
(1982) 05 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Special Appeal No. 34/82

Miss Kamlesh Bhardwaj etc.

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 14-05-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1982) WLN 358

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

G.M. Lodha, J.—As the stenographers are on strike, the judgment in these bunch of 31 writ petitions is being dictated on dictaphone.

2. This is a bunch of 31 writ petitions filed by unsuccessful candidates who applied for being selected as Lecturers in the various departments of the Govt. Colleges of Rajasthan. The petitioners can safely be categorised in two categories. Category A denotes to those petitioners who are not only Post graduates but have got further qualifications of Ph. D. or M. Phil/M Litt. These petitioners who have obtained the decree of M Phil/M.Litt. or who have done Ph D., all fall in one category which may be for the sake of convenience treated as category "A". The other petitioners who have not qualified themselves by having the degree of doctorate that is Ph.D. or M.Phil/M.Litt. falls in category "B".

3. The advertisement which was issued by the Rajasthan Public Service Commission for inviting applications for the post of lecturers in the various departments contain the following qualifications. Qualification for the post mentioned above Sl. No. 1 to 16 are:

(a) Good academic record with atleast a high second class (with minimum of 54% marks) Masters degree in the subject concerned of an Indian University or an equivalent degree of a foreign University, and

(b) A Ph.D., M. Phil/M. Litt. degree or a recognised degree beyond the Master's

level or published work indicating the capacity of the candidates for independent research work.

Qualification "C" all the post mentioned above (Sl. No. 1 to 20) was as under:

Candidates must have knowledge of Hindi written in Devnagri Script and one of the Rajasthani dialects.

Then there was a proviso and this proviso would assume great importance in the various points raised and the controversy debated before me and is adjudicated. The proviso runs as under:

Provided that (for the post mentioned above at Sl. No. 1 to 17 (a) a candidate possessing the qualifications at (b) is not available or is not considered suitable for appointment, the Commission may recommend the person who fulfils the requirement as given in (a) above on the condition that he will have to obtain the Ph. D. M. Phil/M. Litt. degree or recognised degree beyond Masters level within five years of his appointment, failing which he will not be able to earn future increment till he obtains the degree or gives evidence of published work of high standard indicating the capacity of the candidate for independent research work.

It is not in dispute that all those candidates whom I have put in category "A" in the list annexed which would be "schedule "V, have got qualification which has been prescribed in Clause (b). The Public Service Commission after obtaining applications, held an examination which has been described as screening test for the purposes of weeding out good number of candidates in order to have a sizable number of candidates which can be interviewed. In this process many of the candidates who have qualifications both of Clause (a) and (b) were weeded out as they were not able to obtain sufficient marks which could entitle them to become eligible for the zone of consideration of or appearing in the interview. The result of the above was that many candidates who had qualifications both (a) & (b) were rejected immediately after the screening and were not permitted to appear in the interview. Contrary to it many candidates who are not having qualifications of Clause b) & were only qualified having the Post Graduate degree as required by qualifications contained in Clause (a) were declared successful for being eligible in the zone of consideration and they were interviewed by the Rajasthan Public Service Commission, Board of interview and selected.

4. The petitioners in these writ petitions have made manifold grievances. However, during the course of the arguments the principal grievances which were emphasised and on which concentration was done by learned Counsel for the petitioner are not many. The first grievance according to the learned Counsel for the petitioners is that those candidates who fulfil both qualifications of Clause (a) & Clause (b) cannot be rejected without being considered in the interview. The submission is that the Clause (a) and Clause (b) are essential necessary qualifications for eligibility of consideration for the post of lecturer according to this advertisement which contains requirements which have been prescribed by the University. That being so the proviso which provides an exception to appoint

even those candidates who fail to fulfil condition No. (b) cannot be invoked unless it is found that the candidates who have got qualifications of Clause (a) and (b) are not suitable or not available. The test of suitability cannot be done by screening examination. It was argued that whether the candidate is suitable or not for the post of lecturer can only be decided by the Interview Board after their interviews done by the P.S.C. members and the experts in respect of their ability to teach the subjects.

5. This submission of the petitioners was contested by Learned Counsel for the respondents both appearing on behalf of the P.S.C. and also the State. It was argued that the screening test is nothing but the part of suitability test and whether the candidate is suitable or not need not be decided only by interview. It was pointed out that in advertisement itself it was mentioned that the Commission can hold examinations for the purposes of screening and that being so screening test is nothing but a matter of adjusting the suitability of the candidates. It was also pointed out that suitability need not be dependent only upon the interview and in screening test the paper which was set and given were only relevant to the subjects in which the petitioners wanted to become lecturers and that being so having failed at the screening test they can hardly claim any right to appear in the interview.

6. The second limb of submission of Mr. Paras Kuhad is based upon interpretation of Rule 9 of the Rajasthan Education Service (College Branch) Rules, 1971 (hereinafter called as the Rules of 1971). Mr. Kuhad invited my attention to Rule 9 which reads as under:

9. Determination of vacancies.--(1) Subject to the provisions of those rules, the Appointing Authority shall determine each year the number of vacancies anticipated during the following twelve months and the number of persons likely to be recruited by each method. Such vacancies shall be determined again before the expiry of 12 months of the last determination of such vacancies.

(2) In calculating the actual number to be filled by each method on the basis of the percentage prescribed in column 3 of the Schedule, appended" with relevant Service Rules, the Appointing Authority shall adopt an appropriate cyclic order to correspond with the proportion laid down in each of the Service Rules by giving precedence to promotion quota over direct recruitment quota e.g. where the appointment by direct recruitment and promotion is in the percentage of 75 and 25, respectively, the cycle shall run as follows:

- (1) By promotion,
- (2) By direct recruitment,
- (3) By direct recruitment,
- (4) By direct recruitment,
- (5) By promotion,

- (6) By direct recruitment,
- (7) By direct recruitment,
- (8) By direct recruitment,
- (9) By promotion, and so on.

According to the learned Counsel for the petitioner the vacancies are required to be determined in the beginning of every year. In the present case no vacancies are determined for 1980-81. It was pointed out that on account of this many new posts, which have fallen vacant during these years have not been included and therefore, the zone of consideration as well as the number of candidates to be selected has been unlawfully minimised and curtailed. It was also pointed out that if the vacancies would have been redetermined in the year 1980 and 81 then the candidates would have been different because during this year many more persons would have become eligible and they would have also appeared.

