IN THE HIGH COURT OF TRIPURA
A G A R T A L A
WP(C)732 of 2017
WP(C)734 of 2017
WP(C)906 of 2017

In WP(C)No.732 of 2017

Sri Biprajit Chakraborty,
son of Sri Nikhil Ranjan Chakraborty,
resident of Naraura, Bishalgarh,
P.O. & P.S. Bishalgarh,
District : Sepahijala

..... Petitioner(s)

– V e r s u s –

1. The State of Tripura,
represented by its Secretary cum Commissioner to the Department of Education (Social Welfare & Social Education), Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

2. The Secretary-cum-Commissoner,
Department of Finance (Taxes & Excise),
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex,
District : West Tripura

3. The Secretary-cum-Commissioner,
Department of Panchayat, Directorate of Panchayat, Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

4. The Secretary-cum-Commissioner,
Department of Food, Civil Supplies and Consumers Affairs, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

5. The Secretary-cum-Commissioner,
Department of Cooperatives, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

6. The Tripura Public Service Commission,
represented by its Secretary, Akhaura Road, P.O. Agartala, P.S. West Agartala, District : West Tripura

7. Sri Ayan Bhaumik,
son of Gopal Bhaumik,

notice to be served through the respondent No.1

8. Sri Sankhasubhra Sen,
son of Shital Ranjan Sen,
notice to be served through the respondent No.1

9. Smti. Debarati Gautam,
daughter of Debapriya Gautam,
notice to be served through the respondent No.2

10. Sri Subinay Bhaumik,
son of Sunil Chandra Bhaumik,
notice to be served through the respondent No.1

11. Sri Pritam Chanda,
son of Tapan Chanda,
notice to be served through the respondent No.3

12. Smt. Sharmistha Deb Roy,
daughter of Mrinal Kanti Deb Roy,
notice to be served through the respondent No.3

13. Sri Kaushik Baran Ghosh,
son of Sri Krishna Charan Ghosh,
notice to be served through the respondent No.3

14. Shri Dipankar Chakraborty,
son of Dilip Chakraborty,
notice to be served through the respondent No.3

15. Sri Uttam Kumar Deb,
son of Bhushan Deb,
notice to be served through the respondent No.3

16. Sri Binoy Roy,
son of Bhagirath Roy,
notice to be served through the respondent No.2

17. Md. Helal Uddin,
son of late Abdul Rashid,
notice to be served through the respondent No.3

18. Sri Rajib Gope,
son of Adhir Gope,
notice to be served through the respondent No.3

19. Sri Prasenjit Roy,
son of Pranesh Roy,
notice to be served through the respondent No.3

20. Smti. Sujata Saha,
daughter of Haripada Saha,
notice to be served through the respondent No.3

21. Sri Mithun Bhowmik,
son of Dhiman Chandra Bhowmik,
notice to be served through the respondent No.3

22. Sri Pritimoy Kar,
son of Priyatosh Kar,
notice to be served through the respondent No.2

23. Smti. Rupali Bhowmik,
daughter of Nitai Lal Bhowmik,
notice to be served through the respondent No.3

24. Smti. Debalina Bhattacharjee,
daughter of Jadabendra Nath Bhattacharjee,
notice to be served through the respondent No.3

25. Sri Sudeb Chandra Bhaumik,
son of Subal Chandra Bhaumik,
notice to be served through the respondent No.2

26. Sri Kuntal Chakraborty,
son of Jiban Chakraborty,
notice to be served through the respondent No.3

27. Smti. Debjani Basu Debroy,
daughter of Utpal Kumar Basu,
notice to be served through the respondent No.3

28. Sri Bijit Debbarma,
son of Lalit Mohan Debbarma,
notice to be served through the respondent No.2

29. Smti. Priyanka Baidya,
daughter of late Rakhal Baidya,
notice to be served through the respondent No.2

30. Smti. Smriti Das,
daughter of late Nihar Das,
notice to be served through the respondent No.2

31. Sri Argha Das,
son of Gopal Chandra Das,
notice to be served through the respondent No.2

32. Sri Prasenjit Das,
son of late Amitabha Das,
notice to be served through the respondent No.2

33. Sri Prasun Debnath,
son of Bimal Debnath,
notice to be served through the respondent No.2

34. Sri Avijit Das,
son of Haradhan Chandra Das,
notice to be served through the respondent No.3

35. Sri Dibakar Sarkar,
son of Gopal Kanti Sarkar,
notice to be served through the respondent No.2

36. Sri Kajal Das,
son of Chintaharan Das,
notice to be served through the respondent No.3

37. Sri Biswanath Debbarma,
son of late Krishnabashi Debbarma,
notice to be served through the respondent No.1

38. Smti. Solanki Das,
daughter of Sridam Das,
notice to be served through the respondent No.3

39. Sri Bijit Sarkar,
son of late Sukumar Sarkar,
notice to be served through the respondent No.3

40. Smti. Anita Mog,
daughter of Sudha Mog,
notice to be served through the respondent No.3

41. Sri Rajib Reang,
son of Shyama Prasad Reang,

notice to be served through the respondent No.3

42. Sri Tamber Dewan,
son of late Kirtisri Dewan,
notice to be served through the respondent No.2

43. Sri Santosh Kalia,
son of late Ananta Kalai,
notice to be served through the respondent No.3

44. Sri Lalditsak Hrangkhawl,
son of Lalhmingsang Hrangkhawl,
notice to be served through the respondent No.3

45. Sri Partha Debbarma,
son of Kiran Debbarma,
notice to be served through the respondent No.2

46. Sri Rachik Chakma,
son of Haladhar Chakma,
notice to be served through the respondent No.3

47. Sri Rajesh Debbarma,
son of Indrajit Debbarma,
notice to be served through the respondent No.3

48. Sri Prabandip Chakma,
son of Amarchand Chakma,
notice to be served through the respondent No.2

49. Sri Shyamal Debbarma,
son of Nilmani Debbarma,
notice to be served through the respondent No.3

50. Sri Amio Debbarma,
son of late Sukumoni Debbarma,
notice to be served through the respondent No.2

51. Sri Paritosh Debbarma,
son of late Birendra Debbarma,
notice to be served through the respondent No.3

52. Smti. Shilpa Debbarma,
daughter of Jyoti Mohan Debbarma,
notice to be served through the respondent No.2

53. Sri Chiranjit Debbarma,
son of late Sanjib Debbarma,
notice to be served through the respondent No.2

54. Sri Chitta Ranjan Pal,
son of late Hari Bhushan Pal,
notice to be served through the respondent No.2

55. Sri Dipankar Deb,
son of Dipak Kumar Deb,
notice to be served through the respondent No.2

56. Sri Subhrajit Roy,
son of Pinaki Bhushan Roy,
notice to be served through the respondent No.4

57. Sri Satyajit Pal,
son of late Manoranjan Pal,
notice to be served through the respondent No.4

58. Sri Sourav Das,
son of Samarendra Das,
notice to be served through the respondent No.4

59. Sri Bablu Namasudra,
son of Rabindra Namasudra,
notice to be served through the respondent No.5

60. Sri Subrata Das,
son of Raman Basi Das,
notice to be served through the respondent No.4

61. Sri Kang Kan Dewan,
son of late Kirtisri Dewan,
notice to be served through the respondent No.4

62. Sri Amrit Chakma,
son of Bimala Ranjan Chakma,
notice to be served through the respondent No.4

63. Sri Joheb Betu,
son of Lalzabiaka Betu,
notice to be served through the respondent No.4

64. Sri Ritesh Debbarma,

son of late Debabrata Debbarma,
notice to be served through the respondent No.2

65. Sri Lalthapuia Sailo,
son of late Lalrawntlinga Sailo,
notice to be served through the respondent No.5

66. Sri Maloy Chowdhury,
son of Parimal Chowdhury,
notice to be served through the respondent No.4

67. Sri Prasenjit Majumder,
son of Mahadeb Majumder,
notice to be served through the respondent No.4

68. Smti. Swasati Acharjee,
daughter of Dulal Chandra Acharjee,
notice to be served through the respondent No.4

69. Smti. Sunanda Chowdhury,
daughter of Santosh Chowdhury,
notice to be served through the respondent No.4

70. Smti. Nibedita Choudhury,
daughter of Tapan Choudhury,
notice to be served through the respondent No.4

71. Sri Dipankar Saha,
son of Dilip Kumar Saha,
notice to be served through the respondent No.4

72. Sri Anupam Saha,
son of Bhabesh Ranjan Saha,
notice to be served through the respondent No.4

73. Sri Debajyoti Chakraborty,
son of Adhir Chakraborty,
notice to be served through the respondent No.4

..... Respondent(s)

