

(2005) 12 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (Civil) No's. 976, 1077, 1134. 1140, 1232, 1529, 1650, 1904, 1905, 1906, 1907, 1923, 2002, 2005, 2309, 2710, 2721, 2864, 3011, 4224, 4844, 5655, 445, 1237, 1369, 1370, 1445, 1446, 7350, 1457, 1460, 1548, 1603, 1681, 3348, 3695, 3756, 4021,

Mumtaj Ali and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Assam Police Manual — Regulation 26
Constitution of India, 1950 — Article 226, 309

Citation : (2006) 2 GLT 349

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : N. Dutta, B. Ahmed, P. Talukdar, H. Sarma, B.K. Mahajan, P.J. Saikia, J.I. Barbhuiya, S. D. Chaudhury, M. Dutta, P. K. Talukdar, S.P. Deka, D. Bora, B. Islam, T.H. Hazarika, A. Talukdar, B.D. Konwar, A.K. Dasgupta, R.M. Chaudhury, J.H. Saikia, D. Sinha, B.S. Basumatary, N.N.B. Choudhury, S.C. Biswas, M.U. Mahmud, D.K. Saikia, B. C. Das, D.M. Thakuria, B. Rajkhowa, A.K. Bora, B. Sinha, N. Ahmed, M.K. Borah, M. Sarania, Nur Mahammad, A.R. Sikdar, M.G. Singh, M. Deka, C. Goswami, M.Z. Ahmed, M.D. Chaudhury, C. Baishya, U.K. Goswami, P.J. Phukan, T. Deuri, I.A. Talukder, S. Huda, R.B. Borah, A.K. Sarkar, M.A. Sheikh, N. Zaman, A.M. Mazumdar, R. Ali, S.S.S. Rahman, D.C. Nath, J. Sinha, A. Biswas, J. Abedin, S. Chakraborty, A.M. Buzarbaruah, M.U. Mandal, K.A. Mazumdar, B.P. Sinha, L.P. Sarma, N.H. Mazarbhuiya, H.R. Khan, D. Bargohain, S. Sharma, D. Baruah, S. Nath, K. Paul, R. Chetri, M. Bhagawati, S. Chouhan, D.C., Kathhazarika, R.P. Sharma, T. Hussain, K. Agarwalla, P.J. Saikia, B.B. Gogoi, D. Bagchi, B.D. Goswami, J. Payeng, Y.K. Phukan, K.D. Chetri, D.P. Chaliha, M.K. Borah, P. Mahanta, B. Das, M.K. Choudhury, R.B. Borah, R. Dhar, N. Borah, C. Baishya, M. Goswami, G. Baishya, K.P. Gogoi, S. Seal, D.J. Dutta and B. Buragohain, for the Appellant; K.N. Choudhury, Addl. A.G., A.M. Mazmdar, M. Bhuyan, B. Baneijee, B.M. Chaudhury, Mridula Goswami, M.S. Ali, D. Das, P. Bhattacharyya, I. Choudhury, F.U. Barbhuiya, M. Hazarika, M. Choudhury, A.K. Sarma, B. Bhuiyan, U.K. Nair, P. Chakraborty, B. Das, J. Chutia, A.B. Chaudhury, K. Bhattachaijee, T.C. Chutia, T.J. Mahanta, J. Handique, P. Kalita, N.K. Baruah, A.K. Hussain, S. Gogoi, S. Dihingia, R. Hussain, A. Gohain, A.K. Goswami, D. Saikia, S. Dasgupta, N. Saikia and J. Ahmed, for the Respondent

Judgement

Ranjan Gogoi, J.—A distinct commonness in the challenge projected in each of the writ petitions being discernible, all the cases were considered analogously and will be covered by the present judgment and Order.

2. An advertisement dated 21.8.2004 was published in the leading newspapers of the State of Assam inviting applications for filling up nearly 5500 posts of Constables. The vacancies were identified separately for each armed police battalion having its permanent Headquarters in a district and the executive force of such district. Recruitment was to be held in 25 different centers covering each district of the State for the post/vacancies identified separately for each district, as already noticed.

Nearly 2 lakh candidates took part in the recruitment rallies which were eventually held between 3rd to 11th December 2004. On completion of the recruitment drive, select lists for each district separately for the Armed police battalion/battalions located in the district and the district executive force were prepared. It is at this stage that the present group of writ petitions have been filed challenging the recruitment process and the select list prepared on grounds that will be noticed a little later. What would be significant to be noticed at this stage is that nearly 3000 unsuccessful aspirants are the Petitioners in this group of writ petitions. The selected candidates who subsequently got themselves impleaded in the present proceedings numbered over 1000.

3. At the initial stage of the present proceedings, this Court, by several orders passed, had directed the official Respondents to submit the records of the selection to the Court. The records having been so submitted were ordered to be kept in safe custody of the officials of the Registry of the Court. The aforesaid course of action was adopted by the Court in view of the apprehensions expressed by the writ Petitioners that the records relevant to the selection process may be destroyed, as had happened in the selection that had preceded the present recruitment. The records produced by the Respondents, in view of the huge number of candidates who had taken part in the selection, naturally, is voluminous. In view of the pleadings contained in the writ petition and the grievances projected, limited scrutiny of such records, as would be permissible for a Writ Court to undertake was made with the assistance of three Judicial Officers who had rendered their valuable assistance to the Court. In the course of the prolonged hearing of the cases the officials responsible for the selection in the different centers were present to ensure an orderly and systematic presentation of the records before the Court.

4. It must also be put on record, at this stage, that the resolution of the dispute raised in the present group of cases is being attempted by the Court by taking a pragmatic view of the matter, keeping in mind that over 2 lakh candidates had taken part in the selection spread across as many as 24/25 districts of the State. The scope of scrutiny of the recruitment process vis-a-vis the records maintained

has not only been limited from the perspective of the scope and extent thereof, keeping in mind the limited parameters in this regard that must govern such exercise of power under Article 226 of the Constitution, such scrutiny of records even within the limited parameters could by no means have extended to each individual case. What has, therefore, been done is a limited sample survey of the cases of the selected as well as unselected candidates; care and caution, however, has been taken to ensure that the samples scrutinized is as representative of the entire "population" as the same could be under the circumstances. In doing so, the Court has derived its authority from what has been perceived to be a largely similar path adopted by the Apex Court in the case of Krishan Yadav and another Vs. State of Haryana and others, and in the case of The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others,

Having said and stated the manner in which the Court is proceeding to tackle the issues arising, the narration must start with the advertisement issued intimating the proposed recruitment and inviting applications from intending candidates.

5. The advertisement is dated 21.8.2004. It was widely published indicating that 5488 posts of Constables were proposed to be filled up in the different armed police battalions, district executive force (DEF) and a few other cadres like special branch, Government Railway police etc. Broadly speaking, the advertisement contemplated recruitment of Constables including female constables, for whom 10% of the vacancies was reserved, in the armed police battalions and the district executive forces. The armed police battalions of the State being permanently located in particular districts, recruitment to both the forces were to be made district wise. The number of vacancies in the armed police battalions as well as in the district executive forces were specifically mentioned in the advertisement which also stipulated the number of posts available for the general category candidates and different reserve category candidates. While 5% of the posts were earmarked for compassionate appointment in accordance with the Government policy in force the advertisement contemplated that the recruitment rallies will held in between 4th to 7th October 2004 in the centers specifically mentioned.

A further reading of the advertisement dated 21.8.2004 would go to show that in terms of the eligibility criteria prescribed, a candidate was required to be between 18 to 25 years of age as on 1.1.2004 and he was required to have read up to Class-VIII. A candidate had to be of a particular height, weight and was required to have particular dimensions of chest measurement. A candidate was also required to be free from any physical defect or deformity and particularly he was required not to have a knock knee, flat feet or squint eye. The prescribed parameters were to be tested in the first instance and those who qualified in such measurements (hereinafter referred to as the measurement test) were required to take part in a 1.6 kilometer race which was 0.80 kilometer for female candidates. The aforesaid race was required to be complete in a maximum of six

minutes whereafter a credit of 15 marks was to be given to a qualified candidate who was thereafter required to participate in the physical efficiency test (hereinafter referred to as the physical test). The advertisement, therefore, contemplated that only candidates who qualify in the measurement test will take part in the 1.6/0.80 kilometer race and only those who qualify in the said race will take part in the physical efficiency test. The physical efficiency test was to consist of three segments i.e. 100 meter race, long jump and high jump. A total 35 marks i.e. 15 for the 100 meter race and 10 each for the long jump and high jump were earmarked. What marks are to be given out of the aforesaid total marks for each segment of the physical tests, on the basis of performance or standard reached, was laid down in a separate set of instructions. Along with the 15 marks to be awarded for the qualifying race the total marks for the physical test was thus quantified as 50.25 marks in the physical test has been stipulated in the advertisement as the criteria for qualifying to go on to the next segment of the selection i.e. the personal interview. 50 marks were allotted in all for the personal interview which was to test the general awareness as well as the general knowledge of the candidates. Once again 25 marks was stipulated as the minimum qualifying marks in the personal interview. The final merit list was to be prepared on the basis of the combined marks secured in the physical test and the personal interview.

6. Prior to the issuance of the advertisement dated 21.8.2004, by a Government order dated 11th of August 2005 a Selection Board was constituted for each district. The Superintendent of Police or the Commandant of the Police Battalion located in the particular district, whoever is senior, was to be the Chairman and whoever is junior was to be a Member. A Medical Officer to be nominated by the Joint Director of Health Services of the district was to be 3rd Member of the Board. The procedure to be followed by the Selection Board in making the selection, in addition to what was stipulated in the advertisement, was further amplified by subsequent Government letters dated 2nd September 2004 and 8th September 2004. The aforesaid Government letters reiterated the procedure for selection as spelt out by the advertisement dated 21.8.2004, as has already been noticed. What would be significant to notice at this stage is the fact that by the Government letter dated 2nd September 2004 it was mentioned that there will be 25 marks for the oral test which was later clarified to be 50 by the Government letter dated 8th September 2004. The mention of 25 marks in the Government letter dated 2nd September 2004 was clarified by the subsequent Government letter dated 8th September 2004 as a typing error.

7. The recruitment schedule to commence from 4th of October 2004 in terms of the advertisement dated 21.8.2004 was postponed to 18th to 24th of November 2004 by Government letter dated 17th of September 2004. The reason for the postponement as contained in the aforesaid Government letter is on account of the bye-election to the Moran Assembly Constituency. There was a further postponement to 24th to 30th November 2004 by another Government letter dated 2nd November 2004 in view of the Asian Car Rally, Kali Puja, Diwali and

Idd festivals. The recruitment did not start even on the postponed dates. For this the Court would be required to take notice of another fact which would be of particular significance in view of the considerable arguments raised on behalf of the Petitioners on the aforesaid score.

The advertisement dated 21.8.2004 had stipulated that candidates belonging to one particular district can take part in the recruitment for the posts advertised for that district. Subsequently by a Government letter dated 16th November 2004 it was clarified that the aforesaid instruction will not apply to recruitment to the armed police battalions but will hold good only for the posts advertised for the district executive forces. This has been a bone of contention between the parties particularly with regard to the bonafides of the said exercise and the impact it had on what the Petitioners contend to be a ill motivated and ill intentioned selection. While the details of the said arguments will be noticed a little later, as the aforesaid Government decision had to be circulated by issuance of a notice/ corrigendum in the newspapers which, though dated 17.11.2004 was eventually published on 23rd of November 2004, the dates for recruitment suffered another postponement which was rescheduled to 3rd to 7th December 2004. Recruitments were finally held in between the said dates which got extended up to 11th September 2004 in view of the huge number of candidates who had turned up.

8. Having noted the broad features of the essential facts we may now proceed to consider the pleadings made in the writ petitions and the contentions advanced on behalf of the parties in course of the very elaborate oral arguments offered.

9. The tenor of the pleadings contained in the writ petitions is more or less similar. Broadly speaking, the Petitioners contend that the selections were made without following the procedure detailed in the advertisement dated 21.8.2004 and the Government instructions issued from time to time. The candidates register as prescribed under the Assam Police Manual which is the basic document required to be maintained in order to establish the identity of a person taking part in the selection process was not maintained at all in many of the selection centers and in the few centers where it was maintained, the same was not done properly. Candidates who had not taken part in the selection have been selected. According to the Petitioners, there are persons who are over-aged and under qualified who have been selected and furthermore though it is only such candidates who had qualified in the physical test who could take part in the personal interview, many of the selected candidates were allowed to appear in the personal interview though they had not qualified in the physical test by securing the required marks. Similarly, according to the Petitioners, though there was a qualifying mark in the personal interview many of the selected candidates were included in the merit list without having secured the minimum qualifying marks in the personal interview. The Petitioners further allege that there were interpolation/tampering in the marks allotted to many of the candidates particularly in the working result sheets of the physical test part of the selection.

The Petitioners further allege that many of the selected candidates were included in the select list on the recommendations of different political functionaries of the State and that there was large scale political interference in the conduct of the selection. On the aforesaid broad allegations, it is the case of the Petitioners that the entire selection was a mockery and rampant political interference had made the exercise wholly farcical. In support, the Petitioners in W.P.(C) No. 976 of 2005, pertaining to the selection held in Nagaon district, have brought on record three sets of documents to show the extent to which political interference had prevailed during the selection. A recommendation of the local M.L.A. and another by the Zilla Parishad President along with a reference made by the Chief Minister's Secretariat in favour of particular candidates who had taken part in the selection have been enclosed to the aforesaid writ petitions. Similarly, in case of the selection made in Barpeta district a list of 43 persons recommended by the Minister, Irrigation has been enclosed to the pleadings made in W.P. (C) No. 2269 of 2005.

10. As already noticed, the State has not responded to the allegations made in each of the writ petitions by filing separate affidavits. The affidavits filed by the State in W.P.(C)No. 976 of 2005 and W.P. (C)No.1007 of 2005 have been relied upon as reflecting the stand of the State in all the matters. A perusal of the counter affidavit filed in the aforesaid two cases would go to show that the State denies the contention of the Petitioners that the selection process was not fair and that it was vitiated by any such fundamental irregularity or illegality which would justify the interference of the Court. The affidavits filed also indicate the justification of the State for the postponement of the dates of selection from time to time as already noticed as well as the corrigendum dated 16th/23rd of November 2004 whereby candidates of one district were allowed to participate in the selection in another district in so far as the posts in the Armed police battalions are concerned. The documents brought on record by the Petitioners to show the political interference that had prevailed has been sought to be countered by the State by contending that most of the candidates, if not all, who have been recommended by different political functionaries did not eventually get selected.

11. After noticing the pleadings made on behalf of the rival parties the Court must now turn to briefly notice what has been argued on behalf of the parties.

