
(2013) 08 DEL CK 0323

In the Delhi High Court

Case No : Writ Petition (C) No. 5767 of 2011

Vikas Singh and Others

APPELLANT

Vs

Airport Authority of India

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 138 DRJ 475

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Prakash Gautam and Mr. Vivek Ojha, for the Appellant; K.K. Rai, and Mr. Digvijay Rai, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—Petitioners seek appointment to the posts of Manager (Electronics) with the respondent/Airport Authority of India. Petitioners seek appointment on the ground that respondent has not filled all the sanctioned posts which were advertised for being filled in. In the subject recruitment process in which the petitioners participated, only 75 posts have been filled instead of 112 posts which were advertised. What the petitioners plead is that the action of the respondent in filling less posts is illegal and arbitrary as the respondent did not fix the eligibility criteria passing marks for the candidates before the recruitment process commenced, and the passing marks were decided only after written test and interviews were concluded. It is contended that no doubt it is not mandatory for an employer such as the respondent to fill in all posts which are advertised, however, what is emphasized is that in a case such as the present where passing marks are not fixed till written test and interviews are conducted, the same will and has led to arbitrary action that management of the respondent has decided as per its convenience as to what should be the passing marks. This procedure is alleged by the petitioners that the same has been used to adopt a policy of pick and choose, because at the convenience of

the respondent by fixing of the particular passing marks after conducting the written test and interview certain candidates can and have been included and certain candidates can be and have been excluded in an arbitrary manner. Petitioners therefore contend that in circumstances such as in the present case ordinarily all the advertised vacant seats/posts must be filled in otherwise there would be imprimatur to the arbitrariness and pick and choose action of the respondent. The facts of the case are that the respondent by the advertisement issued in about May/June 2010 (numbered 1/2010) invited applications for various posts, including for the subject posts of Manager (Electronics). There were 112 posts advertised of Manager (Electronics). Of the 112 posts, 56 were in General Category, 30 in OBC Category, 17 in SC Category and 9 in ST Category. Four posts were reserved out of the 112 posts for physically challenged persons with orthopedic disability. Last date of receipt of the application was 16.10.2010. Written examination was conducted on 31.10.2010 and interviews thereafter were conducted in June and July 2011. Results were declared in July 2011. Respondent selected only 75 candidates out of 112 posts advertised for Manager (Electronics). Out of 75 selected persons, 47 fell in General Category, 19 in the OBC (including 1 physically handicapped) and 9 in SC Category. No posts were filled in the ST Category.

2. Respondent claims that there is no obligation to fill in all the advertised posts and states that it is always open to an employer to decide as per administrative convenience or administrative realities less posts than the posts which were advertised. Reliance in this regard is placed upon the judgment of the Supreme Court in the case of Shankarsan Dash Vs. Union of India, and other similar judgments which lay down the same ratio.

3. The issue before this Court is that can an instrumentality of State such as the respondent at all have a selection/appointment process without pre-fixing the eligibility criteria of passing marks, and which position continues well after conducting of the written exam and even after conducting of the interviews, and, the passing marks are fixed only thereafter when merit list is prepared or around/ just before that stage. Putting it differently can passing marks of a selection process be fixed after completion of the written test and holding of the interview. It may be clarified that when we refer to fixing of marks, we are referring to fixing of marks of two types and at two stages. The two types of marks are: first of the written test and second of the interview. The two stages mean: the first stage of the written test for which no passing marks are fixed, and the second stage is of interview, again before conducting of which, no marks are fixed which are required for clearing the written test or those to be obtained in the interview, and also the total required for the written test and the interview. To elaborate further it is stated that before conducting of the written test, no passing marks were prescribed (taken of written test or interview individually or total qua both) at any point of time whether in the advertisement or otherwise. After the written test was conducted, passing marks for the written test again were not specified but only a minimum cut-off marks were prescribed for calling of the candidates

for interview. Yet further, what would be the passing marks for the interview was also not specified before the interviews were conducted including the aspect that what would be the total marks a successful candidate requires on totaling of the written test and the interview marks and which marks would be taken as the cut-off marks of having qualified in the selection process.

