
(2020) 12 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition No. 940, 755 Of 2020 (S/S), 2114, 2201 Of 2019 (S/S)

Pawan Nath Goswami & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 04-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 227

Citation : (2020) 12 UK CK 0011

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : R.K. Raizada, M.S. Tyagi, M.C. Pant, Shashank Shekhar Singh, Bhupesh Kandpal, Anjali Bhargava, P.C. Bisht, N.P. Sah, Sushil Vashistha, Pankaj Purohit, N.S. Pundir

Final Decision : Dismissed

Judgement

Lok Pal Singh, J

1) Aforementioned writ petitions, under Article 226 of the Constitution of India, have been filed by the petitioners seeking writ in the nature of

certiorari quashing the Office Order dated 13.08.2019, passed by the Secretary (Power) as well as the report dated 20.06.2018 submitted by the

Committee. A further writ in the nature of mandamus has been sought commanding and directing the respondent no. 3 to give joining to the petitioners

as per the merit list dated 08.02.2018 pursuant to the advertisement dated 21.09.2016 on the post of Junior Engineer (Electrical and Mechanical

Group) in Power Transmission Corporation of Uttarakhand Ltd. and Uttarakhand Power Corporation Ltd.

2) Since identical questions of law and facts are involved in the aforementioned writ petitions, therefore, the same are taken up together and are being

decided by this common judgment for the sake of brevity and convenience.

3) Petitioners (in WPSS no. 940 of 2020) are selected candidates for the post of Junior Engineer (E&M) and their names figured in the final select list

dated 08.02.2018. Petitioners in WPSS no. 755 of 2020 and WPSS no. 2201 of 2019 are those, who have no concern in any manner whatsoever with

Genius Coaching Institute, and were successful candidates in the said examination. Writ petition no. 2114 (S/S) of 2019 has been filed by the

petitioners, who were students of Genius Coaching Institute and have qualified the said examination.

4) Brief facts leading to filing of aforementioned writ petitions are that an advertisement dated 21.09.2016 was issued for recruitment on the post of

Junior Engineer (Electrical / Mechanical) Post Code 52.1 and 52.2. Petitioners being desirous of becoming Junior Engineers participated in the

selection process. Initially, in the advertisement dated 21.09.2016, there was no condition of opting for a particular branch and attempting question

paper of that branch, however, on the request of certain candidates, respondent no. 2 vide publication dated 15.09.2017, provided that a candidate can

exercise his option to attempt the question relating to one of the five branches at the time of examination and that for all candidates only 30 questions

would be common and compulsory and rest 70 questions would be set in five different branches / discipline and the candidate had an option to attempt

those 70 questions of either of the branch / discipline of his choice. Thereafter, examination was held on 05.11.2017 and the final result was declared

on 08.02.2018 and the petitioners got selected and their name figured in the merit list. On 06.03.2018, the process of document verification was carried

out by the appropriate authority.

5) Certain students who could not qualify the examination and make in the final list filed WPSS no. 354 of 2018, Jagdish Chand Pandey and others Vs

State of Uttarakhand and another before this Court. It is stated that the said writ petition was preferred alleging that certain 66 candidates from one

coaching Institute have got selected in the selection process and such selection casts a doubt over the fairness of the selection process and hence the

final select list be quashed. A further ground was taken that since five different papers for five different branches were provided, as such, separate

merits for five different branches should have been made. The said writ petition,

along with analogous matter, was disposed of by a Co-ordinate

Bench of this Court vide judgment and order dated 25.03.2019. The operative portion of the judgment is extracted hereunder:

“In such view of the matter, there is no point in keeping these writ petitions pending. Accordingly, writ petitions are disposed of with liberty to the

petitioners to make appropriate representation within two weeks to the Secretary, Energy, Government of Uttarakhand in respect of the inquiry report

and the tentative decision taken by the Selecting Body to cancel the entire selection. The Secretary Energy, Government of Uttarakhand shall

thereafter examine the matter and take appropriate decision, in accordance with law, within three months. Consequential order, if any, shall be passed

within eight weeks from the date of final decision by the Secretary Energy.

It is made clear that no personal hearing would be given to anyone and Secretary (Energy) shall take decision independently, without being influenced

by any observation made by the Selecting Body.”

