
(2015) 01 MAN CK 0012
In the Manipur High Court
Case No : Writ Petition (C) No. 28 of 2011

Yumnam Gopal Krishna Singh	Vs	APPELLANT
State of Manipur		RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 309

Citation : (2015) 01 MAN CK 0012

Hon'ble Judges : N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : L. Shyamkishor, Senior Advocate, for the Appellant; N. Ibotombi, Bimol, Advocate, Vasum, G.A., Y. Nirmolchand and Arunkumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.—Heard Mr. L. Shyamkishor, learned senior counsel for the petitioner, Mr. A. Bimol, learned counsel for the JNIMS, Mr. N. Ibotombi, learned senior counsel for respondent No. 5, Mr. A. Arunkumar, learned counsel for respondent No. 4, Mr. Y. Nirmolchand, learned counsel for respondent No. 3 and Mr. Y. Ashang, learned GA for respondent No. 1.

2. In the present writ petition, the petitioner has challenged the recommendation and appointment of the respondent Nos. 4 and 5 as Assistant Professors in the Department of Microbiology, in the Jawaharlal Nehru Institute of Medical Sciences (JNIMS), Porompat in terms of the recommendation made by the Selection Committee in its meeting held on 19.11.2010, pursuant to which the appointment orders dated 27.12.2010 (Annexure-A/5 and 6) were issued in favour of respondent Nos. 4 and 5.

3. As per the pleading of the petitioner, an advertisement was issued by the Respondent No. 2 on 28.8.2010 for appointment to various posts including two posts of Assistant Professors in Microbiology in the JNIMS. The advertisement

dated 28.8.2010 as far as the present case is concerned reads as follows:

"J.N. INSTITUTE OF MEDICAL SCIENCES POROMPAT, IMPHAL EAST

ADVERTISEMENT Imphal, the 28th August, 2010

No. JIMS/Advt/10: On behalf of the President, N.J. Institute of Medical Sciences (JNIMS) Society, Porompat, the undersigned invites applications from Indian citizens for appointment to the following posts in the Institute so as to reach him on or before the 30th September, 2010 in sealed Envelope super-scribed with the name of the post. The application giving full bio-data and contact telephone numbers should be accompanied with attested copies of certificate of qualification, experience, age, etc.

1. Professors:....

2. Associate Professors:....

3. Assistant Professor: (i) Pathology -2 Nos. (ii) Microbiology -2 Nos. (iii) Community Medicine - 1 No. (iv) T.B. and Chest -1 No. (v) Dermatology,....

4. Tutor/Demonstrator/Sr. Resident:....

5. Jr. Resident:...

Qualifications:

I. Professor:....

II. Associate Professor:...

III. Assistant Professor: Essential: Registered Medical Graduate with P.G. Degree in the subject. Desirable: 3 yrs teaching experience in the subject in a recognized Medical College.

IV. Demonstrator/....

V. Sr. Residents:

VI. Jr. Residents: Age as on 30/09/2010

I. Professor: 55 yrs and below....

II. Associate Professor: 45 yrs and below (Upper age limit relaxable for candidates of Recognized Medical College/State Govt. Service upto a period of 5 yrs and by 5 yrs for SC/ST and by 3 yrs for OBC candidates in addition to the above relaxation).

III. Assistant Professor: Same as Associate Professor.

IV. Demonstrator/....

....

(Prof. Th. Biren Singh) Director, JNIM, Imphal, the 28th August, 2010"

4. The petitioner was one of the applicants in addition to the respondent Nos. 4 and 5 for the said two posts of Assistant Professors in Microbiology advertised. Pursuant to the said advertisement, the Selection Committee held its meeting on 19.11.2010. The said Selection Committee recommended the names of the respondent Nos. 4 and 5 for appointment to the posts of Assistant Professor and accordingly on being recommended, they were appointed as such vide orders dated 27.12.2010, as mentioned above. Being aggrieved by the aforesaid recommendation and appointment of the respondent Nos. 4 and 5 as Assistant Professors in Microbiology, the present writ petition has been filed challenging their recommendation as well as appointment as Assistant Professors.

5. While assailing the recommendation and appointment of the respondent Nos. 4 and 5 as Assistant Professors, the petitioner has raised three grounds at the time of hearing. Firstly, it has been contended that the Selection Committee, which held its meeting on 19.11.2010 and recommended the names of the respondent Nos. 4 and 5 for appointment to the post of Assistant Professors, was not validly constituted as per rules. Secondly, it has been contended that the Selection Committee had devised its own method of selection which is not permissible in law. Thirdly, it has been submitted that the entire selection proceeding is vitiated by arbitrariness in as much as the proceeding would clearly indicate that there was no proper application of mind by the members of the Selection Committee at the time of recommendation as regards the various qualifications and achievements of the petitioner qua the respondent No. 4 and 5.

6. As regards the first contention, Mr. L. Shyamkishor, learned senior counsel for the petitioner has submitted that as per information obtained by the petitioner under the Right to Information (RTI) Act, the petitioner came to know that the Selection Committee consisted of the following members:

- "(1) The Chief Secretary as the Chairman
- (2) V.C., Manipur University (who was absent)
- (3) Secretary (Health)
- (4) Director (RIMS)
- (5) Director (MHS)
- (6) Director (JNIMS)
- (7) Advisor (JNIMS)
- (8) Subject Expert"

Learned senior counsel submits that the said composition of the Selection Committee was not in conformity with the Government order dated 6.12.2008, copy of which is available at Annexure-C/3 to the counter affidavit filed by respondent No. 2. As per the aforesaid Government order dated 6.12.2008, the Selection Committee for selection of faculty members, other than for the post of

Director, JNIMS, is to be constituted with the following members:

- "(a) Chief Secretary, Govt. of Manipur - Chairman.
- (b) Principal Secretary/Comm/Secy (HandFW) - Member
- (c) Vice Chancellor, Manipur University - Member
- (d) Director, RIMS - Member
- (e) Director, JNIMS - Member Secy."

