
(2015) 08 MEG CK 0004
In the Meghalaya High Court
Case No : WP(C) No. 339 of 2014

Kampher Mark Swer

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Citation : (2015) 08 MEG CK 0004

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : H.S. Thangkhiew, Senior Advocate, P. Nongbri and N. Mozika, for the Appellant; S. Sen Gupta, G.A., B. Khyriem and S. Sen, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J—In this writ petition, the petitioner is praying for quashing and setting aside of the proceedings of the Interview Committee held on 08-07-2014 and also the select list notified by Notification No. MPSC/D-22/2/2007-2008/189 dated 28-07-2014 for appointment to the post of Sub-Divisional Public Relations Officer/Media Extension Officer.

2. The concise fact of the case leading to filing of the present writ is recapitulated. By an office order No. I PR. 45/2005/75 dated 17-12-2009, the petitioner was appointed as Assistant Public Relations Officer/Sub-Divisional Public Relations Officer in the Department of Information and Public Relations, Government of Meghalaya under Reg. 3(f) of the Meghalaya Public Service Commission (Limitations of Functions) Rules and was posted as Sub-Divisional Public Relations Officer, Amlarem. The term of the petitioner's appointment as Sub-Divisional Public Relations Officer had been extended from time to time by various extension orders and the petitioner is continuing to serve as Sub-Divisional Public Relations Officer, Amlarem till date.

3. The Meghalaya Public Service Commission (respondent No. 2) issued an

advertisement being No. MPSC/ADVT-38/1/2012-2013/1 dated 20-04-2012 inviting application for recruitment to the various posts, including 6 (six) posts of Sub-Divisional Public Relations Officer/Media Extension Officer in the Directorate of Information and Public Relations, Government of Meghalaya. The eligibility criteria for the post of Sub-Divisional Public Relations Officer/Media Extension Officer as mentioned in the said advertisement was Graduate in Arts/Science/Commerce and preference would be given to candidates with degree in Mass Communication/Journalism from any recognized institute. However, the said advertisement did not mention anything about the selection procedure to be followed and the marks assigned for the written examination and personal interview. Later on, vide letter under memo. No. MPSC/ADVT-38/1/2012-2013/105 dated 24-04-2013 the number of posts for Sub-Divisional Public Relations Officer and Media Extension Officer as mentioned in the said advertisement was reduced from 6 (six) to 4 (four) posts.

4. Written examination of the candidates was conducted for 300 marks on 31-01-2014, wherein a total of 971 candidates appeared. It is stated that the petitioner performed exceptionally well in the written examination and scored 242 marks (out of the total of 300 marks) which was the highest marks scored by any candidate in the said written examination. The respondent No. 2 vide Notification under memo. No. MPSC/Ex-C/17/2013-2014/67 dated 18-06-2014 notified that 21 candidates (including the petitioner) had qualified the written examination and were asked to appear for the personal interview on 08-07-2014. In the personal interview held on 08-07-2014, 18 (eighteen) candidates including the petitioner appeared. The Interview Board consisted of 5 (five) members. It is not known to the petitioner as to what was the total marks assigned for the personal interview and what was the marks assigned to each of the 5 (five) members of the Interview Board. It is also stated that the petitioner performed exceptionally well in the interview and answered almost all the questions asked by the members of the Interview Board. But to the shock and surprise of the petitioner, the petitioner was given 8.15 marks in the personal interview as per the result of the personal interview published by the respondent No. 2. It is also stated that one member of the Interview Board had given 6 marks to the petitioner and another member had given 2 marks and the remaining three members had given 0.05 marks to the petitioner. It is the further case of the petitioner that the variation is unreasonable inasmuch as three members had given 0.05 marks, another member had given 6 marks and the marks given by the members of the Interview Board were in fractions and decimals which is absolutely arbitrary, unreasonable and unprecedented in a personal interview.

5. Based on the said personal interview, the respondents No. 2 vide Notification No. MPSC/D-22/2/2007-2008/189 dated 28-07-2014 recommended the names of the private respondents No. 4, 5, 6 and 7 for appointment to the said 4 (four) posts of Sub-Divisional Public Relations Officer/Media Extension Officer. The petitioner also submitted an application under RTI Act to the respondent No. 2

seeking various information, including information as to weightage given to the written examination and personal interview and copies of the petitioner's question booklet and answer script. The PIO of the respondent No. 2 under his letter dated 02-09-2014 informed the petitioner that the weightage given to the written examination was 87.5% and to the personal interview was 12.5%. The PIO further furnished the copies of the petitioner's question booklet and answer script.

