

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (S/B) No. 474 of 2012**

Dr. Ritu Singh and others ..... Petitioners

Versus

Uttarakhand Public Service Commission  
and others ..... Respondents

**Writ Petition (S/B) No. 490 of 2012**

Dr. Parul and others ..... Petitioners

Versus

State of Uttarakhand and others ..... Respondents

**AND**

**Writ Petition (S/B) No. 496 of 2012**

Dr. Prashant Verma and others ..... Petitioners

Versus

State of Uttarakhand and others ..... Respondents

Present: Mr. Sharad Sharma and Mr. R.K. Raizada, Senior Advocates  
assisted by Mr. Parikshit Saini and Mr. J.S. Bisht, Advocates for  
the petitioners.

Mr. T.A. Khan, Deputy Advocate General (Civil) with Mr. Vinay  
Kumar, Standing Counsel for the State of Uttarakhand.

Mr. Vijay Hansaria, Senior Advocate assisted by Mr. Jatinder  
Kumar Bhatia and Mr. B.D. Kandpal, Advocates for the  
Uttarakhand Public Service Commission.

Mr. Manoj Tiwari, Senior Advocate assisted by Mr. Sandeep  
Adhikari, Advocate for the private respondents.

**JUDGMENT**

**Coram: Hon'ble Barin Ghosh, C.J.  
Hon'ble Servesch Kumar Gupta, J.**

**BARIN GHOSH, C.J. (Oral)**

Selection pursuant to an advertisement is the subject  
matter of challenge in the present writ petitions. The purpose of the  
selection was to enable appointment of Medical Officers

(Ayurvedic). The appointments are available in the posts created by the State under the Uttarakhand Medical (Ayurvedic and Unani) Group 'B' Service Rules, 2010. The said Rules provide, amongst others, that recruitment to the post in the service shall be made by direct recruitment through Commission. In terms of the said Rules, Commission means 'Uttarakhand Public Service Commission'. The said Rules direct that the method of selection shall be interview, where marks are to be allocated to the candidates to be interviewed. There is no dispute that, in the instant case, interviews were held by the Commission. Petitioners are seeking to contend that marks were not allocated at the interview. It is the contention of the Commission that marks were allocated to each person, who was interviewed. It is the specific case of the Commission that after having had interviewed all those candidates, who had been invited at the interview, on the basis of merit, recommendation for recruitment was made. It is the contention that whereas the Commission made recommendation for many a categories, but not all categories, as it could not find people suitable in those categories for being recommended as they did not get the required cut off mark. One of the petitioners in these writ petitions is an OBC candidate. It is contended that the cut off mark, as was fixed, as claimed by the Commission, was not applicable to Medical Officers firstly and in any event, the same was not notified and, accordingly, recourse thereto could not be taken. It is, therefore, the contention of that petitioner that because of fixation of cut off mark, he has lost an opportunity of being appointed. The fact remains that the Procedure and Conduct of Business Rules, 2007 authorises the Commission to deal in such manner as the Commission deems fit with any matter not specifically provided for in those Rules. It is the contention of the Commission that since those Rules have not dealt with cut off mark, the same could be dealt with by the Commission in exercise of its residuary power and the same was exercised as far back as on 19<sup>th</sup> October, 2007,

i.e. much before steps were taken to commence selection. It was contended that on 19<sup>th</sup> October, 2007, a decision was taken that in future, selections for all posts, the cut off mark for general candidates in the interview shall be 45 per cent, whereas for reserved candidates, the same will be 35 per cent. The learned counsel for the petitioners, for our assistance, have produced a judgment of a three-Judge Bench of the Hon'ble Supreme Court rendered in the case of **K. Manjusree versus State of Andhra Pradesh and another**, reported in 2008 (3) SCC, 512. The learned counsel also drew our attention to paragraph 33 of the said judgment. The same is as follows:-

“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 wants 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.”

2. A perusal of the above observation of the Hon'ble Supreme Court would make is abundantly clear that it is well within the domain of the selectors to prescribe minimum cut off

