
(2021) 10 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4133 Of 2020

Rumi Gogoi And 125 Ors. Vs State Of Assam And 5 Ors

Date of Decision : 08-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 10 GAU CK 0003

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : A.R. Bhuyan, D. Mozumdar, D. Nath

Final Decision : Dismissed

Judgement

1) Heard Mr. A.R. Bhuyan, learned counsel for the petitioner and Mr. D. Mozumdar, learned Additional Advocate General for the State, assisted by Mr. D. Nath, learned Senior Government Advocate. Stand taken in the writ petition, in brief, and relief sought for:

2) In brief, the case of the petitioners is that by filing W.P.(C) No. 2725/2010, they had assailed the selection process of Armed Branch Constable in the Assam Police which was undertaken in the year 2009. By judgment and order dated 22.02.2019, this Court had disposed of the said writ petition by directing the respondent authorities to consider the cases of the petitioners in the said writ petition for appointment in Armed Branch Constable (hereinafter referred to as 'AB Constable' for short) or in any other equivalent post in the vacancies available and it was further ordered that the respondent authorities would not fill up the post of AB Constable without considering the cases of the petitioners. Pursuant to the said judgment dated 22.02.2019, the Director General of Police (respondent no.2), by passing a speaking order dated 21.10.2019 purportedly in compliance of W.P.(C) 2725/2010, rejected the cases of the petitioners, thereby disentitling them for appointment as AB Constable in the Assam Police. On the ground that the said speaking order is in willful disobedience to the judgment dated 22.02.2019 passed in W.P.(C) No. 2725/2010, the petitioner nos. 131 to 134 herein had filed a contempt petition, which was registered as Cont. Cas (C)

No.698/2019.

3) In the meanwhile an employment advertisement was issued on 25.04.2018, for recruitment of 5494 posts of AB Constables/UB Constables in the Assam Police. This was followed by an Addendum advertisement dated 19.12.2019, by which upon receipt of approval for recruitment of another 1168 posts (UB Constable - 540 and AB Constable 628) in Assam Police, as such, it was envisaged that 6662 posts of AB/UB Constables would be filled up. It is projected in this writ petition that the petitioners have assailed the subsequent recruitment process before this Court by filing W.P.(C) 2725/2020 and W.P.(C) 3020/2020.

4) It is further projected that during the pendency of the contempt petition and the said two writ petitions, the respondent no. 3 had issued a corrigendum dated 21.08.2020 to the effect that the herein before referred speaking order dated 21.10.2019 was not passed in compliance of the judgment dated 22.02.2019 in W.P.(C) 2725/2010. The said speaking order dated 21.10.2019 and the corrigendum dated 21.08.2020 are the subject matter of challenge in this writ petition filed under Article 226 of the Constitution of India and the petitioners have prayed for setting aside and quashing of the same.

Submissions of the learned counsel for the petitioner:

5) In course of his submissions, the learned counsel for the petitioner has extensively referred to the pleadings in the writ petition, and has read over the judgment dated 22.02.2019 in W.P.(C) 2725/2010. It has been submitted that in the said judgment, this Court had given a specific findings to the effect that some illegality had been committed by the respondents undertaking the selection process for the post of AB Constable, but despite the said finding, this Court had refrained from interfering with the appointments already made and at the same time, this Court had arrived at a conclusion that the process of selection was arbitrary and beyond the terms and conditions that was indicated in the advertisement and therefore, directions were issued to the following effect, viz.,

"1) The respondents are directed to consider the case of the petitioners for their appointment to the post of Armed Branch Constable or in any other equivalent post in the vacancies available i.e. current and next available vacancies. If the vacancies are limited, the petitioners will be considered in a phase manner till all of them are considered.

2) If it is found that the petitioners in the meantime have become overaged, the respondent authorities shall give them age relaxation as may be required.

3) It is made clear that the respondents without considering the case of the petitioners shall not fill up any post of Armed Branch Constable."

