

(2008) 08 AHC CK 0200
In the Allahabad High Court
Case No : Writ Petition No. 2956 (S/S) of 2005

Manoj Kumar Tiwari And Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 3, 4
Constitution of India, 1950 — Article 226, 235

Citation : (2008) 08 AHC CK 0200

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—The question, involved in the present writ petition is of public importance and call for adjudication is, whether against the cancellation of examination before declaration of result, a writ petition is maintainable? Whether the High Court through its Administrative Judge/or Administrative Committee has got jurisdiction to interfere with the selection process, initiated by the District Judge to fill up the vacancies in Subordinate Courts?

2. The brief facts, giving rise to the present writ petition are summarised as under:

In the judgeship of Sultanpur, 12 posts of Clerical cadre and five posts, of Stenographer were advertised in October, 1998 inviting applications for regular appointment. During the pendency of the selection process, the High Court by a O.O. Letter dated 7.8.1999 granted permission for recruitment of 17 posts of clerical cadre. In pursuance to the advertisement, written test was held on 30.12.2000, typing test for the post of Stenographer was held on 11.3.2001. In the meantime, it appears that the complaints were received by the High Court which were placed before the Administrative Committee, Hon'ble the Chief Justice, vide his order dated 19.2.2002 had stayed the declaration of the result. The Administrative Committee, vide its resolution dated 30.11.2002, had resolved and summoned the copies of the written test. A copy of the resolution of

the Administrative Committee has been filed as Annexure SA1 to the affidavit dated 16.8.2007. After receipt of the copies, a Committee was constituted consisting of Hon'ble Mr. Justice Markandey Katju and Hon'ble Mr. Justice S.P. Srivastava. The Committee submitted its report dated April 4, 2003 and recorded a finding that irregularities were committed during the course of examination by alteration of marks etc. The report of the Committee was placed before the Administrative Committee of the High Court and the Administrative Committee, vide its resolution dated 10.5.2000 decided to cancel the examination. In consequence thereof, vide impugned letter dated 21.5.2003, filed as Annexure 5 to the writ petition, the examination was cancelled. Thereafter, the District Judge, Sultanpur, vide his letter dated 2.6.2003, has made request for permission to hold fresh test. A copy of the letter dated 21.6.2003 has been filed as Annexure 7 to the writ petition.

3. In the State of U.P., a large number of employees are working in the clerical cadre as well as on the post of Stenographer in Fast Track Courts. The High Court took a decision for absorption of ad hoc employees working in the Fast Track Courts against the regular vacancies of the respective districts. Accordingly, by the impugned order dated 16.5.2005, the High Court directed for absorption of the ad hoc employees against regular vacancies. The District Judge vide his letter dated 27.1.2001, informed the High Court that there are 24 posts of Clerk and seven posts of Stenographer. The communication sent by the learned District Judge indicates that the number of vacancies were more than what was sought to be filled up by advertisement of October, 1998. A copy of the letter dated 27.1.2001 of the learned District Judge has been filed as Annexure 6 to the writ petition.

4. Shri Manish Singh, learned counsel for the petitioners while assailing the impugned order submitted that the decision taken at the level of the High Court to cancel the examination is per se wrong and illegal and suffers from want of jurisdiction on the ground that the District Judge is the appointing authority. It has also been submitted that persons in whose records no manipulation was done, their result should be liable to be declared.

The learned counsel for the petitioners has questioned the power of the High Court to cancel the examination in question, more so when the High Court itself has permitted the District Judge to fill up the vacancies in question.

5. In brief, the submission of the petitioners' counsel is that under the power of superintendence vested in the High Court, the cancellation of examination or its result is not permissible. The power is vested in the District Judge being the appointing authority under the rules. It has also been submitted that the impugned order has been passed on unfounded grounds and it is not permissible to transfer the ad hoc employees working in other judgeship of Fast Track Courts to the Sultanpur Judgeship.

6. On the other hand, learned Standing Counsel submits that the power of

control in the High Court over the subordinate Court is complete and the High Court was competent to cancel the examination being satisfied from the material on record. It has also been submitted that since the examination was cancelled before declaration of the result, no statutory or fundamental right of the petitioners has been violated. Hence the writ petition is not maintainable. The High Court discharged its constitutional obligation in pursuance to power conferred by Art. 235 of the Constitution through its various bodies empowered under the Rules of Court.

