HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.791 of 2017

Smt. Anindita Shil,
wife of Sri Goutam Sen,
resident of Town Pratapgarh Road No.1,
P.O. Agartala, P.S. East Agartala,
Sub-Division: Sadar,
District: West Tripura,
PIN: 799 001

..... Petitioner(s)

– V e r s u s –

1. **The State of Tripura,**
   represented by the Secretary,
   Health & Family
   Welfare Department,
   Government of Tripura,
   having his office at Capital Complex,
   Gurkhabasti,
   P.O. Secretariat Complex,
   P.S. New Capital Complex,
   Sub-Division: Agartala,
   District: West Tripura, PIN:799 010

2. **The Director of Health Services,**
   represented by the Secretary,
   having his office at P.N. Complex,
   Gurkhabasti, P.O. Kunjaban,
   P.S. New Capital Complex,
   Gurkhabasti,
   P.O. Secretariat Complex,
   P.S. New Capital Complex,
   Sub-Division: Agartala,
   District: West Tripura, PIN: 799 006

3. **Shri Animesh Deb,**
   son of Sri Amalendu Deb,
   resident of village: Shantipara,
   P.O. & P.S. Ambassa,
   District: Dhalai Tripura

4. **Sri Soumyadip Chakraborty,**
   son of Sri Samir Kanti Chakraborty,
   resident of village: Joynagar,
   P.O. & P.S. Teliamura,
   District: Khowai Tripura

..... Respondent(s)

For Petitioner (s)	:	Mr. Somik Deb, Adv.
For Respondent(s)	:	Mr. A. K. Bhowmik, Advocate General Mr. D. Sharma, Addl. G.A.
Date of Hearing	:	13.09.2019
Date of delivery of Judgment and Order	:	30.09.2019
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

There is no dispute that the petitioner is the Bachelor of Medical Laboratory Technology (BMLT) from the Allahabad Agricultural University.

02. In order to fill up the vacancies in the post of Pharmacist (Allopathy) and in other posts namely Laboratory Technician (Blood), Radiographer, Plaster Technician, O.T. Technician, Physiotherapist, Audiometric Technician, Laboratory Technician (Blood), Lower Division Clerk, Record Technician, Dental Technician, Histopathology Technician, Ward Master, Rehabilitation Assistant, Tailor, Transport Officer, Carpenter and Pharmacist Homeo, all belonged to Group-C Non-Gazetted, the employment notification dated 27.05.2016 was published by the Director of Health Services, Government of Tripura. For purpose of reference, the entire text of the said notification is extracted hereunder:

Employment Notification

Applications are invited for filing up vacancies for the following pasts under the Health & Family Welfare Department, Government of Tripura on purely temporary and fixed pay basis.

Name of the post	No. of vacant posts	Essential qualification/experience
Pharmacist(Allo) [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	80 (UR-21, ST-37, SC-10) UR(EXS)-4,UR(PH)-1, ST(PH)-3,ST(EXS)-2, SC(PH)-1,SC(EXS)-1	1. H.S.(+2 stage) with science passed from recognized institution. 2. Diploma in Pharmacy from a recognized institution.
Laboratory Technician (Blood) [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	142 (UR-52, ST-59, SC-17) UR(PH)-4,UR(EXS)-3 ST(PH)-3,ST(EXS)-2, SC(PH)-1,SC(EXS)-1	1. Madhyamik or its equivalent Examination passed from any recognized Board/Institution and 3(three)years Diploma in Medical Laboratory Technology from any recognized Institute. Or 2. Higher Secondary (+2 stage) with science passed from recognized Board/Institution and at least 2(two) years Diploma in Medical Laboratory Technology from any recognized institution (i.e.from any Institute Recognized by UGC-affiliated University or from any recognized Institute affiliated to AICTE)
Laboratory Technician (Blood) [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	61 (UR-29, ST-20, SC-09) UR(PH)-1,UR(EXS)-1 ST(PH)-1	1. H.S.(+2 stage) with science passed from recognized Institution. 2. 2(two) years Diploma in Medical Laboratory Technician (Blood) Course from a recognized Institution.
Radiographer [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	41 (UR-18, ST-14, SC-5) UR(PH)-1,UR(EXS)-1 ST(PH)-1,ST(EXS)-1	1. H.S.(+2 stage) with science passed from recognized Institution. 2. 2(two) years Diploma in Radiography from a recognized Institution.
Plaster Technician [Group-C Non-Gazetted, Fixed pay of Rs.8,644/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2200/-]	14 (UR-8, ST-4, SC-2)	Essential: Madhyamik or its equivalent examination passed from recognized Board. Desirable : Knowledge of work in respective lines.
O.T. Assistant [Group-C Non-Gazetted, Fixed pay of Rs.8,644/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2200/-]	16 (UR-7, ST-5, SC-3, UR(PH)-1	Essential: Madhyamik or its equivalent examination passed from recognized Board. Desirable : Knowledge of O.T. works in Hospital.
E.C.G. Technician [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	13 (UR-3, ST-9, SC-1)	1. H.S.(+2 stage) with science passed from recognized Institution. 2. Diploma certificate course of E.C.G. Technician from a recognized institution.