<u>In WP(C)No.734 of 2017</u>

Md. Anu Miah,
son of Md. Manik Miah,
resident of Jogendra Nagar,
P.O. Jogendra Nagar,

P.S. East Agartala,
District : West Tripura

..... Petitioner(s)

– V e r s u s –

1. The State of Tripura,
represented by its Secretary-cum-Commissioner to the Department of Education (Social Welfare & Social Education), Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

2. The Secretary-cum-Commissoner,
Department of Finance (Taxes & Excise), Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex,
District : West Tripura

3. The Secretary-cum-Commissioner,
Department of Panchayat, Directorate of Panchayat, Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

4. The Secretary-cum-Commissioner,
Department of Food, Civil Supplies and Consumers Affairs, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

5. The Secretary-cum-Commissioner,
Department of Cooperatives, Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex,
District : West Tripura

6. The Tripura Public Service Commission,
represented by its Secretary, Akhaura Road, P.O. Agartala, P.S. West Agartala, District : West Tripura

..... Respondent(s)

<u>In WP(C)No.906 of 2017</u>

Sri Debabrata Das,
son of Sri Sunil Chandra Das,
resident of Kamalpur, P.O. & P.S. Kamalpur,
District : Dhalai Tripura

..... Petitioner(s)

– V e r s u s –

1. The State of Tripura,

represented by its Secretary-cum-Commissioner to the Department of Education (Social Welfare & Social Education), Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

2. The Secretary-cum-Commissoner,
Department of Finance (Taxes & Excise),
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex,
District : West Tripura

3. The Secretary-cum-Commissioner,
Department of Panchayat, Directorate of Panchayat, Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

4. The Secretary-cum-Commissioner,
Department of Food, Civil Supplies and Consumers Affairs, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District : West Tripura

5. The Secretary-cum-Commissioner,
Department of Cooperatives, Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex,
District : West Tripura

6. The Tripura Public Service Commission,
represented by its Secretary, Akhaura Road, P.O. Agartala, P.S. West Agartala,
District : West Tripura

..... Respondent(s)

For Petitioner(s)	**:**	Mr. A. Bhowmik, Adv.
For Respondent(s)	**:**	Mr. M. Debbarma, Addl. G.A. Mr. Somik Deb, Adv. Mr. P. Datta, Adv. Mr. T. Debbarma, Adv. Mr. S. Lodh, Adv. Mr. Samarjit Bhattacharjee, Adv.
Date of hearing	:	27.08.2019
Date of delivery of Judgment & order	:	31.10.2019
Whether fit for reporting	:	YES: √ / NO:

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGEMENT & ORDER

All these writ petitions being WP(C)No.732 of 2017 [Biprajit Chakraborty versus State of Tripura & Others], WP(C)No.734 of 2017 [Md. Anu Miah versus State of Tripura & Others] & WP(C)No.906 of 2017 [Debabrata Das versus State of Tripura & Others] are clubbed together for disposal by a common judgment, inasmuch as, the challenge projected in these writ petitions are identical.

2. The selection of the respondents No.7 to 71, persuant to the advertisement No.08/2015 dated 17.04.2015 [Annexure-1 to the writ petition being WP(C)No.732 of 2017] and the notification under No.7.19 [105]/Rectt/TFS/2014 dated 11.09.2015 [Annexure-2 to the writ petition being WP(C)No.732 of 2017] have been challenged in these writ petitions. In the alternative, it has been urged by the petitioners to consider them for appointment to the post pursuant to the advertisement No.08/2015 and the notification dated 11.09.2015 respectively Annexures-1 & 2 to the writ petition being WP(C)No.732 of 2017.

3. By the advertisement No.08/2015, Tripura Public Service Commission, the respondent No.6, invited application for the Tripura Combined Competetive Examination for recruitment to the miscellaneous posts. The posts which were brought under the Combined Competetive Examination are (1) Child Development Project Officer under the Department of Education (Social Welfare & Social Education), (2) Superintendent of Taxes under Finance (Taxes & Excise) Department, (3) Panchayat Officer under Directorate of Panchayat, (4) Panchayat Extension Officer under Directorate of Panchayat and (5) Inspector of Taxes under Finanace (Taxes & Excise) Department. In the advertisement, 50 vacancies were declared for recruitment to the

miscellaneous posts as stated showing the vacancies category wise meaning vacancies for SC, ST and UR category against each of the post as advertised by the Tripura Public Service Commission. In the advertisement, however, it has been clearly provided as follows :

> **"Some posts of above mentioned categories/other categories coming under the purview of "Tripura Combined Competetive Examination for Recruitment to Miscelleneous posts" will be included in the ongoing recruitment process if requisition from the Government reaches to the Commission before the Preliminary Examination."**

In the said advertisement, it has been clearly stipulated that the recruitment process will comprise of three successive stages viz.-(1) preliminary examination of 100 marks (Multiple Choice, Type Test, (MCTT) (2) main examiniation of 200 marks (conventional type test(CTT) (3) personality test of 50 marks. The last date of receiving application initially was 25.05.2015 which was extended till 01.06.2015 by the notification under No.F.11(104)-Rectt./TPSC/2015 dated 23.05.2015. Further, by the notification dated 11.09.2015 [Annexure-2 to the writ petition being WP(C)No.732 of 2017] it was declared that the preliminary examination would be held on 20.12.2015. By the said notification, additional 19 posts were included under the said combined examination as per the requisition made before the preliminary examination.

4. There is no dispute that the result of preliminary examination was published by the notification dated 14.03.2016 [Annexure-3 to the writ petition being WP(C)No.732 of 2017]. In this juncture, it may be noted that the writ petition being WP(C)No.732 of 2017 [Biprajit Chakraborty versus State of Tripura and Others] has been treated as the lead case by the petitioners along with WP(C)No.734 of 2017 [Md. Anu Miah versus State of Tripura and Others] and WP(C)No.906 of 2017 [Debabrata Das versus State of Tripura and Others] and hence, whenever a reference would be made in the writ petitions in respect of

the annexures in particular, that would mean to the writ petition being WP(C)No.732 of 2017 unless, however, the context requires specific reference to the writ petitions.

5. The petitioner of writ petition being WP(C)No.732 of 2017 was successful in the preliminary examination but the petitioners of other two writ petitions have not averred categorically whether they were successful in the preliminary examination or not. Even though, the petitioner of the writ petition being WP(C)No.734 of 2017 has stated that "the facts and averments made in the lead matter titled Sri Biprajit Chakrabaroty versus State of Tripura and Others" will be relied. Even the documents annexed to the said writ petition would be utilised for advancing the cause. No such statement, however is available in the writ petition being WP(C)No.906 of 2017 [Debabrata Das versus State of Tripura and Others]. There is reason to assume that the petitioner of WP(C)No.906 of 2017 would not be successful in the preliminary examination. As there was no specific averment in the writ petition in respect of being successful in the preliminary examination, the Tripura Public Service Comission have not verified the fact whether the petitioner was successful in the preliminary examination or not.