Power of Superintendence

7. The power of superintendence over subordinate Courts flows from Art. 235 of the Constitution of India. Articles 233 to 237 of the Constitution of India entrust the High Court with certain powers with regard to the executive business as well as administrative control in the administration of justice. Article 225 of the Constitution of India empowers the High Court to frame rules in relation to administration of justice of the Court. The High Court thus has been empowered by Article 225 of the Constitution of India to make rules with regard to administration of justice.

Rules can provide for allocation of work amongst Judges to regulate the business of the Court and also the manner and method of its performance. Rules so framed facilitate the carrying out of the business entrusted to the High Court during the course of administration of justice.

8. The term, "High Court" used in the Constitution has got wide connotation. Any decision or order passed on administrative or judicial side in pursuance to power conferred by the Constitution of India or rules framed there under shall be deemed to be orders passed by the High Court. In Art. 236 of the Constitution of India, the term, "High Court" has been used which includes the power to exercise in the matter of administrative control including posting, promotion and grant of leave to officers etc. The Constitution has recognised the rule making power of the High Court and intended to leave it into the High Court itself. While framing appropriate rules or regulations, the High Court may lay down as to what function will be performed by whole of the Court, i.e. to say all the Judges or by its committees consisting lesser number of Judges or even the individual judges. A Division Bench of this Court in a case, reported in AIR 1968 All 67, *Farzand v. Mohan Singh and others*, ruled that the term, "High Court" should not be split up keeping in view the importance of duties discharged in various forms.

9. In *State of Assam v. Ranga Mohammad and others*, AIR 1967 SC 903, Hon'ble Supreme Court held that Art. 235 of the Constitution gives wide power to the High Court to exercise over the members of the subordinate judiciary.

10. In *State of West Bengal v. Nripendra Nath Bagchi*, AIR 1966 SC 447 while defining the word, "contrary" existing in Article 235, the Hon'ble Supreme Court ruled that the word "control" includes disciplinary jurisdiction and other allied matters.

11. In a case reported in (1997) 6 SCC 339, High Court of Judicature at Bombay through its Registrar v. Shirishkumar Rangrao Patil and another, Hon''ble Supreme Court held that the power of superintendence and control is shared by High Court Judges collectively and individually.

12. In High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and another, (1998) 3 SCC 72, Hon''ble Supreme Court has reiterated the settled principle of law that under Article 235 of the Constitution of India, the High Court has to exercise its administrative, judicial and disciplinary control over the subordinate judiciary of the State. Hon''ble Supreme Court ruled that the word, "control" has got wide connotation and it has been used in comprehensive sense which includes general superintendence of working of the subordinate Courts, disciplinary control over officers and to recommend the imposition of punishment of dismissal, removal or reduction in rank: It has been further held that the Chief Justice is the master of case list, conferred with power to allocate work to the puisne judges of the Court.

13. In Yoginath D. Bagde v. State of Maharashtra, (1999) 7 SCC 739, Hon''ble Supreme Court held that the power of supervisory control vested in the High Court under Art. 235 of the Constitution is complete subject to powers of the Governor in the matter of appointment, judicial posting and promotion to the post of District Judges as well as awarding of major penalty. The principle laid down in Yoginath D. Bagde (supra) has been reiterated by the Hon''ble Supreme Court in Registrar (Administration), High Court of Orissa, Cuttack v. Sishir Kanta Satapathy (Dead) by LRs and another, (1999) 7 SCC 725.

14. In (2001) 3 SCC 54, In the matter of K.A. Judicial Officer, while reiterating the power of administrative control over subordinate Court vested in the High Court under Art. 235 of the Constitution of India, Hon''ble Supreme Court held that the role of High Court is that of a friend, philosopher and guide. Hon''ble Supreme Court ruled that while exercising power of punishment, the Court should adopt corrective measures but should take care that the errors are not repeated.

15. The power of superintendence and complete control vested in the High Court over subordinate Court has been reiterated in the cases reported in (2003) 4 SCC 239, High Court of Judicature for Rajasthan M. P.P. Singh and another, (2006) 8 SCC 294, Jasbir Singh v. State of Punjab; (2004) 4 SCC 524, Gauhati High Court and another v. Kuladhar Phukan and another.

