

(2016) 02 P&H CK 0218

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 11736 of 2013, 1240, 8974, 5002, 5042, 1416, 22372, 22441, 22443, 3940, 10623, 9948, 9902, 11175, 15659, 18597, 18880, 18893, 18963, 19742, 20470, 13530, 13575, 15784, 16877, 17350, 17594, 18086, 18089, 18094, 18133, 18308, 18440, 18523, 18527, 1

Jagbir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16(1)

Citation : (2016) 02 P&H CK 0218

Hon'ble Judges : Deepak Sibal, J.

Bench : Single Bench

Advocate : Ashok Bhardwaj, Advocate, for the Appellant; Shruti Jain Goyal, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Sibal, J.—1. Through the present bunch of petitions being CWP Nos. 11736 of 2013, 1240, 8974, 5002, 5042, 1416, 22372, 22441, 22443, 3940, 10623, 9948, 9902, 11175, 15659, 18597, 18880, 18893, 18963, 19742, 20470, 13530, 13575, 15784, 16877, 17350, 17594, 18086, 18089, 18094, 18133, 18308, 18440, 18523, 18527, 18531, 18532, 18533, 18535, 7281, 1433, 16016, 19312, 21356, 21680, 15505, 20964, 22814, 23032, 23396, 25998, 9555 of 2014, 582, 898, 3274, 3661, 3868, 1851, 732, 9833, 8790, 8767, 8768, 8847 and 1616 of 2015, selection of Post Graduate Teachers (PGTs), made in pursuant to advertisement No. 1/2012 dated 07.06.2012 is challenged.

2. For the sake of convenience, facts have been extracted from

C. W.P. No. 11736 of 2013.

3. Through advertisement dated 07.06.2012, the respondents invited

applications for appointment to the posts of Post Graduate Teachers (PGTs) in different subjects. As per the advertisement, the last date of application was 29.06.2012, which, through a corrigendum, was extended to 15.07.2012. The following eligibility was prescribed, which was common to all posts:--

"Common to all posts - Eligibility :

- (a) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject.
- (b) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET) of respective subject for the post applied, conducted by Board of School Education Haryana, Bhiwani/One time exemption of HTET [See Note-2].
- (c) Consistent good academic record (See Note-1)
- (d) Essential qualification (EQ) is given with each post."

4. Further qualifications, which were prescribed, were Post Graduation in the concerned subject with at least 50% marks and B.Ed. from a recognized University. Along with the essential qualifications, the advertisement also contained the following Notes:--

"Note 1. Consistent good academic record implying that out of the lower qualification i.e. Matric/10+2 Graduation than requisite minimum qualification, one must secure at least 50% marks in two lower exams and 45% marks in third lower exam. If there are only two lower exams, than one must secure at least 50% marks in one exam and 45% marks in another.

Note 2. A one time exemption of HTET/STET has been granted to the candidates who have worked for minimum 4 years till 11.04.2012 in privately managed Govt. Aided Schools Recognized Schools and Govt. Schools. Candidate must be in service on 11.04.2012 in addition to being in position on the date of applying for the said post. They will have to qualify HTET not later than 1st April 2015 otherwise their services will be terminated automatically. Qualification/eligibility conditions and certificates will be determined with regard to last date fixed for submission of online applications also called as closing date given in the advertisement.

Note 3. One time exemption certificate for HTET/STET & one time upper age relaxation certificate from Head of the Institute is required to be verified by DEO & counter signed by Director of Secondary Education of the concerned State. One time implies that an applicant can apply only once for a particular category of post in the first advertisement. No such exemption will be granted in the subsequent advertisement.

Note 4. A person who has passed HTET/STET without the qualification of B.Ed. before the date i.e. 11.04.2012 of notification of Service Rules concerned, shall be considered eligible for the post of PGT

Note 5. Candidates having qualified Certificate of HTET/STET conducted by Board of School Education Haryana, Bhiwani only will be eligible.

Note 6. A member of Service appointed by the direct recruitment shall be liable to serve for a continuous period of five years in the rural area from the date of appointment.

Note 7. 33% posts are reserved for women of Haryana (horizontal reservation).

Note 8. Reservation in SC, BC, ESM and PHC's only for Haryana State.

Note 9. Education, Haryana will not be eligible.

Note 10. 5% relaxation in qualifying mark allowed for SC and PHC candidates.