6. It is stated in para No. 10 of the writ petition that as per the information provided by the PIO of the respondent No. 2, the weightage given to written examination was 87.5% and to personal interview was 12.5%. The total marks assigned to the written examination was 300 marks. As such 300 marks constituted 87.5% weightage for the written examination. In that view of the matter, the total marks assigned to the Personal Interview comes to 42.8571429 marks. Therefore, the marks assigned to the personal interview would be 42.8571429 marks. Further, if the said 42.8571429 marks was assigned to 5 (five) members of the Interview Board, each member was given 8.57142858 marks. The petitioner further stated that even that is highly improbable inasmuch as individual members of the Personal Interview Board had given marks upto 8.5 marks to some of the candidates. The petitioner further stated that the mark sheet of the interview has been manipulated/fabricated by the respondent No. 2 and the marks reflected in the score sheet is not the actual marks given by the members. This is apparent from the pattern of marks given by 4 (four) members of the Interview Board to the respondents No. 5 and 6.

7. It maybe pertinent to mention here that as directed by this Court, the respondent No. 2 produced the proceedings of the interview in sealed cover. By opening the sealed cover, this Court had carefully perused the proceedings of the interview and found that there is no evidence for manipulation/fabrication of the mark sheet of the interview. The petitioner in para 13 of the writ petition asserted that:

"13. That the petitioner states that the entire selection/interview process has been carried out by the respondents in a highly illegal, arbitrary and discriminatory manner inasmuch as the advertisement dated 20-04-2012 for the said post of Sub-Divisional Public Relations Officer/Media Extension Officer did not state anything about the selection procedure to be followed and the marks assigned for the written examination and the personal interview. The information furnished under the RTI stated that the weightage given to written examination was 87.5% and to the personal interview 12.5%. Since 300 marks constituted 87.5% weightage for the written examination, the remaining 12.5% weightage should have been for the personal interview, which comes to 42.8571429 Marks. It is absolutely improbable that the marks assigned to personal interview would be 42.8571429 Marks. Further, if the said 42.8571429 Marks are assigned to 5 members of the Interview Board, each member was given 8.57142858 Marks. The petitioner further states that even that is highly improbable inasmuch as

individual members of the Personal Interview Board have given marks up to 8.5 marks to some of the candidates. This clearly shows that the allocation of marks for the written examination and personal interview was done arbitrarily and without application of mind."

8. It is also stated in the writ petition that one of the interviewers had charged the petitioner with trying to use influence through his local MLA to favour him in the selection, but the petitioner has no knowledge or had he ever approached any person inasmuch as he was confident of being successful, after performing exceedingly well in the written examination which is substantiated by the result wherein he scored the highest marks of all the candidates and was placed in the first position.

9. There is no material pleading in the writ petition that any of the members of the Interview Board was biased and mala fide against the petitioner and as such, very less marks were awarded to the petitioner in the interview. It is now very clear that the allegations of mala fide are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. In the absence of necessary particulars of the charge of bias and mala fide for making out a prima facie case in the writ petition, the High Court is justified in refusing to carry on investigation into the allegations of mala fides. Therefore, in the case of the charge of bias and mala fide, there should be necessary particulars for making out a prima facie case in the writ petition. In the present writ petition, there are only vague and scanty general allegations in para 18 of the writ petition that the entire selection/interview process has been carried out by the respondents in a highly illegal, arbitrary and discriminatory manner inasmuch as the entire interview/selection process smacks of mala fide and favouritism and nepotism to reach favour to certain preferred candidates and deny the petitioner a fair chance to compete for public employment. Therefore, it is clear that there are no material particulars for making allegations of bias and mala fide against any member of the Interview Board.

