

(2015) 03 MP CK 0060
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4369/2011

Veena Choube

APPELLANT

Vs

Madhya Pradesh Public Service Commission and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

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

Citation : (2015) 03 MP CK 0060

Hon'ble Judges : S.C. Sharma, J.

Bench : Single Bench

Advocate : Vinay Saraf, Learned Counsel, for the Appellant; V.P. Khare, Learned Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.C. Sharma, J.—The petitioner before this Court has filed the present petition being aggrieved by the order dated 03/02/2010 (Annex.-P/11) by which the candidature of the petitioner has been rejected by the M.P. Public Service Commission on the ground that she does not hold requisite qualification in respect of teaching experience.

2. The petitioner's contention in the present petition is that an advertisement was published on 19/01/2009 by the M.P. Public Service Commission inviting applications for the post of Professor in various subjects which included drawing and painting as one of the subject. The petitioner who is holding Ph.D. Degree did apply for the post in question, however, her candidature was turned down on the ground that she does not have ten years' teaching experience.

3. The petitioner in the present writ petition has stated that she has obtained degree of M. A. (Drawing and Painting) and Ph.D. degree from Barkatullah University, Bhopal. Learned counsel for the petitioner has also stated that the petitioner has done research work which is of high quality and she was Gold Medalist for doing research work by "Research Link" - Saraswat - Samman

Varsha 2007-08. The petitioner has also written a book titled as "Bundelkhand Ki Lok Rupankar Kalaye" which has been published by Commissioner of Public Relations, M. P., Bhopal. The book authored by the petitioner was reviewed by "Shodh- Dhara" and "M.P. Sandesh, M.P. Govt.". The petitioner is a renowned artist and paintings of the petitioner were exhibited in painting exhibition organized on "International Women Day" at Swaraj Bhawan, Bhopal. Thirty four research papers of the petitioner have been published by the different publishers. She has participated in four International Seminars, 12 National Seminars and 1 State Seminar and 10 other academic activities. It has been further stated by the petitioner that the Barkatullah University, Bhopal has included the book written by the petitioner in the Syllabus for the students of B.A. and M.A. The petitioner has filed a detailed Chart in respect of work done by her as Annex.-P/31. The petitioner further stated that besides being an outstanding scholar she is having brilliant academic record up to Post Graduate. In the master degree the petitioner has secured 85.90% marks and she is working as "Guest Faculty Teacher" in various colleges continuously right from 1999 till today. The petitioner has enclosed certificates in respect of teaching experience right from 1999 till 2004-05, however, some of the certificates filed by the petitioner were not considered on the ground that she has not received any honorarium for the period in question. The petitioner is claiming appointment being an outstanding scholar. The petitioner was permitted to participate in the process of interview for the post of Professor (Drawing) by this Court by interim order dated 19/05/2011 and the petitioner has been selected for the post of Professor in the subject of Drawing.

4. Reply has been filed by the State Government as well as by the M.P. Public Service Commission and their contention is that the petitioner though does not have ten years teaching experience, was not considered for appointment and also she has not received honorarium for teaching the classes for the period in question. In the light of the circular dated 29/04/2010 issued by the Stated Government as the petitioner has not received honorarium for a certain period the candidature of the petitioner has been rejected by the M.P. Public Service Commission.

5. The petitioner has referred to the judgment delivered by the Principal Seat of this Court in case of an identically placed person namely Dr. Mrs. Ankita Bohare Vs. Madhya Pradesh Public Service Commission and Another passed in W.P. No. 4086/2011, who has applied for the post of Professor Zoology. Dr. Mrs. Ankita Bohare was also not having teaching experience of ten years. Though the petitioner's case is different from the case of Dr. Mrs. Ankita Bohare as she is having ten year's teaching experience, however, teaching experience is not as per the executive instructions issued by the State Government dt. 29/04/2010.

6. The principal seat of this Court while dealing with the case of Dr. Mrs. Ankita Bohare has upheld the selection of Dr. Mrs. Ankita Bohare by treating her in the category of outstanding scholar.

7. In the present case, initially this Court has also turned down the petitioner's prayer by dismissing the present writ petition and thereafter, a Writ Appeal was preferred by the petitioner being W.A. No. 658/2012 and the Division Bench of this Court has permitted the petitioner to file a Review Petition. The petitioner, thereafter, has filed a review petition and the review petition was allowed thereby restoring the present writ petition for final hearing on merits.