It is thus clear from the aforesaid Government order dated 6.12.2008 that the members of the Selection Board would consist of only five members. However, it is seen from the proceedings of the Selection Committee dated 19.11.2010 (Annexure-E to the additional affidavit of the petitioner) that it consisted of eight (8) members, thus having 3 additional members, namely, one Dr. Kh. Sulochana Devi, Subject Expert, Dr. S. Ibomcha, Director, Health, Govt. of Manipur and Prof. A.D. Singh, Advisor of JNIMS as members of the Selection Committee. Accordingly, it has been contended by Mr. Shyamkishor, learned senior counsel that since the Selection Committee was not constituted in terms of the Govt. order dated 6.12.2008 by including persons who were not members of it, the same is illegal and as such, any recommendation made by such illegally constituted body cannot be given effect to.

7. It has been also contended by Mr. Shyamkishor, learned senior counsel that not only the Selection Committee was not validly constituted, the Selection Committee also devised its own method for selection by adopting the method of interview for selection, which is not provided under the Rules or any executive instruction, and as such not permissible.

In this regard, Mr. Shyamkishor, learned senior counsel by relying on the decision of the Supreme Court reported in Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, has submitted that the suitability criteria cannot be laid down by the Selection Board or Selection Committee unless specifically authorised under the Rules. It has been contended that in the present case, no such authorisation was given to the Selection Committee, by any executive instruction of the competent authority under the relevant rules nor provided under the recruitment rules, and as such, the procedure adopted by the Selection Committee by devising its own method in the selection is illegal.

8. Lastly, it has been contended by Mr. Shyamkishor, learned senior counsel that even otherwise also, there is nothing to indicate as to how the members of the Selection Committee applied their mind as regard the various established considerations for selection of the candidates.

It has been contended that the proceedings of the Selection Committee held on 19.11.2010 does not indicate the criteria or the basis for giving marks as there is no marking in respect of the various parameters viz., the educational qualifications, experience, submission of papers, participation in conferences,

etc. It has been contended that in respect of respondent No. 5, the column relating to marks in the MBBS (Final MBBS) has been kept blank thereby indicating that the Selection Committee was not aware of the marks obtained by her, whereas in respect of the other candidates, i.e. the petitioner as well as the respondent No. 4, the same had been shown, which clearly indicates that there was non application of mind as regards the marks obtained by respondent No. 5 in the final year of MBBS. It has been contended that the Selection Committee could not have assessed the suitability of the candidates without referring to the marks obtained by the candidate in the final examination of the MBBS, in absence of records or materials before it as regards the respondent No. 5.

9. It has been also contended by Mr. Shyamkishor, learned senior counsel that the petitioner is having teaching/training experience of 14 years and had completed his 3 years' P.G. course from the All India Institute of Medical Sciences, one of the top medical institutions in the country and has the highest number of publications amongst the candidates and had participated in 48 Training/Workshops, both inside Manipur and outside, whereas, none of the other candidates had shown any such participation, as compared to the petitioner. It has been also contended that while respondent No. 5 presented/submitted only two presentations and there is no such presentation of respondent No. 4. According to Mr. Shyamkishor, these are the important parameters required to be considered by the Selection Committee for proper assessment of the comparative merit of the candidates, which, unfortunately was not done by the Selection Committee.

It has been submitted that there is nothing in the proceeding which indicates the assessment by the Selection Committee in respect of these various criteria/parameters for consideration which is sine qua non for proper assessment of the relative merit of the candidates. Therefore, it has been submitted that the proceedings of the Selection Committee would clearly reveal that there was non-application of mind by the Selection Committee as far as the relative merit of the candidates is concerned.

10. In response to the aforesaid three pronged challenge of the petitioner on the validity of the selection proceeding, Mr. Bimol, learned counsel for the Respondent No. 2, JNIMS has submitted that all these contentions raised by the petitioner at the time of hearing can not be considered as these are not supported by proper pleadings. It has been contended that nothing has been pleaded in the petition or in any of the additional affidavits filed by the petitioner to make out any of the grounds which have been raised now before this Court. It has been submitted that such contentions have been raised for the first time at the time of hearing and since no such grounds had been taken in the writ petition, the respondent authorities had no opportunity to rebut and meet these allegations.

11. Mr. Bimol, further submits that even if the aforesaid contentions are taken into account by this Court, there are sufficient documents/materials to show that

these contentions raised by the petitioner are without any basis and have produced these documents at the time of hearing.