6) It is submitted that in a total disregard to the aforesaid judgment dated 22.02.2019, the respondent no. 2, by a speaking order dated 21.10.2019, in guise of considering the cases of the petitioners, undertook a fresh exercise of examining the marks obtained by the petitioners and rejected the candidature of

all the petitioner, thereby not selecting the petitioners. It is submitted that the said order dated 21.10.2019 is not only in total disregard to the judgment, but the manner in which the entire exercise was undertaken by the respondent no.2 amounts to an act of over-reaching this Court's order as if the respondent no. 2 was sitting in appeal over the judgment of this Court. Therefore, the petitioner nos. 131 to 134 had filed a contempt petition before this Court which was registered as Cont. Cas (C) 698/2019.

7) It is submitted that after passing the said speaking order, the respondents have initiated a fresh selection process to fill up the vacant posts of AB Constable in Assam Police by making reference to the previous recruitment advertisement dated 25.04.2018 and accordingly, an addendum was issued on 19.12.2019 by the respondent no. 6, thereby prescribing certain criteria. It is submitted that on 18.02.2020, the respondent no. 6 had issued yet another advertisement for filling up vacant posts of (i) Constables (Communication/Messenger/ Carpenter/ UB) in APRO, and (ii) Sub-Officers, Firemen and Rescuers in Fire and Emergency Services, Assam and that in the said advertisement, 25 vacant posts are indicated in respect of Sivasagar District. It is submitted that aggrieved by the said addendum and advertisement, the petitioner nos. 131 to 134 had filed W.P. (C) 2725/2020 before this Court and that this Court by an interim order dated 17.07.2020, directed the respondent authorities not to fill up 4 posts in the ensuing selection process meant for Sivasagar District and the petitioners had also filed a writ petition before this Court, which was numbered as W.P.(C) No. 3020/2020 and that this Court by order dated 20.08.2020, had issued notice of motion.

8) It is submitted that after the filing of the subsequent two writ petitions and the contempt petition, the Assam Police administration appeared to have become wiser and accordingly, the respondent no. 3 had issued a corrigendum dated 21.08.2020. By the said corrigendum, the following in the speaking order dated 21.10.2019 - "This dispose of the Hon'ble Gauhati High Court order dated 22.02.2019." was omitted and in its place the following words was inserted - "further action will be taken in the matter subject to outcome of the Writ Appeal being preferred before the Hon'ble Gauhati High Court against the judgment and order dated 22.02.2019 passed in W.P.(C) 2725/2010." Accordingly, it is submitted that after the respondent authorities had realized the mischief committed by them, the writ appeal was filed to assail the judgment dated 22.02.2019, passed in W.P.(C) 2725/2010 after about 1 (one) year. It is also submitted that the filing of the writ appeal would constitute proof that the respondent authorities were aware of the fact that the judgment and order by the learned Single Judge could only be interfered in appeal. Therefore, it is submitted that the speaking order was liable to be interfered with.

9) It is submitted that the respondent no. 2 had misconstrued the judgment dated 22.02.2019 passed in W.P.(C) 2725/2010. It is submitted that this Court had found fault in the selection process and had expressed its opinion that

illegality had been committed in the selection process and thereafter a direction of the Court was to consider the case of the petitioners for their appointment and therefore, it is submitted that the respondent no. 2 could not have assigned reasons not to select and appoint the petitioners and/or to revisit their marks obtained in the selection process. In order to explain the meaning of the word "consider", the learned counsel for the petitioner has placed reliance on the case of A.P.S.R.T.C. vs. G. Srinivas Reddy, (2006) 3 SCC 674 (para-17). It is submitted that the respondents including the respondent no. 2 had no power to re-examine the marks of the petitioners, but the authorities were bound to appoint all the petitioners.

10) It is submitted that the criteria of cut off marks was not indicated in the selection advertisement, which indicates that gross illegality was committed in the selection process by imposing cut-off mark criteria to prevent the petitioners to be selected and appointed. In this regard, it is also submitted that by providing cut-off marks for women, not only the women were treated as a separate class, but in the process the respondent authorities had violated the provisions of Assam Women (Reservation of Vacancies in Services and Posts) Act, 2005 and Schedule appended thereto.