4. Respondent's case is that after the written test was conducted on 31.10.2010, the respondent by an administrative decision dated 28.12.2010 decided on the cut-off marks for calling of candidates in the interview by adopting the "practice in vogue" and hence its action is justified.

It bears mention that however even in this administrative decision dated 28.12.2010, what are the passing marks in the written test are not specified and there is only prescribing of cut-off marks for being called in the interview. What should be the marks then to be obtained in the interview and what should be the sum total marks to be obtained both in the written test and the interview is also not specified in this administrative decision dated 28.12.2010.

5. Respondent further justifies its action and pleads validity of the same on the ground that its two administrative decisions: first dated 28.12.2010 and second dated 7/15.7.2011 only adopted the existing criteria which was prevalent from 2007. It is argued that by adopting a practice in vogue since 2007 it must be held that the recruitment process is valid because exiting criteria has been adopted and no new criteria has been framed. Essentially, what is contended is that adaptation of an existing practice; even if not so prescribed in the advertisement as the qualification criteria, not even thereafter prescribed before the written test is conducted, not prescribed then even after written test is conducted, not prescribed even before interviews take place; is justified because candidates are deemed to have appeared in terms of practice in vogue since 2007.

of course, I may at the risk of repetition again mention that neither in the administrative decision dated 28.12.2010 nor in the subsequent decision dated 7.7.2011/15.7.2011 any passing marks of either of the written test or of the interview or the total marks with the sub-total marks of written test and interview are prescribed. The only aspect which is prescribed as qualification in the 2nd administrative decision dated 7.7.2011/15.7.2011 is that there is prescribed a ratio percentage of written test plus interview as 80:20 and this is stated in the following language in the administrative decision dated 20.10.2009 which is said to be the practice in vogue and hence adopted for the selection process:-

1. The total marks of written examination plus interview (80:20) have been taken as the deciding factor of merit.

6. It is an undisputed fact that no administrative decision of the respondent is placed on the file of this Court to show that at a particular point of time before the actual merit list of candidates was taken out of the selected candidates, that,

a decision was taken as to the requisite cut-off marks which are to be taken as the passing marks in/for the written test and interview individually or the total of both.

7. It is also argued on behalf of the respondent that petitioners having participated in the selection process with open eyes, they cannot now challenge the validity of the selection process.

8. The salient aspects which therefore emerge from the record of this file are as under:-

(i) Recruitment process commenced and was concluded for appointment to the posts of Manager (Electronics) by the respondent without fixing the eligibility criteria as regards the passing marks. Passing marks were not fixed for the written test whether before or after the written test was concluded and even till the selection list was finalized. Same is the position qua the interview marks as also the total marks with the break-up marks of the written test marks and interview marks.

(ii) Without specifying passing/qualifying marks in the written test, candidates were called for an interview merely and only by fixing a particular cut-off mark for the stage of the interview i.e. without there being specified that particular passing marks are fixed for being obtained for clearing of the written test. Candidates were called for the interview by fixing a minimum cut-off mark in the written test, only for calling for the interviews and which minimum cut-off marks were not the passing marks for the written test.

(iii) What should be the total passing marks of the written test and then for the interview, and with the respective minimum sub-totals taken of the written test alongwith the interview, are not informed to the candidates right till the selection list was finalized and published.

(iv) No administrative decision has been filed by the respondent in this Court which shows that respondent at any stage whatsoever before finalizing the selection list took a specific decision that particular passing marks are now decided to be taken as being the required total of the written test marks and the interview marks. Also, at the time of publishing of the selection list, no decision of the respondent existed and was published that the candidates have been selected by taking a particular passing marks individually qua the written test and the interview.

