
(2006) 06 GAU CK 0071
In the Gauhati High Court
Case No : Writ Petition (C) No. 819 of 2006

Mani Ram Kalita (Dr.)

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Assam Education Department Selection Rules, 1981 — Rule 10, 10(1), 10(3), 6, 7
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 6

Citation : (2006) 4 GLT 750

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : S.S. Goswami, A.M. Bujarbaruah, D. Goswami and M. Nath, for the Appellant; M.K. Choudhury, M.R. Pathak and S.S. Dey, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The selection for empanelment of candidates by the State Selection Board for appointment as Principals in Deficit Grants in Aid Colleges of the State pursuant to the advertisement dated 2.3.2003 and the orders extending the validity of the select list are principally under challenge in the instant proceeding. The Petitioner though not a participant in the process has questioned the legality and/or the validity of the selection alleging violation of the Assam Education Department Selection Rules, 1981 (referred to as the Rules) and the relevant University Grant Commission Guidelines.

2. I have heard Mr. S.S. Goswami, learned Counsel for the Petitioner, Mr. M.K. Choudhury, learned Sr. Standing Counsel, Education Department for the official Respondents and Mr. S.S. Dey, learned Counsel for the Respondent No. 5.

3. The rival cases are outlined in the pleadings of the parties. According to the Petitioner, he is a Post Graduate in Arts having secured 55.6% marks in the said examination and is also a Doctorate from the Gauhati University. He has claimed teaching experience as a lecturer for last 13 years and asserts to be eligible and

qualified to be empanelled as a candidate for the post of Principal under the University Grants Commission Regulation, 2000 (hereafter referred to as the Regulations).

4. On 2.3.2003 an advertisement was issued by the State Selection Board (here after referred to as the Board) under the Rules for selection of candidates for the posts of Principal in Deficit Grants in Aid Colleges in Assam setting out therein amongst others the essential academic qualifications and other conditions of eligibility. The advertisement was, however, silent about the number of posts. The pre scribed academic qualification required that the candidates should posses a masters degree with atleast 55% marks or its equivalent grade, the requirement being relaxable to 50% for the SC/ST candidates and for the Ph.D. Degree Holders who had obtained Master's degree prior to 19.9.1991. Candidates with Ph.D. Degree who are already in the University system but do not possess the qualifications mentioned above were also allowed to apply. Total experience of 10 years of teaching/ research in University/Colleges and other institutions of Higher Education was in sisted upon.

According to the Petitioner, in terms of the Regulations, a candidate, all relaxations notwithstanding to be eligible for the post of Principal is required to possess 50% marks in the Post Graduate examination. The advertisement, however, mentioned that candidates with PHD Degree and al ready in University system but not possessing the qualifications mentioned therein above were also eligible to apply. Eventually, a select list was published on 17.9.2003, which amongst others contained names of candidates who did not possess the minimum, qualifying marks in the Masters Examination. It has been as sserted that the advertisement was in derogation of the Regulations and the select list nonest in law having included candidates ineligible to apply in terms of the said Regulations. Referring to the Rules, the Petitioner has asserted that in terms of Rule 10, the validity of the select list expired on 16.9.2005 but by the impugned orders dated 1.12.2005 and 7.1.2006, the same was sought to be extended up to 21.6.2006. This the Petitioner has contended is grossly impermissible under the Rules. The selection has also been impeached on the ground that two conditions of eligibility contained in the Government guidelines dated 20.2.2003 prescribed for appointment of Principal in Deficit Grants in Aid Colleges had been withdrawn on 2.7.2003 after the selection process was initiated by the aforementioned advertisement. As the modification in the guidelines amounts to alteration in the conditions of eligibility for appointments to the post in question, the process got vitiated thereby. Without prejudicie to the above, the Petitioner has pleaded that in terms of Rule 10, going by the number of candidates empanelled, the existing vacancies are computable to 98 and, therefore, as in the mean time 110 selectees have been appointed for all in tents and purposes, the list has even other wise lost its force.