Submissions made by the learned Additional Advocate General:

11) Per contra, the learned Additional Advocate General has submitted that in the earlier round of writ petition, i.e. W.P.(C) 2725/2010, neither this Court had returned any finding as to which particular selection and appointment made in the selection process was illegal, nor any finding has been returned as to which of the 167 petitioners had scored higher than the last selected candidate in his respective category. It is also submitted that there was no finding as to which selected candidates was undeserving but were appointed. Similarly, no finding was given by this Court as to which of the petitioner was found deserving and yet did not get selected and was not appointed. It is also submitted that in the judgment passed in W.P.(C) 2725/2010, there is no finding in respect of any of the 167 petitioners, save and except a general statement that the selection process was illegal, but without interfering with the selection process. It is submitted that for though not admitting but for the sake of argument even if there was any discrepancy, it would affect the result of only such persons, but it would not entitle all the petitioners to be appointed even if there is no discrepancy or illegality in not getting selected and appointed. Therefore, no illegality had been committed by the respondent no. 2 in passing the speaking order dated 21.10.2019 impugned in this writ petition. It is submitted that the exercise undertaken by the respondent no. 2 was in consonance with the judgment dated 30.08.2017, passed by this Court in W.P. (C) 2725/2010.

12) It is submitted that this Court in W.P.(C) 2725/2010 had not returned any finding qua any particular or individual petitioner, as such, the use of word "consider" in the said judgment would mean by implication that an exercise was required to be taken to examine the marks obtained by the petitioners in the said

writ petition and 'consider' would include re-consideration. It is submitted that had any finding been returned in W.P.(C) 2725/2010, by holding any particular petitioner eligible for selection and appointment, then the word 'consider' would have a different implication. In this regard, it is also submitted that the petitioners have challenged the impugned speaking order, but there is no pleading as to why the said speaking order was factually incorrect in respect of marks obtained by the petitioners and bench mark which has been indicated therein. It is submitted that devising a cut-off mark cannot be said to mean that the rules of the game was changed after the game had begun.

13) It is submitted that in W.P.(C) No. 2725/2010, there were 167 writ petitioners. In the present writ petition, i.e. W.P.(C) No. 4133/2020, as per cause-title, there are 126 writ petitioners, as such, 41 petitioners who were in the earlier writ petition have not joined in the present writ petition. It is further submitted that the names of about 16 petitioners could not be found in W.P.(C) 2725/2010.

14) It is also submitted that the plea of the petitioners that the provisions for reservation for women was not followed was also raised in the earlier writ petition, i.e. W.P.(C) 2725/2010, but was rejected by this Court and as such it is submitted that the same issue cannot be raised in the present writ petition as the said issue had attained finality.

Discussions and decision:

15) The Court is conscious of the fact that no affidavit-in-opposition has been filed by the State respondent. Therefore, the statements made by the petitioners have remained unrebutted.

16) From the submissions made by the learned counsel for the petitioners and the learned Additional Advocate General for the State, and upon the perusal of the materials on record, the Court finds that the only point determination by this Court is whether the impugned speaking order dated 21.10.2019 issued by the respondent no. 2 is not sustainable on facts and in law?

17) Amongst the points urged by the learned counsel for the petitioner are (i) relating to changing the rules of game by adopting methods not reflected in the advertisement like fixing cut-off marks, and (ii) relating to selection process for women candidates. In this regard, it is seen that in the previous writ petition, this Court had recorded the submissions made by the learned counsel for the petitioners regarding both the points urged including non-adherence to the mandate of the Assam Women (Reservation of Vacancies in Services and Post) Act, 2005 as a ground to challenge the selection process of AB Constable. However, this Court, taking note of the submissions, had rejected the challenge made on that ground. The relevant paragraphs 10 and 11 of the judgment dated 22.02.2019 in W.P.(C) 2725/2010 are quoted below:-

"10. I have heard the submissions advanced by the learned counsels for the rival

parties and I have perused the materials available on record. As may be noticed, the claim of the petitioners that there was irregularity in making the selection for the post of Armed Branch Constable is in respect of the district of Sivasagar. By relying upon the advertisement that was floated in the month of February, 2009, the petitioners have alleged that the respondents in making the selection to the post concerned have changed the rule of the game. Secondly, the respondents have also violated the Women Reservation Act by only allotting 10% of the vacancies for women candidates. The Women Reservation Act no doubt provides for a 30% reservation for women candidates in any direct recruitment process. Although there is a provision for relaxation of the reservation but, it is seen that the respondents have not invoked the relaxation clause. However, the fact remains that the petitioners instead of making a challenge to the advertisement in this respect, proceeded to participate in the selection process. Therefore, it will not be open for them to raise this issue after participating in the selection process. I therefore find force in the argument advanced by the learned Addl. Advocate General in this regard.