16. In Kuladhar Phukan's case (supra), Hon''ble Supreme Court ruled that the State and Central Government lacks jurisdiction to frame rules in the matter of appointment, posting, promotion etc. of the Courts without having prior consent of the High Court or the Supreme Court as the case may be. Some of the other cases over supervisory control over the subordinate Court are reported in AIR 1959 AP 497, Mohammad Ghous v. State of Andhra Pradesh; AIR 1966, Calcutta v. Chief Secretary, Government of West Bengal; AIR 1974 SC 710,

Baradakunta Mishra v. Registrar of Orissa High Court and others; AIR 1976 P&H 215 (FB), Amar Singh v. Chief Justice; AIR 1978 Gujarat 102, R.N. Garjarv. State of Gujarat and others; AIR 1979 SC 193, Chief justice of Andhra Pradesh and others v. LVA Dixitulu and others; AIR 2001 SC 201, Subedar Singh v. District Judge, Mirzapur, (2003)4 SCC 239, High Court of Judicature for Rajasthan v. P.P. Singh and another and unreported judgment of this Court, passed by the Division Bench in writ petition No. 31769 of 2000, Ramesh Chandra Singh v. High Court of Judicature at Allahabad, decided on 25.11.2005.

17. In one other recent judgment, reported in 2006(8)SCC 294, Jasbir Singh v. State of Punjab, Hon"ble Supreme Court reiterated the earlier proposition of law and observed as under:

"The power of superintendence over all subordinate Courts and tribunal is given to High Court under Article 227 of the Constitution. The said power is both administrative and judicial nature and it could be exercised suo moto also."

18. In view of the settled provisions of law, there appears to be no stretch of imagination on account of which, the power of administrative or supervisory control over the functioning of the subordinate Courts vested in the High Court may be doubted. The power is complete and covers the entire sphere of working of the subordinate Courts. The power so conferred is exercised by Hon"ble Judges, individually or collectively as prescribed by the rule of the Court.

19. Subject to the aforesaid constitutional provisions, rules have been framed and given in Chapter III of the Rules of the High Court. Rule 1 of Chapter III empowers the Chief Justice to nominate and assign a puisne Judge of the High Court as Administrative Judge. Under Rule 2 of Chapter III, Administrative Committee has been constituted and under Rule 4 of Chapter III, the Chief Justice has been empowered to allocate work to Administrative Judges. The power with regard to allocation of work has been vested in Hon"ble Chief Justice. Subrule (B) and (C) deals with the power of Administrative Judges and Administrative Committees which is relevant for the purpose of adjudication of the present dispute, hence reproduced as under:

[(B) MATTERS FOR [ADMINISTRATIVE] JUDGES

(1) Review of judicial work of subordinate Courts, tribunals, district consumer forums and all other special Courts and control of their working including inspection thereof, to record entries in the character rolls of the officers posted in the division assigned to the [Administrative] Judge.

(2) Perusal of returns, calendars, evaluation of inspection reports made by the Presiding Officers in respect of their own offices, audit reports received from those Courts, tribunals etc. and to make orders thereon.

(3) Any adverse remarks or strictures made by an [Administrative] Judge about judicial work, conduct or integrity of any officer under his charge will be communicated to the officer concerned, who may make his representations, if

any, with in a month and the same shall be placed before the Administrative Committee for consideration and decision.

(4) Grant of earned leave to officers posted in the sessions division under the charge of the [Administrative] Judge.

(5) Grant of casual leave (including special casual leave) and permission to leave near a quarter to the District and Sessions Judge, presiding officers of the tribunals and special Courts etc. howsoever designated.

(6) Disposal of appeals against orders of punishment imposed on and representations etc. of the employees of the subordinate Courts.]

(C) MATTERS FOR THE ADMINISTRATIVE COMMITTEE

(1) Annual postings and transfers of officers of the subordinate judiciary.

(2) Deputation of officers of the subordinate judiciary and their withdrawal.

(3) Consideration of the preliminary report in disciplinary matters and directing holding of disciplinary enquiry against officers of the subordinate judiciary.

(4) Suspension of officers of the subordinate judiciary pending disciplinary enquiry.

(5) Award censure entries to officers of subordinate judiciary.

(6) Temporary promotion of officers to the cadres of Civil Judges and Chief Judicial Magistrates.

(7) Confirmation, promotion to selection grade, supersessions and reversions of officers of the subordinate judiciary.

(8) Investiture of powers on officers of the subordinate judiciary.

(9) Creation and abolition of posts.

(10) Issuing circulars and genera? letters for the guidance of subordinate Courts. Copies of such circulars, and genera? letters shall be sent to all the Judges of the Court for information.

