

(2010) 04 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 8883 of 2009

Maharashtra Public Service Commission

APPELLANT

Vs

Shri Kisan Tukaram More, Drugs Inspector and Others

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Public Service Commission Recruitment Rules, 2002 — Rule 5.1.4

Citation : (2010) 112 BOMLR 2146

Hon'ble Judges : R.M. Savant, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : A.A. Kumbhakoni and A.M. Kulkarni, for the Appellant; Y.S. Jahagirdar and N.V. Bandiwadekar, for Respondent Nos. 1 to 16 and S.R. Nargolkar, GP for Respondent Nos. 17 and 18, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—Rule, with the consent of the parties made returnable forthwith and heard.

2. By the above Petition filed under Article 226 of the Constitution of India, the Petitioner i.e. Maharashtra Public Service Commission, takes exception to the Common Judgment and Order dated 14th July 2009 passed in Original Application Nos. 129, 140, 152, 153 and 177 of 2009 by the Maharashtra Administrative Tribunal. (For short the Tribunal)

3. The said Original Applications were filed by the Respondents herein i.e. the original applicants who are all working as Drugs Inspector - Class II [The parties would be referred to as per their status in the Original Applications before the Tribunal, except the Maharashtra Public Service Commission, which would be referred to as the Petitioner]. The dispute concerns the appointment to 12 posts of Assistant Commissioner (Drug), General State Services, Group "A" in the Food Administration Department of the Government of Maharashtra.

4. The facts giving rise to the filing of the above Petition can be briefly summarised thus:

The Applicant Nos. 1 to 16 are working in the Food Administrative Department which comes under the Medical Education and Drugs Department, Government of Maharashtra. As mentioned herein above, all the Applicants are working in the post of Drugs Inspector. Some of the Applicants are holding the Bachelors Degree in Pharmacy i.e. B.Pharm. while some are holding the Masters Degree in Pharmacy i.e. M.Pharm. It appears that in the beginning of the year 2008, the State Government through the Principal Secretary, Medical Education & Drugs Department, forwarded a requisition to the Chairman/Secretary of the Petitioner-MPSC for filling up 12 posts of Assistant Commissioner of Drugs. The break up of the said posts is as under:

Open : 5 + 1 (Female) + 1 (Sportsman) Schedule Caste : 1 + 1 (Female) Other Backward Class : 2 + 1 (Female)

On the basis of the said requisition, an advertisement came to be issued by the Respondent No. 1-MPSC in the local newspapers on 23rd May 2008 inviting applications from the eligible candidates. It is relevant to reproduce the qualifications for the said posts;

5. Qualifications: 5.1 Candidates must - 5.1.1 Possess a degree in Pharmacy or Pharmaceutical Chemistry or in Medicine with specialization in Clinical Pharmacology or Microbiology from a university established in India by Law; And

5.1.2 Experience gained after acquiring qualification mentioned in Clause 5.1.1. above, in the manufacture or testing of drugs or enforcement of the provisions of the Act for a minimum period of five years; and

5.1.3 Have adequate knowledge of Marathi so as to be able to speak, read, write Marathi with facility.

5.1.4. Preference may be given to

candidates, having a post graduate degree in any one of the subject mentioned in Sub-clause 5.1.1. above or degree in law or research experience in the synthesis and testing of drugs.

5. The Applicants applied for the said posts in open category pursuant to the said advertisement. The Petitioner-MPSC informed the Applicants that they are not eligible as per the criteria for direct recruitment to the post of Assistant Commissioner. The said letter inter-alia contains the reason which was mentioned as follows:

Not eligible as per criteria.

On the back side of the said letter, it was mentioned as follows:

lgk;d vk;qDr ?vkS"k/ks? - Assistant Commissioner (Drugs), dsfjrk fud"k%:

?v? vuqlwfr tkfr ?loZlk/kkj.k? oxZokjhdfjrk fud"k%:

Post Graduate Degree in Pharmacy or Pharmaceutical Chemistry or in Medicine with specialization in Clinical Pharmacology or Microbiology and thereafter 10 years full time experience on the post of Drug Inspector/Assistant Commissioner.