9. I have therefore, to essentially decide two aspects in the present case. The first aspect is can there be a valid selection process in which at no point of time before the finalization of the selection list, actual passing marks were prescribed; whether individually qua the written test or of the interview or thereafter of both taken together. Second aspect is whether petitioners are estopped in challenging the recruitment process because they have participated in the same and have never challenged any non-fixing of cut-off/passing marks before the selection list

was published.

10. On behalf of the respondent, reliance is placed upon three judgments of the Supreme Court as under:-

(i) Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others,

(ii) Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another,

(iii) S.S. Balu and Another Vs. State of Kerala and Others,

11. In the case of Chandra Prakash Tiwari (supra) reliance is placed upon paras 34 and 35 to contend that there is estoppel by conduct against the petitioners. Paras 34 and 35 read as under:-

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem 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.

35. In that view of the matter, while we are not in a position to record our concurrence with the applicability of the doctrine of estoppel by conduct but by reason of the decisions as cited from the Bar, we do feel it required to lend our concurrence to the submissions of Dr. Dhawan, on that score as noticed above.

12. In the judgment in the case of Madhya Pradesh Public Service Commission (supra) reliance is placed upon paras 6, 8 and 10 to contend that there is nothing illegal in adopting a practice of having screening test or written test to limit the number of candidates who have to be called for the interview. Also on the basis of these paras relied upon it is contended that because of time constraint the number of persons who can be called for the interview can be limited and process of short-listing will not amount to altering or substituting the eligibility criteria. Paras 6, 8 and 10 read as under:-

6. The question which is to be answered is as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates amongst the applicants. In most of the services screening tests or written tests have been introduced to limit the numbers of the candidates who have to be called for interview. Such screening tests or written tests have been provided in the

concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.

8. The sole purpose of holding interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva-voce test if large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint. The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview. It appears that Union Public Service Commission has also fixed a ratio for calling the candidates for interview with reference to number of available vacancies.

10. In this background it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed and evaluated. It need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences. If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8(3)(c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c) places a bar that no person having less than five years of practice as an Advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8(3)(c) of the Act.

9. In the judgment in the case of S.S. Balu (supra) para 12 is relied upon and which holds that State as an employer has a right whether or not to fill up all the advertised posts. Para 12 reads as under:-

12. There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. [See Pitta Naveen Kumar and Others Vs. Raja Narasaiah Zangiti and Others, The state as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the concerned candidate will have no legal right for obtaining a writ of or in the nature of mandamus. [See Baitarani Gramiya Bank Vs. Pallab Kumar and Others, In Shankar Balwant Lokhande (dead) by L.Rs. Vs. Chandrakant Shankar Lokhande and Another, , a Constitution Bench of this Court held:

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.

14. On behalf of the petitioners, reliance is placed upon two judgments of the Supreme Court. The first is the judgment of Hemani Malhotra Vs. High Court of Delhi, The second is the judgment in the case of Ramesh Kumar Vs. High Court of Delhi and Another,

15. The judgment in the case of Hemani Malhotra (supra) is relied upon for the purpose that after the selection process begins, rules of the game cannot be changed midway. For this purpose, reliance is placed upon para 14 and 15 of the judgment, which read as under:-

14. It is an admitted position that at the beginning of the selection process, no minimum cut off marks for Viva-voce were prescribed for Delhi Higher Judicial Service Examination, 2006. The question, therefore, which arises for consideration of the Court is whether introduction of the requirement of minimum marks for interview, after the entire selection process was completed would amount to changing the rules of the game after the game was played. This Court notices that in Civil Appeal No. 1313 of 2008 filed by K. Manjusree against the State of A.P. and Anr. decided on February 15, 2008, the question posed for consideration of this Court in the instant petitions was considered and answered

in the following terms:

33. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.

From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for vive-voce. Therefore, prescribing minimum marks for vive-voce was not permissible at all after written test was conducted.

15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal.

