

THE HIGH COURT OF MEGHALAYA

W.P. (C) No.110/2013

Dr. Sudip Dey,
S/o (L) Sudhir Chandra Dey,
R/o Lumparing, Shillong,
East Khasi Hills District, Meghalaya.

:::: Petitioner

- *Vrs* -

1. North Eastern Hill University (NEHU), a University established under an Act of Parliament represented by the Registrar, NEHU Campus, Shillong-793022, Meghalaya.
 2. The Registrar, North Eastern Hill University, NEHU Campus, Shillong-793022, Meghalaya.
 3. Selection Committee for appointment to the post of Professor (UR) in the Department of Sophisticated and Analytical Instrumentation Facility (SAIF), North Eastern Hill University (NEHU), Shillong.
 4. The Executive Council, North Eastern Hills University (NEHU), Shillong.
- :::: Respondents

BEFORE THE HON'BLE MR. JUSTICE T NANDAKUMAR SINGH

| | | |
|---------------------|---|---|
| For the petitioner | : | Mr. HS Thangkhiew, Sr. Adv, Mr. N Mozika, Mr. P Nongbri, Advs |
| For the respondents | : | Mr. K Khan, SC NEHU |
| Date of hearing | : | 15.04.2014 |
| Date of Judgment | : | 25.04.2014 |

JUDGMENT AND ORDER

This is the second time the petitioner is assailing the selection process of the Selection Committee for direct recruitment to the post of

Professor (UR) in the Department of Sophisticated Analytical Instrumentation Facility (for short 'SAIF'), North Eastern Hills University (NEHU), Shillong. The earlier writ petition being WP(C)No.191(SH)2012 filed by the petitioner was allowed with certain directions vide judgment and order dated 06.11.2012, against which none of the parties preferred an appeal. Accordingly, the matter in issue in the present writ petition is not going to be decided in a virgin field and is to be decided in an area where both the parties had already ventured which result to the passing of the said judgment and order of the learned Single Judge dated 06.11.2012. Therefore, while deciding the matter in issue in the present writ petition, the judgment and order of the learned Single Judge dated 06.11.2012 is required to be kept in view.

2. Heard Mr. HS Thangkhiew, learned senior counsel assisted by Mr. N Mozika, learned counsel for the petitioner and Mr. K Khan, learned standing counsel for NEHU appearing for the respondents.

3. The succinct fact leading to the filing of the present writ petition is recapitulated.

The petitioner holds a Bachelor's Degree in Science [B.Sc. (Hon)] with First Division securing 1st position in the University and a Master's Degree (M.Sc.) in Zoology with First Division. The petitioner also obtained Ph.D. Degree from the Department of Zoology, NEHU in 1982 and had been serving in SAIF, NEHU, Shillong as Senior Technical Assistant from the year 1984 till 1990 and thereafter, as Scientific Officer (Senior Grade) from the year 1990 till date. An advertisement dated 07.12.2011 was issued by the NEHU on its website and invited applications from the eligible candidates to the post of Professor in SAIF, NEHU, Shillong. A copy of the said advertisement dated 07.12.2011 is available at Annexure-2 to the writ

petition. The relevant portions of the said advertisement dated 07.12.2011 are quoted hereunder:-

**“NORTH EASTERN HILLS UNIVERSITY
NEHU Campus, Shillong-793022 (Meghalaya)**

F.No.1-4/Estt.II(B)/2011-235 Dated, the 7th December, 2011.

EMPLOYMENT NOTICE

Applications on the prescribed format are invited from Indians Nationals for filling up various Teaching posts in the North Eastern Hills University, Shillong Campus.

The last date for receipt of application 20th January, 2012.

For details log into University website www.nehu.ac.in.

*Sd/-
(L. Roy)
Registrar.*

| <i>Sl. No.</i> | <i>Department</i> | <i>Post</i> | <i>No. of Vacancies</i> | <i>Category</i> | <i>Specializations</i> | <i>Essential Qualification Applicable</i> |
|----------------|--|---------------------|-------------------------|-----------------|------------------------|---|
| <i>41.</i> | <i>Sophisticated Analytical Instrumentation Facility</i> | <i>(a)Professor</i> | <i>1</i> | <i>UR</i> | <i>OPEN</i> | <i>E.Q.1.</i> |

(i) E.Q.-1

Professor

A.(i) An eminent scholar with Ph.D. degree in the concerned/allied/relevant discipline and published work of high quality, actively engaged in research with evidence of published work with a minimum 10 publications as books and/or research/policy papers.