2? vekxkl ?loZlk/kkj.k? oxZokjhdjhrk fud"k%:

c? Post Graduate Decree in Pharmacy or Pharmaceutical Chemistry or in Medicine with specialization in Clinical Pharmacology or Microbiology + Degree in Law and thereafter more than 10 years full time experience on the post of Drug Inspector/Assistant Commissioner.

Or

d? Post graduate degree in Pharmacy or Pharmaceutical Chemistry or in Medicine with Specialization in Clinical Pharmacology or Microbiology and thereafter more than 14 years, 6 months full time experience on the post of Drug Inspector/Assistant Commissioner.

Or

M? Degree in Pharmacy or Pharmaceutical Chemistry or in Medicine with Specialization in Clinical Pharmacology or Microbiology + Degree in Law and thereafter more than 15 years full time experience on the post of Drug Inspector/Assistant Commissioner.

6. Aggrieved by the said letter dated 7th February 2009 of the Petitioner-MPSC of not calling the Applicants for interview, though according to them they were fulfilling the qualification prescribed by the Rules, the Applicants filed the Original Applications whose numbers have been mentioned in the earlier part of this Judgment. The sum and substance of the case of the Applicants in the said Original Applications was that the Applicants were fulfilling the qualification/eligibility criteria prescribed by the Rules and the advertisement and, therefore, the action of the Respondent No. 1 of not calling them for interview was arbitrary and illegal. The Applicants, therefore, prayed in the said Original Applications that the said letter dated 7th February 2009 issued by the Respondent No. 1 should be quashed and set aside and the Applicants be directed to be called for interview.

7. The said Original Applications were opposed by the MPSC being the Respondent No. 1 in the Tribunal i.e. the Petitioner herein by filing affidavit in reply of one Shri C.V. Pawar - The Desk Officer working in the office of Petitioner. In the said affidavit it was stated that in all 6 posts were originally available for open category for which 92 candidates were found prima facie eligible. Similarly for S.C. (General) category, 17 candidates were found prima facie eligible. It was further stated in the said affidavit that in the terms of the Rules of Procedure of the Petitioner, in so far as seats meant for open category is concerned, the ratio of 3 candidates for one seat to be short-listed for interview and the ratio of 5

candidates for one seat for S.C (General) Category was required to be followed. It was further stated in the said affidavit that in so far as posts meant for S.C. (Female), O.B.C.(General) and Open (Female), since the number of candidates available from these categories were in proportion with the number of posts advertised for these categories, the Petitioner did not fix any criteria for the said categories. It was further stated that for maintaining the ratio between vacancies and number of candidates to be called for interview, the applicants were short-listed for interview on the basis of reasonable criteria which resulted into the disqualification of the applicants for interview which was accordingly communicated to the Applicants vide the said letter dated 7th February 2009. It was further stated that since the Applicants were not fulfilling the educational qualification and experience as mentioned in the criteria adopted for short-listing their names were dropped, for being called for interview in the said process of short-listing. It was also stated that the qualification prescribed in the advertisement indicated minimum eligibility criteria and that by itself did not confer any right on the candidates possessing minimum prescribed qualification for being called for interview. The criteria fixed for the said short-listing was based on the preferential qualification prescribed in the Recruitment Rules of the said post. It was therefore stated that the weightage was given to the candidates possessing preferential qualification i.e. M.Pharm or LL.B degree or both and since enough candidates possessing preferential qualification were available, the applicants were not called for interview. It was also stated that the said criteria for short-listing was not made applicable to the candidates from S.C. (Female), O.B.C. (General) and (Female), and Open (Female) as the candidates from said categories were in proportion to the number of posts available. Therefore, there was no question of shortlisting. It was lastly contended that the Petitioner was entitled to prescribe a criteria for short-listing and such procedure is upheld by the Apex Court in the matter of Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, . It was therefore the case of the Petitioner that there was no merit in the Applications and therefore prayed for its dismissal.

8. To the said affidavit in reply, a rejoinder came to be filed on behalf of the Applicants in Original Application No. 140 of 2009 and the contentions sought to be raised by the Petitioner were sought to be disputed.

9. The Tribunal heard all the Original Applications together as they involved a common question and by the impugned judgment and order dated 14th July 2009 disposed off the said Original Applications by directing the Petitioner-MPSC to interview the Applicants, if they are not already interviewed, provided that they are fulfilling the preferential criteria laid down by Petitioner, except the criteria of law degree as an additional qualification and take steps according to law.