The arguments on behalf of the Petitioners have been advanced, in the main, by Sri N. Dutta, learned Senior Counsel appearing in W.P.(C) No. 976 of 2005 (Nagaon district). The same have been largely adopted by Sri D.K. Saikia, Sri P. Talukdar, Sri J.C. Bora, Sri A.D. Choudhury, Sri S.C. Biswas, Sri H. Sarma, Sri B. D. Konwar, Sri I. Choudhury, Sri A.R. Sikdar, Sri S.K. Medhi and Ms. M. Gogoi, learned Counsels, who have argued their respective cases.

Sri K.N. Choudhury, learned Additional Advocate General of the State has defended the selections under challenge in each of the writ petitions.

On behalf of the selected candidates arguments have been advanced by Sri A.M. Mazumdar, Sri Monojit Bhuyan, Sri B. Banerjee, Sri B.M. Choudhury, Ms. Mridula Goswami, Sri M.Z. Ali, Sri D. Das, Ms. P. Bhattacharyya, Sri I. Choudhury, Sri F.U. Barbhuiya, Ms. M. Hazarika, Sri M. Choudhury, Sri A.K. Sarmah, Sri B. Bhuyan, Sri U.K. Nair, Ms. P. Chakraborty, Ms. B. Das, Sri J. Chutia, Sri A.B. Choudhury, Sri K. Bhattacharjee, Sri T.C. Chutia, Sri T.J. Mahanta, Sri J. Handiqiie, Sri P. Kalita, Sri N.K. Baruah, Sri A.K. Hussain, Sri S. Gogoi, Sri S. Dihingia, Sri R. Hussain, Sri A. Gohain, Sri A.K. Goswami, Sri D. Saikia, Sri S. Dasgupta, Smti. N. Saikia and Sri J. Ahmed.

12. Arguing for the Petitioners, Sri N. Dutta, learned Senior Counsel, at the outset, has submitted that the several postponements of the dates of selection on the grounds cited are for reasons extraneous. The grounds shown being wholly unacceptable, the Court must understand that there was some other ulterior purpose for which the postponements had to be made. The by election to the Moran Assembly Constituency, at best, could have affected the selection in one particular district and cannot furnish a good ground for the postponement of the entire process in all the 24/ 25 districts. The date/dates of the Asian Car Rally, Kali Puja, Diwali and Idd festivals were known from before. If the said dates were not convenient for holding the selections there was no conceivable reason why the selection had to be postponed to such dates only to be further postponed. Sri Dutta has argued that the real reason for the postponements made was to enable the Government to relax the rigour contained in the advertisement which prohibited candidates of one district from taking part in selection in another district. Until the said decision was formalized, according to Sri Dutta, it was not "convenient" to hold the selection. When the said decision was eventually taken on 16th of November 2004 and published in the newspapers on 23rd of November 2004, the "decks" or "hurdles" in holding the selection were cleared and the selections were fixed between 3rd to 7th of December 2004. Sri Dutta has further argued that there was an oblique purpose behind the aforesaid relaxation. A particular section of the candidates had moved from their home district to participate in the selections held in another district. Such a shift is noticeable in the main in case of the selections held in the 4th Assam Police Battalion and in the district of Bongaigaon. The majority of such candidates who had moved were eventually selected which would go to show that there was a unseen force working behind such movement of candidates from one district to another and the eventual selection of such candidates.

Supporting Sri Dutta, Sri S.K. Medhi, learned Counsel for the Petitioner in W.P. (C)No. 1362 of 2005 has contended that a similar shift is discernible in the selection held in Sonitpur District where only 37 out of over 400 selected candidates have been contended to be from the home District i.e. Sonitpur.

Sri Dutta has further argued that the candidates register in the present case was not maintained though such a register has been prescribed under the Assam Police Manual. The object of maintaining a candidates Register is contended by

Sri Dutta to be to establish the identity of a candidate taking part in the selection and to ensure that it is the same candidate who is taking part in different segments of the selection process and further that it is the candidate who had participated in the selection who is being appointed. While Sri Dutta has agreed that maintenance of the candidates register in the form prescribed may not be a sacrosanct requirement, permitting no departures therefrom, yet there must be an attempt to follow some procedure which would achieve the purpose behind maintenance of a candidates register. In this regard, Sri Dutta has submitted that there are cases of some candidates who have been shown to be selected against the identity numbers given to other candidates. In this regard, Sri Dutta has drawn the attention of the Court to the identity number given to one Ibrahim Ali (I.B./ 2401) and the selection of one Afnur Ali at Serial No. 42 of the select list of Nowgong D.E.F. with the same identity number. Furthermore, in this regard, Sri P. Talukdar, learned Counsel for the writ Petitioner in W.P.(C)No. 1232 of 2005 has supported Sri Dutta in his arguments by placing before the Court that though it is the writ Petitioner Sri Partha Jyoti Bora who was given identity number 1(A) 1255 yet it is one Ratul Mazumdar who was shown to be selected at serial No. 59 of the select list of 9th Assam Police Battalion against the aforesaid identity Number. Sri Dutta, in the course of his elaborate arguments, has made it clear that while the writ Petitioners do not challenge the constitutionality or legality of the Government's action in opening up the selections in the Armed police battalions to persons residing all over the State irrespective of the districts to which they belong, yet, what has been sought to be contended before the Court is the invalidity of the aforesaid decision in modification of the restrictions in this regard as contained in the advertisement on the ground that the said exercise was designed to achieve a particular result, i.e. to have a chosen few selected. Continuing further, Sri Dutta has argued that though in the advertisement, 50 marks was stipulated as the total marks earmarked for the personal interview, by Government letter dated 2.9.2004 it was reduced to 25 and once again it was raised to 50. Award of 50 marks for the personal interview, according to Sri Dutta, is high and has the effect of giving primacy to the subjective element inherent in a selection process. However, Sri Dutta has argued that on the state of the law as prevailing on the point, award of 50% marks for the personal interview, per se, would not invalidate the selection unless it can be proved and demonstrated that in assigning marks in the personal interview the basic acceptable norms were departed from. In this regard, Sri Dutta has argued that the results of the selection would go to show that in a large number of cases persons who have secured just the qualifying marks in the physical test have been selected by virtue of the very high marks awarded to them in the personal interviews whereas persons who have done exceedingly well in the physical test have not been successful because of the low marks secured by them in the personal interviews. Sri Dutta has further argued that the records of selection being before the Court the Court should scrutinize the same by drawing representative samples of both selected and unselected candidates and if such scrutiny reveals any significant anomalies beyond what could be reasonably

attributed to human error the entire selection process should be interfered with.

13. Striking a somewhat discordant note, Sri J. Deka, learned Counsel for the writ Petitioners in W.P.(C)No. 1007 of 2005 pertaining to the Sibsagar district, has argued that earmarking 50% marks for the personal interview segment of the selection, per se, must be construed by the Court to be indicative of a basic and incurable flaw in the selection process as allotment of such high percentage of marks to be awarded on a subjective basis and on the individual opinions of the Members of the Board is not permissible in view of the law laid down by the Apex Court in several cases. Sri Deka has further argued that in each of the selections held there were a large number of candidates. In Sibsagar district alone over 7000 candidates had taken part in the selection process. Completion of the entire selection process consisting of several stages within a span of 9 (nine) days, having regard to the number of possible working hours in each day, also demonstrates the farcical nature of the selection. Sri Deka has argued that in similar situations the Apex Court has laid down the law that subjecting such large number of candidates to the selection process on the same day ought to be construed by the Court to be reflective of an inherent fallacy in the selection process. Sri Deka has relied on the decisions of the Apex Court in the case of Mohinder Sain Garg Ors. Vs. State of Punjab and Others, in the case of Satpal and Ors. v. State of Haryana and Ors., 1995 Suppl. (1) SCC 206 in the case of Madhukar Bakru Pingal Vs. Rajendra D. Gaikwad and Others, and in the case of Inder Parkash Gupta Vs. State of Jammu and Kashmir and Others, . Sri Deka has further argued by pointing out the specific pleadings in the writ petition [W.P. (C)No. 1007 of 2005] that very little time was allotted to the personal interviews of the candidates and in the course of such interviews irrelevant questions were put and asked, a fact which has received support in the course of the arguments offered by Sri B.D. Konwar, learned Counsel for the writ Petitioners in W.P. (C)No. 4350 of 2005.

14. Sri K.N. Choudhury, learned Additional Advocate General of the State in his very elaborate attempt to defend the selections under challenge has raised two objections which according to him would go to the root of the matter and disentitle the writ Petitioners to an adjudication of the merits of the dispute. Firstly, Sri Choudhury has argued that the pleadings made in the writ petitions are scanty and devoid of material particulars and the Petitioners would not be entitled to a scrutiny and consideration of the records at the hands of the Court though the same have been placed before the Court by the Respondent authorities. Sri Choudhury has submitted that in the absence of requisite pleadings and material particulars any such scrutiny by the Court of the records produced would amount to a fishing and roving enquiry by the Court and the Apex Court in a large number of cases has disapproved any such course of action by the writ Court. Sri Choudhury has further argued that the Petitioners cannot be heard, at this stage, to complain of any ulterior motive on the part of the State in postponing the dates of the selection and in issuing the corrigendum dated 17.11.2004 inasmuch as all such facts which have now been sought to be

challenged were known to the Petitioners in spite of which they had knowingly participated in the selection. In this regard, Sri Choudhury has relied on the decisions of the Apex Court in the case of Manak Lal Vs. Dr. Prem Chand, and in the case of G. Sarana Vs. University of Lucknow and Others, More particularly, Sri Choudhury has argued that the Petitioners having taken part in the selection and most of them having gone up to the stage of personal interview cannot now be allowed to turn round and question the fairness of the selection process. Reliance in this regard has been placed on the decisions of the Apex Court in the cases of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, of Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, and of G.N. Nayak Vs. Goa University and Others,

Arguing further, Sri Choudhury, learned Additional Advocate General, has contended that the decisions cited on behalf of the writ Petitioners in W.P. (C)No. 1007 of 2005 regarding allotment of high percentage of marks for the personal interviews would not have any application in view of the decisions of the Apex Court in the case of Lila Dhar Vs. State of Rajasthan and Others, and in the case of Ashok Kumar Yadav and Others Vs. State of Haryana and Others, Sri Choudhury, learned Additional Advocate General of the State, by relying on three further decisions of the Apex Court in the case of Anzar Ahmed Vs. State of Bihar and others, in the case of Jasvinder Singh and Others Vs. State of Jammu & Kashmir and Others, and in the case of Vijay Syal and Another Vs. State of Punjab and Others, has contended that the correct ratio of law discernible from the above cases is that what percentage of marks should be given for each segment of the selection process including the personal interview is a matter to be determined by the recruiting agency which agency has been understood by the Apex Court to be vested with a wide discretion in the matter. In the present case, allotment of 50% marks for the personal interview segment of the selection process in case of recruitment of Constables has been rightly done by the authorities and unless any perverse or fundamental errors are disclosed in the award of marks as made there will be no occasion for the writ Court to cause any interference.

Controverting the specific submissions advanced on behalf of the writ Petitioners that the time allotted for the interview was exceedingly small and irrelevant questions were put in the course of the personal interviews, Sri Choudhury, learned Additional Advocate General, has argued that the time to be allotted for personal interviews and the questions that are to be put to candidates in course of such interview is a matter to be primarily decided by the interviewers who has to conduct the interview keeping in mind the requirement of the posts. In this regard, reliance has been placed on a judgment of the Apex Court in the case of Sardara Singh and others, etc. Vs. State of Punjab and others,

Sri Choudhury, learned Additional Advocate General, has further argued that the parameters within which the records are required to be scrutinized by the writ

Court have been settled by the Apex Court and such parameters would be extremely limited. The Writ Court cannot convert itself into a super-selection body to scrutinize the marks given to individual candidate in the different segments of the selection process. Any scrutiny of the records, if at all embarked upon by the writ court, has necessarily to be confined to the question of determination of the fairness of the manner and procedure adopted and no further. At the end of his arguments Sri Choudhury has submitted that the selection in each of the districts must be construed by the Court to be a separate selection inasmuch as the posts advertised and available in each district have been separately identified and the selections were held separately in each district for such posts only. Sri Choudhury has further argued that even for the selections in each district, if the Court is satisfied that there has been some illegality which would justify interference, the interference must be limited only to those cases in respect of which the Court may have been able to identify any illegality or fundamental irregularity. Reliance in this regard has been placed on an Apex Court judgment in the case of Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another,

The arguments advanced by Sri Choudhury, learned Additional Advocate General, Assam, has been largely adopted by the learned Counsels appearing for the selected candidates who have argued that their selections have been pursuant to a fair and acceptable process and further that there has been no fundamental breach of any acceptable norms governing a selection which would justify this Court's interference.

15. Having noticed and set out the pleadings made and the arguments offered by the rival parties the Court must now proceed to analyse the same. In this regard the objections taken by the Respondent State with regard to the pleadings of the writ Petitioners and their entitlement to challenge the selection process having participated in the same may be conveniently answered in the first instance.

The foundation of a challenge made in a writ petition, without doubt, has to be on the basis of the pleadings contained therein. It is the bounden duty of a litigant approaching the Court to state the precise basis on which the challenge made is founded. The requirement of precise and firm pleadings, therefore, is an essential feature of a writ proceeding. While it is correct that the exercise of the writ jurisdiction is in the domain of public law, and the Court's scrutiny can extend to unexplored heights, if required, yet, there can be no roving and fishing enquiry by the writ Court in the course of any proceeding brought before it and the writ Court has to necessarily confine itself to the case urged and pleaded. Additional grounds by way of supplementary pleadings would be permissible so long as the adversary is put to adequate notice of the same. In the present case, the pleadings brought on record by the writ Petitioners have already been noticed. The writ Petitioners are unsuccessful candidates who had appeared in the selection involving a large number of persons. According to them, they have done well at the various stages of the selection process and in their

comprehension they ought to have been selected. Instead, people who had not taken part in the selection or who were otherwise not qualified to participate in the selection process have been included in the select list. This is the precise grievance raised in the present group of cases. The elementary requirements of a valid pleading are evident from the contents of the writ petition. What, perhaps, is lacking is material particulars i.e. the names and particulars of the candidates who, according to the Petitioners, have been illegally/wrongly selected. Such material particulars, according to the writ Petitioners, would be discernible from a scrutiny of the records which have been called for by the Court, the present being a proceeding for a writ of certiorari. That apart, the Petitioners have contended that the selection process has been undermined by serious political interference made at different levels, which has resulted in significant interpolation/tampering of the marks awarded leading to selection of undeserving candidates. To the extent possible for the unsuccessful candidates details of such political interference have been stated and documents in support have been annexed in W.P.(C) No. 976 of 2005 and W.P.(C) No. 2269 of 2005. Though a large number of decisions have been cited at the Bar pointing out what has been perceived to be two essentially different schools of thought on the requirements of a valid pleading in a writ petition and the eventual reconciliation of the two conflicting views by means of the judgment of the Apex Court in the case of V.K. Majotra Vs. Union of India (UOI) and Another, the Court is of the view that the present judgment need not be burdened by any detail consideration of any of the said judgments in view of the state of the pleadings as already noticed. The Petitioners have come before the Court complaining of serious anomalies in a fairly large selection process. Having regard to the fact that over 2 lakh candidates had participated in the selection process spread out over 9 days in as many as 24 different recruitment centers of the State, public interest would require the Court to unfold its ad-judicatory mechanism to protect the inherent requirement of fairness in the administrative process and to preserve the Rule of law, once the basic pleadings are available, as in the present case.