6) Subsequently on modification application no. 266 of 2019 being filed by the applicants in aforesaid writ petition, the Co-ordinate Bench of this Court

modified the order dated 25.03.2019. The relevant portion of the order dated 03.04.2019 is excerpted hereunder:

“It is contended on behalf of the applicants in the modification application that they were declared successful in the selection for the post of Junior

Engineer and unfounded allegations were made against their selection. Thus, it is prayed on behalf of the applicants that the order dated 25.03.2019

may be modified and the applicants may also be permitted to make representations before the Secretary, Energy so that they may also have their say

in the decision making process.

Considering the facts mentioned in the affidavit filed in support of modification application and also in the interest of justice, modification application is

allowed.

Order dated 25.03.2019 is modified and in the third line of paragraph no. 7 of the said order, after the expression “petitioners” other

stakeholders” be added.

Time for making representation by other stakeholders to the Secretary, Energy is enlarged by another two weeks from today.”

7) It is stated that subsequently Uttarakhand Subordinate Service Selection Commission (hereinafter referred to as "the Commission") on its own motion ordered for an inquiry by the District Magistrate vide its letter dated 07.03.2018. As per the aforesaid letter, the enquiry was supposed to be conducted only in respect of Genius Coaching Institute, Roorkee from where 66 candidates were selected and while issuing the letter dated 07.03.2018, it was also observed that names, addresses and mobile numbers of such 66 candidates were also forwarded to the District Magistrate with a request to conduct an enquiry. It is alleged that there was no order to initiate inquiry by this Court nor was there any prayer raised in the WPSS no. 354 of 2018 to this effect.

8) Pursuant to the letter dated 07.03.2018, the District Magistrate, Haridwar constituted five member committee headed by Additional District Magistrate (Finance & Revenue) on 16.04.2018. Thereafter, the Committee conducted the enquiry and submitted the report on 20.06.2018 to the District Magistrate, Haridwar.

9) In compliance of judgment and order dated 25.03.2019, passed by this Court, the Secretary (Energy), State of Uttarakhand took a final decision on 13.08.2019 for cancellation of entire selection process. It is alleged that the Secretary (Energy) without affording any opportunity of hearing to the petitioners cancelled the entire selection process holding that during moderation process mobile phones were used. It is further alleged that despite the pendency of WPSS no. 2114 of 2019 and WPSS no. 2201 of 2019 before this Court, fresh advertisement has been issued by the respondents without even considering the fact that the matter is sub-judice before this Court. Hence, aforementioned writ petitions.

10) Counter affidavit has been filed by respondent no. 1 in WPSS no. 2114 of 2019. It is averred in said counter affidavit that the order dated 13.08.2019 was passed by respondent no. 1 in compliance of the directions of this Court vide orders dated 25.03.2019 and 03.04.2019, passed in WPSS no. 354 of 2018, titled as Jagdish Chandra Pandey Vs State of Uttarakhand and others. The aforesaid order was passed after due consideration of facts and circumstances as well as statutory provisions such as Uttarakhand Subordinate Service Selection Commission Act, 2014 and rules made thereunder and the law laid down by Hon'ble Apex Court in

2017 (5) SCALE 433, Gohil Vishwaraj Hanubhai Vs State of Gujarat.

It is further averred that the selection and appointment of candidates for the post of Junior Engineer (Civil) and Junior Engineer (Information

Technology) was not the subject matter of the aforesaid WPSS no. 354 of 2018 and other connected writ petitions. The controversy involved in the

aforesaid writ petition was regarding the selection of Junior Engineer (Electro Mechanical). It is also averred that selection and appointment of Junior

Engineer (Civil) and Junior Engineer (Information Technology) was not the subject matter of enquiry by District Magistrate, Haridwar. It is

specifically averred that selected candidates for the post of Junior Engineer (Civil) and Junior Engineer (I.T.) have been given appointment in

compliance of judgment and order passed by this Court in WPSS no. 2243 of 2018 and WPSS no. 354 of 2018.