6. Having considered the challenge as projected in the writ petition being WP(C)No.906 of 2017, this court is of the considered view that though the selection process and appointment of the respondents No.7 to 71 are challenged, a new ground which is not available in other writ petitions has been raised to the effect that since by the subsequent notification dated 11.09.2015, 19 posts were added for the combined examination and there had been no opportunity to file the fresh applications for the posts of Inspector of Foor, Inspector(Small Savings), Group Insurance Inspector and Co-operative Inspector, in particular, the

petitioner in WP(C)No.906 of 2017 has asserted that he was eligible for appointment to those posts. Denial of the opportunity for filing the fresh application has rendered the selection process arbitrary and untenable, as the eligible candidates did not find the opportunity to take part in the said selection. Exclusion, as such, was in violation of Article 14 and 16 of the Constitution of India.

7. Mr. A. Bhowmik, learned counsel appearing for the petitioner in WP(C)No.906 of 2017 has strenuously stated that the selection process is in general untenable and the appointments of the respondents No.7 to 71 emanating from the said selection are liable to be interfered with, by this court. The special ground as raised in WP(C)No.906 of 2017 is according to Mr. Bhowmik, learned counsel for the petitioner is of paramount importance, inasmuch as, by giving no opportunity to file a fresh application for those posts which were added by the notification dated 11.09.2015 the TPSC has acted arbitrarily. In this regard, Mr. Bhowmik, learned counsel has referred a decision of the apex court in **Rakhi Ray and Others versus High Court of Delhi and Others** reported in **(2010) 2 SCC 637** where the apex court had occasion to observe as under :

> **"7. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution",of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide Union of India and Ors. v. Ishwar Singh Khatri and Ors. (1992) Supp 3 SCC 84; Gujarat State Deputy Executive Engineers' Association v. State of Gujarat and Ors.: (1994) Supp 2 SCC 591; State of**

Bihar and Ors. v. The Secretariat Assistant S.E. Union 1986 and Ors.: AIR 1994 SC 736; Prem Singh and Ors. v. Haryana State Electricity Board and Ors.: (1996) 4 SCC 319; and Ashok Kumar and Ors. v. Chairman, Banking Service Recruitment Board and Ors.: AIR 1996 SC 976).

8. In Surinder Singh and Ors. v. State of Punjab and Ors. AIR 1998 SC 18, this Court held as under:

> **"14. ...A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointment, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.'***
>
> **16. ... Exercise of such power has to be tested on the touch-stone of reasonableness.... It is not a matter of course that the authority can fill up more posts than advertised."**
>
> **(Emphasis added)**

9. Similar view has been re-iterated in Madan Lal v. State of J & K and Ors. AIR 1995 SC 1088; Kamlesh Kumar Sharma v. Yogesh Kumar Gupta and Ors.: AIR 1998 SC 1021; Sri Kant Tripathi v. State of U.P. and Ors.: (2001) 10 SCC 237; State of J & K v. Sanjeev Kumar and Ors.: (2005) 4 SCC 148; State of U.P. v. Raj Kumar Sharma and Ors.: (2006) 3 SCC 330; and Ram Avtar Patwari and Ors. v. State of Haryana and Ors.: AIR 2007 SC 3242).

10. In State of Punjab v. Raghbir Chand Sharma and Ors.: AIR 2001 SC 2900, this Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that post can be filled up offering the appointment to the next candidate in the select list observing as under:

> **"4. ...With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select list prepared, the panel ceased to exist and**

> **has outlived its utility and at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."**
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> **11. In Mukul Saikia and Ors. v. State of Assam and Ors.: AIR 2009 SC 747, this Court dealt with a similar issue and held that "if the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised". The Select List "got exhausted when all the 27 posts were filled". Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The "currency of Select List had expired as soon as the number of posts advertised are filled up, therefore, the appointments beyond the number of posts advertised would amount to filling up future vacancies" and said course is impermissible in law.**
>
> **12. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, in executable and unenforceable in law. In case the vacancies notified stand filled up, process of selection comes to an end. Waiting list etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more."**
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> **[Emphasis added]**

8. Mr. Bhowmik, learned counsel has also referred other two decisions of the apex court being **Rajesh Kumar Gupta and Others versus State of U.P. and Others** reported in **(2005) 5 SCC 172** and **Amlan Jyoti Borooah versus State of Assam and Others** reported in **(2009) 3 SCC 227**. This court is persuade to observe, in the context, that both the decisions relate to recruitment from the merit panel. The future vacancies should not ordinarily be filled up from waiting list [**also see Gujrat State Dy. Executive Engineers Assn. Versus State of Gujarat reported in 1994 Supp(2) SCC 591**]. In the perspective of this writ petition, those decisions are of no relevance.

9. At the time of issuing the advertisement No.8/2015, it had been clearly adverted that the posts which are under perview of the

combined examination will be included in the ongoing recruitment process, if requisition from the government reached to the TPSC before the preliminary examination. In terms of the said declaration, 11 posts of Inspector of Food under Food, Civil Supply and Consumers Affairs Department, Inspector (Small Savings and Group Insurance) under the Finance Department and Co-operative Inspector under the Department of Cooperation were added as the requisition was made by the respective department. Those posts are in the category of Panchayat Extension Officer and Inspector of Taxes, for which posts the said advertisement was issued. The essential qualifications are degree from any recognised university. Even the petitioner of the lead case did not make out a case that those posts as added by the notification dated 11.09.2015 are completely different or so different that those cannot be brough under the combined examination or for their selection a special qualification is required, which is not required for other Inspector or the Officer borne in the same category.

10. This court even could not find out whether the petitioner of the writ petition being WP(C)No.906 of 2017 had applied for in pursuance to the advertisement No.08/2015 or not. If he did not apply, for the categorical declaration made in the advertisement No.08/2015 in respect of inclusion of post of the categories already adverted if the requisition from the government reached to the TPSC before the preliminary examination [the said clause has been reproduced above], he cannot have any objection as the course of addition is adverted very clearly.

11. The decision of the apex court in **Rakhi Ray**(supra) cannot be applied in this case. By the notification, it was brought to the notice of all concerned that some posts of similar category may be added under the said selection process if the requisition is received from the

concerned departments before the preliminary examination. The TPSC has also categorically stated that the preference to the post will be asked from the candidate only after his success in the preliminary examination. For this purpose, the reference may be made to Para-4(vi) of the reply filed by the TPSC. In the said passage, the following has been asserted :

> **"(vi) In Advt. No.08/2015 of TPSC, as other important information, it was specifically mentioned that, "During submission of Application form, the candidates need not mention sequence of preference for the posts. The candidates qualifying in the Main Examination will be asked to submit sequence of preference for the posts", hence, though later on 19 (nineteen) new posts has been included under purview of one drive, there is no chance of deprivation of the candidates qualified in Main Examination in exercising their option for sequence of preference for the posts."**

Hence, the ground that without affording opportunity for applying afresh in so far as 11 additional posts which were brought under the selection process by the notification dated 11.09.2015, the selection and appointment of the respondents No.7 to 71 is unsustainable and cannot be accepted by this court. In the advertisement, the stipulation relating to inclusion of additional posts under the recruitment process has been if the requisition is made by the concerned department before the preliminary examination with adequate emphasis [the said clause in the advertisement has been highlighted by bold letters]. Thus, all concerned including the petitioner of WP(C)906 of 2017 was aware of such inclusion. Despite that, the petitioner of WP(C)No.906 of 2017 did not submit the application for recruitment in terms of and in pursuance to the advertisement No.08/2015 [Annexure-1 to the writ petition being WP(C)No.906 of 2017]. Hence, that ground falls through with all consequences to follow.

