

(2018) 03 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petitions No.13617-13627 of 2017, 14529 of 2017, 11342of2017

Renukambike R and Ors @APPELLANT@Hash The State of Karnataka and Ors

Date of Decision : 09-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Provisions of Prevention of Corruption Act, 1988 — Section 3(q), 3(b), 7, 14, 15, 19, 34, 120, 120B, 418, 420, 465
Government of India Act, 1935 — Section 96C
Code of Criminal Procedure, 1973 — Section 173

Citation : (2018) 03 KAR CK 0016

Hon'ble Judges : H.G.RAMESH J;P.S. DINESH KUMAR, J

Bench : Division Bench

Final Decision : Disposed of

Judgement

1. The batch of these writ petitions involve appointment of Group A and Group B Probationary Officers under the Karnataka

Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997.

2. Writ Petitions No.13617-13627 & 14529/2017 are filed in public interest and Writ Petition No.11342/2017 is filed in private interest with a prayer

inter alia to quash the common order dated 19.10.2016 passed by the Karnataka State Administrative Tribunal, Bangalore (Administrative

Tribunal for short), in Applications No.6268/2014 to 6395/2014 c/w 6432/2014 to 6444/2014, 6446/2014 to 6459/2014, 6597/2014 & 6598/2014,

7464/2014, 7941/2014 to 7946/2014, 7950/2014 to 7966/2014, 7967/2014, 7968/2014, 7969/2014, 9112/2014 to 9126/2014, 9592/2014 to 9610/2014 and

8298/2015, whereby the Administrative Tribunal has directed the State Government to issue appointment orders to the applicants therein.

FACTS OF THE CASE:

3. The genesis of these cases dates back to issuance of notifications by the State Government on 29.3.2011, 25.4.2011, 4.10.2011 and 19.10.2011 to

hold examination for the posts of Group-A and Group-B Officers as per the Karnataka Recruitment of Gazetted Probationers (Appointment by

Competitive Examinations) Rules, 1997 [â??1997 Rulesâ?? for short]. Pursuant thereto, the Karnataka Public Service Commission (â??KPSCâ??

for short) by notification dated 3.11.2011 invited applications for 352 posts. Subsequently, the number of posts were modified to 362 by the State

Government vide communications dated 9.2.2012. Accordingly, amended notification was issued by the KPSC. Preliminary written examinations were

conducted on 22.4.2012 and written (main) examinations were conducted between 15.12.2012 and 6.1.2013. The personality tests were conducted

between 1.4.2013 and 27.5.2013.

4. On 24.5.2013, Dr. HPS Mythri, one of the candidates submitted a representation to the learned Advocate General forKarnataka, alleging mal-

practices in theselection process, stating inter alia that she had secured 1009 marks out of 1800 in the written examination, but she was awarded only

75 marks in viva-voce, whereas, a candidate in the same category, Supriya Banagar, who was her immediate competitor had secured only 937.5

marks in the written examination, but she was awarded 150 marks in viva-voce.

5. On 28.5.2013, Dr. Mythri, submitted another representation to the learned Advocate General stating that:

â?¢ on 20.3.2013, she received a call from a Cell Phone No.99455 85567; the caller introduced herself as Dr. Mangala Sridhar, Member, KPSC, and

asked Dr.Mythri to meet her, in her chambers;

â?¢ she received another call from the very same No.99455 85567 on 22.3.2013, with a similar request;

â?¢ when she met Dr. Mangala Sridhar, Member, KPSC, she was asked to discuss with her PA (Personal Assistant) Ashok Kumar;

â?¢ Ashok Kumar told her that the post of Assistant Commissioner (Revenue) were being offered at Rs.1 Crore for general merit candidates.

Dr.Mythri, being a candidate belonging to Scheduled Tribe Category, was being offered the same at Rs.75 Lakhs;

â?¢ on 26.3.2013, she received two calls from Ashok Kumar, from Cell Phone No.

97390 08228. However, she declined to accept his demand to pay illegal gratification; and

On 6.5.2013, she again received a call from Ashok Kumar, from Cell Phone No.81476 07549, informing that she had lost her chance to get the post of Assistant Commissioner, but she could still negotiate for the post of an Executive Officer.

With aforesaid allegations, she requested the learned Advocate General to look into the matter.

6. On 4.6.2013, the learned Advocate General gave his opinion as follows:

It is well-settled that calling for an interview or even a selection by the Public Service Commission would not confer any vested right upon the

candidate to be appointed. If the Government wants to disapprove or reject the list submitted by the Commission, it is empowered to do so. But such

rejection should be done within a reasonable time on receipt of the List and for reasons to be recorded. Government cannot accept a part of the List

and reject the rest. The Government may reject the entire Select List when it is satisfied after due enquiry that the selection has been vitiated either on

account of violation of a fundamental procedural requirement or is vitiated by corruption, favoritism or nepotism.

a) In the light of the serious allegation of rampant corruption, the Government will have to carefully examine the allegations made and hold an enquiry

to verify the truth of all these allegations. It should be remembered that these are only allegations and not proof of any omission or commission. And it

is not permissible for the Government to form an opinion on the basis of these allegations alone.

b) However, as could be seen from the material now available with the government, a prima facie case has been made out to withhold the List and

conduct a thorough enquiry/investigation into these allegations and ascertain whether the process of selection is so tainted so as to warrant the entire

selection process to be cancelled. It has to be ensured that due to the misdeeds of some candidates, honest and meritorious candidates do not suffer.

If the Government finds it impossible or improbable that the tainted cases cannot be separated from the non-tainted cases, the entire Selection List can

be cancelled. All endeavours should be made to segregate the tainted from untainted candidates while scrutinizing the Selection List.

c) In the light of this legal position, I advise the Government to initiate the following steps.

1. Withhold the list of selected candidates,
2. Direct a comprehensive inquiry/investigation into the allegations made against the entire process of selection including the conduct of written examinations and viva-voce through a credible investigating agency like the Central Bureau of Investigation.

3. Decide on acceptance or non-acceptance of the List on the basis of the outcome of such investigation and keeping in mind the above stated legal

principles.â??

7. The State Government, through the Deputy Secretary, DPAR, lodged a complaint with Vidhana Soudha Police Station on 22.6.2013 alleging

commission of offences punishable under the provisions of Prevention of Corruption Act and Sections 34, 120, 120-B, 418, 420 and 465 IPC, against 8

accused. In substance, it was alleged in the complaint that the selection process was vitiated and deserving candidates were not selected. An FIR was

registered in Crime No.28/2013, wherein, Gonal Bheemappa, Chairman, KPSC, was arraigned as accused No.1 and another Member of KPSC,

Mangala Sridhar, was arraigned as accused No.4. Three other officials working in KPSC, namely, Arunachalam, Sundar and Ashok Kumar, were

arraigned as accused No.2, 3 and 5 respectively. Sudhir, working as Assistant Executive Engineer in Bengaluru Water Supply & Sewerage Board,

Somnath, working as Executive Engineer in Bengaluru Development Authority and Rajashekar, an employee of Karnataka Government Secretariat

were arraigned as accused No.6, 7 and 8 respectively.

8. On 27.6.2013, the State Government ordered an investigation and entrusted the matter to the Criminal Investigation Department (Special Units and

Economic Offences) [â??CIDâ?? for short], headed by the Director General of Police. The CID, submitted an interim report to the Government on

10.9.2013.

9. The State Government, after going through the Interim report, issued an order dated 15.10.2013 annulling evaluation of written examination as also

the personality tests, and called upon the KPSC to re-do the exercise from the stage of evaluation of performance in the written examination (main).

10. The KPSC, vide their communication dated 19.12.2013, took a stand that the

order dated 15.10.2013, passed by the State Government, was without jurisdiction and non est. It went ahead with the selection process and published a provisional select list on 5.3.2014. After considering the objections received, KPSC published their Final Select List on 21.3.2014 and gazetted it on 22.3.2014. As per Rule 11(2) of the 1997 Rules, KPSC delivered the Final Select List to the Government on 26.3.2014. This marked the end of selection process by the KPSC.