8. In the case of Dr. Mrs. Ankita Bohare also, initially the matter was dismissed by the learned Single Judge and thereafter, a remand order has been passed in W.A. No. 1208/2013 on 02/12/2013 and the petition filed by Dr. Mrs. Ankita Bohare being W.P. No. 4086/2011 was restored and the same has now been decided. The judgment delivered by Hon'ble Single Judge in the case of Dr. Mrs. Ankita Bohare (Supra) has held as under:-

"2. Invoking the jurisdiction under Article, 226 of the Constitution of India, assailing the communication dated 27.1.2011, Annexure P-1 and 21.02.2011, Annexure P-2 and the order of termination dated 29.10.2013 passed in furtherance to the order of learned Single Judge dated 26.09.2013 and seeking quashment of those orders and to hold the petitioner Dr. Mrs. Ankita Bohare eligible and qualified for the post of professor (Zoology) and to reinstate her with all consequential benefits direction has been sought for in W.P.(S) 4086/2011.

3. As per the order of the Division Bench of this Court dated 02.12.2013 in W.A. No.1280/2013, the order passed by learned Single Judge on 26.09.2013 has been set aside and the parties were relegated to advance their plea again for reconsideration before the Single Bench. On restoration of this petition vide order dated 23.01.2014, application for amendment assailing the consequential order of termination, passed during pendency of the writ appeal based on subsequent event has been allowed.

4. The facts narrated in the original writ petition (s) 4086/2011 and also by amendment are that the Madhya Pradesh Public Service Commission issued an advertisement for appointment to the post of Professors in various subjects. The present petition relates to the post of Professor "Zoology", for which 25 posts were advertised for appointment, out of which 12 posts were for unreserved category, 4 posts were for SC, 5 posts for ST and 4 posts for OBC category. The last date for submission of the application form was 20.02.2009.

5. Petitioner applied for the post of Professor (Zoology) being a candidate of merit possessing the essential qualification Ph.D. in the topic "A Probe into Correlation between Astrological Rulings and Women's reproductive Cycle". It is said that she is having 10 years teaching experience as an Assistant Professor in Mata Gujar Post Graduate Women's College, Jabalpur. Apart from it, she is working as Senior Consultant -Genetic, Child Planning, Infertility, Ante and Post Natal Care in the Yashasvi Child Planning and Holistic Health Care and Research Centre, Jabalpur, Madhya Pradesh and Consultant in Department of Obste and Gynae, Jabalpur Hospital and Research Centre, Jabalpur. She has worked as

Research Assistant for her work "Correlative Study between Sex Ratio of Human New born and the pre natal epoch position of Moon and Ascendant of horoscope" and also on The Minor Research Project of University Grant Commission in the subject of "Astrological Rulings and Women's Reproductive Cycle". Since 2008 till submission of the application form she had worked as Principal Investigator on a Major Research Project on EUGENICS sanctioned and financed by UGC, MHRD, Govt. of India. She is having various awards and certificate of merit in High School, Madhya Pradesh State Education Board, "Young Scientist Award" in Bhartiya Vigyan Sammelan, III Prize in National Symposium in Biological Sciences, Govt. Auto Model Science College, Jabalpur, All India Science Hindi Congress, Appreciation by Federation of Obste and Gynae Societies of India (FOGSI), Appreciation by All India Congress of Obste and Gynae Societies of India (AICOG), Special Award for Outstanding work in the field of Holistic and Integrated Field, BEST Women Empowerment Award, abstracts published and presented in World Ayurved Congress 2008, Jaipur. She is having various additional qualifications and also possessing the Membership of various Institutions.

