
(2011) 08 AHC CK 0290

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37741 of 2007

Sri Krishna Rai and Others

APPELLANT

Vs

Banaras Hindu University and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2011) 8 ADJ 148 : (2012) 1 AWC 825

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Sudhir Agarwal, J.—34 Petitioners, working as Class-IV employees in Banaras Hindu University (hereinafter referred to as "BHU"), have filed this writ petition under Article 226 of the Constitution of India challenging promotion of Respondents 3 to 16 vide order dated 5.6.2007 (Annexure 9) to the post of Junior Clerk and order dated 2.7.2007 (Annexure 1) rejecting Petitioners" representation.

2. Sri Ashok Mehta, Advocate, has advanced submissions on behalf of Petitioners and Sri Sunil Kumar Tripathi, Advocate, has appeared for BHU. None has appeared on behalf of Respondents 3 to 16. Office report dated 18.1.2011 shows that Respondents 3,7,11,12 and 13 were served and their acknowledgments were also received while Respondents 4,5,6,8,9,10,14,15 and 16 were issued notices but neither acknowledgment nor undelivered notice received in office. Thus under the Rules, service upon them is deemed sufficient. Sri Tripathi, however, told that Respondents 3 to 16 have authorized University to defend them.

3. The facts in brief giving rise to the present dispute are as under.

4. All the Petitioners were appointed on various dates between 1977 to 1997 and presently are permanent Class IV employees in BHU. They claim to have passed

matriculation or equivalent examination and are eligible for consideration for promotion to the post of Junior Clerk under 25 % promotion quota.

5. The last promotion before the impugned one from Class IV to Class III was made on 21.6.1982 after holding examination on 23.12.1980. On 6.9.1995 though an advertisement was issued for Class IV employees working in BHU inviting applications for promotion against 25% promotion quota in Class III but it did not proceed further.

6. Under the existing provisions, eligibility for promotion from Class IV to Class III is five years service, High School qualification and passing of departmental examination-cum-seniority.

7. A notification/advertisement was issued on 17.12.2005 (Annexure 4 to the writ petition) inviting application from Class IV permanent employees of BHU for appointment as Junior Clerk under 25% promotion quota in the pay scale of Rs. 3050-4590. The eligibility prescribed in the said notification reads as under:

Eligibility:

All Class- IV employees, who have put in five years services and who have passed matriculation examination or equivalent will be eligible for appointment as Junior Clerk under 25% promotion quota.

Such eligible candidates will be tested in:

A typing test in English/Hindi for a minimum of 30 words per minutes; and after qualifying in the test.

Note: If an employee does not pass the typing test and is otherwise eligible for promotion he/she be promoted subject to the condition that he/ she passes the typing test within two years from the date of his/her promotion failing which he/ she will be reverted.

Provided further that for such employees, typing test be held at least twice a year.

Two papers of simple English, Hindi and Arithmetic of one hour duration.

8. In furtherance thereof, the BHU decided to hold a computer typing test on 20.4.2006 whereagainst all Petitioners represented. The aforesaid test was postponed. BHU issued a clarification vide letter dated 4.5.2006 stating that final merit list shall be based on the marks obtained in typing test, written test and interview. The candidates may give typing test either on computer or on manual typewriter having option. The date of typing test accordingly was fixed on 16.5.2006.

9. Petitioners, thereafter, made representation on 16.6.2006 requesting BHU to promote Class IV employees considering their seniority. BHU, however, promoted/appointed 14 persons on the post of Junior Clerk from Class IV vide appointment letters dated 5.6.2007. All the appointment letters are identically worded and one of such appointment letter is on record as Annexure-9 to the writ petition

issued on 5.6.2007. Since seniority was completely given a go-bye, Petitioners made representation on 12.6.2007 which has been rejected by order dated 2.7.2007.

10. It is said that there are 242 posts of Junior Clerk vacant out of which 62 comes within the quota of Class IV employees but 14 have been promoted. The impugned promotion and selection is in violation of Clause 6.4 of Office Procedure Manual (hereinafter referred to as "Manual") as prescribed by Executive Council on 2/3.4.1990 as amended on 23/24.4.1996.