11. In April 2014, Dr. Mythri, filed an application before the Administrative Tribunal, challenging the final select list and obtained an ex-parte interim order, which stood vacated on 2.7.2014, with an observation that any decision taken by the State Government with regard to the Final Select List shall be subject to the result of her pending application before the Administrative Tribunal.

12. The CID, on 12.5.2014, filed its charge sheet against accused No.1, 2, 5, 6, 7 and 8 namely, Gonal Bheemappa, Arunachalam, Ashok Kumar, Sudeer @ Sridhar, Somanath @ Somesh Chickkamath and Rajashekhar respectively.

13. The State Government, by their order dated 14.8.2014, withdrew dated 9.3.2011, 25.4.2011, 4.10.2011, 19.10.2011 and 9.2.2012; and ordered for closure of recruitment process.

14. In the meanwhile, the State Government, appointed an Expert Committee headed by Shri P.C.Hota, IAS(Retd.), Former Chairman of Union Public Service Commission, to review the systems and procedures in the KPSC. The said Committee submitted its report on 20.8.2015, with its recommendations.

15. In 2014, successful candidates filed Applications No.6268-6395/2014 and connected cases before the Administrative Tribunal, inter alia with a prayer to quash the Government Order dated 14.8.2014 and to direct the State Government to issue appointment orders. State Government resisted those applications contending inter alia that in view of large scale irregularities such as manipulation in the process of recruitment, rampant corruption and nepotism by the Members of the KPSC and involvement of candidates as elucidated in the CID report dated 10.9.2013, the State Government had withdrawn the requisitions.

16. The Administrative Tribunal, after hearing, has passed impugned common

order and quashed Government Order dated 14.8.2014 and directed the State Government to issue appointment orders to the applicants.

17. We have heard Shri Udaya Holla, Shri M.B.Nargund, learned Senior Counsel and Shri Rahamathulla Kothwal, learned Counsel for the petitioners

and Shri Aditya Sondhi, learned Additional Advocate General for the State Government, Shri P.S.Rajagopal, learned Senior Counsel for KPSC, Shri

K.G.Raghavan, Shri Sajan Poovayya, Shri B.M.Shyam Prasad, learned Senior Advocates, Shri B.L.Acharaya, Shri B.M.Arun, Shri I.S.Pramod

Chandra, Shri N.G.Phadke and Shri Vikram Phadke, learned Counsel for respective parties.

18. The arguments advanced on behalf of the petitioners may be summarised as follows:

(i) that, there was large scale irregularity, corruption and manipulation in the entire selection process;

(ii) that, the State Government, on the advice of the learned Advocate General, directed an inquiry and investigation by the CID;

(iii) that, CID's preliminary report, has revealed large scale corruption and involvement of Members of the Selection Committee;

(iv) that, Dr. Mythri, did not succumb to the illegal offers, but, brought to the notice of the learned Advocate General, the state of affairs and sought

redressal;

(v) that, Dr. Mythri, also filed an application before the Administrative Tribunal in Application No.2661/2014 and the same is still pending adjudication.

However, without adjudicating her application, the Administrative Tribunal has allowed the applications filed by a batch of successful candidates.

Therefore, she had no other alternative but to challenge the order passed by the Administrative Tribunal before this Court;

(vi) that, in view of Government Order dated 14.8.2014, the KPSC ought to have re-evaluated the answer scripts and held fresh viva voce. However,

it did not comply with the said order, but went ahead with the selection process and notified the list of selected candidates. Now, by the order

impugned, directions have been given by the Administrative Tribunal to the State Government to issue appointment orders within a period of two

months;

(vii) that, the interim report dated 10.9.2013, submitted by the CID, clearly

suggests that there was large scale corruption and manipulation, which rightly persuaded the State Government to annul the evaluation process;

(viii) that, the Gazetted Probationer Officers hold executive power of the State and therefore, a candidate to be appointed for such post must not only be meritorious, but also a person of impeccable integrity. The CID report reveals that, the select list contains candidates who have indulged in serious mal-practices. Therefore, if the impugned order passed by the Administrative Tribunal is given effect to, the same shall result in appointing candidates selected for extraneous considerations;

(ix) that, the State Government, accepted the CID report and resisted the applications filed by the selected candidates before the Administrative Tribunal, and

(x) that, the CID, after completion of investigation has filed the charge sheet (report under Section 173 of Cr.P.C.) before the jurisdictional Criminal Court.

19. With the above principal submissions, learned Counsel arguing in support of these writ petitions, contended that there is a strong element of public interest involved in these writ petitions and they are eminently maintainable. They prayed for quashing the impugned order passed by the Administrative Tribunal.

20. The arguments advanced by learned Senior Advocates S/Shri K.G.Raghavan, Sajan Poovayya, and B.M.Shyam Prasad, and Shri B.L.Acharya, learned Advocate, are summarised as follows:

Â i) PIL is not maintainable in service matter;

ii) High Court can examine only the order passed by the Administrative Tribunal and cannot expand the scope of writ petition;

iii) Tainted candidates are not included in the charge sheet;

iv) CID report could not have been submitted to the Government but ought to have been filed in the Court only;

v) that, in the petitions filed by Smt.Renukambike and others, eight out of ten candidates did not qualify in the written test;

vi) that, the writ petition filed by Dr. Mythri, is clearly in the nature of a private interest, inasmuch as, she has challenged appointment of third

respondent (Supriya Banagar), and prayed for a direction to the State

Government to consider her case for appointment to the post of Assistant Commissioner (Revenue);

vii) that, Dr. Mythri, after participating in the selection process, submitted a complaint to the learned Advocate General on 25.4.2013 with bald

allegations. Within next three days, she improved her case alleging that she was called to the chambers of a Member of the KPSC and offered the

post, on payment of illegal gratification. To substantiate her claim, she has quoted some telephone numbers. It is quite reasonable for anxious

candidates to contact the concerned officials in the KPSC to know progress in the selection process. It is also arguable that, the officials may have

returned a missed call from Dr. Mythri. Therefore, the entire case of Dr. Mythri is based on surmises and conjunctures;

viii) that, Dr. Mythri, has admittedly, approached the Administrative Tribunal in Application No.2661/2014. Therefore, she had an option to either press

for disposal of her application or seek review of the impugned order;

ix) that, the State Administrative Tribunal is established as a substitute and appropriate forum for redressal of all service related matters. Therefore, a

petition concerning a "service matter" is not maintainable before the High Court. High Court is not a Court of Appeal to examine an order

passed by the Administrative Tribunal;

x) that, the Administrative Tribunal being the Judicial Tribunal of first instance, has gone into every aspect of the matter in detail and delivered a

considered judgment. The State has accepted the said judgement. The High Court, exercising its jurisdiction under Article 226 or 227 of the

Constitution of India, can only examine the decision making process by the Administrative Tribunal. The petitioners have not demonstrated any

perversity either in appreciation of facts or any infraction of law calling for interference by this Court;

xi) that, there is an urgent requirement of the Administrative Officers in the State;

xii) that, there is no indictment against any selected candidate by the CID. Therefore, they cannot be denied of their appointments.

With the above submissions, the learned Counsel for the respondents prayed for dismissal of these writ petitions.

21. Shri Aditya Sondhi, learned Additional Advocate General for the State,

submitted that, the opinion tendered by the Advocate General was discussed in the Cabinet. With regard to the selection process, he submitted that, about 46 candidates were contacted by or on behalf of members/officials of the KPSC. To a pointed query, with regard to laying of report before the Legislature in compliance with Article 323(2) of the Constitution of India, he submitted that, the report was tabled during February, 2017. He also submitted that, the State Government is seeking sanction from the President of India to prosecute KPSC members.

22. We have carefully considered the submissions of the learned Counsel for the parties and perused the records as also the authorities cited by the learned Counsel in support of their respective contentions.

23. The principal defence urged before us, by the respondents, is that, public interest litigation is not maintainable in service matters.