6. It is urged that the communication dated 27.1.2011 and 21.2.2011 rejecting the candidature of the petitioner due to not having teaching experience or having experience of a private college is not proper. As petitioner was eminent and outstanding scholar, however, eligible for the post. It is submitted that this Court vide interim order dated 4.3.2011 directed to accept the application form of the petitioner and permitted to participate in the process of selection provisionally subject to final outcome of this writ petition. After completion of the process of selection as per interim order dated 20.5.2011 it was directed that in-case the petitioner is found eligible she may be appointed provisionally subject to final decision of this writ petition. In furtherance to the order passed by this Court, and on found eligible, petitioner was appointed as Professor "Zoology" vide order dated 3.8.2011 and posted as a Professor in Govt. Model Science College, Jabalpur. It is said that this Court vide order dated 26.9.2013 dismissed the petition against which a writ appeal bearing number 1280/2013 was filed on 22.10.2013 which came up for hearing on 28.10.2013 but on the said date hearing could not take place, however, listed on 31.10.2013. Prior to the said date, the order terminating the petitioner was passed on 29.10.2013 (Annexure P/8) with utmost haste without awaiting the order if any of the Division Bench. On account of the said subsequent development, this Court, directed to call for the record of M.P.P.S.C. pertaining to selection. Thereafter, on 2.12.2013, the writ appeal was allowed and the order dated 26.9.2013 passed by the learned Single Judge was set aside restoring the writ petition to its number. It is urged that the order of termination passed by the authorities is with the utmost haste and in gross violation of principle of natural justice and also in violation of Article 14 and 16 of the Constitution of India. In view of the aforesaid prayer is made to quash the communication dated 27.1.2011 (Annexure P/1), 21.2.2011 (Annexure P/2) and the order of termination dated 29.10.2013 (Annexure P/8)

and to reinstatement her with all consequential and monetary benefits.

8. The respondent No. 1 PSC by filing return in W.P.(S) No. 4086/2011, inter alia, contended that the recruiting agency as per the request made by the State Government published the advertisement for the vacancies specified therein. It is said that the State Government vide communication dated 27.10.2009 has clearly stated that teaching experience of these candidates who have worked in the Government or Government aided colleges as specified in Annexure R-1 ought to be counted. As the petitioner is having the teaching experience of private college, however, in the light of the said communication, her teaching experience cannot be counted. Thus, candidature of the petitioner has rightly been rejected in the light of instructions issued by the State Government. It is said that the action of the respondents is neither illegal nor arbitrary or violative of Article 14 and 16 of the Constitution of India. By filing additional return it is submitted that in view of the advertisement 10 years" experience is required till the last date of submission of the application form upto 22.02.2009, but as per the experience certificate submitted by the petitioner, she has completed only 9 years 6 months and 20 days of teaching, therefore, criteria of having 10 years" teaching experience has not fulfilled by her, however, communication Annexure P-1 and P-2 has rightly been issued. The reply to the amended pleading has not been filed denying those averments.

10. The respondent No. 2/State, in its return, filed in W.P.(S) No. 4086/2011 contended that the post of Professor in various subjects by inviting advertisement was directed to be filled-up by the MPPSC, however an advertisement was published in the newspaper "Rozgar Aur Nirman" dated 19.01.2009. In the said advertisement, one of the qualifications was that the candidate should possess 10 years" teaching experience in graduate/post graduate classes on the date of submission of the application form. As per the experience certificate submitted by the petitioner, it is apparent that she started teaching from 01.07.1999 and on the last date of submission of the application form she was having an experience of 9 years, 7 months only, less than 10 years. The Public Service Commission sought clarification whether teaching experience from non-government institutions can be counted. In reply to it, the State Government vide its memo dated 29.04.2010 clarified that teaching experience would mean the experience of teaching in Government Colleges or Government Aided Colleges or Universities as guest of faculty, part time lecturer or assistant professor and it would not include the experience of teaching in non-government institution. As the experience of the petitioner pertains to private institution, therefore, it cannot be taken into account in view of the clarification issued by the State Government. The instructions issued by the State Government are reasonable with a view to achieve the object relates to the post of Professor, however, minimum 10 years" teaching experience of undergraduate or post graduate classes has been said as mandatory. By filing the additional return as per the directions issued by the court it is clarified that the UGC has issued letter to the Principal Secretary, Higher Education Department on

29.08.2009 stating that no criteria had fixed or laid down by UGC who may be outstanding scholar, it ought to be decided by each of the Universities considering the cases of individuals. The State Government has not filed any reply to the amended pleadings.