As regards the contention raised by the petitioner that the Selection Committee was not duly constituted, it has been submitted by Mr. Bimol, learned counsel for the JNIMS that it is not correct. It has been submitted that the Respondent No. 2, JNIMS is an autonomous body managed by a registered society having its own bye laws and rules and regulations. It has been submitted that as per the bye-laws of the said society, and in terms of the decision taken in the Board meeting of the Governing Council of the JNIMS held on 17.3.2008, composition of the Selection Board for selection of faculty members, other than for the post of the Director JNIMS, had been decided which includes the Director, RIMS as a member of the Selection Board. The said meeting also decided that the Board shall co-opt two subject matter Specialists with the approval of the Chairman. The said resolution is reproduced herein below:

"Agenda No. 5: Selection Board/Committees:

3. Resolved to constitute a Selection Board selection of Director, JNIMS as follows:

- i) Chief Secretary, Government of Manipur - Chairman.
- ii) Vice-Chancellor, Manipur University - Member
- iii) Principal Secretary/Commissioner/Secretary (HandFW), Govt. of Manipur - Member Secretary
- iv) Director, RIMS - Member

4. Resolved that as Selection Board for selection of other Faculty Members be also constituted with the following members:

- i) Chief Secretary, Manipur - Chairman
- ii) Principal Secretary (HandFW) - Member
- iii) Vice Chancellor, Manipur University - Member
- iv) Director, RIMS - Member
- v) Director, JNIM - Member Secretary.

The Board shall co-opt two subject matter Specialists with approval of the Chairman."

12. Thereafter, an executive order was issued by the JNIMS on 2.11.2010 pursuant to the decision of the Government order dated 6.12.2008 read with the decision of the two meetings of Executive Council of JNIMS held on 17.3.2008 and 5th July 2010, notifying the composition of the Selection Committee for selection of faculty members. It has been submitted that the Selection Board which made the recommendation on 19.11.2010 was duly constituted in terms of the aforesaid order dated 2.11.2010 issued by the JNIMS authority. Accordingly,

it has been contended that there is no illegality or irregularity in the composition of the said Selection Board.

13. As regards the contention of the learned senior counsel for the petitioner that the Selection Committee could not have devised its own method, Mr. Bimol, learned counsel for the JNIMS submitted that the selection was based on interview which was known to the petitioner as is clearly evident from the statement made by the petitioner himself in para 7 of the writ petition, in which the petitioner had clearly stated that "the petitioner was informed to attend the personal interview for selection to the post of Assistant Professor", after he submitted his application in terms of the advertisement dated 28.8.2010. It is therefore, contended that the petitioner having taken part in the said interview after fully knowing the method of selection adopted by the authorities, cannot now turn around and challenge the same by contending that the Selection Committee could not have devised its own method of selection. It has been contended that the petitioner knew very well in advance that the selection was to be made on the basis of interview and accordingly had taken part in the said selection process and as such he will be debarred from challenging the said procedure, being hit by the principle of waiver.

Mr. Bimol has submitted that in his representation dated 22.11.2010 submitted by the petitioner to the JNIMS authority, soon after the interview was held on 19.11.2010 (Annexure A/8 to the writ petition), the petitioner has not raised any objection about the constitution of the Selection Committee, except for the inclusion of Dr. Kh. Sulochana Devi, the Subject Expert and the Director RIMS which was only on the ground that the petitioner had filed a writ petition against the Director, RIMS and one Dr. Kh. Ranjana Devi, who was related to the Subject Expert, Dr. Kh. Sulochana Devi. Thus, the only objection raised was against the inclusion of the Director, RIMS and Dr. Kh. Sulochana Devi, Subject Expert, who according to the petitioner would be biased against the petitioner for filing a writ petition against them. Apart from this, no other objection was raised, including the procedure adopted by the Selection Committee for selecting the candidates, in the said representation.

14. Mr. Bimol, learned counsel for respondent No. 2 has also submitted that interview being one of the well recognised methods of selection, has been adopted in the present case and there is no irregularity in the same and he relied on the same decision of the Supreme Court in Dr. Krushna Chandra Sahu and Ors. case (supra), which had been relied upon by the petitioner also.

15. As regards the charge of non application of mind by the Selection Committee and arbitrariness in the recommendation by the Selection Committee, it has been contended that there was indeed marking based on the performance in the interview and the candidates were not assessed on the basis of their respective performances in the MBBS examination. The Selection Committee had made assessment on the basis of the certificates and interview and accordingly made the recommendation as is evident from the proceedings of the Selection

Committee.

It has been submitted that there is no dispute about the eligibility of the candidates and the petitioner has also not challenged the eligibility of the private respondents for appointment to the posts of Assistant Professors. It has been submitted that it was on the basis of the performance in the interview of the candidates that they had been adjudged. As far as the performance of respondent No. 5 in the interview was concerned, she was given the grading of B+, so was the respondent No. 4. However, the petitioner was graded only B. It has been further submitted that in the aptitude test, the respondent No. 5 was adjudged more meritorious than respondent No. 4 and both of them better than the petitioner. It has been therefore, submitted that it cannot be said that there was no marking as contended by the petitioner. Accordingly, it has been submitted that it cannot be said that there was no basis for assessment of the candidates.

16. Mr. Bimol, also submits that this Court is not sitting as an appellate authority over the assessment made by the expert body like the present Selection Committee. In the present case the Selection Committee consisted of many technical persons well versed in the science of medicine and they have made the recommendation after considering the performance in the interview and as such, this Court ought not to substitute the expert opinion by its own opinion.