Note 11. Physically Handicapped Candidates means Physically Challenged/ Persons with Disabilities.

Note 12. Details instructions for filling the online application form are available on the website w.w.w.recruitment.cadacmohali.in. Note 13. In case of any guidance/information/clarification regarding the online filling of the form the candidate can call at CDAC Mohali helpline Nos. 0172-6619054 AND 0172-669055 on all working days from 9:00 a.m. To 6:00 p.m.

The prescribed essential qualification does not entitle a candidate to be called for interview. In the event of number of applications being large scale the Haryana School Teachers Selection Board (HSTSB) may shortlist the, candidates for interview by holding a written examination or on the basis of academic criteria or percentage cut off to be adopted by the Board. The decision of the Board in all matters relating to acceptance or rejection of an application, Eligibility/suitability of the candidates, mode of and criteria for selection etc. will be final and binding on the candidates. No inquiry or correspondence will be entertained in this regard.

USE OF MOBILE PHONE, PAGER AND OTHER ELECTRONIC/COMMUNICATION DEVICES IN HARYANA SCHOOL TEACHERS SELECTION BOARD EXAMINATION/ INTERVIEW IS STRICTLY PROHBITED."

5. Through Corrigendum dated 03.07.2012, the following amendments were made to the initial advertisement:--

"2. Under heading "COMMON TO ALL POSTS - Eligibility " point (c) Consent good academic record (See Note-1) and Note-1 shall be omitted.

3. Under heading "COMMON TO ALL POSTS - Eligibility " after point (b) the following point C (i) & (ii) shall be inserted, namely:--

(c) (i) The candidates who have worked as teachers for a minimum four years till 11.04.2012 in privately managed Government aided Schools, Recognised Schools and Government Schools and must be in service on 11.04.2012, in addition to being in position on the date of applying for the said post, are exempted to

acquire qualifications of passing HTET/STET and B.Ed. as one time measure.

(c) (ii) A person who has passed STET/HTET without the qualification of B.Ed., before the date i.e. 11.04.2012 of notification of Service Rules concerned, shall also be considered eligible for the post of PGT as one time measure in the first recruitment.

4. Transitional provision:-- Person fulfilling conditions of qualifications as per old Rules of Haryana State Education Lecturer School Cadre (Group-C) Service Rules, 1998 shall also eligible for recruitment as a one time measure. Provided that such person shall have to qualify the Haryana Teachers Eligibility Test (HTET) and B. Ed. by 1st April, 2015 and if he fails to do so, his appointment shall stand terminated automatically without giving any further notice.

The relevant subject combinations in relevant posts are as under:--

Under heading "POSTS EXCEPT DISTRICT MEWAT" and "POSTS FOR DISTRICT MEWAT ONLY (MWT)", Essential Qualification (E.Q.) for PGT mentioned at Category No. 1, 4, 14, 17, 19, 22, 32 and 35 of the above said Advt. may be read as under, as one time measure:--

Cat. No. 1 & 19 : PGT Mathematics

E.Q. M.A./M.Sc. Math/Mathematics Statistics with at least 50% marks from a recognised University.

Cat. No. 4 & 22 : PGT Biology

E.Q.M. Sc. Biology or Zoology or Botany or Bio-Science or Bio-Chemistry or Genetics or Micro-Biology or Plant Psychology or Biotechnology with at least 50% marks from a recognised University.

Cat. No. 14 & 32 : PGT Political Science

E.Q. M.A. Political Science or Public

Administration with at least 50% marks from a recognised University Cat. No. 17 & 35 : PGT History

E.Q. M.A. History or Ancient Indian

History and Culture or Culture and Archaeology with at least 50% marks from a recognised University"

6. A perusal of the above quoted provisions of the initial advertisement read with the Corrigendum show that the prescribed academic qualifications were very clearly depicted therein. It also provided for one time exemption from passing of HTET/STET and B.Ed., but the appointees were required to pass the relevant Test/ B.Ed. Examination by 01.04.2015 (now 01.04.2018) and if he failed to do so, his appointment would stand automatically terminated.

7. The advertisement further provided that possessing of essential qualifications

did not entitle a candidate to be called for interview and in the event of the applications being large in number, shortlisting of candidates could be resorted to. It was further provided that the decision of the Selection Board in all matters relating to acceptance or rejection of applications, eligibility/suitability of the candidates, mode of and criteria for selection would be final and that no inquiry or correspondence thereafter would be entertained in that regard.