(ii) A minimum of ten years teaching experience in university/college, and/or experience in research at the

University/National level institutions/industries, including experience of guiding candidates for research at doctoral level.

(iii) Contribution to educational innovation, design of new curricula and courses, and technology-mediated teaching learning process.

(iv) A minimum score as stipulated in the Academic Performance Indicator (API) based performance Based Appraisal System (PBAS) (refer to RX 1.4)

OR

B. An outstanding professional, with established reputation in the relevant field, who has made significant contributions to the knowledge in the concerned/allied/relevant discipline, to be substantiated by credentials.

RX-1.4

**ACADEMIC PERFORMANCE INDICATORS (API) FOR
DIRECT RECRUITMENT/CAREER ADVANCEMENT
SCHEME (CAS) PROMOTION OF TEACHERS UNDER
PERFORMANCE BASED APPRAISAL SYSTEM (PBAS)**

Summary of API Scores

API scoring will be progressively rolled out for categories I and II, beginning with assessment of one year for selection committees in 2011-2012, annual averages of two years in 2012-2013 and so on. Bur for category III, scores will be computed for the entire assessment period.

TABLE 1A-CATEGORY I: Teaching, Learning and Evaluation Related Activities.

| Sl. No. | Nature of Activity | Maximum Score |
|---------|---|---------------|
| 1. | Lectures, seminars, tutorials, practicals, contact hours undertaken as Percentage of lectures allocated* | 50 |
| 2. | Lectures or other teaching duties in excess of the UGC norms | 10 |
| 3. | Preparation and Imparting of knowledge/instruction as per curriculum; syllabus enrichment by providing additional resources to students | 20 |
| 4. | Use of participatory and innovative teaching-learning methodologies; updating of subject content, course improvement etc. | 20 |
| 5. | Examination duties (invigilation; question paper setting, evaluation/assessment of answer scripts) as per allotment | 25 |
| | Total Score | 125 |
| | Minimum API Score required | 25 |

**Ordinarily no points shall be awarded for less than 80% of the assigned contact hours undertaken. Any teacher who completes the course and take at least 80% of the assigned classes shall be awarded 50 points.*

Note: Teachers in Centres that do not have regular teaching programmes shall be exempted from minimum API score in category I.

TABLE 1B-CATEGORY I: Teaching, Learning and evaluation Related Activities for physical Education and Sports disciplines.

| Sl. No. | Indicators | API Score |
|-----------------------------------|--|----------------------|
| 1. | Management of Science Education, Physical Education and Sports Programme for students (Planning, executing and evaluating the policies in Science education, Physical Education and Sports) (20 points) Lecture cum practice based Science demonstration/athlete/sports classes, seminars undertaken as percentage of allotted hours (20 points) | Max Score: 40 points |
| 2. | Extending services, science education/sports facilities and training on holidays to the institutions and organizations. | Max Score: 10 points |
| 3. | Organizing and conducting sports and games competitions/Science exhibitions at the International/National/State/Inter University/Inter Zone Levels (25 points) Organizing and conducting coaching camps/sports person development/training programmes/Science training programmes (15 points). | Max Score 40 points |
| 4. | Up gradation of scientific and technological knowledge in Science Education, Physical Education and Sports (5 points) Identifying scientific/sports talents and Mentoring scientific/sports excellence among students (10 points) | Max Score 20 points |
| 5. | Development and maintenance of play fields and other sports facilities/science education related models/museum etc. | Max Score 15 points |
| Total score | | 125 |
| Minimum API Score Required | | 75" |