17. Mr. N. Ibotombi, learned senior counsel for the respondent No. 5 has taken a similar line of defence and has submitted, in addition, that the advertisement dated 28.8.2010 as quoted above, mentions of submission of applications with names, telephone numbers to be communicated, with the attested copies of certificates for qualification, experience and age etc. It has been submitted that the said advertisement does not provide for submission of any mark sheet because of which the petitioner did not submit as it was deemed not required. It has, therefore, been submitted that, as such, the respondent No. 5 can not be penalised or put to disadvantage merely because, the mark sheets of MBBS had not been submitted along with the application.

In this regard, Mr. N. Ibotombi, learned senior counsel has drawn the attention of this Court to Annexure-S/2 to the affidavit-in-opposition filed by respondent No. 5, which is the proforma to be followed while submitting the application form. As per the said proforma issued by the office of the respondent No. 2, furnishing or mentioning of the marks obtained by the respondent No. 5 was not necessary.

It has been also submitted that the marks obtained by the candidates in the final year of MBBS could not have been material in view of the fact that for appointment to the post of Assistant Professor, the candidates must be Medical Graduates with P.G. Degree. As such, if the Selection Committee did not consider the marks obtained in the MBBS Final year examination, it cannot be faulted with.

18. It has been submitted by Mr. N. Ibotombi, learned senior counsel that the contention of the petitioner that no marks were awarded by the Selection

Committee is not correct inasmuch as the marks were awarded in terms of grade as clearly reflected in the record of the selection proceeding. Further, it has been submitted that the relative years of experience of the candidates was not of any importance inasmuch as all the candidates had fulfilled the minimum required educational qualification and experience and if the authorities had assessed the suitability of candidates on the basis of interview, which has been done in the present case, the said recommendation cannot be said to be illegal.

19. It has been submitted that apart from the bold assertion of the petitioner that the proceeding of the Selection Committee is vitiated as mentioned in the grounds at para 16 (i) and (k) of the writ petition, no specific grounds have been pleaded in the writ petition which the petitioner is seeking to do now at the time of hearing, which is impermissible.

20. Mr. Arun, learned counsel for respondent No. 4 also adopted a similar line of defence and it has been submitted that the respondent No. 4 fulfilled all the essential qualifications and the candidates had been adjudged on the basis of the performance in the interview, as has been clearly reflected in the proceedings of the Selection Committee and as such the allegation of arbitrariness has no foundation.

21. Mr. Y. Nirmochand, learned counsel for the Medical Council of India (MCI) submits that the MCI has no role in the entire selection process and the Court may decide the matter on the basis of the respective pleas made by the contesting parties.

22. Mr. Vasum, learned GA also has submitted that the State is not directly involved in the selection process. It has been submitted that, nevertheless, there is nothing in the procedure adopted by the JNIMS which could be faulted with.

23. Mr. Shyamkishor, learned senior counsel for the petitioner in response to the contentions of the JNIMS has submitted that the said order dated 2.11.2010 which is relied on by the respondent No. 2 to justify the composition of the Selection Committee could not have been issued in contravention of the Government order. It has been submitted that since the said order issued by the JNIMS authority is in contravention to the Government order dated 6.12.2008, the executive order dated 2.11.2010 is vitiated. It has been submitted that the order issued by the JNIMS dated 2.11.2010 cannot override the binding nature of the Government order dated 6.12.2008 as far as the composition of Selection Committee is concerned.

24. It has been also contended by Mr. Shyamkishor, learned senior counsel for the petitioner that the JNIMS can not take a contrary stand from what they had taken in their affidavit-in-opposition wherein it was stated that the composition of the Selection Committee was based on the Govt. order date 6.12.2008. The JNIMS authorities are now trying to justify, at the time of hearing that the composition of the Selection Committee is on the basis of order passed on 2.11.2010 issued by the JNIMS, which however, cannot supersede the

Government order dated 6.12.2008.

25. Mr. Bimol, learned counsel for respondent No. 2 has responded by contending that the respondent No. 2 never took the plea that the Selection Committee was not constituted in terms of the Government order dated 6.12.2008 and submitted that the averments made in para 7 of the affidavit-in-opposition filed by the respondent No. 2 was in response to the allegation of the petitioner that the Director, RIMS cannot be a member of the Selection Committee and since no issue was raised by the petitioner to the effect that the Selection Committee was not validly constituted in terms of the Government order dated 6.12.2008, the JNIMS authority did not have the proper opportunity to rebut this claim of the petitioner. It has been, however, submitted that since the JNIMS is a registered society and an autonomous body, it does not function under the State Government and the JNIMS authorities are not under any obligation to follow only the order of the State Government dated 6.12.2008 and the JNIMS authority in their wisdom constituted the Selection Committee in terms of the resolution of the Governing Body read with the Government order dated 6.12.2008. The said constitution was in conformity the Govt. order and the resolution of the JNIMS society and as such it cannot be said that the said constitution was not valid.

26. Heard the learned counsel for the parties and perused the materials on record. The decisions of the apex court relied on by the respective parties are also considered.

27. Mr. L. Mr. Shyamkishor, learned senior counsel for the petitioner, in support of his contentions, has placed reliance on a number of decisions of the Supreme Court.

28. Relying on the decision of the Supreme Court in Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, , it has been submitted that in absence of any specific guidelines to judge the merit of suitability of candidates in the recruitment rules or in the administrative instructions in that regard, the Selection Committee does not have the jurisdiction to lay down the criteria for selection. The Supreme Court in Dr. Krushna Chandra Sahu (supra) held as follows:

"30. The proceedings indicate that since Rule 3 was silent as to the guidelines on the basis of which suitability of the candidate was to be adjudged, the members constituting the Selection Board, by a majority decision, resolved to determine the suitability on the basis of confidential character rolls of the candidates who were already employed as Homoeopathic Medical Officer.