10. The gist of the reasoning given by the Tribunal was that in terms of the Recruitment Rules of 2002 for the said post of Assistant Commissioner (Drugs) as well as in the advertisement, the preferential criteria was laid down and it was

post graduation or degree in law. However, the Petitioner, while laying down preferential criteria for short-listing in 2(b) and 2(d) mentioned post graduation plus degree in law. According to the Tribunal, the degree in law in the criteria for short-listing was not shown as an alternative, but it was shown as compulsory. This according to the Tribunal was not in accordance with the statutory Rules of Recruitment and the advertisement issued for the said post.

The Tribunal further held that though in terms of the Rules of procedure for short-listing, the Petitioner could have enhanced the requirement of experience or requirement of higher educational qualification. Instead of doing so, the Petitioner has laid down a criteria of an additional educational qualification as preferential criteria. The Tribunal was of the view that the same was in fact not in conformity with the statutory rules and in fact was violative of the statutory Rules of Recruitment which had the effect of depriving the applicants and others who were in fact possessing minimum educational qualification and having large experience and even fulfilling the preferential criteria of enhanced experience for being called for interview. The Tribunal was, therefore, of the view that the Applicants have been wrongly denied the call for interview, as they were not holding a law degree and, therefore, the Tribunal thought it fit to set aside the communication dated 7th February 2009 addressed to each of the Applicants and directed the Petitioner to call the Applicants for interview.

11. As indicated above, it is the said judgment and order dated 14th July 2009 of the Tribunal, which is impugned in the above Petition.

12. We have heard Shri A.A. Kumbhakoni, the learned Counsel appearing for the Petitioner-MPSC and Shri Y.S. Jahagirdar, the learned senior Counsel appearing for the Respondents-Original Applicants and Shri S.R. Nargolkar, the learned Government Pleader appearing for the State/Respondent Nos. 17 and 18.

13. On behalf of the Petitioner, the thrust of the submissions was on the right of the Petitioner i.e. MPSC to adopt process of short-listing of the candidates, to be called for interview. The learned Counsel submitted that the Tribunal, after having held that the Petitioner was within its right to short-list its candidates for interview, has thereafter misdirected itself by holding that the criteria adopted for short-listing was dehors the Rules of Recruitment and the advertisement. The learned Counsel for the Petitioner on the aspect of short-listing, relied upon the judgment of the Apex Court reported in *Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another*, . The said case concerned recruitment of Presiding Officers of the Labour Courts constituted under the provisions of M.P. Industrial Relations Act, 1960. The qualifications required for the said post are mentioned in Section 8(3)(c) of the Act which requires that the applicants should have practiced as an advocate or a pleader for a total period of not less than five years. An advertisement came to be issued for 9 posts of Presiding Officers to be filled up, out of which only 4 posts were available to the general category candidates. In pursuance to the said advertisement, several applications were received. In view of the fact that only 4 posts were available

for general category, a decision was taken by the Public Service Commission to call for interview only 71 candidates, although 188 applicants were eligible, as per the requirement of the advertisement. Only those candidates were called for interview who had completed seven and half years of practice. The said process of short-listing was challenged by way of a writ petition in the High Court. The High Court allowed the writ petition taking the view that as the statutory qualifications in respect of the practice was only 5 years, raising the said period from five to seven and half years amounted to laying down a criteria in violation of the prescribed statutory criteria. A direction was given either to call all the applicants for interview who had completed 5 years of practice as required by Section 8(3)(c) of the Act or to screen the applicants through some test and thereafter to call only such applicants for interview who qualify at the said screening test. The matter was carried in appeal to the Apex Court. The Apex Court set aside the judgment of the High Court by holding that the process of short-listing of the applicants by calling those applicants who had completed seven and half years practice cannot be said to be in conflict with the requirement of Section 8(3)(c) because such applicants having longer period of practice shall be presumed to have better experience. The Apex Court observed that if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8(3)(c) of the Act. The rationale behind the short-listing of candidates finds place in Paragraphs 8 and 9 of the said Judgment which are reproduced herein-under:

8. The sole purpose of holding interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva voce test if large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint. The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview. It appears that Union Public Service Commission has also fixed a ratio for calling the candidates for interview with reference to number of available vacancies.