10. The respondent No. 2 had filed the affidavit-in-opposition wherein the respondent No. 2 had categorically denied the allegations made by the petitioner in the writ petition that the entire selection/interview process has been carried out by the respondents in a highly illegal, arbitrary and discriminatory manner and also the entire process smacks of mala fide and favouritism and nepotism to reach favour to certain preferred candidates. The respondent No. 2 categorically stated in the affidavit-in-opposition that the members of the Selection Committee are experts and also there is no strategic formula that whosoever obtains the highest marks in the written test should get the highest or very good marks in the viva voce test/interview.

11. The respondent No. 2 in the affidavit-in-opposition further stated that when a written/screening test is conducted by the Commission, where the marks for personal interview are not specified by the Service Rules, weightage of personal interview is decided by the Commission on the principle laid down in its Order

No. MPSC/D-99/1/2012-2013/17 dated 18-04-2013 read with the modification vide order No. MPSC/D-99/1/2012-2013/20 dated 29-04-2013, unlike the recruitment to the posts of Judicial Magistrate Grade III, Meghalaya Civil Service, Meghalaya Police Service, Meghalaya Forest Service where the marks were specified as per the Service Rules. The copies of the said orders are also annexed with the affidavit-in-opposition as Annexure-3 and 4 respectively.

12. The respondent No. 2 further stated in the affidavit-in-opposition that the marks assigned to the personal interview should not exceed 12.5% of the total as the total written test marks being 300, the ceiling worked to be $(300/87.5) \times 12.5 = 42.8571428571$. For the sake of convenience, the said marks were thus fixed at 42.5, i.e. below the ceiling, and each member of the five (5) members interview board, including the expert deputed by the Department, was allotted 8.5 marks.

That as stated and claimed by the Petitioner that he had performed exceptionally well is unacceptable as he is not under any law, qualified to make such a statement. The true performance of any candidate in the interview is reflected by the marks awarded to him by the members of the interview board.

The total marks assigned to the personal interview was 42.5 and each member was allotted 8.5 marks. Every member has the legal right to award marks to any candidate interviewed from "0" to "8.5" as per his individual assessment of the candidate. The use of decimals in the marks awarded to the candidate is not unprecedented or arbitrary as alleged. It has been used by the Commission in other recruitments in the past. There is no law which says that only natural numbers have to be used in awarding marks to the candidate. The decimals are as real as any other number. The marks awarded by any member to a candidate are a reflection of the assessment made by that member of the performance of the candidate in the interview. The degree of variation, whether large or small, is immaterial. A member is not required to take the consensus of the interview board before he can award marks to a candidate. In that respect, each and every member has the exclusive right of absolute independence. The only information that can be inferred from the marks awarded to the candidate petitioner is that the assessment of the four members are compatible and hence a truer reflection of his performance. The action of the Commission is perfectly legitimate.

13. The respondent No. 2 also stated in the affidavit-in-opposition that the written test was conducted on General English, General Knowledge and Mass Communication. The total marks of the written test, viz. 300 were printed on the front page of the question booklet. Once the written marks were fixed, the personal interview marks got automatically fixed under the principle enunciated in the Commission's orders referred earlier i.e. (Annexure-3 and Annexure-4). The personal interview is always an integral part of recruitment procedure except for the post of Typist and Stenographers. In recruitment to higher post, the personal interview plays a very crucial part in the selection of the most suitable candidates who could be recommended for appointment. No written test can

evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by a viva-voce test, much depending upon the constitution of the interview board. The procedure had been adopted by the Commission in all cases of recruitment conducted in the past. In this instant case, no unfair treatment had been meted out to any candidate including the petitioner. If anybody has any objection to the conduct of the test or the personal interview, it should have been raised at the relevant time. The candidate petitioner had participated in the written test as well as the personal interview without demur. He cannot turn back and assailed the same, making all kinds of baseless and unsubstantiated allegations, now that he had found out that he was not selected.

14. The respondent No. 2 further stated that all the members of the Commission had, before the scheduled date of the personal interview i.e. 08-07-2014, received a letter from the petitioner's local MLA dated 30-06-2014 making an attempt to influence the outcome of the interview in favour of the petitioner. This was the very reason which prompted one of the members to ask the petitioner about the propriety of such an act. The said letter dated 30-06-2014 received from the petitioner's local MLA by the Chairman MPSC and other members read as follows:

To,

The Chairman, Meghalaya Public Service Commission Shillong.