8. The petitioner being eligible, applied for the consideration of his candidature for appointment as a PGT (Political Science). However, on the declaration of the final result, since he did not make the merit, he was not offered appointment. On the happening of the aforesaid event, laying a challenge to the entire selection, the present petition has been filed.

9. Learned counsel for the petitioner has attacked the selection on the ground that no selection criteria was provided in the advertisement and that the same was only disclosed at the time of declaration of the results. In support of his submission, learned counsel relied upon a judgment of the Apex Court in the case of *Dr. Krushan Chandra Sahu v. State of Orissa* - 1995 (4) SCT 560 and a judgment of this Court in *Vandana Dhadwal and another v. Punjab University, Sector 14, Chandigarh and others* - 2010 (4) SLR 725

10. Learned counsel for the petitioner further argued that the disclosed criteria was also arbitrary. All the candidates were evaluated out of a total score of 100 marks, 67 of which were earmarked for academic excellence and the remaining 33 for interview. It was submitted that the grant of 33 marks for interview was excessive than legally permissible. In support of this contention of his, learned counsel relied upon the following judgments of the Apex Court:--

"1. *Ashok Kumar Yadav v. State of Haryana* - , AIR 1987 SC 454;

2. *Bishnu Biswas and others v. Union of India and others* -Civil Appeal No. 4255-58 of 2014, decided on 02.04.2014."

11. While drawing the attention of the Court to the result sheet, it was sought to be projected that candidates having lesser academic score had intentionally been given higher marks in interview so that they could be selected and appointed. The converse was also sought to be highlighted.

12. To show arbitrariness in the impugned selection, the Court's attention was also drawn to two specific instances in the case of *Pushpa Rani and Rekha Gupta* to show that in their cases, they had actually scored less marks in their Post Graduation, as depicted in their respective Post Graduation degrees, but on their false representation in their respective applications, where they had shown themselves to have secured higher marks, without any verification by the respondents, they have been selected and appointed.

13. It was further argued that as per the applicable Rules, passing of HTET/STET and B.Ed examination were essential qualifications but as per the advertisement, by providing relaxation, one time exemption had been granted from passing of

HTET/STET and B.Ed examination. It was further submitted that under the head "Academic Score", five out of the total of 67 marks, had been allocated for B.Ed and eight marks had been allocated for passing of HTET/STET. It was submitted that the exemptees had been given these marks which would taint the entire selection. According to the learned counsel for the petitioner, such exemptions had resulted in dilution of standards, which being against the applicable service Rules and public interest should not be permitted. In support of his submission, reliance was placed on the following judgments of the Apex Court:--

- "1. State of Orissa and another v. Mamata Mohnaty - , 2011 (3) SCC 436 and
2. Mrs. Rekha Chaturvedi v. University of Rajasthan - , 1993 SCC 592."

14. Learned counsel for the petitioner further submitted that there were many appointees, who had not passed the HTET/STET and B.Ed examination till 01.04.2015, which was the last date to pass the examinations, but they were still continuing to serve the respondents. It was thus submitted that the State was acting to favour these exemptees by earlier giving them exemption, by appointing them by giving them marks to which they were not entitled to and then by not taking action against them for having not passed the examination by the last date stipulated to pass the same.

15. Learned counsel for the State of Haryana sought dismissal of the writ petition by invoking the principles of estoppel. It was submitted that in the advertisement, the selection criteria to be followed had not been spelled out. In spite of the same, the petitioner took part in the selection process without a challenge to the same. It was thus submitted that the petitioner, having taken part in the entire selection process, on rejection of his candidature, could not now turn around to challenge the entire selection process on the ground that no selection criteria was disclosed in the advertisement.

16. Without prejudice to the objection of estoppel, it was submitted that in the absence of any statutory obligations to the contrary, the Selection Board was well within its rights to frame a criteria within the four corners of law and the criteria so framed in the case in hand by the Selection Board of earmarking 67 marks for academic achievements and 33 marks for interview was as per accepted legal norms. It was submitted that the exemption granted to candidates from passing HTET/STET and B.Ed was on the basis of amendments made in the Haryana State Education School Cadre (Group B) Service Rules, 2012 (hereinafter referred to as - the 2012 Rules), the vires of which were challenged before this Court through a bunch of petitions, which were dismissed by a Division Bench of this Court in Shivani Gupta and others v. State of Haryana and others - , 2013 (1) S. C. T. 545 It was submitted that once the Rules have been upheld, on the basis whereof, exemptions have been granted, no challenge to the grant of exemptions could be made by the petitioner through the present petition.