Physiotherapist [Group-C Non-Gazetted, Fixed pay of Rs.12,514/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.4200/-]	18 (UR-210, ST-5, SC-3)	1. H.S.(+2 stage) or its equivalent examination passed from a recognized Board. 2. Diploma/Degree course in Physiotherapy from a recognized Institute. 3. Preference will be given to these who have practical training in line.
Audiometry Technician [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	20 (UR-10, ST-6, SC-4)	1. H.S.(+2 stage) with science passed from recognized Board. 2. Diploma in Audiometry Technician course from a recognized Institute.
Laboratory Technician (Blood) [Group-B Non-Gazetted, Fixed pay of Rs.13,362/- in the pay scale of Rs.10,230-34,000/- in the PB-3 with Grade Pay of Rs.4400/-]	20 (UR-8, ST-6, SC-4) UR(PH)-1, UR(EXS)-1	1. H.S.(+2 stage) with science. 2. Laboratory Technician (Blood) course trained from any recognized Institute in India.
Lower Division Clerk [Group-C Non-Gazetted, Fixed pay of Rs.8,644/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2200/-]	95 (UR-45, ST-24, SC-14) UR(EXS)-3,UR(PH)-2, ST(EXS)-2, ST(PH)-3, SC(EXS)-1, SC(PH)-1	1. Should have passed Madhyamik/H.S. or is equivalent examination. 2. Knowledge of typing in English with minimum speed of 30 words per minutes in case of all categories of LDCs and in case of Bengali typist capability of typing at least 25 words per minute. 3. Having knowledge of operating Computer and a certificate from any recognized computer Institute.
Record Technician [Group-C Non-Gazetted, Fixed pay of Rs.8,644/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2200/-]	1 (UR-1)	1. Madhyamik or its equivalent examination passed from recognized Board. 2. Diploma in Computer from recognized Institute.
Dental Technician [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	4 (UR-2, ST-1, SC-1)	1. H.S.(+2 stage) with science passed from recognized Board. 2. Diploma in Dental Technician Course from recognized Institution.
Histopathology Technician [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	2 (UR-1, ST-1)	1. H.S.(+2 stage) with science passed from a recognized Institute. 2. 2(two) years Diploma in Medical Laboratory Technician (Blood) courses from a recognized Institution.
Ward Master [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	5 (UR-2, ST-3)	1. Graduate from a recognized University.
Rehabilitation Assistant [Group-C Non-Gazetted,	1 (UR-1)	1. Madhyamik or its equivalent examination passed from recognized

Fixed pay of Rs.8,434/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2100/-]		Board. 2. Certified course in Rehabilitation from recognized Institute.
Tailor [Group-C Non-Gazetted, Fixed pay of Rs.8,434/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2100/-]	1 (UR-1)	1. Madhyamik passed from recognized Board with I.T.I. Trade in the line.
Transport Officer [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	1 (UR-1)	1. Diploma in Mechanical Engineering from any recognized Institute AICTE affiliated.
Carpenter [Group-C Non-Gazetted, Fixed pay of Rs.8,434/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2100/-]	2 (UR-1, ST-1)	1. Madhyamik or its equivalent examination passed from recognized Board. 2. Carpentry trade from recognized I.T.I.
Pharmacist(Homeo) [Group-C Non-Gazetted, Fixed pay of Rs.10,354/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]	2 (ST-2)	1. H.S. (+ 2 Stage)with Science examination passed. 2. Diploma in Pharmacy (Homeo) from any recognized Institute.

The eligible will candidates residing permanently in the state of Tripura within the age limit of minimum 18 years of age and maximum 40 years (relaxable by 5 years for ST, SC, PH, Er-Serviceman and in service candidates) as on 15th June, 2016 may apply in the plain paper stating all the particulars as mentioned below along with self attested copies of relevant documents.