12. The counsel for the petitioner has succinctly raised an objection in the writ petitions being WP(C)No.734 of 2017 [Md. Anu Miah versus State of Tripura and Others] and WP(C)No.906 of 2017

[Debabrata Das versus State of Tripura and Others] and urged to axe those writ petitions in limini as the selection of the respondents No.7 to 71 has been challenged but without impleading them as the party-respondent. Those respondents whose distinct right has been created for their selection and appointment to the respective posts are no doubt necessary party, in whose absence no effective adjudication can be done by this court. If the intervention is made, the selection and appointment of the respondents No.7 to 71 would be set aside with further consequences. It has been raised quite stoutly that when the writs of mandamus or certiorari cannot be issued in absence of the persons in the array of the party, the writ petition is bound to fail.

In response to such objection, Mr. A. Bhowmik, learned counsel for the petitioners in WP(C)No.734 of 2017 and WP(C)No.906 of 2017 has stated that the respondents No.7 to 71 are the party respondent in the arraignment made in the "lead case" and those respondents were not made the party respondents, as those respondents are before this court on notice and participating in the writ petition being WP(C)No.732 of 2017 and hence, no prejudice would occur in detriment to their interest.

13. This court cannot merely decide the requirement of law in the particular circumstance, by waiving the essential requirement in respect of impleadment. Every lis as registered for adjudication is a separate entity, be that a lead case or the adjunct cases. The impleadment of the necessary parties is unavoidable for two principal reasons, viz., 1) by waiving the requirement, the court cannot put the necessary party in a peril inasmuch as, the necessary party has distinct and inalienable right to contest the case in the manner he prefers to do and 2) the necessary party has a distinct right of participation in the consequential litigations

such as review or appeal by the court or the superior court. If from the lead case, no such future action is taken and such action is taken on the adjunct case, it would create avoidable and grave complication in adjudication. Thus, the plea of Mr. Bhowmik, learned counsel stands rejected. In this regard, a decision of the apex court in **B. Ramanjini v. State of A.P.** reported in **(2002) 5 SCC 533** where selection of teachers was challenged on the ground of impleadment and the apex court has observed as follows :

> **"19. Selection process had commenced long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings initiated before it. The writ petitions filed by the respondents concerned ought to have been dismissed which are more or less in the nature of a public interest litigation."**
>
> **[Emphasis added]**

14. In **K.H. Siraj versus High Court of Kerala and Others** reported in **(2006) 6 SCC 395**, the apex court has observed by reistating the law in respect of impleadment of the respondents who are supposed to suffer prejudice imminently, as under :

> **"75. The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. In our view, the writ petitions have to fail for non-joinder of necessary parties also."**

15. In **Rashmi Mishra versus Madhya Pradesh Public Service Commission** reported in **(2006) 12 SCC 724**, the apex court has restated the law in the following manner :

> **"13. It is not in dispute that all the 17 selected candidates were not impleaded as parties. Respondent Nos. 3 and 4, although, purported to have been impleaded as parties, the same, as noticed hereinbefore, was done on a different premise. Allegations of favoritism against them having been made, indisputably they were necessary parties. In the writ petition, although, the appellant contended that they were being impleaded in their representative capacity; admittedly no step had been taken in terms of Order 1 Rule 8 of the Code of civil Procedure or the principles analogous thereto.**
>
> *** *** *** ***
>
> **15. <u>In the aforementioned situation, all the seventeen selected candidates were necessary parties in the writ petition. The number of selected candidates was not large. There was no difficulty for Appellant to implead them as parties in the said proceeding. The result of the writ petition could have affected the appointees. They were, thus, necessary and/or in any event proper parties</u>."**
>
> **[Emphasis added]**

Having observed thus, as all the selected candidates were not impleaded as the parties in the writ petition, it has been held that no relief can be granted to the petitioner who challenged the selection and appointment.

16. As the petitioners in all the petitions have proceeded to lay their plea for challenging the action of the respondents based on the averments and the documents of the writ petition being WP(C)No.732 of 2017 [Biprajit Chakraborty versus State of Tripura and Others], henceforth, reference in respect of averments or the documents shall only be made from the said writ petition. In these writ petitions, as stated earlier, the challenge is directed against the advertisement and the notification respectively dated 17.04.2015 and 11.09.2015, [Annexures-1 & 2 to the writ petition] and consequently it has been urged for setting aside the selection of the respondents No.7 to 71 for paving a fresh selection. In the alternative, it has been urged that 'the

petitioners be considered for appointment' to the post as reflected in the said advertisement and the notification. The petitioners have asserted further that the petitioners of WP(C)No.732 of 2017 and WP(C)No.734 of 2017 have asserted that they were selected for participating in the main examination which was held on 12.06.2016 based on the result of the preliminary examination as carried out by the TPSC on 20.12.2015. The petitioners of the writ petitions being WP(C)No.732 of 2017 [Biprajit Chakraborty versus State of Tripura and Others] and WP(C)734 of 2017 [Md. Anu Miah versus State of Tripura and Others] were also successful in the main examination and they were called for Personality Test. But the petitioners name did not figure in the letter of recommendation sent by the TPSC to the respondents No.1 to 5 or the requisitioning authority. In Para-11 of WP(C)No.732 of 2017 it has been asserted as under :

> **"The petitioners were astonished to find that the petitioners were not recommended for the posts as advertised by the advertisement No.08/2015, but some candidates who were inferior to the petitioners were recommended."**

17. To substantiate the above allegation, the petitioners made endeavour to unearth the marks in different phases of the selection test. But no case was made out by them on the basis of the so called disclosure made under the Right to Information Act. They expanded their challenge by asserting that since 20% marks was kept for personality test, it has generated such anomalus outcome. But in para-14 of the writ petition, the petitioner has asserted that the TPSC had divided the alloted marks in two segments. 10% of the marks was allocated for personality test and the other 10% of marks was allocated for academic achievements. The personality test as adverted was for analytical power and professional attitude etc. [para-14 of the writ petition]. For the academic performance, the marks so allotted was sub-divided in order to achieve objectivity. But the petitioner has raised a very strange objection

that Academic Performace Index, API in short was not followed at the time of the personality test. The said concept has been borrowed from the University Grant Commission Guidelines which has no relevance exfacie in the present context, inasmuch as, the Public Service Commission being a constitutional entity has adequate authority to adopt rational principles to select the suitable candidates. Since, this court does not propose to take this objection further, it is discarded right at this juncture. As it is the admitted position that marks was allotted at 10% for the personality test, and hence, the objection in respect of allocation of higher marks for interview being illogical and inherently prejudicial cannot be entertained by this court.

18. The writ petitioners have as well raised the objection relating to addition of 11 posts subsequent to publication of the advertisement by the notification dated 11.09.2015. Since, the separate selection test was not followed, according to them, this is highly irregular. While deciding this objection, this court has laid its considered opinion in WP(C)No.906 of 2017 [Debabrata Das versus State of Tripura and Others]. There is no reason to deviate from that analogy and hence, this objection falls through as no prejudice or detriment to the interest to the petitioners has been caused for following the adverted process of inclusion of the additional post before the preliminary examination. True it is that, in the notification dated 11.09.2015, the eligibility for these posts were not mentioned in the advertisement. But since those were brought under the combined examination, the petitioners were considered automatically, inasmuch as, the preference would be asked from the successful candidates in the preliminary examination. Thus, the objection that the notification dated 11.09.2015 is illegal and ultravias is not acceptable. But for purpose of adverting the posts, the TPSC ought to have

mentioned the eligibility for those posts. It is expected that in future, they will not repeat the similar imperfection.