17. It was further submitted on behalf of the State that no marks earmarked for HTET/STET and B.Ed examination were given to the exemptee candidates, who

had not passed the HTET/STET and B.Ed examination. They were thus put to a disadvantage and only those of the exemptee candidates, who still made it to the merit list, were appointed. Responding to the submission of the learned counsel for the petitioner of having not taken action against candidates, who had not passed the HTET/STET and B.Ed examination by 01.04.2015 i.e. the last date prescribed to pass the aforesaid examinations, it was submitted that by way of an amendment to the Rules, that date had been extended to 01.04.2018, to which no challenge had been made by the petitioner.

18. A perusal of the advertisement shows that it was stipulated therein that the decision of the Board in all matters relating to acceptance or rejection of an application, eligibility/suitability of the candidates, mode of and criteria for selection etc., as made by them, would be final. The afore-referred clause of the advertisement gave clear indications that the Selection Board would be carving out a criteria for selection of suitable candidates. However, no specific criteria was given. This fact being in the advertisement on the basis whereof the petitioner had applied, it can safely be presumed that the same was well within the knowledge of the petitioner, but in spite of that, no challenge to the same was made. Rather accepting the terms thereof, he made an application and thereafter, took part in the process of selection. Later, when he was not offered appointment, the present petition was filed challenging the entire selection process. In view of these facts, in my opinion, the petitioner would clearly be estopped by his conduct to maintain a challenge to the selection process through the present petition.

19. The aforesaid opinion of mine with regard to the rejection of the present petition on the ground of estoppel finds support from *Madan Lal v. State of Jammu and Kashmir* - , 1995 (3) SCC 486, wherein the Apex Court has held as under:--

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.*, (, AIR 1986 SC 1043), it has been clearly laid down by a Bench of

three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, "the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."

20. To the same effect is the decision of the Apex Court in the case of *Dhananjay Malik and others v. State of Uttaranchal and others* - , 2008 (4) SCC 171, wherein it has been held as under:--

"8. In *Madan Lal v. State of J & K* , (1995) 3 SCC 486, this Court pointed out that when the petitioners appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

9. In a recent judgment in the case of *Marripati Nagaraja v. The Government of Andhra Pradesh* , (2007) 11 SCR 506 at p.516 SCR this Court has succinctly held that the appellants had appeared at the examination without any demur.

They did not question the validity of fixing the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process.

10. We are of the view that the Division Bench of the High Court could have dismissed the appeal on this score alone as has been done by the learned Single Judge."

21. In *Vinod Kumar v. State of Haryana and others* - , 2006 (4) SLR 237 a Division Bench of this Court, while upholding a similar objection of estoppel, has held as under:--

"5. We have thoughtfully considered the submissions made by the learned Counsel for the parties and are of the view that these writ petitions are liable to be dismissed for more than one reason. The advertisement has not placed any embargo on the eligibility of those who have qualified the Certificate Course in Physical Education after qualifying Matric. The change in rule in the year 2001, for admission to the aforementioned course confining admission to only 10+2 pass candidates, cannot constitute a basis for setting aside the selection as the petitioner, who had passed 10+2 examination and thereafter qualified the Certificate Course in Physical Education, has also been made eligible. The Certificate Course passed by the private respondents has been duly recognised. Therefore, we do not find any substance in the first submission of the learned Counsel. The other submission that 50% marks have been allocated to the Viva Voce test can also not be accepted because firstly it would depend on the selection body, the age of the candidate and the requirement of the job, which would determine the criteria to be adopted by the selection bodies. The determination of 50% marks for Viva Voce cannot be held to be arbitrary. By a catena of judgments of the Hon''ble Supreme Court it has now been laid down that merely because 50% marks have been kept for Viva Voce would not constitute a basis for quashing a selection. In the case of *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.*, various principles have been culled out, which go into the consideration of framing a criteria by the selection bodies. In *Anzar Ahmad v. State of Bihar and Ors.* (1984)1 S.C.C. 151, the Hon''ble Supreme Court has gone to the extent of upholding the selections, which have been made on the basis of 100% marks for Viva Voce. However, in that case selection was made by allocating 50% marks for academic qualification and 50% for interview and the selection was upheld. Therefore, there is no substance even in the second contention raised on behalf of the petitioner. Moreover, the petitioner has participated in the selection and having failed he would be estopped by the principle of estoppel to challenge the selection of the private respondents as has been held by the Hon''ble Supreme Court in *Madan Lal's* case (supra)."