11. Adverting to the other issue as to whether the respondents have changed the rules of the game by adopting methods which were not reflected in the advertisement. The stand of the respondents as can be seen from Paragraph No. 8 of the affidavit-in-opposition dated 22.07.2010 is clear. The minimum cut-off marks have been provided for each category of candidates i.e. the reserved and the unreserved. Although, the same is not reflected in the advertisement but the fact remains that in order to select the required number of candidates for the posts advertised, the participating candidates will have to be arranged in order of their merit and therefore, a cut-off mark will have to be arrived at. As may be seen, the advertisement provided that a merit list will be prepared on the basis of aggregate marks secured in both the physical test and viva voce test by the candidate and in accordance with the reservation rules. It also further provided that the merit list shall be equal to the number of vacancies available and that no waiting list shall be prepared. As such, I am of the considered opinion that the respondents by devising the cut-off marks cannot be said to have changed the rules of the game as alleged by the petitioners. However, from the additional affidavit filed by the respondents as pointed out by Mr. AR Bhuyan, it is seen that despite providing for a cut-off mark, the same has not been strictly adhered to in as much as some of the candidates who scored above the cut-off marks have not been selected."

18) Nonetheless, from the above, it is seen that though without specifying the candidate who was not selected despite scoring more than cut-off marks, this Court had recorded that " ... despite providing for a cut-off mark, the same has not been strictly adhered to in as much as some of the candidates who scored above the cut-off marks have not been selected". To understand the proposition argued by the learned counsel for the petitioner, let us take an example that in a given case, the cut of marks for admission in a college is 80%, but all seats are filled up by students scoring 99% and above, and under such circumstances,

whether the selection and admission process can be said to be illegal merely because some students scoring more than cut-off marks, say for example student securing 85% has not been admitted. This Court is unable to find fault with the admission process, unless someone comes before the Court and satisfied the Court that he belongs to the same category as a particular selected candidate, who had scored less than the petitioner. In other words only if a person can successfully establish that he had scored higher than the last selected candidate in same category as him and yet he was deprived of admission, can the selection and admission process be said to be vitiated. Be that as it may, in this regard, it is seen that in the present writ petition, the petitioners have not made any pleading as to which petitioner had secured above the marks obtained by the last successful candidate in his same category, i.e. General, SC, ST, ST(P), ST(H), OBC, MOBC, Women, etc.

19) From the speaking order dated 21.10.2019, it is seen that the respondent no. 2 has disclosed marks obtained by all 167 petitioners of W.P.(C) 2725/2010. It was disclosed that data collected from the Chairman, State Level Police Recruitment Board revealed that 156 number of posts were allotted for Sivasagar District out of which 8 (eight) posts (i.e. 5%) were reserved for appointment on compassionate ground and therefore, recruitment for 148 posts of AB Constable was conducted in Sivasagar District pursuant to advertisement dated 20.02.2009 and that a total of 142 candidates were selected category-wise. It is mentioned in the speaking order that category-wise cut-off marks were as follows, viz., General- 68.5; SC- 63; ST(P)- 65; ST(H)- 56; OBC/MOBC-66; Women-74.5. It is also disclosed therein that the State Level Police Recruitment Board in the proceedings of its meeting dated 22.03.2010 for the Sivasagar District and other districts in different dates had decided that in case of equal marks with the cut-off marks there will be a tie of marks of PET in the matter of selection, and OBC candidates who had obtained equal marks with the cut-off marks securing more marks in PET was to be selected. As already indicated herein before, this Court in the judgment dated 22.02.2019 in W.P.(C) 2725/2010, had held that devising cut-off marks cannot be said to have changed the rules of game as alleged by the petitioners. Therefore, the herein before referred two plea urged by the learned counsel for the petitioners, having been heard and decided in W.P.(C) 2725/2010, the said plea would be barred by the principles of issue estoppel as well as barred by principles of res judicata.