5. This Court while issuing notice on 15.2.2006 on a prima facie consideration of the sworn statements in the petition re strained the official Respondents from

acting further on the impugned select list. Though no affidavit in opposition has been filed, the Respondents separately have filed two applications for vacation and/or modification of the interim direction. The State Respondents in their application (MC 1981/06) have stated that the Board by an advertisement published on 6.12.2000 had invited applications for selection of candidates for the post of principal in deficit Grants in Aids Colleges in Assam. This was challenged in WP(C) 4842/01 by one Dr. Jagadish Chandra Mazumdar contending it to be in contravention of the Regulations. This Court by judgment and order dated 12.12.2002 while upholding the challenge directed the State Respondents amongst others to consider the case of the Petitioner along with other eligible candidates by issuing a fresh advertisement. Pursuant thereto the Government in the Higher Education Department issued an addendum on 24.2.2003 introducing relaxation in qualifications. Thereafter a fresh advertisement was published on 2.3.2003 mentioning therein the requisite qualifications prescribed by the Regulations as well as the relaxations contained in the addendum. This advertisement as well came under challenge before this Court in various writ petitions alleging inter alia that the same was violative of the mandatory norms prescribed by the Regulations. This Court by order dated 11.4.2003 in WP (C) 2833/03 allowed the Petitioners therein to participate in the interview. On 29.4.2003, a similar interim order was passed in WP (C) 2953/03. The selection process was therefore furthered and on competition thereof the Board submitted a list of selected candidates for appointment as Principals in Deficit Grants in Aid Colleges of Assam. The Government in the Higher Education Department vide notification dated 17.9.2003 approved the said list and allowed it to be published for which the same was forwarded to the Superintendent, Assam, Government Press, Guwahati for publication in the Assam Gazette. By a subsequent notification dated 14.10.2003 the notification dated 17.9.2003 was kept in abeyance and the publication of the list was withheld.

This Court by its order dated 2.6.2004 passed in MC 1282/04 arising out of WP (C) 2956/03 and others modified its earlier interim order dated 25.4.2003 and permitted the State Respondents to publish the select list to be acted upon for the purpose of appointment of Principals to the exception of 10 Colleges named therein where the writ Petitioners concerned were serving as Principal in charge. With the liberty so granted, the select list was accordingly published in the Assam Gazette on 22.6.2004 under the Rules. While the matter rested at that, the above writ petitions along with others on the same issue were disposed of by this Court by judgment and order dated 28.9.2005 leaving the State Respondents at liberty to act upon the said list in accordance with the Rules by appointing only those who had the requisite qualifications as per the UGC norms. Situated thus, the Government of Assam in the Higher Education by communication dated 1.12.2005 extended the validity of the Select list for a period of six months w.e.f. 22.6.2005 under Rule 10(1) of the Rules. This was followed by a communication dated 7.1.2006 granting further extension to the list for another period of six months w.e.f. 22.12.2005 to 21.6.2006.

6. According to the State Respondents, the extension was essential as about 50 colleges in the State were functioning without regular Principals. The number of colleges district wise has also been provided in the application.

7. The Respondent No. 5 in his application while generally endorsing the pleas of the State Respondents has asserted that the select list having been published in the official gazette on 22.6.2004, it could be validly extended upto 21.6.2006 and, therefore, the contentions to the contrary are untenable. According to him, he was duly selected by the Board and empanelled at serial No. 25 in the select list. He has averred that on the retirement of the Principal of the B. Barooah College, Ulubari, Guwahati, the post was advertised for which he along with others applied. He has maintained that following the selection, he has been placed at the top of the list of the recommended candidates which has been forwarded by the College authorities to the Director of Higher Education, Assam for approval. However, in view of the interim direction of this Court, no further action has been taken. The Respondent has asserted that having been selected during the period of validity of the select list of the Board, he has an enforceable right in law to be appointed and, therefore, the interim order needs to be vacated.