[Emphasis supplied]

22. To the same effect is a Single Bench judgment of this Court, in the case of *Pankaj Sharma and another v. Secretary, Staff Selection Commission, Panchkula*

and others - C. W. P. 12392 of 2011, decided on 11.05.2015, wherein it has been held as under:--

"It is a matter of record that the petitioners have participated in the selection process and there was a lot of gap in between the submission of applications, date of interview and declaration of the result. In case the petitioners had any grievance qua non-disclosure of the criteria in the advertisement they could have challenged the advertisement on the ground available to them. Since the petitioners have participated in the entire selection process, therefore, they are estopped from challenge the same."

[Emphasis supplied]

23. In *Satyender v. Haryana Staff Selection Commission and others* - C.W.P. No. 21025 of 2014 decided on 04.11.2014 another Single Bench of this Court has held:--

"Even the submission raised by counsel as regards selection criteria having not been disclosed at the threshold i.e. at the stage of issuance of the advertisement, is without merit. It shall be presumed that the petitioner had read the advertisement dated 14.8.2010 at the stage of submitting his application for the post of Auditor. A grievance, if any, with regard to the criteria having not been disclosed in the advertisement, was required to be agitated on all grounds that may have been available at that stage itself. The petitioner having applied for the post of Auditor in response to the advertisement dated 14.8.2010 and having subjected himself to the process of selection and having remained unsuccessful cannot now be permitted to turn around to raise such a submission."

24. The same view has been taken by another Single Bench of this Court in the case of *Suresh Kumar and others v. State of Haryana and others* - C. W.P. No. 6485 of 2008 decided on 09.01.2014 as under:--

"Another reason which disentitles the petitioners to the claim as made by them is that the challenge to the criteria at the stage when the selection has proceeded with in which the petitioners have taken a chance and failed. They cannot be permitted to challenge the criteria at this stage as they should have agitated this cause at the initial stage. Having taken a chance, they cannot now be allowed to turn around and lay a challenge to it as they would be estopped to do so."

25. Even otherwise, there being no statutory obligation to the contrary, the Selection Board was well within its rights to frame a criteria for selection but of course within the four corners of law.

26. The right of the Selection Board to frame a selection criteria, in the absence of there being no statutory prescription otherwise, has been recognised by the Apex Court in the case of *Ramesh Kumar v. High Court of Delhi and another* - , 2010 (3) SCC 104 to the following effect:--

"13. Thus, law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum Bench Marks for written test as well as for viva-voce."

[Emphasis supplied]

27. To the same effect is the judgment of a Single Bench of this Court in the case of Tarun Rathee v. State of Haryana and others - C.W.P. No. 23557 of 2012, decided on 30.11.2012, wherein it was held as under:--

"It is now settled by various judicial verdicts that the recruiting agency can evolve its own criteria for selection in the absence of any statutory mandate, limiting such criteria. If the process of selection and the criteria is provided under the statutory Rules, the same cannot be deviated from by the recruiting authority. No statutory Rules/Instructions has been referred to by the petitioners which would prescribe a criteria for selection or shortlisting of the candidates. In the absence of the same, the discretion is that of the Commission to evolve its own process of shortlisting and devise its own method for the same. The power of judicial review, no doubt is available to the Court, but that jurisdiction is limited and the Court can only interfere with such decision of the recruiting/appointing authority if the same was illegal or suffered from procedural impropriety or was irrational and that too to the extent that it was in outrageous defiance of logic or moral standards. Interference by the Court would also be permissible in case such a decision is totally arbitrary, unjust and based on malafides. If these traits are absent, the Court would not interfere in the exercise of discretion by the competent authority in laying down the procedure and criteria for selection or shortlisting for restricting the candidates for a reasonable limit."