11) Separate counter affidavit has been filed by respondent no. 3 stating therein that this is second round of litigation between the parties. The case

has a checkered history which trickled down with the filing of WPSS no. 354 of 2018, wherein challenge was made to the selection process conducted

pursuant to the advertisement dated 21.09.2016 and select / merit list dated 06.02.2018 of Junior Engineer (Electrical / Mechanical) groups in both the

Corporations. A further prayer has been made for preparation of a fresh merit list for each Branch group-wise for the post in question. It is averred

that in WPSS no. 354 of 2018 allegations about rampant corruption in the selection process were made. It was contended in said writ petition that 66

candidates from one Branch, who took coaching from one Coaching Institute namely, Genius Coaching Education Point, Malviya Nagar, Roorkee

were selected and found placed in the impugned select list. It is further averred that a copy of said writ petition was served upon the respondent

Commission and this fact of alleged corruption raised a question mark on the fairness, impartiality and transparency of the selection conducted by the

respondent Commission. Therefore, it was decided that the matter should be investigated through District Magistrate, Haridwar vide letter dated

07.03.2018. District Magistrate, Haridwar constituted a five members committee headed by A.D.M. (Finance & Revenue) for conducting the inquiry.

The committee submitted its inquiry report dated 20.06.2018. When the inquiry report was placed before the Commission, it took a unanimous decision

dated 09.07.2018 and decided to cancel the examination and conduct the re-examination subject to the decision of this Court in WPSS no. 354 of

2018. During the pendency of WPSS no. 354 of 2018, various writ petitions were filed by the candidates who were selected in the examination

questioning the decision of the respondent Commission with a prayer not to cancel the examination. All those writ petitions were clubbed together with

WPSS no. 354 of 2018 and were disposed of vide judgment and order dated 25.03.2019 with certain directions to the Secretary (Energy), Government

of Uttarakhand. Thereafter, Secretary (Energy) after receiving the representations from the successful as well as unsuccessful candidates in the

examination earlier held pursuant to the advertisement from the selection of Junior Engineer (Electrical / Mechanical) and meticulously examined the

submissions raised by these candidates and took a decision that the examination shall be cancelled with immediate effect and directed to conduct re-

examination by the respondent Commission. It is alleged that now the petitioners have challenged the decision taken by the Secretary (Energy) dated

13.08.2019 by filing instant writ petitions. It is stated that there is no illegality in the order dated 13.08.2019 and all the petitioners can participate in the

examination which is to be re-held by the respondent Commission. It is also stated that only those candidates who appeared in the last examination will

be eligible for the examination and the pattern of examination will also remain the same.

12) In reply to the counter affidavit it has been stated in the rejoinder affidavit that petitioner in WPSS no. 354 of 2018 failed to qualify the competitive

examination in question and has projected a false and concocted story and by playing fraud succeeded in his oblique motive. It is alleged that the

Commission took the sole defence as narrated in its counter affidavit to justify the impugned order which is based on the report of the District

Magistrate. The impugned order passed in the writ petition is also based upon the recommendation of the Commission which is also contrary to the

judgment of this Court. It is further alleged that the Commission acted arbitrarily and took a decision with mala fide intention and thereby caused

wrongful loss to the petitioners which is contrary to law and the judgment rendered by this Court. The role of the Commission to justify the impugned

order on the basis of its own wrong is also questionable. The contents of paragraph no. 7 of the counter affidavit are denied. It is stated that mere fact

that amongst 66 selected candidates 32 have passed their diploma from K.L. Polytechnic Institute cannot be a ground to suspect the ability of the

candidates. Elaborating the same by example it is stated that if some persons obtained their degree from IIT Roorkee, IIT Delhi etc. and got success

in the competitive examination then questioning their ability on the ground that they have imparted their degree from these institutes is itself inhuman.

Similarly defending qualification of the coaching faculty of the Genius Institute it has been stated that Mr. Chandra Shekhar Tiwari is having B.Tech

Degree from Pant Nagar, M.Tech Degree from IIT Delhi and as per AICTE regulation he is fully qualified to become an Asstt. Professor, thus

questioning his eligibility is not justified. The District Magistrate, Haridwar has ceased the mobile during the inquiry and also checked the laptop and

bank account of the concerned persons and did not find any connection of the coaching faculty or the proprietor of the Institute with the K.L.

Polytechnic faculties. It is stated that the impugned order is passed with grave influence of the decision of the selecting body which is based on

District Magistrate's inquiry report and not an independent one. There is element of malice, malafide and bias, hence the same is liable to be

quashed.

13) Heard learned counsel for the parties and perused the counter affidavits, rejoinder affidavits, as also other entire documents brought on record.

14) Learned counsel for the petitioners would submit that the Commission has accepted the report of the District Magistrate in toto which was made

basis for canceling the examination, whereas this Court has clearly directed that the Secretary (Energy) shall take an independent decision without

being influenced by any observation made by the selecting body. Therefore, the impugned order is totally being influenced by the selecting body based

on the report of the District Magistrate and cannot sustain in the eyes of law. The respondent no. 3 being a statutory body must be fair in its action.