8. Mr. Goswami has emphatically urged that the advertisement dated 2.3.2003 being in contravention of Rule 6 and 7 of the Rules and the Regulations, the entire selection has been vitiated thereby. The Board having omitted to mention the number of vacancies/posts in the advertisement and follow the procedure prescribed by Rule 7, the process undertaken thereafter is non est in law. The relaxation in the academic qualifications extended to candidates in the university system possessing Ph.D. Degree being antagonistic to the UGC norms contained in the Regulations to the contrary, the entire exercise was afflicted by an incurable illegality, he urged. The official Respondents having withdrawn, the conditions of eligibility regarding selection grade and minimum qualifying age incorporated in the guidelines dated 20.2.2003 for appointment of Principals in Deficit Grants in Aid Colleges of the State, subsequent to the initiation of the selection process by a notification dated 2.7.2003, the same amounted to alteration and/or modification with the criteria of eligibility prescribed by the advertisement thereby rendering the process invalid. Mr. Goswami was critical about the select list in particular contending that it contained names of candidates who did not possess 50% marks in the Post Graduate examination. He also referred to a list of 19 such selectees appended to the writ petition.

9. The learned Counsel further urged that the notification dated 17.9.2003 demonstrated that the select list was approved and published on the very same date and the Rules having provided an outer limit of two years for the validity thereof, no extension beyond 16.9.2005 was permissible and, therefore, the impugned orders dated 1.12.2005 and 7.1.2006 are null and void. He persuasively argued that the requirement of publication of the select list in the official gazette was optional and in any view of the matter, such a publication

only signified a reprint thereof. He maintained that the State Respondents too had proceeded on the basis that the select list had been published on 17.9.2003 as is evident from the communications dated 14.10.2003 (annexure C to the MC 1918/06) and dated 20.8.2005 (annexure 9 to the writ petition), the former keeping the select list in abeyance in terms of the interim directions of this Court in the earlier batch of writ petitions and the latter suggesting re-advertisement on realizing that the validity of the list reckoned from 17.9.2003 was soon to expire.

In the alternative, Mr. Goswami has contended that even assuming that the term of the select list ought to be computed from 22.6.2004, the date of its publication in the official gazette, no order of extension beyond one year thereof under the Rules was permissible and on that count as well, the impugned order dated 1.12.2005 and 7.1.2006 are per se without jurisdiction. The learned Counsel has urged that though the advertisement is silent about the number of posts/vacancies in terms of Rule 10 requiring selection of candidates three times the number of vacancies, it can be safely presumed that 96 posts had been advertised, the select list having empanelled 288 candidates. As in the meantime 110 candidates have already been appointed, Mr. Goswami asserted that the select list having exhausted its purpose ought not be permitted to be further acted upon. As qualified persons including the Petitioner are waiting in expectation, to face a selection for getting empanelled by the Board for appointments to the post of Principal, it is a fit case for interference of this Court. To back up his arguments Mr. Goswami has relied on the decision of the Apex Court in *Jamatraj Kewalji Govani Vs. The State of Maharashtra*, and of this Court in *Fishing Cooperative Society Ltd. v. State of Manipur* and Anr. 1981 (1) GLR 127 and in *Utpal Choudhury v. State of Assam* and Anr. 2003 (2) GLT 39.