24. In the conspectus of the facts recorded hereinabove, following questions arise for consideration of this Court:-

- (i) Whether these writ petitions are classifiable purely as 'service matters'?
- (ii) Whether an element of 'public interest' is involved in these matters?
- (iii) Whether any interference is called for?

25. Re-point No.(i):

Whether these writ petitions are classifiable purely as 'service matters'?

a) The gravamen of petitioners' case is, that there was large scale corruption and nepotism in the selection process in the KPSC and candidates have been selected for extraneous considerations. In the process, several meritorious and eligible candidates have lost their opportunities.

b) Applicants' prayer before the Administrative Tribunal, was, inter alia, to quash the Government Order dated 14.08.2014, withdrawing requisition and to direct the State Government to issue appointment orders. Therefore, the subtle issue for consideration before the Administrative Tribunal was to examine, whether there was any flaw in the decision making process by the State Government, in passing order dated 14.08.2014.

Indisputably, the said order was passed based on the CID report, which has indicted eight persons including the Chairman and a member of the public service commission. Thus, the issue involved in the applications before the Administrative Tribunal or before this Court in these writ petitions do not

involve appointment of officers under normal circumstances. The grievance of the petitioners is that, entire selection process smacks of malafides.

Although selection process culminates in appointment of officers, which according to the selected candidates is purely a service matter, the subtle and

the real issue for consideration is the decision making process by the State Government while passing order dated 14.8.2014 withdrawing the

requisitions given to the KPSC to conduct selection process.

c) We, therefore hold that, the issue in substance, either before the Administrative Tribunal or in these writ petitions are not "stricto sensu"

classifiable, purely as service matter.

26. Re-point No.(ii):

Whether an element of public interest is involved in these matters?

a) Executive is one of the three limbs of the Constitution. Under the federal structure, the State, in their eminent domain are enjoined with solemn duty

to administer the State policies. The Part-VI of the Constitution deals with the State. Under Article 153 of the Constitution, each State shall have a

Governor, who shall head the State and exercise the executive power upon the advice of the Council of Ministers as provided under Article 163 of the

Constitution. The business of the Government is conducted under Article 166 of the Constitution. The recruitment and conditions of service of persons

serving under the Union or the State are governed by Article 309 of the Constitution. It is no more res integra that, Civil Servants are limbs of the

executive. [See Samsher Singh Vs. State of Punjab and Another (1974) 2 SCC 831]. Unarguably, the case on hand pertains to appointment of Civil

Servants. Appointment of ineligible, inefficient persons with questionable integrity shall have a serious and cascading adverse impact on the business

of the Government, which shall inevitably result in mal-functioning. This is anathema of rule of law.

b) Duties and responsibilities of bureaucracy and need to appoint sensitive, devoted and professionally competent officers, fell for consideration before

the Hon'ble Supreme Court of India in the case of Mehmood Alam Tariq and others Vs. State of Rajasthan and others reported in (1988)3 SCC

241. The Supreme Court, speaking through Hon'ble Mr. Justice M.N.Venkatachaliah (as he then was), has held as follows:

"14. We may now examine the merits of the rival contentions. The modern

state has moved far away from its concept as the "Leviathan"

with its traditional role symbolised by the two swords it wielded "one of war and the other of justice. The modern, pluralist, social welfare state with

its ever-expanding social and economic roles as wide-ranging as that of an Economic Regulator, Industrial Producer and Manager, Arbitrator,

Educationist, Provider of Health and Social Welfare services etc., has become a colossal service corporation. The bureaucracy, through which the

executive organ of the state gives itself expression, cannot escape both the excitement and the responsibility of this immense social commitment of the

Welfare State. Today the bureaucracy in this country carries with it, in a measure never before dreamt of, the privilege and the burden of participation

in a great social and economic transformation, in tune with the ethos and promise of the Constitution for the emergence of a new egalitarian and

eclectic social and economic order "a national commitment which a sensitive, devoted and professionally competent administrative set up alone can

undertake. A cadre comprised of men inducted through patronage, nepotism and corruption cannot, morally, be higher than the methods that produced

it and be free from the sins of its own origin. Wrong methods have never produced right results.

15. What, therefore, should impart an added dimension and urgency to the recruitment to the services is the awareness of the extra-ordinary vitality

and durability of wrong selections. With the constitutional guarantee of security, the machinery for removal of a government servant on grounds of

inefficiency and lack of devotion remains mostly unused. The authors of a work on "Britain's Ruling Class" say:

One of the main attractions of working for the Civil Service is job security. Once they let you in, you have to do something spectacularly improper to

get kicked out. In 1978 out of 5,67,000 non-industrial civil servants, just 55 were sacked for disciplinary reasons; 57 were retired early "on grounds

of inefficiency or limited efficiency" ; 123 were retired early on grounds of "redundancy". In practice, a modest dose of common sense and

propriety allows you to stay a civil servant until you retire. In the middle and senior administration grades many do just that. 82 per cent of Permanent

Secretaries have been in the Civil Service for 25 years or more; so have 79 per cent of Deputy Secretaries, 62 per cent of Under Secretaries and 70

per cent of Senior Executive Officers.â. Recruiting civil servants means picking as many potential high flyers as possible â" and at the same time

as few potential albatrosses. It is a task carried out by the Civil Service Commission â" with scrupulous honesty, but questionable efficiency.

16. The history of the evolution of the civil services in some countries is in itself study in contrast as fascinating as it is disquieting. In France, until the

Revolution almost every office, central or local, excepting the dozen or so of the highest offices were attainable only by private purchase, gift or

inheritance. All public officers were treated as a species of private property and voluminous jurisprudence governed their transmission. Of this

spectacle, a learned authority on Public Administration says:

Prices rose, but there was a frantic buying. Ministers made the most of their financial discovery. As it soon became too difficult to invest new offices,

the old ones were doubled or trebled â" that is, divided up among several holders, who exercise their functions in rotation, or who did what the

seventeenth and eighteenth centuries were too fond of doing, employed a humble subordinate to carry them outâ!â!.

Offices were sought, then, with a frenzied energy, and they were created with cynicism. Desmarets, one of Louis XIVâs Comptroller-Generals,

had proposed to the King the establishment of some quite futile offices, and the latter asked who would ever consent to buy such situation? âYour

Majestyâ replied Desmarets, âis forgetting one of the most splendid of the prerogatives of the Kings of France â" that when the King creates a

job, God immediately creates an idiot to buy it.â

(Emphasis supplied)

c) Indubitable facts are, State Government requisitioned the KPSC to select 362 Civil Servants. Total number of candidates who applied for various

posts are 1,38,307. Out of them, 91,667 candidates appeared for written test(preliminary) and 7,188 were found eligible for the written test(main). Out

of them, 6,211 candidates appeared for written test(main), of which 1,086 passed and became eligible for personality test. From out of those who

wrote written test(main), 929 candidates applied for re-totalling and 4 out of those were found eligible for personality test. Thus, in the result, 1090

candidates became eligible for viva-voce.

d) Based on the advice of the learned Advocate General, the State Government

ordered an inquiry by the CID. The CID, in its preliminary report, has concluded that the process of evaluation of answer scripts of 'main examination' and the 'personality tests' have been vitiated. Having perused and being satisfied with the CID report, the State Government vide order dated 15.10.2013 annulled the results of the 'mains examination' and 'viva voce'; and further directed re-evaluation of the answer scripts and fresh viva voce. The said order was not followed by the KPSC compelling the State Government to pass the impugned order dated 14.8.2014, withdrawing the requisitions.

e) Public Service Commissions are established under Article 315 of the Constitution of India and their functions are regulated under Article 320 of the Constitution of India. Article 323(2) requires a State Public Service Commission to present its annual report to the Governor of the State. The Governor on receipt of such report, shall cause a copy thereof together with a memorandum explaining the causes, if any, where, the advice of the Commission is not accepted, the same shall be laid before the State Legislature. We are informed by Shri Aditya Sondhi, learned Additional Advocate General that the reasons for not accepting the select list was laid before the State Assembly during February 2017.

f) Thus, the central issue for consideration is legality and correctness of State Government's decision to accept CID report and reject the recommendation of Public Service Commission.

g) It is fairly well-settled that, it is the prerogative of the employer 'to appoint' or 'not to appoint' a candidate or candidates against the notified posts. Unless, the order of appointment is communicated to the selected candidate, no right shall accrue to him. The State accepted the CID report and exercising their executive authority, rejected KPSC's recommendations. The reasons for not accepting the recommendations have been laid before the State Assembly. The matter should have ended there.

h) The Administrative Tribunal, in the impugned order at paragraph No.78, has accepted the legal principle that an applicant has no right of appointment.

i) The Administrative Tribunal chose to take it upon itself the task to examine as to whether there were any procedural irregularities in the CID report.