I do hereby recommend the name of Shri Kampher Mark Swer, Roll No. 8, who is applying for the post of Sub-Divisional Public Relations Officer and Media Extension Officer under DIPR, who secured 1st Position in Written Test for the said post.

Kindly extend your help and support to accommodate him to the above post.

With regards Sd/- (S. Shullai)"

15. The petitioner filed the rejoinder affidavit to the affidavit-in-opposition filed by the respondent No. 2 wherein it is stated that he has no knowledge or had he ever approached any person inasmuch as he was confident of being successful, after performing exceedingly well in the written examination. In his rejoinder affidavit, the writ petitioner is not categorically denying the said fact pleaded in the affidavit-in-opposition by the respondent No. 2 that they had received the said letter dated 30-06-2014 from the petitioner's local MLA making an attempt to influence the outcome of the interview in favour of the petitioner.

16. There is no straitjacket formula in a case of personal bias, for deciding, if, there is personal bias or not. But acceptable tests are (i) the real likelihood of bias; (ii) whether a reasonable intelligent man, fully apprised of all the

circumstances, would feel a serious apprehension of bias and (iii) not to the extent that there should be clear evidence of bias/existence of bias. In Halsbury's Laws of England, 4th Edn., Vol. 2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. This principle had been accepted by the Apex Court in *Manak Lal Vs. Dr. Prem Chand*, AIR 1957 SC 425 : (1957) 1 SCR 575 . De Smith in his *Judicial review of Administrative Action*, (1980) P. 262 had considered what are "real likelihood of bias or reasonable suspicion of bias" and observed that:

"Real Likelihood of Bias or Reasonable Suspicion of Bias

A "real likelihood" of bias means at least substantial possibility of bias. The court, it has been said, will judge of the matter "as a reasonable man would judge of any matter in the conduct of his own business". The test of real likelihood of bias, which has been applied in a number of leading cases in magisterial and liquor licensing, is based on the reasonable apprehensions of a reasonable man fully apprised of the facts. It is no doubt desirable that all judges, like Caesar's wife, should be above suspicion; but it would be hopeless for the courts to insist that only "people who cannot be suspected of improper motives" were qualified at common law to discharge judicial functions, or to quash decisions on the strength of the suspicions of fools or other capricious and unreasonable people.

What is the position if the court is satisfied, on the evidence before it, that there was no real likelihood of bias but is nevertheless of the opinion that a reasonable man, at the time when the decision under review was made, could well have suspected that the tribunal would be biased? Does the public interest nevertheless demand that the original decision be set aside? The cases do not speak with one voice on this matter. The courts have often quashed decisions strength of the reasonable suspicions of the party aggrieved, without having made any finding that a real likelihood of bias in fact existed. In 1954 the Divisional Court of the Queen's Bench Division, after having reviewed the authorities, held that "real likelihood" was the proper test, and that a real likelihood of bias had to be "made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries. "This might be regarded as but another formulation of the "reasonable suspicion" test, for it is the duty of a reasonable man to make reasonable inquiries; if, after having made his inquiries, he is still left with the impression that there was a real likelihood that the tribunal would be biased against him, it is the duty of the Court to quash the decision although, on the full information available to it, it is satisfied that his suspicions were unfounded? The answer given by Devlin L.J. in a subsequent case was in the negative. Whether a real likelihood of bias existed was to be "determined on the probabilities to be interfered from the circumstances, not upon the basis of the impressions that might reasonably be left on the minds of the party aggrieved or the public at large.

However, the pendulum has now swung towards a test of reasonable suspicion, founded on the apprehensions of a reasonable man who had taken reasonable steps to inform himself of the material facts. "Reasonable suspicion" tests look mainly to outward appearances, "real likelihood" tests focus on the court's own evaluation of the probabilities; but in practice the tests have much in common with one another, and in the vast majority of cases they will lead to the same result. For the courts to retain both tests as alternative methods of approach is unlikely to cause serious uncertainty, and there may be advantages in preserving a measure of flexibility. It would be surprisingly, surely, if a court were to refuse to set aside a decision on the ground that a reasonable observer could not have discovered facts that subsequently came to light and which indicated to the court that there was a real likelihood of bias in the adjudicator."