19. The respondents, particulary, the respondent No.6 by filing the reply has denied the allegation as frivolous and without substance. All the petitioners, according to them, got the less mark than the last UR candidate recommended by the TPSC. The last UR candidate got 172.77 whereas the petitioner of WP(C)No.732 of 2017 namely Biprajit Chakraborty got 149.94 and the petitioner of WP(C)No.734 of 2017 namely Md. Anu Miah got 152.52 and the petitioner of WP(C)No.906 of 2017 namely Debabrata Das was not shown any mark for the reason that he did not participate in the selection process. Even, the said petitioner did not claim that he did take part in the said selection process. The TPSC in their reply has quite assertively stated as follows :

> **"..... the examination comprised three successive stages viz. (i) Preliminary Examination for 100 marks (Multiple Choice Type Test), (ii) Main Examination for 200 Marks (Conventional Type Test) and (iii) Personality Test for 50 Marks. The Main Examination consisted two papers of Conventional Type Questions namely Paper I- English and Paper II- General Studies and Arithmetic. Full marks 100 for each paper and time allotted 2 hours 30 minutes for each paper. As per the Guidelines for conducting "The Tripura Combined Competitive Examination for the Recruitment to Miscelleneous post" the Personality Test was based on following :**
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> | | |
> |---|---|
> | i. | Knowledge in concerned field |
> | ii. | Analytical power |
> | iii. | Professional attitude |
> | iv. | Communication skill |
> | v. | General Knowledge & Current Affairs |
>
> **The Commission decided to measure the knowledge in the concerned field as Academic Achievements from Madhyamik or equivalent up to the minimum academic qualification required as per said Guidelines and 25 marks was allotted for this."**

20. The TPSC has further detailed the method they have followed during the personality test and in a table, they have shown how they have assessed each candidate during the personality test/interview. For purpose of reference, the said table is reproduced below :

Sl. No.	Subject	Marks Distribution
1	Academic Achievements	Madhyamik or equivalent.... 05 HS or equivalent .... 10 Graduation or equivalent.... 10 Total = 25
2	Analytical Power/Professional Attitude/Knowledge of Job Requirements/Communication skill/General Knowledge/Current Affairs/personality	25 Marks
	Total	50 Marks

21. The respondent No.6 has quite categorically submitted that the members of the interview board awarded marks against 25 only, which only accounts for 10% of the total marks. The entire selection process has been carried out in terms of "the guide lines for conducting the Tripura Combined Competition for recruitment to the miscellenous posts." All relevant rules for the recruitment process were published in the official website of the TPSC and shortly in the advertisement dated 17.04.2015. Thus, the entire procedure of selection was made known to the intending participants in the selection process. Having known the process, the participants without any flutter participated in the process. The respondents No.1, 2, 3, 4 and 5 filed separate replies on stating that the requisition they sent for selection of the candidates against the vacant post and they had received the recommendation from the TPSC. All those respondents have raised serious objection based on principles of Estoppel by conduct, inasmuch as, the petitioner participated in the process knowingfully well, how that would be carried out and as such, they are estopped to challenge the process of selection. The respondents No.54 to 56, 58 to 61 and 64 to 71 have also filed the separate replies and have stated that there is no cause of action to file the writ petition inasmuch as, how the process will be carried out, had been adverted before hand by the TPSC. Those respondents have supported the stand taken by the TPSC including their mechanism for assessment of the

academic performace stating that the same to be lauded as that has led to selection of persons with good academic career. According to them, the TPSC enjoys the previlage to evolve their own procedure for selection, unless it is demonstrated that such procedure is grossly unreasonable and arbitrary, the participant cannot raise objection to that. It appears that the petitioner of WP(C)No.732 of 2017 has filed rejoinder, mostly by reiterating the averments made in the writ petition and on further questioning the divison of marks as made by the TPSC for the personality test/interview as according to them, such division is in clear violation of the recruitment rules. Even in the rejoiner, the petitioner has reiterated his objection based on "Academic Performance Index."

22. Mr. A. Bhowmik, learned counsel appearing for the petitioners has strenuously submitted that there is gross irregularity in the selection process, even, it is apparent on the face of the records, such irregularity cannot be challenged in the Public Interest Litigation (PIL) and the only remedy that is left to the petitioner is to file the writ petition. In this regard, reference has been made to **Hari Bansh Lal versus Sahodar Prasad Mahto and Others** reported in **(2010) 9 SCC 655**, **Girjesh Shrivastava and Others versus State of Madhya Pradesh and Others** reported in **(2010) 10 SCC 707**, **Bholanath Mukherjee and Others versus Ramakrishna Mission Vivekananda Cenetenary College and Others** reported in **(2011) 5 SCC 464** and **Madan Lal versus High Court of Jammu and Kashmir and Others** reported in **(2014) 15 SCC 308** where the apex court has clearly held that in service matters Public Interest Litigation (PIL) is not maintainable. The apex court has observed that despite the decision in **Duryodhan Sahu (Dr.) versus Jitendra Kumar Mishra** reported in **(1998) 7 SCC**

273, that form of litigation (PIL) continued unabated which should not have been. Thus, the petitioner has challenged the selection and appointment in the writ petitions.

23. Mr. Bhowmik, learned counsel has in this regard submitted that the fundamental rights under the constitution cannot be bartered away. They cannot be compromised, nor can there be any estoppel aginst the exercise of fundamental rights available under the constitution as pointed out. To buttress his contention, the decision of the apex court in **Nar Singh Pal versus Union of India and Others** reported in **(2000) 3 SCC 588** has been referred. In this regard, he has also referred **Raj Kumar and Others versus Shakti Raj and Others** reported in **(1997) 9 SCC 527** to contend that if the glaring illegalities are located on scrutiny, even if, the candidates who appeared in the selection and are found unsuccessful, cannot be barred from questioning the selection. In **Raj Kumar**(supra) the apex court in order to distinguish **Madal Lal versus State of J & K** reported in **(1995) 3 SCC 486** have observed as under :

> **"16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J & K.: 1995 3 SCC 486 and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the Constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. <u>But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the</u>**

> **Government or the Committee as well as the action taken by the Government are not correct in law."**

24. When queried by this court whether there is any glaring or patent illegality in the selection process, Mr. Bhowmik, learned counsel has projected that acceptance of API, non-standardisation of marks of different boards as well as keeping 50 marks for personality test/interview are illegal of that proportion. He has candidly stated that in **Ashok Kumar and Another versus State of Bihar and Others** reported in **(2017) 4 SCC 357,** the apex court has observed as follows :

> **"20. The decision in Raj Kumar v. Shakti Raj:(1997) 9 SCC 527 (which was relied upon by the Appellants) involved a case where government was found to have committed glaring illegalities in the procedure. Hence, it was held that the principle of estoppel by conduct or acquiescence had no application. The decision is distinguishable."**

25. Mr. Bhowmik, learned counsel has further stated that assessment of the Academic Performance Index which is deformed in the present selection has been adopted by the TPSC in the interview. Such method has been discarded by the University Grants Commission but the same has been adopted by the TPSC. He has referred a decision of the apex court in **Haryana Public Service Commission versus Amarjeet Singh and Others** reported in **(1999) SCC (L & S) 1451,** where it had been held as follows:

> **"3. There was no grievance made before the Court that different standards were adopted for different sets of candidates. The fault found by the Court was that although none of the candidates possessed any higher qualifications or specialised training, marks have been allocated to them and, therefore, the action of the appellants became arbitrary. Even though that was the standard adopted by the Public Service Commission and the same standard has been applied to all, though may be defective, did not prejudice Respondents 1 and 2 or any of the candidates. When uniform process had been adopted in respect of all and selections had been made, it was highly inappropriate for the High Court to have examined the matter in further detail and to have allocated marks to the two candidates and thereafter directed the appellant Commission to select them."**

How this decision could support the contention of the petitioners is unintelligible to this court, as there is no allegation against the TPSC that they have applied different standard for different sets of candidates.