16. The next "preliminary" contention advanced on behalf of the Respondent State may now be taken up for consideration. The Respondent State contends that the postponements of the dates of the selection by the several Government orders issued from time to time as well as the corrigendum dated 16/23.11.2004 permitting residents of one district to take part in the selection in another district were facts known to the Petitioners and that the Petitioners had not lodged any protest on either of the aforesaid scores at any earlier point of time; rather, they had participated in the selection and, therefore, must be deemed to have waived their rights to raise any objection with regard to the postponement of the selections and the corrigendum issued. The contention proceeds on what the Court must construe to be a fallacious understanding of the case projected by the Petitioners. The Petitioners do not contend that merely because the selections have been postponed from time to time or the candidates of one district have been permitted to participate in the selection in another

district, the Court must, per se, hold the selections made to be invalid. What has been contended by the Petitioners is that all such actions must be added together along with the other features of the selection process like non-maintenance of the candidates register, allotment of high marks in the personal interviews and the manner of conduct of the selections to arrive at the final picture. In such a situation, it is difficult to comprehend as to how the Petitioners can be understood to have waived any of their rights. That apart, waiver of a legal right requires a conscious mental decision taken at the relevant point of time. At the stage when the selections were postponed or the corrigendum was issued the Petitioners could not be attributed with any knowledge that the selection process would not be a fair one. It is only the subsequent facts with regard to the holding of the selection which had led the Petitioners to entertain such an apprehension and move the Court. Surely, the doctrine of waiver can have no application in the said facts.

Closely connected with the arguments advanced on the aforesaid issue is the contention of the Respondent State, on the basis of the several decisions of the Apex Court as already noticed, that the Petitioners having participated in the selection process cannot now be allowed to turn back and call into question the fairness of the same. The law laid down in the case of Madanlal (supra) which forms the basis of the aforesaid contention advanced by the Respondent State has subsequently been understood not to be laying down a rule of general application knowing no departures. Ground realities attending a selection process have been responsible for carving out exceptions; one such exception has been recognized to be a situation where there has occurred large scale anomalies in the selection process rendering the same to be a mockery. Authority for the above proposition can be derived from the decision of the Apex Court in the case of Raj Kumar and Others Vs. Shakti Raj and Others, In such circumstances, the Court is of the view that, in the facts of the present case, it would not be correct to refuse an adjudication of the merits of the dispute raised by the Petitioners.

17. The learned Counsels arguing for the Petitioners, as already noticed, have sought to weave a united and consistent knot pointing to large scale irregularities in the selection process from the various threads surrounding the same. The requirement of maintenance of the candidates register, a discernible shift of candidates from one district to another and the allotment of high marks for the personal interview segment, innocent and innocuous by itself, have been sought to be combined to project a highly ominous portent to a fair selection, coupled with the actual illegalities that have taken place in the selection. While the issue raised with regard to the candidates register, the shift of the candidates from one district to another, if at all discernible, and the consequences thereof as well as what kind of marks were awarded in the personal interview, particularly to the selected candidates, has to be necessarily determined on a scrutiny of records, the arguments advanced in one of the cases i.e. W.P. (C)No. 1007/2005 to the effect that allotment of 50% marks for the personal interview and the minimum time allotted for each candidate in the interview would, per se, invalidate the

selections, may be considered at this stage, beginning with any analysis of the judgments relied upon.

18. The decision of the Apex Court in the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, prescribing an outer limit of 15% marks for the personal interview segment of the selection has been understood, in later decisions of the Apex Court, to be in the context of admission to academic institutions and not for appointment to posts in public service. In *Lila Dhar Vs. State of Rajasthan and Others*, the position has been succinctly explained in paragraphs 6 and 9 of the judgment which may be usefully extracted herein below:

6. Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. That was what was decided by this Court in *Periakaruppan v. State of Tamil Nadu*, *Ajay Hasia v. Khalid Mujib Sehravardi*, and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview-test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great a weight, to the interview-test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview-test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission.

9. Both the cases cited before us *Periakaruppan* case and *Ajay Hasia* case were cases of admission to colleges. We have already pointed out that the provision

for marks for interview-test need not and cannot be the same for admission to colleges and entry into public service....

The observations of the Court were made, primarily, in connection with the problem of admission to colleges, where, naturally, academic performance must be given prime importance. The words "or even in the matter of public employment" occurring in the first extracted passage and the reference to the marks allocated for the interview-test in the Indian Administrative Service examination were not intended to lay down any wide, general rule that the same principle that applied in the matter of admission to colleges also applied in the matter of recruitment to public services. The observation relating to public employment was per incuriam since the matter did not fall for the consideration of the Court in that case. Nor do we think that the Court intended any wide construction of their observation. As already observed by us the weight to be given to the interview-test should depend on the requirement of the service to which recruitment is made, the source-material available for recruitment, the composition of the Interview Board and several like factors. Ordinarily recruitment to public services is regulated by rules made under the proviso to Article 309 of the Constitution and we would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be re-writing the rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious oblique motive.

19. The question received the further consideration of the Apex Court in the case of *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, where the Apex Court was considering the question as to whether prescription of 33.3% and 22.2% marks for physical interview for ex-servicemen and other candidates for appointment in the Haryana Civil Service was excessive rendering the selection process arbitrary. Even though the Apex Court, on the facts of that case, held the percentage of marks earmarked for the personal interview to be excessive, the law laid down on the aforesaid issue appears to be a reiteration of the views expressed in paragraphs 6 and 9 in *Lila Dhar (supra)* as quoted above. It must also be noticed at this stage that in *Ashok Kumar Yadav (supra)* where the award of 33.3% and 22.2% marks in the personal interviews for two different categories of candidates was held to be excessive by the Apex Court, the Court was considering recruitment to the Haryana Civil Service. In reaching its conclusion the Apex Court relied on the report of the Kothari Committee prescribing the ideal percentage of marks for the interview segment of the selection process for recruitment to Civil Services.

Ashok Kumar Yadav (supra) is also important for another aspect that would confront the Court a little later i.e. whether award of high marks in the personal interview to a candidate who had secured just pass marks in the written test would, per se, point to any arbitrariness in the selection process. What must be noted in this regard is the view expressed by the Apex Court on the above issue

to the effect that such a situation could, at best, be a suspicious circumstance and selections made ought not to be set aside merely on the said score unless it is proved or it has become obvious that marks have been awarded arbitrarily or for oblique purposes.

The wide discretion available to the employer State in the matter of allotment of marks for the interview and written test segments of a selection process has been subsequently reiterated in Anzar Ahmed (supra), Jasvinder Singh (supra) as well as Vijay Syal (supra). In Jasvinder Singh (supra) a further note of caution has been sounded by the Apex Court that the judicial verdict ought not to be "carried away" by a few instances of award of high marks in the interview segment of the selection process as compared to the marks awarded in the written test.

20. Certain other decisions have been cited at the Bar to impress upon the Court that it is a settled position of law that award of more than 15% marks for the personal interview would by itself vitiate a selection. In Mohinder Sain Garg Ors. Vs. State of Punjab and Others, allotment of 25% marks of the total marks for the viva voce test was held by the Apex Court to be excessive. A view was taken that the percentage of such marks should not have exceeded 15%. In Mohinder Sain Garg (supra) the selection was for the post of Excise and Taxation Inspectors in the State of Punjab and recruitment was to be made from candidates fresh from college on the basis of a written examination followed by a viva voce test. The Apex Court in taking the aforesaid view preferred to follow the basis indicated in Ashok Kumar Yadav (supra) that as per the Kothari Committee's report the percentage of marks for the viva voce test should not exceed 12.5% in cases of recruitment to the administrative services. The case is, perhaps, distinguishable from the present cases where recruitment of police constables is involved.

In the case of Satpal and Ors. v. State of Haryana and Ors., 1995 Suppl. (1) SCC 206 the allotment of 85% marks for the viva voce test was understood by the Apex Court to be excessive permitting arbitrariness to creep into the selection process. Similarly in the case of Inder Parkash Gupta Vs. State of Jammu and Kashmir and Others, the allotment of 100 marks for the interview and 40 marks for the other segments of the selection was interfered with.

In the case of Madhukar Bakru Pingal Vs. Rajendra D. Gaikwad and Others, the Apex Court was considering the question as to whether the direction for appointment of an unsuccessful candidate in the post of Police Patil as made by learned Administrative Tribunal was justified. Appointment to the post was made on the basis of a selection held wherein 50% marks were allotted for the viva voce test. The learned Tribunal set aside the appointment and directed for the appointment of the Respondent. Before the Apex Court the contention advanced proceeded on an assumption that even if award of 50% marks for the viva voce test was excessive, the direction issued by the learned Tribunal was not correct and what should have been directed is for holding a fresh selection by lowering

the percentage of marks for the viva voce test. Agreeing with the aforesaid contention the Apex Court interfered with the direction of the learned Tribunal and directed for fresh selection by allocation of 85% marks for the written test and 15% marks for the interview. Madhukar Bakru Pingal (supra) is a case of judicial prescription and not one of "judicial veto".

21. A consideration of the decisions of the Apex Court as discussed above would go to show that though a wide discretion has been conferred on the employer State to decide on the method of recruitment and what marks should be allocated for different segments of the recruitment process, such discretion has to be exercised keeping in mind the level at which recruitment is being made, the requirements of the post and the persons who are offering themselves as candidates for the post. There can be no hard and fast rule in this regard and interference of the Court on the basis of high allocation of marks for any particular segment, particularly for the viva voce test would be justified only if the marks allotted exposes the recruitment process to the vice of an imminent possibility of arbitrariness. It is in the above context that the interference made by the Apex Court in the cases noticed above must be understood. It is only upon full satisfaction that the percentage of marks allocated for the viva voce test is so high that arbitrariness has become imminent, interference would be justified. Otherwise, the Court must be slow to supplant its views for that of the executive in the matter.

22. There is one fundamental feature that would distinguish the present case from the cases considered by the Apex Court which must now be noticed. While the law laid down by the Apex Court, as noticed above, has been in the context of the percentage of marks that should be allotted for the viva voce test as against the written examination, in the present selection no provision has been made for holding of any written examination. A written examination is a test of the candidate's intellect. In the present case, 50% marks have been allotted for the physical test which by no means can be understood to be a test of the candidate's intelligence. The aforesaid quality of a candidate, therefore, has to be decided in the course of the oral interviews along with the candidates personality and suitability for the job. The above feature of the selection process must, therefore, be kept in mind by the Court while proceeding further in the matter.

23. There is no doubt that the Constabulary constitutes the backbone of the police force of the State and the constable is the representative of the police force that the citizen meets and sees everyday. Notwithstanding the harsh realities attending the working conditions of the members of the constabulary and their performance on the field, serious attempts are being made and such attempts have to be continued to raise the level of consciousness of such members of the force. A constable is expected to reach the optimum standards of physical fitness and mental alertness. He is expected to reflect the kind and humane but firm and intelligent face of the police force. A constable must not

only be physically fit; he must have a positive mindset with a fair amount of intelligence. What proportion of marks should be awarded for physical fitness and to test the other qualities that a constable must possess are matters in respect of which the Court cannot have an in depth expertise. Whether it is 15% or 25% or 50% marks that should be allotted for the personal interviews is an issue on which it would be very difficult for the Court to express an opinion which can pass the test of correctness even by a reasonable approximation. Having considered the matter from all possible perspective the Court has, therefore, come to the opinion that the correct course of action for the Court would be to take the view that the 50% marks allotted in the present selection process for personal interviews though appears to be on the higher side may not be conclusive to take the view that award of such marks by itself should be understood to have vitiated the selection. The Court would like to base its conclusions in the instant cases on surer grounds i.e. whether in awarding marks to the candidates for personal interview there were any significant anomalies so as to lead credence to the view that high marks have been allotted for an oblique purpose which has been successfully attained. In doing so, the Court would also consider it appropriate to impose a heavier than normal burden on the employer State to satisfy the Court that its actions in allotting 50% marks for the personal interviews stands fully vindicated by the actions of its officers in the field while awarding marks to the candidates who took part in the selection.

24. There is yet another connected issue which must be answered by the Court at this stage i.e. the time allotted to each candidate for the personal interview which has been contended by some of the candidates to be of very short duration and in course of which irrelevant questions were put. What time should be spent for the personal interview of a candidate, again, is a difficult matter for assessment by the Courts. In fact, it is impossible for the Court to lay down any rule of universal application in this regard, such task being essentially that of the interviewers, unless, of course, the number of candidates interviewed on any particular day has been so abnormally large that an inference of mockery of the personal interview process must necessarily be reached by the Court.

Time and again, it has been reiterated by the judicial verdict that what should be the ideal time allotted for the personal interview to correctly assess the suitability of a candidate depends on the nature of the post sought to be filled up; the duties and responsibilities attached to such post and the particular background to which the candidates belong and such other related factors. In the present case, the interview Board consisted of the Superintendent of Police of the concerned District and the Commandant of the Battalion/Battalions located in the particular district. The composition of the Selection Board has been emphasized by the Court only to remind itself that the members of the Board who are the officers in the field could be expected to be well conversant with the requirements that were being looked for in the candidates. In the instant selections, the number of candidates being very high, even the number that had qualified for the interview, in most districts, was considerable. If a longer time, say, 10 minutes or so was to

be allotted for the interview of each candidate the interview in most of the districts would have continued for over a month. This would have caused serious dislocation in the normal functioning of the police administration in the districts as both the Superintendent of Police and the Battalion Commandant would have been required to devote their entire time for the interviews for a fairly long period. A need to quicken the process, therefore, was imminent. In such circumstances the Court has considered it proper to rely on the judgment of the Apex Court in *Satpal and Ors.* (Supra) and proceed on the basis that the acceptable time allotted to a candidate for the interview should be with reference to a benchmark of a maximum of 250 candidates per day. The said figure has been considered appropriate for adoption having regard to the fact that the records indicate the simultaneous holding of the interviews along with the other segments of the selection throughout the length of each working day which extended upto 12/14 hours. The interviews could, therefore, have commenced only on identification of at least part of the qualified candidates. In the above circumstances, anything more than the number specified above will have to be treated by the Court as "suspect" and the effect thereof on the selection process will have to be assessed along with such other "negative" circumstances as have been already indicated as militating against a fair selection.