13. Respondent no.12 (petitioner in W.P.(S) No. 4086/2011) by filing the reply has reiterated the averments made in her petition inter alia contending that she possess the requisite qualification for the post. Respondent no.13 by filing its reply and referring various documents and also the eligibility criteria prescribed in advertisement contended that he is eligible for selection and appointment and accordingly, selection has rightly been made by the respondents.

17. Learned counsel appearing on behalf of the parties have been heard at length, however, to adjudicate the core issue that petitioner in W.P.(S) No. 4086/2011 Dr. Smt. Ankita Bohare possesses requisite qualification and eligibility for appointment to the post of Professor "Zoology" is required to be examined in the context of the eligibility criteria prescribed in the advertisement as per Rule 8 Schedule III of Madhya Pradesh Educational Services (Collegiate Branch) Recruitment Rules, 1990 and also UGC Guidelines. As per the advertisement commensurate to the UGC guidelines, the eligibility criteria is as under -

18. Petitioner passed out 12th Class, B.Sc, M.Sc with first division throughout and awarded Ph.D. as per notification dated 28.11.2003 on the subject "A probe into Correlation between Astrological Rulings and Women's Reproductive Cycle". Alongwith the application form, experience certificate of Mata Gujari Post Graduate Women's College, Jabalpur dated 13.2.2009 having teaching experience from 1.7.1999 as Assistant Professor has also been attached alongwith her additional work experience as Senior Consultant -Genetic, Child Planning, Infertility, Ante and Post Natal Care in the Yashasvi Child Planning and Holistic Health Care and Research Centre, Jabalpur, Madhya Pradesh and as Consultant in Department of Obste and Gynae, Jabalpur Hospital and Research Centre, Jabalpur (M.P.). Alongwith the application form to show the research work of more than 10 years various instances pleaded like the work of Research Assistant with Dr. Kanti Choubey for a period 1997-1999 on the subject "Correlative Study between Sex Ratio of Human New Born and the Pre Natal Epoch Position of Moon and Ascendant of Horoscope". The Minor Research Project in the subject of "Astrological Rulings and Women's Reproductive Cycle" approved by University Grant Commission; Ph.D. Research during 1999-2002; 2002- till date of submission of form working as Senior Consultant in Yashasvi Research Centre with a team Gynecologists, Pediatricians, Ayurvedacharya and Alternative therapist on Eugenics; from 2008-till date of submission of application form working as Principal Investigator of Major Research Project "The Influence of Prenatal Vedic Procedurals on Maternal Health, Blastula Implantation, Mental and Physical Development of the Fetus" approved by the University Grants Commission, Govt. of India with a grant of more than 7 lacs. It has also been specified that she is having a "Certificate of Merit" in High School

issued by M.P. State Educational Board. "Young Scientist Award" in Bhartiya Vigyan Sammelan; III Prize in National Symposium in Biological Sciences, Govt. Auto Model Science College, Jabalpur. Appreciation by Federation of Obste and Gynae Societies of India (FOGSI), Zonal Conference, Indore; Appreciation by All India Congress of Obste and Gynae Societies of India (AICOG) 2004, Agra (UP); Special Award for Outstanding work in the field of Holistic and Integrated Field by Govt. Science (Auto) College Workshop, Jabalpur; BEST Women Empowerment Award; Abstracts published at World Ayurved Congress 2008, Jaipur. It has further been specified that she is having Certificate course of Computer Operator; Vocal Classical Degree and appearing in Diploma in Early Childhood Care and Education (DECE), IGNOU. It is also specified that she is having Membership of various recognized Governing Bodies, College, Society and Federation and NGO. In the context of the qualification as possessed on the date of submission of the application form and as per the directions issued by the Division Bench in the order passed in Writ Appeal to examine that the case of the petitioner falls within the purview of alternative qualification being an eminent scholar or outstanding scholar is required to be looked into.