4. The University Grants Commission (for short ‘UGC’) vide Memo No.F.3-1/2009 dated 30.06.2010 had framed and published the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Higher Education, 2010, which provides for the qualifications for appointment to the Professor (Annexure-11 to the writ petition). Clause 6.2.0 of the said UGC Regulations for Minimum Qualifications for Appointment of Teachers, 2010 and Table II (c) of Appendix III provide the

norms for direct recruitment of teacher to different cadres; while Table II (a) and Table II (b) provide for CAS promotions of teachers in Universities and Colleges respectively, which accommodate these differences. Clause 6.3.2 further provides that the candidates who do not fulfill the minimum score requirement under the API scoring system proposed in the Regulations as per Tables II (a) and (b) of Appendix III or those who obtain less than 50% in the expert assessment of the selection process will have to be re-assessed only after a period of one year. The date of promotion shall be the date on which he/she has successfully got re-assessed. It is clear from the UGC Regulations for Minimum Qualifications for Appointment of Teachers, 2010, that Table II (c) of Appendix III shall be followed for direct recruitment of teachers to different cadres and Tables II (a) and (b) of Appendix III shall be followed for promotions.

5. Under Clauses 6.3.2 and 6.3.11, the candidates, who do not either fulfill the minimum API score in the criteria as per PBAS proforma or obtain less than 50% in the expert assessment, wherever applicable, such candidates will be re-assessed only after a minimum period of one year. On conjoint reading of Clause 6.3.2 and 6.3.11, it appears that those clauses are applicable only to the promotions and there is no clear clause for direct recruitment that the candidates should obtain not less than 50% in the expert assessment of the selection process. It is too late for the day to discuss the basic rule of interpretation of the Statutes, more particularly, in the given case. But one has to remember while interpreting one particular section or/statute, that it is required to see with open eyes where that particular section appears/ or what is the just foregoing section and also that section or/ statute cannot be read in isolation of the other parts of the chapter of the Statutes or Act where that particular Statute or/Section appears. It will be

more profitable to quote the clauses (i) 6.2.0; (ii) 6.3.2; (iii) 6.3.10 and; (iv) 6.3.11 and also the Appendix III Table II (c) hereunder:-

“6.2.0 The minimum norms of Selection Committees and Selection Procedures as well as API score requirements for the above cadres, either through direct recruitment or through Career Advancement Schemes Regulations, shall be similar. However, since teachers recruited directly can be from different backgrounds and institutions. Table II (c) of Appendix III provides norms for direct recruitment of teachers to different cadres, while Tables II (a) and Table II (b) provide for CAS promotions of teachers in universities and colleges respectively, which accommodate these differences.

6.3.2 Candidates who do not fulfill the minimum score requirement under the API Scoring System proposed in the Regulations as per Tables II (a and b) of Appendix III or those who obtain less than 50% in expert assessment of the selection process will have to be reassessed only after a minimum period of one year. The date of promotion shall be the date on which he/she has successfully got re-assessed.

6.3.10 Candidates shall offer themselves for assessment for promotion, if they fulfill the minimum API scores indicated the appropriate API system tables by submitting an application and the required PBAS proforma. They can do so three months before the due date if they consider themselves eligible. Candidates who do not consider themselves eligible can also apply at a later date. In any event, the university concerned shall send a general circular twice a year calling for applications for CAS promotions from eligible candidates.

6.3.11 In the final assessment, if the candidates do not either fulfill the minimum API scores in the criteria as per PBAS proforma or obtain less than 50% in expert assessment, wherever applicable, such candidates will be reassessed only after a minimum period of one year.

APPENDIX-III TABLE-II (c)

Minimum Scores for APIs for direct recruitment of teachers in university departments/colleges, Librarian/Physical Education cadres in Universities/Colleges, and weightages in Selection Committees to be considered along with other specified eligibility qualifications stipulated in the Regulation.