11. A counter-affidavit has been filed on behalf of Respondents 1 and 2 sworn by Sri S.K. Bose, Senior Assistant. Basic facts are not disputed. It says that procedure for promotion is prescribed by Executive Council's resolution No. 223 dated 2/3.11.1980 printed on page 27 at Clause 6.4 in Manual, 1985. It provides as under:

6.4 Promotion of Class IV staff to the Cadre of Junior Clerk:

(i) All Class- IV employees who have put in five years services and who have passed matriculation examination or equivalent will be eligible for promotion to the post of Junior Clerk grade.

(ii) Such eligible candidates will be tested in:

(a) A typing test in English/Hindi for a minimum for a minimum speed of 30 words per minute and after qualifying in the test.

Note: If an employee does not pass the typing test and is otherwise eligible for promotion he be promoted subject to the condition that he passes the typing test within two years from the date of his promotion failing which he will be reverted.

Provided further that for such employees, typing test be held at least twice a year.

Two papers of simple English, Hindi and Arithmetic of one hour's duration.

Further, the Executive Council vide ECR No. 131 dated March 29-30, 1996 has raised 20 to 25% of the vacancies in all cadre of posts (Group "C" and "D") for promotion of Group- "D" in-service employees. A seniority-list of such employees shall be prepared after passing the Departmental test. No relaxation in prescribed qualification shall be given for in-service employees.

12. The total sanctioned strength of Junior Clerks in BHU is 266 out of which 223 were lying vacant. As per U.G.C. directions issued on 6.9.2002, 25% of resultant vacancies are to be filled in after approval by U.G.C. It takes care of 56 vacancies. 25% of 56 comes to 14 and that is how promotion for 14 vacancies was considered. Applications were invited vide notification dated 17.12.2005 fixing last date for submission of application forms at 16.1.2006. 385 applications were received. A Board of Examiner was constituted by Vice-Chancellor for undertaking typing and written test. The aforesaid Board decided to award maximum 20 marks for typing, 60 marks for written test and 20 for interview.

The typing test was conducted on 23.5.2006 and written test was held on 23.9.2006. Those who secured 33 and above marks in typing and written test were called for interview. Thus 190 candidates were called for interview held on 31.5.2007 and 1.6.2007. Merit list was prepared accordingly by Board of Examiners. In the light of the recommendations, appointment letters were issued to 14 selected candidates i.e. Respondents 3 to 16. It is said that selection has been made strictly in accordance with guide lines of Executive Council and there is no violation of Clause 6.4 of Manual, 1985.

13. Sri Ashok Mehta, learned Counsel for Petitioner submitted that the procedure nowhere contemplates any interview. It talks for a departmental test whereafter preparation of a seniority list and then those who qualify in typing test, are to be promoted. He submitted, the procedure shows that typing is only a "desirable qualification" inasmuch the same will not deprive a person from promotion but the condition is that one can pass typing test before or after promotion but within two years from the date thereof. Relaxation in typing test is also permitted to the employees who are above 45 years.

14. It is said that the marks of typing test have been added in departmental test and no seniority list has been prepared, therefore, the entire selection has been made illegally. He drew my attention to Annexure RA-1 to the rejoinder-affidavit which is notification dated 9.12.1980 and contended that earlier criteria for promotion was seniority and performance in departmental test. There was no condition of passing typing test before promotion. On the contrary, typing test could have been passed even after promotion but within two years.

15. Learned Counsel for BHU, on the contrary, relied on the stand taken by University in the counter-affidavit and submitted that the selection has been made in accordance with procedure prescribed in the Manual and in the light of decision taken by Selection Committee, hence, warrants no interference. He also stated that Respondent Nos. 3 to 16 have authorized the University to take care of their interest and the Counsel for the University may appear on their behalf and may represent their case. He, therefore, submitted that the stand taken by him be construed as the stand taken by Respondent Nos. 3 to 16.

16. The short question up for consideration is, whether selection and promotion in the present case has been done in accordance with the procedure prescribed or not.

17. In the rejoinder-affidavit, Petitioners have referred to a different procedure though in the writ petition in para 5 they admit that for promotion from Class IV to Class III, procedure in Clause 6.4 of Manual would apply. A minor amendment was made by Executive Council vide its resolution dated 3/5.11.1995 notified on 23/24.4.1996 which in respect to Class IV employees reads as under:

The provision of reservation under promotion quota for Group-D employees for all cadres (Group C & D) be raised to 25 per cent from 20 per cent and panel of in-service employees for promotion be prepared after taking Departmental Test.