25. The above discussion would now require, the Court to record what has been revealed by the scrutiny of the records that had been undertaken by the Court and the conclusions that the Court considers prudent to reach on that basis. It would not only be convenient but also imperative for the Court to proceed in the matter district/center-wise as each selection has to be construed as a separate and independent selection. What, however, must be emphasized, at this stage, before embarking upon the necessary discussions is that the records of each district have been scrutinized by the Court only to determine the fairness of the exercise performed while subjecting the huge number of candidates to the different stages of the selection process. The Court has not, even remotely, been concerned with the marks awarded to any particular candidate; no attempt has been made to evaluate the standards reached by the candidate at any of the stages of the selection process. It is a broad and general impression of the selection process that has been attempted to be reached by the Court on the basis of the records scrutinized and not a minute and microscopic examination of the selection process. Again, it must be emphasized that the scrutiny of the records has been made on a representative basis, as already indicated in the opening part of the present judgment and the conclusions as will be reached and recorded is by a process of correlation of the result of the sample scrutiny with the rest of the cases constituting the general trend. This, the Court understands to be the only pragmatic manner of resolution of the dispute involving the selection of nearly 5500 constables from a total of over 2 lakh job seekers. The Court also considers the present to be an appropriate stage to take note of the painstaking efforts made by the learned Amicus Curiae, Sri S.N. Sarma, in wading through the voluminous records and in preparing several reports, interim,

final and supplementary, which has made it possible for the Court to undertake the present task. The Court would also like to put on record, at this stage, that the exercise attempted would not have been possible had it not been for the services rendered by Sri B.C. Das, Sri D.C. Choudhury and Sri B. Bora, all Grade-I Judicial Officers, in assisting the Court in its scrutiny of the records and at times, in reducing into writing the result of such scrutiny, an exercise resorted to in order to ensure that the result of the enormous human effort is not lost in the vast sea of records that have confronted the Court in the present cases.

GOLAGHAT DISTRICT

26. A total of 4563 candidates, in all, applied against the 409 posts advertised. 2726 candidates had qualified for the physical test. Only such candidates who had qualified in the physical test who were allowed to take part in the viva voce. The number of candidates who had qualified for the viva voce, though not specifically computed, could not have, . therefore, exceeded such an acceptable number who could not be properly interviewed over a period of 9 days of the selection. The records of the selection held in Golaghat District reveals a somewhat healthy picture. There has been an ideal adherence to acceptable norms and the procedure as spelt out in the advertisement dated 21.8.2004 in holding the selection. The report of the learned Amicus Curiae is also to the same effect.

The records scrutinized would go to show that a register of candidates was maintained though it was not in the form prescribed. Each candidate's particulars has been entered therein and the signature of each candidate has also been taken in the register. The measurement of height, weight chest etc. along with the result of verification of the conditions of eligibility of each candidate is reflected on the reverse side of the application forms submitted by such candidate. The entries therein are supported by the signature of the candidates as well as the authority conducting the measurement tests and the scrutiny of the eligibility conditions. The result of the preliminary medical examination of such candidates is also recorded on the reverse side of the application form under the signature of the Medical Officer, Candidates who were found to be qualified in the measurement test and who had otherwise satisfied the conditions of eligibility were divided into groups of 30 and were allowed to take part in the 1.6 kilometer/0.8 kilometer race. The application forms of each of the aforesaid 30 candidates constituting one group have been bundled together. A list of the candidates constituting each group of 30 was maintained and such of the candidates who had qualified in the elimination race had tick marks recorded against their names in red ink. It is only such candidates who were allowed to take part in the physical test. The contemporaneous records of performance of each candidate in the different segments of the physical test were maintained and marks were awarded on the basis of such performance as per the Government instructions in force. It is only those candidates who had secured 25 marks or more in the physical test who were allowed to take part in

the viva voce. Thereafter, marks secured in the physical test and viva voce were added together and the select list was drawn up keeping in mind the reservation roster in force.

In Golaghat District, the 50 marks allotted to the viva voce was bifurcated in the following manner.

1. Educational qualification = 5 marks.
2. Smartness, general ambience = 5 marks.
3. Language reading and writing = 10 marks.
4. Extra qualifications = 5 marks.
5. Proficiency in sports, marshal arts = 5 marks.
6. General knowledge and oral test = 20 marks.

The verification of the marks secured by the candidates in the physical test as well as die viva voce reflects a uniform pattern. However, the scrutiny of the records has revealed that though the conduct of the selection in Golaghat District has been exemplary which could be used by the Court as a role model for the other Districts, 3 (three) candidates who were under-aged have been selected. Except for the aforesaid discrepancy no other irregularity or illegality has been revealed in the selections held in Golaghat District. As the 3 (three) selected candidates do not meet the requirement of age as stipulated in the advertisement, this Court upholds the selection held in Golaghat District save and except in the following three cases which are being interfered with:

Name of the candidate Date of birth 1. Shri Amrit Doley 04.01.1986. 2. Shri Srimanta Bora 04.1.1986. 3. Shri Jamiruddin Ahmed 05.4.1986. The Respondents are directed to select three fresh candidates, in order of merit, against the aforesaid three posts on the basis of the records of the selection held.

NALBARI DISTRICT

27. A total of 8566 candidates (male and female) had applied pursuant to the advertisement issued for a total number of 191 posts. 2129 candidates qualified for the physical test. The number of candidates who had, therefore, qualified for the interview would be still smaller. The report of the learned Amicus Curiae in respect of Nalbari District is to the effect that no discrepancy in award of marks either in the physical test or in the viva voce has been revealed on scrutiny of the records. The learned Amicus Curiae has also found die marks awarded to the selected candidates in the physical test and viva-voce to be more or less uniform. It was further recorded by the learned Amicus Curiae in his report that the reservation roster was maintained.

The records were further scrutinized by the Court which scrutiny has revealed that the candidates who had reported in the recruitment rally were divided into groups for their physical measurement and preliminary medical test which was

performed by 25 different teams. The results of such physical measurement and in cases where a candidate had been disqualified on the basis of the preliminary medical examination have been recorded in the application forms of the candidates. It is only those candidates who had qualified in the measurement test and preliminary medical examination who were allowed to participate in the qualifying race. The particulars of all the candidates who qualified in the elimination race have been placed before the Court. The records of such candidates who did not qualify in the elimination race have also been maintained separately. Only those candidates who had qualified in the elimination race were allowed to go to the next segment of selection i.e. physical test. The performance of each candidate in different segments of the physical test is recorded separately under the signature of such official/officials who had conducted or supervised the said test. The said entries are counter-signed by the Superintendent of Police as well as the Commandant of the Battalion. Only those candidates who had qualified in the physical test were allowed to participate in the viva voce and the marks secured in the viva voce have also been maintained separately. Thereafter a master chart/final result sheet of all the candidates was prepared on the basis of the contemporaneous records. The marks given to the selected candidates in the viva voce does not appear to be excessive or on the higher side.

In the above circumstances, the Court is of the view that the selections made in Nalbari District must have the Court's approval and the Respondent State will now be at liberty to proceed with the appointment of the selected candidates, if it so desires.

KOKRAJHAR DISTRICT

28. In Kokrajhar District against a total of 376 posts advertised, about 9000 number of candidates had taken part in the selection out of which about 3500 number of candidates had qualified for the physical test. As only those candidates who had secured qualifying marks in the physical test were allowed to take part in the viva voce, the number of candidates who had qualified for the viva voce would not indicate an alarming picture requiring any further probe.

The learned Amicus Curiae, in his report, has stated that in Kokrajhar District the register of candidates was maintained in accordance with the Regulation 26 of the Assam Police Manual and the form prescribed. The learned Amicus Curiae in his report has also recorded his satisfaction as to the manner in which all the segments of the selection process was undertaken including the marks awarded in the physical test and the viva voce. The learned Amicus Curiae has also found that the reservation roster was duly followed in Kokrajhar District.

Scrutiny of the records made by the Court has revealed that the physical measurements of the candidates were taken by several groups and the results of such measurement have been entered in a measurement card. In the measurement card there is a column for the remarks of the Medical Officer,

perhaps, with regard to the preliminary medical examination. It is only such candidates who have been found to be eligible on the basis of the physical measurement, preliminary medical examination and the conditions of the eligibility with regard to age, education etc. who were allowed to take part in the elimination race. Candidates who had qualified in the said race were segregated from those who had not. A candidates register in the form prescribed under the Police Manual was prepared thereafter. The said register contains the physical measurement of a candidate as recorded in the measurement card. The performance of each of such qualified candidates in the different segments of the physical test has been recorded under the signature of the particular officer in charge of conducting that particular segment of the physical test. Only those candidates who had qualified in the physical test were allowed to take part in the interview. The marks in the interview were entered separately in a separate register. Such marks have not been excessive or high. All the data recorded in the contemporaneous documents were subsequently entered in a final result sheet which has been signed by the Commandant, 7th Assam Police Battalion, the Superintendent of Police and the Medical and Health Officer. In the above facts, no infirmity can be said to be crept into the selection process in Kokrajhar District so as to warrant any interference by the Court.

KARBIANGLONG DISTRICT

29. There is a solitary challenge to the selections held in Karbi Anglong District i.e. W.P.(C)No. 4603 of 2005. The report of the learned Amicus Curiae would go to show that out of a total of 1458 candidates only 744 qualified for the physical test and viva voce. Learned Amicus Curiae in his report has also stated that no irregularity has been found in the award of marks either in the physical test or the viva voce and that the reservation roster was maintained.

The records of selection in Karbi Anglong District have been scrutinized by the Court. Such scrutiny has revealed that the Petitioner who has complained of allotment of low marks has been awarded marks in the different segments of the physical test on the basis of the performance reached by him which has been recorded by three separate teams conducting the three different segments of the physical test. The said fact is evident from the separate hand-writings in which the results of performance of all candidates in the three different segments of the physical test have been recorded. The Petitioner who had applied for appointment against the posts earmarked for appointment on compassionate ground was placed at Serial No. 5 in order of merit in the list of such candidates. Serial Nos. 1 to 4 of the said list have been selected in view of the fact that there were only four vacancies earmarked for compassionate appointment. The Petitioner secured 73 marks in all and the last of the candidate selected on compassionate ground had secured 74 marks. In these circumstances, W.P. (C)No. 4603/2005 is considered to be appropriate to be dismissed.

N.C. HILLS DISTRICT

30. There is again a solitary challenge to the selections held in North Cachar Hills District i.e. W.P. (C)No. 6184 of 2005. None had appeared for the Petitioner when the case was called. Notwithstanding the above, the Court, with the assistance of the learned Amicus Curiae, had tried to locate the records showing the performance of the Petitioner in the selection. The identity number of the Petitioner i.e. 1100 as given in the writ petition could not be traced out in spite of the best efforts made by the learned Amicus Curiae. In such circumstances, the Court has felt inclined to take the view that W.P. (C)No. 6184 of 2005 ought not to be pursued any further, as the Court reasonably understands the absence of the learned Counsel for the Petitioner to be a sufficient indication of the lack of any further interest of the Petitioner in the present proceedings.

DIBRUGARH DISTRICT

31. Only three writ petitions have been filed in respect of the selections in Dibrugarh District i.e. W.P.(C) No. 2020/2005,2034/ 2005 and 3687/2005.

The learned Amicus Curiae in his report has stated that a total of 7210 candidates had applied for the 157 posts advertised. 1529 candidates had qualified to participate in the physical test after having completed the elimination race within the stipulated time. The learned Amicus Curiae has further reported that the verification of the results of the physical test did not reveal any anomaly and the marks given to the candidates in the viva voce test were uniform. The reservation roster was also found to have been maintained properly while making the selections.

The scrutiny of the records of Dibrugarh District by the Court has revealed that the candidates register has been maintained from the stage of completion of the elimination race. While the performance of the candidates in the different segments of the physical test have been recorded in the first instance and thereafter marks have been awarded as per the Government instructions in records which could be said to be contemporaneous, there is some familiarity in the hand-writings in which such entries were made in respect of &e different segments of the physical test. The scrutiny of the records made by the Court further reveals that though the candidates had been subjected to the measurement of height, weight, chest etc. prior to the 1.6 kilometer/0.80 kilometer race, the candidates who had qualified in the physical test were subjected to the same process, once again, and at this stage also some of the candidates were disqualified. However, the records scrutinized reveals that it is only those candidates who had qualified in all segments of the selection process who were allowed to participate in the viva voce.

The scrutiny of the records of Dibrugarh District, thus, reveal certain irregularities. However, the familiarity in the hand-writings in which entries of performance in the different segments of the physical test were made cannot be conclusive of the matter. The Court is not an expert to decide the said question. Subjecting the candidates who had qualified in the physical test to a second

round of measurement is at best an irregularity so long the second round of measurement was conducted properly. There is no material to hold that the second round of measurement was done only with the view to disqualify some particular candidates.

The grievance raised by the Petitioner in W.P.(C) No. 2034/2005 needs to be specifically dealt with by the Court. In the initial round of measurement the height of the Petitioner was recorded as 155 cms. and she was cleared to participate in the elimination race wherein she had qualified and had competed in the physical test. She secured 34 marks, in all, in the physical test. However, on being subjected to a second round of measurement her height, this time, was recorded as 154 cms. and she having been found to be below the prescribed height by 1cm. was not allowed to participate in the viva voce.

The discrepancy noticed with regard to height in the second round of measurement is marginal. The Petitioner was found to be of the required height in the initial round of measurement. The norms and procedure applicable to the selection did not contemplate a second round of measurement. The Petitioner has placed before the Court certificates to the effect that she is of the required height. In such circumstances, I am of the view that the case of the Petitioner would require reconsideration at the hands of the authority who will re-measure her height and if she is found to meet the requirements of height as stipulated in the advertisement dated 21.8.2004, the authorities will hold a fresh viva voce for the Petitioner and thereafter determine her entitlement to be selected on the basis of such marks that she may obtain.

There is another feature of the selection made in Dibrugarh District which must be noticed by the Court. In the select list prepared almost all the selected candidates had been shown to be belonging to different reserved categories. This has been sought to be explained by Sri K. N. Choudhury, learned Additional Advocate General, Assam by contending that what has been mentioned in the select list is the caste/category of a selected candidate and such reserved category candidates have been selected against the general category posts. The explanation offered is a plausible explanation which would only require a small correction of the select list. Similarly, in respect of the selections made on compassionate ground neither any separate select list has been drawn up nor any mention has been made in the select list as to which of the candidates are being selected against that category. In such circumstances, the Court is of the view that it would be appropriate to direct the Respondents to republish the select list after indicating which of the selected candidates have been selected against general category posts and against posts earmarked for reserved category candidates as well as which of the candidates have been selected for posts against the quota for compassionate appointment.

Consequently, the selections held in Dibrugarh District are upheld subject to the directions mentioned above.

NORTH LAKHIMPUR DISTRICT

32. As against a total of 123 posts advertised, 5768 candidates had submitted their applications out of whom 1302 candidates had qualified for the physical test. Though all the candidates who had qualified in the physical test were subjected to the personal interviews, the said fact in the context of the total number of qualified candidates, must be understood to be a mere irregularity particularly when none of the selected candidates have been found to be disqualified in the physical test.

The learned Amicus Curiae in his report has disclosed that no discrepancy in award of marks in the physical test or any disproportionate marks in the viva voce could be noticed by him.