9. In Kothari Committee's Report on the "Recruitment Policy and Selection Methods for the Civil Services Examination" it has also been pointed out in respect of interview where a written test is also held as follows:

The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled....

In this background, it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are

called for interview are properly assessed and evaluated. It need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of the process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences. If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8(3)(c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c) places a bar that no person having less than five years of practice as an advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8(3)(c) of the Act.

By the said Judgment, the criteria of higher experience than the one prescribed by the Recruitment Rules was upheld by the Apex Court. The said judgment further lays down that short-listing can be done on some rationale and objective basis so that the personality and merit of the persons who are called for interview are properly assessed and evaluated.

14. The learned Counsel for the Petitioner further submitted that the Petitioner was within its right to prune the number of candidates at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. For the said purpose the learned Counsel for the Petitioner placed relied on the judgment of the Apex Court reported in Union of India and another Vs. T. Sundararaman and others, of the said judgment is material which is reproduced herein-under:

The Tribunal has clearly erred in doing so. Note 21 to the advertisement expressly provides that if a large number of applications are received the commission may shortlist candidates for interview on the basis of higher qualifications although all applicants may possess the requisite minimum qualifications. In the case of Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, this Court has upheld shortlisting of candidates on some rational and reasonable basis. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was

used as a criterion by the public service Commission for calling candidates for an interview. This was upheld by this Court. In the case of Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, also this Court said that it is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. The procedure, therefore, adopted in the present case by the commission was legitimate. The decision of the Tribunal is, therefore, set aside and the appeal is allowed. There will, however, be no order as to costs.

The learned Counsel for the Petitioner also placed reliance on the judgment of the Apex Court reported in B. Ramakichenin @ Balagandhi Vs. Union of India (UOI) and Others, . in support of his submission that short-listing can be done on some rationale and objective basis.

The learned Counsel for the Petitioner submitted that the Tribunal has misdirected itself by holding that in applying the preferential criteria in Clauses 2(b) and 2(d) as communicated to each of the Applicants, the Petitioner has acted de hors the said Rules. The learned Counsel further submitted that the Tribunal has failed to appreciate that the Recruitment Rules provided for giving preference to the candidates having the qualifications mentioned in Clause 5.1.4 of the said Recruitment Rules. One of the preferential qualification is a degree in law. Therefore, according to the learned Counsel, there was nothing wrong on the part of the Petitioner in applying the said preferential criteria at the threshold to screen the number of candidates so that the candidates are brought within the ratio prescribed by the Rules of Procedure of the Petitioner. The learned Counsel for the Petitioner submitted that for the 7 posts which were for the open category and in respect of which there is a dispute applying the said preferential criteria for short-listing the number of candidates have been pruned down to 24 so that the same is now in consonance with the ratio prescribed by the Rules of Procedure. The learned Counsel for the Petitioner lastly submitted that the short-listing criteria in the instant case cannot be said to be irrational or arbitrary in the context of Recruitment Rules or in the context of the nature of duties that the Assistant Commissioner of Drugs has to carry out. The learned Counsel therefore submitted that the Tribunal has erred in directing the Petitioner to call the Applicants for interview by applying preferential criteria prescribed by the Recruitment Rules, but not applying the criteria of a degree in law.

15. Per contra, it is submitted by Shri Jahagirdar, the learned senior Counsel appearing for the Respondents/Original Applicants before the Tribunal, that the Petitioner could not have applied preferential criteria as mentioned in the Rules at the threshold for short-listing the candidates. The learned senior Counsel submitted that having represented to the Applicants as regards the educational qualification as mentioned in the advertisement, it was not open for the Petitioner to short-list the candidates by applying the said preferential criteria.