16. In the judgment in the case of Ramesh Kumar (supra) reliance is placed upon para 18 to contend that there can be no estoppel against the petitioners and which para reads as under:-

18. These cases are squarely covered by the judgment of this Court in Hemani Malhotra Vs. High Court of Delhi, wherein it has been held that it was not permissible for the High Court to change the criteria of selection in the midst of selection process. This Court in All India Judges" case (supra) had accepted Justice Shetty Commission's Report in this respect i.e. that there should be no requirement of securing the minimum marks in interview, thus, this ought to

have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates. Selection to the post involved herein has not been completed in any subsequent years to the selection process under challenge. Therefore, in the instant case, in absence of any statutory requirement of securing minimum marks in interview, the High Court ought to have followed the same principle. In such a fact-situation, the question of acquiescence would not arise.

17. In my opinion, the first aspect of validity of selection process without fixing of passing marks, in the peculiar facts of this case has to be decided in favour of the petitioners. This I say so because in the judgments which have been relied upon by the respondent in the cases of Chandra Prakash Tiwari (supra) and Madhya Pradesh Public Service Commission (supra) it is nowhere held that recruitment process should be taken as valid although no selection criteria exists from commencement till conclusion i.e. the selection process is valid in spite of the fact that no passing marks are fixed and published till the selection list is finalized and published. No doubt an employer can have cut-off marks for calling successful candidates for the interview, but that is not the issue, the issue is that can a selection process be commenced and concluded without fixing the selection criteria qua passing marks.

18. In the case of Madhya Pradesh Public Service Commission (supra) relied upon by the respondent, once again it was not a case that there was no selection criteria which were fixed. The selection criteria was a statutory requirement in terms of Section 8(3)(c) of the M.P. Industrial Relations Act, 1960 and which was of five years practice as an Advocate or Pleader for being appointed as a Presiding Officer. The selection criteria therefore having been prescribed after completion of the selection process, the criteria was raised to 7 years in order to cut down and limit the number of candidates who have to be called for the interview. Surely, this is permissible because no one can quarrel with the proposition that after certain number of candidates are held to have passed on account of passing marks being prescribed, thereafter, out of those candidates who have passed only a particular number of candidates can be called otherwise the selection process can become very time consuming and unnecessarily long. It is in this context that the Supreme Court in para 6 of the judgment in Madhya Pradesh Public Service Commission (supra) observed that process of short-listing shall not amount to altering or substituting the eligibility criteria given in the statutory rules or prospectus because in the statutory rules and the prospectus issued for selecting the Presiding Officer the eligibility criteria was in fact specified and it is not a case that eligibility criteria before conduct of the examination was not specified in the statutory rules or the prospectus. In para 10 of the judgment in the case of Madhya Pradesh Public Service Commission (supra) reference is made to the case of The State of Haryana Vs. Subash

Chander Marwaha and Others, and which para has been relied on behalf of the respondent, but, a reading of that para shows that there was prescribed eligibility criteria of a candidate obtaining 45% or more marks in the competitive examination to become eligible for appointment. Therefore, once again the eligibility criteria was prescribed in the case of Subhash Chander (supra). In fact if we refer to para 13 in Madhya Pradesh Public Service Commission (supra) case the Supreme Court distinguished the judgment of the Madhya Pradesh High Court in a case of Praveenkumar Trivedi v. Public Service Commission, M.P. (1986) Lab 1C 1990 (MP) on the ground that in the facts of Madhya Pradesh Public Service Commission (supra), selection was to be made purely on the basis of interview and therefore, the Supreme Court observed that where selection is to be made purely on the basis of interview and if the applications for such posts are large in number when taken with reference to the number of posts available to be filled up, then, the Selection Board has an entitlement to short list the applicants to be called and which can be done on a rationale and reasonable basis.