However, no relaxation in educational/ technical qualification as prescribed under the rules for promotion quota be given to in-service employees.

18. Clause 6.4 of the Manual, in Sub-clause 1, talks of eligibility for promotion to the post of Junior Clerk. All Class IV employees who have put in five years service, passed matriculation examination or equivalent are so eligible.

19. Sub-clause 2 of Clause 6.4 talks of a typing test which is to be held after qualifying in departmental test.

20. Note appended to the said sub-clause provides that an employee who does not pass typing test but is otherwise eligible for promotion, would be promoted, subject to the condition that he passes typing test within two years from the date of promotion failing which he will be reverted. The proviso says that for such employees, typing test be held at least twice a year.

21. Then there is a written test contemplated in Clause 6.4 consisting of two papers of simple English, Hindi and Arithmetic of one hour duration.

22. The matter of importance is that in Clause 6.4 (II) (2), the test other than typing test has been referred to by observing "qualifying in the test". This Court has also gone through the resolution of Executive Council of 1996, which, while extending quota of promotion from 20 to 25%, talks preparation of panel of in-service employees for promotion after taking departmental test. It clearly says that there shall be no relaxation in educational and technical qualifications.

23. These provisions have been understood by BHU in their true perspective when notification for selection was issued as is evident from the conditions mentioned therein. It is nobody's case that there is any other change or alternation either by Executive Council or any other authority having jurisdiction in the matter incorporating any alteration or amendment in the aforesaid procedure. It goes without saying that note appended to Sub-clause 2(a) of Clause 6.4 says that passing of typing test is a pre-condition for qualifying for promotion in Class III from Class IV. If a candidate is otherwise eligible, and has passed departmental test, he can be promoted, whereafter he may pass typing test in two years.

24. No provision has been shown which contemplate any interview or marks therefor. Even the departmental test is contemplated as a qualifying examination for eligible candidates. Reading Clause 6.4 of Manual in the light of Executive Council's resolution notified on 23/24.4.1996 requiring preparation of a seniority list of the candidate who have passed departmental test, this Court has no manner of doubt that for promotion from Class IV to Class III, the extant procedure available in BHU talks of only a departmental test which consists of a written test in two papers of English, Hindi and Arithmetic. Those who pass the said test shall be promoted in Class III in order of seniority. If they have already passed typing test, their promotion will be absolute subject to provision of probation etc. but if they have not passed typing test, then promotion would be

conditional i.e. they have to pass typing test within two years failing which they would be reverted. Neither the procedure contemplates preparation of a merit list based on the marks obtained in typing test, written test and interview nor passing of typing test is a pre-condition for getting promotion on Class III post nor interview at all a part of selection procedure.

25. The Respondent-University in the counter-affidavit has said that this was incorporated by Board of Examiners on 11.4.2006. It is apparently, in my view, in the teeth of procedure prescribed in Clause 6.4 of Manual read with Executive Council's resolution dated 23/24.4.1996 and the procedure notified by Respondents inviting applications on 17.12.2005.

26. The incidental but necessary question then comes up whether the Board of Examiner, which is a body constituted by Vice Chancellor to hold selection in accordance with existing provisions, did possess any power to make alteration/change in the procedure of selection. In my view, the matter is squarely covered by a decision of the Apex Court in Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, In para 35 of the judgment, the Court said:

The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309. It is basically the function of the rule making authority to provide the basis for selection.

27. Further in para 36 the Court said:

The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication.

28. Earlier, in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, the Court said:

By necessary inference, there was no such power in the ASRB to add to the required qualifications. If, such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reasons that such deviation from the rules is likely to cause irreparable and irreversible harm.

29. In Umesh Chandra Shukla Vs. Union of India (UOI) and Others, also the Apex Court held that selection committee does not possess any inherent power to lay down its own standards in addition to that is prescribed under the rules.

30. In Durgacharan Misra Vs. State of Orissa and Others, following Apex Court decision in Ramchandra Iyer (supra) the Apex Court pointed out limitations of the selection committee stating that it has no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva-voce test.

31. The Apex Court in Krushna Chandra Sahu (supra) in para 38 also said that Selection Committee or the Selection Board cannot be held to have jurisdiction to

lay down any standard or basis for selection as it would amount to legislate a rule for selection.