In paragraph No.61 of the impugned order, it has recorded its findings and

held, firstly, that the CID has to submit its report to the jurisdictional Magistrate; secondly, that the inquiry is not in accordance with the dictionary meaning of "inquiry" as defined in the Law Lexicon; thirdly, that no inquiry was held against the candidates; and fourthly, that the CID report is one sided and there are many lacunae in the report; and that the report is not in accordance with the Rules. We record that the Administrative Tribunal has not adverted to infraction of any specific "rule". Nor any contention was urged in that behalf before us in these proceedings. The Administrative Tribunal has further held in paragraph No.66 of the impugned order that the CID report has no "probative value" unless the same is proved in a "trial" and that its findings could not have been taken as "gospel truth". With these observations, the Administrative Tribunal has directed the State Government to issue appointment orders to the applicants therein. This decision of the Administrative Tribunal, when translated into action, would result in appointment of Civil Servants whose selection by the KPSC has been seriously doubted by the State Government. Then the next question that would follow is, whether appointments of such candidates by virtue of judicial order by the Administrative Tribunal consists an element of public interest? The answer must be "yes" because the State would be left with no option but to appoint the applicants in compliance with the Administrative Tribunal's directions which is admittedly based on its opinion with regard to veracity of alleged mal-practices adopted in the selection process. Ultimately, it would result in appointment of Civil Servants whose selection process, according to the Executive had stood vitiated. Since this matter touches upon the appointment of bureaucrats in the State, it carries within itself an element of public interest. We, therefore, answer point No.(ii) in the affirmative.

(j) In W.Ps.No.13617-13627/2017 & W.P.No.14529/2017, the petitioners have filed I.A.No.3/2017, seeking leave of this Court to permit them to file and prosecute the said writ petitions in Public Interest.

(k) In W.P.No.11342/2017, petitioner has filed I.A.No.1/2017, seeking permission to file the said writ petition as the 3rd respondent filed an application in O.A.No.7941/2014, which is also disposed of by the impugned common order and the said order adversely affects her.

(l) In view of our finding that, an element of public interest is involved in these

cases, I.A.No.3/2017 in W.Ps.No.13617-13627/2017 &

W.P.No.14529/2017 and I.A.No.1/2017 in W.P.No.11342/2017, are allowed and the applicants/petitioners therein are permitted to prosecute these writ petitions.

27. Re. Point No.(iii):

Whether any interference is called for?

a) Having recorded our opinion that these petitions cannot be classified as service matters *stricto sensu* and that there exists an element of public interest, we proceed to analyse the need, if any, for interference.

b) The impugned judgment is based on Administrative Tribunal's assessment of CID report. Therefore, we deem it expedient to examine the same. A careful perusal of the CID report shows that investigation was conducted by a team of officers consisting of seven Deputy Superintendents of Police, twelve Inspectors and other staff under the direct supervision of the DIGP, CID. It is catalogued in three parts.

Part-B deals with the allegations contained in the FIR, allegations levelled by the candidates who were examined during investigation, mal-practices observed in evaluation of examination(mains), mal-practices during the personality test and the conduct of the accused.

c) We were taken through following allegation contained in the FIR:

Allegation No.(i):

Dr.Mythri who belonged to ST(W) category, had scored 1009 marks and was awarded 75 marks in the personality test, whereas, the next immediate candidate namely, Supriya Banagar in the same category who had scored 937 marks, was awarded 150 marks in the personality test;

Dr.Mythri was called upon to pay illegal gratification by Dr.Mangala Sridhar through her personal assistant Ashok Kumar to ensure her selection to the post of Assistant Commissioner.

With regard to above allegations, we have noticed that the investigation report contains details of phone call records of Ashok Kumar (P.A. to

Mangala Sridhar-Member, KPSC). It records exchange of twenty calls between Mythri and Ashok Kumar. It also records several calls with different

candidates and the highest number of calls are made to one, Sumeeth A.R.(133 calls).

The call details of Mangala Sridharâ??s phone also records a call with Dr.Mythri.

Allegation No.(iii):

Sudhir, an Assistant Executive Engineer with B.W.S.S.B., Somanath, an Executive Engineer with B.D.A., and Rajashekar, an employee of Karnataka

Government Secretariat, acted as middlemen and bargained the illegal gratification.

With regard to above allegation, we have observed that, phone call details of Sudhir shows exchange of calls between him and members of KPSC

namely, Krishna Prasad, Kaniram, and Dayashankar. Call details of Somanath shows exchange of calls with candidates and particularly, with

candidate bearing registration No.11571(Bhimappa Parappa Ajoor) with as many as 86 calls.

We may record that exchange of phone calls between employees working in the Water Supply Department and Bangalore Development Authority

with members of Public Service Commission who hold Constitutional posts, is rather disturbing. Equally, exchange of 86 calls with one of the

candidate is appalling. But it is amazing to note that the Administrative Tribunal, despite having such stark and disturbing facts before it, turned the

other way.

Allegation No.(iv):

Eight candidates were allegedly benefited in the re-totalling.

With regard to above allegation, we have observed that, the portion of FSL report extracted in the investigation report clearly shows that the marks

have been overwritten.

Allegation No.(v):

Members allotted same quantum of marks to selected candidates in the personality test.

With regard to above allegation, we record that during the hearing, we were taken through table No.44 in the investigation report which contains a

total number of 566 candidates. It shows that all members who interviewed candidates have awarded exactly same amount of marks to a particular

candidate. For example, candidates with registration Nos.16806, 11300, 12287 have been awarded 150 marks each by all the members namely, Gonal

Bhimappa, Krishna Prasad, Rangamurty, Parshwanath and Dayashankar.

Similarly, candidate with registration No.12809 has been awarded 65 marks and candidate bearing registration No.11509 has been awarded 50 marks each by all the members. Likewise, marks awarded by all members to any particular candidate are exactly the same.

It was submitted that as per the procedure followed in the KPSC, the members of the committee were required to award marks and affix their

signature on each page after the interview. Those statements were required to be sealed and handed over to the Secretary, KPSC, for tabulation. It

was urged on behalf of the petitioners that members of the committee awarded equal marks to candidates who appeared for viva-voce because,

members did not make their respective objective assessment in respect of each candidate interviewed by them but collectively agreed and decided to

award a particular number of marks to particular candidate. We are, persuaded to accept petitionersâ?? argument, that unless members did agree to

do so, for extraneous reasons, it is impossible that the marks awarded by five members would, exactly be the same without any variation. We say so

because, the CID investigation report, we have perused, reveals that all the 566 candidates listed therein have been awarded marks by all the

members in this manner. Further, the theory of pre-determination and unison among the members is prima facie fortified by the statement of Gopal

Krishna, Private Secretary to the Chairman, KPSC, recorded before the Magistrate, wherein he has stated that after the interviews on each day, the

Chairman and Members were discussing the performance of candidates. His statement, thus provides a plausible answer as to how equal marks were

awarded by all the members.

Allegation No.(vi):

The digital video recorder in the KPSC building has been replaced to destroy the evidence.

With regard to above allegation, CID investigation report records that the digital video recorder(DVR) has been replaced and the existing DVR

contains records from 26.06.2013, i.e. after registration of FIR. This revelation in the CID report is shocking. If only, the video recording of earlier

period was available to the investigating officers, we are afraid, many more startling facts may have come to light.