(11) Fixing working hours, vacation for the subordinate Courts, calendars and list of holidays for Courts.

(12) Matters referred to the Administrative Committee by the Chief Justice.

(13) Matters in which the opinion of the High Court is sought for by the Union or the State Government.

(14) Permission to cross efficiency bar to officers of the subordinate judiciary.

(15) Finalisation of the list of holidays, working hours, vacations and calendars of the Court.

(16) Decision of the reports of [Administrative] Judge including annual confidential remarks recorded by him in respect of an officer in his charge.

(17) Consideration of representations against the decisions of the Committee relating to adverse remarks and strictures."

20. The Full Court represented by all puisne Judges of the High Court is presided by Chief Justice. The power of Full Court has been provided under Sub Rule (D) of Rule 4 of Chapter III of the Rules of the Court.

As discussed hereinabove, under Rules of the Court, power has been conferred to Hon"ble Judges singly as well as through various Committees or through Full Court to regulate administration of justice on administrative and judicial side.

21. A decision taken by the Administrative Judge may be annulled by Administrative Committee and decision of the Administrative Committee may be over ruled or modified by the Full Court of the High Court. Accordingly, the decisions are subject to modification or alteration by higher forum. The Administrative Judge may direct District Judge to cancel an examination and in case he fails to discharge duty, the Administrative Committee may exercise the same power. The Chief Justice being the head" of the institution has got power to take decision within the constitutional fabric and rules of the Court.

22. In view of the above, there appears to be no doubt that not only the Administrative Judge but also as the case in hand the Administrative Committee was fully empowered to resolve to cancel the examination. The power vested in the High Court may be exercised suo moto or on receipt of some complaint or representation. Satisfaction recorded by the High Court unless suffer from mala fide or violation of certain rules or regulations is ordinarily not open to judicial review.

23. It is a settled proposition of law that the Court in exercise of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are not unreasonable or suffer from mala fide or violative of certain statutory provisions. Ordinarily, the Courts are concerned with decision making process and not the decision taken while exercising statutory power vide (1991)3 SCC 91; G.B. Mahajan v. Jalgaon Municipal Council, (1986)1 SCC 264; LIC of India v. Escorts Limited, (1989)3 SCC 293; Dwarkadas Marfatia v. Board of Trustees of the Port of Bombay, (1990)3 SCC 280; Star Enterprises v. City and Industrial Development Corporation, (1999)7 SCC 89; Style v. Union Territory, Chandigarh, (2000)5 SCC 287; Monark Infrastructure (P) Limited v. Ulhasnagar Municipal Corporation, (2003)4 SCC 579; Indian Railway Construction Company Limited v. Ajay Kumar, AIR 2002 SC 350 BALCO; Employees Union v. Union of India, (2003) 7 SCC 410; National Highways Authority of India v. Ganga Enterprises, (2004) 2 SCC 476; People's Union for civil Liberties v. Union of India and AIR 2005 SC 2080, State of NCT v. Sanjeev.

24. Hon'ble Supreme Court in a case, reported in AIR 1975 SC 192, *The State of Bihar and another etc. etc. v. Asis Kumar Mukherjee and others etc. etc.* held that in the absence of proof of bad faith or oblique exercise or other error of law, the Court is not expected to interfere with the decision of the administrative body only because somehow it displeases judicial relish or the Court does not agree with its estimate of the relative worth of the candidates. To reproduce from *State of Bihar*(supra):

"21. What do the alleged infirmities add up to Shri Jagdish Swaroop rightly stressed that once the right to appoint belonged to Govt. the Court could not usurp it merely because it would have chosen a different person as better qualified or given a finer gloss or different construction to the regulation or on the score of a set formula that relevant circumstances had been excluded, irrelevant factors had influenced and such like grounds familiarly invented by parties to invoke the extraordinary jurisdiction under Article 226. True, no speaking order need be made while appointing a government servant. Speaking in platitudinous terms these propositions may deserve serious reflection. The Administration should not be thwarted in the usual course of making appointments because somehow it displeases judicial relish or the Court does not agree with its estimate of the relative worth of the candidates. Is there violation of a fundamental right, illegality or akin error of law which vitiates the appointment? The overlooking of alleged superlative abilities claimed by Dr. Mukherjee is not of judicial concern but of public resentment and individual injustice, if wrongly discarded by an appointing authority in the absence of proof of bad faith or oblique exercise or other error of law. Nor is the corrective judicial review but an appeal to other democratic processes which holds sanctions against misdoings of any Administration and its minions. The Court is not to evaluate comparatively but to adjudicate on legal flaws."