The selections held in North Lakhimpur were scrutinized by the Court. A register of candidates containing entries under different heads of the selection process including the total marks secured by each candidate has been submitted to the Court. The said register discloses the stage at which a particular candidate has been eliminated with the recordings up to that stage. The entries in the register are based on certain contemporaneous records which have also been perused by the Court. The said contemporaneous records also discloses the physical measurement of the candidates; whether he/she had qualified in the 1.6 km. race and, if so, his/her performance in the different segments of the physical test as well as the viva voce. Though the records of selection reveal that a large number of candidates were subjected to the selection process on each day commencing with the physical measurement, as for example, 1640 candidates on the 1st day i.e. 3.12.2004, 1200 candidates on the 2nd day i.e. 4.12.2004 and 700 candidates on 7.12.2004, such events have to be construed by the Court to be possible in view of the fact that the records demonstrate that several teams of police officials were constituted to undertake and supervise the selections of the candidates who were divided into groups. Eventually only 1302 candidates had qualified for the physical test as already noticed and although all of them were interviewed, the number of candidates interviewed would still fall within the acceptable number. No other significant anomaly having been revealed in the selection held in North Lakhimpur, the Court finds no good ground to cause any interference. It will now be open for the State to make the consequential appointments on the basis of the select list, if it so desires.

DHEMAJI DISTRICT

33. In Dhemaji District against a total of 39 posts advertised, 3845 candidates submitted their applications out of which 1033 candidates had qualified for the physical test. All the candidates who had qualified in the physical test were simultaneously interviewed which course of action, though not in terms of the advertisement, must be understood to be a mere irregularity in view of the total number of candidates involved i.e. 1033.

The learned Amicus Curiae, in his report, has stated that the perusal of the

records of selection of Dhemaji District by him did not disclose any discrepancy in the award of the marks either in the physical test or personal interviews.

The records of selection of Dhemaji District has been scrutinized by the Court. Such scrutiny has revealed that, to begin with, all the candidates were made to run the elimination race and those who did not qualify were asked to leave the venue. Candidates who could complete the elimination race within the stipulated time were physically measured and details of such measurement were entered in a chart/tabulation sheet. Thereafter, the performance of such candidates in the individual items of the physical test were recorded in the same chart/tabulation sheet. The entries in the chart/tabulation sheet are in pencil and a few cases of erasures and subsequent entries has been noticed by the Court. The entries in the aforesaid chart/tabulation sheets being in the same hand the Court, on being asked, was informed that a register showing the performance of the candidates in the different items of the physical test was maintained. The said register which has been perused by the Court had gone to indicate that the entries therein are in the same hand-writing. The register therefore cannot be understood to be a contemporaneous document. On further probing, another record which has been contended to be the contemporaneous record of the physical test was placed before the Court. The entries in the said records are once again in pencil and contain certain erasures and over-writings.

There is no explanation forthcoming at all as to why the marks awarded to the candidates have been maintained in pencil. However, the said fact, by itself, will not be conclusive and sufficient for the Court to draw an adverse inference unless the Court is satisfied that the over-writings/erasures are so significant that the same must be understood to have vitiated the selections. The erasures/over-writings in the entries made in pencil falls short of such a requirement inasmuch as such erasures/over-writings, as noticed, are in respect of candidates not selected while others are in respect of the physical measurement of the candidates. In such circumstances, the Court is of the view that the selections held in Dhemaji should not be disturbed.

TINSUKIA DISTRICT

34. 5002 candidates, in all, had applied for a total of 282 posts advertised. 2726 candidates qualified for the physical test. The number of candidates who had qualified for the interview is 1302.

The learned Amicus Curiae in his report had submitted that the candidates register was maintained and that verification of the result of the physical test did not reveal any discrepancy in the marks awarded. The reservation roster was also found by the learned Amicus Curiae to have been maintained properly. However, the learned Amicus Curiae, in his report, has stated that the majority of the selected candidates got 40 or more marks in the viva voce.

The records of the selection of Tinsukia District have been scrutinized by the Court. The disqualification of the candidates in the initial round i.e. measurement

test was mainly on account of such candidates being below the prescribed height. Only such candidates who had qualified in the measurement test and were found to be fit in the preliminary medical examination were allowed to take part in the elimination race and those who had qualified in the elimination race (2726) were segregated from those who had not qualified. It is only the qualified candidates who were allowed to go to the next segment of the selection process i.e. physical test. The performance of the candidates in the different segments of the physical test and the marks awarded to them on that basis have been maintained in records which could be said to be contemporaneous. Such records are also duly authenticated under the signatures/initials of the persons responsible for conducting the test.

The learned Amicus Curiae was requested by the Court to further verify as to the number of selected candidates who have got 40 marks or more in the viva voce and those selected candidates who have got high marks in the physical test but had secured very low marks in the viva voce. The learned Amicus Curiae was requested by the Court to analyse the data on a representative basis. Pursuant thereto the learned Amicus Curiae has submitted a report which would go to show that out of a representative sample of 250 to 300 candidates in either of the aforesaid two categories the picture which has emerged is as follows.

Candidates who have secured high marks in the viva voce and were thus selected:

SI. Roll Name of the candidate. Marks in Marks in

No. No. physical viva-

test voce.

1. 99 Banamali Kalita 39 42
2. 213 Uday Das 39 42
3. 234 Janardhan Prasad Mali 38 43
4. 350 Ripu Barua 30 44
5. 509 Kiran Kumar Gurung 38 44
6. 637 Prakash Sarma 39 44
7. 758 Dhanpath Sah 38 44
8. 802 Shankar Achaijee 37 44
9. 824 Utpal Das . 38 45
10. 838 Prasanta Buragohain 36 44

Candidates who have secured high marks in the physical test but who had secured very low marks in the viva voce:

SI. Roll Name of the candidate. Marks in Marks in

No. No. physical viva-

test voce.

1. 1925 Miss T. Buragohain 39 17
2. 7 Kushal Saikia 44 29
3. 43 Nitumani Gogoi 42 25
4. 78 Munindra Dutta 42 25
5. 90 Sorooj Kumar Gogoi 43 25
6. 98 Indrajit Gogoi 45 25
7. 97 Bidyadhar Saikia 46 25
8. 110 Sachin Maran 44 25
9. 127 Putul Paik 47 25
10. 142 Anukul Sonowal 46 25
11. 208 Miss. Junmoni Gogoi 41 16

In the above circumstances, the question that confronts the Court is whether the selections in Tinsukia District should be interfered with and if so to what extent or whether the same should be maintained.

The records of the selection held in Tinsukia District cannot be said to have indicated any major illegality, irregularity or discrepancy in view of the specific details already noted. The only doubt that could be reasonably entertained is with regard to award of high marks in the viva voce. The result of the exercise performed by the learned Amicus Curiae out of a group of 250-300 selected candidates would go to show that only 10 candidates i.e. about 2.5% has secured high marks in the interview. In *Jasvinder Singh (supra)* the Apex Court has clearly laid down that care and caution must be taken not to get carried away by a few instances of award of high marks in the viva voce. In such circumstances and in the facts noted above, the Court is of the view that the award of high marks in the viva voce to some of the selected candidates ought not to be adversely understood. The selections in Tinsukia District would, therefore, not justify the Court's interference.

BONGAIGAON DISTRICT

35. 8707 candidates in all had applied against the 233 posts advertised out of which 2263 candidates had qualified for the physical test.

The report of the learned Amicus Curiae would go to show that the selected candidates (both males and females) have secured high marks in the interview

and further that there are some cases of candidates securing high marks in the physical test but not succeeding on account of the low marks in the viva voce. The learned Amicus Curiae has also reported that the select list prepared does not reveal who are the selected candidates for the Police Battalion and who have been selected for the D.E.F.

Scrutiny of the records of the selection by the Court has revealed that a register recording the names, addresses and other particulars of the candidates along with their signatures was maintained. A printed form containing the said particulars along with an identity number was given to each candidate. In the said form there are separate columns for entry of the result of the physical measurement, the performance of the candidate in the elimination race as well as the performance in the different segments of the physical test and also the marks secured in the viva voce test. In respect of the candidates who have been disqualified either on account of physical measurement or in the elimination race an appropriate endorsement is available in the said form. For those who had qualified, the time taken for completion of the 1.6 kilometer race and the standards reached in the different segments of the physical test and the marks awarded as well as the marks obtained in the interview is recorded. Each of such entries are under the signature of the concerned authority along with the date on which the candidate took part in the selection. A report of the Medical and Health Officer is also available. Candidates who had qualified to take part in the physical test had affixed their thumb impressions in the form.

In the course of the arguments advanced by the Petitioners it has been contended that the select list contains the names of a large number of candidates particularly from Kamrup and Nagaon Districts and such candidates had taken part in the selection in Bongaigaon District after having taken part in the selection in their home districts. Such candidates have not been selected in their home districts and therefore the argument advanced is that an inference with regard to a conspiracy to have such candidates selected in Bongaigaon District should be drawn by the Court.

Though the contention advanced is beyond the pleaded case of the Petitioners, yet, the Court had required the Judicial Officers assisting the Court to verify the aforesaid aspect of the matter and to enable them to do so the State was directed to place before the Court the names and addresses of the selected candidates of Bongaigaon District who belong to other districts.

The scrutiny of the aforesaid aspect of the case has revealed that in Bongaigaon District 36 candidates from Kamrup District, 18 from Nagaon District, 2 from Barpeta District, 1 from Tinsukia District and 1 from Darrang District have been selected. There is no evidence to show that any of such candidate had taken part in the selections held in their home Districts or had failed in the selections in their home districts. The contention advanced, therefore, remains unsubstantiated.

While it is correct that some of the candidates who have been selected had secured high marks in the viva voce and similarly some candidates who had secured high marks in the physical test have failed to make it to the select list on account of low marks in the viva voce, there are over 120 selected candidates who have also got above 40-45 marks in the physical test. In such circumstances it cannot be said that award of high marks in the viva voce has been made solely to get any or some chosen candidates selected.

In the totality of the facts of the case and having regard to the elaborate procedure followed while making the selections, this Court is of the view that the selections in Bongaigaon District must be upheld which I hereby do. The Respondents shall, however, republish the select list indicating the candidates selected for the A.P. Battalion and for the D.E.F.

DHUBRI DISTRICT

36. In Dhubri District against 178 posts advertised, a total of 3722 candidates are stated, in the report of the learned Amicus Curiae, to have qualified for the physical test. All such candidates, irrespective of whether they had qualified in the physical test, were allowed to take part in the viva voce. The number of candidates interviewed, therefore, would exceed what has been indicated to be an acceptable number. The learned Amicus Curiae in his report has further stated that the application forms of the selected candidates were kept separately along with their photographs and further that the marks in the physical test were awarded in a proper manner. However, the learned Amicus Curiae in his report has stated that all selected candidates have got high marks in the viva voce ranging between 30 to 41 marks.

The records of Dhubri District have been perused by the Court. For each candidate a printed chart was prepared wherein there was space for recording of the bio data of the candidate, the result of the physical measurement as well as the result of the different segments of the physical test. Each of the aforesaid sections of the printed chart, up to the stage which a candidate may have reached, has been found to be recorded under proper initials, which the Court can reasonably understand to be of the concerned officer responsible for that part of the selection process. The candidate's photograph is also found attached in each chart. Candidates who had qualified in the measurement test were allowed to take part in the elimination race and only those who had qualified in the elimination race were permitted to take part in the physical test. The performance of each candidate in the different segments of the physical test along with the marks awarded as per the Government instructions are recorded in the same chart which has been signed by the Chairman and the other two Members of the Selection Board. The marks secured in the interview were recorded in the final result sheets in which result sheet the physical measurement of the candidates as well as the performance in the physical test and marks awarded (if the candidate had reached to that stage) has been entered on the basis of the contemporaneous records i.e. the chart prepared.

While the procedure adopted and followed cannot be faulted, the number of candidates who were interviewed during the 9 days of the selection is a highly disturbing factor. The award of high marks in the viva voce to the selected candidates, an isolated feature, by itself, would assume significance in this regard. In such circumstances, the Court is of the view that the better and surer course of action would be to interfere with the selections held in Dhubri District. Accordingly, the same is set aside in its entirety.

KARIMGANJ DISTRICT

37. A total of 4999 candidates had applied for the 198 posts advertised in Karimganj District. 2309 candidates had qualified for the physical test. All such candidates were allowed to take part in the viva voce.

The learned Amicus Curiae in his report has stated that no anomalies in the marks awarded in the physical test had been detected by him on scrutiny of the records. Only candidates who had secured more than 25 marks in the physical test and who had also secured the qualifying marks in the viva voce were included in the select list on the basis of their inter se merit. The reservation roster was also found to have been followed while making the selections.

Scrutiny of the records in Karimganj District by the Court has revealed that a comprehensive record commencing with the bio data of the candidates, the result of their measurements and the performance of the qualified candidates in the physical test as well as the marks secured in the viva voce. The result of the preliminary medical examination is also available. The doubt in respect of the credibility of the records maintained with regard to the performance of the candidates in the different segments of the physical test and the marks awarded on that basis in view of the similarity of the hand-writings in which such entries were made has been sought to be explained by the learned Additional Advocate General, Assam by contending that such entries though by different persons appear to be similar as all such persons were constable writers who have a uniform pattern of hand-writing.

A random scrutiny of the result sheet of the selected candidates has revealed that most of the selected candidates have secured very high marks in the viva voce and had it not been for such high marks, such candidates would not have been selected. The learned Amicus Curiae was asked to look a little more into the aforesaid aspect of the matter whereafter a report has been submitted highlighting the cases of 30 selected candidates who have secured very high marks in the viva voce and who have been selected primarily on account of such high marks. The result sheet of the selected candidates which indicates the marks given in the physical test and the viva voce has also been perused by the Court. Such perusal has reflected a more or less uniform pattern i.e. the majority of the selected candidates have been so selected only on account of the high marks given in the viva voce.

The particulars of the selected candidates who were awarded high marks as

found by the learned Amicus Curiae is mentioned below:

SI. No, Name of the candidate. Roll. No. Marks in test. Marks in viva voce Total
Police Station

1. Gokul Chah 109 27.5 40 67.5 Barpathar, GLT.
2. Binod Kr. Rao 119 29 40 69 Lakhipuur
3. Samarendra Barman 190 33 45 78 Udhar-band.
4. SumaRani Nath 214 26.5 40 66.5 R.K. Nagar.
5. Subal Ahmed 379 32 43 75 Karimganj
6. Roshid Ahmed 380 29 42 71 Karimganj.
7. Rajesh Paul 390 28 40 68 Katlicherra
8. Ibangal Singha 491 32 40 72 Hailakandi
9. Mithu Chorai 497 27 45 72 Ratabari
10. MojnurHussain 517 30 40 70 Patharkandi
11. Benedic Chorai 518 29 40 69 Ratabari
12. K. Shyamsundar Singh 548 26 45 71 Lakhipur
13. Abdul Ahad 593 27 40 67 Karimganj
14. Jahangir Alom 690 32 40 72 Badarpur

SI. No Name of the candidate. Roll. No. Marks in test. Marks in viva voce Total
Police Station

15. Tahir Ahmed Khan 762 28 40 68 Ratabari
16. Deepak Debnath 773 31 40 71 Patharkandi
17. Kalpita Dey 818 28 40 68 Patharkandi
18. HiranmoyNath 879 29 40 69 Katlicherra
19. Abbas Uddin Choudhury 1242 31 35 66 Karimganj
20. SusmitaNath 1349 27 40 67 Karimganj
21. Mousomi Das 1353 27 40 67 Karimganj
22. Sitarani Das 1510 26 40 66 Karimganj
23. SitaNath 1512 26 40 66 Karimganj
24. Arindam Swami 1891 32 42 74 Karimganj
25. Ratna Dey 2238 25 40 65 Badarpur

- 26 Tinbuli Kaora 3425 26 45 71 Patharkandi
27. Ranjan Uddin Laskar 3646 28 45 73 Silchar
28. Anjana Rani Dey 3781 26 35 61 Patharkandi
29. Bishwajit Mazumdar 4984 26 35 61 Hailakandi
30. Champa Deb 4017 26 35 61 Patharkandi.