28. Thus, in substance, in our view, the investigation report, prima facie reveals

that:

- a) the candidates and the members of the Public Service Commission or their agents were in constant touch;
- b) interview marks were not awarded on the basis of merit and performance;
- c) security system was compromised and records of security systems such as CC TV cameras were destroyed/manipulated.

29. History of Public Service Commission dates back to the recommendation made by Lee Commission in the year 1924, which recommended thus:

“S.264.- The case for a Public Service Commission was thus set out by the Lee Commission of 1924:-“Wherever democratic institutions

exist, experience has shown that to secure an efficient Civil Service it is essential to protect it so far as possible from political or personal influence

and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which

Governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the

“spoils system” has taken its place, an inefficient and disorganized Civil Service has been the inevitable result and corruption has been rampant.

In America a Civil Service Commission has been constituted to control recruitment of the Services, but, for the purposes of India, it is from the

Dominions of the British Empire that more relevant and useful lessons can perhaps be drawn. Canada, Australia, and South Africa now possess

Public or Civil Services Acts, regulating the position and control of the Public Services Commission, to which the duty of administering the Acts is

entrusted. It was this need which the framers of the Government of India Act had in mind when they made provision in S.96-C for the establishment

of a Public Service Commission to discharge “in regard to recruitment and control of the Public Services in India such functions as may be assigned

thereto by rules made by the Secretary of State in Council”, (Lee Commission Report para. 24).

(Emphasis supplied)

Ref: Commentary on the Government of India Act, 1935, by Sri N.Rajagopala Aiyangar, printed and published in 1937.

30. Civil Service in India originated from the time of establishment of East India Company and British Government in India. Initially, it was known as

Covenanted Civil Services under the East India Company. In 1853, the Covenanted Civil Services were thrown open to general competition to be called as "Indian Civil Service". In his report, in 1854, Lord Macaulay, recommended that patronage based system of East India Company should be replaced by a permanent Civil Service based on merit. In his report, he recommended, "Henceforth, an appointment of Civil Service of the Company will not be a matter of favour, but a matter of right. He, who obtains such an appointment will owe it solely to his own abilities and industry". The report made it clear that only the best and brightest would do for the Indian Civil Service. (Source: Kulwant Kumar Kalsan Vs. State of Haryana 2015 SCC online P & H 7065)

31. It is, therefore, unarguable that selection for any public posts and particularly to the post of a Civil Servant through Public Service Commission can only be on merit through an unimpeachable selection process.

32. It is no more *res integra* that the selection made by Public Service Commission is only recommendatory in nature. Government may reject recommendations made by Public Service Commission subject to compliance of Article 323(2) of Constitution of India.

33. Following authorities cited by Shri Udaya Holla are apt, wherein the Hon'ble Supreme Court has held as follows:

a) In the case of *Dr H. Mukherjee Vs. Union of India and Others* (1994 Supp (1) SCC 250):

"8. It is obvious from what we have stated above that this Court clearly observed in *Jatinder Kumar* case¹ that the selection made by the

Commission was only recommendatory in nature and it was open to the Government to either accept the recommendation or to depart therefrom.

Observations on which the Tribunal relies merely convey that if the Government does not depart from the recommendation of the Commission the

Government must make the appointments strictly adhering to the order of merit as recommended by the Commission. It cannot disturb the order of

merit according to its own sweet will except for good reasons, namely, bad conduct or character but that does not mean that the Government cannot

depart from the recommendation of the Commission. If it departs from the recommendation it must ultimately comply with the requirement of Article

323 of the Constitution. There is nothing in that article or in the rules to suggest

that the Government cannot take into consideration the developments subsequent to the selection made by the UPSC. Such a view would not be in public interest and may lead to serious complications if the Government is enjoined to make the appointment notwithstanding certain serious matters having come to its notice subsequent to the recommendation made by the Commission. Counsel for Respondent 1, however, submitted that a line of demarcation must be drawn somewhere because the Government cannot be allowed to delay its decision till adverse circumstances appear against the candidate recommended for appointment. He submitted that this demarcation must coincide with the date on which the recommendation is made by the Commission and at any rate must be confined to a reasonable period subsequent thereto.â??xxx

(Emphasis supplied)

b) In the case of Hanuman Prasad and Others Vs. Union of India and Another (1996) 10 SCC 742:

â??3. It is seen that after the allegations were made that malpractices were committed, the matter was referred to CBI for enquiry. The CBI has submitted its preliminary report which indicated that the malpractices have been committed in writing the examination. They need not await the final report which would be to take further action against erring officers. Therefore, it is a case where the authorities have taken the decision on the basis of the report submitted by the investigating agency, containing proof in support of the allegations of malpractice committed in writing the examination. It cannot, therefore, be said that the order of cancellation does not contain any reasons.â??

(Emphasis supplied)

c) In the case of Jatinder Kumar and Others Vs. State of Punjab and Others (1985) 1 SCC 122:

â??12. The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability, varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the

Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission. The selection has to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz. bad conduct or character.

The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. We are supported in our view by the two earlier decisions of this Court in *A.N. D'Silva v. Union of India* and *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165 : 1973 Lab IC 1212 : (1973) 2 LLJ 266]. The contention of Mr Anthony to the contrary cannot be accepted.â??

(Emphasis supplied)

d) In the case of *Adarsh Shiksha Mahavidyalaya and others v. Subhash Rahangdale and others* [(2012) 2 SCC 425]:

â??60. While rejecting the objection raised on behalf of the appellant that the writ petition filed by the respondent cannot be treated as a petition filed

in public interest, this Court in *Shivajirao Nilangekar* [(1987) 1 SCC 227]

observed: (SCC p. 246, para 36)

36. The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice.

(Emphasis supplied)

e) In the case of *State of Gujarat and another v. Justice R.A. Mehta(Retired) and others* [(2013) 3 SCC 1]:

92. Corruption in a civilised society is a disease like cancer which if not detected in time is sure to spread its malignance among the polity of the country leading to disastrous consequences. Therefore, it is often described as royal thievery. Corruption is opposed to democracy and social order, as being not only anti-people, but also due to the fact that it affects the economy of a country and destroys its cultural heritage. It poses a threat to the concept of constitutional governance and shakes the very foundation of democracy and the rule of law. It threatens the security of the societies undermining the ethical values and justice jeopardising sustainable development. Corruption devalues human rights, chokes development and corrodes the moral fabric of society. It causes considerable damage to the national economy, national interest and the image of the country. (Vide *Vineet Narain v. Union of India* [(1998) 1 SCC 226 : 1998 SCC (Cri) 307 : AIR 1998 SC 889] ; *State of M.P. v. Ram Singh* [(2000) 5 SCC 88 : 2000 SCC (Cri) 886 : AIR 2000 SC 870] , SCC pp. 93-94, para 8; *State of Maharashtra v. Balakrishna Dattatrya Kumbhar* [(2012) 12 SCC 384 : JT (2012) 10 SC 446] and *Subramanian Swamy v. Manmohan Singh* [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666 : AIR 2012 SC 1185]).

(Emphasis supplied)

f) In the case of Subramanian Swamy v. Manmohan Singh and another [(2012)3 SCC 64]:

¶68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.¶¶

(Emphasis supplied)

34. The principle contention urged by Sri P.S.Rajagopal, learned Senior Counsel for the KPSC and other respondents is that a public interest petition is not maintainable in a service matter. He heavily relied upon the authority in the case of Dr.Duryodhan Sahu and others v. Jitendra Kumar Mishra and others [(1998) 7 SCC 273], wherein it is held as follows:

¶18. The constitution of Administrative Tribunals was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of ¶¶service matters¶ found in Section 3(q) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word ¶¶his¶ cannot be ignored. Section 3(b) defines the word ¶¶application¶ as an application made under Section 19. The latter section refers to ¶¶person aggrieved¶. In order to bring a matter before the Tribunal, an application has to be

made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have

already seen that the word "order" has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section

3(q) as service matters could be brought before the Tribunal. If in that context Sections 14 and 15 are read, there is no doubt that a total stranger to

the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be

entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated.