7. Yet another submission on behalf of the petitioner was that the Article 14 of the Constitution has been contravened. It was argued that in many department no screening was done and no test was held at all. The example of Mathematics and Physics was given. It was pointed out that in many departments the ratio for the purpose of zone of consideration was fixed arbitrarily in as much as in some departments it was 1:19 & 1:14 in others it was 1:3 and 1:5. The submission of the counsel for the petitioners was that these were done arbitrarily as there was no principle which can justify why in a particular department the ratio is 1:19 and the other departments it is 1:4. It was also argued that exempting certain departments from the screening test and holding screening test in other department is also violative of Article 14 as it is hit by the principle of discrimination and that discrimination is not based on any just and reasonable classification having nexus to the object to be achieved.

8. These submissions of the learned Counsel for the petitioner were first challenged by the respondent on the ground that the case should not be decided on merits because the petitioners are not entitled to invoke extraordinary jurisdiction of this Court. It was pointed out that so far as the petitioners' conduct is concerned all of them who have challenged the various results of selections have themselves applied with eyes open in response to the advertisement, which expressly mention that there would be screening test. Thereafter they took a chance by appearing in the Screening Test and having failed they cannot be permitted to turn round and now challenge the selections of these candidates, who on account of superior performance in the screening test, have been declared successful. It was pointed out that on account of this conduct and acquiescence, they are estopped from challenging the selections made, which are based on screening test as the first preliminary step in it.

9. It was then argued that several persons have been declared selected by the Rajasthan Public Service Commission. And before that several candidates were

declared successful in the screening test. All those, who were declared successful in the screening test and further all those, who have been selected, have got a legal right to be heard against their selections and the challenge to it if at all is made. Hearing of the case in their absence and deciding it against them would result in violation of principle of natural justice because they would be condemned unheard. It was argued that they are necessary parties and therefore non-joinder of necessary parties is fatal to the writ petitions.

10. The learned Counsel for the respondents further pointed out that in these cases the petitioners who have appeared in the screening test, after failure to obtain the requisite marks for being eligible for the purpose for appearing in the interview now cannot be heard to say that the requirement of suitability contained in the proviso as an exception would not apply and suitability can only mean the suitability as adjudged by the interviews and not by the screening test.

11. Mr. Singhvi appearing for the State further raised two more preliminary objections. It was argued that those who have come to this Court have come at a premature stage because after recommendations of the Public Service Commission, the matter is processed and the decision is to be taken by the Govt. whether to appoint or not Mr. Singhvi pointed out that unless a candidate is appointed by the Government on the post of lecturer, it cannot be said that he would be appointed and therefore, since there is chance that he may not be appointed, the writ petition is premature. In this connection, Mr. Singhvi invited my attention to the Rules according to which after the selection is made by the P.S.C., a list is sent in the form of recommendation and the Govt. thereafter decides whether these recommendations are to be accepted as a whole or in part and if not for which particular candidate it need not be accepted. That exercise is yet to be done by the Govt., argued Mr. Singhvi, and therefore the petitioners have rushed to the court in hot haste.

12. Yet another objection by Mr. Singhvi was that since the petitioners have come for a writ of mandamus, they are required to make a demand for justice which is a condition precedent before it can be entertained. Mr. Singhvi pointed out that in only one or two cases a general and vague averment has been made that the demand of justice was made to the Govt. It was then argued that in any case the requirement of demand of justice means that it must be specific and it must be to the competent authority and then the competent authority must be given full reasonable time to consider it. It was argued that it is only when it is rejected that the petitioner can come to this Court.

13. Mr. Asopa and Shri Sharma appearing for the respondents submitted that so far as the Political Science is concerned there was another preliminary objection because the writ petitions have been filed after great delay. It was pointed out that writ petitions have been filed after selections have been completed and the appointments have been made and that being so on the ground of delay itself, these writ petitions should be rejected in addition to other preliminary objections, which have been made by Mr. Singhvi which are still more strong in the instant

case because here appointments have also been made.

14. Mr. Singhvi in support of the preliminary objection first submitted that according to the Rules the list of selected candidates is to be sent and further a list is prepared which is called reserved list for 50% of the vacancies. It was pointed out that about 699 candidates have been selected in 24 subjects. It was argued that these candidates, who have been selected are necessary parties because their right would be adversely affected in case selections are set aside. In support of the above contention Mr. Singhvi referred to me the judgment of 1978 LIC 223 (1) in which the Calcutta High Court has decided that in the absence of necessary parties the writ petition deserves to be dismissed. Paras No. 13, 14, 15, 16, 17 and 21 of the above judgment were read over. According to the above, persons, whose names have been included in panel have been held to be adversely affected and since 13 persons were not joined as party, the writ petition was dismissed. Reference was also made to the decision of Jayanti Kumar v. P.S.C, Madhya Pradesh (2) 1979(1) S.L.R. 316. In the above case para 14 deals with the objection regarding necessary parties. It has been mentioned that inspite of objections the petitioner did not join and therefore writ petition deserves to be dismissed on this ground alone. Mr. Singhvi also invited my attention to the decision of Five Judges" Full Bench in the Kerala High Court reported in AIR 1918 Ker 176 (3). It was held in this case in paras 12, 13 and 16 that when invalidation virtually affects the selected persons, no writ can be issued in their absence. In this case two decisions of the Hon"ble Supreme Court were discussed and it was held that although in those cases the principal of rejection of writ petition in the absence of the parties was not upheld but the reason was that there policy decisions were challenged. My attention was also invited to a Full Bench judgment again of five Judges of Patna High Court Padmraj Samarendra and Others Vs. State of Bihar and Another, in which the Hon"ble Court observed as under:

Constitution of India, Article 226--Parties to writ proceedings-Necessary parties--Applicability of provisions of Civil P.C.--Petition challenging selection of students for admission in Medical Colleges Selected candidates and University not made parties to petition--Petition, held was not maintainable in absence of necessary parties who were going to be directly affected--Per majority. (Head Note F)

In this case it was held that when selected candidates have not been made parties then writ is not maintainable.