19. On perusal of the eligibility prescribed it is to be observed that in the first category Ph.D. is an essential qualification, with desired experience of Graduate/ Post Graduate teaching of 10 years. At second category as per the UGC Guidelines, if a person is eminent scholar with published work of high quality, actively engaged in research with 10 years of experience in Post Graduate teaching and / or experience in research at the University/national Level Institution, including experience at doctoral level; while at third place if a person is an "outstanding scholar with established reputation who has made significant contribution to knowledge" would be eligible for selection and appointment to the post of Professor. In the said context, looking to the essential qualification of Ph.D., the petitioner has possessed the same. While for 10 years experience, the certificate has been filed dated 1.3.2011 alongwith petition Annexure P-5 but as per the advertisement the experience as demanded on the last date of submission of form i.e. 20.2.2009. The PSC in its return has accepted the experience of petitioner for 9 years 6 months and 20 days. Thus, it can fairly observed that petitioner did not possess 10 years teaching experience on the last date of submission of application form to fulfill desired qualification of teaching experience. But in the light of direction issued in the Writ Appeal by Division Bench, it is to be seen that petitioner is an eminent scholar having research work of standard or she may fall within the purview of the "outstanding scholar of established reputation" to fulfill the eligibility. In this respect in para 5.5 of the petition, it is averred that the petitioner is an eminent scholar in her subject and has led major research projects in the capacity of Principal Investigator. The said averment of the writ petition has not been denied and has remained unrebutted. But as per directions, it is to be seen that looking to the research work performed by her during tenure she may come within the ambit of eminent scholar or outstanding scholar of established reputation.

20. To find out the answer that who may be eminent scholar with published work or outstanding scholar, the judgment of Hon'ble Apex Court delivered in the case of G.N. Nayak Vs. Goa University and Others, would be relevant. In paragraph-25 of the said judgment, the Apex Court has observed- "for a candidate to be qualified under second limb, apart from a brilliant academic record and having an established standing, the candidate must have been responsible for original research which had added to the field of the particular science, not in small measure but significantly. As per the letter of the University Grants Commission dated 28.8.2009 filed alongwith the Additional Return Annexure AR/1, it has been clarified by the UGC to the State Government that UGC has not laid down any criteria or norms for eminent scholar or outstanding scholar. This has to be decided by the each University on the merit of the individual case. It is relevant to note here that the Public Service Commission who is the expert body and interviewed the petitioner has not objected that the case of the petitioner do not fall within the second or third category i.e. eminent scholar or outstanding scholar. It is merely said that the qualification prescribed in the context of teaching experience is not fulfilled by the petitioner. As per Major Law Lexicon By P. Ramanatha Aiyar, IVth Edition, 2010 4865, the word "outstanding" means "still unsettled prominent, conspicuous" meaning thereby the outstanding will mean prominent and scholar means a learned person. As per Oxford English Dictionary "Scholar" means a person who studies and has a lot of knowledge about a particular subject. Thus, a prominent learned person having knowledge in particular subject would also fall within the purview of eligibility criteria. In this backdrop, petitioner possesses the eligibility criteria or not is to be decided by the Selection Committee, constituted by the MPPSC consist with the body of experts.

22. On the basis of such recommendation, petitioner was appointed on found eligible vide order dated 3.8.2011 without asking any further advise from the MPPSC. Clause.8 of the appointment order issued by the State Government states as under -

23. In view of the conjoint reading of the recommendations of the M.P.P.S.C as well as the appointment order of State Government, it is clear that P.S.C has examined the eligibility of the petitioner and found her suitable for selection and placed in the merit at Serial No. 5A alongwith the list of candidates of unreserved category, providing a solace to State Government to satisfy them on eligibility of the petitioner. Thereafter, order of appointment was passed by State Government accepting the documents of petitioner subject to a rider that the document submitted by the candidates, if any, found incorrect, then by giving a notice of one month, his/her services can be terminated, meaning thereby, the State Government was also satisfied on the eligibility of the petitioner, after the recommendation of the Selection Committee of the MPPSC, however, appointed the petitioner without raising any objection. The said description find support from their returns because the plea of petitioner in para 5.5 relating to the eminent scholar/outstanding scholar has not been denied.

24. As per the Constitutional Bench judgment of Hon''ble the Apex Court in a case of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, it was held that normally Courts should be slow to interfere with the opinions expressed by the experts particularly in a case where there is no allegation of mala fide against the experts constituting the Selection Committee. The Court further observed that it would normally be wise and safe for the Courts to leave the decisions of academic matters to the experts who are more familiar to with the problems they face than the Courts. Hon''ble Apex Court in the case of *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*, reiterated the same principle that whether or not a candidate fulfils the requisite qualifications is to be decided by the selection committee. In the said case the court while dealing the appointment for the post of Professor of Philosophy in a University has emphasized the scope of judicial review in the matter of recruitment process. It is said that the decisions of the academic authorities should not ordinarily be interfered with by the Courts. Whether or not a candidate fulfils the requisite qualification is a matter which should be entirely left to be decided by the academic bodies and on the concerned selection committees which invariably consist of experts on the subject. In the said facts, the Court has declined to interfere in the matter.