1. Name of the post applied for, 2. Name of the candidates (in BLOCK LETTER),
3. Father's/Husband name, 4. Permanent address, 5. Permanent address to which communication is to be made, 6. Contact number, 7. Whether SC/ST/Ex.Serviceman,
8. Whether belongs to BPL/AAY, 9. Date of birth, 10. Educational and other qualification (mentioning year of passing, total marks obtained & percentage of marks obtained),
11. Experience(if any), 12. Employment Exchange Reg. No. 13. Nationality, 14. Religion,
15. Other information (if any).

Application(s) will receive in the O/o the Director of Health Services, Government of Tripura, P.N. Complex, Gurkhabasti, P.O.Kunjaban, Agartala, Pin-799006, in Govt. working days during 11.00 PM with effect from 03.06.2016. Last date of receiving application is 15.06.2016 (up to 4:00 PM). No application will be received after last date. Department is not liable for any postal delay. No TA & DA is admissible for this purpose.

Not illegible
Sd/-(Dr. J.K. Deb Varma)
Director of Health Services,
Government of Tripura, Agartala.

03. It is apparent from the said employment notification that the eligible and willing candidates residing permanently in

the state of Tripura within the age limit of 18 years and the maximum 40 years [relaxable for 5 years for ST,SC, PH, Ex. Serviceman and in-service candidates] as on 15.06.2016 might apply in the plain paper stating the particulars and annexing copy of the relevant documents in terms of the requisite particulars as referred in the said Employment Notification. After the applications were received within the period of 3.6.2016 and 15.06.2016, the Director of Health Services, Government of Tripura issued the Memorandum under No.F.2(1-203)-MS/ESTT/2016(Sub-V) dated 01.09.2016 whereby the eligible applicants were asked to appear before the interview board as per the schedule of the interview provided in the said memorandum. The eligible applicants were asked to appear before the interview board on the scheduled date and time. They were further asked to carry the original testimonials and receipt-token of the application and the interview card as issued by the Director of Health Services and sent by post.

04. There is no dispute that the petitioner and the private respondents pursuing the instruction appeared before the interview board for appointment to the post of Laboratory Technician (Blood), but the petitioner was not selected by the selection board. Being unsuccessful, now the petitioner questioned the legality and integrity of the selection process. The petitioner has alleged that the private respondents who have been selected were illegally favoured in the selection inasmuch as, according to the employment policy of the state, the merit

and comparative seniority were to be given the prescribed weightage, but that was not so done. That apart, they have asserted that the time that was allotted per candidate for interview was less than one minute. The time to interview a candidate was too short and absurd. The petitioner has asserted that none of the candidates was interviewed to weigh their capacity and individuality. In the process as initiated by issuance of the employment notification dated 27.05.2016 [Annexure-2 to the writ petition] the petitioner had participated in the interview by submitting their certificates and documents in support of their eligibility. There is no dispute that the petitioner is eligible for appointment to the post of Laboratory Technician (Blood). The walk-in-interview was held on 26.09.2016, 27.09.2016 and 28.09.2016 for selection and appointment to the said post of Laboratory Technician (Blood). In the said interview the petitioner participated along with other 695 candidates in the interview. It has been further asserted by the petitioner that the time allocated for interview for each candidate is absurdly short and nobody can from such short encounter ascertain someone's competence and individuality. The petitioner has quite categorically asserted that policy parameters were not followed. As a result, the selection process had turned out to be a complete fiasco.

05. In the reply filed by the official respondents, hereinafter the respondents, unless is otherwise be qualified, the allegations made by the petitioner have been squarely denied

and they have asserted that by a fair process, the interview board had ascertained the academic performance and assessed personality, aptitude, general performance etc. by the interview interacting with each of the candidates. Thereafter on the basis of the recommendation of the interview board, the appointments were made from the selected candidates only. They have categorically asserted that the petitioner knowing fully well the method of selection by walk-in-interview appeared before the interview board without raising any objection. The objection that was raised much after completion of the recruitment process when they found that they were not selected. In the reply, it has been categorically stated that in strict adherence to the recommendation made by the interview board the candidates were appointed.