26. Mr. Bhowmik, learned counsel has quite emphatically submitted that introduction of API was made after the selection process was set in and hence, this is the change in the rule of game. After the selection process is commenced, the rule of the selection cannot be changed. To nourish the submission, Mr. Bhowmik, learned counsel has relied on a decision of the apex court in **V. Lavanya and Others versus State of Tamil Nadu represented by its Principal Secretary and Others** reported in **(2017) 1 SCC 322** :

> **"30. The Appellants have contended that the provisionally selected candidates were called to attend certificate verification on 23.01.2014 and 24.01.2014 and weightage marks were also awarded as per the then existing Government Order. While so, by issuing impugned G.O. Ms. No. 25 dated 06.02.2014 and G.O. Ms. No. 29 dated 14.02.2014 the criteria of selection was altered by relaxing passing marks by 5% in TET from 60% to 55%, thereby allowing large number of candidates who scored lesser marks to be considered for selection. As per the Appellants, this has resulted in altering the criteria of selection after the commencement of selection process. Reliance is placed upon K. Manjushree v. State of Andhra Pradesh and Anr.: (2008) 3 SCC 512 and Hemani Malhotra v. High Court of Delhi: (2008) 7 SCC 11 to contend that the Rules of selection cannot be changed after the selection process commenced."**

27. On the aspect of allocating the marks of personality test or interview, Mr. Bhowmik, learned counsel has referred a decision of the apex court in **Lila Dhar versus State of Rajasthan and Others** reported in **(1981) 4 SCC 159** where the apex court having approved the proposition of **Ajay Hasia etc. versus Khalid Mujib Sehravardi and Ors. etc.:(1981) ILLJ 103 SC** and **Periakaruppan v. State of Tamil Nadu :(1971) 2 SCR 430** that high marks for interview and non-allocation of marks under various heads in the interview are illegal. For purpose of reference, the relevant passages are extracted hereunder:

"6. Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection.

If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them.

In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview test must be minimal. That was what was decided by this Court in Periakaruppan v. State of Tamilnadu, Ajay Hasia etc. v. Khalid Mujib Sehravardi and Ors. etc., (supra) and other cases. 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 un fruitfull 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 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 of Public Service Commission.

9. Both the cases cited before us Periakaruppan's case and Ajay Hasia's case were cases of admission to colleges. We have already pointed out that the provision for marks for interview test need not and cannot be the same for admission to colleges and entry into public services. In fact in Periakaruppan's case, even in the case of college admissions the Court observed:

> **While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention that it was not within the power of**

> **the Government to provide such high marks for interview or that there was any arbitrary exercise of power.**

It is true that in Periakaruppan's case the Court held that the non allocation of marks under various heads in the interview test was illegal but that was because the instructions to the Selection Committee provided that marks were to be awarded at the interview on the basis of five distinct tests. It was thought that the failure to allocate marks under each head or distinct test was an illegality. But, in the case before us, the rule merely and generally indicates the criteria to be considered in the interview test without dividing the interview test into distinct, if we may so all them, sub-tests. We do not think that Periakaruppan's case, which, as we said, deals with admission to a college, affords any true guidance to us. Ajay Hasia's case was also a case of admission to a college. The Court while upholding the interview test as not irrational or irrelevant though unsatisfactory and capable of abuse, made the following observation:

> **We would, however, like to point out that in the matter of admission of colleges or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification.**

The Court then proceeded to consider the next question raised before them, whether the allocation of 33 1/3 percent of the total marks for the interview test vitiated the selection procedure as arbitrary and unreasonable. It was held that it did and reference was made to the fact that even for selection of candidates for the Indian Administrative Service the marks allocated for the interview test were only 12.2 percent of the total. It was then observed, "under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid"

The observations of the Court were made, primarily in connection with the problem of admission to colleges, where naturally, academic performance must be given prime importance. The words "or even in the matter of public employment" occurring in the first extracted passage and the reference to the marks allocated for the interview test in the Indian Administrative Service examination were not intended to lay down any wide, general rule that the same principle that applied in the matter of admission to colleges also applied in the matter of recruitment to public services. The observation relating to public employment was per incuriam since the matter did not fall for the consideration of the Court in that case. Nor do we think that the Court intended any wide construction of their observation. As already observed by us the weight to be given to the interview test should depend on the requirement of the service to which recruitment is made, the source material available for recruitment, the composition of the interview Board and several like factors.

> **Ordinarily recruitment to public services is regulated by rules made under the proviso to Article 309 of the Constitution and we would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be rewriting the rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious oblique motive. There is none in the present case. The Writ Petition is therefore dismissed but in the circumstances there will be no order regarding costs.**
>
> **[Emphasis added]**

28. The law in this regard has been reviewed and examined to illustrate how it is difficult to lay down the rigid rules, the importance of the personality test or interview cannot be whittled down. The courts should leave such matter to the domain of the experts. In **Ashok Kumar Yadav and Others versus State of Haryana and Others** reported in **(1985) 4 SCC 417** the apex court has observed as under :

> **23. This Court speaking through Chinnappa Reddy, J. pointed out in Liladhar v. State of Rajasthan: (1982) 1 S.C.R. 329 that the object of any process of selection for entry into 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. But the question is how should the competitive examination be deviled? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy, J. "In the very nature of things it would not be within the province or even the competence of the court and the Court would not venture into such exclusive thickets to discover ways out, when the matter are more appropriately left" to the wisdom of the experts. It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may posts and appointments where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly high percentage of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters and not y courts. The expert bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test.**

24. It is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there ore 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 can be evaluated, perhaps with some degree of error, by a viva voce test, much depending on the Constitution of the interview Board.

25. Glenn Stahl has pointed out in his book on Public Personnel Administration that the viva voce test does suffer from certain disadvantages such as the difficulty of developing a valid and reliable oral test, the difficulty of securing a reviewable record of an oral test and public suspicion of the oral Jest as a channel for the exertion of political influence and, as pointed out by this Court in Ajay Hasia's case (supra), also of other corrupt, nepotistic or extraneous considerations, but despite these acknowledged disadvantages, the viva voce test has been used increasingly in the public personnel testing and has become an important instrument whenever tests of personnel 3 attributes are considered essential. Glenn Stahl proceeds to add that "no satisfactory written tests have yet been devised for measuring such personnel characteristics as initiative, ingenuity and ability to elicit cooperation, many of which are of prime importance. When properly employed, the oral test today deserves a place in the battery used by the technical examiner." There can therefore be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination. Now if both written examination and viva voce test are accepted as essential features of proper selection in a given case, the question may arise as to the weight to be attached respectively to them. "In the case of admission to a college for instance", as observed by Chinnappa Reddy, J. in Liladhar's case, "where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life , greater weight has perforce to be given to performance in the written examination" and the importance to be attached to the viva voce test in such a case would therefore necessarily be mini mil. It was for this reason that in Ajay Haisa's case this Court took the view that the allocation of as high a percentage of marks as 33.30/0 to the viva voce test was "beyond all reasonable proportion and rendered the selection of the candidates arbitrary". But as pointed out by Chinnappa Reddy, J., "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". There may also be services "to which recruitment is made from younger candidates whose personalities are on the thresh hold of development and who show sings of great promise" and in case of such services where sound selection must combine academic

> **ability with personality promise, some weight has to be given to the viva voce test. <u>There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in Liladhar's case "exaggerated weight has been given with proven or obvious oblique motives."</u>**
>
> **[Emphasis added]**

29. On the same point of challenge, Mr. Bhowmik, learned counsel has placed his reliance on **Jasvinder Singh and Others and State of J & K and Others** reported **(2003) 2 SCC 132**. In the said decision, the apex court while dilating on allocation of marks for viva voce in excess of 12.2% has held that such allocation of marks should not be with intent or be so arbitrary is capable of being abused and misused in its exercise.