mark. The only restriction is that they should do it before the process of selection has started. We would add the reason behind the said logic. We think that the selectors before selecting must know that a minimum is required for a person to qualify. Unless the selectors know that to be the standard in the matter of assessment, there is likelihood of their making assessment without focusing the ability of the person to acquire the minimum recruitment and, accordingly, if the same is not fixed at the time before the selection started, but the same is inserted later, there is possibility of a candidate suffering prejudice, inasmuch as, at the time of interview, the members of the interview board did not apply their mind whether he is good enough to cross the eligibility. This paragraph of the judgment, while uphold the authority of the selectors to prescribe cut off/minimum marks at interview, did not speak that the same is required to be notified. / In the circumstances, we can not hold in favour of that OBC writ petitioner, who has secured less than the cut off mark of 35 per cent, fixed for reserved category and, accordingly, has not been recommended for being appointed. The ultimate contention is, whether marks were given to the candidates or not? That the marks were given to the candidates, was sought to be established by the Commission by producing the mark-sheets of each interview boards. It is the contention of the petitioners that the mark-sheets, thus produced, suggest that more than one person constituted the interview board, but the mark-sheets contain the signature of only one person said to be a member of the interview board. It is the contention of the petitioners that the marks, thus reflected in those mark-sheets, were the marks, in fact, given by the members of the board, is not evidenced by the mark-sheets themselves. It is the contention of the Commission that at the interview board, members of the board decided, after interviewing each candidate, what marks he is entitled to and that is reflected in the mark-sheet and at the end of the interview, the same is signed by the Chairman of the board. It is the contention of the

Commission that the said system is in vogue since the creation of the Commission. It has been contended that many of the people, who were members of those Boards, have filed affidavits and, therein, they have indicated that the mark-sheets reflect the collective decision of the members of the boards. Petitioners have contended that while originally the Commission had indicated that assistance of 66 experts was taken, later, the figure was altered to 57 and on counting the members, who manned the different boards, it will appear that 60 experts had participated. It was contended that in some of the mark-sheets, only the number of experts had been mentioned, but their names had not been furnished. It was contended that in two of the boards, there were at least one member, who was seeking election and accordingly, was disqualified to be a part of the interview board. This only creates suspicion, but suspicion cannot take the place of evidence. A writ court, in the matter of upholding legal right of a writ petitioner which will deny a legal right accrued in favour of the respondents to the writ petition, cannot take recourse to either doubt or to suspicion. It has to come to a conclusion that the legal right sought to be enforced is existing and that the same is enforceable and because the same is existing and enforceable, the legal right said to have accrued in favour of the respondents dissipates. We feel that justice is not only to be done, but is also required to be shown to have been done. In the instant case, the members of the boards of interview were doing justice inter se those candidates who had appeared before them for being selected. In the present writ petitions, there is no material on the basis whereof we can pronounce that justice was not done while awarding marks to each of the candidates, who appeared before the boards, but the fact remains that such justice was, in fact, done was not shown or reflected in the mark-sheets. It appears that almost all the boards were comprised of more than one person. The mark-sheets contain the signature of one. If a person, who has signed, alters the mark-

sheet subsequent thereto, the person who has not signed will not be able to do justice to the person, who has lost by reason of such alteration. It was, therefore, obligatory on the part of all the members of the boards to sign the mark-sheets in order to show that not only justice has been done by them but they have also ensured that the same has been shown and established. There is another aspect of the matter. By rules framed under proviso to Article 309 of the Constitution of India, the criterion for selection has been mandated to be interview where marks are to be given. As aforesaid, the Commission is to hold the interview and to give marks, is also the mandate of the rules. Commission has done so and, accordingly, has discharged its obligation. Petitioners are contending that selection pursuant to interview alone is not proper. They are contending that when selection pursuant to interview is the one and the only mode, then it is a requirement of law to lay down what are the factors to be taken into account at the interview and what marks would be allocated for those factors. It was contended that the same having not been done in the instant case, the selection is otherwise interferable. We think that having had taken chance before the interview boards, knowing fully well that the criterion for selection is only interview and no parameter for assessment of merit at the interview has been prescribed, it is not permissible for the court, at the instance of the petitioners, to hold that for fixation of interview as the sole criterion for selection or for non-laying down of parameters for adjudging merit or eligibility, there can be any interference with the selection, which stands concluded and by virtue whereof, people have acquired some right based on the merit adjudged at the interview.

3. We, accordingly, refuse to interfere with these writ petitions. They are dismissed, but at the same time, we direct the Commission to henceforth ensure that each member of the interview board signify under his signature either the marks given

by him individually or marks given by all the members of the board collectively. We feel, may be selection by interview only is permissible, but when a large number of people are to be recruited, at the bottom of the cadre or as the only members of the cadre, it would not be just to select them only on the basis of interview. Such a selection cannot be said to be fair and just. There is no inherent mechanism for warding off chances of arbitrariness and favouritism in such selection process. It would be desirable, therefore, to alter the criteria for selection. We would, therefore, request the State Government to alter the selection criteria. At the same time, we request the Commission to lay down such parameters to be followed by the members of the board for ascertaining inter se merit of people to be interviewed so that the chances of arbitrariness and favouritism are minimized.

**(Serves Kumar Gupta, J.)**  
**30.04.2013**

**(Barin Ghosh, C.J.)**  
**30.04.2013**