06. It has been further asserted by the respondents that the entire writ petition is misconceived and based on certain assumptions which do not have any root in the records or in the reality. The respondents have asserted that in terms of the employment notification dated 27.05.2016, a walk-in-interview was held from 26.09.2016 to 28.09.2016. In that interview, as many as 764 candidates submitted their application, but only 623 candidates faced the interview on those days. Interview was taken in two spells. On each and everyday it started at 10 a.m. and continued up to 1.00 p.m., again it started 1.30 p.m. and continued till the last candidate was interviewed from the day's list. They have categorically denied that the interview was

completed by 5.00 p.m. They have specifically asserted that at 5.00 p.m. interview was not completed inasmuch as the board took the interview till all the candidates who reported before the board was interviewed. The statistics of the petitioners according to the respondents is assumptive. According to the respondents the interview board has assessed the merit of the candidates having regard to their academic performance. The marks against each candidate were given. The select panel was prepared according to the merit position by the Interview Board. As per the tabulation sheet, the petitioner obtained comparatively poor marks than the selected candidates. The selection of the candidates was based on merits and the marks obtained by them in interview. Even though the marks obtained in the relevant Diploma course was taken into consideration to assess the suitability of the candidates, but the seniority and marks obtained in the Diploma course were not only the criteria for selection. Many other aspects were taken care of during the interview. Pursuant to the employment notification dated 27.05.2016, the said interview was carried out.

07. The respondents have further asserted that in the interview as many as 764 candidates submitted their application but only 623 appeared to face the interview. Interview was taken into two spells as stated. But the interview continued till the last candidate scheduled for the day was interviewed. They have categorically stated that it is not correct to say the interview concluded at 5.00 p.m. Thereafter, the respondents have

categorically stated that having assessed the merits of the candidates who appeared in the walk-in-interview, a select panel was prepared and the marks were put in a tabulation sheet. Based on the said tabulation sheet, the select list had been prepared. The Director of Health Services issued the select list according to the merit position of the candidates as per the tabulation sheet. They have further asserted that from the tabulation sheet it would appear that the petitioner have obtained comparatively poor marks than the selected candidates. The said tabulation sheet has been produced before the court showing various information of the candidates and the marks that have been obtained by each of the candidates. Thereafter a combined merit list was prepared. The respondents were not oblivious to state that the seniority and mark obtained in the Diploma course is not only the criteria for the selection but they have assessed the performance and the personality when they appeared before the Interview Board. The allegation against the state has been squarely denied.

08. In the rejoinder, the petitioner has levelled serious allegation against the respondents particularly, against the respondent No.2 that despite the request made to the said respondent for the employment policy under No.F.23(8)-GA(P&T)/14 dated 23.07.2016 was not furnished and even the copy of the tabulation sheet of all the persons participated in the selection process was denied disclosure. Even, it has been asserted that one of the candidates when asked for supply of the

information regarding the break-up of marks in the interview board, the respondents had initially denied that mark. Later on, on an appeal such information was disclosed.

09. Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that the parameters of an employment policy has been applied which did not exist on the day of the employment notification. That apart, he has argued that the similar policy was severely criticized by this court in **Tanmoy Nath vs. State of Tripura** reported in **(2014) 2 TLR 731** where the state had been directed that a new employment policy should framed within a time-frame. Even this court has framed its own guidelines to be followed by the State Government. Mr. Deb, learned counsel however has fairly submitted that in para-126 in **Tanmoy Nath** (supra) this court had observed that since the revised employment policy, which applies to a large category of posts and not merely to teachers, the judgment shall be prospective in nature and shall not affect the appointments already made unless the said appointments are under challenge on the ground that the employment policy is illegal. Mr. Deb, learned counsel has further contended that the time allocated for the interview for purpose of determining the merit is very pertinent. But in the case in hand, hardly one minute or one and half minutes of time was allocated for assessing the performance of the candidates. In this regard Mr. Deb, learned counsel has referred before this court a decision of the apex court in **Minor A. Peeriakaruppan inclusive of Sobha Joseph vs. State of**

Tamil Nadu and Others reported in **1971(1) SCC 38** where the apex court had very significantly observed that earmarking of 75 marks out of 275 marks for interview prima facie appears to be excessive. It is not denied that in that case the interview lasted hardly for three minutes for each candidate. In the course of three minutes interview it is hardly possible to assess the capability of a candidate. In most cases, the first impression need not necessarily be the best impression. The apex court has also observed that the system of interview, as in vogue in this country is so defective as to make it useless. It is true that various researches conducted in other countries particularly in U.S.A. show that there is possibility of serious errors creeping in interviews made on haphazard basis. **C.W. Valentine on "Psychology and its Bearing on Education"** refers to the marks given to the same set of persons interviewed by two different competent Boards and this is what is stated in his book:

> **"The members of each board awarded a mark to each candidate and then he was discussed and an average mark agreed on. When the orders of merit for the two boards were compared it was found that the man placed first by Board A was put 13th by Board B when the man placed 1st by Board B was 11th with Board A."**