31.

....

32. In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis

of which suitability of the candidates was to be determined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homeopathic Medical Officers, as the basis for determining their suitability.

33. 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. This Court in *State of Andhra Pradesh and Another Vs. V. Sadanandam and Others*, observed as under:

"We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusions, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive."

(emphasis supplied)

34. 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. In *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, , it was observed: (SCC pp. 180-81, para 44)

"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 reason that such deviation from the rules is likely to cause irreparable and irreversible harm." 35. Similarly, in *Umesh Chandra Shukla Vs. Union of India (UOI) and Others*, , it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in *Durgacharan Misra Vs. State of Orissa and Others*, and the limitations of the Selection Committee were pointed out that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva voce.

36. It may be pointed out that rule-making function under Article 309 is legislative and not executive as was laid down by this court in *B.S. Yadav and Others Vs. State of Haryana and Others*, . For this reason also, the 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 legislating a rule of

selection."

29. However, perusal of the aforesaid decision of the Hon^{ble} Supreme Court in Dr. Krushna Chandra Sahu (*supra*) would reveal that the said case related to appointment to a teaching post, and no provision was made in the recruitment rules or any such instructions issued by the Government as to how the recommendation is to be made by the Selection Committee for the posts which were to be filled up by direct recruitment amongst serving governing officials. Since the rules were silent about it, the Selection Board, by a majority decision, decided to determine the suitability of the candidates on the basis of confidential character rolls of the candidates, as the candidates were already employed in the State Government as mentioned in para 30 of the judgment as quoted above.

The Supreme Court went on to observe that the suitability for appointment to a teaching post must be based on thorough knowledge of the subject concerned, his ability to organise his thoughts and the art of presentation of his thought to the students, which are of paramount importance and these qualities cannot possibly be reflected in the confidential character rolls relating to another service as mentioned in para 38 of the said judgment which is reproduced herein below:

"38. A candidate in order to be suitable for appointment on a teaching post must have at least three qualities: he should have thorough knowledge of the subject concerned; he should be organised in his thoughts and he should possess the art of presentation of his thoughts to the students. These qualities cannot possibly be indicated or reflected in the confidential character rolls relating to another service, namely, the service in the Health Department as Homoeopathic Medical Officers where the character rolls would only reflect their integrity, their punctuality, their industry and their evaluation by the Reporting or the Accepting Officer recorded in the annual entries. True it is that the candidates being already serving officers, their character rolls have to be looked into before inducting them in the new service but this can be done only for the limited purpose of assessing their integrity etc. These character rolls, however, cannot form the sole basis for determination of their suitability for the posts of junior teachers in the Medical Colleges. Then, what formula or method should be adopted to assess these qualities is the question which next arises. This Court in *Lila Dhar Vs. State of Rajasthan and Others*, pointed out:

"The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services." It further observed:

"It is now well-recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written

examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the Interview Board."

Lila Dhar Vs. State of Rajasthan and Others, was approved in Ashok Kumar Yadav and Others Vs. State of Haryana and Others,

Accordingly, the Hon''ble Supreme Court held in the peculiar facts obtaining the said case that it would be impermissible to adjudge the suitability of the candidates for appointment to a teaching post against direct recruitment on the basis of the confidential character rolls which can not reflect the qualities of the candidates as regards the knowledge in the subject. In that context, the Hon''ble Supreme Court held that it was not permissible for the Selection Committee to decide and lay down the criteria for selection.

30. It may also be noted that while deciding that case of Dr. Krushna Chandra (supra), the Supreme Court relied on its earlier decision in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, . In that case, as mentioned in para 34 of the judgment as quoted above, the Selection Committee added certain qualifications which were held to be impermissible as there was no power conferred on the Selection Committee to add new qualification/criteria. Similarly, in that case of Umesh Chandra Shukla Vs. Union of India (UOI) and Others, relied upon by the Supreme Court in Dr. Krushna Chandra (supra), it is also seen that the Selection Committee adopted another criteria in addition to what had been prescribed in the rules as mentioned in para 35 quoted above. In that context, the Hon''ble Supreme Court held that the Selection Committee did not have any jurisdiction to lay down its own standard or basis for selection by adding new criteria as it would amount to legislating.

31. Thus a minute examination of the facts of the cases relied or decided by the Supreme Court as mentioned above, would clearly indicate that the Selection Committee adopted/added new criteria to adjudge the suitability of candidates in addition to what were already existing in the rules. In the case of Dr. Krushna Chandra Sahu (supra), the Supreme Court had decided the matter in the facts obtaining the said case where the Selection Board adopted a criteria which was not appropriate for adjudging the suitability of the candidates. It is in that context that the Hon''ble Supreme Court held that the Selection Committee did not have any jurisdiction to lay down its own standard or basis for selection as it would amount to legislating. Therefore, this Court is of the opinion that the aforesaid principle applied by the Supreme Court has to be understood in the facts obtaining in the said cases which are not present in the present case.

Though the rules in the present case may be silent as to the method which was to be adopted for adjudging the suitability of the candidates, the Selection Committee adopted the method of interview as decisive factor for deciding the suitability of the candidates which was made known to the candidates in advance. In this context, it may be noted that interview as a method of adjudging the suitability of candidates for appointment to a teaching post is a well accepted one. In fact, the Supreme Court in the said case of Dr. Krushna Chandra Sahu (*supra*) had discussed about the advisability and appropriateness of interview as the basis for selection for appointment to the teaching post as mentioned in para 38 of the aforesaid judgment quoted above.