20) It is seen that the learned coordinate Bench of this Court by the said judgment dated 22.02.2019 in W.P.(C) 2725/2010, had expressed an opinion that illegality was committed in selection process and in no uncertain terms had held that the petitioners have been able to make out a case for the directions as already extracted herein above.

21) As indicated herein before, it is seen from the Speaking Order dated 21.10.2019 that 156 number of posts were allotted for Sivasagar District out of which 8 (eight) posts (i.e. 5%) were reserved for appointment on compassionate

ground and therefore, recruitment for 148 posts of AB Constable was conducted in Sivasagar District pursuant to advertisement dated 20.02.2009 and that a total of 142 candidates were selected category-wise. It must be remembered that none of the appointments made in the said selection process was set aside. Therefore, if the judgment under reference is interpreted to mean that all 167 petitioners in W.P.(C) 2725/2010 are to be appointed then out of 156 posts earmarked for Sivasagar, the total appointment would be to the extent of 323 persons, as such, the interpretation as sought to be given by the learned counsel for the petitioner would lead to an anomalous situation where appointments to be made in connection with recruitment drive of 2009 would lead to excess appointment in relation to the then sanctioned and available vacant posts.

22) The Court is compelled to take note of the fact that as per the pleadings made in the writ petition, the petitioners have assailed the Speaking Order dated 21.10.2019 on the premise that it runs contradictory to the mandate of the judgment in W.P.(C) 2725/2010. However, the contents of the said speaking order relating to the marks obtained and/or secured by the petitioners are not questioned at all. The said speaking order contains 12 columns, viz., (1) Serial no.; (2) name of the petitioners; (3) Category; (4) Roll no.; (5) 16 km race for male and 0.80 km race for women, max. marks- 15, qualifying marks-8 for both; (6) 100 mtrs. sprint for male and 60 mtrs. sprint for women, max. marks- 15, qualifying marks-8 for both; (7) long jump, max. marks- 10, qualifying marks-4.5 for both; (8) high jump, max. marks- 10, qualifying marks-4.5 for both; (9) viva voce and interview, total marks- 50, qualifying marks- 25 for both; (10) Total marks obtained; (11) Category wise cut off marks General-68.5; SC- 63; ST(P)- 65; ST(H)- 56; OBC/MOBC- 66; Women-74.5; (12) Recruitment result of the petitioners and comments. It is seen that the respondent no. 2 had already assigned speaking reasons why the petitioners were not selected. Therefore, it is seen that in this writ petition, no attempt has been made by the petitioners to show which petitioner had scored higher than the last selected candidate in his/her respective category and/or was shown to be deserving and yet was selected and appointed. The petitioners have also not made any attempt to demonstrate as to which successful and/or selected candidate was undeserving, but were appointed nonetheless. Similarly, no finding was given by this Court as to which of the petitioner. Therefore, on the face of it, the contents of the said Speaking Order dated 21.10.2019 cannot be faulted with.

23) It is seen from paragraph- 6 of the judgment dated 22.02.2019 passed in W.P.(C) 2725/2010, that this Court had perused the records produced before it pursuant to order dated 30.08.2017. Thereafter, the respondents therein had filed their additional affidavit on 01.09.2018, annexing a compilation of the marks given to the selected candidates in so far as the District of Sivasagar is concerned. As per paragraph-7 of the said judgment, the learned counsel for the petitioners had submitted that (i) the bench-mark or the cut-off mark in respect of the general category was 68.5 marks, however, the petitioner nos. 4, 5, 76, 80, 81, 93, 99, 139 and 142, who belonged to either the general, OBC or

Scheduled Caste category have all secured above 68.5 marks; (ii) the bench-mark or the cut-off mark in respect of Scheduled Tribe (Plains) category was 65 marks, however, the petitioner nos. 97 and 101 had secured 67 and 65.5 marks; (iii) the bench-mark or the cut-off mark in respect of the OBC/MOBC category was 66, however, the petitioner nos. 3, 79, 100 and 138 had all secured 66 or more marks. However, the said petitioners were not selected.