15. Yet, judgment of Padam Singh v. Union of India 1974 (1) S.L.R. 594(5) was referred to by Mr. Singhvi, para 7 of which reads as under:

It appears from Annexures C and "D" filed with the SLP before this Court, that whereas in the seniority list corrected upto April 1, 1961, the appellant was shown at No. 5, he was shown at No. 7 in Annexure "D" in the list of seniority corrected upto April 1, 1962. But we are unable to investigate the question whether there has been infringement of the rules governing fixation of seniority

for a majority of those who were placed above the appellant in the seniority list were not impleaded in the petition before the Judicial Commissioner and are not before this Court. It is impossible to pass an order, assuming that the appellant is able to convince us that a breach of the rules was committed, in altering the list of seniority, unless those who are likely to be affected thereby are before the Court and have an opportunity of replying to the case set up by the appellant.

The same principle that persons who are directly and likely to be affected are necessary parties was reiterated here also. In this case also it was held that majority candidates in the seniority list were not made parties and therefore the writ was not maintainable.

16. Confronted with the above Mr. Paras Kuhad learned Counsel for the petitioners relied upon the decision in the General Manager, South Central Railway Sikandrabad and Anr. v. AVR Sindhanti and Ors. reported in 1974 (IV) SCC 335 . In the above case the Hon'ble Judges of the Supreme Court observed that when constitutional validity of policy decisions of the Railway Board containing administrative rules of general application is attacked, merely because the persons who are employees and who are likely to be affected adversely on account of the decision which may result in re-adjustment of seniority in accordance with the Boards decision have not been made parties cannot be fatal. Para No. 15 and 16 of the above decision may now be reproduced for ready reference:

15. As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition containing administrative rules of general application, regulation absorption in permanent departments fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop Departments. The respondents--petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Article 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to, the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952, were at the most proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition.

16. The ratio of this Court's decision in Padam Singh Jhina's case (supra) is not applicable to the facts of the instant case. Jhina's contention was that he had been malafide reduced in the list of seniority, placed from the 5th to the 7th and that one Prem Sagar had been placed above him in contravention of the Rules.

The validity or vires of the Rules was not in question All the persons whose placement in the seniority list was controverted were not impleaded, and as such, had no opportunity of replying to the case set up by Jhina, and, in the absence of persons directly affected it was not possible for the Court to adjudicate the matter. The ratio of Jhina's case does not help the appellant. The case relevant for our purpose are B. Gopalan and Ors. v. Government of Andhra Pradesh and J.S. Sachdev and Ors. v. Union of India and Ors. We approve of the rule enunciated on this point.

17. The above principles laid down by their Lordships of Hon''ble Supreme Court in this case precisely apply in the instant case also. All said and done, what is being done in the present cases is the interpretation regarding the exception clause in the qualifications prescribed by the Rajasthan Public Service Commission. The qualifications (a) and (b) which are normally necessary qualifications can be given a good-bye and can be departed in appropriate cases only when the proviso applies. The proviso uses the words that when the candidates possessing the qualifications at (b) are not available or are not considered suitable then the Commission can recommend persons who fulfils qualifications "A" only. The Public Service Commission interpreting the above qualifications clause and more particularly exception, took a policy decision that the screening test must be held for all including possessing qualifications (a) & (b) & so also possessing qualification (a) only. It was decided that in the Screening test when number and result is received then only certain number of candidates who would fall in the proportion of the ratio fixed for zone of consideration, would be called for interview and if they fall outside it, they would not be called for interview. The resultant position was that this policy decision resulted in the screening of these petitioners who were not allowed to appear in interview, because they could not obtain such marks which could make them eligible in the zone of consideration. This was the police decision taken by the Public Service Commission on the interpretation of the qualifications clause in the notification. This decision of the Public Service Commission is precisely being challenged in the present writ petition in addition to the interpretation of Rule 9 which would be dealt with at a different stage. These both relate to interpretation of the Rule or the qualification or the general policy decision of the Public Service Commission, for permitting or not permitting the candidate to appear in the interview. In other words it is not concerned with merely individual A, B or C D or with individual candidates nor with the respondents nor with the persons who have appeared and declared successful or who have been selected or not selected. The policy decision covers the very big entire canvas because all those who applied to the Public Service Commission and who appeared in the screening test are guided by these policy decisions. In view of this, I am of the opinion that this policy decision being challenged on the ground of constitutionality under Articles 14 and 14 of the constituting, and further on the ground of the legal and logical meaning which should be given to the proviso to Clause (a) and (b) contained in Clause (c), covers the entire range and need not be confined to

individual cases 1 hat being so, I am of the firm opinion that the above decision of their Lordships of the Supreme Court clinches the issue. In view of this the objection taken by the learned Counsel for respondents that the petitioners must fall on account of non-joinder of parties fails to carry any conviction and deserves to be dismissed.

18. The second objection of the learned Counsel Mr. Singhvi appearing for the State is that the conduct of the petitioners disentitles them from getting any relief in the extraordinary jurisdiction of this Court under Article 226 of the Constitution. It was argued that the advertisement appeared on 4-4-1980. The advertisement expressly contained a covenant that screening test may be held. The petitioners who applied in pursuance of the advertisement did so with eyes open. They appeared in the screening test, took a chance and when they were rejected on account of lack merit then they have taken a summer-sault, turned round and now they went to challenge the validity of the screening test. It was argued that this conduct disentitled them because firstly on account of acquiescence, secondly on account of estoppel and thirdly on account of the game which they played by appearing and then taking a chance. In this connection Mr. Singhvi relied upon a large number of decisions reference of which have been made during the debate. They are as under:

Dr. M.C. Mehta v. The Satate of Rajasthan (7), 1972 W. L. N. P. 661 confirmed by Division Bench in Special Appeal on 12th of September, 1975, Samarathmal and Others Vs. Jugaldas and Others, Civil Writ Petition No 339 of 1974 decided on 29-11-79 Dr. Mrs. Nirmala Upadhyaya v. University of Jodhpur (14).

19. On the bedrock of the principle said down in the above decisions Mr. Singhvi pointed out that the petition cannot be heard on merits. It was argued that process started in January, 1980. Advertisements were then made and about 4000 candidates applied. 2000 of them appeared in the screening test and over 1000 were interviewed for several days Now the petitioners having failed, want that all this process must be undone and set at naught and the advertisement should lapse. Mr. Singhvi pointed out that in all 466 vacancies were there for which candidates have been selected and the reserve list contains names of 233 candidates in addition to the above. The reserve list is to be exhausted within six months from the date of recommendation and since the list was sent in Februray, it would lapse by July, 1982.