[Emphasis supplied]

28. To the same effect is the judgment in the case of Pearl Sidhu v. State of Punjab - , 2014 (11) RCR (Civil) 221 wherein it was held as under:--

"28. It is by now settled by various judicial verdicts that the recruiting agency can evolve its own criteria for selection in the absence of any statutory mandate, limiting such criteria. If the process of selection and the criteria is provided under the statutory Rules, the same cannot be deviated from by the recruiting authority No statutory Rules/Instructions has been referred to by the petitioners which would prescribe a criteria for selection or shortlisting of the candidates. In the absence of the same, the discretion is that of the Commission to evolve its own process of shortlisting and devise its own method for the same. The power of judicial review, no doubt is available to the Court, but that jurisdiction is limited and the Court can only interfere with such decision of the recruiting/appointing authority if the same was illegal or suffered from procedural

impropriety or was irrational and that too to the extent that it was in outrageous defiance of logic or moral standards. Interference by the Court would also be permissible in case such a decision is totally arbitrary, unjust and based on malafides. If these traits are absent, the Court would not interfere in the exercise of discretion by the competent authority in laying down the procedure and criteria for selection."

[Emphasis supplied]

29. The respondent Selection Board is constituted under the Haryana School Teacher Selection Board Act, 2011 (hereinafter referred to as - the 2011 Act). Section 5 of the 2011 Act gives the qualifications for appointment as Chairman and other Members. As per the prescribed qualifications, the Members and Chairman of the Selection Board are persons of varied experience and experts in their respective fields. The selections, which are under question, have been made by the Members of the Selection Board. Selections by Members of a Statutory Board, who are experts in their respective fields have been upheld by the Apex Court in the case of *Kiran Gupta v. State of U.P.* - , 2000 (7) CC 719 by holding as under:--

"14. A bare reading of Section 4 makes it evident that the Commission was composed of members of whom one member was having a position of eminence in judicial services and the other members were experts in the field of education. Inasmuch as the Commission was an expert body and it was entrusted with the duty of selection of Teachers, Principals/Headmasters, it would be the most competent body to lay down guidelines on matters relating to method of recruitment and promotion of teachers to the posts of Principals/Headmasters. Indeed laying down of guidelines by the Commission in such matters when it is so authorised by an Act of legislature or by statutory Rules is a well accepted principle and no exception can be taken to it. [See : *Dr. Krushna Chandra Sahu and Ors. v. State of Orissa and Ors.* [, 1995 (6) SCC 1]."

30. To the same effect is a judgment of this Court in *Suresh Kumar's* case (*supra*), wherein it has been held as under:--

"The contention of the counsel for the petitioners that the more meritorious candidates have been ignored as the petitioners and the persons lower in merit in the academic and professional qualifications have been appointed only on the basis of the interview marks assigned by the Commission. This contention of the counsel for the petitioners cannot be accepted in the light of the fact that interview is dependent upon the performance of a candidate and the same cannot be said to be unjustified depending upon the marks which are assigned by the Commission. There are no specific malafides against any of the Members of the Selection Committee nor is there anything which would project that such an exercise has been resorted to by the Commission in making such selections. In the absence of any material on the record which would justify such a claim made by the petitioners, the same cannot be accepted."

31. The next question to be determined is whether the criteria framed and followed while making the selections in question is legally sustainable.

32. The selections have been made after evaluating the candidates for their academic achievements and their performance in the interview. 67 marks have been earmarked for academic excellence and 33 marks for interview. Counsel for the petitioner has submitted that prescription of 33 marks is excessive giving a wide discretion in the hands of the Selection Board and the same being arbitrary vitiates the entire selection. In this regard, the counsel has relied upon the judgments of the Apex Court in the case of Mohinder Sain Garg v. State of Punjab and ors. - , 1991 (1) SCC 662, Ashok Kumar Yadav (supra) and Bishnu Biswas (supra).

33. The argument of the learned counsel for the petitioner deserves notice only to be rejected. The selection is not on the basis of any written examination to be followed by interview and that being so, the law laid down in the judgments cited by the counsel for the petitioner would not apply.

34. When the selection is not based on a written test followed by interview, then prescription of 33% marks for interview has been held not to be arbitrary or violative of Article 14 of the Constitution of India. The leading case qua this proposition of law is the case of Anzar Ahmad v. State of Bihar and others - , 1994 (1) SCC 150 in which prescription of 50% marks for academic excellence and 50% marks for interview was held well within the parameters of law. The earlier judgments of the Apex Court in the cases of Ashok Kumar Yadav (supra) and Mohinder Sain Garg (supra) were distinguished on the ground that in those cases, the selection was based on a written test followed by interview. The judgment in Anzar Ahmad's case (supra) has been followed by the Apex Court in Siya Ram v. Union of India - , 1998 (2) SCC 566 and this Court in Gurjit Singh v. State of Punjab - 1999 (3) S.C.T. 248 and Vinod Kumar's case (supra), wherein prescription of 50% marks for professional ability followed by interview of 50% marks was upheld.