25. In the case *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, selection on the post made by the Committee accepting alternative qualifications have been declined to interfere with. The Court observed that the minimum qualification prescribed for the post is a doctorate in the subject concerned. In the present case also the essential qualification is the Ph.D. in addition experience is required and also the alternative qualification as prescribed. In that case, the Court found, that for the appointment qualification was not possessed by the petitioner, but on the basis of the alternative qualification, the selection was made. In the said sequel of facts, the court observed that Chancellor who accepted the recommendations of the Selection Committee ignoring the opinion of the Executive Council is justified. It has further been observed that the High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendations on which the Chancellor has acted upon.

26. Similarly, in the case of *State of Punjab Vs. Tehal Singh and Others*, the Apex Court observed that the Court would not be justified in adopting the legalistic approach and proceed on a technical view of the matter without considering the intention of the University in laying down the condition of eligibility which is to be decided by them. It is for the University to decide what kind of research would be adequate to qualify for professorship. The University had intended, understood and consistently proceeded on the basis that the pre-doctoral research could be counted towards the 10 years'' experience clause. In an another case of *Dr. Kumar Bar Das Vs. Utkal University and Others*, the Apex Court has reiterated the same principle holding that the teaching experience and research work satisfies the condition of 10 years experience and

after selection and appointment by the expert body, the interference by the Court is not warranted.

27. Recently, the Apex Court in a case of Basavaiah (Dr.) vs. Dr. H.L. Ramesh and others has emphasized the scope of judicial review reiterating the view taken by the Constitutional Bench of the Apex Court in the case of University of Mysore vs. C.D. Govinda Rao (*supra*) and also referring more than ten judgments of Apex court. In para-38 the Apex Court observed that we have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters.

28. In view of the above discussion based upon various precedents of Hon''ble Apex Court, it is well settled that after the recommendation made by the Selection Committee consists with the experts of the subjects the, interference by the Court in such recommendations is not warranted. On applying the said principle and looking to the facts of this case, it is pertinent to emphasize that after permitting the petitioner to participate in the process of selection as per interim order of this Court her interview was conducted. After perusal of all the papers of qualification, research paper and awards, the Selection Committee found her eligible and the candidate of merit, however placed at Sl. No. 5A of the merit list out of 12 candidates in unreserved category. After selection and while making recommendations the MPPSC has acknowledged the eligibility, further requesting the State Government to consider the issue of eligibility of petitioner prior to passing the order of appointment or otherwise may ask for advice, if any, from the PSC. This apparently indicates that on having satisfaction of the eligibility of petitioner by the Selection Committee recommendations were made by the MPPSC. Thereafter, the State Government was also satisfied on eligibility, therefore, in the order of appointment in Clause-8, it was mentioned that if the documents found incorrect then services may be terminated. In such circumstances, after recommendation by the PSC and appointment by the State Government, interference by this Court is not warranted to redetermine the issue of eligibility of the petitioner.

29. In addition to the aforesaid, looking to the directions issued by the Division Bench of this Court in Writ Appeal No. 1280/2013 as per order dated 2.12.2013 on restoration of the writ petition, this court is required to consider the eligibility of the petitioner in the context of the pleadings of para-5.5 of the writ petition which relate to eminent scholar or outstanding scholar. As the order of the Division Bench has been passed in this particular case, however, a probe into the eligibility of the petitioner is required. In the said context, it is to be noted that