25. In *Shri Sitaram Sugar Company Limited v. Union of India*, reported in AIR 1990 SC 1277, their Lordships of Hon'ble Supreme Court have given a word of caution and held that the Courts should not substitute its judgment for that of the Legislature or executive or their agents as to matters within the province of either. When the Legislature or the administrative body acts within the sphere of its authority and delegates power to an agent, it may empower the agents to record the findings of fact which are conclusive unless suffers from arbitrary exercise of power.

26. Lord Brightman in a case, reported in (1982)3 All ER 141 observed, to quote:

"Judicial review is not appeal from a decision, but a review of the manner in which the decision was made."

27. Hon'ble Supreme Court by a catena of judgments ruled that unless the order passed by the administrative authority is unlawful or unconstitutional, the power of review should not ordinarily be exercised. The order of administration may be right or wrong. It is the administrator's right to trial and error and so long as it

is bona fide and within the authority, no interference is called for. In short, the power of judicial review is supervisory in nature. Unless the Court observes restraint in exercising the power, under guise of preventing abuse of power by administrative authority will itself be guilty of usurping power vide *Tata Cellular v. Union of India*, AIR 1996 SC 11; *Sterling Computers Limited v. M/s. M&N Publications Limited and others*, (1993) 1 SCC445.

28. Hon^{ble} Justice Krishna Iyer, a Great Judge of the country in *State of Punjab v. Gurdayal Singh*, (1980)2 SCC 471 observed as under:

"The Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice.,Wisdom in administrative action is the property of the executive and judicial circumspection keeps the Court lockjawed save where the power has been polluted by oblique ends or is otherwise void on well-established grounds, The Constitutional balance cannot be upset."

29. Hon^{ble} Supreme Court repeatedly ruled that the Court does not exercise appellate powers. It is not intended to take away from administrative authorities the powers and discretion properly vested in them by law and to substitute the Courts as the bodies making the decisions. The judicial review is a protection and not a weapon vide *Chief Constable of North Wales Police v. Evans* (1982)3 All England Reporter 141, *Amin v. Entry Clearance Officers*, (1983)2 All DR 864, *Tata Cellular v. Union of India*, (1994)6 SCC 651 (supra).

30. In the present case, after going through the records, the Administrative Committee resolved for cancellation of the result/examination. In consequence thereof, the order was passed for the cancellation of result and a followup action was taken thereon. Nothing has been brought on record by appropriate pleading that the Administrative Committee of the High Court had acted *ma? a fide* with some oblique motive. As discussed (supra), the High Court have complete control over subordinate Courts and in consequence thereof, the decision taken for cancellation of examination is not open to judicial review being not suffering from *ma? a fide* or want of jurisdiction or violative of certain rules or regulations. Cancellation of Examination and Select List:

31. It is the consistent view of the Supreme Court that the candidates appearing in the examination or peoples whose names included in the select list do not possess indefeasible right to be appointed. It cannot be said that if a number of vacancies were notified for appointment and adequate number of candidates are found fit, such candidates have got indefeasible right to be appointed. The notification inviting applications to hold selection is merely amounts to invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to post.

32. The Constitution Bench of Hon^{ble} Supreme Court in the case reported in AIR 1991 SC 1612, *Shankarsan Dash v. Union of India* has held as under:

"It is not correct to say that if a number of vacancies are notified for appointment

and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decision in *State of Haryana v. Subhash Chander Marwaha*, (1974) 1 SCR 165 : (AIR 1973 SC 2216); *Miss Neelima Shangla v. State of Haryana*, (1986) 4 SCC 268: (AIR 1987 SC 169); or *Jitendra Kumar v. State of Punjab*, (1985) 1 SCR 899 : (AIR 1984 SC 1850).

33. However, in the case of *Shankarsan Dash* (supra), the controversy relates to a situation where the decision was taken after declaration of result, to cancel the select list. After declaration of the result, there may be some right on certain grounds subject to *Shankarsan Dash* case (supra) but once a decision is taken to cancel the examination before publication of the select list, then ordinarily the candidates appearing in the examination shall have ordinarily no right to challenge the decision taken by the competent authority unless suffers from some mala fide or violation of certain statutory provisions.