32. The minutes of meeting of Board of Examiners (constituted by Vice-Chancellor) have been placed on record as Annexure 3 to Supplementary Counter-affidavit filed by Respondents 1 and 2 and it says as under:

Considered the matter relating to conduct of Typing Test on 16.5.2006 of the eligible Group-"D" employees of the University, Written Test and Interview for appointment to the post of Junior Clerk under 25% promotion quota.

The Board of Examiners, after considering the facts and in view of the previous norms, decided the following marking system for Typing Test Written Test and Interview:

Mode of Test

Maximum Marks

Typing Test

20

For 30 wpm

10

For each two correct words-1 mark as bonus

10 (maximum)

Written Test

60

Hindi

20

English

20 (Paper-A)

Arithmetic

20 (Paper-B)

Interview

20

Total

100 marks

The Board of Examiners decided that the above-mentioned marking system be

adopted for making final merit for appointment to the post of Junior Clerk from amongst eligible Group-"D" employees under 25% promotion quota in the University.

The Board of Examiners still further decided that all the eligible Group-"D" employees except exempted employees are required to appear in the Typing test. The excepted employees (by way of age or disabilities) be given 10 marks without appearing in the Typing Test. If they wish to appear in the Typing Test and if their performance in the Typing Test is more than 20 wpm, 1 mark be given for each two correct words but maximum 10 marks as in the case of general employees. All the eligible employees including exempted employees be subjected to written Test and Interview. The merit list be prepared on the basis of overall marks obtained by them in the Typing Test, Written Test and Interview.

33. The said Board consisted of Prof. Kalyan Singh, Department of Agronomy as Chairman and Sri N. Sundaram, Registrar, Prof. Kiran Barman, Department of Economics, Prof. S.K. Basu, Department of Computer Science, Dr. S.P. Mathur, Dy. Registrar (Admin.-1) as members and Sri M.L. Kanaujiya, Dy. Registrar (Admin.)- II as Member Secretary. The above decision of Board of Examiners is clearly in violation of procedure prescribed in Clause 6.4 of the Manual and Executive Council's resolution of 1996.

34. Learned Counsel for Respondents 1 and 2 has admitted that Board of Examiners was not authorized or conferred any power either under B.H.U. Act or statute or ordinance or any resolution of Executive Council so as to empower them to prescribe procedure for selection. On the contrary, repeatedly in the counter-affidavit and the written submission, the case of the Respondents 1 and 2 is that they have strictly followed the procedure prescribed in Clause 6.4 read with 1996 Resolution of Executive Council. It is not in dispute that the Executive Council is a statutory body under the Act and is empowered to frame rules and regulations, statutory in nature, for recruitment and conditions of service of the employees of University. They had so laid down procedure and that had to be followed as such. The Board of Examiners by no stretch of imagination possess any power to create a procedure on their own in contravention or addition to what has been laid down by Executive Council. The aforesaid decision and consequential selection, therefore, in my view, is wholly illegal and contrary to the procedure prescribed in law.

35. Sri Tripathi, learned Counsel for Respondents, at this stage, submitted that an employee has no right of promotion but only has right of consideration for promotion. Petitioners were given an opportunity to participate in selection, they also participated and have not been selected. Having so appeared in selection and failing therein, they subsequently cannot turn around and challenge the very selection. Fortifying the aforesaid submission, he placed reliance on Apex Court's decisions in *K. Samantaray Vs. National Insurance Co. Ltd.*, *Ved Prakash and others v. State of Haryana and others* (2002) 10 SCC 359, *Union of India (UOI) and Another Vs. A.K. Narula, K.A. Nagmani v. Indian Airlines*, (2009) 5 SCC 518,

Madan Lal and Others Vs. State of Jammu and Kashmir and Others, Chandra Prakash Tiwari v. Shakuntla Shukla, (2002) 6 SCC 132 and Union Public Service Commission Vs. S. Thiagarajan and Others,

36. The above proposition advanced by learned Counsel for Petitioner and the aforesaid decisions in respect to exposition of law as such admits no exceptions. The Million dollar question, however, would be, whether it would apply to the present case or not.