17. In the case of personal bias, two tests are there: (i) likelihood of bias and (ii) that there is reasonable case of bias. But nevertheless, the opinion of likelihood of bias is that of a reasonable man, at the time the decision under review was made, could well have suspected that the Tribunal would be biased? There is another formula "reasonable suspicion" tests for it is the duty of a reasonable man to make reasonable inquiries, if, after having made his inquiries, he is still left with the impression that there was a real likelihood that the tribunal would be biased against him, is it is the duty of the Court to quash the decision. De Smith observed that the apprehension of a reasonable man who had taken reasonable steps to inform himself of the material facts and "reasonable suspicion" tests look mainly to outward appearances. The inferences of malafide can be drawn only on the basis of factual matrix and not merely on the basis of insinuations, conjectures and surmises. (Ref:- M. Sankaranarayanan, IAS Vs. State of Karnataka and others, AIR 1993 SC 763 : (1992) 3 SCALE 90 : (1993) 1 SCC 54 : (1992) 2 SCR 368 Supp .

18. The Apex Court in (Constitution Bench) in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, AIR 1970 SC 150 : (1969) 2 SCC 262 : (1970) 1 SCR 457 , held that the real question is not whether he was biased, for it is difficult to prove the state of mind of a person. There must be a reasonable likelihood of bias and a mere suspicion of bias is not sufficient.

19. It is fairly settled law that when the Rules themselves do not provide for allocation of the marks under different heads at the time of interview test, it is for the Interviewing Body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in those matters and the Court cannot sit in the judgment of the expert body i.e. the Interviewing Board. In the present case, the manner of allocation of marks for the interview, in the absence of marks for interview prescribed in the Rules, had already been notified by the MPSC vide the said order dated 18-04-2013 and modification order dated 29-04-2013. This fact is not denied by the writ petitioner and also as to how the weightage of personal interview should be given in the case of total marks for written test is 300 as pleaded in the writ petition, is similar with the

one as mentioned by respondent No. 2 in the affidavit-in-opposition.

20. The Apex Court in *Lila Dhar Vs. State of Rajasthan and Others*, AIR 1981 SC 1777 : (1981) 43 FLR 347 : (1981) LabIC 1515 : (1981) 2 LLJ 297 : (1981) 3 SCALE 1235 : (1981) 4 SCC 159 : (1982) 1 SCR 320 : (1981) 2 SLJ 266 : (1981) 13 UJ 719 (3 Judges) in para 6 and 8 held that:

"6. Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview test must be minimal. That was what was decided by this Court in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, AIR 1971 SC 2303 : (1971) 1 SCC 38 : (1971) 2 SCR 430 , *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, AIR 1981 SC 487 : (1981) 1 LLJ 103 : (1981) 1 SCC 722 : (1981) 2 SCR 79 : (1981) 2 SLJ 651 and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied.....

8. The second ground of attack must fail for the same reason as the first ground of attack. The rules themselves do not provide for the allocation of marks under different heads at the interview test. The criteria for the interview-test has been laid down by the Rules. It is for the interviewing body to take a general decision whether to allocate marks under different heads or to award marks in a single lot. The award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, as we said, it is proven or obvious that the method of marking was chosen with oblique motive."

21. The Apex Court in *State of H.P. Vs. Amar Nath Sharma and Others*, (1994) 5 JT 342 : (1994) 3 SCALE 141 : (1994) 2 SCC 532 Supp : (1994) 1 SCR 429 Supp : (1995) 1 SLJ 217 : (1994) 2 UJ 795 held that "we have not been able to find any material illegality in the conduct of interviews. Simply because a candidate obtained less marks for educational qualifications and more marks in the interview, it is not the ground to reach the conclusion that the candidate was favoured". Para 9 of the SCC in *Amar Nath Sharma's* case (Supra) held that:

"9. The High Court, in our view, was not justified in quashing the selection procedure. The High Court has acted merely on surmises and conjectures. We have not been able to find any material illegality in the conduct of interviews. Simply because a candidate obtained less marks for educational qualifications and more marks in the interview, it is no ground to reach the conclusion that the candidate was favoured. The special selection committees at various district levels adopted their own procedure to hold the interviews. At some places lump sum marks were awarded in respect of general knowledge and personality whereas at other places 20 marks were divided into general knowledge and personality separately. We see no illegality in the manner of holding the interviews. We, therefore, set aside the findings of the High Court and hold that the interviews were held properly."