The facts cited above and the scrutiny of the relevant records of the selection in Karimganj District by the Court has revealed a situation wherein the majority of the selected candidates have been found to be so selected only by virtue of the high marks in the viva voce.

There is also a connected aspect of the matter which has to be dealt with by the Court. The supplementary report dated 3.12.2005 of the learned Amicus Curiae indicate that by and large most of the unselected candidates have secured less than 25 marks in the physical test, who, therefore, ought not to have been allowed to participate in the viva voce. The participation of such candidates in the viva voce is not only an illegality/irregularity but it has the effect of reducing the entire of the viva voce segment of the selection to a mock/farcical exercise inasmuch as the candidates who had passed in the physical test and were thus qualified for the viva voce were the ones who got eventually selected. The competition in the viva voce test was therefore confined to only the selected candidates as all other candidates who had not qualified in the physical test, notwithstanding their participation in the viva voce and the total marks secured, could not have been included in the select list. In the above facts, the Court is of the view that the entire of the selection held in Karimganj District should be set aside and interfered with by the Court which I accordingly do.

HAILAKANDI DISTRICT

38. 19 number of posts in all were advertised for Hailakandi District. The candidates register was not maintained and the learned Amicus Curiae in his report has stated that though in the selections held 670 male candidates and 85 female candidates had participated, it is not possible to ascertain as to how many candidates had applied. The learned Amicus Curiae has stated in his report that though marks have been shown to be awarded to the candidates in the different segments of the physical test i.e. 100 meters race, long jump and high jump, the basis on which such marks have been awarded is not indicated.

A perusal of the records of selection in Hailakandi District by the Court has revealed that there is nothing to indicate the total number of candidates who had applied. The aforesaid lacuna has been sought to be cured by production of some records at the hearing of the cases to indicate that a total of 1782 candidates (both male and female) had applied pursuant to which a total of 767 candidates had qualified for the physical test out of which 463 candidates had qualified for the interview. No record showing how over 1000 candidates have been

disqualified has been maintained. The lacuna in the award of marks in the physical test as observed by the learned Amicus Curiae has been, again, sought to be cured by production of some records at the hearing. The said records, which is claimed to be the contemporaneous records, would go to show that the recordings of the performance of the candidates in the different segments of the physical test held on the same day, as for example 100 meter race and long jump, is in the same hand-writing. How such a situation could be possible has not been satisfactorily explained to the Court. In such circumstances, the Court is of the view that there is no basis to maintain and/or uphold the selection held in Hailakandi District. The entire of the selection held in Hailakandi District is, therefore, set aside.

CACHAR DISTRICT

39. Against a total of 238 posts advertised 12800 candidates had applied. Only 1497 candidates remained in the fray after the elimination race (1.6 kilometer/0.80 kilometer). As none of the writ petitioners are persons who have been disqualified in any of the segments up to the elimination race and the writ petitioners are candidates who had participated in the physical test and viva voce the question of rejection of the candidature of such a large number of persons has not been gone into by the Court.

The report of the learned Amicus Curiae is to the effect that in Cachar District the records of selection have not been properly maintained. The report of learned Amicus Curiae indicates that though 1497 candidates had qualified for the physical test, the particulars of the marks secured by 1007 candidates in the physical test have been forwarded to the Court. As the candidates were subjected to some kind of medical examination after qualifying for the physical test, the learned Amicus Curiae understood the difference in number (between 1497, who qualified for the physical test and 1007, whose marks were sent to the Court) to be on account of disqualification in the medical examination. Arithmetically, 490 candidates were required to have been disqualified in the medical examination. The learned Amicus Curiae, therefore, started looking into the result sheets of the physical test and at one point of time it had transpired that more than 1497 candidates had taken part in the physical test. In fact, at the hearing the learned Amicus Curiae has submitted that the number had gone beyond 2000. In such a situation, the application forms of the selected candidates were verified and 12 numbers of application forms of the selected candidates were not found in the records. The above facts have been verified by the Court from the records and the Court is with complete agreement with the conclusion reached by the learned Amicus Curiae that the records of selection have not been properly maintained in Cachar District and there are certain features of the selection which has not been satisfactorily explained by the State.

Furthermore, a cursory glance of the result sheets of the selected candidates having shown that some selected candidates have not secured the qualifying marks in the viva voce, the matter was probed further by the Court. 88

candidates, in all, particulars of whom are mentioned below, have been included in the select list though they had not secured the qualifying marks, i.e. 25 marks, in the viva voce.

SI. No. SI. No. Name of the selected in the candidates selecte list. Marks secured in viva voice

1. 3 NimluRongmai 10
2. 5 Suren Teli 20
3. 11 Rukhanuddin Barbhuiya 22
4. 12 Abdul Kuddus Laskar 20
5. 13 Nripen Sinha 21
6. 14 Kripamoy Barman 15
7. 18 Meihem Rongmai 20
8. 19 Kimai Gangmai 23
9. 22 Uma Shankar Goala 22
10. 23 Salauddin Choudhury 20
11. 24 Stephen Watson 22
12. 25 Rana Barman 18
13. 29 Rekha Begum 22
14. 30 Kajal Adjolaro 23
15. 31 Jadu Barman 10
16. 35 Dhiraj Dev 22
17. 37 M. Ronald Singha 23
18. 39 Bapan Thapa 20
19. 43 Smti. Anjana Dey 20
20. 44 Smti Nandita Barman 20
21. 46 Smti. Sudipta Sinha 24
22. 48 Bijoy Kumar Deb 20
23. 49 M. Rahman Choudhury 20
24. 50 Sanjoy Rabidas 20
25. 51 Smti Sabina Barman 10
26. 52 Usha Rani Barman 10

27. 53 Debasish Bhattacharjee 22
28. 55 Paoitana Rongmai 10
29. 57 Joaur Rahman Barbhuiya 22
30. 58 Milton Chanda 20
31. 61 Lalmanik Halem 10
32. 68 Dipanjoy Barman 24
33. 71 Sri Himadri Bijoy Das 22
34. 73 Sri Arup Das 20
35. 74 Kabiruddin Barbhuyan 18
36. 76 Manna Karmakar 22
37. 80 Md. Asabuddin Khadhir 23
38. 82 Kaguiawpaw Kamai 15
39. 83 L. Vicky Hmar 16
40. 85 Abdul Gafur Laskar 20
41. 86 Jashimuddin Barbhuyan 22
42. 87 Pinku Dey 20
43. 89 Rajib Barman 20
44. 94 Imran Hussain 24
45. 97 SujitKarDeb 24
46. 107 Premjit Singh 24
47. 110 Saimul Haque Laskar 23
48. 111 Smti Sukla Rani Sen 20
49. 112 Smti Reshmi Barman 15
50. 114 Smt. Sarathi Tripura 20
51. 118 Gaisuingpow Rongmai 10
52. 120 Debasish Barman 17
53. 122 SanjayNandi 10
54. 125 Ms. Bablirani Barman 20
55. 126 Smt. Sulekha Barman 23
56. 127 Smt. Rubirani Das 20

57. 129 Shankar Sarma 23
58. 140 Ms. Dhilon Tantubai 24
59. 141 Ms. Sumita Deb 24
60. 142 Sri Rajendra Dey 22
61. 143 Nirmal Paul 24
62. 144 Ashim Sinha 24
63. 148 Jehirul Huda Laskar 24
65. 153 Ashu Kumar Barman 20
66. 155 Nandan Bardhan 23
67. 156 Bishnu Das 20
68. 159 SanjibPaul 22
69. 163 Pintu Chanda 24
70. 164 Samarendra Das 24
71. 166 SurajlalNunia 23
72. 167 Angshuman Barman 24
73. 169 Ms. Anupama Gupta 24
74. 170 Sri Lab Pradhan 23
75. 171 Uttam Barhai 24
76. 174 Rajesh Kalowar 24
77. 193 Jiten Singh 20-Comp- assionate.
78. 194 Kamalesh Mazumdar 18-Compassionate
79. 198 Ikbal Hussain Barbhuiya 23
80. 211 Sahid Hussain Barbhuiya .24
81. 212 Ratul Khan 24
82. 226 Alok Das 24
83. 227 Galingmai Rongmai 20
- M 232 AmitRoy 20
85. 234 Ms. Anamika Barman 20
86. 236 Smt. Ratna Barman 20
87. 237 Smt. Suparna Barman 17

88. 238 Afzal Hussain Mazumdar 22

The percentage of candidates who had been selected though they had not secured the qualifying marks in the viva voce is very high i.e. nearly 40%. There is a fair amount of doubt as to whether the other candidates in the select list have been selected in a fair and transparent manner in view of the facts noted above which has satisfied the Court that the records of selection have not been properly maintained. In such a situation, the Court is of the view that the entire of the selection in Cachar District should be interfered with which I accordingly do.

SIBSAGAR DISTRICT

40. Against a total of 234 posts advertised nearly 8000 candidates (both males and females) had applied. About 3200 (both males and females) had qualified for the physical test. All such candidates were allowed to take part in the viva voce.

The learned Amicus Curiae in his report submitted to the Court has stated that in so far as the selection of one Moinul Haque Choudhury (Serial No.01, Identification No. 129) and Jakir Hussain (Serial No.04, Identification No.69) made on compassionate ground, is concerned, the aforesaid two persons are from Kamrup and Golaghat Districts respectively. The application forms of the aforesaid two candidates were not found by the learned Amicus Curiae in the records forwarded to the Court. The learned Amicus Curiae has further found that there is nothing in the record to indicate as to how the aforesaid persons have been identified as coming from the two districts in question. The learned Amicus Curiae in his report has also indicated about the selection of some candidates who have not qualified in the physical test and overwriting of marks of some other candidates thereby enabling such candidates to secure a place in the select list and simultaneously disabling other candidates from being included in the select list.

The records of Sibsagar District scrutinized by the Court with the assistance of the Judicial Officers who were present at the hearing substantiates the conclusions reached by the learned Amicus Curiae with regard to the two cases of compassionate appointments, as noted above. In so far as the selection of candidates who had not secured the qualifying marks in the physical test is concerned, it has been brought to the notice of the Court that in Sibsagar District the 15 marks that were required to be allotted to candidates who had qualified in the elimination race were not added to the marks secured in the three segments of the physical test. If the 15 marks that was required to be awarded to a candidate who had qualified in the elimination race is added to the marks secured in the three segments of the physical test, as required, the lacuna noticed by the learned Amicus Curiae i.e. some of the selected candidates had not secured the qualifying marks in the physical test, would cease to exist.

In so far as the over-writings in the marks of the selected as well as unselected candidates are concerned, a representative scrutiny of 100 cases has revealed

that in the cases of six selected candidates and 16 non-selected candidates there has been over-writing in the marks either in the physical test or viva voce test or in both. The particulars of such candidates are indicated below:

(A) Relating to selected candidates:

SI. No. Identification No. Date of events Name of the candidate. Over-writ- ings in marks of

1. 27 6.12.2004 Dipankar Saikia Viva voce and total
2. 168 6.12.2004 Deep Konwar Viva voce and total
3. 173 6.12.2004 Montu Saikia Viva voce
4. 388 6.12.2004 N. Boruah Physical test
5. 246 7.12.2004 Smt. N. Deori Physical test
6. 332 7.12.2004 Ms. D. Gogoi Physical test.

(B) Relating to non-selected candidates:

SI. No. Identification No. Date of events Name of the candidate. Over-writings in marks of

1. 47 7.12.2004 Ms. M. Chetia Physical test
2. 90 7.12.2004 S. M. Senchowa Viva voce
3. 197 7.12.2004 Ms. L. Chetia Viva voce
4. 201 7.12.2004 Smt. Bonti Devi Physical test
5. 213 7.12.2004 Smt. J. Chetia Physical test
6. 253 7.12.2004 Ms. A. Baruah Physical test.
7. 254 7.12.2004 Smt. M. Lahan Physical test
8. 255 7.12.2004 Ms. B. Payeng Grand total
8. 303 7.12.2004 S. B. Borgohain Physical test, viva voce and total.
9. 388 7.12.2004 Smt. L. Duara Physical test
10. 406 7.12.2004 Ms. M. Hazarika Physical test
11. 09 10.12.2004 Smt. J. Bordoloi Grand total
12. 77 7.12.2004 Biswaj it Gogoi Physical test and total
13. 35 10.12.2004 Monoj Gogoi Viva voce
14. 61 10.12.2004 Utpal Dihingia Viva voce
15. 92 10.12.2004 Madan Thapa Physical test

The effect of such over-writings is disastrous. The selected candidates have succeeded whereas the non-selected candidates have failed to succeed entirely because of the over-writings. In some of the cases the original marks in place of which fresh marks have been substituted by a process of over-writing cannot be deciphered by the Court. The percentage of such cases where such over-writings have taken place is also considerable. Furthermore, the number of candidates allowed to take part in the viva voce is beyond what has been indicated to be an acceptable number. Considering all the above circumstances, the Court is of the view that the selections held in Sibsagar District must be enblock set aside which I hereby do.

JORHAT DISTRICT

41. In Jorhat District against 345 total posts 10819 candidates (both males and females) had applied out of which 4731 candidates had qualified for the physical test.

From the report submitted by the learned Amicus Curiae it is evident that all the 4731 candidates who had appeared in the physical test were allowed to participate in the viva voce also. The same could not have been done in terms of the norms stipulated in the advertisement dated 21.8.2004 and the Government instructions dated 2.9.2004 and 8.9.2004. Only candidates who had qualified in the physical test by securing 25 or more marks could have been allowed to participate in the viva voce. That apart, holding of viva voce test for 4731 candidates over a period of 9 days i.e. over 500 candidates everyday is beyond what has already been stipulated by the Court earlier to be an acceptable number.

That apart, the learned Amicus Curiae in his report having indicated the names of some candidates in respect of whom certain over-writings in the marks secured by them were noticed by him, the Court had required the Judicial Officers assisting the Court in the scrutiny of the records to further verify the aforesaid aspect of the selection. The said Officers on completion of the scrutiny has submitted a report, the relevant part of which may be extracted below.