The learned senior Counsel submitted that the Applicants were fulfilling the eligibility criteria prescribed by the Rules as also some of them were having higher educational qualifications of M.Pharm, they, therefore, should have been called for interview and thereafter if the Petitioner thought it fit that the said preferential criteria could have been applied to select the candidates. The learned senior Counsel therefore submitted that by applying preferential criteria at the threshold, the applicants have been denied the right to be considered for appointment. The learned senior Counsel further submitted that the preferential criteria adopted for short-listing is dehors the rules and in fact in violation of the rules as though the degree of law has been mentioned as an alternative in the preferential criteria adopted by the Petitioner for short-listing, the same has been made compulsory. He, therefore, submitted that the said action of the Petitioner was therefore illegal as being in violation of the Recruitment Rules. However, the learned senior Counsel fairly submitted that the Petitioner has a right to short-list the candidates, but according to him, the said procedure should have been followed after the candidates were called for interview by applying the qualification prescribed by the Recruitment Rules. The learned senior Counsel submitted that no interference is therefore called for with the impugned judgment and order of the Tribunal as the said Judgment and order merely directs the Petitioner to call the Applicants for interview.

16. The learned senior Counsel for the Applicants in support of his said submissions relied on the judgment of the Apex Court in the case of Inder Parkash Gupta Vs. State of Jammu and Kashmir and Others, , wherein the Apex Court has held that Public Service Commissions must scrupulously follow the statutory rules during recruitment and in making appointment and any procedure devised by it should conform with the statutory rules.

17. The learned senior Counsel for the Applicants further relied on the judgment of the Apex Court in the matter of State of Punjab and Others Vs. Manjit Singh and Others, , wherein the Apex Court in the facts of the said case held that fixing of cut-off marks in the examination held for short-listing was improper and that the required number of candidates should be taken from the top of the list.

18. We have heard the learned Counsel for the parties and have bestowed our anxious consideration to the rival contentions.

At the outset, it would be pertinent to note that the Applicants do not dispute the right of the Petitioner to short-list the candidates for interview. The learned senior Counsel for the Applicants fairly conceded to the said position. The issue, therefore, which arises is whether as held by the Tribunal in the impugned Judgment and order whether the Petitioner in shortlisting the candidates by applying preferential criteria has acted dehors the rules. For the said purpose, the advertisement issued will have to be seen. The eligibility or qualification mentioned in the said advertisement as can be seen is inconsonance with the Recruitment Rules. The Tribunal has also recorded a finding to the the said effect. The eligibility qualifications contained in Clause 5.1.4 of the Recruitment Rules

postulates that preference may be given to the candidates having a post graduate degree in any one of the subjects mentioned in Sub-clause 5.1.1. or degree in law or research experience in the synthesis and testing of drugs.

19. The Petitioner, as a Public Service Commission, has also framed Rules of Procedure known as Maharashtra Public Service Commission Rules of Procedure, 2005 for carrying out selection. The said Rules of Procedure inter-alia prescribe the ratio between each vacancy and the number of candidates to be called for interview for a particular category. In so far as the instant selection is concerned, the ratio was to be 1:3 i.e. for every one vacancy three candidates to be called for interview. The Rules of Procedure in so far as direct recruitment is concerned, with which we are concerned, are contained in Clause 5.2 onwards or 5.2.1 to 5.2.2.4 The relevant clauses, as translated from Marathi into English, are reproduced herein under:

5.2 Scrutiny of the Applications.

5.2.1 The Scrutiny Committee duly appointed as per the Rules of Procedure of the Commission shall scrutinize the Applications received.

5.2.2 As per the Prevailing Policy of the Commission, after the Applications received are scrutinized by the Scrutiny Committee, with a view to Short-list the Candidates for interview, the Candidates shall be Shortlisted by anyone or more modes mentioned herein below or in any other mode required as the situation warrants.

5.2.2.1 On the basis of the qualification higher than the minimum qualification prescribed in the Advertisement and experience.

5.2.2.2 Educational qualification higher than the minimum qualification prescribed in the Advertisement.

5.2.2.3 Experience in the concerned field or

5.2.2.4 Taking into account the experience held (gained) after minimum required qualification/after prescribed qualification mentioned in the Notification or...

20. The Petitioner is therefore entitled to short-list the candidates by applying the aforesaid procedure. The Tribunal in the impugned judgment and order has also found fault with the Petitioner on the ground that as per the Rules of Procedure the Petitioner could have enhanced the requirement of experience or requirement of higher educational qualification but could not have adopted the criteria of an additional qualification for short-listing. Therefore, the question that also arises is, whether the degree of LL.B. for the purpose of short-listing can be said to be an additional educational qualification in the context of the aforesaid issue.