He would further submit that the respondent no. 3 cannot blame or cancel the selection process of his own wrong on the point of mobile phones used

by the paper setters during the moderation as it has no concern with the respondents. It is contended that respondent no. 3 had also conducted other

competitive examinations previously and same process of moderation might have been used by the paper setters. It is argued that out of these 66

selected candidates, some students who took coaching from Genius Coaching Institute were also previously selected in other competitive examinations

and the Institute has previously good selection record. It is contended that out of 66 selected candidates, 39 candidates belongs to S.C., S.T., O.B.C. It

is further argued that out of these 66 candidates, who obtained their coaching from Genius Coaching Institute have previously also qualified various

competitive examinations and some of them got selected and appointed by UJVJL, THDC, PWD, RWD, PGCIL, Jal Sansthan. The recruitment

process for recruitment in PWD, Jal Sansthan and RWD was conducted by respondent no. 3 herein. It is specifically and categorically stated that in

the inquiry report submitted by the committee it was found that the study material provided by the said Institute to its students did not match with the

questions which were asked in the examination. Lastly, it is contended that the respondent no. 1 had passed the order impugned in an arbitrary manner

which is nothing but reproduction of the report of the committee, thus the impugned order is liable to be quashed.

15) Learned counsel for the petitioner placed reliance on the following judgments in support of his contention:

i) Union of India Vs Rajesh P.U. Puthuvalnikathu, (2003) 7 SCC 285

ii) Inderpreet Singh Kahlon Vs State of Punjab, (2006) 11 SCC 356

iii) Joginder Pal Vs State of Punjab, (2014) 6 SCC 644

16) In Union of India Vs Rajesh P.U. Puthuvalnikathu (2003) 7 SCC 285, Honâ??ble Apex Court while dealing with the legality of the decision of

the CBI in respect of canceling the entire selection process had emphasized the need to segregate the tainted and the untainted candidates. In

Inderpreet Singh Kahlon Vs State of Punjab, (2006) 11 SCC 356 it has been held by the Honâ??ble Supreme Court that the High Court was not right

in treating all cases identically and the matter was remitted to the High Court for fresh consideration. In Jogender Pal Vs State of Punjab (2014) 6

SCC 644, it has been held by Honâ??ble Apex Court that though the tainted candidates have rightly received their comeuppance, but the innocent

persons cannot be punished with them.

17) On the strength of judgments (supra), learned counsel for the petitioners vehemently argued that there was no just and proper reason to cancel the

entire selection process. Sufficiency of material for forming an opinion is a vital

aspect which deserves consideration, but in the present case, the sole and principle ground to cancel the selection process is in regard to using of mobile phone in the moderation process. Apart from this, there is no sufficient material found proved which may warrant cancellation of the selection process. It is contended that neither the petitioners nor any other selected candidates were heard at any stage, before cancellation of the selection process, which is contrary to the established principle of natural justice.

18) Per contra, learned Addl. Chief Standing Counsel for the State placed reliance on the following judgments in support of her contention:

i) Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Limited & others Vs Surendra Nath Pandey and others, (2011) 15

SCC 81.

ii) Madhyamic Shiksha Mandal, M.P. Vs Abhilash Shiksha Prasar Samiti & others, (1998) 9 SCC 236

19) In Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Limited & others Vs Surendra Nath Pandey and others, (2011)

15 SCC 81 a three Judge Bench of Honâ??ble Apex Court has observed that though it was permissible to take books into the examination, but that

was in respect of the books prescribed in the syllabus. The guidebook used by the candidates was not permitted to be taken into the examination

centre which resulted in mass cheating. It has been further observed that since there was no provision under the Rules with regard to mass copying,

the appellants were fully justified in constituting a committee to enquire into the matter and the enquiry into the fact situation was bonafide. It has been

held that the procedure adopted by the appellants cannot be said to be unfair or arbitrary. It was a reasonable and fair procedure adopted in the

peculiar circumstances of the case. It cannot be said to be in breach of rules of natural justice. Rules of natural justice cannot be put in a straitjacket.

The purpose of rules of natural justice is to ensure that the order causing civil consequences is not passed arbitrarily. It is not that in every case there

must be an opportunity of oral hearing.