10. Mr. Choudhury per contra has asailed the maintainability of the writ petition contending that the Petitioner not having participated in the process has no locus standi to question the validity thereof. He also urged that the petition ought not to be entertained, the selected candidates though necessary parties not having been impleaded therein. Apart from the delay in raising the challenge, the learned Sr. Counsel has urged that the select list can not be quashed in part as prayed for by the Petitioner. He asserted that the advertisement had been in meticulous compliance of the directions contained in the judgment and order dated 12.12.2002 passed in WP (C) 4842/01 and the UGC norms contained in Regulations. He has maintained that an identical challenge against the same advertisement had been dealt with and negated by this Court in its judgment and order dated 28.9.2005 passed in a batch of writ petitions, the lead case being WP (C) 2833/03. This Court thereby having permitted the State Respondents to act on the impugned select list for the appointment of the Principal in the Deficit Grants in Aid Colleges of the State, the instant petition is an abuse of the process of the Court. According to him, the modification in the revised guidelines for appointment of Principals in such colleges has no bearing on the selection conducted by the Board as the candidates empanelled would have to undergo

another drill to be conducted by the respective colleges for appointments.

11. The learned Standing Counsel argued that the Rules having provided the outer limit of validity of a select list to be two years, it is legally not obligatory to effect extension thereof before the expiry of one year of its publication. Some free play in the joint to the executive having regard to the purpose of the selection ought to be conceded, he urged. While asserting that presently 50 Deficit Grants in Aid colleges in the State are functioning in the State without regular Principal for which the students are suffering, Mr. Choudhury has urged that it would be in public interest that the selection be upheld and the term of the select list be extended by the period for which the interim order has been in operation. He rested his submissions on the decision of the Apex Court in *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, and *Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others*,

12. Mr. Dey while joining the assailment on the locus standi of the Petitioner has argued that the Regulations do not fix any cut off percentage of marks in the Post Graduate Examination for Ph. D. Candidates already in the university system and that the prescription of 50% marks, by this Court in judgment dated 28.9.2005 is wholly based on the pleaded stand of the Commissioner in the earlier batch of writ petitions. In any view of the matter, the above prescription having provided, sufficient safeguard against appointment of candidates not possessing the above percentage of marks, the select list ought to be permitted to be acted upon. As the private Respondent in the meantime has been selected for appointment as Principal of B. Barooah College, Guwahati, following an independent exercise made by the College and that too during the validity of the select list impugned, it would be in, fitness of things that the selection be upheld and the select list be permitted to continue for a period of two years excluding the periods of interruptions following interim orders of this Court. The list having been already acted upon ought not to be abandoned at the instance of a person who had neither participated in the process nor has the standing to question the same, he urged.

13. The rival submissions have received the due consideration of this Court. A public process governed by the Rules having been initiated, it is the constitutional obligation of the authorities to act in terms of the law and procedure prescribed to take it to its logical end. The Petitioner though not a participant in the process, considering the, grounds of challenge raised in the petition, I am of the view that the Petitioner does not deserve to be non suited only for not having participated therein. The impugnement, however is fraught with unexplained delay, the select list in question having been approved far back as on 17.9.2003. Noticeably, the candidates selected and more particularly, those alleged to be ineligible even to apply being not possessed of 50 percent marks in the Post graduate examination, not having been impleaded, the petition suffers from the defect of non-joinder of necessary parties as well. These, notwithstanding, the challenge on merits would be tested in the background of

facts and the law applicable.

14. The Regulation containing the UGC norms to be eligible for direct recruitment of Principal (Readers Grade) of a college are extracted hereinbelow:

- (i) A Masters degree at least with 55% marks or its equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E and F
- (ii) Ph. D. or equivalent qualification;
- (iii) Total experience of 10 years of teaching/Research in Universities/Colleges and other institutions of higher education.

Following relaxations however, have been provided.

(1) A relaxation of 5% may be provided from 55% to 50% of the marks to the Ph. D. degree holders who have passed their Master's degree prior to 19 September, 1991.

(2) B in the 7 point scale with letter grade O, A, B, C, D, E and F shall be regarded as equivalent of 55% wherever the grading system is followed.

(3) NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph. D. degree. However, the candidate who have completed M.Phil, degree or have submitted Ph. D. thesis in the connected subject up to 31st December, 1993, are exempted from appearing in the NET examination.