34. The law settled by the Constitution Bench in *Shankarsan Dash* case has been reiterated by Hon'ble Supreme Court in the case reported in (2006) 3 SCC 330, *State of U.P. and others v. Rajkumar Sharma and others*. For convenience, relevant portion is reproduced as under:

"14. Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination."

35. Some of the other cases where *Shankarsan Dash* (supra) has been reiterated are reported in 2006(1) SCC 779, *Union of India v. Kalidas Batish and another*, (2001) 6 SCC 380; *All India SC & ST Employees Association and another v. A. Arthur Jeen and others*, 1996(10) SCC 742; *Hanumal Prasad and another v. Union of India and others*, 1997(10) SCC 264; *Vice Chancellor v. University of Allahabad v. Dr. Anand Prakash Mitra*, 2004(2) UPLBEC 1377; *Pradeep Kumar and others v. State of U.P.*, (2006) 12 SCC 56; *State of Bihar and others v. Amrendra Kumar Mishra*, (2007) 9 SCC 286; *Divisional Forest Officer and others v. M. Ramalinga Reddy and (2005) 9 SCC 22*, *Punjab State Electricity Board and others v. Malkiat Singh*.

36. Hon"ble Supreme Court in a case reported in 1993 Suppl. (2) SCC 600; Jai Singh Dalal and others v. State of Haryana and another while reiterating the principle enunciated in Shankarsan Dash (supra) further ruled that a selection process shall not deem to be completed unless the result is declared. Before declaration of result, a candidate cannot claim that h? has been selected for appointment. To reproduce relevant portion from Jai Singh Dalal (supra):

"7.....Therefore, the law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent dat? not to fill up the posts or to resort to fresh selection and appointment on revised criteria. In the present case, the selection was yet to be mad? by the HPSC. Therefore, the petitioners cannot even claim that they were selected for appointment by the HPSC. The selection process had not been completed and before it could be completed the State Government reviewed its earlier decision and decided to revise the eligibility criteria for appointment. It is, therefore, clear from the settled legal position that the petitioners had no right to claim that the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the HPSC."

37. The ratio of Jai Singh Dalal (supra) has been reiterated by the Hon"ble Supreme Court in another case reported in (2003) 5 SCC 373, State of Andhra Pradesh and others v. D. Dastagiri and others. Hon"ble Supreme Court held that in absence of publication of select list, the selection process shall not deem to complete. In absence of publication of select list, it cannot be held that the selection process has been completed. Before completion of selection process, the government has got every right to change the policy and in such a situation, the candidates appearing in the examination would have no right to challenge the action of the government with the allegation of arbitrariness. To reproduce relevant portion from D. Dastagiri (supra):

"There is serious dispute as to the completion of selection process. According to the appellants, the selection process was not complete. No record has been placed before us to show that the selection process was complete, but, it is not disputed that the select list was not published. In the absence of publication of the select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the selection process was complete and assuming that only select list remained to be published, that does not defend the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. In the light of the facts that we have stated above, when it was open to the government to take a policy decision, we fail to understand as to how the respondents can dub the action of the appellant as arbitrary, particularly when they did not have any right to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned Government Pleader on behalf of the appellant,

State cannot improve the case of the respondents. Similarly, such a submission cannot confer right upon the respondents, which "they otherwise did not have."

38. In the present case, the decision was taken by the High Court by exercising the power vested in it through the Rules of the Court to cancel the examination before declaration of the result. The power exercised by the High Court was perfectly within jurisdiction under Art. 235 of the Constitution (*supra*). The petitioners, who had appeared in the examination neither possess any statutory right nor his fundamental right has been violated since the examination was cancelled before declaration of the result. The High Court was perfectly within its jurisdiction to take a decision to cancel the result to initiate recruitment process *de novo* by recalculating the entire vacancies arisen up to date as is evident from the material on record.

39. The learned counsel for the petitioners Shri Manish Singh while assailing the impugned action of the High Court has tried to rely upon certain cases which seems to relate to a situation where the results were declared and appointment orders were not issued for one or the other reason. However, none of the judgments, relied upon by the learned counsel for the petitioners seems to overrule *Shankarsan Dash* case and *D. Dastagiri* (*supra*). However, they are considered hereinafter.