| | | | |
|--|--|--|--|
| | Assistant Professor/ equivalent cadres (Stage 1) | Associate Professor/equivalent cadres (Stage 4) | Professor/equivalent cadres (Stage 5) |
|--|--|--|--|

| <i>Minimum API Scores</i> | <i>Minimum Qualification as stipulated in these regulations</i> | <i>Consolidated API score requirement of 300 points from category III of APIs</i> | <i>Consolidated API score requirement of 400 points from category III of APIs</i> |
|--|---|---|--|
| <i>Selection Committee criteria/ weightages (Total Weightages=100)</i> | <i>a) Academic Record and Research Performance (50%)</i> <i>b) Assessment of Domain knowledge and Teaching Skills (30%)</i> <i>c) Interview performance (20%)</i> | <i>a) Academic Background (20%)</i> <i>b) Research performance based on API score and quality of publications (40%)</i> <i>c) Assessment of Domain knowledge and Teaching Skills (20%)</i> <i>d) Interview performance (20%)</i> | <i>e) Academic Background (20%)</i> <i>f) Research performance based on API score and quality of publications (40%)</i> <i>g) Assessment of Domain Knowledge and Teaching Skills (20%)</i> <i>Interview performance (20%)</i> |

Note: For Universities/Colleges for which Sixth PRC Awards (vide Appendix 2) are applicable, Stages 1, 4 and 5 correspond to scales with AGP of Rs.6000, 9000 and 10000 respectively.”

6. The Parliament enacted in the Twenty Fourth Year of the Republic of India an Act called “The North-Eastern Hill University Act, 1973” (hereinafter called the said Act of 1973). The Statutes called “North-Eastern Hill University Statutes” (hereinafter called the Statutes) had been made under Section 25 of the said Act of 1973. Statute12 of the North Eastern Hills Statues provides the composition of the Executive Council. The powers and functions of the Executive Council are provided under Statute 13 of the Statutes; and the Executive Council has the power to appoint the Professors under Statute 13 (2)(ii) of the Statutes. Under Statute 20 (5) of the North Eastern Hills University Statute, the procedures to be followed by a Selection Committee in making recommendations shall be laid down in the Ordinances. Para 3 of OE-3 provides that the Selection Committee shall make recommendations as to the suitability of the candidates referred to it, for consideration of the Executive Council and para 8 further provides that every Selection Committee shall be competent to adopt its own procedures regarding the mode of assessment of the candidates presented before it.

7. In response to the said advertisement dated 07.12.2011 for direct recruitment to the post of Professor in SAIF, NEHU, Shillong, the petitioner applied for the said post of professor in SAIF. On the recommendations of the screening committee, the respondents called four candidates including the writ petitioner for interview to be conducted by the Selection Committee on 20.04.2012. On the date of interview, only the petitioner was present for the interview and the other three candidates did not appear for the interview. The Selection Committee summarily come to the conclusion that the petitioner had “no management experience” and “lack of knowledge of analytical equipments other than SEM” and based on that, the Selection Committee had come to the conclusion that the petitioner was not found suitable for recommendation for direct recruitment to the post of Professor SAIF.

8. The petitioner had assailed the selection process of the Selection Committee by filing a writ petition i.e. WP(C)No.191(SH) of 2012 in the Gauhati High Court against the present respondents. The Hon'ble Gauhati High Court vide judgment and order dated 06.11.2012, had finally allowed the writ petition with the clear cut findings vide para 11 of the judgment and order that *(i)* management experience and knowledge of analytical equipments other than SEM are not the qualifications stipulated by the advertisement *(ii)* the insistence of these qualifications by the Selection Committee on the pain of rejection of the candidature of the petitioner, would amount to introduction of additional criteria/qualifications for appointment to the post in question without any authority of law and *(iii)* assuming without admitting that such power is there, selection criteria have to be prescribed in advance. Para 11 of the judgment and order dated 06.11.2012 (Annexure-4 to the writ petition) read as follows:-

“11. Once it is found that management experience and knowledge of analytical equipments other than SEM are not the qualifications stipulated by the advertisement, the insistence of these qualifications by the Selection Committee on the pain of rejection of the candidature of the petitioner, would amount to introduction of additional criteria/qualifications for appointment to the post in question without any authority of law; this is an ultra vires action. Even assuming without admitting that such power is there, selection criteria have to be prescribed in advance. The issue was reviewed by the Apex Court in **K. Manjusree** case (supra) wherein the legal position was reiterated in the following manner:

“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 may regulating the selection, can prescribe by rules, the minimum marks for both written examination and interviews, or prescribes minimum marks for written examination, but not for interview, 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 the selection process. If the Selection Committee prescribed minimum marks only for the written examination, before commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates also should 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.”