10. Having referred this Mr. Deb, learned counsel has contended that the entire process of the selection is required to be held irrational. Such process cannot produce the best result. Mr. Deb, learned counsel has also referred **Nishi Maghu and Others vs. State of J & K and Others** reported in **(1980) 4 SCC 95** where the apex court, though in a different context, has observed that the criticism is based on the allegation that the

time spent on each candidate was between 1-1/2 and 2 minutes within which, one could hardly assess the suitability of the candidate on a consideration of the five factors: physical fitness, aptitude, personality, general knowledge and general intelligence, some of which are also difficult to evaluate objectively. Both the case referred by Mr. Deb, learned counsel was examining the process of selection where both the written test and the oral interview are the part of the process and the process was therefore examined completely from a different perspective.

11. In **Ajay Hasia and Others vs. Khalid Mujib Sehravardi and Others** reported in **(1981) 1 SCC 722**, the apex court was examining the allocation of the marks between the written and oral interview and it was observed that the oral interview as conducted was a mere pretence or farce, as it did not last for more than 2 or 3 minutes per candidate on an average and the questions which were asked were formal questions relating to the parentage and residence of the candidate and hardly any question was asked which had relevance to assessment of the suitability of the candidate with reference to any of the four factors required to be considered by the Committee. Thereafter the apex court has made the following observation:

> **"We may point out that, in our opinion, if the marks allocated for the oral interview do not exceed 15 percent of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-arbitrariness. We think**

> **that it would also be desirable if the interview of the candidates is tape-recorded, for in that event there will be contemporaneous evidence to show what were the questions asked to the candidates by the interviewing committee and what were the answers given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee."**

But here is the process for selecting the candidates through the walk-in-interview and the candidates were asked to bring their records of marks they obtained in the relevant examination and other documents as may be relevant.

12. Later on, Mr. Deb, learned counsel appearing for the petitioner has referred another decision of the apex court in **Arti Sapru and Others vs. State of J & K and Others** reported in **(1981) 2 SCC 484** where it has been observed on consideration of **Ajay Hasia** (supra), **A. Peeriakaruppan** (supra) and **Nishi Maghu** (supra) that for allocation of marks over 15 percent of total marks in the viva voce examination, the court had recorded reluctance to interfere on that ground, because a clear pronouncement that allocation of more than 15% of the total marks to the viva voce examination may result in constitutional invalidity. Rather, it is the State Government which would take steps to revise the marks ratio in future. Even the contention of the petitioner that not more than two minutes were allotted in interviewing them was not entertained, even though it was pleaded that there was no application of mind to the selection of the candidates. Thereafter, the following observation was made in **Arti Sapru** (supra):

> **"The State Government maintains that the time spent was four minutes per candidate. We have given the matter our anxious consideration, and we are unable to hold that there is adequate material for striking down the selection on this ground. But**

> **here again the State Government would do well to note the observations made by this Court in Ajay Hasia (supra) in this matter, and to ensure that Selection Committees take care to devote sufficient time to the oral interview of individual candidates having regard to the several relevant considerations which must enter into their judgment respecting each candidate."**

13. Mr. Deb, learned counsel has finally submitted that in **Pradeep Kumar Rai and Others vs. Dinesh Kumar Pandey and Others** reported in **(2015) 11 SCC 493** the apex court has again made their observation in respect of allocation of marks for interviewing the candidates. It has been observed that the purpose of constituting multi-member interview panel is to remove the arbitrariness and ensure objectivity. It is required by each member of the interview panel to apply his/her own mind in giving marks to the candidates. The best evidence of independent application of mind by each panelist is that they awarded separate marks. However, if only consolidated marks are awarded at the interview, it becomes questionable, though not conclusive whether each panelist applied his/her own mind independently. Having said that, the apex court has noted that in **Lila Dhar vs. State of Rajasthan: (1981) 4 SCC 159** it was laid down that it is not for the courts to re-determine the appropriate method of selection unless obvious oblique motives are proved in a particular case. Even in **Lila Dhar's (supra)**, the issue was regarding the marks awarded by the selection committee and there marks were consolidated one. Despite that the court refused to interfere with the appointment process on that ground. Only because the panelists on the interview board

did not award separate marks that cannot be a ground to quash the entire process.