30. In **Vijay Syal and Another versus State of Punjab and Others** reported in **(2003) 9 SCC 401** the apex court has observed that the very proposition in **Ashok Kumar Yadav** (supra) would go to show that there cannot be any hard and fast rule of universal application for allocating the marks for viva voce *vis a vis* the marks for the written examination. Consequently, the percentage indicated therein alone cannot be the touchstone in all cases. Thereafter, it has been observed that :

> **"What ultimately required to be ensured is as to whether the allocation, as such is with an ablique intention and whether it is so arbitrary as capable of being abused and misused in its exercise [see Jasvinder Singh v. State of J & K: (2003) 2 SCC 132]."**

31. Notwithstanding the law relating to the fixing of percentage of marks for viva voce within a reasonable limit so that it cannot be

abused for oblique purpose in the selection process. Mr. Bhowmik, learned counsel has relentlessly insisted that the fixation of marks for the interview in the selection process under reference is grossly unsustainable, inasmuch as, **Lila Dhar**(supra) and **Ashok Kumar Yadav**(supra) has generated *stare decisis* and hence is the binding law.

With all humility with this submission, this court would observe that both in **Lila Dhar**(supra) and **Ashok Kumar Yadav**(supra), the apex court has eminently propounded that no inflexible rule in regard, i.e. in fixing the percentage of marks for the viva-voce vis-a-vis the marks in the written examination can be laid.

32. Appearing for the respondent No.6, Mr. T. Debbarma and Mr. P. Datta, learned counsel have produced the records of the selection process in order to show the correctness of the statement made in the reply filed by the TPSC. Having verified the records, it appears that the petitioners of the writ petition being WP(C)No.732 of 2017 and WP(C)No.734 of 2017 had made their preference for the post after they were successful in the preliminary examination and at that time, they did not raise any objection whatsoever. Mr. Debbarma, learned counsel has further submitted that the interview had been designed to achieve utmost objectivity and marks for that purpose were confined to 25 out of 250, 10% of the total marks. For academic achievement for which the specific assortment was uniformly followed. Finally the marks allotted personality test/interview was 25 out of 250, 10% of the total marks. The assessment of academic performance has nothing to do with the personality test. Therefore, the contentions as raised in these writ petitions are not supported by any law or decision of the apex court. Mr. Debbarma, learned counsel has submitted that even the addition of 11 posts was in the public domain and nobody had approached the TPSC to

apply afresh, not even the writ petitioner of WP(C)No.906 of 2017. Without notice to the state or its instrumentalities, a writ petition cannot be maintained.

33. Mr. Debbarma, learned counsel appearing for the TPSC has relied on a decision of the apex court in **Anzar Ahmad versus State of Bihar and Others** reported in **(1994) 1 SCC 150** to repel the objection that academic performance can not be considered at the time of interview. The following passage is relevant in support of that contention:

> **"20. In the instant case, we find that the State Government in its letter dated September 20, 1990 has clearly stated that selection should be made on the basis of interview. On the basis, of this letter the Commission could have made the selection wholly on the basis of marks obtained at the interview. But in accordance with the past practice, the Commission has made the selection on the basis of interview while keeping in view the academic performance and with that end in view the Commission has allocated 50% marks for academic performance and 50% marks for inter-view. It cannot be held that the said procedure adopted by the Commission suffers from the vice of arbitrariness. By giving equal weight to academic performance the Commission has rather reduced the possibility of arbitrariness."**

34. Mr. Debbarma, learned counsel appearing for the respondent No.6 has fairly submitted that had the case of the petitioner been that after exhausting the adverted post, and without any selection process, the TPSC has made the recommendation from the merit panel as maintained and on the basis of such recommendation, the appointments were made, there would have been some substance in view of the decision of the apex court in **Mukul Saikia and Others versus State of Assam and Others** reported in **(2009) 1 SCC 386** where the apex court had occasion to observe as follows :

> **"44. It is well-settled law that filling up of the vacancies over and above the number of vacancies advertised would be violative of Articles 14 and 16 of the Constitution of India. Mere inclusion of the appellants in the select list of the direct appointees does not confer any right on them to be appointed against the vacancies reserved for promotes."**

35. Finally, Mr. Debbarma, learned counsel for the TPSC has submitted that when no arbitrariness has been made out on facts, normally the court would not interfere with the assessment made by the interview board on the basis of unsubstantiated allegations and in absence of any malafide or extraneous considerations on records. In this batch of writ petitions, no such allegations have even been made by the petitioners and as such, the suitability as determined by TPSC cannot be subject to judicial review.

36. Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents No.1 to 5, Mr. Somik Deb, learned counsel appearing for the respondents No.54-56, 58-61, 64-71, Mr. S. Lodh, learned counsel appearing for the respondents No.11-27, 34, 36, 38-41, 46-47 and 51 and Mr. Samarjit Bhattacharjee learned counsel appearing for the respondents No.9, 22, 25, 30-34, 42, 45, 50, 51 & 53 have raised the common objection in respect of the maintainability of the writ petition being WP(C)No.732 of 2017 [Biprajit Chakraborty versus State of Tripura and Others] and WP(C)No.734 of 2017 stating that the writ petitioners of those writ petitions having participated in the selection process without demur and on the final outcome of the selection process, when they found that they were not declared successful, they have challenged the selection process on the multiple grounds. On the face of records, even though, those grounds are unsustainable, but this court may not decide the writ petition on merit as the writ petitioners as stated are estopped to challenge the action of the respondents No.1 to 6 in respect of selection, recommendation and recruitment of the respondents No.7 to 71. They have further raised the other ground of non-impleadment which has already been discussed substantially. The counsel for the respondents in this regard additionally relied a decision of the apex court in **Iswar Bhai**

C. Patel alias Bachu Bhai Patel versus Harihar Behera and Another reported in **(1999) 3 SCC 457** where the apex court had occasion to observe as follows :

> **"13. This Rule, to some extent, also deals with the joinder of causes of action inasmuch as when the plaintiff frames his suit, he impleads persons as defendants against whom he claims to have a cause of action. Joinder of causes of action has been provided for in Order 2 Rule 3 which provides as under:**
>
> **"Joinder of causes of action.-(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.**
>
> **(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.**
>
> **14. These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined."**

37. The learned counsel for the respondents have referred **Union of India and Others versus C. Girija and Others** [the judgment dated 13.02.2019 delivered in Civil Appeals No.1577-78 of 2019] where the apex court while considering the aspect of estoppel by conduct has observed as under :

> **".....In this context, reference is made to judgment of this Court in Ashok Kumar and Another Vs. State of Bihar and Others, (2017) 4 SCC 357. This Court after referring to several earlier judgments have laid down following in Paragraph Nos. 13 to 18:-**
>
> > **"13. The law on the subject has been crystallised in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar,**

(2007) 8 SCC 100, this Court held that: (SCC p. 107, para 18)

"18. <u>It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724.)</u>."

14. The same view was reiterated in Amlan Jyoti Borooah, (2009) 3 SCC 227, wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15. In Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576, the same principle was reiterated in the following observations: (SCC p. 584, para 16) "16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of J&K, (1995) 3 SCC 486, Marripati Nagaraja v. State of A.P., (2007) 11 SCC 522, Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171, Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 327 and K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515."

16. In Vijendra Kumar Verma v. Public Service Commission, (2011) 1 SCC 150, candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

17. In Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309, candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p. 318, para 18)

"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."**
>
> **18. In Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non- selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493, this Court held that: (SCC p. 500, para 17)**
>
> > **"17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. <u>This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted." This principle has been reiterated in a recent judgment in Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454"</u>.**
>
> **[Emphasis added]**

38. Learned counsel for the respondents have referred **Rajesh Kumar Gupta and Others versus State of U.P. and Others** reported in **(2005) 5 SCC 172**, **Rashmi Mishra versus Madhya Pradesh Public Service Commission and Others** reported in **(2006) 12 SCC 724**, **Madan Lal versus High Court of Jammu and Kashmir and Others** reported in **(2014) 15 SCC 308** and **D. Sarojakumari versus R. Helen Thilakom and Others** reported in **(2017) 9 SCC 478** to press their objection based on estoppel by conduct. Since, the well entranced proposition of law in this regard has been exposited in **C. Girija** (supra), this court will not make incisive reference to those reports as no distinction has been made as regards the law on estopple by conduct.