19. The argument of the respondent that it has simply adapted the existing criteria or the practice in vogue is an argument which begs the question of existence of selection criteria. Issue is not of subsequent adaptation of an existing criteria after conclusion of the test and interview, but, the issue is that no such criteria existed right from commencement till conclusion of the selection process. What the law requires is a definite selection criteria being prescribed at or before the commencement of the selection/recruitment process and not adaptation of an existing or new criteria at the end of the process. If existing passing marks criteria are adapted after conclusion of the selection process, it will not take the case out of the condition that no passing marks criteria was fixed or existed before the selection process began.

20. The facts of present writ petition, in my opinion, in a way, falls in a totally different path then the line of cases relied upon by the respondent and the line of cases relied upon by the petitioner. This is because there is no judgment which is pointed out to me by either side that an entire selection process can or cannot be commenced, gone ahead, concluded and selection list published without the candidates not even knowing what would be the passing marks for the written test or for the interview and then for the written test and the interview taken together and which are to be taken as the total marks for passing the selection process and that on so achieving them the qualifying criteria for being selected stands satisfied.

21. On the second aspect of estoppel against the petitioners, no doubt, the petitioners have participated in the selection process but this process never had any prescribed criteria from the beginning till the end and thus what weighs in the mind of this Court that how can an instrumentality of State be allowed to act so grossly in violation of mandate of Article 14 of the Constitution which requires that there should be no arbitrariness and also that there cannot be a pick and

choose policy or any action which can promote favoritism. The action of the respondent in the present case of having not specified or published or intimated what would be the passing marks qua candidates till the selection list was actually published surely could have led to the position that the management would have thought it fit that if certain candidates have achieved a particular cut-off marks, then at the convenience of the Management, those particular marks can be decided as the cut-off or the passing marks for selection of the candidates. This is not only wholly and completely illegal, but it smacks of gross favouritism in the action of the respondent. In my opinion, in the facts of the present case, what would really apply are the observations of the Supreme Court in the judgment in the case of Ramesh Kumar (supra) because in more or less or similar circumstances where candidates had appeared in the selection process, the Supreme Court held that there would be no question of applicability of principles of acquiescence against the candidates because selection process in a subsequent year had not been completed and the employer was not justified in prescribing a requirement for the interview when the same was not originally fixed.

22. (i) The bar of estoppel cannot apply against the petitioners because in the judgments which are relied upon on behalf of the respondent it is not as if that in spite of the fact that no criteria were fixed for selection, persons who have participated in the selection process have been held to be estopped. In the case of Chandra Prakash Tiwari (supra), there were definitive criteria for selection before commencing of the selection process and it is not held in that case that doctrine of estoppel will apply even if there is no selection criteria specified i.e. passing marks are not specified before the final selection list is published. The observations in Chandra Prakash Tiwari (supra) have to be read in the context that when a candidate appears in an examination which has criteria for selection then in such a case the candidate who is not successful in the examination is estopped from protesting and challenging the examination process. The judgment in the case of Madhya Pradesh Public Service Commission (supra) is also for the self-same reason distinguishable. I hold that in a case such as the present when from commencement till conclusion of the selection process no passing marks criteria is fixed the argument of estoppel cannot be raised against the candidates.

(ii) The aspect of estoppel in my opinion, would not apply to the petitioners in the present case additionally for the reason that admittedly all the advertised vacancies have not been filled up. Even if all the advertised vacancies had been filled up then possibly petitioners may not have a case to allege any violation of their rights because the published vacancies were filled in. One cannot overlook the fact that a hopeful candidate may have had other opportunities of employment, but which he may not have utilized hoping for a successful result on the basis of particular number of advertised vacancies. Accordingly, even the second aspect of estoppel will stand decided in favour of the petitioners and against the respondent and I hold in the facts of the present case bar of estoppel

cannot apply against the petitioners for their approaching this Court for seeking appointments to the subject posts.