(4) The minimum requirement of 55% shall not be insisted upon for Principals, Professors, Readers, Librarian, Deputy Librarians, Directors of Physical Education and Deputy Directors of Physical Educations, for the incumbents who are already in the university system However, these marks should be insisted upon for those entering the system from outside and those at the entry point of Lecturers, assistant Registrars, Assistant Librarians, Assistant Directors of Physical Education.

(5) A relaxation of the minimum marks at the PG level from 55% to 50% for appointment as Lecturer may be provided to the candidates who have cleared the JRF examination conducted by UGC/CSUR only, prior to 1989, when the minimum marks required to appear for JRF exam. Were 50%.

15. The conditions of eligibility set out in the advertisement dated 2.3.2003 also deserve to be extracted for comparison:

REQUIRED QUALIFICATION AND EXPERIENCE.

1) A Master's degree with at least 55% marks or its equivalent grade, relaxable to 50% for SC/ST candidates and for the Ph. D. degree holders who obtained their Master's degree prior to 19th September, 1991.

Candidates with Ph. D. Degree who are already in the University system but do

not possess the qualification mentioned above may also apply.

2) Ph. D. or equivalent published work. (If a candidate considers any of his/her publications to be equivalent to Ph. D. he/she will have to produce a certificate to that effect from a competent academic authority).

3) Total experience of 10 years of teaching/research in Universities/Colleges and other Institutions of Higher Education (None need apply who has not completed 10 years of teaching/research experience on or before 1.2.2003).

A cumulative reading of the above bears out the conformity of the advertisement with the Commission norms. The qualifications prescribed by the Commission coupled with the relaxation under Clause (1) (2) and (5) are obviously consistent with those referred to in the advertisement. Though it has been urged en passant that the eligibility criteria contained in the advertisement are opposed to the directions contained in the judgment and order dated 12.12.2002 passed by this Court in WP (C) No. 4842/2001 it was not highlighted in course of the arguments. Not only the advertisement evinces that the same is in pursuance of the aforesaid directions, the State Respondents have confirmed it to be so in their pleadings. The plea that the advertisement is not sustainable being antithetical to the UGC norms and defiance of the directions of this Court in the above decision is therefore unacceptable.

The communication dated 20.2.2003 (Annexure-13 to the writ petition) amongst others incorporating two conditions of eligibility in the guidelines to be followed for selection of candidates for appointment of Principal, Lecturer etc. in Deficit Grant-in-aid Colleges of Assam are-

a) The candidate must be a Selection Grade lecturer

b) Age above 40 years.

The guidelines visibly are meant to conduct the selection to be held by the respective Colleges for recommending candidates for appointment to the post of Principal etc. Not only these are independent of the process undertaken for empanelment of candidates by the Board, the above eligibility criteria were not prescribed by the advertisement in question. In other words, the candidates desirous to respond to said advertisement were not required to comply with the above essentials. By the communication dated 2.7.2003 (Annexure-12 to the writ petition) these conditions were withdrawn. As the selection to be held by the respective colleges for appointment of Principals is independent of the process conducted by the Board under the Rules, the argument of vitiation of the selection process impugned in the instant proceeding on withdrawal of the above conditions of eligibility criteria is plainly not tenable. Empanelment of a candidate following a selection by the Board under the Rules being an insignia of eligibility for participating in the selection process to be initiated by the Deficit Grant in Aid Colleges of the State, no modification and/or alteration in the guidelines pertaining to such process can in any view of the matter have any bearing on the

selection undertaken by the State Selection Board.

16. Though the Petitioner in support of his plea of selection of ineligible candidates has enclosed a list of 19 candidates, none of them has been impleaded in the proceeding. The Respondent No. 5 however is not one of such candidates.