32. In this context it may be stated that the Supreme Court in *Lila Dhar Vs. State of Rajasthan and Others*, , had posed the question as to "what is the ideal mode of selection to a public service, by written examination, by oral test (*viva voce*), or by a combination of both?" The Supreme Court after discussing the advantages and disadvantages of written test and oral test in the context of various requirements observed in para 6 thereof that adoption of these two tests or exclusive use of only one method would depend on the requirement of the service and observed that in case of services to which requirement has necessarily to be made from persons of mature personality, interview may be the only way, subject to basic and essential academic and professional requirements being satisfied.

"6.

....

On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview-test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great a weight, to the interview-test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview-test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the

Research Unit of the Union Public Service Commission."

In the present case which also relates to appointment to a teaching post, the recruitment rules to the teaching post of Assistant Professor in Microbiology in the Jawaharlal Nehru Institute of Medical Sciences, a medical college, the minimum requirement of Graduation in medical subjects with 3 years P.G. Course has been insisted with the desirable qualification of teaching experience. Therefore, adopting interview as the method to assess the suitability for appointment to a teaching post can not, in the light of the decision in Lila Dhar (supra), be held to be irrational.

33. Therefore, the only question, which remains to be considered is whether, adoption of interview as method of selection can be said to be beyond the jurisdiction of the Selection Committee. Though the rules may have been silent on this aspect, yet, the Selection Committee had to adopt some methodology to adjudge the relative merits of the candidates. In the present case, since no provision has been made for written test, and in absence of any other prescribed method of assessment by the Selection Committee to assess the suitability of the candidate, adoption of interview as a method of assessment of merit was by way of invoking the inherent power of the Selection Committee.

This Court is of the view that the very purpose of constituting a Selection Committee is to adjudge the suitability of the candidates and it is inherent in the Selection Committee the power to assess the merit of the candidates by way of directly examining the candidates of their suitability which is variously known as interview or personality test or viva voce. This inherent power however, can be supplanted or supplemented by other method that may be specifically provided by the rules. Since, in the present case, no such other method has been prescribed, the Selection Committee merely invoked its inherent power of interview, which has been also accepted as a valid method of assessment of candidates.

It is to be noted that the Supreme Court in Dr. Krushna Chandra Sahu's case (supra) was not dealing with the issue whether a Selection Committee could on its own adopt interview as a method of assessment. The principle laid down in the case that the Selection Committee did not have jurisdiction to evolve its own criteria, has to be understood in the context of the facts available in the said case and accordingly, this Court is of the view that the decision of the Supreme Court in Dr. Krushna Chandra Sahu's case (supra) will not be applicable in the present case.

34. The respondent No. 2 has also drawn attention of this Court to the fact that the petitioner was fully aware that the appointment would be on the basis of interview as clearly reflected in para 7 of the writ petition in which it has been stated by the petitioner that "Accordingly the petitioner was informed to attend the personnel Interview for selection of the post mentioned above". The petitioner knowing fully that the selection will be based on the interview did

attend the interview of which the petitioner has not raised any grievance in the writ petition, or even in the representation submitted by the petitioner soon after the interview, but has raised this issue at the time of hearing of the writ petition.

This Court is of the view that in the facts of the case available in the writ petition, adoption of the method of interview by the Selection Committee to choose the suitability of the candidates, which has been recognised by the Supreme Court as a valid method to adjudge the suitability of candidates, which was also made known to the candidates in advance cannot be said to be illegal. This issue is accordingly, decided against the petitioner.

35. We will now examine the other decisions of the Supreme Court in *Ranjit Thakur Vs. Union of India (UOI) and Others*, as well as *A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others*, relied on by the petitioner. The first case is regarding the scope of judicial review relating to the decision making process in the matter of imposition of the penalty invoking the principle of proportionality. This Court is of the view that this decision can not be applicable to the present case. The second case of *A.P. Public Service Commission (supra)* dealt with the issue of selection, wherein the Supreme Court held that the process of selection cannot be confined only to the stage of preparation of selection list as different steps in the process of selection are covered. Therefore, this case also can not be applicable to the present case.

The decision cited by the petitioner in *East Coast Railway and Another Vs. Mahadev Appa Rao and Others*, deals with the issue of non application of mind against the decision of the authority to cancel the departmental examination for appointment to the post of Chief Typist without giving justification for it in the official records, in which the Supreme Court held that such action ought to have been taken after proper application of mind and ought to have been supported by recording reasons. However, in the present case, the matter relates to the recommendation for appointment to the post by a Selection Committee and it is established law that Selection Committee while making recommendation need not record the detail reasons. In the present case, it cannot be said that there was no reason recorded at all in view of the fact that the selection was made on the basis of interview for which grades were given to the candidates and as such, it cannot be said that there was non application of mind by the Selection committee. The decision relied on by the petitioner in *Durgacharan Misra Vs. State of Orissa and Others*, also will not be applicable in the present case in as much as the issue involved in the said case was about non permissibility of prescribing of minimum qualifying marks by the Selecting Body in absence of such a provision in the statutory rules. In the said case, the Supreme Court held that rules did not prescribe for any fixing of any minimum qualifying marks to be secured at the viva-voce test of Munsiff and the authority did not have power to prescribe such minimum standard. The situation being different in the present case, the aforesaid decision would be of no avail to the petitioner.