(a) A candidate named Nekibur Rahman, Roll No.3111, was initially given 21 marks in viva voce while he secured 27 marks in physical test. The total marks originally came to 48 but later on, the figure 21 given in viva voce was cancelled and in its place, 48 was awarded. Thus, the total marks came to 75 and he was selected. The figures 48 and 75 were written by different inks after cancelling the figures 21 and 48 respectively.

(b) Shri Ananta Dutta, Roll No.3314, secured 38 marks in physical test. He was given 38 marks initially in viva voce test making a total of 76. But later on, the figure 38 given in viva voce test was cancelled and in its place, 26 was written. Thus, the total marks came to 64. This candidate was not selected.

(c) Marks allotted in viva voce test to Shri Nabajit Senchowa, Roll No.3248, Shri

Ritul Kumar Gogoi, Roll No.3401, and Shri Nitumoni Saikia, Roll No.3394, were over written. It is difficult to ascertain the original marks given to these candidates.

(d) A candidate named Shri Bipul Hazarika Roll No.775 was originally given 39 marks in viva voce test but later on it was cancelled and in its place only 17 marks were given.

The findings mentioned above are in respect of a sample survey of the cases of about 100 candidates. If the result of such sample survey, indicated above, is correlated to the cases of 4731 candidates who were found qualified to take part in the selection from the stage of the physical test, surely and certainly, the chances of many more such irregularities emerging is certain. It would, therefore, be impossible for the Court to separate the good from the bad in order to maintain what may be the good part of the selection. In the above circumstances, the Court is of the view that the entire of the selection in Jorhat District must receive the Court's interference. The said selection is, therefore, being set aside.

NAGAON DISTRICT

42. Against a total number of 354 posts advertised 11142 candidates had applied. 7177 candidates were qualified in the elimination race and were thus selected to undergo the physical test. It is only such candidates who had qualified in the physical test who should have been allowed to participate in the viva voce. However, the scrutiny of the records has revealed that all candidates who had qualified for the physical test, i.e. 7177, were also interviewed. Though no such candidate has been eventually selected, the aforesaid fact not only points to an irregularity in the selection process but there is a much larger significance that emanates therefrom. The said fact adds up to the number of candidates who had to be interviewed everyday and keeping in view that the total number of candidates who were qualified in the elimination race and were eligible to participate in the physical test was 7177, the number of candidates who participated in the viva voce test must be understood by the Court to have exceeded the acceptable number thereby exposing the farcical nature of the viva voce test for which 50 marks out of 100 was allotted.

Grave irregularities in the selections held in Nagaon District has been reported by the learned Amicus Curiae in the report submitted to the Court as well as in his affidavit filed on 17.5.2005. The learned Amicus Curiae has reported that the candidates register was not maintained and application forms were received only from candidates who had qualified in the elimination race. The elimination race for the female candidates was 1 kilometer instead of 0.80 kilometer. The learned Amicus Curiae has further reported that 13 (thirteen) application forms of male selected candidates and 1 (one) application form of a female selected candidate were not in order and these were allowed to be corrected by the selected candidates after their selection. That apart, the learned Amicus Curiae further

found that all the selected candidates were awarded between 40 to 48 marks in the viva voce on account of which high marks such candidates could get selected.

In the additional affidavit dated 17.5.2005 filed by the learned Amicus Curiae it has been stated that there were some significant discrepancies in the award of the marks in the different segments of the physical test. Some candidates who had completed the 100 meter race within the stipulated time were not awarded any marks at all.

The records of Nagaon District have been scrutinized in detail. Two unsuccessful candidates i.e. the writ petitioner in W.P.(C) No. 1232/2005, namely, one Parthajyoti Bora [Identity No. 1(A) 1255] and as stated in W.P.(C) No.976/2005, one Ibrahim Ali [Identity No. 1 (B) 2401 had appeared in the selection. Against the identity numbers of the aforesaid two candidates one Ratul Maumdar and Afrun Ali respectively are found to have been selected.

4 (four) candidates, viz., Rakesh Sarma [Identity No. 1(C)- 939], ShakhRiku Rahman [Identity No. 1(A)-1486], Atiqur Rahman [Identity No. 1(C)-192] and Mridu Paban Bora [Identity No. 1(A)-314], though, under- aged have been selected. Their respective dates of birth are 30.4.86, 17.2.86 and 3.1.86.

A random survey of the final result sheet would go to show that, though not selected, a large number of candidates who had secured less than 25 marks in the physical test and, therefore, were not eligible to participate in the viva voce were allowed to do so. The particulars of such candidates that has been found in the random survey are as follows:

SI. No. Name of the candidate Identity No. Marks secured in physical test

1. Sri Bhaben Das i(cyi 170 24
2. Asraf Ali I(D)/904 22
3. Sashanka Sarma I(B)/50 22
4. Keshab Bora I(C)/687 24
5. JalaluddinLaskar 1 (C)/2167 23"/2
6. Upen Nath I(C)/398 22

The consequences of allowing such disqualified candidates to take part in the viva voce have already been noted. The same had the effect Of increasing the number of candidates who took part in the viva voce to an unacceptable number, unacceptable, because of an apparent inconsistency of such number with a fair process of interview. Again, candidates who have secured high marks in the physical test have failed to make it to the select list only by virtue of their low marks in the viva voce. As observed by the learned Amicus Curiae the scrutiny of the records have revealed that the application forms of 14 selected candidates, though defective, were allowed to be corrected subsequently. The Court has found on scrutiny of the relevant records that though a tabulation sheet

containing the marks allotted to the candidates in the different segments of the physical test have been maintained no supporting or contemporaneous record is available for verification of the entries in the said tabulation sheet.

In Nagaon District as evident from the pleadings made in W.P.(C) No.976 of 2005 candidates recommended by the local M.L. A. and the Zilla Parishad President have been selected. The fact that all such candidates recommended have not been selected and only some or few of them have been declared successful, an argument that has been advanced on behalf of the respondent State, can hardly merit acceptance. The several irregularities and illegalities in the selection process, as noted above, indicating a deliberate attempt to select some candidates while disqualifying others exposes the amenability of the persons responsible for the selection and it is in this context that the recommendations made by the local M.L. A. and the Zilla Parishad President, in conjunction with other circumstances that has to be considered by the Court. So considered, the Court is of the view that the entire process of selection in Nagaon District has been a farce which the Court cannot uphold. Accordingly, the selections held in Nagaon District is set aside.

DARRANG DISTRICT

43. Against 218 posts advertised in the Darrang District, 15233 candidates had applied out of which only 2309 candidates had qualified in the elimination race and were found to be eligible to take part in the physical test. Nearly 13000 candidates having been disqualified, though none of such candidates had approached the Court in the writ petitions covering the District in question, the Court desired to know the detail procedure adopted. It appears that all candidates were required to clear a height barrier which was manually erected and all those who had cleared the same were allowed to take part in the 1.6 kilometer race as also the different segments of the physical test. Thereafter, measurement of height, weight, chest etc. as well as preliminary medication examination to detect cases of flat feet, knock-knee and squint eye etc. was carried out. The procedure adopted, indeed, was ingenious.

The learned Amicus Curiae, in the report submitted, has indicated that the candidates register, though maintained, was not found to be in order, inasmuch as, in Volume VIII the names of the candidates against serial Nos. 15431 to 15470 and again from Serial Nos. 15491 to 15510 were blank and the entries against these numbers were made in another register i.e. Volume No.VI. The learned Amicus Curiae has reported that the majority of the selected candidates had secured very high marks in the viva voce and there are a large number of cases of candidates doing well in the physical test who have been given very low marks in the viva voce. In the report of the learned Amicus Curiae there is specific reference to one Sultan Ali (Serial No. 16135) of being selected, though he has secured only 16.5 marks in the physical test. The case of one Muzamil Haque (Serial No. 1139) was mentioned by the learned Amicus Curiae in his report with regard to over-writings in the marks in the, physical test.

The records of selection of Darrang District has been scrutinized by the Court. Such scrutiny has revealed several instances of candidates being selected though they had not qualified in the physical test. Over-writings in the marks awarded in the different segments of the physical test, in respect of a fairly large number of candidates, have also been noticed by the Court. The aforesaid two aspects of the matter were entrusted by the Court to the Judicial Officers assisting the Court to analyse the details thereof on a representative basis by taking a sample of 100-150 cases. The report submitted by the Judicial Officers indicate that in the aforesaid 19 cases, candidates have been selected though they had not qualified in the physical test and furthermore that in 21 cases of selected candidates there has been over-writings in the marks awarded to them in the physical test.

(A) Selected candidates who were disqualified in the physical test:

SI. No. SI. No. in the selec list Roll No. e:t Name of the candidate Marks secured in physical test Marks secured in viva voce

1. 13 1342 Hemanta Kalita 16.5 48.5
2. 15 4171 Abani Mohan Bora 22.5 46.5
3. 62 229 Utpal Deka 23.5 44.5
4. 22 20 Bharat Baruah 21.5 47
5. 25 16135 Sultan Ali 16.5 44.5
6. 34 1060 Ainal Haque 23 42
7. 35 1744 Bhavajyoti Deka 24.5 39.5
8. 46 190 P!""--ajit Kalita 22.5 46.5
9. 50 775 S./iiU Ali 23.5 44.5
10. 53 1035 Sahidul H. Faraji 22 46
11. 56 15451 Islamuddin Ahmed 22.5 46.5
12. 59 1383 Bhabesh Deka 24 44
13. 60 2301 Billal Hussain 23.5 39.5
14. 62 4217 Jayanta Deka 20.5 42.5
15. 68 2636 Labakumar Baruah 22.5 45.5
16. 75 398 Pradip Bora 19.5 43.5
17. 77 1791 Rahul Alam 23.5 43.5
18. 88 1822 Teharu Gour 20.5 42.5
19. 120 1186 Mahfil Hussain 15.5 46.5

(B) Selected candidates whose marks in the physical test shows over-writings:

SI. No. Serial No. No. in the select list Roll No. Name of the candidates

1. 134 53 Chitra Devi
2. 28 127 Sangita Deka
3. 95 5092 Deben Saharia
4. 5 5807 Dipak Sarmah
5. 112 5911 Jitetn Kachari
6. 67 6643 Sambara Basumatari
7. 6687 Pankaj Sarmah
8. 81 6799 Rudra Daimari
9. 60 6867 NakulNath
10. 52 6871 Kanpai Bania
11. 24 15331 Abhinandan Deka
12. 56 15451 Islamuddin Ahmed
13. 6 15781 Mustafa Kamal
14. 10 15785 Atikur Rahman
15. 5 15968 Ibrahim Ali
15. 5 15968 Ibrahim Ali
16. 14 16417 Tamzidul Islam
17. 4 16427 Ahadul Islam
18. 19 16432 Nurul Islam
19. 74 850 Anju Beck
20. 39 1131 Mozzammil Hoque
21. 28 1883 Jagadish Deka

In view of the facts and circumstances noted above, the Court is of the view that the entire selections held in Darrang District should be declared null and void by the Court. Accordingly, the said selection is set aside.

SONITPUR DISTRICT

44. As against 414 posts advertised, 12,433 candidates had applied out of which 5399 candidates were found qualified for the physical test. It appears that practically all the candidates who had qualified for the physical test were also

interviewed. The above fact by itself would have the effect of rendering the interviews held and consequently the entire selections to be a farcical exercise. The fact that none of the candidates who had not qualified in the physical test were eventually selected would detract from the fundamental question at issue? whether over 5000 candidates could have been interviewed in a fair and objective manner in a span of 9 days.

Though the learned Amicus Curiae in his report has stated that no discrepancy in award of marks in the physical test and award of uniform marks in the viva voce vis-a-vis the written test was noticed by him, the Court has not been able to persuade itself to wholly agree with the views expressed by the learned Amicus Curiae. Though the marks obtained by the candidates in the different segments of the physical test have been noted in a tabulation /compilation sheet, the entries therein are not supported by any contemporaneous records. There are instances of a large number of candidates who had fared well in the physical test being given low marks in the interview/viva voce. Two selected candidates i.e. Mridul Bora (Serial No.69 in the select list for DEF) and Diganta Das (Serial No.222 in the select list of 12th A.P.Bn.) were under- aged, their date of birth being 17.1.86 and 2.2.86 respectively. In such circumstances, particularly having regard to the number of candidates who were subjected to the viva voce test during the 9 days of the selection, the Court is of the view that the selections held in Sonitpur District has not been fair and acceptable. The same, therefore, is being set aside.

GOALPARA DISTRICT

45. Against a total of 218 posts advertised, 5602 candidates had applied out of whom 1907 candidates had qualified in the physical test.

The learned Amicus Curiae, in his report, has stated that while no discrepancy could be noticed in the award of marks in the physical test, however, the marks secured by the selected candidates in the viva voce test is high i.e. between 35 to 46.

The records of the selection held in Goalpara District has been scrutinized by the Court. Such scrutiny has revealed that the performance of the candidates in the different segments of the of the physical test have been entered in a chart/tabulation : .heet. It has been noticed by the Court that the entres made in the said chart/tabulation sheet are in the same hand-writing. No contemporaneous records have been produced before the Court. Accordingly, it was considered proper to specifically scrutinize about 150 cases on a representative basis to determine the validity of the selections made. The survey done by the Court with the assistance of the Judicial Officers was in respect of both selected and unselected candidates. Such survey has revealed serious anomalies in the selection, details of which are noted below.

The marks awarded to the following selected candidates either in the physical test or in viva voce or both has been over-written and higher marks have been

awarded thereby facilitating/enabling their selections:

SI. No. Name of the candidates Roll No.

1. Ratul Hazarika 3582
2. Md. Mafidul Islam 3675
3. Upen Deka 3683
4. Md. Babul 3704
5. Jahirul Islam 3890
6. Pranab Kumar Hazowori 3894
7. Mofidul Islam 1202
8. Subhas Rabidas 1460
9. Baharul Islam Khan 604-A
10. Jiaur Rahman 4075
11. Lakhyadhar Deka 4099
12. Nurul Amin 4519
13. Goolam Mehboob 4522
14. Ms. Putuli Das 01
15. Ms. Kalpana Rabha 212
16. SubrataDeka 1519
17. Lakhindra Rabha 1598
18. Dip Kumar Roy 1890
19. SurajitNath 1924
20. Monmohan Nath 410
21. Biplab Roy 2572
22. Babul Chakraborty 2583
23. Tarani Rabha 2679
24. Tahib Uddin Ahmed 2691
25. Dhiraj Saikia 2905
26. Nakib Hussain Ansari 3032
27. Akhil Nath 3055
28. Rakesh Tiwari 3187

The above scrutiny has also revealed that in the following cases because of over-writings in the marks awarded the concerned candidates have failed to qualify:

SI. No. Name of the candidates Roll No.