17. This Court while disposing of the earlier batch of writ petitions vide judgment and order dated 28.9.2005 amongst others in WP (C) No. 2833/2003 (Ajit Kuinar Baruali v. State of Assam, and Ors.) noticing the pleaded stand of the UGC in WP (C) No. 9391/2003 (also disposed of by the same judgment) held that the Ph. D. degree holders already in service of the University/affiliated colleges would be eligible to take part in the selection for appointment to the post of Principal provided they had secured atleast 50% marks at the Masters' Degree level. Noticeably, the said writ petition had carried a challenge against the same advertisement alleging it to be violative of the UGC norms contained in the Regulations. It would be worthwhile to record the stand of the University Grant Commission in paragraph 24 of its affidavit in the aforementioned writ petition as follows:

24. That with regard to the statements made in paragraph 37 of the writ petition the deponent states that Ph. D. or equivalent published work is one of essential qualification for the post of Principal. The minimum requirement of 55% marks of master's level shall not be insisted upon for the existing incumbents who are already in the University system for the post of Principal. The minimum requirement in his/her candidature shall be at least 50% of marks at master's level.

18. This Court concluded with the following operative directions:

In view of the clarification of the eligibility criteria of the candidates having Ph. D. degree who are in employment of the University system, the order dated 2.6.2004 passed in Misc. case No. 1312/2004 is vacated with liberty to the State authority to act upon the select list in accordance with the rules including the list kept in sealed cover for appointment of Principals by appointing only those candidates who have the requisite qualification as per the U.G.C norms as interpreted above. This is subject to the condition that a candidate whose name is not empanelled in the State select list for appointment as Principals shall be appointed even if his name finds berth in the select lists prepared in pursuance of the advertisement dated 2.3.2003.

19. In view of the above judicial determination no fresh impugment of the advertisement ought to be entertained at this belated stage more particularly as the judgment and order dated 28.9.2005 as is submitted at the Bar has remained unchallenged in any higher forum till date. In face of the unambiguous interpretation of the UGC norms pertaining to the existing incumbents in the University system as above, no interference with the select list is warranted at the instance of the Petitioner who admittedly is not a contender in the process.

Furthermore, the pleaded facts to the above effect have been sworn to be true to the Petitioner's information derived from the records without disclosing the particulars thereof. In any view of the matter, the above decision of this Court provides adequate safeguard against the appointment of selected candidates if any with less than 50% marks at the master's level. The materials furnished by the petitioner are too insignificant in the teeth of the above overwhelming facts to uphold his contentions. The Petitioner has failed to discharge his burden to rebut the presumption of validity of official acts available in such matters. This plea therefore fails.

20. True, it is that the advertisement ought to have disclosed the number of vacancies for which the selection had been undertaken. It is irrefutable that the procedure prescribed by Rules 6 and 7 has to be followed by the authorities concerned. Admittedly, on the completion of the selection, the select list has been approved by the government on 17.9.2003 and on the publication thereof has been acted upon for making appointments of 110 selectees therefrom. At this distant point of time to nullify the entire exercise by overlooking the intervening developments and the undue delay would not only result in massive dislocation, but also cause serious prejudice to the concerned candidates without affording them an opportunity of hearing. Such a course of action only for the omission to mention the number of vacancies would not accord with public interest. This Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India is not expected to intercept any public process only on making out of a legal point unless judicial intervention is the demand of supervening public interest.

21. Rule 10 of the Rules deals with the publication of the select list. It requires that the Selection Board should prepare the list of selected candidates for Lecturers and Principals numbering at least three times of the existing vacancies and forward the same to the Government. The government may approve the list after proper verification of the character and antecedents of the candidates and publish the same in the official gazette. The list should be published subject-wise and is to be forwarded to the Governing Bodies of the Aided colleges. Rule 10(3) prescribes that the list published thereunder would be valid for a period of one year from the date of its publication which may further be extended for a period not exceeding one year.

22. Rule 10 therefore enjoins the Board to prepare a list containing the names of candidates at least three times of the existing vacancies and the Government may if it is approved, publish it in the official gazette. The validity of the list is for one year from the date of its publication and the term can be further extended for a period not exceeding one year. With the extension if granted the life of the list is therefore two years from the date of its publication.