36. The decision of the Supreme Court in *Sugarbai M. Siddiq and Others Vs.*

Ramesh S. Hankare (D) by Lrs., relied on by the petitioner relates to the scope of the High Court under Article 227 of the Constitution of India to deal with the decisions of the lower Court or Tribunal. In the said case, it was held that the High Court in exercise of power under Article 227 of the Constitution of India cannot examine the correctness or otherwise of a decision but is concerned only with the decision making process. In the present case, as already discussed above and herein below, no infirmity has been demonstrated as regards the decision making process by the Selection Committee. The petitioner has also relied in the case of State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, . The said case deals with the power of judicial review of the High Court and whether the High Court could issue any direction to the Central Bureau of Investigation to investigate cognizable offence without the consent of the State Government. The Supreme Court held in the said case that such a power exercised by the High Court under Article 226 of the Constitution of India is by way of exercise of power of judicial review which is a part of the basic structure and such a power cannot be curtailed restricted on the ground that it may violate the federal structure. This decision cannot be of any assistance to the issued raised by the petitioner in the present writ petition as no such issue is involved in the present case. Accordingly, for the reasons discussed above, this Court is of the view that the decisions cited by the petitioner before this Court would be of no assistance to the issues raised by the petitioner.

37. On the other hand, Mr. A. Bimol, learned counsel for the respondent No. 2 has relied on the following decisions of the Supreme Court in support of his contentions:

- "(1) Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others,
- (2) Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others,
- (3) Ramesh Chandra Shah and Others Vs. Anil Joshi and Others,
- (4) Union of India (UOI) and Others Vs. Somasundaram Viswanath and Others,
- (5) Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari and Another,
- (6) Bharat Singh and Others Vs. State of Haryana and Others,
- (7) Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and Another,

38. Mr. Bimol, relying on the decision of the Supreme Court in Ramesh Chandra Shah and Others Vs. Anil Joshi and Others, has submitted that the petitioner having prior knowledge of the fact that the selection will be based on interview and having taken part in the same, cannot turn around and challenge the same as being hit by the doctrine of waiver . In the said case of Ramesh Chandra Shah (supra) the Supreme Court held as follows:

"18. It is settled law that a person who consciously takes part in the process of

selection cannot, thereafter, turn around and question the method of selection and its outcome.

19.

20. In *G. Sarana Vs. University of Lucknow and Others*, , this Court held that the appellant who knew about the composition of the Selection Committee and took a chance to be selected cannot, thereafter, question the constitution of the Committee.

21. In *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, , a three-Judge Bench ruled that when the petitioner appeared in the examination without protest, he was not entitled to challenge the result of the examination. The same view was reiterated in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, in the following words:

"9. ...The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, 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 the Selection Committee was not properly constituted. In *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner." 22.

23.

24. In view of the propositions laid down in the abovenoted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

This Court accepts the contention of Mr. A. Bimol and holds that in the present case, as the petitioner knew well before the interview that the selection would be based on interview, and since, he has not raised this plea at the time of interview or soon thereafter or even in this writ petition, this plea must fail as being barred by the principle of estoppel.

39. Relying on the decision of the Supreme Court in *Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others*, it has been also submitted that in the matter of recommendation made by an expert committee, the Court should be slow in interfering with such decision, particularly when no allegation of malafide has been made against the expert constituting the selection committee and Court may not endeavour to sit as an appellate authority over decisions of expert. It has been also submitted relying on the decision of the Supreme Court in *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, that if the allegation of bias is made against the member of the selection committee, such facts must be specifically pleaded with particular details and selection should not be lightly disturbed without adequate material to indicate a strong likelihood of bias of a personal interest of the member in appointing a particular candidate. It has been submitted by Mr. Bimol that the details of the alleged bias have not been pleaded in the writ petition and the petitioner made the allegation only after selection was over and was not selected and as such, his plea of bias cannot be entertained.

40. As mentioned above, the petitioner has raised 3(three) specific grounds at the time of hearing of the writ petition in questioning the validity of the recommendation of the Selection Committee in favour of the private respondents 4 and 5 for appointment to the posts of Assistant Professors in Microbiology and their subsequent appointment as discussed above, which had been vehemently opposed by the respondent No. 2 as well as private respondents, contending that such pleas cannot be raised now, having not been specifically pleaded in the writ petition.

41. This Court has observed that in the writ petition filed by the petitioner, the petitioner has taken the plea that the petitioner is apparently having better experience and qualifications than private respondents and the Selection Committee had ignored and overlooked the experience and good academic career of the petitioner but there was no proper assessment of the merit of the petitioner vis-à-vis the private respondents.

The other plea taken in the writ petition is about participation of the Director of RIMS as well as the subject experts, namely, Dr. Kh. Ranjana Devi as according to the petitioner they would be biased against the petitioner because of certain writ petition filed by the petitioner against the Director, RIMS as well as a relative of the subject expert.

However, at the time of hearing, the petitioner has raised three additional grounds i.e., that the Selection Committee was not properly constituted and in fact, it was constituted contrary to the Government orders in this regard and also that the Selection Committee had devised its own method which is not permissible in law. The other plea that the Selection Committee's proceeding was vitiated due to arbitrariness and non application of mind can be dealt together with the plea raised in the writ petition.