37. I first refer to the decisions relied by learned Counsel for Respondents 1 and 2.

38. In K. Samantaray (supra) the Apex Court in para 6 observed that in all services whether public or private, there is invariably a hierarchy of posts comprising of higher posts and lower posts. Promotion, as understood under the service law jurisprudence, is advancement in rank, grade or both and no employee has a right to be promoted, but has a right to be considered for promotion. Further, in para 11 of the judgment, Court observed that employer while laying down promotion policy or rule can always specify the area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, nor has the effect of violating any statutory provision. The above exposition of law is well settled admits no exception. It may be pointed out at this stage that in K. Samantaray (supra), no statutory provision existed laying down the promotion policy, criteria etc. hence the employer, i.e. National Insurance Company formulated a promotion policy which has been quoted in the judgment in para 8. The Apex Court said that in absence of statutory rules, the employer can always formulate such policy since the legislative power in such matter vests with employer. It is in this context, in para 11 of the judgment the Court said:

There is no statutory rule operating. It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy-making. It was, therefore, permissible for the Respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well, depending upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts.

39. In Ved Prakash (supra), the question was whether the criteria for promotion "seniority-cum-merit" would mean that the promotion has to be made solely on the basis of seniority ignoring merit or not. It was held that expression "seniority-cum-merit" cannot be construed equivalent to seniority alone, but in such case one must have minimum merit and if by considering the merit he is found unsuitable, the senior most person may be denied promotion. Evidently, the judgment has no application in the case in hand since in our case, the criteria for promotion is not as that was applicable in Ved Prakash (supra) and others and that too was governed by a statutory rule, namely, Rule 9 of Punjab Forest Subordinate (Executive Section) Rules. The judgmental, therefore, has no

application in the case in hand.

40. In *Union of India v. A.K. Narula* (supra), the only question up for consideration was whether a selection made by a departmental promotion committee can be challenged by requiring the Court to examine whether the assessment of performance has been made rightly or not, like sitting in appeal. Repelling, Apex Court said that a process of assessment can be vitiated in law either on the ground of bias, mala fide or arbitrariness and not otherwise. The Court would not sit like an appellate authority and for this purpose relied on its earlier decisions in *State Bank of India and others Vs. Mohd. Mynuddin*, *Union of Public Service Commission v. Hiranyuala Dev*, (1988) 2 SCC 242, *Badrinath Vs. Government of Tamil Nadu and Others*, Provisions as applicable therein were also considered and in para 15 of the judgment, the Court said:

15. The guidelines give a certain amount of play in the joints of DPC by providing that it need not be guided by the overall grading recorded in C Rs. but may make its own assessment on the basis of the entries in C Rs. DPC is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness, that the selection calls for interference. Where DPC has proceeded in fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by DPC, the Court will not interfere.

41. There is no such dispute in our case, therefore, the judgment has no application.

42. In *K.A. Nagmani*(supra), the Apex Court in paras 53,54 and 55 observed that the Appellant therein participated in the selection without any demur or protest and when the selection was complete and they were unsuccessful, they challenged the selection which cannot be permitted. Para 54, which says the above facts, is reproduced as under:

54. The Corporation did not violate the right to equality guaranteed under Articles 14 and 16 of the Constitution. The Appellant having participated in the selection process alongwith the contesting Respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the promotion.

43. In this context, relying on an earlier decision of Apex Court in *Madan Lal* (supra) and *Chandra Prakash Tiwari* (supra), the Court said that unsuccessful candidate in these cases cannot be allowed to challenge the selection. In our case, the facts already stated would show when a typing test was held as a first item, Petitioners protested and again they protested at the time of interview, but their protest was rejected. Here is not a case where Petitioners did not protest or shown demur against the manner in which the selection was held. Besides, the decisions of Board of Examiners for providing different marks in three tests it, is

nowhere stated by the Respondents that it was ever disclosed or made known to the candidates. In any case, here is not a case wherein the selection is being challenged on the ground that proceeding according to statutory provisions, there is some irregularity but the contention is that the entire selection is vitiated being in the teeth of statutory procedure laid down by the Executive Council of the University. There is no estoppel against law.

44. In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , the Hon''ble Supreme Court has held that once a person has taken a chance in the selection, he cannot resile back subsequently after having found himself unsuccessful and cannot be allowed to challenge the entire selection.

45. In *Union of India and Another Vs. N. Chandrasekharan and Another*, the Hon''ble Apex Court has held as under:

It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report.