20. Confronted with the above objection regarding conduct, learned Counsel for petitioners first invited my attention to my own judgment in Hari Narain's case (15). It was pointed out that in this case this Court has held after detailed consideration of all the case law up to date, that the question whether the petitioner is disentitled to file a writ petition on account of his conduct depends upon the finding whether the petitioner had conscious knowledge and was alive to the fact that the interviews which are being held or the tests which are being held are illegal and therefore he can challenge them. If it depends upon the interpretation of the rules or some facts which are not known at the time the

candidate appears or interpretation which is difficult to be made or on which two views are possible then it cannot be said that the petitioner voluntarily appeared and took a chance and has now after acquiescence tried to challenge it only because he was failed. It was argued that the acquiescence means wilful conscious and active acquiescence and in the absence of that the same cannot prove fatal. Reliance was also placed on my judgment in Dr. M.R. Goyal's case (16) in which the question of waiver and estoppel was discussed at length. It was pointed out that there also this Court has observed that acquiescence or waiver means conscious, voluntary, wilful and intentional act with full knowledge about the consequences. It was pointed out that merely because a candidate goes for interview or appears in a test without knowing the legal infirmities and delicacies of the interpretation about the rules, it cannot be said that he has waived his right to challenge the rules or the interviews which are otherwise invalid.

21. On a very thoughtful consideration of the various facts of the above debate, I am of the firm opinion that in the instant case whether those candidates who fulfil the requisite qualifications both of Clause (a) & (b) should or should not be put to the screening test is not a matter which can be said to be free from doubt. Even before me, when the learned advocates from both sides argued the case at length, there were several occasions, when I was of the view that interviews need not be held or may be held and similarly screening test may or may not be held, because much depends upon the interpretation which is to be given to the words availability, which have been used in the proviso to Clause (a) (b) and (c) of the qualifications mentioned in the advertisement. It is difficult to say off hand that one interpretation and one only would be possible. It is in my opinion a question which is not free from Court as the interpretation to be put requires a consideration of entire scheme of the rules, of the syllabus of the P.S.C., provisions regarding the P.S.C., requirements of the interview in the Act and the Rules. In short it is on account of totality of the circumstances and interpretation to be put on the various rules including the advertisement that a conclusion or deduction can be drawn. How can we expect the students who is Doctor in Philosophy or Economics or History or Geology to know the intricacies of law and to apply his mind first to the validity of the rules and validity of the interpretation which had been done by the Public Service Commission. It would be too much to expect that each candidate who appears in the selection test or screening test whatsoever it may be called, would first be able to understand the implications about the validity of the policy decisions and then he consciously applied for it and appeared in the screening test. In my considered opinion those lecturers or candidates who are appearing for lecturers in different subjects could not understand the implications of the interpretation which may ultimately be given to the word "suitability" in the exception clause to Clause (a), (b), (c) of the requirement or qualifications in the notification of the advertisement. In that view of the matter I am of the firm opinion that these petitioners were not aware of the infirmities attached either to rule 9 or its interpretation or to the advertisement containing the notification having the exception and the

interpretation made by the Public Service Commission to ask or complete even those persons who fulfil the requisite qualifications of (a) and (b) to appear in the screening test. I am of the firm view that this would require a lot of debate, discussion, thinking and consideration by learned members of the law and lawyers and judges. That being so to expect from the student or a candidate who is appearing in various subjects to take a decision about the validity would be too much expectation. In view of this neither the appearance in the selection test nor the screening test was voluntary or conscious, intentional having the knowledge.

22. Since I have held that the participation in the screening test of the petitioners was not with the knowledge that the Rule 9 interpretation or the interpretation to be given to the word suitability in the advertisement Sub-clause (b) and (c) would be such that they would not be required to appear in the screening test, they were not appearing in the screening test with a view to take chance but they were doing so genuinely because they thought that it was required by law. The invalidity of the law or the policy decision or the requirements of the screening test was not writ large and was not patent and at the most it was latent which could be discovered only by legal brains. That being so, I am of the firm opinion that the writ petitions of the petitioners cannot be dismissed on the ground of waiver, acquiescence or estoppel by conduct. The second objection of Mr Singhvi and other learned Counsel for the respondents is equally untenable and fails and is consequently rejected.

23. The third objection is equally futile. The selection list has not only been published but it has been also sent to the Government. Mr. Singhvi's contention that the Government may still consider the selection list and appoint or not appoint the petitioners is not sustainable. The reason being that once the recommendation of the Public Service Commission to the Government is sent on the basis of merit, the Government has got no powers of veto as held by me in Hari Narain's case. All that the Government can consider is whether their character or antecedents are such which can disentitle them from their appointment in spite of their merit. There is a very far fetched possibility of one or two persons being not appointed of the entire list because they may have some bad adverse antecedent either of conviction or of such activities which may disentitle them. That being so, by and large the recommendation of the Public Service Commission contained in the selection list is final and all that the Government required is to make an enquiry about the conduct and then issue formal orders of appointment. In view of this it cannot be said that writ petitions have been filed at a premature stage.

24. It is interesting that the preliminary objection of the respondents is self contradictory because whereas at one stage they say that they are premature, in the second breath by some other advocate, it has been said that it is delayed. The objections of delay and premature are contradictory and paradox in terms.

25. Mr. Asopa's objection regarding delay is equally futile. All that has been done now is that appointment orders have been issued and therefore hardly it can be

said that any stage have come where there was inordinate delay without any reasonable explanation. The objections regarding the writ petition as premature as well as liable to be dismissed on account of delay are rejected.

26. I may now deal with the last limb of the preliminary objections raised by the respondents. It was argued that the demand of justice is a prerequisite condition for a prayer of writ of mandamus. Prima facie there cannot be a quarrel with this principle which is well established. However, in the instant case, two important features must be noticed. The first one is that what is being challenged is the policy decision and the interpretation of Rules is to be done. Secondly one of the petitioners or some of the petitioners did make representations and whether they were sent to the Commission or the Government or to both, is not a matter of great substance, in substance the petitioners or some of them at least did make a demand as is evident from the affidavit filed by Shri Paras Kuhed in writ petitions No. 11/81 and 367/82. That being so, on both the grounds, I am not inclined to reject writ petitions on this technical ground more so after the entire matter has been discussed; and considered quite at length. It may also be pointed out here that a decision on the point canvassed before me would further curtail litigations because the P.S.C. and the Government on the one hand and the petitioner on the other hand, must know as to what is the meaning of the word "suitability" which has been used in proviso and which is in the nature of exception to the qualifications clause. Equally it is important that it must be decided as to what are the implications of Rule 9 and the decision of Pema Ram's case, whether it should be followed by the Commission in all these cases. These two important features of the case require prompt decision so that several persons whose fate is to be decided on account of the validity or invalidity of them is decided once for all. For this important reason also, I am not inclined to dismiss these writ petitions on any preliminary objection also.