21. In the context of the issues that arise in the above Petition, it would be relevant to note a few facts. In so far as open category seats are concerned, by virtue of the fact that the candidates from some other categories especially ST

Category and Sportsman Category, being not available, the seats for the said categories were converted to open category seats thereby making the open category seats to be filled up to 7, the number of applications for the open category seats were 92. The rationale of pruning the number of candidates to be called for interview is eloquently enunciated in the judgment of the Apex Court in M.P. Public Service Commission (Supra). The Petitioner therefore, applying the Rules of Procedure has pruned down or short listed the number of candidates to be called for interview to 24, by applying the preferential criteria reproduced in the earlier part of this Judgment i.e. Clauses 2(a) to 2(d). It would be significant to note that the Recruitment Rules provide for preference to be given to the candidates having qualifications mentioned in Clause 5.1.4 of the Recruitment Rules, wherein degree in law is one of the qualifications. The Petitioner, therefore, considering the number of applications received and the qualifications possessed by each of the candidates who had applied in the open category, applied the preferential criteria mentioned in Clauses 2(a) to 2(d) for short listing the candidates to be called for interview. The preferential criteria for short-listing would indicate that the preferential criteria as mentioned in the Recruitment Rules had been adopted albeit with a alteration that degree of law was made a requirement rather than an alternative, in our view, when the candidates with qualification of degree of law were available, the Petitioner was entitled to short list the candidates on the said basis so as to prune or short list the candidates within the ratio prescribed by the Rules of Procedure. i.e. 1:3. It is well settled that higher qualification or higher experience could be adopted as a criteria for short listing the candidates. In our view, including the degree of law as a qualification for short listing the candidates along with others would not amount to an additional qualification as held by the Tribunal but can only be said to be a qualification taken into consideration for short listing the candidates. It would also be pertinent to note that the criteria evolved for short-listing encompasses within itself the criteria of experience as can be seen from Clauses 2(a) and 2(c) and therefore it is not only the educational qualification, by way of a degree in law but experience was also sought to be given due weightage at the time of shortlisting. In our view, considering the number of candidates, who had applied, the ratio prescribed in the Rules of Procedure between a vacancy and the candidates to be called for interview, the qualifications possessed by the applicants, and the nature of the duties and functions of the said post, the criteria adopted for short-listing by the Petitioner satisfies the test laid down by the Apex Court of being rationale and reasonable.

22. It is required to be noted that Shri Jahagirdar, the learned Senior Counsel appearing for the Respondents-Applicants, did not dispute the right of the Petitioner to short list the candidates, once the said position is accepted by the applicants, they cannot be heard to say that the preferential criteria as prescribed by Clauses 5.1.4 of the Recruitment Rules could have been applied after the candidates were interviewed. The said submission cannot be countenanced in the teeth of the law enunciated by the Apex Court in M.P. Public

Service Commission's case (supra) in the matter of short listing of candidates and the rationale behind it.

23. In our view, the Tribunal has totally missed the point in assuming that in applying the preferential criteria for short listing, the Petitioner has acted de hors the Rules and has prescribed an additional qualification instead of a higher qualification. The Tribunal has, in our view, confused the issue between the qualifications required for the post and qualifications prescribed or evolved for short listing and has therefore arrived at the said erroneous conclusion. In any event as observed by us, degree in law is one of the criteria mentioned in the preferential criteria in Rule 5.1.4 of the Recruitment Rules and therefore cannot be dubbed as a criteria foreign to the Recruitment Rules.

24. In so far as the judgment reported in Inder Parkash Gupta Vs. State of Jammu and Kashmir and Others, cited on behalf of the Applicants is concerned, the controversy in the said case would be relevant. In the said case the recruitment in question was to the post of Lecturer. Rule 8 of the said Rules governed the recruitment to the said post of Lecturer which was as follows:

8. Method of recruitment- While making selection-

(1) to the posts in the teaching wing of the service, the Commission/Department Promotion Committee shall have regard to the following, namely-

(a) academic qualifications of the candidates;

(b) teaching experience; and

(c) research experience and

(d) previous record of work, if any.