20) In Madhyamic Shiksha Mandal , M.P. Vs Abhilash Shiksha Prasar Samiti & others (1998) 9 SCC 236 it has been held by their Lordships of

Honâ??ble Supreme Court that the High Court was not justified in interfering with

the decision of the Mandal (read Board) on technical ground and affirmed the decision taken by M.P. Madhyamic Shiksha Mandal cancelling the examination on the reports of Naib Tehsildar and Valuer which forms basis that there was mass coping in the examination center even before the distribution of question papers. It has further been held that it is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. Their Lordships further observed that one may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the result and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again.

21) Earlier, in writ petition no. 354 (S/S) of 2018, filed by the petitioners who could not succeed in the said examination, certain allegations about rampant corruption in the selection process were made. It was stated that 66 candidates from one Branch, who took coaching from one Coaching Institute namely, Genius Coaching Education Point, Malviya Nagar, Roorkee were selected and their names figured in the select list. When the controversy of alleged corruption raised a question mark on the fairness, impartiality and transparency of the selection conducted by the respondent no. 3 Commission, it was decided that the matter should be investigated through District Magistrate, Haridwar. District Magistrate, Haridwar, in turn, constituted five members committed headed by A.D.M. (Finance & Revenue) for conducting the inquiry. The committee submitted its inquiry report dated 20.06.2018. When the inquiry report was placed before the Commission, it took a unanimous decision dated 09.07.2018 and decided to cancel the examination and conduct the re-examination subject to the decision of this Court in WPSS no. 354 of 2018. During the pendency of WPSS no. 354 of 2018, the candidates who were selected in the examination, filed various writ petitions questioning the decision of the respondent Commission with a prayer not to cancel the examination. All those writ petitions were clubbed together with WPSS no. 354 of 2018 and were disposed of vide judgment and order dated 25.03.2019 with certain directions to the Secretary (Energy),

Government of Uttarakhand. Thereafter, Secretary (Energy) after receiving the representations from the successful as well as unsuccessful candidates in the examination earlier held pursuant to the advertisement for the selection of Junior Engineer (Electrical / Mechanical) took a decision that the examination shall be cancelled and directed to conduct re-examination by the respondent Commission.

22) Here, an inquiry was conducted and it has been found that such candidates (petitioners in WPSS no. 2114 of 2019), who were students of Genius

Coaching Institute, Roorkee have been selected. Writ petitioners of WPSS no. 755 of 2020, WPSS no. 2201 of 2019 and WPSS no. 940 of 2020) are

coming with the case that since their involvement has not been found in using the malpractice in the examination, therefore, their case should be

considered separately and the respondents have committed illegality in canceling the entire selection process. Once a report is submitted wherein it

has come that the selection process was unfair and paper setters have used the mobile phones, the breach of secrecy cannot be ruled out.

23) Merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment.

Law on this point is no longer *res integra* having been settled in a catena of decisions [Shankarsan Dash Vs Union of India, 1991 AIR 1612 and Rakhi

Ray Vs High Court of Delhi, (2010) 2 SCC 637; Punjab State Electricity Board and Others Vs Malkiat Singh, (2005) 9 SCC 22].

24) It is well settled principle in law that while exercising its powers of judicial review of any administrative action, courts could not interfere with the

administrative decision unless it suffers from the vice of illegality, irrationality or procedural impropriety. A Three Judges Bench of Honâ??ble Apex

Court in the case of Municipal Council, Neemuch v. Mahadeo Real Estate and others (2019) 10 SCC 738 has observed as under:-

â??13. â??Though, there are a catena of judgments of this Court on the said issue, the law laid down by this Court in the case of Tata Cellular Vs.

Union of India reported in (1994) 6 SCC 651 lays down the basic principles which still hold the field. Paragraph 77 of the said judgment reads thus:

â??77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?

2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only

concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the

grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of*

State for the Home Department, ex p Brind, (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of

the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a

nature and degree which requires its intervention".

14. It could thus be sent that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the

decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-

makes is vitiated by irrationality and that too on the principle of "Wednesbury unreasonableness" or unless it is found that there has been a

procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also

equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the

decision-making process.

15. This Court recently in the case of *West Bengal Central School Service Commission vs. Abdul Halim* reported in (2019) 18 SCC 39 had again an

occasion to consider the scope of interference under Article 226 in an administrative action.

31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test

to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or

whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there

may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan v. Mallikarjuna*

reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been

adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or

ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by

issuance of writ of Certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no

reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by

the materials on record, the same may be regarded as perverse.