14. Mr. Deb, learned counsel appearing for the petitioners has referred **Pradeep Kumar Rai** (supra) for purpose of showing that the consolidated marks was given. He has referred to the tabulation sheet for this purpose but from the tabulation sheet it cannot be stated that each member of the interview board did not give individual marks and later on those were not aggregated for purpose of coming to an inference. It is to be mentioned here that Mr. Deb, learned counsel has also submitted that the members of the interview board did not file separate affidavit. But as pointed out by Mr. A. K. Bhowmik, learned Advocate General the members of the interview boards were not made party in the writ petition. Therefore there is no obligation to file any response by them.

15. Mr. Deb, learned counsel in the perspective has urged this court that for lack of transparency, absence of any objective assessment of performance and merit and for gross denial of scientific method the entire process be set aside. As consequence, this court should quash the selection and ask the respondents to make the appointments following a scientific method of interview. According to him the select panel is a fraud on the constitutional framework and as such he has asked further to set aside the select panel which is the outcome of the said process.

16. Mr. D. Sharma, learned Addl. G.A. appearing for the official-respondents while repelling the said submission has robustly contended that the petitioner without any demur participated in the interview board knowing fully well the mode of selection. The State Government has followed a method for objective assessment giving due regard to the marks obtained in the relevant examination and the performance in the interview. From the tabulation sheet it would be available that the marks were given on the following aspects: general educational qualification, technical qualification, experience in the field etc. and thereafter out of 100, the multi member interview board gave the marks. Therefore the apprehension or the allegation of the fraud is totally baseless and the petitioner has failed to show before this court any foundation. To explain the communication dated 19.12.2017 [Annexure-F to the writ petition being W.P.(C) No.630 of 2017], Mr. Sharma, learned Addl. G.A. has submitted that that comment is in respect of the final consolidated tabulation sheet, therefore it will not strike at the very process. He has further submitted that all the selected candidates who participated in the process are not made party and hence essentially the writ petition suffers from nonjoinder of the parties. The petitioner cannot at her whim pick up some of the respondents for purpose of challenging the entire selection process. How to make the persons who would be finally affected by the order of the court is well laid and the petitioner has not followed that process. That apart, it has been urged that the

method of walk-in-interview has been also approved by the apex court. No malafide has been imputed against any member of the interview board and they are not made party in the writ petition. Most of the selected candidates have been kept out of the arraigment of the parties and as such this court is not in a position to adjudicate the controversy, this court should not entertain the challenge as any order, if for any reason, is passed affecting those persons who are not made party, those persons would be seriously prejudiced. From the private respondents, it has been asserted that unless malafide is alleged against the board of interview the court ordinarily should not interfere with their assessment. In support of their contention **Sadananda Halo and Others vs. Momtaz Ali Sheikh and Others** reported in **(2008) 4 SCC 619** has been relied. In **Sadananda Halo** (supra) the apex court has observed that it is settled law that in a writ proceeding a roving inquiry on the factual aspect do not occur. The High Court cannot only engaged itself into a non permitted fact finding exercise but as well would not go after the microscopic findings. It has been observed thus:

> **"It was not for the High Court to place itself into a position of a fact finding commission, that too, more particularly at the instance of those petitioner who were unsuccessful candidates. The High Court should, therefore, have restricted itself to the pleadings in the writ petition and the say of the respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the Selection Committee and also in the process assumed the role of an Appellate Tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any justification."**

17. In the following passages the apex court has further consolidated their observation:

"59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India & Ors. v. S. Vinod Kumar: (2007) 8 SCC 100 where one of us (Sinha, J.) was a party. This was a case where different cut off marks were fixed for the unreserved candidates and the Scheduled Caste and Scheduled Tribes candidates. This Court in para 10 of its judgment endorsed the action and recorded a finding that there was a power in the employer to fix the cut off marks which power was neither denied nor disputed and further that the cut off marks were fixed on a rationale basis and, therefore, no exception could be taken. The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla & Ors.: 1986 Supp SCC 285 where it has been held specifically that when a candidate appears in the examination without protest and subsequently found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise. The Court further made observations in para 34 of the judgment to the effect:

> **There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.**

In para 20 this Court further observed that there are certain exceptions to the aforementioned rule. However, the court did not go into those exceptions since the same were not material.