27. Decks are now clear for dealing with important points raised on the merits of these cases. I would first deal with the question whether, what meaning should be given to the "suitability" as used in the proviso (2) Clause (c) after Clause (a) and (b) in the advertisement, in respect of the qualifications. It would be here necessary to have a view of the advertisement which contains these qualifications. The petitioners have filed this advertisement which is Annexure 1. In this advertisement the qualifications part of which has been extracted above, for the post Sr. No. 1 to 16, in which all petitions are covered, two qualifications are necessary. It is important to notice that Sub-clause (a) and Sub-clause (b) are not either or but between them the word "and" has been used. This means that the candidate in order to qualify and be eligible to appear in the interviews or test to be held must have two qualifications (a) and (b) both. The qualifications contain Sub-clause (a) which relates to Master's Degree with a minimum of 54 marks in the subject concerned.- Undoubtedly all these persons who have been selected and the petitioners will fulfil the qualifications Clause (a). The crucial qualification is contained in Clause (b) which is Ph.D., M. Phil /M. Litt degree of recognised Institution and further in the alternative published

works indicating the capacity of the candidate for independent research work. This qualification (b) admittedly is wanting in many of those candidates, who have been selected. This being the admitted position it is not necessary for to decide and determine individual case with a view to find out which are those persons who have been selected. Therefore what is required is to decide whether the qualification (b) was necessary and if so what is result of it.

28. The proviso is contained after qualifications (c) which mentions that a candidate possessing the qualifications at (b) is not available or if is not considered suitable for appointment, the commission may recommend a person who fulfils the retirements as given in Clause (a). Now the above would show that the normal rule is that the candidate must possess qualification (a) and qualification (b) Qualification (b) is therefore normally to be insisted upon. In other words if a person having both qualification (a) and (b) is available then the persons having qualification of (a) only would not be selected unless the Commission is of the opinion that even though a parson having qualifications (a) and (b) is available but he is not suitable for appointment. It is to be noted that so far as the availability is concerned it is nobody's case that persons having qualifications (a) and (b) are not available. It is admitted position that number of persons having qualification (a) and (b) were available. This would further be supported by the charts which have been produced by the respondents along with the reply in which the number has been given.

29. Then comes the question whether the persons who " were having qualifications (a) and (b) were not suitable and in what manner and by what method and what is the procedure and process of determining suitability in order to invoke the exception and the proviso for appointing less meritorious persons, having less qualifications, ignoring or superseding the candidates who have got better qualifications and are more meritorious, so far as the prescribed qualifications is concerned.

30. Under Rule 19 of the Rules of 1971 the Commission is required to scrutinise the applications received by them, and then decide, how many candidates are qualified for appointment under these Rules, to be desirable to appear them before interview. It is under rule 20 that the Commission prepares the list of candidates whom them consider suitable for appointment to the post concerned and arrange them in order of merit. Then list is forwarded to the Govt. under the proviso the reserve list is prepared to the extent of 50% of the advertised vacancies. Thereafter under Rule 22 the Govt. selected candidates from that list of the candidates who stand highest in order of merit. The Govt. then makes an enquiry to find out whether such candidates are suitable in all respects for appointment to the post concerned and then the appointment follows.

31. A comprehensive study of Rule 19, 20 and 22 would show that under rule 19 at the time of scrutiny for the application the Commission scrutinises the applications and then for the purposes of interview decide the number of candidates out of them to be put for interview. Thereafter the interviews are

done and suitability is determined under rule 20. Rule 19 therefore is a rule for the purposes of weeding out certain candidates if the number is excessive so that a reasonable number only appear for the interview. This is what is contemplated by the word "desirable" in rule 19. It is only in interview that the suitability is decided by the Commission.

32. Mr. Paras Kuhad's argument that since screening test is not provided in the rules, and, therefore, no screening test can be held, cannot be accepted. The reason being that under rule 12, the Commission is entitled to carve out and frame its own procedure for reducing the number from the applicants to such a reasonable number which can appear for interview. So long as the decision is done bonafide without violation of constitutional provision or any express law, the autonomous body like a Commission is competent and authorised to lay down its own procedure, norms and principles on the basis of which curtailment of the number can be done.

33. In the instant case, it is true that there is difference in the ratio which has been formulated from number of candidates to be interviewed and the number of applicants, in different departments. But it is neither outrageous nor such which can be said to be absolutely arbitrary. The availability of the experts, the period which is available before the Commission, the nature of the subjects and various allied relevant factors can be taken note of by the Commission, and the Commission can then determine as to what should be the ratio in the number of subject whether 1 : 5 Or 1:20. Merely because it is in some cases 1:20 and in other cases 1:5, it cannot be said that it violates Article of the Constitution.

34. The object of Rule 19 and the screening test is to weed out and to reduce the number of applicants to be interviewed to such a reasonable number that on the one hand the Commission have fair chance of selections and their choice is not restricted, on the other hand the time available to the Members and the experts and the entire work completion is not impaired and delayed. If all the candidates are to be interviewed then the Commission may not be able to interview all the candidates even for a month for one subject Again if the number is to be reduced to such that only a few are interview, then the interview Board, will have no option but to accept them and the very purpose, of interview would be defeated. In interview the members consider, examine and give different marks on various aspects for example experience, personality, the ability of a candidate and his general display of knowledge on the main and allied subject etc. That being so, interview plays a very important role in the determination of suitability about a candidate and is next only to the eligibility about a candidate. The eligibility is the front door entry but thereafter whether a berth or seat should be booked or not for candidate, depends upon the performance in the interview.

35. That being so, the petitioner's submission, so far as it relates to the basic right of the Commission to hold selection or screening test is concerned, cannot be accepted and consequently rejected. It is held that the Commission has got legal right under Rule 19 to hold Screening Test for the purposes of sorting out,

weeding out and reducing the number of candidates to such an extent that it becomes sizable and convenient for interview and this can be done on the basis of cumulative factors to be taken note of so long as there are no malafides and not bad motives.