(Emphasis supplied)

35. Learned Senior Counsel for KPSC placed reliance on the following authorities:

- a) Kushum Lata Vs. Union of India and Others [(2006) 6 SCC 180];
- b) Charan Lal Sahu Vs. Giani Zail Singh and another [(1984) 1 SCC 390]; and
- c) Durga Charan Rautray Vs. State of Orissa and another [(2012) 12 SCC 513].

36. The first authority, Kushum Lata (supra), deals with locus standi of a public interest litigant. The second authority, Charan Lal Sahu (supra), deals

with intentional mud-slinging in public interest litigation. The third authority, Durga Charan Rautray (supra), is on the point that once objection with

regard to maintainability is upheld, it is not open to a Court to decide the matter on merits. In our view, none of these three cases apply to the facts of

these cases. Learned Advocates for the private respondents also cited several judgments, which in our view, are not necessary for adjudication of

these petitions.

37. The CID's investigation report, prima facie discloses that there are sufficient reasons to believe that the selection process was not inviolable.

In the circumstances, the State Government withdrew the requisition for selection of Civil Servants. Unless the decision making process by the State

Government is satisfactorily proved to be arbitrary, capricious, or mala fide, it would be inappropriate for the Courts to impinge upon such decision.

38. It was also urged that the High Court can examine, only the legality and correctness of the judgment rendered by the Administrative Tribunal and

cannot expand the scope. As noticed above, the Administrative Tribunal chose to take it upon itself to examine the facts of the case and substitute its

opinion with the decision taken by the State Government in withdrawing the requisitions. The State Government, while defending their action before the Administrative Tribunal have averred thus:

4) At the outset, the applications are not maintainable and the applicants have no locus standi, to question the policy decision of the State

Government in withdrawing the letters releasing vacancies to KPSC for the recruitment of Gazetted Probationers for the year 2011 in view of the

large scale irregularities like manipulation of the process of recruitment, rampant corruption, nepotism in the process of recruitment by the Members of

the 2nd Respondent-KPSC and the involvement of candidates as is evident from the CID report dated 10/09/2013. In such circumstances, prima-facie

the members and some officials, in KPSC are themselves involved in the alleged malpractices in the Gazetted probationers recruitment process for the

year 2011. Therefore, in the larger public interest, the State Government had taken decision to do revaluation of all answer scripts of the Main

Examinations and to redo personality test/interview by issuing an order on 15/10/2013. The same was subject matter in A.No.7690-7699 of 2013

before the Karnataka administrative Tribunal while considering the interim prayer, this Hon'ble Tribunal had observed, "In the present case the

situation is unprecedented and perhaps such situation has not arisen earlier in any other State. The Government has relied upon not merely on the

media publication which was telecast for more than a week, it has referred in the impugned order the acts of certain persons viz. Sri M.Sridhar,

Assistant Executive Engineer, BWSSB, Sri Somanath Executive Engineer BDA and Sri Rajashekar, a staff of Karnataka Legislative Secretariat, who

according to investigation scouted for successful candidate in the Main Examination for the purpose of inducing them to pay money for selection. The

media publication published also discloses certain attempt by a member of the KPSC to contact the candidates and these are mentioned in the

impugned government order. The Government in pursuance of this disclosure sought for the advice of the Advocate General and in pursuance of the

same directed an investigation by the CID. It is only in pursuance of the investigation and on conclusion and recommendation of the investigating

agency that these steps have been taken when the investigation has disclosed that the selection process subsequent to the Main Examination has been

initiated by corruption, nepotism etc, it cannot be said that the government as appointing Authority should have waited till the selection list it submitted??

5) when the process of viva voce for the Gazetted Probationer's Recruitment for 2011 batch were going on there were serious allegations against

the then Chairman/Members, and other officials which were made known to the general public through some of the candidates and also through media

in awarding marks in the viva voce. The State Government who is the appointing authority for Group-A & B posts could not be silent spectator. If the

impugned decision was not taken, it would have been detrimental to public interest. The Public Service Commission is an institution of utmost

importance created by the constitution of India under Article 315. For the efficient functioning of a democracy, it is imperative that the public service

commissions are manned by people of the highest skill and irreproachable integrity, so that the selections to various public posts can be immunized

from all sorts of extraneous factors like political pressure or personal favoritism, corruption and are made solely on consideration of merit. However

due to unfortunate events which unfolded in the recruitment process for the Gazetted Probationers, 2011 batch, there was a break down of the State

Public Service Commission in the aforesaid recruitment, At this juncture, it is relevant to cite a decision of the Apex Court in the case where the

Chairman and Members of the Public Service of Haryana were suspended. Extract of the judgment reported in (2009) 9 scc 378 (Ram kumar

Kashyap v. Union of India) is reproduced herein.

15. In Ram Ashary Yadav (Dr.), Chairman, Bihar Public Service Commission, this Court discussed the role of the Members of the Public Service

Commission's and made the following observations with regard to their duties and qualification: (scc p. 312, para 4)

4 keeping in line with the high expectations of their office and need to observe absolute integrity and impartiality in the exercise of their powers

and duties, the Chairman and members of the Public Service Commission are required to be selected on basis of their merit, ability and suitability and

they in turn are expected to be models themselves in their functioning. The Character and conduct of the Chairman and Members of the Commission,

like Caesar's wife, must therefore be above board. They occupy a unique place

and position and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and Members of the Public Service Commissions.â??

Â At para 34 of the same opinion, the court further stated; (scc p. 321)

Â â??34. The credibility of the institution of a public Service Commission is founded upon the faith of the common man in its proper functioning. The

fait would be eroded and confidence destroyed if it appears that the Chairman or the Members of the Commission act subjectively and not objectively

or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and Members of the Commission. The

Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence

in the Commission. The high constitutional trustees, like the Chairman and Members of the Public Service Commission must forever remain vigilant

and conscious of these necessary adjuncts.â??

6) Keeping in view the alleged irregularities, the State Government referred the matter to the CID to investigate vide Government order date

27/6/2013. The CID submitted its interim report after comprehensive investigation into the matter on the investigation of case in crime No.28/2013

under sections 34, 120(B), 418, 420, 465, IPC and section 7 of the prevention of corruption Act, 1988. Copy of the interim report of the CID dated

10/09/2013 is marked as ANNEXURE- RI. The following conclusions have been arrived by the CID in the report, which is reproduced herein:

â??Considering the detailed investigation into the different allegations made and several other malpractices which have come to the notice of the

investigation team during the course of investigation, it can be concluded that the process of evaluation of the mains answer scripts and the personality

tests have been vitiatedâ??.

In the evaluation of mains answers scripts, starting from the selection of examiners apart from the list provide by the Universities / authorities for

evaluation, conducting the evaluation process in tearing hurry: not calling evaluators of particular subject even when they were available : overwriting

of entries in the marks sheet of candidates during the course of tabulation/re-totaling: to suspicious communication between the evaluators and the

candidates, the discrepancies and malpractices are glaring. Coupled with the

above, the resultant variation in the marks allotted during the evaluation conducted by the KPSC and sample test evaluation by experts during investigation suggest that the entire exercise has been done to favour some undeserving candidates due to extraneous consideration at the cost of deserving and meritorious candidates. Therefore, it is felt that the process of evaluation of mains answer script has been conducted in unjust and unfair manner, thereby vitiating at entire process and as such the Mains Evaluation process may be conducted once again, after putting in place necessary guidelines and safeguards. The personality tests have been conducted even more indifferently, as if it was no more than a mere pretence, and the marks that had to be allotted were already pre-decided. The entire process of personality test is completely impaired by the systematic abuse by the Chairman and the Members, in furtherance of their reprehensible designs and dishonest intentions. The members are found to have conducted interviews as a mere formality and awarded predetermined marks later on after discussion. Except for two candidates, for all 1083 candidates all the members have entered the same marks. Apparently, some members have awarded marks to candidates even though they were not present at the time of interview. Therefore, the illegal manipulation in the process of personality test have rendered it completely unacceptable and untenable and as such the same may also be conducted again by persons other than the one ; who are involved in the present case.