42. As regards the plea that presence of the Director, RIMS and the particular

subject expert had caused prejudice to him on the ground of bias, this Court finds this plea to be without any substance. Merely because, the petitioner had filed a writ petition against the Director, RIMS and another person who happens to be related to the subject expert can not be the ground to doubt the assessment made by the Selection Committee which also consisted of other members, in absence of a reliable and irrefutable evidence. The petitioner has neither produced any such material nor drawn attention of this Court to any aspect of the Selection Committee which would cast serious doubt on the objectivity of the members of the Selection Committee including the Director, RIMS and the subject expert. This Court, therefore, declines to accept this plea of the petitioner.

43. We now proceed to deal with the other pleas. This Court finds substance in the objection raised by the counsel for the respondent No. 2 that new pleas could not be allowed to be raised at the time of hearing without specific pleading with supporting materials as allowing new pleas to be taken at the time of hearing would prejudice the defence of the respondents. It is now well settled that unless it involves a pure question of law, any plea based on facts ought not to be allowed to be taken at the time of hearing which is not specifically pleaded in the petition. In the present case, as the first two additional grounds raised by the petitioner have not been specifically pleaded, this Court is not inclined to accept the same. However, in course of the hearing, counsel for the respondent No. 2 has produced certain documents which would invalidate the said new pleas taken by the petitioner at the time of hearing.

44. Therefore, though this Court was not inclined to consider these new two pleas of the petitioner, considering the materials produced by the counsel for the respondent No. 2 which has not been objected by the counsel for the petitioner, this Court would deal with the said new pleas.

45. As regards the plea of the petitioner that the Selection Committee was not validly constituted in terms of the Government orders dated 6.12.2008, it may be stated that the respondent No. 2 being an autonomous body managed by a registered society could devise its own procedures for the conduct of the recruitment process subject to any statutory provision. Mr. Bimol, learned counsel for the respondent No. 2 has produced before this Court a copy of the resolution passed by the Governing Council of the JNIMS on 17.03.2008 which provides for the composition of the Selection Committee for appointment to the faculty members as mentioned in para No. 11 of this judgment. By the said resolution, members who are not included in the Government order dated 6.12.2008 have been included. Based on the aforesaid resolution of the Governing Council of the JNIMS and also by taking into consideration of the Government order dated 6.12.2008, the JNIMS authority issued the executive order dated 2.11.2010. The impugned Selection Committee was constituted with the members in terms of the Executive Order dated 2.11.2010 which was based on the decision of the Governing Council of the JNIMS and the Government order

dated 6.2.2008, and as such, presence of additional members other than members mentioned in the Government order dated 6.12.2008 can not affect adversely the validity of the composition of the Selection Committee. Otherwise also, the petitioner has not challenged the executive order dated 2.11.2010. Therefore, the first additional plea of the petitioner is rejected.

46. Coming to the second additional plea of the petitioner that the Selection Committee had devised its own method of selection which is not permissible in law, relying on the decision of the Hon"ble Supreme Court in Dr. Krushna Chandra Sahu (supra), this Court has elaborately discussed the issue in the preceding paragraphs No. 31, 32 and 33 of this judgment and has come to the conclusion that in the facts obtaining in the present case, adoption of interview as a method to assess the suitability of the candidates does not suffer from any infirmity and this issue is also accordingly decided against the petitioner.

47. As regards the last contention of the petitioner that the interview had been vitiated by arbitrariness and non application of mind by the members of the Selection Committee, it may be observed that the Selection Committee comprising of experts in the field had assessed the comparative merit of the candidates by interview by assigning specific grades to the candidates on which basis recommendation was made. It is also to be noted that these posts are teaching posts. In this regard, one may refer to the decision in Lila Dhar (supra) in which it was observed by the Supreme Court that it is for the interview body to take a general decision whether to allocate marks under different heads or to award marks in a single lot. It was observed in the said case that award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. Accordingly, it was observed that it is for the interviewing body to choose the appropriate method of marking at the selection to each service and there cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, it is proven or obvious that the method of marking was chosen with oblique motive as mentioned para 8 of the judgment which is reproduced herein below:

"8. The second ground of attack must fail for the same reason as the first ground of attack. The Rules themselves do not provide for the allocation of marks under different heads at the interview-test. The criteria for the interview-test has been laid down by the Rules. It is for the interview body to take general decision whether to allocate marks under different heads or to award marks in a single lot. The award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot

be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, as we said, it is proven or obvious that the method of marking was chosen with oblique motive."

48. In the present case, the selection was based on interview and candidates have been graded according to the performance. This grading is another form of marking and hence, it could not be said that there was no application of mind by the Selection Committee. As regards the arbitrariness in marking or assessment as already discussed above, it would be improper of this Court to sit in judgment as to whether the candidates had been properly assessed or not by the Selection Committee consisting of experts unless it is shown to be patently illegal or absurd or illogical, which the petitioner has failed to do. Therefore, the grievance of the petitioner that his claim of better experience and academic records had not been given due consideration by the Selection Committee, can not be considered even though the petitioner may have his own reason to feel that the Selection Committee had not properly assessed the experience and academic records of the petitioner. This Court in absence of obvious and unimpeachable material or evidence to the contrary would not hazard to judge the assessment of the candidates by the Selection Committee for making the recommendation. Therefore, this Court is not able to accept the plea of the petitioner that there was non application of mind by the Selection Committee.

49. Accordingly, for the reasons discussed above, the writ petition fails and is dismissed.