24) In respect of the herein before referred 15 petitioners in W.P.(C) 2725/2010, in the Speaking Order dated 21.10.2019, it has been mentioned as follows, viz., (1) Petitioner no. 4 (OBC) had obtained marks less than the cut off marks for women candidate. Hence not selected; (2) Petitioner no. 5 (OBC) had obtained marks less than the cut off marks for women candidate. Hence not selected; (3) Petitioner no. 76 (OBC) had obtained marks less than the cut off marks for women candidate. Hence not selected; (4) Petitioner no. 80 (SC) had obtained marks less than the cut off marks. Hence not selected; (5) Petitioner no. 81 (OBC) had obtained marks less than the cut off marks for women candidate. Hence not selected; (6) Petitioner no. 93 ST(P) had failed in viva voce and also obtained marks less than the cut off marks. Hence not selected;

(7) Petitioner no. 99 (OBC), in his case it was noted in column 12 that the State Level Police Recruitment Board in the proceedings of its meeting dated 22.03.2010 for the Sivasagar District and other districts in different dates had decided that in case of equal marks with the cut-off marks there will be a tie of marks of PET, in the matter of selection he secured 36 marks in PET, whereas some of the other OBC candidates securing equal marks with the cut off marks secured more marks in PET than him. Hence not selected; (8) Petitioner no. 139 (OBC) had obtained marks less than the cut off marks. Hence not selected; (9) Petitioner no. 142 (MOBC), he had failed in viva voce and also obtained marks less than the cut off marks. Hence not selected; (10) Petitioner no. 97 ST(P), she had obtained less than the cut off marks for women candidates. Hence not selected; (11) Petitioner no. 101 (OBC), he had failed in viva voce and also obtained marks less than the cut off marks. Hence not selected; (12) Petitioner no. 3 (MOBC), in his case it was noted in column 12 that the State Level Police Recruitment Board in the proceeding of its meeting dated 22.03.2010 for the Sivasagar District and other districts in different dates had decided that in case of equal marks with the cut-off marks there will be a tie of marks of PET, in the matter of selection he secured 36 marks in PET, whereas some of the other OBC candidates securing equal marks with the cut off marks secured more marks in PET than him. Hence not selected; (13) Petitioner no. 79 (OBC), in her case it was noted in column 12 that the State Level Police Recruitment Board in the proceedings of its meeting dated 22.03.2010 for the Sivasagar District and other districts in different dates had decided that in case of equal marks with the cut-off marks there will be a tie of marks of PET, in the matter of selection she secured 41 marks in PET, whereas some of the other OBC candidates securing equal marks with the cut off marks secured more marks in PET than her. Hence not selected; (14) Petitioner no. 100 ST(P), she had failed in viva voce and also

obtained marks less than the cut off marks for women candidate. Hence not selected; (15) Petitioner no. 138 (MOBC), she had obtained marks less than the cut off marks for women candidates. Hence not selected. Therefore, in respect of the said 15 (fifteen) out of 167 petitioners in W.P.(C) 2725/2010, whose reference has been made in paragraph 7 of the judgment, it appears from the Speaking Order dated 21.10.2019 by the respondent no. 2 that there are justifiable reasons for not selecting the said petitioners. However, the learned counsel for the petitioners has not been able to demonstrate from the judgment dated 22.02.2019 that any finding has returned by this Court as to which of the eligible petitioner was not selected. Therefore, the directions "... to consider the case of the petitioners ..." as contained in the said judgment dated 22.02.2019 in W.P.(C) 2725/2010, cannot be read to mean that the respondent authorities would be powerless to examine the marks obtained by the petitioners to see if they were entitled to be appointed.