46. In *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, wherein it was held as under:

Both the University as well as the selected candidate have pointed out that this fact was known to the first Respondent throughout. He did not, at any times, objected to the composition of the Selection Committee. He objected only after the selection was over and he was not selected. This would amount to waiver of such objection on the part of the first Respondent.

47. In *Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others*, the Hon''ble Apex Court has held as under:

The law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

48. Following the judgments of the Hon''ble Apex Court, some of them referred to hereinabove, an Hon''ble Single Judge of this Court has also taken the same view in *Kavindra Kumar v. Deputy Inspector General and others*, 2003 (1) ESC 235, wherein it was held as under:

It is thus held that these writ petitions, challenging the criterion for promotion, are not maintainable at the instance of candidates who have participated in the selection without raising any objection.

49. A Division Bench of this Court (in which I was also a member) has also taken similar view in Special Appeal No. 1222 of 2005 Km. Saurabh Vibhushan v. State of U.P. and others, decided on 11.9.2006 wherein it was held as under:

Now, after having failed to qualify in the selection the Appellant has challenged the very qualification on the basis whereof the aforesaid selection has been made. In our view, the Appellant having availed the opportunity of participating in the selection cannot be permitted to challenge the norms of the aforesaid selection.

50. The three judgments, namely, K.A. Nagmani (supra), Madan Lal (supra) and Chandra Prakash Tiwari (supra), similar others, some whereof discussed above, therefore, in my view, have no application to the facts of this case.

51. In Union Public Service Commission v. S. Thiagarjan, the Court in para 22 of the judgment has categorically held that the Selection Committee acted strictly in accordance with the provisions of the Promotion Regulations which are statutory in nature. That being so, its decision for not interfering with the selection would not help the Respondents in any manner and reliance placed thereon, in my view, is thoroughly misconceived. Moreover, it was a case relating to selection made in accordance with statutory rules of the members of All India Service (i.e. Indian Forest Service) governed by the regulations framed under All India Services Act, 1951 and, therefore, has nothing common with the facts and dispute in this case.

52. In the present case, I am constrained to observe that the notification published by University categorically reiterated what was contained in Clause 6.4 of the Manual. The rules of game were made known to everybody but Board of Examiners, which was constituted to hold selection strictly in accordance with aforesaid decided norms, changed the rules in between the game and held selection in a manner unknown to the extant Rules applicable for promotion from Class IV to Class III in BHU. This was wholly illegal and without jurisdiction. It is well settled that rules of games cannot be allowed to be changed during the game.

53. This Court has no manner of doubt in the light of above discussion that Petitioners have been discriminated and have been considered in a manner which was never contemplated by the University for considering promotion from Class IV to Class III.

54. One more aspect also not be ignored. In making such promotions persons totally unequal to each other in various respects have to be considered. A Class IV employee who was appointed in 1977 has much longer experience of a Class IV post but in the context of personality and other aspects, he may not compare with his much junior entered in service as Class IV employee after 10, 20 or 25 years. The subsequent educational advancement also cannot be ignored. It is evident that persons who were appointed in 1977 to 1997, i.e. Petitioners, got occasion for consideration for promotion to Class III post after decades of

service. For such persons, making interview as a part of selection when it was not contemplated in the relevant procedure prescribed by the University obviously made it difficult for them to qualify since they may not compete with young and youngest new employees having better qualifications. But one must also have considered that they at the fag end of service to their credit, have long experience. Better honour and respect needed so that they may retire from a higher post after getting at least one promotion at the fag end of their service. The University must have all these facts and other relevant aspects in mind when laid down the procedure in the Manual, but unfortunately the Board of Examiners acted unmindful of wider aspects. The acted wholly illegally by ignoring the established procedure laid down in the Rules and on the contrary settled their own selection procedure by exceeding their authority and jurisdiction.

55. In the result, the writ petition is allowed. Impugned orders dated 5.6.2007 and 2.7.2007 and appointments of Respondents 3 to 16 on Class IV posts are hereby quashed.

56. The University is directed to hold fresh selection for promotion to the post of Class III against the vacancies for which selection was held by notification dated 17.12.2005 and complete the same expeditiously and in any case, within three months from the date of production of certified copy of this order strictly in accordance with Rules and in the light of observations made above.

57. Petitioners are entitled to costs which I quantify to Rs. 50,000/-.