40. The case reported in (2003)7 SCC 285; *Union of India and others v. Rajesh P. U., Puthuvalnikathu* and another relates to a controversy where the select list was declared and after enquiry, it was found that the names of certain persons were included in the list by making certain allegation or mala fide practice. Hon'ble Supreme Court ruled and found that out of 134, 31 candidates were not found to be qualified for the post and their names were wrongly included in the select list, hence their Lordship of Hon'ble Supreme Court directed that others may be appointed excluding those 31. The controversy in question does not seem to cover by the case of *Rajesh P. U., Puthuvalnikathu* (*supra*) since the entire examination was cancelled before declaration of result.

41. The cases reported in (2005)12 SCC 688, *K. Channegowda and others v. Karnataka Public Service Commission and others*, (2007)3 SCC 720 *Sanjay Singh v. U.P. Public Service Commission, Allahabad and another*, 2006 (10) SCC 261; *Pitta Naveen Kumar and others v. Raja Narasaiah Zangiti and others*, (2008) 1 SCC 456; *State of M.P. and others v. Sanjay Kumar Pathak and others*; (2001)2 SCC 386, *Om Kumar and others v. Union of India* relate to a situation where examination was held and results were declared and as such does not seem to be applicable under the facts and circumstances of the present case.

42. However, out of above, there appears to be no dispute over the point that unless some statutory or fundamental right flows to defend the cause of aggrieved party, mainly because a person appeared in the examination will have got no indefeasible right to seek appointment. The recent judgment that is the case of *Sanjay Kumar Pathak* (*supra*) relied upon by the petitioners himself is

relevant to mention. While summarising the law on the point, Hon"ble Supreme Court held as under:

"18 As the selection process itself was not complete, there was nothing before the Tribunal as also the High Court to indicate that they had acquired legal right of any kind whatsoever. Even where, it is trite, the names of the persons appeared in the select list, the same by itself would not give rise to a legal right unless the action on the part of the State is found to be unfair, unreasonable or mala fide. The State, thus, subject to acting bona fide as also complying with the principles laid down in Articles 14 and 1 of the Constitution of India, is entitled to take a decision not to employ any selected (sic candidate) even from amongst the select list. Furthermore, we have noticed hereinbefore, that selections were made in four phases. It is not the contention of the respondents that the State Government acted mala fide. The dispute, as noticed hereinbefore related to appointment in Phase 3 and Phase 4 only."

" 19. If the action of the State was not bona fide and/or otherwise unfair, in our opinion, the Tribunal and consequently the High Court could exercise their jurisdiction to issue a writ of or in the nature of mandamus, as has been sought to be done, but neither any such plea was raised nor was the same otherwise found to be existing."

In view of the above, the cases relied upon by the learned counsel for the petitioners does not seem to extend any help to assail the decision taken by the High Court. One of the cases relied upon by the petitioners' counsel is reported in 2007 (25) LCD 1266, *Vijai Shankar Tripathi and others v. Hon"ble High Court of Judicature at Allahabad and others*. In the case of *Vijai Shanker Tripathi (supra)*, the question cropped up before the Division Bench of which I was a member relates to allotment of lawyers' chambers. The chambers were allotted without framing any guidelines or rules and collecting relevant material to evaluate comparative merit of advocate to assess requirement, hence it was held that the power exercised by the High Court was unreasonable and arbitrary. The facts and circumstances of that case being entirely different than the case in hand extend no help to the petitioners.

43. Some of the other unreported judgments, referred by the petitioners' counsel, delivered in writ petition No. 46362 of 2004, *Manoj Kumar and others v. State of U.P. and others* and other connected writ petitions and Special Appeal No. 107 of 2008; *U. P. Power Corporation Limited v. Gulab Chand and others* do not seem to attract in view of the law settled by the Supreme Court, discussed hereinabove, particularly the case of *D. Dastagiri (supra)* and *Sanjay Kumar Pathak (supra)*. Neither any mala fide has been pleaded nor any procedural illegality has been pointed out, hence there appears to be no good ground to interfere with the decision taken by the High Court to cancel the examination.

44. To sum up, since the order of cancellation of the examination was passed before declaration/publication of the result or select list by the High Court within

the jurisdiction and nothing has been brought on record that the Committee has acted mala fide or in violation of certain rules or regulations, no fundamental or statutory right of the petitioners has been violated. Accordingly, no case for interference under Art. 226 of the Constitution of India is made out. Learned District Judge may fill up the vacancies in terms of the orders passed by the High Court and in accordance with rules, expeditiously.

The writ petition is devoid of merit. It is accordingly dismissed.