36 Having held so, the next question is whether in respect of considering the exception or the application of the proviso, for the purposes of the qualification, as laid down in (a) and (b), the Commission can utilise the screening test, as a method or mode or procedure for weeding out some of them, by joining both of them. In other words whether the persons or candidates who are qualified for (a) and (b) both can be put together with the lot of unqualified or normally unqualified candidates, who would come into picture only when the qualified candidates are not available or not suitable, and then by screening test deny them, the chance of consideration in the interview. On a very mature, serious and thoughtful consideration of the entire matter, I am of the opinion that the very purpose of carving out an exception would be redundant, and what has been provided as an exception or a proviso to the Rules or to the qualification clause would become a part of the clause, as good or as bad as the main clause in the case the interpretation put by the Commission is accepted, I am further of the firm view that those candidates, who fulfil the qualifications in both respects (a) and (b) which is normal qualification of candidates to be considered for the purposes of lecturer in these subjects, stand certainly on a high pedestal, better footing and different footing in comparison to those who fail to possess the essential qualification of (b) and went to take advantage of the proviso or the exception. To be exact, the candidates who are fulfilling the qualifications (a) and (b) are not only more meritorious than those who want to come by exception, but they are further the only candidates who are eligible normally and who can as of right claim consideration under the Rules for the post of lecturers. Those, who want to come by way of an exception wants to come by back door entry of course permissible in the Rules. But it must not be forgotten that there is vast difference between those persons, who come as a matter of right openly under the law on account of their qualifications and those, who normally are not entitled but want to enter into the premises by back door by taking advantage of proviso or exception.

37. I am of the view that these two categories form different classes and should not be jumbled up together in the screening test. It is equally true, that those who fulfil the conditions of (a) and (b) are certainly the persons, who legitimately as of right, under the Rules, claims to be considered and those who fail to fulfil the condition (b) are the persons who wait in a big queue at the tail end with the rare and stray chance of taking advantage in case of exception if any of those persons, who are normally qualified are found to be "unsuitable" on account of any reason. In my view the words available and unsuitable or suitable have been used simultaneously in the same Rule in the same clause, of the exception, carved out by the" proviso. In this context it means that as far as possible those candidates who fulfil the qualifications (a) and (b) only should be taken. In other

words there must be some-thing radically wrong with those who are fully qualified so that the Commission cannot accept them and those must be exceptional grounds and not the normal or ordinary grounds.

38. In this back ground and with this analysis of the word "suitable" used in this clause, the next question comes whether by way of screening on the basis of setting of questions to those according to the syllabus, which have been admittedly the syllabus of Post Graduation or such, the qualified persons having category (a) and (b) can be screened and rejected. For the purposes of being a lecture, it is not only the mere knowledge of Post Graduation, which is required but the ability to teach and experience or on account of general out look of a particular candidate or his intelligence which has developed on account of being Ph. D or other equivalent courses mentioned in Clause (b), have got a very relevant bearing. Certainly they are not considered nor they can be considered at the time of screening test which is based only as rightly pointed out by the petitioner, "retentive memory" of the subjects, which is studied during the graduation or the post graduation. After Post Graduation the specialisation of knowledge on account of the Doctorate which is done in a particular small subject or such equivalent study or research and that specialised branch of research and knowledge cannot be depicted in the answers to the test of bookish knowledge of Post Graduate or Graduation. It would be therefore violence to the spirit in which conditions (a) and (b) prescribed by the University to screen solely on the basis of test of so called retentive memory or the knowledge of Graduation or Post Graduation by screening test. The tale of those who fulfil both the conditions of (a) and (b) and who are thrown over board at the threshold, without being considered in the interview, is based on illegality.

39. I am of the firm opinion that this would be in substance circumventing the requirement of (a) and (b) and virtually making a (b) a dead letter, redundant and useless. It is well known that no such qualification which have been prescribed by the University after due consideration, can be treated superficial surplus or useless nor can it be treated as defunct or dead. If it is to be alive then the Commission should also give life to it and the only way the Commission can remain alive to it is that it must permit all those candidate"s who fulfil conditions (a) and (b) to be interviewed by the Members without requiring them to clear the screening test. In this view of the matter the entire procedure adopted by the Commission to reject those candidates, who fulfil (a) and (b) condition, on the sole ground that they have not obtained so many marks in the screening test so that they could come in the zone of consideration is untenable in law and consequently is liable to be quashed.

40. The result of this would be that all those candidates, who have qualified themselves by passing the Post Graduation Examination and also are qualified according to category (b) being either Ph. D or M. Phil or M. Litt. or any equivalent qualification as required by Clause (b), should be treated as the only person having the qualification which are, required to be "considered" and they

should be interviewed by the Commission, as of right, irrespective of their performance in the Screening Examination. To be exact, they need not be subjected to the test of screening examination, as by obtaining the Doctorate or M. Phil or M. Litt. they have already obtained the status where they are not required to appear in the Screening Examination. This way alone the word "suitability" should be interpreted and the word "suitability" should not be interpreted to put them in the common hoch poch with the post graduates, and then decide their fate at the very threshold.

41. Admittedly in the cases of the candidates of schedule "A" they are having qualifications both of (a) clause and (b) clause i. e. they are post graduate and further fulfil the qualifications required by (b) clause and therefore they were persons who should have been considered by the Commission under rules 19 and 20 by interviewing them. Of course, after interview, it was open to the Commission to consider whether they should utilise services of those persons, who do not fulfil (a) and (b) qualifications by using the exception, after making the persons having qualification of (a) and (b) non-suitable and others to be suitable. Then, of course it would not be open to this Court to insist that only because a person fulfils the qualifications (a) and (b) he must be selected finally, even though he is found not suitable. This is so because then the word "suitable" would become meaningless and we have to give some meaning to word "suitable" also. "Suitable" cannot mean "available" and therefore "suitable" mean something more than "available".

42. That being so, I am of the opinion that the interpretation put by the Commission in the policy decision taken to reject those persons having qualifications (a) and (b) also, solely on account of screening test, was not according to law and consequently deserves to be quashed. The logical and legal corollary of this would be that all those candidates which are covered by the writ petitions of Schedule "A" and in those subjects in which writ petition have been filed by them would be reconsidered provided they got qualification of (a) and (b) both irrespective of the fact, whether they have passed the screening examination or not.

43. According to the information conveyed to the court after screening examination and interviews have been held in all these subjects, selections have been made and lists have been forwarded to the Government under Rule 20. Those lists cannot be acted upon and since on account of the above finding they will have to be revised, by the Commission interviewing all those candidates also who have not been called for interview and who possess the qualifications of (a) and (b) both. Then after giving them marks in the interview, the Commission would readjust the merit lists, so that these persons who come for interview and who obtained better marks in the interview may be adjusted in the merit list. It would be thereafter only that the Commission would send the selection list again in supersession of the selection lists already sent to the Govt.