23. By the notification dated 17.9.2003 issued by the Secretary to the Govt. of Assam, Education (H) Department the list drawn up by the Board after the selection was approved. Though the text of the notification reads that the list

was prepared and published, a copy thereof was marked to the Superintendent, Assam Govt. Press, Guwahati for publishing it in the Assam Gazette. The notification therefore manifestly evidenced the intention of the State Respondents to publish the list in the office Gazette as contemplated in Rule 10. However, in view of litigations initiated before this Court involving the selection in hand, the publication did not materialize. It was eventually that this Court by order dated 2.6.2004 passed in Misc case No. 1312/2004 arising out of WP (C) No. 2956/2003 permitted the State authorities to publish the select list and to act upon the same for the purpose of appointment of Principals except for 10 colleges wherein the Petitioners (in that writ petition) were serving as the Principal Incharge. It was thereafter that notification dated 19.7.2003 was published in the issue dated 22.6.2004 of the Assam Gazette (Extra ordinary) wherein the name of the Respondent No. 5 appears at SI. No. 25. As the writ petitions challenging the selection remained pending for final disposal and the statutory prescribed life of one year of the list was going to end, the Commissioner and Secretary to the Govt. of Assam, Education (Higher) Department suggested for a fresh advertisement by his communication dated 20.8.2005 (Annexure-9 to the writ petition). While the matter rested at that by the judgment and order dated 28.9.2005 referred to above the challenge to the advertisement was set at rest by this Court and the State authorities were permitted to act on the Select list in accordance with the Rules.

24. On a cursory perusal of Rule 10(3), it is abundantly clear that the term of a select list would have to be computed from the date of its publication and not prior therefrom. The publication unmistakably under Rule 10(1) has to be in the Official Gazette. The Rules having provided the mode of publication of the select list, any other method of doing so is by implication prohibited. If a law prescribes an act to be done in a particular way, it has to be imperatively performed in the manner prescribed and no other course is permitted. *A verbis leges non est, recedendum* (There would not be any departure from law).

25. The Apex Court in *Ramchandra Keshav Adke (Dead) (Supra)* reiterated the above proposition observing that where a power is given to do certain things in certain way, those must be done in that way and all other methods of performance are necessarily forbidden.

26. The decision in *Jamatraj Kewalji Govani (supra)* pressed into service by the learned Counsel for the Petitioner to underline the distinction between "may" and "shall" in guiding an action prescribed by statute is of no relevance. The State Respondents having decided to publish the Select list in the Office Gazette as envisaged in Rule 10(1), having regard to the fact that the life of the Select list has to be reckoned from the date of its publication in the Office Gazette, it is the publication which activates the list for the purpose of appointment therefrom. A combined reading of sub rule (1) and (3) of Rule 10 bears no semblance of doubt that the publication contemplated has to be only in the Official Gazette and no other manner is either conceived of or permissible.

27. The decision of this Court in Utpal Choudhury (supra) is not an authority on the point that the Select list under Rule 10(1) need not be published in the Official Gazettee and its life tenure, Rule 10(3) notwithstanding, is computable from the date of its approval. The plea therefore that the list had lost its force on the expiry of two years from 17.9.2003 being not in ac cord with the Prescription of Rule 10 does not commend for acceptance. The correspondences emanating from the State authorities incompatible with the directives of the Rules noticed hereinabove are there fore wholly insignificant.

28. The above notwithstanding, the list having lived its statutorily prescribed life of one year from the date of its publication, did it remain valid thereafter, the ex tension thereof having been sought to be effected by letters dated 1.12.2005 and 7.1.2006? Noticing the statutory sanction that with extension the outer limit of the validity of select list is two years, the order of extension has to be unerringly during the subsistence thereof In other words, the list to be validly extended for one more year, necessary order to the said effect would have to be passed before expiry of the first year of its term.