In any view of the matter, I am of the considered view that the impugned selection process suffers from the vice of arbitrariness, illegality and/or non-application of mind calling for the interference of this Court.”

9. The Gauhati High Court, after coming to the above findings vide para 11 of the judgment and order dated 06.11.2012, had set aside the selection proceedings of the Selection Committee and also subsequent advertisement dated 28.06.2012 and directed the respondents to consider afresh the case of the petitioner for appointment to the post of Professor in SAIF, NEHU strictly in accordance with the criteria and the respective weightage as prescribed by the extant rules and regulations. Again the Selection Committee held on 14.02.2013 did not recommend the petitioner for appointment to the post of Professor in SAIF by direct recruitment. The said recommendation of the Selection Committee held on 14.02.2013 was placed before the Executive Council of the University in the 145th Meeting of the Executive Council held on 28.03.2012. The Executive Council adopted the Resolution, which reads as follows:-

“No:EC:154:2013:6:1(i): The Council noted that, the University in compliance of the Order of the Hon’ble High Court in letter and spirit and in adherence to the extant rules and regulations of Act/Statute/Ordinance of the University in terms of Sec. 18 of the NEHU Act, 1973 and Statute 2(b)(1), (2) and (3) and Statute 13(2)(ii), Statute 20(2) and Ordinance OE 3(3) and (10) has considered afresh the Candidature of Dr. Sudip Dey for appointment to the post of Professor. Dr. Sudip Dey was interviewed by duly constituted Selection Committee on 14.3.2013 within the stipulated date vide Hon’ble High Court Order dated 17.12.2012. The Executive Council RESOLVED to approve the recommendation made by the Selection Committee as place in the meeting which is reproduced hereunder:

“The candidate scored 37 out of 80 in expert assessment and therefore not recommended.”

UGC Regulation 2010 Clause 6.2.0 prescribes similar norms for CAS and direct recruitment. Further Clause 6.3.2 and 6.3.11 provide that a candidate obtaining score of less than 50% in expert assessment cannot be recommended for promotion/selection.

In view of the fact that the candidate scored less than the minimum prescribed by UGC as well as the Selection Committee, the Executive Council RESLOVED not to appoint Dr. Sudip Dey as Professor.”

10. It is stated that the petitioner had submitted an application on 03.04.2013 under the RTI Act requesting the respondents for (a) Selection Committee report for the said post of Professor; (b) Score sheet of the petitioner (c) Minimum score, if any, needed for selection in direct recruitment. In response to the said application dated 03.04.2012, the PIO, NEHU vide letter dated 01.05.2013 informed the petitioner as follows:-

“(a) That with regard to the query of the petitioner as to the minimum score, if any, needed for selection in direct recruitment, the information furnished under the RTI Act stated as follows:-

“As per UGC Regulation in the final assessment the candidate should obtain minimum 50% in expert assessment.”

(b) That the copy of the selection committee report (Minutes of the Selection Committee meeting dated 14.2.2013) stated as follows:-

“... At the outset the committee felt that the Professor in SAIF is also expected to be the leader of SAIF. Thus according to the criteria in the relevant score card, the committee has fixed a minimum of 65/100 in order for the candidate to be considered for the selection.”

(c) That as per the copy of the score sheet furnished to the petitioner, the selection committee awarded the petitioner the following marks:

| <i>Academic Background</i> | <i>Research performance based on API score & quality of Publications</i> | <i>Assessment Domain Knowledge and teaching skills</i> | <i>Interview performance</i> | <i>Total marks obtained out of 100</i> |
|----------------------------|--|--|------------------------------|--|
| <i>(20 marks)</i> | <i>(40 marks)</i> | <i>(20 marks)</i> | <i>(20 marks)</i> | |
| 15 | 20 | 10 | 7 | 52 |

(d) That the Score card prepared by the Selection Committee made the following remark:

“The candidate scored less than minimum recommended score fixed by the Committee and also UGC.”

(e) That the Minutes of the Selection Committee meeting stated as follows:-

“The candidate Dr. Sudip Dey scored 52/100. Hence the candidate was not selected for the position...”