44. Now remains the question of consideration about the second limb of

argument of Mr. Paras Kuhad regarding Rule 9 of the Rules of 1971 Rule 9 reads as under:

9. Determination of vacancies.--(I) Subject to the provisions of these rules, the Appointing Authority shall determine each year the number of vacancies anticipated during the following twelve months and the number of persons likely to be recruited by each method. Such vacancies shall be determined again before the expiry of 12 months of the last determination of such vacancies.

(2) In calculating the actual number to be filled by each method on the basis of the percentage prescribed in column 3 of the Schedule, appended with relevant Service Rules, each Appointing Authority shall adopt an appropriate cyclic order to correspond with the proportion laid down in each of the Service Rules by giving precedence to promotion quota over direct recruitment quota e.g. where the appointment by direct recruitment and promotion is in the percentage of 75 and 25, respectively, the cycle shall run as follows;

- (1) By promotion
- (2) By direct recruitment
- (3) By direct recruitment
- (4) By direct recruitment (6) By promotion
- (6) By direct recruitment
- (7) By direct recruitment
- (8) By direct recruitment
- (9) By promotion, and so on

45. According to the decision of this Court in Pema Ram v. State of Rajasthan in S.B. Civil Writ Petition No. 882/79 decided on August 20, 1981. (17) the Govt. is required to determine the vacancies each year and unless that is done, the effect of non-compliance of Rule 9 would be that the process of selections for fulfilling the vacancies determined in that particular year, if not completed in that year would lapse. Undoubtedly in the instant case since the vacancies were advertised in the early part of 1980 they were according to the determination of 1979. In other words, there was no determination of vacancies for 1980, 1981 and 1982. Of course determination of vacancies of 1982 is immaterial because before that the process of selection have taken place and now only question of appointments remains. However the question to be seen is what is the effect of non-determination of vacancies in the year 1980 and 1981

46. Mr. Singhvi on behalf of the State pointed out that the determination of vacancies is done after having the statistical survey of entire department and thereafter the requisition is sent to the Commission. The Commission applied his mind in advertising the vacancies. Thereafter applications are to be considered, scrutinised for the purposes to find out whether they are in order. It is at this

stage that the Commission thereafter considers which experts are to be called and experts are to be intimated. The programme of interviews is then to be finalised. The interviews are to be held keeping in view the convenience of experts who, come from different places. It was pointed out that about 70 services are within the purview of the Commission and thousands of persons are to be selected every year. It was also pointed out (hat all these factors are to be taken note of and Rule 9 cannot be held to be mandatory because all that is required is that effort should be made to determine vacancies every year in the very beginning. It was also argued that determination may take place but the process of completion and before that interview and screening under Rules 19 and 20 is not part of Rule 9.

47. Mr. Singhvi also pointed out that the Commission under the Constitution and the laws have got several duties like advisory jurisdiction for various disciplinary proceedings which are thousands in numbers. In addition to that even in temporary appointments concurrence is required to be taken of Public Service Commission and temporary employees are again thousands in number. In view of this manifold and multifold activities of the Commission, it was pointed out that it is impossible to stick to "one year" rule and make it a rule of thumb.

48. Mr. Singhvi pointed out that the provision is directory and in no case can be held to be mandatory, because no penalty has been prescribed. Both Mr. Singhvi and Mr. Jain supported by Mr. Asopa and Mr. Sharma pointed out that it is established principle of law of interpretation of statutes, that unless a penalty is provided, a provision is not mandatory.

49. Mr. Paras Kuhad on the contrary submitted that Pamararri's view taken by this Court should be adhered to and there is no ground to differ from that. Mr. Paras Kuhad has submitted that it is the duty of Commission and no account of huge load of work, they must have more members and more personnel to implement but law cannot be interpreted on account of convenience or inconvenience of any particular functionary.

50. I have given a very thoughtful consideration to this aspect of the case, because the issue involved is of great and serious importance and magnitude, which would affect all services and the selection of persons. To this, it must be added that an opinion has been expressed by one of my brother Judges and normally I must, unless there are compelling reasons, agree to view taken by one of the Judges of this bench. At one point of time I also thought that since I am not inclined to agree with the view taken by the other learned Judge and with respect I was disagreeing I may refer the case to the Division Bench. However, it was pointed out that once the reference is made to the Division Bench then the entire process of selections in other matters of other services would also come to stand still on account of uncertainty of law and serious complications would arise. I have carefully applied my mind to this aspect of the case and I find that looking to the serious wide spread implications of pendency of the cases, and keeping in suspense such an important point would not be in the interest of any of the

parties; the candidates, the Commission; the Government and the people at large. Admittedly thousands of persons have been selected both in original list and the reserve list and all of them are looking forward for the commencement of their careers. Many who have challenged and fallen in that category and who fulfil the requisite qualifications of (a) & (b) both and stand on high pedestal are also anxiously awaiting about decision given about their fate. It would be therefore inexpedient and indiscreet both to keep the matter pending by referring it to the Division Bench.

51. In such circumstances, I am inclined to accept the view which I have already taken in Motia's case that in view of the judgment of the Hon'ble Supreme Court, I need not refer the case to a larger Bench for decision on this point.

52. In S.S. Sharma v. Union of India 1980 (3) S.L.R. 511 (18) their Lordships of the Supreme Court have observed as under:

There is no requirement in law that the select list pertaining to a particular year must be finalised within that year. It is open for the Government to complete the process of selection and finalise it after the expiry of that year...

In addition to the above, I am also of the opinion that the principle that unless a penalty clause is there either by express or by implication, a Rule could not be called mandatory is also well established and well settled. In the instant case, Rule 9 is not followed by any penalty or of any consequence to ensue, on account of non-finalisation of the selection within that year. Rule 9 therefore, in terms is directory and non-compliance of it cannot vitiate the selections. In my opinion Rule 9 is to be read with Rule 19 and 20 and therefore the process of selections which has started on the basis of the requisition which was sent in the year 1979 and the advertisement which was issued in the year 1980 would continue and it would not lapse till finalisation of the appointment. This would hold even for the consequential steps which would be taken on account of judgment of this Court, as a result of my decision on first point.