This Court while elaborating on the meaning and purport of the word "extenssion" had in Ikop Laidkol Fishing Co-operative Society Ltd. (supra) held that by its very nature extension must be of a thing already in existence. For extension of a lease, the lease is pre-requisite, it observed. I fully subscribe to the said view. The plea of the Respondents that maximum period of validity of the list prescribed by Rules being two years, the State Respondents are entitled to a leeway to cause extension thereof at any time within the said period is clearly untenable. For a valid extension, the order to the said effect has to be essentially passed before expiry of the prescribed time limit of one year of its publication. In the case in hand, the letters containing the decision to extend the select list are be yond the initial period of one year.

This would have otherwise clinched the issue in favour of the Petitioner in absence of the judgment and order dated 28.9.2005. This Court by the above decision having rejected the challenge to the validity of the advertisement and permitted the State Respondents to act on the select list in accordance with the Rules, the only logical conclusion is that thereby its validity was ac knowledged for the unexpired term of two years, if not cancelled in the meantime. The verdict of this Court which admittedly has remained unassailed in any higher forum to be meaningful has to be construed as signifying the above. Any other interpretation would neither be rational or realistic. The two letters dated 1.12.2005 and 7.1.2006 therefore are not of decisive relevance. This Court having regard to the adjudication made in the earlier batch of writ petitions culminating in the above judgment and order is not inclined to take a different view. The Select list therefore stands valid till 21.6.2006 by virtue of the judgment and order dated 28.9.2005.

29. It is the categorical case of the State Respondents that as on date, 50 colleges in the State are without a regular Principal. It has been submitted at the

Bar that the last selection prior to the one in hand had been conducted by the Board in the year 1997 following which appointments of Principals on regular basis were made during 1997-1998. The advertisement thereafter issued in the year 2002 was interfered with by this Court, where after the present process had been initiated. The State Respondents have pleaded that absence of regular Principals in the colleges have adversely affected the academic environment thereof to the detriment and prejudice of the students.

30. The Apex Court in *Sangappa Gurulingappa Sajjan* (supra) while referring to the Explanation to Section 4(1) of the Land Acquisition Act, 1894 as amended had excluded the period for which stay of the eviction of the Appellant was granted following the notification u/s 4(1) of the Act in computing the period permissible for publishing the declaration u/s 6 thereof. Though an analogous provision under the Rules is not available, this decision has been relied upon on behalf of the State Respondents to draw support therefrom for a similar relief.

This Court as noticed hereinabove by order dated 15.2.2006 restrained the official Respondents from acting on the Select list which then was in force. Its expiry is round the corner i.e. 21.6.2006. The Select list significantly has been challenged in part with the prayer to direct the Respondents not to act thereon further. The challenge thereto having failed for the reasons aforementioned, I am of the considered opinion, that the Select list ought to be allowed to remain operative for the period for which, the interim order has been in force. Having regard to the enormity of the exercise undertaken, it would be in fitness of things that the Select list be operative for a period of four (4) months from the date of this order. Ordered accordingly.

31. In absence of any disclosure in the advertisement of the number of vacancies and any material on record that the process had been initiated for 96 vacancies, I do not feel persuaded to scuttle the list on that consideration. The decision of the Apex Court in *Madanlal and Ors.* (supra) in the accompanying facts situation is of no avail to the Petitioner. On balancing the equities as well, I am persuaded to conclude that the course adopted would serve public interest. It is however, made clear that the Respondent authorities would act in terms of the Rules and strictly in accordance with the letter and spirit of the directions contained in the judgment and order dated 28.9.2005 as above.

32. Before parting, however, this Court records its disapproval to incautious and temerarious approach to requirements of the Rules vis-a-vis ascertainment of the vacancies and the advertisement thereof. It is expected that watchful steps would be taken henceforth to avoid recurrence of such omission in future.

33. In the result, the petition fails and is dismissed. Stay order stands vacated. All connected Misc cases also stand disposed. No costs.