Apart from the above, the general procedure adopted by the KPSC, at every stage of the selection process of Gazetted Probationers seems to be impaired by glaring loop holes: which can always be exploited by unscrupulous elements. Hence, it is felt that the procedures being followed presently need to be reviewed and necessary changes incorporated.â??

7) It is submitted that the State Government have gone through the report and its contents, while accepting the findings and recommendations of the CID report. It is further submitted that State Government constituted Committee headed by the Sri.P.C.Hota, IAS [retd.,] and his recommendations, have also been taken into consideration. The State Government had directed Cancellation of the result of the main examination as well as the viva-voce and further ordered revaluation of the answer scripts of the Main examination and to re-conduct the viva-voce. Thereafter the Respondent no.1

had issued the order dated 15/10/2013. The said order was subject matter of Application no.7690-7699 of 2013 and it is pending consideration.

Para (15) It is submitted that the impugned decision of the State Government is in terms of the rules and discretionary power which is vested and gist

of the reasons are stated in the preamble portion of the impugned order. The State Government being the appointing authority has taken into

consideration the relevant facts relating to valuation of answer scripts of the main examination and award of viva-voce marks which are highly

arbitrary and which is prima-facie established in the CID report. The State Government is satisfied with the sufficiency of the materials collected so

as to enable them to arrive at its satisfaction that the entire selection process was tainted in the Main Examination and Personality Test. The illegalities

committed by the respective parties as held by the CID would go to the root of the matter which vitiate the entire selection/recruitment. It is further

submitted that fraudulently obtained marks in the main examination and personality test could be legitimately treated as voidable at the option of the

State Government. On the basis of such fraudulently obtained marks by the candidates, they cannot get any equity in his/her favour or any estoppels

against the appointing authority/State Government. Thus, the decision of the State Government to nullify the process of recruitment of Gazetted

Probationers for the year 2011 by withdrawing the process is in order.â??

(Emphasis supplied)

Â

39. It is pleaded by the State Government that, in the previous round of litigation, in Applications No.7690-7699/2013, the Administrative Tribunal has

held that the â??situation was unprecedented and perhaps such situation had not arisen earlier in any other Stateâ?. However, in the instant

proceedings, the Administrative Tribunal fell in an error in not adhering to the â??doctrine of separation of powersâ??. This is manifest by the

strongly worded comments contained in paragraph No.104 of the impugned order, which reads as follows:

â??104. â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|. Before issuing (sic) an order of appointment from the selection list under Rule 11(3) of the said

1997 Rules, the first respondent has taken the decision to withdrawn the requisition dated 29.3.2011, 25.4.2011, 4.10.2011, 19.10.2011 and 9.2.2012

and has been withdrawn. The said decision taken based on the interim report of the CID and the opinion of the Advocate General and opinion of the

Law Department. After careful consideration of the above mentioned rule and the reasons assigned by the first respondent, we are of the view that

the action of the first respondent under the impugned order is not in accordance with the proviso to Rule 11(3) of 1997 Rules. The impugned order is

highly outrageous in its defiance of logic and of accepted moral standards giving an impression that the authorities have taken leave of their

senses.â??â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|.

(Emphasis supplied)

40. The Administrative Tribunal, has not recorded any finding to show that the decision making process by the State Government is faulty in any

manner except stating that, it is contrary to Rule 11(3) of 1997 Rules. The said Rule reads as follows:

â??11. List of candidates suitable for appointment:- (1) Subject to the provisions of sub-rule

(3) of Rule 4 and Rule 8, and the number of Posts advertised for each of the services in Group â??Aâ?? and Group â??Bâ??, the Commission shall

prepare separate lists of names of the candidates equal to the available number of vacancies considered suitable for appointment for each of the said

services in Group â??Aâ?? and Group â??Bâ?? arrange in the order of merit determined on the basis of total marks secured in the main

examination comprising written examination and personality test:

Provided that the name of a candidate shall not be included in more than one such list.

2. The list prepared under sub-rule (1) shall be published by the Commission in the Official Gazette and the copies thereof shall be forwarded to.-

(i) the Government together with the marks secured by each of the candidates in the written examination and personality test; and

(ii) each candidate whose name is included in such list.

(3) Candidates whose names are included in the list prepared in accordance with the provisions of sub-rule (1) shall be considered for appointment to

the vacancies notified in each of the services and groups of posts in the order in which their names appear in the list:

Provided that, no candidate shall be appointed unless the Government is satisfied

after such enquiry and verification as may be considered necessary that the candidate is suitable for such appointment.â??

41. Rule 11(3) requires consideration of candidates, whose names are included in the Select List for appointment. The proviso to the Rule makes it clear that, no candidate shall be appointed unless the Government is satisfied, after such enquiry that the candidate is suitable for appointment. In the instant case, based on the CID report Government came to the conclusion that the selection process was vitiated. Consequently, Governmentâ??s satisfaction with regard to suitability of candidates remained wanting. Therefore, Administrative Tribunalâ??s finding that Governmentâ??s decision is contrary to Rule 11(3), is unsustainable.

42. It has set aside State Governmentâ??s decision to withdraw the requisitions by recording as follows in paragraphs No.109 to 114 of the impugned order:

â?? that, investigation against the Chairman and members of the KPSC shall not come in the way of consideration of candidature of the applicants;

â?? that, State Government did not chose to segregate the tainted and the untainted candidates; and

â?? that, the applicants were not supplied with investigation report and heard before passing any order; and that the State Government have ignored

the selections made by Public Service Commission established under Article 315 of the Constitution.

43. In substance, the Administrative Tribunal has substituted its opinion with that of the State Government with regard to consideration of investigation report and the action taken thereon. This is impermissible in law.

44. Since the issue involves appointment of civil servants, we have also carefully examined the investigation report and recorded our findings supra. In

substance, we have observed that the investigation report prima facie shows that the selection process was not free from interference.

45. In the light of facts recorded by the CID in itâ??s investigation report, we are of the view that there is no error in exercise of their powers under

the transaction of business by the State Government in withdrawing the requisition given to the State Public Service Commission.

46. If the judicial pronouncement by the Administrative Tribunal is given effect to, it would compel the State Government to appoint candidates

selected by a committee of questionable reputation.

47. It is well-settled that the Administrative Tribunal or the High Court while exercising power of judicial review is required to be extremely conscious

of the scope of interference and the settled parameters. In the case of *Tata Cellular vs. Union of India* [(1994) 6 SCC 651], the Honâ??ble Supreme

Court has held as follows:

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 fulfilment 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 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, â??consider whether something has gone wrong of a

nature and degree which requires its intervention.â??

48. The Administrative Tribunal could have examined the Government order dated 14.8.2014 only within the above parameters. The scope of

interference even on evaluation of facts is also limited as held in paragraph 81 of *Tata Cellular (supra)*, which reads as follows:

Â 81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not

logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the

other way, cannot be upheld. â?|â?|â?|â?|â?|â?|â?|â?|â?|.â??

Â (Emphasis supplied)

49. Exercise of restraint and adherence to strict self-imposed restriction is the hallmark of judicial review. In words of Lord Denning, the sacrosanct

duty of Court is stated thus:

40. As Lord Denning observed:

â??This power to overturn executive decision must be exercised very carefully, because you have got to remember that the executive and the local

authorities have their very own responsibilities and they have the right to make decisions. The courts should be very wary about interfering and only

interfere in extreme cases, that is, cases where the court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you

would get a conflict between the courts and the Government and the authorities, which would be most undesirable. The courts must act very warily in

this matter.â?? (See Judging the World by Garry Sturgess Philip Chubb.)

(Emphasis supplied)

[See Transport & Dock Workers Union v. Mumbai Port Trust, (2011) 2 SCC 575]

50. The parameters noticed in Tata Cellular supra, have not been answered by the Administrative Tribunal. It has not recorded any finding which

would have otherwise justified the impugned order. To satisfy ourselves, we have examined the aforementioned parameters qua the Government

Order dated 14.8.2014.