25) In the considered opinion of the Court the restrictive interpretation of the directions contained in the said judgment dated 22.02.2019 in W.P.(C) 2725/2010, so as to completely exclude the respondent no. 2 from revisiting marks would lead to two illegalities, firstly, (i) in respect of 148 posts advertised, the total appointment of AB Constable in 2009 recruitment process in respect of Sivasagar District would be 323 persons against 156 sanctioned posts/ vacancies to be filled up by direct recruitment in the said District. Secondly, (ii) the otherwise undeserving petitioners, who had been unsuccessful in the recruitment process for the year 2009 would be continued to be appointed in the future vacancies in AB Constables of Assam Police in Sivasagar District till such period of time till all the petitioners are appointed, as if a new category or reservation has been made for the otherwise unsuccessful petitioners.

26) It would be now relevant to refer to paragraphs 14 to 20 of the cited case of A.P.S.R.T.C. (supra), which are quoted below:-

"14. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner/s in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/ irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to

exercising appellate power, but require the authority to 'consider' and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself.

16. The High Courts also direct authorities to 'consider', in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to 'consider' and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs 'consideration' without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to 'consider' afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to 'consider' the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

18. We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by court. We may illustrate by an example. A claim, which is stale, time- barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to

consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider', may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of court's direction to 'consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily wagers seeking regularization/ absorption into regular service is a species of cases, where there has been a large scale misuse of the orders 'to consider'.

20. Therefore, while disposing of writ petitions with a direction to 'consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

27) As already mentioned herein before, the petitioners have not been able to demonstrate that as envisaged in paragraph 20 of the case of A.P.S.R.T.C. (supra), there is no finding in judgment dated 22.02.2019 in W.P.(C) 2725/2010 about entitlement of the petitioners in order of merit.

28) It is a settled legal proposition that the court should not set aside the order which appears to be illegal, if its effect is to revive another illegal order. It is for the reason that in such an eventuality the illegality would perpetuate and it would put a premium to the undeserving party/person. If one needs any authority on the point, the cases of (i) Gadde Venkateswara Rao v. Government of Andhra Pradesh & Ors., AIR 1966 SC 828; (ii) Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar & Ors., AIR 1999 SC 3609; (iii) Mallikarjuna Mudhagal Nagappa & Ors. v. State of Karnataka & Ors., AIR 2000 SC 2976; (iv) Chandra Singh v. State of Rajasthan, AIR 2003 SC 2889; (v) State of Uttaranchal & Anr. v. Ajit Singh Bhola & Anr., (2004) 6 SCC 800, and (vi) Bhartiya Samaj Seva Trust Vs. Yogeshbhai Ambalal Patel, (2012) 9 SCC 210 may be referred to. Following the same ratio, the Court is of the considered opinion that if the interpretation sought to be given by the learned counsel for the petitioners is to be accepted, then the petitioners, who have remained unsuccessful in the recruitment process of the year 2009 for AB Constable in Sivasagar District, the result of which was declared after the select list was approved on 01.04.2010, would secure appointment after a lapse of 11 years now. More so, when the petitioners have not been able to demonstrate that (i) the reasons assigned in the said Speaking Order dated 21.10.2019 for not selecting the petitioners is incorrect, wrong, not sustainable on facts or contrary to the records, (ii) that any

of the 126 petitioners in this writ petition had secured more marks in his/her respective category, yet was deprived of selection and appointment.

29) As a result of the discussions above, the Court is constrained to hold that no case has been made out by the petitioners for setting aside or quashing or otherwise interfering with the speaking order no. LC/WP(C) No. 2725/2010/174/340 dated 21.10.2019, passed by the Director General of Police (respondent no. 2).

30) As regards the prayer for setting aside the corrigendum dated 21.08.2020 issued by the respondent no.3 is concerned, the said corrigendum does not prejudice any of the petitioners, or puts them in an adverse position. Therefore, the Court finds no reason to interfere with the same.

31) Therefore, this writ petition fails and the same is dismissed.

Before parting with the records, it is clarified that reference has been made to the judgment dated 22.02.2019 in W.P.(C) 2725/2010 merely to understand the context in which the Speaking Order dated 21.10.2019 was passed and with full respect to the said judgment, nothing contained herein is intended to comment on merit in respect of the said judgment.