22. It is well settled that when a selection is made by the Expert Body like the Public Service Commission which was also advised by the Expert, the Court should be slow to interfere with the opinion expressed by the Expert unless allegations of mala fide are made and established. The Apex Court in *Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others*, (1996) 7 AD 148 : (1996) 74 FLR 2728 : (1996) 8 JT 130 : (1996) LabIC 2744 : (1997) 1 LLJ 110 : (1996) 6 SCALE 494 : (1996) 6 SCC 282 : (1996) 5 SCR 361 Supp : (1996) 3 SLJ 127 para 9 held that:

"9. ... We are unable to accept this contention. This Court in the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, AIR 1981 SC 487 : (1981) 1 LLJ 103 : (1981) 1 SCC 722 : (1981) 2 SCR 79 : (1981) 2 SLJ 651 , while considering the Case of selection, wherein 33% marks was the minimum requirement by a candidate in viva voce for being selected, held that it does not incur any constitutional infirmity. As has been stated earlier the expert body has to evolve some procedure for assessing the merit and suitability of the applicants and the same necessarily has to be made only by allotting marks on different facets and then awarding marks in respect of each facet of a candidate and finally evaluating his merit, it is too well settled that when a Selection is made by an expert body like public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus considered, we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated."

23. The Apex Court in *Ashok Kumar Yadav and Others Vs. State of Haryana and*

Others, AIR 1987 SC 454 : (1986) LabIC 1417 : (1985) 1 SCALE 1290 : (1985) 4 SCC 417 : (1985) 1 SCR 657 Supp (4 Judges) held that the significance of viva voce matter is to be determined by the Expert Body and would not be right for the Court to pronounce upon it. Para 25 of the SCC in Ashok Kumar Yadav's case (Supra) read as follows:

"25. ... There can therefore be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination. 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. "In the case of admission to a college for instance", as observed by Chinnappa Reddy, J. in Liladhar's case, : Lila Dhar Vs. State of Rajasthan and Others, AIR 1981 SC 1777 : (1981) 43 FLR 347 : (1981) LabIC 1515 : (1981) 2 LLJ 297 : (1981) 3 SCALE 1235 : (1981) 4 SCC 159 : (1982) 1 SCR 320 : (1981) 2 SLJ 266 : (1981) 13 UJ 719 "where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has to be given to performance in the written examination" and the importance to be attached to the viva voce test in such a case would therefore necessarily be minimal. It was for this reason that in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, AIR 1981 SC 487 : (1981) 1 LLJ 103 : (1981) 1 SCC 722 : (1981) 2 SCR 79 : (1981) 2 SLJ 651 this Court took the view that the allocation of as high a percentage of marks as 33.3% to the viva voce test was "beyond all reasonable proportion and rendered the selection of the candidates arbitrary." But, as pointed out by Chinnappa Reddy, J., "in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way subject to basic and essential academic and professional requirements being satisfied." There may also be services "to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise" and in case of such services where sound selection must combine academic ability with personality promise, some weight has to be given to the viva voce test. 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 Chinnappa Reddy, J. in Liladhar's case (supra) "exaggerated weight has been given with proven or obvious oblique motives."

24. The Apex Court in Madan Lal and Others Vs. State of Jammu and Kashmir

and Others, AIR 1995 SC 1088 : (1995) 2 JT 291 : (1995) LabIC 1575 : (1995) 1 SCALE 494 : (1995) 3 SCC 486 : (1995) 1 SCR 908 : (1995) 2 SLJ 161 : (1995) 2 UJ 817 held that there is no settled law that candidates who obtain higher marks in the written test should have been given the higher marks in the oral interview, and in the absence of any allegations of bias and mala fide against the Committee, the Court would not sit in appeal against the marks awarded by the Expert Body to a candidate. Para 10 and 17 of the SCC in Madan Lal's case (Supra) read as follows:

"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 candidates concerned 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.