the petitioner did Ph.D. in a subject "A probe into Correlation between Astrological Rulings and Women's Reproductive Cycle". She did her research as a Research Assistant under Dr. Kanti Choubey on a subject "Correlative Study between Sex Ratio of Human New Born and the Pre Natal Epoch Position of Moon and Ascendant of Horoscope" The Minor Research Project is on the subject "Astrological Rulings and Women's Reproductive Cycle" while the Major Research work is on the topic "The Influence of Prenatal Vedic Procedurals on Maternal Health, Blastula Implantation and Mental and Physical Development of the Fetus". In addition thereto, she has worked as a Consultant, Genetic, Child Planning, Infertility, Ante and Post Natal Care in Jabalpur Hospital and Research Centre, Jabalpur and as Senior Consultant in the Yashasvi Child Planning and Holistic Research Centre, Jabalpur, Madhya Pradesh. After having brilliant academic record upto Post Graduation securing the certificate of merit in High School she has also secured "Young Scientist Award" as well as so many awards and appreciations with the publication. Being a student of "Zoology" looking to the research work towards Bio Science i.e. starting from Astrological Rulings and Women's Reproductive Cycle and the Influence of Prenatal Vedic Procedurals on Maternal Health, Blastula Implantation and Mental and Physical Development of the Fetus, makes it clear that she is having established understanding in the original research work which have been recognized by an appreciation of the FOGSI and All India Congress of Obste and Gynae Societies of India (AICOG). However, in the said context, she may be said to be a prominent learned person having knowledge of particular subject and come within the purview of outstanding scholar who worked with prudence and excellence in a particular subject throughout, therefore, the petitioner's case falls within the purview of alternate qualification. In that view of the matter looking to the recommendation made by Selection Committee consists the experts, accepted by the State Government. In my considered opinion, it can be held that Dr. Mrs. Ankita Bohare has rightly been found eligible by the PSC and after selection, rightly recommended for appointment, and in furtherance thereto the order of appointment dated 3.8.2011 was rightly passed by the State Government.

30. Now to venture and to dwell upon the order of termination in furtherance to the order passed by learned Single Judge during pendency of writ appeal, it is suffice to say that on found the petitioner, eligible and qualified for the post of Professor "Zoology" the order of termination is unsustainable. It is to be further observed that in furtherance to the interim order, petitioner was appointed subject to final outcome of the writ petition which was dismissed by learned Single Judge vide order dated 26.9.2013 but the order learned Single Judge was set aside in writ appeal on 2.12.2012, but during pendency of which the order of termination was passed with utmost haste, prior to date of hearing, however, it is liable to be quashed in view of the discussion made hereinabove.

31. Now to dwell upon the claim made by the petitioner in W.P. No. 6294/2011 Dr. Mrs. Sadhna Kesharwani, one of the intervener in W.P. (S)No.4086/2011, that the appointment of respondent no.12 Dr. Mrs. Ankita Bohare has been assailed

on the ground of not having teaching experience. As per the discussion made hereinabove, it is apparent that she has been found eligible for appointment on possessing the alternative qualification, however, on the said ground the relief as prayed for in the said petition cannot be directed. So far as cancellation of the appointment of other respondents are concerned, it is to be observed here that as per Circular issued by the State Government dated 29.4.2010 filed alongwith the return of respondent no.2, it is apparent that teaching experience of Assistant Professors working on contract basis as Guest Faculty and Part Time in the Government and aided institutions shall be counted, however, in the light of the said circular, the plea taken by the petitioner do not subsists in view of the consistent stand taken by the State Government as well as by MPPSC. It is to be further re-stated that Dr. Smt. Sadhna Kesharwani has participated in the selection process and not found place in merit list of the selected candidates. She has found place in the supplementary list at Serial No. 3. As per the pleadings of the petition, there is no averment that the Committee of the Experts constituted by PSC was biased or having any malice. In such circumstance after passing through the process of selection, without having any allegation of bias and malice, against the Selection Committee, interference in the facts of the case is not warranted. In that view of the matter, the petition filed by her W.P. No. 6294/2011 is hereby dismissed and in that view of the matter her intervention application filed in W.P. (S) No. 4086/2011 is also liable to be rejected.

