light of the observations

made as above.

59. While directing as above, this Court would also like to clarify another issue raised by the petitioners. Though the scrutiny committee of the

respondent authorities in their meeting held on 05.01.2017 had laid down the modalities for assessing the candidates by allotting 20 (twenty) marks

pertaining to the academic attainments of the candidates and another five marks for the work experience, it is seen that the selection committee

clubbed these two parameters and allotted consolidated marks, without disclosing as to how much marks each of the candidates had scored vis-à-vis

the academic qualifications and the separately vis-à-vis the work experience, which are two different criteria. This Court holds that clubbing of these

two criteria and giving consolidated marks is not permissible, neither it is desirable for it is difficult to ascertain how much marks each of the

candidates had obtained with reference to the aforesaid two parameters. Accordingly, the relative assessment of the candidates may be done with

reference to different parameters laid down in the aforesaid meeting held on 05.01.2017 and by not clubbing any of these different parameters

together as had been done by the Selection Committee in their meeting held on 23.03.2017.

60. It is also made clear that other issues raised in these petitions, not decided by this Court, are left open to be decided in appropriate proceedings.

61. For the reasons discussed above, all these writ petitions are allowed. The appointments to the post of Scientific Officer and two Junior Scientific

Officers challenged in these writ petitions are quashed.

Though the appointments of the Respondent no. 5 in W.P.(C) No. 3157 of 2017 and W.P.(C) No.6719 of 2018 as well as Respondents no. 6 and 7 in

W.P. (C) No. 3158 of 2017 are quashed they may, however, be allowed to hold the respective posts purely on provisional basis as a stop gap

arrangement so as not to cause any administrative dislocation till the aforesaid exercise of regular appointment as directed above is completed, which

may be completed within a period of 6 (six) months from the date of receipt of a

certified copy of this order, after which period, these private

Respondents will cease to hold these posts to be replaced by regularly appointed persons.