17. In the light of what is stated above, while dealing with contention 1, this contention also must fail. The petitioners subjectively feel that as they had fared better in the written test and had got more marks therein as compared to selected respondents concerned, they should have been given more marks also at the oral interview. But that is in the realm of assessment of relative merits of candidates concerned by the expert committee before whom these candidates appeared for the viva voce test. Merely on the basis of petitioners' apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the process of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the petition about any personal bias of the members of the interview committee against the petitioner. They have also not alleged any mala fides on the part of the interview committee in this connection. Consequently, the attack on assessment of the merits of the petitioners cannot be countenanced. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the petitioners or to the respondents concerned. It cannot be the subject - matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned. In the light of the affidavit in reply filed by Dr. Girija Dhar to which we have made reference earlier, it cannot be said that

the expert committee had given a deliberate unfavorable treatment to the petitioners. Consequently, this contention also is found to be devoid of any merit and is rejected."

25. The Apex Court in *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, AIR 1990 SC 434 : (1990) 60 FLR 172 : (1990) 2 LLJ 470 : (1990) 1 SCC 305 : (1990) 1 UJ 328 in para 12 held that:

"12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."

26. The Apex Court in *Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others*, (2010) 127 FLR 888 : (2010) 7 JT 558 : (2010) 7 SCALE 529 : (2010) 8 SCC 372 : (2010) 9 SCR 227 : (2011) 1 SLJ 170 : (2010) 5 SLR 105 : (2010) AIRSCW 5907 : (2010) 6 Supreme 18 held that the Court will not sit in appeal against the decision/finding of the Expert Committee unless the allegations of bias and mala fide had been made and established against members of the Expert Committee. Para 21, 38 and 39 of the SCC in *Basavaiah (Dr.)*'s case (*Supra*) read as follows:

"21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fides has been alleged against the experts constituting

the selection committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters.

39. In the impugned judgment, the High Court has ignored the consistent legal position. They were expected to abide by the discipline of the precedents of the courts. Consequently, we are constrained to set aside the impugned judgment of the Division Bench of the High Court and restore the judgment of the Single Judge of the High Court."

27. The Apex Court is also of the similar view in *Vijay Syal and Another Vs. State of Punjab and Others*, AIR 2003 SC 4023 : (2003) 5 JT 241 : (2003) 5 SCALE 27 : (2003) 9 SCC 401 : (2003) SCC(L&S) 1112 : (2003) 1 SCR 242 Supp : (2003) 1 SLJ 13 : (2003) AIRSCW 2954 : (2003) 4 Supreme 299 that the marks given by the Interview Committee are not subject to judicial review unless mala fides or extraneous considerations are alleged and established. Para 12 and 17 of the *Vijay Syal*'s case (Supra) held that:

"12. As can be seen from the difference of marks secured by the candidates in the interview, it does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview are 11.5 and the highest are 22.87. Further marks secured in the interview and the marks secured in written test are also not grossly disproportionate. This apart, out of total marks of 240, only 25 marks were earmarked for interview. So 25 marks for interview out of 240 as against 200 for written test and 15 marks for qualification and other activities do not admit an element of arbitrariness or give scope for use of discretion by members of the Interview Committee recklessly or designedly in giving more marks to show favour in the interview so as to give an advantage or march to an undeserving candidate over others who had shown extraordinary merit in written test. From the chart, we find among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to Scheduled Castes were 114. This apart, the marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the court to sit in judgment over such assessment and particularly in the absence of any mala fides or extraneous considerations attributed and established.....

17. This Court in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, AIR 1987 SC 454 : (1986) LabIC 1417 : (1985) 1 SCALE 1290 : (1985) 4 SCC 417 : (1985) 1 SCR 657 Supp , aforementioned, found that allocation of 12.2% marks for viva voce test was fair and just and in that view directed that marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. Even judged by this standard in the present appeals, the marks allocated for the viva voce test being 25 as against total marks of 240 are less than 12.2% i.e. well within the ambit of

direction given. In that case, this Court declined to exercise discretion to set aside the selection made by the HPSC after the lapse of 2 years taking note that the selected candidates had already been appointed to various posts."

28. For the foregoing reasons and ratio decidendi of the cases discussed above, this Court is of the considered view that this writ petition is devoid of merit and accordingly dismissed. However, it is made clear that the time taken in disposal of the writ petition i.e. from the date of filing of the writ petition till the passing of this judgment and order will not be counted in calculating the validity period of the select list in question in the present case.

29. Accordingly, writ petition is dismissed.