35. In the afore-referred judgments, the criteria for earmarking 50% marks for academic excellence and 50% marks for interview was upheld. In comparison, in the facts of the present case, only 33% of the total marks have been earmarked for interview and thus, the same cannot be questioned.

36. The allocation of 33% marks for interview and the remaining for academic excellence have also been upheld by this Court in the case of Jagmal v. State of Haryana and others - , 2007 (1) SLR 177, in which it was held as under :

"8. Having heard the learned counsel at a considerable length and having perused the original record, we are of the considered view that this petition is liable to be dismissed. It is evident that the Commission has adopted a criteria which does not suffer from any violation of Articles 14 and 16(1) of the Constitution. In the case of Anzar Ahmad v. State of Bihar , 1994 (1) SCT 483 (SC) : 1994 (1) SCC 150, Hon'ble Supreme Court has held that in matters

concerning selection for employment to a service, 50% marks allocated for viva voce and 50% marks for academic performance could not be said to have suffered from any arbitrariness warranting interference of the Court. In that regard reference was made to the observations made in *Lila Dhar v. State of Rajasthan*, , 1981(4) SCC 159; *Ajay Hasia v. Khalid Mujib Sehravardi*, , 1981(1) SCC 722 and *Ashok alias Somanna Gowda v. State of Karnataka*, , 1992(2) SCT 35 (SC) : 1992(1) SCC 28. The gist of the aforementioned judgments and the principle governing the selection process has been summed up in the case of *Ashok Kumar Yadav v. State of Haryana*, , 1985(4) SCC 417, and the following para from the aforementioned judgment has been approved by their Lordships in *Anzar Ahmad's case* (supra):--

"...The competitive examination may be based exclusively on written examination or it may be exclusively on interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charge of arbitrariness, but not necessarily always. There may be posts and appointments where the only proper method of selection may be by a viva voce test.

.....Now if both written examination and viva voce test are accepted as essential features of proper selection in a given case, the question may arise as to the weight to be attached respectively to them... 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. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnapa Reddy, J. in *Lila Dhar case* "exaggerated weight has been given with proven or obvious oblique motives". "

(emphasis added)

The aforementioned view has been followed and applied in many other judgments including *Jaswinder Singh v. State of J&K*, , 2003 (2) SCC 132; *Vijay Syal v. State of Punjab*, , 2003 (3) SCT 903 (SC) : 2003(9) SCC 401 and *Inder Parkash Gupta v. State of J&K*, , 2004(2) SCT 680 (SC) : 2004(6) SCC 786."

37. To the same effect is another judgment of this Court in *Pankaj Sharma's case* (supra).

38. From the afore-referred catena of judgments by the Apex Court, as also this Court, there is no room left for doubt that where the selection process does not comprise of a written test followed by interview, the principles laid down by the Apex Court in *Ashok Kumar Yadav's case* (supra) and *Mohinder Sain Garg's case*

(supra) would not apply. It is further clear that where the selection is based on marks allocated for academic excellence and interview, the division of marks in the ratio of 50-50 is well within the four corners of law. If the prescription of 50% marks for interview, where the selection is based on academic score and interview, is not excessive, then also there is no question of holding 33% marks for interview to be excessive, especially when in the case in hand, no mala fides have even been raised by the petitioner against the Selection Committee or its Members. In fact, neither the Selection Committee nor its Members have even been arrayed as parties. In the absence of even an allegation of mala fide and without impleading the Selection Committee or its Members as parties, the petitioner cannot be allowed to agitate the claim raised by him.

39. The submission raised on behalf of the petitioner, that exemption from passing HTET/STET and B.Ed examination would amount to dilution of standards, and therefore, cannot be resorted to, is an argument which also does not carry any weight. The exemption has been granted by the State of Haryana after considering various issues through an amendment to the 2012 Rules, the vires of which were challenged before this Court. After accepting the reasons given by the State for granting the exemptions, a Division Bench of this Court dismissed the writ petitions. Once a Division Bench of this Court in Shivani Gupta's case (supra) has upheld the grant of exemptions, the above argument so raised on behalf of the petitioner must also fail. Even otherwise, the exemption so granted is by way of one time measure and that the appointed candidates are required to pass the examinations, in which they have been granted exemptions, within the stipulated time frame. Thus, there is no dilution of standards, as claimed by the petitioner.