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the

sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what

the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to

manifest injustice. The writ Court does not interfere, because a decision is not perfect.

16. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error

of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers

when it finds that the decision impugned is so arbitrary and capricious that no

reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice.â??

25) Since it has come on record that a detailed enquiry was conducted and the answer sheets of the candidates were also analyzed and on the basis of sufficient proof, decision was taken to cancel the written examination holding the selection process as unfair, it is not appropriate for the Court to sit in appeal against the policy decision taken by the respondents. It is for the respondents, more particularly, the Commission, to decide whether such rule is a preventive or precautionary measure so that the deserving and meritorious student will not suffer in any manner. Moreover, cancellation of the written examination by the Selection Committee is an administrative decision and the Court should not ordinarily interfere in the administrative decision.

26) Honâ??ble Apex Court in Radhey Shyam and another vs Chhabi Nath and others 2015) 5 SCC 423 considering the nine Judge Bench Judgment in Naresh Shridhar Mirajkar vs State of Maharashtra AIR 1967 SC 1 has held that the remedy under Section 226 / 227 of the Constitution of India is not an appealable remedy and can be used only in very exception cases when manifest miscarriage of justice has been occasioned and where there is some perversity in the order passed by the Court. Relevant paragraphs of the judgment rendered in Naresh Shridhar Mirajkar vs State of Maharashtra AIR 1967 SC 1 are extracted hereunder:

â??62. But apart from this aspect of the matter, we think it would be inappropriate to allow the petitioners to raise the question about the jurisdiction of the High Court to pass the impugned order in proceedings under Article 32 which seek for the issue of a writ of certiorari to correct the said order.

It questions about the jurisdiction of superior Courts of plenary jurisdiction to pass orders like the impugned order are allowed to be canvassed in writ proceedings under Article 32, logically, it would be difficult to make a valid distinction between the orders passed by the High Courts inter partes, and those which are not inter partes in the sense that they bind strangers to the proceedings. Therefore, in our opinion having regard to the fact that the

impugned order has been passed by a superior Court of Record in the exercise of its inherent powers, the question about the existence of the said

jurisdiction as well as the validity or propriety of the order cannot be raised in writ proceedings taken out by the petitioners for the issue of a writ of

certiorari under Article 32.

63. Whilst we are dealing with this aspect of the matter we may incidentally refer to the relevant observations made by Halsbury on this point. In

the case of judgments of inferior Courts of civil jurisdiction, says Halsbury in the footnote,

“it has been suggested that certiorari might be granted to quash them for want of jurisdiction [Kemp V. Balne (1844), 1 Dow. & L. 885, at p. 887],

inasmuch as an error did not lie upon that ground. But there appears to be no reported case in which the judgment of an inferior Court of civil

jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground.”

The ultimate proposition is set out in the terms: “Certiorari does not lie to quash the judgments of inferior Courts of civil jurisdiction. These

observations would indicate that in England the judicial orders passed by civil Courts of plenary jurisdiction in or in relation to matters brought before

them are not held to be amenable to the jurisdiction to issue writs of certiorari.”

27) The contention of the petitioners in WPSS no. 755 of 2020, WPSS no. 2201 of 2019 and WPSS no. 940 of 2020 is that no allegation of malpractice

in the examination on their part has been found. The contention of the petitioners is not acceptable for the simple reason that it is difficult to segregate

those who have adopted the malpractice and those who have not? In the inquiry report it has not come that the petitioners of these writ petitions have

adopted the malpractice. It is again difficult to segregate chaff from the grain. Since the inquiry committee has submitted their detailed report and it

has been found that the paper setters have used the mobile phones during moderation process, the breach of secrecy cannot be ruled out. Since

transparency is lacking in the selection process and a bulk of candidates who took coaching from a particular coaching institute have been selected,

this creates a serious doubt in the fairness and impartiality of the selection process. A fair selection in a competitive examination is an important

factor. Unless sanctity and fairness of a competitive examination is maintained, no one would repose faith in such a competitive examination.

28) For the reasons recorded above and in view of principle of law laid down in the judgments (supra) that mere selection does not create any right in

favour of a selectee, I could hardly find any ground to interfere in the expert committee's inquiry report on the basis of which the selection

process was cancelled. Therefore, all the writ petitions lack merit and are hereby dismissed.

29) No order as to costs.