â?¢ With regard to the first parameter of State Government having power to issue the order, we may record that, the State Government, being the

employer, enjoy the power of discretion to either accept KPSCâ??s recommendation or to reject the same, subject to laying the reasons before the

Legislature.

â?¢ With regard to the second parameter namely error in law, having gone through the investigation report, we are of the view that, in the facts and

circumstances of this case, there is no error in law in the decision making process by the State Government. Though, we have noticed several irregularities in the selection process, as recorded in the investigation report, awarding pre-determined marks, in our view, was a sufficient circumstance for the State Government to withdraw the requisition. State Government, have also complied with the requirement of laying the reasons for rejection of advise tendered by the KPSC before the Assembly. Hence, we hold that the State Government decision does not suffer from any legal infirmity.

¶ With regard to the third parameter namely, breach of principles of natural justice, we see no infraction, as no right had accrued to the candidates prior to issuance of appointment orders. Therefore, no notice was necessary to the candidates.

¶ With regard to the fourth parameter namely, that a decision which a reasonable person could arrive at, we hold that the investigation report contains sufficient material to infer that the selection process had stood vitiated. In such circumstance, in our view, the decision taken by the State Government is not contrary to this parameter.

¶ With regard to the fifth parameter namely, the abuse of power, no material was placed before us nor any contention urged. At any rate, ground with regard to imputation of abuse of power by the Executive in the facts of this case is far too fragile to countenance. We say so because, firstly, the action taken by the State Government in withdrawing the requisition is not directed against any individual and secondly, the Government have recorded reasons in their order.

51. We may also profitably notice that in the case of *Heinz India Private Limited and another Vs. State of Uttar Pradesh and Others* [(2012) 5 SCC 443], the scope and ambit of judicial review has been stated as follows:

¶¶61. The above principles have been accepted even by this Court in a long line of decisions handed down from time to time. We may, however, refer only to some of those decisions where the development of law on the subject has been extensively examined and the principles applicable clearly enunciated.

xxxxxx

63. Reference may also be made to the decision of this Court in *State of Punjab v. Gurdial Singh* [(1980) 2 SCC 471] where Krishna Iyer, J. noticed

the limitations of judicial review and declared that the power vested in the superior courts ought to be exercised with great circumspection and that

interference may be permissible only where the exercise of the power seems to have been vitiated or is otherwise void on well-established grounds.

The Court observed: (SCC p. 475, para 8)

“8. The court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative

action is the property of the executive and judicial circumspection keeps the court lock jawed save where the power has been polluted by oblique ends

or is otherwise void on well-established grounds. The constitutional balance cannot be upset.”

64. There is almost complete unanimity on the principle that judicial review is not so much concerned with the decision itself as much with the

decision-making process. (See *Chief Constable of the North Wales Police v. Evans* [(1982) 1 WLR 1155 : (1982) 3 All ER 141 (HL)] .) As a matter

of fact, the juristic basis for such limitation on the exercise of the power of judicial review is that unless the restrictions on the power of the court are

observed, the courts may themselves under the guise of preventing abuse of power, be guilty of usurping that power.

65. Frankfurter, J.'s note of caution in *Trop v. Dulles* [2 L Ed 2d 630 : 356 US 86 (1958)] is in this regard apposite when he said: (L Ed p. 653)

“All power is, in Madison's phrase, of an encroaching nature. Judicial power is not immune against this human weakness. It also

must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.”

66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their

agents as to matters within the province of either, and that the court does not supplant “the feel of the expert” by its own review, is also fairly well

settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable

basis on evidence and whether such findings are consistent with the laws of the land. (See *Union of India v. S.B. Vohra* [(2004) 2 SCC 150 : 2004

SCC (L&S) 363] , Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] and Thansingh Nathmal v. Supdt. of Taxes [AIR 1964 SC 1419]

.)

67. In Dharangadhra Chemical Works Ltd. v. State of Saurashtra [AIR 1957 SC 264] this Court held that decision of a tribunal on a question of fact

which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in Thansingh Nathmal case [AIR 1964 SC 1419] where this Court

held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce

for which the writ is claimed.

68. We may while parting with the discussion on the legal dimensions of judicial review refer to the following passage from Reid v. Secy. of State for

Scotland [(1999) 2 AC 512 : (1999) 2 WLR 28 : (1999) 1 All ER 481 (HL)] which succinctly sums up the legal proposition that judicial review does

not allow the court of review to examine the evidence with a view to forming its own opinion about the substantial merits of the case. (AC pp. 541 F-

H and 542 A)

â??Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view

to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something

which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which

either by statute or at common law as a matter of fairness it ought to have observed. As regards the decisions itself it may be found to be perverse, or

irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for

example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a

failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-

maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is

perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of evidence.â??

(Emphasis supplied)

52. In the light of above discussion, we are of the considered view that, the Administrative Tribunal erred in substituting its opinion and therefore, the impugned judgment quashing State Governmentâ??s decision to withdraw the is wholly unsustainable. Consequently, direction to the State

Government to issue appointment orders to the selected candidates is also rendered unsustainable in law.

53. In W.Ps.No.13617-13672/2017 & W.P.No.14529/2017, it is averred that, the State Government have issued an Un-Official Note dated 17.3.2017

(Annexure-N), instructing the heads of the Departments to issue appointment orders to the selected candidates as per the Final Select List dated

21.3.2014 issued by the KPSC. It is also averred that the Director of Municipal Administration has issued appointment orders to as many as 18

selected candidates vide Official Memorandum dated 27.3.2017 (Annexure-O). The Petitioners, have sought for quashing the said Un-Official Note

as also the Official Memorandum issued by the Director of Municipal Administration.

54. The Administrative Tribunal has quashed Government Order dated 14.8.2014, withdrawing the issued to KPSC. We have held that, the said

common order is unsustainable in law. As a natural corollary, all appointment orders issued pursuant to Final Select List dated 21.3.2014 issued by the

KPSC, are unsustainable liable to be declared as illegal.

55. Resultantly, these writ petitions eminently deserve to be allowed and accordingly:

a) Writ Petitions No.13617-13627/2017 & 14529/2017 and Writ Petition No.11342/2017 are allowed;

b) Common order dated 19.10.2016 passed by the Karnataka State Administrative Tribunal, Bangalore, in Applications No.6268/2014 to 6395/2014

c/w 6432/2014 to 6444/2014, 6446/2014 to 6459/2014, 6597/2014 & 6598/2014, 7464/2014, 7941/2014 to 7946/2014, 7950/2014 to 7966/2014,

7967/2014, 7968/2014, 7969/2014, 9112/2014 to 9126/2014, 9592/2014 to 9610/2014 and 8298/2015, is quashed.

c) Un-Official Note, CÂ£Ã?Â¼PÃ?Ã?vÃ?nÂ¥Ã?Ã tÃ?Â,Ã?ASÃ?Ã¥: DÂ,Ã?Ã?E

139. The writ petition filed by the petitioner in 2016 dated

17.3.2017, issued by Deputy Secretary, DPAR (Services), Government of Karnataka, is quashed;

d) Official Memorandum, dated 14.3.2017, issued by the Director, Municipal Administration, Bengaluru, is quashed;

e) All orders of appointment/s issued pursuant to Final Select List dated 21.3.2014 prepared by KPSC are declared illegal and shall stand quashed; and

f) Government Order, dated 14.8.2014, withdrawing requisitions issued to KPSC for selection of Gazetted Probationers for 2011, and to

close selection process, is sustained.

56. In view of disposal of these writ petitions, I.A.No.16/2017 (in W.Ps.No.13617-13627/2017 & 14529/2017) for impleadment, filed by the applicants

claiming to be candidates in 2011 selection, does not survive for consideration and is accordingly disposed of.

57. Before parting with the case, we record our appreciation for the able assistance rendered by the learned Advocates, who appeared in these cases.

We make no order as to costs.