(f) That the Recommendation of the Selection Committee was as follows:-

“The candidate scored 37 out of 80 in the expert assessment and therefore not recommended.”

11. Copies of the (i) work-sheet; (ii) score-sheet and; (iii) proceedings of the Selection Committee are annexed in the present writ petition. The work-sheet, score-sheet and the proceedings of the Selection Committee speak three languages for the same selection process inasmuch as, the work-sheet (recommendation of the Selection Committee) speaks that the petitioner was not recommended as he secured 37 out of 80 in the expert assessment, the score-sheet speaks another language that the candidate secure less than the minimum recommended score fixed by the Selection Committee and UGC i.e. the minimum of 65/100 and the proceedings of the Selection Committee again stated that according to the criteria in the relevant score card, the Committee had fixed a minimum of 65/100 in order for the candidate to be considered for the selection. After perusal of these copies, this Court put pointed questions to Mr. K Khan, learned counsel for the respondents to answer correctly the questions (i) at what stage of the selection process or when did the Selection Committee fix the minimum score for recommendation of the candidates for direct recruitment to the post of Professor in SAIF, more particularly, in the given case, the Hon'ble Gauhati High Court in the judgment and order dated 06.11.2012, clearly made a direction to the respondents that the selection criteria has to be prescribed well in advance and also another question (ii) whether or not the fixation of the minimum score for recommendation of the

candidates was before the selection process? Mr. K Khan, learned counsel for the respondents in his usual frankness, had submitted that clear instruction is required from the respondents for answering the questions, more particularly, “whether or not the fixation of the minimum score for recommendation of the candidates for direct recruitment was before the selection process or in the midst of the selection process?” On the next day, Mr. Khan, learned counsel for the respondents placed before this Court the original proceedings of the Selection Committee dated 14.02.2013. On bare perusal of the original proceedings of the Selection Committee, it is crystal clear that there is no indication that in compliance with the directions of the Hon’ble Gauhati High Court in the judgment and order dated 06.11.2012 passed in WP(C)No.191(SH) of 2012, the minimum score of 65/100 had been prescribed well in advance or in other words, before the selection process started.

12. In case of plurality of candidates in a selection process for direct recruitment, the Selection Committee can recommend the candidates on the basis of comparative merits of the candidates. In the case of lone candidate for lone post, the minimum score for recommendation i.e. minimum qualifications for appointment of the candidate are to be provided much in advance in strict compliance with the qualifications stipulated in the advertisement and also the relevant rules and regulations. Fixing of minimum qualifications for the lone candidate for lone post would amount to fixing or prescribing qualifications for appointment to that particular post. In this context, it appears that the respondents had misread the provisions of the ordinances mentioned above, and also the powers and jurisdictions of the Executive Council for prescribing the minimum score for the petitioner for appointment by direct recruitment to the post of Professor in SAIF inasmuch as, the minimum score prescribed by the Selection Committee would amount

to prescribing the minimum qualifications for appointment to the post of Professor in SAIF. The Selection Committee should not mix up with its power under paras 3 & 8 of the OE-2 as to their power for adopting their own procedures regarding the mode of assessment in plurality of candidates in a selection process with the one where there is lone candidate in a selection process for one post. In case of a lone candidate, there is no comparative assessment of merits and the lone candidate is to be subjected as to whether the lone candidate had the qualifications as provided in the advertisement and the relevant rules and regulations and the fixation of minimum score by the Selection Committee would amount to prescribing the minimum requisite qualifications of the candidate for which the Executive Committee of NEHU is the Competent Authority. The prescribing of requisite qualifications is not the duty of the Selection Committee and it is the duty of the Executive Council under the said Act of 1973. We may refer to the decision of the Apex Court in ***Dr. Krushna Chandra Sahu & Ors vs. State of Orissa & Ors: (1995) 6 SCC 1*** that fixation of suitability criteria is the primary duty of the law making authority and the selection criteria cannot be laid down by the Selection Board unless specifically authorized. Paras 33, 34, 35 and 36 of the SCC in *Dr. Krushna Chandra Sahu's case (Supra)* read as follows:-