60. In our opinion the first basic thing for such a selection process would be the lack of bona fides or, as the case may be, malafide exercise of powers by those who were at the helm of selection process. Both the courts below have not recorded any finding that they found any malafides on the part of any of the State officials who headed the interviews. On the other hand the tenor of the judgments show that the whole process did not suffer from malafides, lack of bonafides, bias or political interference. In Union of India & Others vs. Bikash Kumar : (2006) 8 SCC 192 this Court observed in para 14 thus:

> **When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias . A presumption arises in regard to the correctness of the official act. The party who makes any allegation of bias or favouritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice.**

61. The learned Single Judge relying upon the decision in Raj Kumar & Others v. Shakti Raj & Others :(1997) 9 SCC 527 seems to have found an exception to this Rule and has more particularly relied on the observation made in para 16 to the following effect:

> **But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board 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 Government or the Committee as well as the action taken by the Government are not correct in law.

We do not think that this case is apposite for the present controversy. In the reported decision the court found a clear cut breach of 1955 Rules. It also found that the names, though were required to be called from the Employment Exchange, were not so called. The Court also found fault with the procedure involved. We are afraid such is not the case in the present situation. No deviation from the rules or no inherent defect in the selection process which would render the whole selection illegal have either been alleged or proved."

[Emphasis added]

18. Reference has been made to **Ashok Kumar and Another vs. State of Bihar and Others** reported in **(2017) 4 SCC 357** where the apex court having considered all relevant precedents has observed as follows:

"11. The basic issue that was addressed by the Division Bench was that the appellants having participated in the fresh round of selection could not be permitted to assail the process once they were declared unsuccessful. On this aspect, a brief recapitulation of the facts would be in order. In the original process of selection, following the issuance of General order No. 204 of 2003 by the District and Sessions Judge, Muzaffarpur on 2 December 2003, a written examination was held on 20 April 2004 consisting of eighty five marks followed by an interview on 7 July 2004 consisting of fifteen marks.

The High Court declined to approve of the selection list and issued through its Registrar (Administration), a communication dated 19 August 2004 requiring the holding of a fresh written examination carrying ninety marks in which the qualifying marks would be regarded as forty five in terms of its General letter No.1 of 1995. Pursuant thereto, a circular was issued in the form of a new General order bearing No. 171 of 2004 on 8 October 2004 which stipulated that in terms of the directions issued by the High Court on 19 August 2004, a fresh written examination would be held carrying ninety marks (with qualifying marks as forty five) followed by an interview of ten marks. Candidates who had applied earlier were not required to apply afresh.

12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.

13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla[4], 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 :

> **18. 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 also Munindra Kumar v. Rajiv Govil : (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission : (2006) 12 SCC 724].**

14. The same view was reiterated in Amlan Jyoti Borroah (supra) where it was held to be well settled that 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 Shah v. State of Bihar : (2010) 12 SCC 576 the same principle was reiterated in the following observations:

> **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 Petitioners is not entitled to challenge the criteria or process of selection. Surely, if the Petitioners's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioners 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 Petitioners 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 MadanLal v. State of J. and K.: (1995) 3 SCC 486, Marripati Nagaraja v. State of Andhra Pradesh : (2007) 11 SCC 522, Dhananjay Malik and Ors. v. State of Uttaranchal and Ors. : (2008) 4 SCC 171, AmlanJyotiBorooah v. State of Assam : (2009) 3 SCC 227 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 Uttrakhand 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:

> **18. It is settled law that a person who consciously takes partin the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.**

18. In Chandigarh Administration 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 :

> **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. 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 v. S.K. Shiva Subaramanyam : (2016) 1 SCC 454.**
>
> **19. In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place that written examination would carry ninety marks and the interview, ten marks. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The High Court noted in the impugned judgment that the interpretation of Rule 6 was not free from vagueness. There was in other words no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90:10 allocation.**
>
> **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."**

In the same line, another decision of the apex court in **D. Sarojkumari vs. R. Helen Thilakom and Others** reported in **(2017) 9 SCC 478** may be referred. This decision of the apex court has further consolidated on the aspect of estoppels by conduct without leaving any space for confusion.

19. On the aspect of non-impleadment of the necessary parties a few decision of the apex court has been relied on by the respondents. In **Rashmi Mishra vs. M.P. Public Service Commission** reported in **(2006) 12 SCC 724** where having approved the observation of **Prabodh Verma vs. State of U.P.:(1984) 4 SCC 251**, the relevant passage was reproduced:

> **"....The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioner refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."**

Prabodh Verma (supra) and **Rashmi Mishra** (supra) have been approved in **Suresh vs. Yeotmal District Central Cooperative Bank Limited and Another** reported in **(2008) 12 SCC 558**.