53. As a result of the above discussion, I hold that Rule 9 is directory and not mandatory. I further hold that the Pemaram's view which has been taken, need not and cannot apply in the facts and circumstances of the present case. The correct view is that rule 9 was complied with as soon as the vacancies are determined in 1979. The process started and the requisition was sent and the consequential exercise of selections which means interview, screening test etc. are continuing and they need not lapse on account of completion of the year, 1979,

54. I must mention here also that the Court cannot remain unaware of the conditions in which the Commission and other departments are functioning and it would be too much to expect that the requisition would lapse at the end of each year. I am, therefore, of the view that the second contention of Mr. Paras Kuhad regarding the lapsing of the vacancies and consequential invalidation of all the selections cannot be accepted and that being so this limb of submissions of Mr.

Paras Kuhad deserves to be rejected.

55. The learned Counsel for petitioner also submitted that so far as screening test being treated as qualifying test is concerned, the Commission cannot pick and choose, and if they held the same for some departments as is done in the present case and do not hold for the other department, it would be violative of the article 14 of the Constitution, I am unable to accept this contention of Mr. Paras Kuhad. The reason being that the Screening test in the present case is held under Rule 19 of the rules which expressly say that it is meant for the purposes of reducing the number of candidates for being placed for interview. It is not a qualifying test in the sense Mr. Paras Kuhad used. The advertisement also makes it clear that it can be held. It may or may not be held and it is not necessary that it must be held. No rule or the rules require that screening test must be held. The option is therefore with the Commission to hold or not to hold the screening test in a particular department or particular subject. The sole object of this test is to reduce the number and weed out the number so that only a sizable number remains for interviews and this object can very well be achieved by holding the test where large number of candidates are there. The number may not be so great but the sitting of the Commission cannot be held on number of days or for such on account of non-availability of the experts for a number of days or for such other reasons. The being so as already held earlier the Commission which is autonomous body and which has got Constitutional status should be left to decide when to hold and when not to hold, and so long as bonafides are there and so long as malafides are not proved, Article 14 cannot be invoked in such a case.

55. The next question is what relief should be granted in the present cases. Now coming to relief aspect of the matter it must be first held that candidates who are in category (a) are as follows:

1. Mrs. Kulmeet Pal
2. Mr Ashutosh Saxena
3. Mr. Girraj Prashad
4. Miss Kamlesh Bhardwaj
5. Mr. Suresh Chandra Agarwal
6. Mr. Subey Singh Yadav
7. Mr. Anil Kumar Saxena
8. Mr. Rajendra Dev Sharma
9. Mr. Prem Prakash Sharma
10. Miss Madhulika Jutsi
11. Mr. Babu Lal Sethi

12. Mr. Tej Singh Chouhan
13. Mr. Snehlata Jain
14. Mrs. Adarsh Chaturvedi
15. Mr. Brij Kishore
16. Mrs. Dhanvanti Dadhich
17. Mrs. Sudha Ram
18. Mrs Kamlesh Joshi

They all are candidates who fulfil the qualifications (a) and (b). All these 18 petitions which have been filed by the candidates who are qualified and fulfil the conditions (a) & (b) & both are therefore accepted. These candidates and also other candidates in the subjects in which these 18 writ petitions have been filed would be interviewed by the Commission again. To make it explicit all these candidates who fall in the category of fulfilling qualification (a) and (b) both and who have applied for lecturership in the subjects of Zoology, History, Business Administration, Economics Administration, Geography, Hindi, Sanskrit are entitled to be considered in interview, irrespective of the result of the screening committee, for the purpose of determination of their suitability as contemplated by exception or proviso to clause a, (b) & (c) in the qualification and for the purpose of their suitability and comparative merit under Rule 19 and 20 of the Rules 1971.

57. Those persons who have not been interviewed inspite of fulfilling qualifications (a) and (b) both together, would now be interviewed by the Commission and marks would be given to them in the interviews. After marks are given to them in the interviews those marks would be re-adjusted comparatively with the already selected persons and if according to the marks obtained by these persons, they can find a place in the merit list of the requisite number of vacancies, then their names should be forwarded to the Government under Rule 20 for appointment. The selection list already sent in these subjects to the Government would remain in abeyance and would not be implemented, unless the revised list is sent by the Commission on the basis of fresh interview of those persons who were not interviewed earlier and fall in this category.

58. All these writ petitions of these 18 petitioners falling in category A are therefore accepted and the respondents are directed as indicated above.

58. It is held that the screening test was permissible and the Commission has not committed any error of law in holding the screening test for determination of the zone of consideration, which have been bonafide done according to the exigencies of the situation. It is further held that in future the Commission would not require the persons who fulfil conditions (a) & (b) in such cases to undergo the screening test. But in case the number of such persons who fulfil both conditions is very large, so as to require any curtailment, then screening test can

also be held for them, but while doing so the number of the persons who are to come into exception would not be taken into account.

60. In other words at all stages and particularly at stages of the interview the first thing which the Commission should find out is whether those persons who fulfil qualifications (a) and (b) & therefore, fulfil both the conditions are suitable or not, and the moment they are found to be suitable in view of the marks which they are given in interviews, then they should be taken in the selection list and should be recommended. It is only after that these persons who are trying to get employment by resort to exception or proviso should be considered and thereafter they can also be accommodated in case the persons who are in category A and B are found to be not suitable.

61. It is true that for suitability only the marks which are to be given by the Commission in interview should be the criterion and there cannot be any other criterion except the marks given in the interview. The Commission can evolve its own method for holding any suitability test in interview by giving marks and for that no interference can be done by this Court in that respect, unless malafides are proved.

62. In writ petition No. 11 of 1982, the petitioner has already been considered and therefore need not be reconsidered. However, so far as the question of his or her inclusion in the merit list is concerned it would depend upon the totality of entire consideration of new persons who have been allowed to be interviewed by this order.

63. In writ petition No. 374 of 1982, the reserve list which has not been exhausted or the implementation of which remained stay on account of order of this Court may now be exhausted and immediate steps may be taken by the Government to make appointment in case there are vacancies after the original list is exhausted.

64. The result of the above discussion is that all these 18 writ petitions falling in the category A are accepted. The other writ petitions falling in the category B are rejected because they failed to fulfil the qualifications of Clause (b) & since they failed to fulfil the qualifications they, cannot challenge the appointment of others, nor they can expect any consideration by the Commission, as per the above direction. Both the parties would bear their own costs.