23. Of course, no employer can be forced to fill in all the advertised vacancies, however, in a case such as the present where no criteria at all had ever been published or fixed before finalization of the selection list, I am of the opinion that it cannot be argued by the respondent that they have indefeasible right to cut down all the vacancies which are otherwise advertised to be fill in.

24. Before proceeding to the operative part of this judgment, it is necessary that in order to prevent an important instrumentality of State such as the respondent from engaging in such an ambiguous exercise as has happened in this case, it is necessary that such authority must be notified that it is bound to fix, apply and implement specific selection criteria before initiating the selection and recruitment process for appointment to various posts. A copy of this judgment therefore be placed before the highest governing body of the respondent so that not only it is ensured that in future recruitment/selection/appointment processes such as the present do not take place where there are no criteria specified till a selection list is finalized, but, also that if the highest governing body of the respondent thinks that in the facts of the present case, there is something amiss, then, necessary follow up action in this regard can be taken by the authority. Affidavit of compliance be filed in three months on this aspect when the Registry will list the matter in the Court.

25. (i). That leaves us on the aspect of the relief to be granted to the petitioners in the present case. One way is that the entire selection list can be quashed and which could have been done if there were almost all or many unsuccessful candidates before this Court. Also, may be in the facts of a particular case the list could be quashed especially when selection process is still under way and is not concluded. In the present case however the selection process is completed. By the selection list however only a limited number of candidates i.e. 75 out of 112 have been appointed to their posts. Therefore, there will be no purpose of quashing the entire selection list not only because selection process stands completed and certain candidates stand appointed, but also additionally because of the reason that there are only a limited number of aspirants before this Court as petitioners and for whom there are otherwise sufficient vacancies available in terms of the subject advertisement. As per the admitted position which appears before me, in the General Category there are 9 posts which are vacant, in the SC Category there are 8 posts which are vacant, in the ST Category there are 9 posts which are vacant and in the OH Category, there are three posts which are vacant. I have before me five petitioners in the present writ petition and of which two are in General Category, one is in ST Category, one is in the SC Category and one is in the PH/OH Category. These persons therefore will be entitled to appointment in the posts of Manager (Electronics) in the published balance vacancies subject of course to the condition that no other person who is higher in seniority/rank in the selection list wants appointment with the respondent in the

post of Manager (Electronics) in the different categories as stated above. It will be therefore necessary that before the respondent gives appointments to the petitioners, respondent will have to send intimation letters to the candidates who are higher in rank than the petitioners in the selection list in the different categories. If any of those candidates who are higher in rank than the petitioners in the selection list, want to be appointed as Manager (Electronics) with the respondent, then the rights of such higher ranked candidates to be appointed will be in preference to the rights of the petitioners, subject however, to the condition that such persons will be given a specific reasonable time by the respondent to join, and if they do not join, their posts can thereafter be given to the petitioners in the respective categories. Accordingly, let the necessary process of intimation to the persons who are higher in rank than the petitioners now take place, giving such persons reasonable date of joining if they want appointment. Other necessary steps, if so required in this regard be also taken by the respondent. The needful be done within a period of three months from today.

(ii) It is also further clarified that entitlement of the petitioners would firstly be if the petitioners fall within the total of 112 ranked vacancies in the posts of Manager (Electronics) with the sub-limits of different categories of General, SC, ST and OH. If however the petitioners are after 112 numbers in ranking, the respondent after finalizing the selection list has further made a waiting list, then in that case if the petitioners fall in the waiting list so created, in such a case even if the petitioners are at a rank after 112, then the petitioners who fall in the waiting list so existing/created will be entitled to seek appointment in terms of this judgment subject of course to the rights of the higher ranked candidates.

(iii) All the service entitlements, whether they be monetary emoluments or seniority, of the petitioners, will be taken from the dates of their joining with the respondent, if the petitioners get employment with the respondent in terms of this judgment.

The writ petition is accordingly allowed and disposed of in terms of the aforesaid observations. Parties are left to bear their own costs. All pending applications stand disposed of.