*“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 authorized 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 A.P. v. V. Sadanandam:1989 Supp(1) SCC 574: 1989 SCC (L&S) 511: (1989) 11 ATC 391** observed as under: (SCC pp. 583-84, para 17)*

“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 conclusion, 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 v. Union of India: (1984) 2 SCC 141: 1984 SCC (L&S) 214: (1984) 2 SCR 200, 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 v. Union of India: (1985) 3 SCC 721: 1985 SCC (L&S) 919: 1985 Supp (2) SCR 367, 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 v. State of Orissa:(1987) 4 SCC 646: 1988 SCC (L&S)36: (1987) 5 ATC 148:(1987) 2 UJ (SC) 657 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 v. State of Haryana: 1980 Supp SCC 524: 1981 SCC (L&S) 343: AIR 1981 SC 561. 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.”

13. Not to speak of prudent person, even a layman know quite well that the rule of game should be prescribed before the game starts and the rule of game cannot be prescribed in the middle of the game. Taking cues of the settled position of law, the Hon’ble Gauhati High Court in the judgment and order dated 06.11.2012, had already made a clear direction that the

selection criteria had to be prescribed well in advance. Now it is well settled in the service jurisprudence that the selection process begins with the issue of advertisement. Regarding this settled position of law, we may refer to the decision of the Apex Court in **A.P. Public Service Commission, Hyderabad & Anr vs. B. Sarat Chandra & Ors: (1990) 2 SCC 669.**

14. Regarding the settled law that the selection criteria or the rule of the game had to be prescribed well in advance and the rule of game cannot be changed when the game is under process. We may refer to the decisions of the Apex Court in (i) **K Manjusree vs State of Andhra Pradesh & Anr: (2008) 3 SCC 512;** (ii) **Ramesh Kumar vs. High Court of Delhi & Anr: (2010) 3 SCC 104 and;** (iii) **State of Orissa & Anr v. Mamata Mohanty: (2011) 3 SCC 436.** The Apex Court in *K Manjusree's* case (*Supra*) held that:

“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 may regulating the selection, can prescribe by rules, the minimum marks for both written examination and interviews, or prescribes minimum marks for written examination, but not for interview, 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 the selection process. If the Selection Committee prescribed minimum marks only for the written examination, before commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates also should 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.”

The Apex Court in *Ramesh Kumar's* case (*Supra*) held that:

“13. In ***Durgacharan Misra v. State of Orissa: (1987) 4 SCC 646: 1988 SCC (L&S) 36: (1987) 5 ATC 148: AIR 1987 SC 2267***, this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in ***B.S. Yadav v. State of Haryana: 1980 Supp SCC 524: 1981 SCC (L&S) 343: AIR 1981 SC 561; P.K. Ramachandra Iyer v Union of India: (1984) 2 SCC 141: (1984) SCC (L&S) 214: AIR 1984 SC 541; and Umesh Chandra Shukla v. Union of India: (1985) 3 SCC 721: (1985) SCC (L&S) 919: AIR 1985 SC 1351***, wherein it had been held that there was no “inherent jurisdiction” of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. “inherent jurisdiction” 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.

14. Similarly, in ***K Manjusree v. State of A.P.:(2008) 3 SCC 512: (2008) 1 SCC (L&S) 841: AIR 2008 SC 1470***, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.”

(emphasis supplied)

15. Mr. K Khan, learned standing counsel for NEHU at the very outset put up a very impressive submission that the Court has no power for judicial review of the academic matters and the Courts are not to sit in appeal over the opinion of the expert, more particularly, academic matters. But answer to the submission of Mr. K Khan is that this Court is not sitting in

appeal over the opinion of the Selection Committee but in judicial review, the Court is confined to the decision making process. It is too late for the day to questions the settled principles of law that the power of judicial review over the legislative action and administrative action vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution of India is an integral and essential feature of the Constitution, constituting part of its basic structure. For this well settled principle of law, we may refer to some celebrated cases i.e. **(i) Kesavananda Bharati v. State of Kerala: (1973) 4 SCC 225; and (ii) Minerva Mills Ltd. v. Union of India: (1980) 3 SCC 625;** (the ratio decidendi in those cases are explained and taught by the Professors for laws to the law students in all the universities, **(iii) Indira Nehru Gandhi v. Raj Narain: 1975 Supp SCC 1; (iv) Kihoto Hollohan v. Zachillhu: 1992 Supp (2) SCC 651 and; (v) L Chandra Kumar v. Union of India & Ors: (1997) 3 SCC 261.** Paras 73 and 74 of the SCC in *L Chandra Kumar's* case (**Supra**) read as follows:-