40. Learned counsel for the petitioner, while referring to the result sheet, has attempted to project arbitrariness on the part of the Selection Committee. It is submitted that candidates with lower marks in academics have been given higher marks in interview and vice versa. The following table has been projected to allege arbitrariness on the part of the respondents while making the award of marks for interview:--

41. While referring to the aforesaid table, it is argued that out of a total of 1870 teachers selected in the subject of English, 1000 are those persons, who had secured less than 33 marks in academics. Similarly, out of a total of 1700 teachers selected in the subject of Hindi, 864 are those, who had less than 33 marks in academics etc. It was sought to be contended that a large number of persons, who had less marks in academics score, were selected by giving them very high marks in interview.

42. The aforesaid table itself belies the case of the petitioner. If 120 persons having less than 33 marks in the academic score out of a total of 275 have been selected as PGT (Political Science), then 155 candidates, who had very high marks in academics, also have got selected. Similar is the position with regard to subjects of Hindi and English. Thus, it cannot be said that majority of the persons

with lesser academic score, by giving them high marks in the interview, have been selected, as percentage of the selectees, who had high academic score, is also quite large.

43. A random perusal of the result sheet shows that candidates with high academic score have got low marks in interview, whereas candidates with lower academic score have got high marks in interview. Thus, it cannot be said that there has been any arbitrariness in the award of interview marks.

44. Even otherwise, a perusal of the averments made in the petition shows absence of any averments with regard to mala fides on the part of Interviewing Board. Further, neither the Interviewing Board nor its Members have been arrayed as parties in the instant lis. In the absence of any mala fides even alleged on the part of the Interviewing Board, especially without they being impleaded as party to the present petition, the arguments raised on behalf of the petitioner, alleging arbitrariness in the interviewing process, have to be rejected.

45. Counsel for the petitioner relies upon a Division Bench judgment of this Court in Vijay Kumar and others v. Sanjeev Kumar and others - L. P.A. No. 1555 of 2012 decided on 30.9.2013 as also a Single Bench judgment of this Court in Suman Kumari v. State of Haryana and others - C. W.P. No. 18482 of 2010 decided on 20.02.2015.

46. A perusal of both the aforesaid judgments shows that the same were rendered after perusal of the record and analysis of the criteria therein, which showed arbitrary allocation of marks. As noticed above, a random perusal of the result sheet in the case in hand does not show any such arbitrariness, as noticed above. Many of the candidates having higher marks in their academic score have got lower marks in interview and vice versa. Even otherwise, in Vijay Kumar's case (supra), a Special Leave Petition being S. L. P. (Civil) No. 35373 of 2013 - Ramjit Singh Kardam and others v. Sanjeev Kumar and others has been filed in which status quo has been granted by the Apex Court. This Court is informed that the matter is still pending before the Apex Court and the order of status quo granted initially, continues. The same is the position with regard to Suman Kumari's case (supra), in which an intra court appeal being L. P.A. No. 359 of 2015 has been filed. In this appeal also, status quo with regard to services of appellants therein has been ordered to be maintained.

47. In view of the above, finding no merit therein, all these petitions being CWP Nos. 11736 of 2013, 1240, 8974, 5002, 5042, 1416, 22372, 22441, 22443, 3940, 10623, 9948, 9902, 11175, 15659, 18597, 18880, 18893, 18963, 19742, 20470, 13530, 13575, 15784, 16877, 17350, 17594, 18086, 18089, 18094, 18133, 18308, 18440, 18523, 18527, 18531, 18532, 18533, 18535, 7281, 1433, 16016, 19312, 21356, 21680, 15505, 20964, 22814, 23032, 23396, 25998, 9555 of 2014, 582, 898, 3274, 3661, 3868, 1851, 732, 9833, 8790, 8767, 8768, 8847 and 1616 of 2015 are ordered to be dismissed with no order as to costs.

48. Before parting with the judgment, directions are issued to the State to go

into the issues raised on the behalf of the petitioner(s) with regard to the alleged irregularities in projection of marks by the earlier mentioned Rekha Gupta and Pushpa Rani and the same be dealt with in accordance with law.