32. In the facts of the present case the argument advanced by the interveners is also required to be dealt with. In this respect it may be observed here, that the final selection list was published by the PSC making recommendation for appointment for the post of Professor "Zoology" on 14.3.2011 which was valid for a period of 11/2 years from the said date. The intervener Dr. (Mrs.) Abida Shamim Qureshi filed an application on 16.5.2014. Similarly, Dr. Hemant Pandit has filed the application for intervention on 30.9.2014. Thus, application of these two interveners were filed after the lapse of more than 11/2 years, on expiry of the period of validity of the supplementary list. None of them has filed the writ petition seeking appointment challenging the recommendations of MPPSC by the Selection Committee alleging bias or mala fide. In the facts of this case, in my considered opinion their intervention is meritless and they are not entitled to claim any relief. In this respect guidance can be taken from the case of State of Orissa and Another Vs. Rajkishore Nanda and Others etc. etc., wherein Hon''ble Apex Court has held that the select list cannot be treated as perpetual reservoir for the purpose of appointments after expiry of validity period of selection. The Apex court in the judgment of Raj Rishi Mehra and Others Vs. State of Punjab and Another, has further held that the interveners who are the wait list candidates and its validity period expired long back then they are not entitled for appointment as a matter of right against the vacant post of petitioner. In that view of the matter, the interveners are having no right to claim any relief in this petition particularly, when the petitioner is found eligible possessing qualification for the post of Professor "Zoology" after selection by the Public Service

Commission and appointment made by the State Government during pendency of the writ petition prior to its dismissal. In view of the foregoing, the pleas taken by the interveners are hereby rejected.

33. So far as intervention by Smt. Veena Chaube is concerned, it is to be observed that the application has been filed by her after expiry of the validity period of select list, however, by such intervention, she do not confer any right to claim appointment. In addition, she has filed a Writ Petition No. 4369/2011 before the Indore Bench of this Court which was dismissed on 7.11.2012, on found her ineligible to hold the post of Professor. The writ appeal filed against the said judgment bearing number 658/2012 has been withdrawn with a liberty to file review petition. Thereafter, a review petition was filed bearing No. 3/2013 and its final order has not been brought to the notice of this Court. In such circumstances, in my considered opinion once she is found ineligible the claim made by her in this petition is also devoid of any merit.

34. In view of the foregoing discussion W.P.(S) No. 4086/2011 is hereby allowed, the communication dated 27.1.2011 (Annexure P/1) and 21.2.2011 (Annexure P/2) is meritless and of no consequence. As per the discussion made hereinabove, the petitioner Dr. Mrs. Ankita Bohare has been found eligible for appointment to the post of Professor "Zoology", however, the order of termination Annexure P/8 dated 29.10.2013 is quashed. The respondent/State is directed to reinstate the petitioner Dr. Mrs. Ankita Bohare within the period of two weeks from the date of communication of this order, and to pay her all consequential and monetary benefits within the period of three months. Consequent upon to allow the Writ Petition(S) No. 4086/2011, and as per the discussion made hereinabove, the Writ Petition No. 6294/2011 filed by Dr. Mrs. Sadhna Kesharwani is devoid of any merit hence dismissed.

35. In the facts and circumstances of the case, parties are directed to bear their own costs. The original record of the MPPSC be returned back by the Registry."

9. The aforesaid judgment makes it very clear that Dr. Mrs. Ankita Bohare who was also considered by the PSC on account of interim - 14 - order and was found fit for selection and similarly the petitioner in the present petition was also found fit for appointment on the post of Professor. There is no difference between the candidature of the petitioner and Dr. Mrs. Ankita Bohare. Learned Single Judge has extended relief to Dr. Mrs. Ankita Bohare by treating her in the category of outstanding scholar.

10. The petitioner, keeping in view the performance which is on record, has to be included in the category of outstanding scholar as she has been selected by the PSC for the post of Professor.

11. Resultantly, the writ petition filed by the petitioner is allowed and the impugned order dated 03/02/2010 passed by PSC is quashed. The respondents are directed to issue appointment order in favour of the petitioner as she has been found fit in the process of selection to the post of Professor. The petitioner

shall also be entitled for all the benefits including the back wages for the post of Professor as the back wages have also been granted to Dr. Mrs. Ankita Bohare the writ petitioner in W.P. No. 4086/2011.

12. It is needless to mention that any other appointment made by the respondent/State is not being set aside by this order and the person who has also been appointed will not be affected, looking to the fact that large number of posts of Professors are available in State of M.P. as informed by learned Government Advocate. The exercise of granting the benefit as directed above be concluded by the respondent positively within a period of 30 days from the date of receipt of certified copy of this order.

13. The writ petition stands allowed.

14. Certified copy as per rules.