39. The learned counsel, particularly Mr. Somik Deb, has added that in **Tejprakash Pathak and Others versus Rajasthan High Court**

& Others reported in **(2013) 4 SCC 540** a three judge bench of the apex court has expressed their doubt in respect of salutary principle not to permit the state or its instrumentalities to tinker with the rules of the game in so far as the prescription of the eligibility criteria is concerned. It has been observed in **Tejprakash Pathak** (supra) as follows :

> **"13. This Court in the case of the State of Haryana v. Subash Chander Marwaha and Ors.: (1974) 3 SCC 220] while dealing with the recruitment of subordinate judges of the Punjab Civil Services (Judicial Branch) had to deal with the situation where the relevant Rule prescribed a minimum qualifying marks. The recruitment was for filling up of 15 vacancies. 40 candidates secured the minimum qualifying marks (45%). Only 7 candidates who secured 55% and above marks were appointed and the remaining vacancies were kept unfilled. The decision of the State Government not to fill up the remaining vacancies in spite of the availability of candidates who secured the minimum qualifying marks was challenged. The State Government defended its decision not to fill up posts on the ground that the decision was taken to maintain the high standards of competence in judicial service. The High Court upheld the challenge and issued a mandamus. In appeal, this Court reversed and opined that the candidates securing minimum qualifying marks at an examination held for the purpose of recruitment into the service of the State have no legal right to be appointed. In the context, it was held:**
>
> > **12. ...In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for more (sic mere) eligibility....**
>
> **14. Unfortunately, the decision in Subash Chander Marwaha (supra) does not appear to have been brought to the notice of their Lordships in the case of Manjusree (supra). This Court in the case of Manjusree (supra) relied upon P.K. Ramachandra Iyer and Ors. v. Union of India and Ors.: (1984) 2 SCC 141], Umesh Chandra Shukla v. Union of India and Ors.: (1985) 3 SCC 721] and Durgacharan Misra v. State of Orissa and Ors.: (1987) 4 SCC 646]. In none of the cases, the decision in Subash Chander Marwaha (supra) was considered.**
>
> **15. <u>No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the 'rules of the game' insofar as the prescription of eligibility criteria is concerned as was done in the case of C. Channabasavaiah v. State of Mysore: AIR 1965 SC 1293 etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the 'rules of the game' stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an</u>**

> **authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard.”**
>
> **[Emphasis added]**

40. **Tejprkash Pathak** (supra) has been relied as the respondent has perceived that the notification dated 11.09.2015 amounts to change in the rule of the game. Even if that is a change in the rule of game, the principle of **K. Manjushris** (supra) would not apply as its correctness has been seriously questioned by a larger bench of the apex court and the reference has been made by the said bench is awaited decision. This court has already discussed that the provision for clubbing of additional posts was made in the contingency of the advertisement [Annexure-1 to the writ petition]. That clause had been exercised vide the notification dated 11.09.2015. That action cannot be termed as the change in the rule of the game or as tinkering with the process.

41. Having appreciated the submissions advanced by the counsel, scrutinized the records and in view of the observation made hereinabove, this court is of the view that the writ petitioners of WP(C)No.732 of 2017 and WP(C)No.734 of 2017 are absolutely estopped from challenging the selection process or the recommendation and appointments of respondents No.7 to 71 based on such recommendation as no glaring illegality or any illegality has been substantiated by the petitioners in the selection process. Even, no malafide has been alleged against the TPSC. Further, on the aspect of fixing the percentage of marks for the personality test/interview, this court is of the view that the divison of heads for purpose of assessment during the said test has substantially reduced the marks to 10% of the total marks and hence, the decision of the apex court, as relied, donot support the petitioners. On the contrary in **Ashok Kumar Yadav**(supra), the apex court has

unequivocally held that the marks to be allocated for personality test/interview to be determined by the administration, not by the court but the fundamental facts which is to be considered for determining the marks is that the percentage of marks should not be disproportionately excessive, as that would tend to abuse and to indulge in arbitrariness. However, that also would depend on the nature of the appointment. In **K.H. Sriraj** (supra) the apex court has observed as under to repel any confusion in respect of the object and purpose of the personality test :

> **54. In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidates' academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a judicial officer.**
>
> **55. We may usefully refer to a decision of this Court in Lila Dhar v. State of Rajasthan: (1981) 4 SCC 159 in which this Court observed as under:**
>
> **"<u>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</u>.**
>
> **"The ideal in recruitment is to do away with unfairness."**
>
> *** *** *** *** ***
>
> > **`A system of recruitment almost totally dependent on assessment of a person's academic knowledge and skills, as distinct from ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrow...We venture to suggest that out recruitment procedures should be such that we can select candidates who cannot only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems.'**
>
> **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 advantage 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.

*** *** *** *** ***

> **'While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention that it was not within the power of the Government to provide such high marks for interview or that there was any arbitrary exercise of power.'**

56. In Mohan Kumar Singhania and Ors. v. Union of India and Ors. : 1992 SCC (L & S) 455, S. Ratnavel Pandian, J. speaking for the Bench, observed as under:

> **"18. Hermar Finer in his textbook under the caption *The Theory and Practice of Modern Government* states:**
>
> > **'The problem of selection for character is still the pons asinorum of recruitment to the public services everywhere. The British Civil Service experiments with the interview.'**

19. The purpose of viva voce test for the ICS Examination in 1935 could be best understood from the following extract of the Civil Service Commission's pamphlet:

> **'Viva Voce - the examination will be in matters of general interest; it is intended to test the candidate's alertness, intelligence and intellectual outlook. The candidate will be accorded an opportunity of furnishing the record of his life and education.'**

20. It is apposite, in this connection, to have reference to an excerpt from the *United Nations Handbook on Civil Service Laws and Practice*, which reads thus:

> **'...the written papers permit an assessment of culture and intellectual competence. This interview permits an assessment of qualities of character which written papers ignore; it attempts to assess the man himself and not his intellectual abilities.'**

21. <u>This Court in *Lila Dhar v. State of Rajasthan*: (1981)4 SCC 159 while expressing the view about the importance and significance of the two tests, namely, the written and interview has observed thus</u>:

> **<u>"...the written examination assess the man's intellect and the interview test the man himself and 'the twain shall meet' for a proper selection</u>."**
>
> **[Emphasis added]**

42. For this purpose, it is essentially required that a balance be struck between two modes of tests to avoid any arbitrariness or allowing the process to be abused for oblique purpose. In this case, no element of arbitrariness is located or established by the petitioners nor from the records as produced by the TPSC such elements have surfaced. Hence, this objection stands negated. As already discussed, unless, the necessary parties whose right or interest might be at stake for determination of the cause as brought before the court for adjudication, are to be essentially impleaded. Else, the court shall deny to take any decision on merit in the controversy. So far the writ petitions being WP(C)No.734 of 2017 and WP(C)No.906 of 2017 are concerned, non-impleadment of the persons who have been recommended by the TPSC for appointment in pursuance to the advertisement dated 17.04.2015 [Annexure-1 to the writ petition] and the notification dated 11.09.2015 [Annexure-2 to the writ petition] notwithstanding their being adjunct petitions are fatal and the court should not embark on passing any judgment on merit. Further, the petitioners have failed to bring any material to show that there had been any legal or fundamental right of the petitioners has emerged, out of the selection, and hence, the cumulative effect of the discussion renders the writ petitions unsustainable and accordingly, those are dismissed.

There shall be no order as to costs.

Records as produced by the TPSC be returned forthwith.

JUDGE

Sabyasachi B