“73. We may now analyze certain authorities for the proposition that the jurisdiction conferred upon the High Courts and the Supreme Court under Articles 226 and 32 of the Constitution respectively, is part of the basic structure of the Constitution. While expressing his views on the significance of draft Article 25, which corresponds to the present Article 32 of the Constitution, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee of the Constituent Assembly stated as follows: (CAD, Vol. VII, p.953)

“If I was asked to name any particular article in this Constitution as the most important – an article without which this Constitution would be a nullity – I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance.”

(emphasis added)

74. This statement of Dr. Ambedkar has been specifically reiterated in several judgments of this Court to emphasize the unique significance attributed to Article 32 in our constitutional scheme. [See for instance, Khanna, J in **Kesavananda Bharati case: (1973) 4 SCC 225 (p.818)**, Bhagwati, J in **Minerva Mills: (1980) 3 SCC 625 (p.678)**, Chandrachud, C.J. in **Fertilizer Kamgar: (1981) 1 SCC 568 (Para 11)**, R Misra, J in **Sampath Kumar: (1987) 1 SCC 124: (1987) 2 ATC 82 (p.137)]**”

16. It is so well settled that the judicial review of the administrative action is directed against the decision making process. The Apex Court taking into consideration of what Lord Diplock observed in **Council of Civil Service Unions v. Minister for the Civil Service: (1984) 3 WLR 1174 (HL): (1984) 3 All ER 935, 950** in **Ranjit Thakur v. Union of India & Ors: (1987) 4 SCC 611** held that:

“25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court- Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In Council of **Civil Service Unions v. Minister for the Civil Service, (1984) 3 WLR 1174 (HL): (1984) 3 All ER 935, 950** Lord Diplock said:

"Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'

which is recognized in the administrative law of several of our fellow members of the European Economic Community.”

17. The Apex Court reiterated in ***Sugarbai M. Siddiq & Anr vs. Ramesh S. Hankare (DEAD) by LRS: (2001) 8 SCC 477*** that the power of judicial review of the High Courts is to the decision making process.

The Apex Court in State of ***West Bengal & Ors vs. Committee for Protection of Democratic Rights, West Bengal & Ors: (2010) 3 SCC 571*** held that:

“51. The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Articles 32 and 226 respectively. Dr. B.R. Ambedkar described Article 32 as the very soul of the Constitution – the very heart of it – the most important article. By now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said articles of the Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and this Court to test the constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution not only declares the pre-Constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution.”

18. For the foregoing discussions and reasons, this Court is of the considered view that the selection process of the Selection Committee held on 14.02.2013 suffers from inherent and apparent illegalities and called for interference. Accordingly, the selection process of the Selection Committee held on 14.02.2013 is hereby set aside and quashed. The Court has no alternative except to direct the Selection Committee to consider afresh the case of the petitioner for appointment to the post of Professor in SAIF,

NEHU, Shillong by strictly in accordance to the clear cut findings of the Hon'ble Gauhati High Court in the judgment and order dated 06.11.2012 passed in WP(C)No.191(SH) of 2012 and also by correcting the infirmities and illegalities pointed out by this Court in the above paras in conducting the selection process within a period of two months from the date of receipt of a certified copy of this judgment and order.

19. This Court hopes and trusts that the respondents shall read and re-read the judgment and order of the Hon'ble Gauhati High Court dated 06.11.2012 and also this judgment and order. No doubt, the Professors and the authorities of the NEHU are the members of the intellectual society. One who had not committed a mistake is yet to be born.

20. In the result, the writ petition is allowed to the extent indicated above.

JUDGE

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