1. Sunanda Sinha 3694
2. Sukram Rabha 2332
3. Md. B. Ali 4674
4. Hemanta Kalita 4753
5. Ms. Archana Das 45
6. Ms. Urmila Das 170
7. Arun Kumar Das 1603
8. Santosh Chakraborty 2580
9. Chandan Hazowary 2862
10. Ranjit Rabidas 2921
11. Nojrul Islam 2928

The picture that emerges from the above is that a fairly large number of candidates out of a repi*; tentative sample of 150 has been found to have qualified on account of over- writings whereby high marks have been awarded to such candidates. Similarly, on account of similar over-writings, candidates who should have been selected have been disqualified. The above facts has to be construed by the Court as a perversity in the selection process. In such circumstances, the Court is of the view that the entire of the selections in Goalpara District should be interfered with which I hereby do. The said selections are consequently set aside.

MORIGAON DISTRICT

46. The number of posts advertised for Morigaon District is 86.4819 candidates had applied and 1407 candidates had qualified for the physical test.

The conclusions reached by the learned Amicus Curiae upon scrutiny of the relevant records, as stated in his report, is to the effect that proper records of selection has not been maintained and certain discrepancies had been noticed by him in the award of marks in the physical test. The ultimate conclusion drawn by the learned Amicus Curiae is that it was difficult to ascertain as to whether the selected candidates were rightly and properly selected.

The records of the selection in respect of Morigaon District has been scrutinized in detail by the Court as well as separately by the Judicial Officers assisting the Court. Though a register of the candidates who took part in the elimination race, the performance of the candidates therein as well as the performance of those

candidates who had qualified for the physical test have been maintained under the signature of the Commandant, 16th A.P.(I.R.) Battalion and the Superintendent of Police, Morigaon and the marks secured in the oral interview has also been recorded date-wise, certain anomalies have been noticed by the Court in the selections held in Morigaon District.

16 of the 86 selected candidates have not secured the qualifying marks in the viva voce. The argument advanced by Sri M. Bhuyan, learned counsel for some of the selected candidates in Morigaon District, to the effect that the award of marks in the viva voce in the District has been on the lower side and therefore the aforesaid irregularity may be overlooked can hardly find acceptance of the Court. If the norms for selection had stipulated a minimum of 25 marks as the qualifying marks in the viva voce test it is difficult to see as to how selection of candidates who had not secured the qualifying marks in the viva voce can be maintained. The names of the 16 candidates who, though selected, had not secured the qualifying marks in the viva voce is mentioned below:

SI. No.	Name of the candidates	Identifica	Marks in	tion No.	viva voce	SI. No.	Name of the candidates	Identifica	Marks in	tion No.	viva voce
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1. Md. Tajuddin Ahmed 98 23
2. Simanta Pator 1832 22
3. Md. Adilur Rahman 5678 22
4. Jagannath Bordoloi 2566 22
5. Md. Jehirul Islam 4882 24
6. Paban Kumar Das 9 21
7. Netrokomal Deka 477 23
8. Trilochan Bora 3706 23
9. Bihubor Medhi 332 22
10. Tultul Kr. Nath 323 22
11. Zehirul Islam 108 20
12. Rajiv Nath 4924 18
13. M. Chakraborty 4592 20
14. Amrajul Hoque 4620 22
15. Abdul Kadir 263 18
16. Adilur Rahman 5678 22

2 (two) selected candidates, namely, Smti Pratima Das (Identification No.2796), Hannan Kotoki (Identification No.941) are under-aged and one Md. Adilur

Rahman (Identification No.5678) is over-aged. That apart, over-writings in the marks awarded to some of the candidates have also been noticed by the Court. Some such instances are the candidates with Identification No.5060, 5657,5635 and 3868.

In the above facts, the Court is of the opinion that it would be proper to take a view that the selections held in Morigaon District ought not to be maintained. The said selections are, therefore, set aside.

BARPETA DISTRICT

47. As a register of candidates in the case of Barpeta District has been maintained only from the stage of completion of the elimination race wherein 5540 candidates had qualified, the total number of candidates who had applied for 210 posts advertised is not known. All the candidates who had qualified in the elimination race and found to be eligible for the physical test were allowed to participate in the viva voce test, as reported by the learned Amicus Curiae. In other words, over 5540 candidates were interviewed in a span of 9 days. The average number of candidates interviewed everyday is far in excess of what has been indicated by the Court to be an acceptable number consistent with a fair selection process.

The result of the performance of the candidates in the different segments of the physical test were recorded in tabulation sheets having separate columns for performance and marks. The tabulation sheet is stated to have been passed from one table to another for recording the performance of the candidates in the different segments of the physical test and award of marks on that basis. After the candidates were interviewed and marks were awarded for such interview, the total marks secured by the candidates were added up and thereafter physical measurement of height, weight, chest etc. were taken and many candidates had been disqualified at such a stage though they had gone up to the stage of personal interviews. The procedure adopted hardly conforms to the requirements/norms spelt out by the advertisement dated 21.8.2004 and the Government instructions issued.

In W.P.(C) No.2269 of 2005 an allegation has been made that some of the selected candidates were so selected on account of a written request made by the Minister Irrigation. Though in the report of the learned Amicus Curiae the number of such candidates who have been selected is stated to be 3, at the hearing the learned Amicus Curiae had submitted that the said written request of the Hon"ble Minister is in respect of 43 candidates out of whom 19 have been selected. The figure "3" mentioned by the learned Amicus Curiae in his report has been explained to be on account of the fact that the document made available to the learned Amicus Curiae was not legible. The learned Amicus Curiae has also submitted a list of the marks secured by such 19 candidates in the physical test as well as viva voce. Though the marks secured by most of the aforesaid 19 candidates do not reflect award of any abnormally high marks in the

viva voce test, yet having regard to the very fragile nature of the viva voce segment of the selection on account of the participation of over 5500 candidates therein, I am of the view that the just and proper conclusion that must be reached in the totality of the facts of the case is that the selections held in Barpeta District should receive this Court's interference. Accordingly, the said selections are set aside.

4th A.P.Bn.. G.R.P.. C.I.D.. S.B. and A.C.B.

48. The selections for 206 posts for the 4th Assam Police Battalion, 95 posts for S.B., 10 posts for G.R.P., 6 posts for C.I.D. and 2 posts for A.C.B. were held together in the 4th Assam Police Battalion Headquarters at Kahilipara. 14861 candidates had applied out of which 8761 candidates were found to be eligible to take part in the physical test after being qualified in the elimination race. All such 8761 candidates were allowed to appear in the viva voce. The result thereof is that, on an average, nearly 1000 candidates were interviewed everyday after completion of the other segments of the selection. The sheer number of the candidates who had been interviewed everyday, on an average basis, leaves no doubt in the mind of the Court that the selection process could not have been fair, reasonable and transparent.

Not only that, the report of the learned Amicus Curiae and the verification of the records of the selection by the Court have shown several other discrepancies. While a large number of selected candidates have been awarded exceptionally high marks in the viva voce, conversely, candidates who had secured high marks in the physical test have been awarded very low marks in the viva voce. There are some instances of over-writings in the marks awarded to some of the candidates. However, in view of the conclusions reached by the Court with regard to the acceptability of the selection process in view of the large number of candidates who were interviewed on an average daily basis, further specific mentioning of details of the other illegalities in the considered view of the Court, would not be required. For the same reason, the contention advanced on behalf of the petitioners that in case of the recruitment to the 4th Assam Police Battalion there has been a significant influx of candidates from other Districts thereby giving rise to a reasonable inference of a conspiracy to select a chosen few is not considered necessary to be dealt with.

In view of the above discussions and for the foregoing reasons the entire of the selections held in 4th Assam Police Battalion's Headquarters at Kahilipara are hereby set aside.

COMMANDO BATTALION and KAMRUP D.E.F.

49. As against 105 posts advertised for the Commando Battalion and 26 posts advertised for the Kamrup D.E.F. 4574 candidates had applied. 1930 candidates had qualified for the physical test.

The learned Amicus Curiae in his report has stated that apart from three

candidates selected against the quota for compassionate appointment who had not secured the qualifying marks in the viva voce, no other discrepancy could be detected by him.

The scrutiny of the records of selection by the Court indicates that the elimination of candidates at different stages of the selection up to the stage of the physical test is not substantiated by the records maintained. However, as none of the aggrieved petitioners belong to the aforesaid category of candidates, the said question is not being gone into by the Court.

The records scrutinized would go to show that the following candidates who were under-aged as well as over-aged have been included in the select list, which could not have been done:

SI. No. Name of the Roll No. candidates Date of birth

1. Kailash Kalita 3658 01.4.86
2. Bipul Boro 0134 05.6.87
3. Rinu Ahmed 2433 01.10.88
4. Dhiraj Mazumdar 3559 01.01.87
5. Sonu Kumar Singh 4214 11.02.86
6. Jayanta Sarma 1150 31.7.86
7. Gitanjali Boro 2957 26.10.88
8. ElaRaniKakati 0201 01.3.74

(over-aged)

3 (three) candidates selected against the quota for compassionate appointment i.e. Samir Rajbongshi (Roll No.883), Monika Medhi (Roll No.056) and Ajoy Phukan (Roll No.017) had secured 10, 17 and 15 marks respectively in the viva voce. They had, therefore, not qualified in the viva voce and could not have been selected. Furthermore, over- writings in the marks awarded to Archana Kumari Tiwari (Roll No.0207), Mukut Choudhury (Roll No.4444), Dwipen Chandra Das (Roll No.4122), Dhruva Das (Roll No.0023), Sonu Kumar Singh (Roll No.4214) and. Nor Hussain Ali (Roll No.4215) have been noticed by the Court. The over-writings have been made to award marks higher than originally awarded and it is on account of such over-writings alone that the aforesaid candidates have been selected. Similarly, one Gitumoni Medhi and Pinish Abul Hoque who would have been selected on the basis of the marks originally awarded to them have been disqualified by over-writings whereby such marks have been reduced. The aforesaid irregularities have been noticed by the Court on a sample survey of the cases of selected as well as unselected candidates. An established perversity in the selection process, therefore, is disclosed.

It has furthermore come to the notice of the Court that all candidates who have been selected have been given 25 and more marks in the viva voce, whereas candidates who had not been selected were uniformly given below 15 marks in the viva voce. A conscious and mechanical approach to select or not to select a particular candidate is, therefore, noticeable.

In view of the above facts revealed by the scrutiny of records of selection, I am of the view that the entire of the selections held for the posts advertised in respect of the Commando Battalion and Kamrup D.E.F. should receive the Court's interference. The aforesaid selection is therefore set aside.

10m ASSAM POLICE BATTALION

50. As against 117 posts advertised 6914 candidates had applied out of whom 2464 candidates had qualified for the physical test. All the candidates who had qualified for the physical test were allowed to appear in the viva voce. Therefore, the number of candidates who had appeared in the viva voce i.e. 2464 brings the case within the border line of serious doubt with regard to the fairness of the selection process having regard to the acceptable number indicated by the Court. The conduct of the selections therefore will have to be understood with due care and caution before reaching any particular conclusion.

The records of the selection scrutinized by the Court would go to show that there are some candidates who were either under-aged or over-aged but have been selected. The particulars of such candidates are noted below:

(A) Under-aged selected candidates:

SI. No. Name of the candidates Roll No. Caste Date of birth

1. Rupan Khanikar Not specified in the select list -OBC 12.10.87
2. Rantu Islary -do- ST 01.2.86
3. Tridip Dutta 1009 Gen 10.4.86
4. Pankaj Kumar 1277 Gen 03.3.87
5. Kushal Bezbarua Not specified. -OBC 01.2.86
6. S. I. Mazumdar 353 Gen 29.1.86
7. Sunil Choudhury 424 Gen 08.8.86

(B) Over-aged selected candidates:

SI. No. Name of the candidates Roll No. Caste Date of birth

1. N Ipon Phukan Not specified in the select list -OBC 10.1.79 (1.1.71 as per Employment Exchange)
2. Dharmendra Barua -do- OBC 27.12.76

The learned Amicus Curiae, in his report, has submitted that exceptionally high marks had been given to the selected candidates in the viva voce test. While almost all the selected candidates were given exceptionally high marks in the viva voce, a sample survey of about 150-200 cases has indicated that as many as 28 candidates who had secured very high marks in the physical test have not been selected on account of the low marks given to them in the interview. The particulars of such 28 candidates are mentioned below:

SI. No. Name of the candidates Marks in physical test Marks i viva voi n Total ce marks obtained

1. Amal Rabha 41 "/2 26 67 !4

2. Ms. Jeuti Das 38 "/2 24 62"/2

3. Mitun Deb 38 21 59

4. 5.

Krishna Mohilari Bilash Rabha 43 14 42 "/2 19 19 62 14 61 "/2

6. Diganta Deka 40 24 64

7. Manoj Rabha 44 "/2 22 66"/2

8. Trailokya Talukdar 35 14 0 35 "/2

9. Utpal Pathak 43 15 58

10. Binod Ch. Das 44 14 9 53 14

11. Krishna Das 38 22 60

12. RanjitDeka 41 20 61

13. Jintu Mondal 41 "/2 20 61 "/2

14. Babul Konwar 38 "/2 22 60 1/2

15. Palash Gogoi 41 24 65

16. Pabitra Kr. Das 43 18 61

17. David Phangcho 40 27 67

18. Mehar Jamal Ali 41 14 26 67 "/2

19. Kandarpa Bora 44 26 70

20. Ram Kumar Boro 41 21 62

21. Probin Kumar Bore >41 24 65

22. Jitumoni Sharma 40 Vi 22 62 14

23. Prasanna Rongpi 40 20 60

24. Ranjit Kumar Rabh a 40"/2 24 6414

25. Diganta Das 40 Vi 15 55 14

26. Jabbar Ali 40 10 50

27. Dhankumar Hussa in 46 "/2 20 66"/2

28. Kamaleswar Roy 43 27 70

The qualifying marks for inclusion in the select list in the 10th A.P. Battalion has been very high i.e. above 70%. In such circumstances the award of exceptionally high marks in the viva voce to the selected candidates and similarly award of low marks to unselected candidates who had otherwise secured very high marks in the physical test would have its own significance. A definite pattern having emerged from the scrutiny undertaken which points to a strong possibility of conscious preconceived decisions, the Court is left with a serious doubt as to the fairness of the selections held in 10th Assam Police Battalion. The Court, therefore, is inclined to take the view that it would be a more prudent exercise to interfere with the selections than to maintain it. Consequently, the selections held in 10th Assam Police Battalion is hereby set aside.

51. The records of the selections held in all the Districts/Centers pursuant to the advertisement dated 21.8.2004 having been dealt with in the preceding paragraphs and the conclusions of the Court in respect of each of such selections having been recorded nothing further survives for consideration in this group of cases. No consequential direction for consideration of the cases of the petitioners or of the other candidates for selection and appointment in any of the cases where interference has been made can be issued in view of the conclusions reached by the Court with regard to the acceptability of the selection process in question. All the writ petitions are, therefore, ordered to be treated as closed in terms of the findings and conclusions reached and recorded.