The Public Service Commission, however, framed rules in the year 1980, known as Jammu & Kashmir Public Service Commission (Conduct of Business and Procedure) Rules, 1980. Rule 51 of the said 1980 Rules was as under:

Rule 51. The assessment at an interview shall be based on the following principles:

A. Performance of the candidate in the viva voce test ...100 Marks B. Academic Merit

(i) Percentage of marks obtained in the basic (i.e., minimum qualification prescribed for the post ...25 Marks

(ii) Higher qualification than the basic (minimum) prescribed for the post such as Diploma or Degree in the concerned Speciality/Superspeciality/ Subject/ Discipline-

(a) Diploma 2 Marks] subject to (b) Degree - 5 Marks] a maximum of] 5 marks

C. Experience acquired by the candidate in the Speciality/Superspeciality/

Subject/Discipline Concerned

(i) exceeding 1 year but not 2 years ...2 marks (ii) for excess 2 years --- for every full year 1 mark subject to a total of 5 marks including those under (i)

D. Sports/Game: Distinction in sports/games (i.e., representing a University, State or Region in any Sports/Games. ...3 Marks

E. Distinction in NCC activities (i.e., having held the rank of Junior Under Officer or Senior under officer or having passed the top grade certificate examination of NCC). ...2 Marks

Total A to E ...140 Marks

25. In the context of the said Rules of 1980 which were applied for short listing the candidates which provide 100 marks for viva voce test; 25 marks for academic merit and, 2 marks for experience, 3 marks for Distinction in sports/games and 2 marks for distinction in NCC activities. The Apex Court on the ground that the said Rules of Procedure took into consideration, a criteria which was not prescribed by the Recruitment Rules held that though the Public Service Commission could adopt the procedure of short listing, any procedure devised by it, should conform with the statutory rules.

26. Now coming to the next judgment cited on behalf of the Applicants i.e. in the matter of State of Punjab v. Manjit Singh (Supra) is concerned, the facts of the said case were that in the selection for 500 Medical Officers in PCMS (Class I), which were to be filled up, 125 posts were reserved for SC candidates, 50 per cent of which namely 62 posts were earmarked for Balmikis and Majhbi Sikhs and the remaining for the general category of SCs. The Public Service Commission with a view to short list the candidates decided to hold a screening test and fixed the cut off marks of 40% for SC candidates and 45% for the general candidates. In so far as SC candidates were concerned, only 4 out of the 27 candidates passed the said screening test. It is in the said context the Apex Court held that the procedure should not be such that it would result in automatic selection of candidates when eligible candidates having minimum qualification were available for interview. The procedure of fixing the cut off marks was adversely commented upon by the Apex Court in the facts of the said case where the candidates available after the screening test were hardly 4 for the 125 seats that were available for the SC category. The Apex Court in the facts of the said case, therefore, held that short-listing can be done by calling the candidates from Serial No. 1 to 500 of the zone of consideration for the said selection.

27. As can be seen from the aforesaid judgments, though the process of short-listing was accepted by the Apex Court, the method of short listing was not approved by the Apex Court in the facts of each of the said cases. In our view, the said judgments cannot take the case of the applicants in the instant selection any further. In the instant case admittedly, the Recruitment Rules prescribed a

preferential criteria, what the Petitioner has done is that it has applied the said preferential criteria at the threshold for short-listing the candidates for interview. This, it has done taking into consideration the ratio prescribed by the Rules of Procedure between each vacancy and the candidates to be called for interview, and also taking into consideration the number of candidates possessing the said criteria. We do not find any arbitrariness or any irrationality in the said action. We are satisfied that the criteria evolved by the Petitioner for short-listing is rational and reasonable for the selection in question.

28. For all the aforesaid reasons in our view the Tribunal has erred in issuing the directions that it has issued in the impugned judgment and order.

29. The above Petition is, therefore, allowed. Rule is accordingly made absolute in terms of prayer Clause (a) with parties left to bear their respective costs.

30. On pronouncement of the Judgment today i.e. 21st April 2010, the learned Counsel for the Respondent Nos. 1 to 16 applies for stay. In the facts and circumstances of the case, the said prayer is refused.