20. In **Public Service Commission vs. Mamta Bisht** reported in **(2010) 12 SCC 204** the apex court had occasion to observe that the law laid down in **Udit Narain Singh Malpaharia vs. Board of Revenue** reported in **AIR 1963 SC 786** is the sound proposition of law wherein the court has explained the distinction between necessary party, proper party and pro-forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. Order 1 Rule 9 of the Code of Civil Procedure, 1908 provides that non- joinder of necessary party may in a given case be fatal. Undoubtedly even though the provisions of the CPC are not applicable in the writ jurisdiction by virtue of

Section 141 of the CPC, but the principles enshrined therein are applicable. [See **Gulabchand Chhotalal Parikh vs. State of Gujarat : AIR 1965 SC 1153**, **Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot : (1974) 2 SCC 706** and **Sarguja Transport Service vs. STAT : (1987) 1 SCC 5**].

21. In **Vijay Kumar Kaul and Others vs. Union of India and Others** reported in **(2012) 7 SCC 610,** the apex court on the same aspect had occasion to observe as follows:

> **"36. Another aspect needs to be highlighted. Neither before the tribunal nor before the High Court, Parveen Singh and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.**
>
> **37. In this context we may refer with profit to the decision in Indu Shekhar Singh & Ors. v. State of U.P. & Ors.[8] wherein it has been held thus:**
>
> > **56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.**
>
> **38. In Public Service Commission, Uttaranchal v. Mamta Bisht & Ors.: (2010)12 SCC 204 this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus:**
>
> > **9. ..... in Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue : AIR 1963 SC 786, wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called CPC) provide that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141, CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat : AIR 1965 SC 1153; Babubhai Muljibhai Patel v. Nandlal, Khodidas Barat & Ors. : AIR 1974 SC 2105 and Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors. AIR 1987 SC 88).**
> >
> > **10. In Prabodh Verma & Ors. v. State of U.P. & Ors. : AIR 1985 SC 167; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors. : (2009) 1 SCC 768, it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.**

> **39. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard.**

22. In **Ranjan Kumar and Others vs. State of Bihar and Others vs. State of Bihar and Others** reported in **(2014) 16 SCC 187** the law has been made far more crystallized. For purpose of reference the following passages are reproduced even at the cost of repetition of the reports as already relied by the parties:

> **5. In the case at hand neither any rule nor regulation was challenged. In fact, we have been apprised that at the time of selection and appointment there was no rule or regulation. A procedure used to be adopted by the administrative instructions. That apart, it was not a large body of appointees but only 182 appointees. Quite apart from that the persons who were impleaded, were not treated to be in the representative capacity. In this regard, it is profitable to refer to some authorities.**
>
> **6. In Indu Shekhar Singh and others v. State of U.P. and others : (2006) 8 SCC 129 it has been held thus:**
>
> > **56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.**
>
> **7. In Km. Rashmi Mishra v. M.P. Public Service Commission and others : (2006) 12 SCC 724 after referring to Prabodh Verma : (1984) 4 SCC 251 and Indu Shekhar Singh : (2006) 8 SCC 129 the Court took note of the fact that when no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.**
>
> **8. In Tridip Kumar Dingal and others v. State of West Bengal and others : (2009) 1 SCC 768 this Court approved the view expressed by the tribunal which had opined that for absence of selected and appointed candidates and without affording an opportunity of hearing to them, the selection could not be set aside.**
>
> **9. In Public Service Commission, Uttaranchal v. Mamta Bisht and others : (2010) 12 SCC 204 this Court, while dealing with the concept of necessary parties and the effect of non-implementation of such a party in the matter when the selection process is assailed, observed thus:**
>
> > **9.....in Udit Narain Singh Malpaharia v. Board of Revenue : AIR 1963 SC 786 wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is**

> **likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'Code of Civil Procedure') provides that non- joinder of necessary party be fatal. Undoubtedly, provisions of Code of Civil Procedure are not applicable in writ jurisdiction by virtue of the provision of Section 141 Code of Civil Procedure but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat : AIR 1965 SC 1153; Babubhai Muljibhai Patel v. Nandlal, Khodidas Barat & Ors. : AIR 1974 SC 2105 and Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors. AIR 1987 SC 88).**

10. In J.S. Yadav v. State of Uttar Pradesh and Another : (2011) 6 SCC 570 it has been held that:

> **31.No order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice.**

It was further held that:

> **31. …… the litigant has to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity.**

11. In Vijay Kumar Kaul and Ors. v. Union of India and Ors. : (2012) 7 SCC 610 it has been ruled thus:

> **36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the Appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.**

12. Recently in State of Rajasthan v. Ucchab Lal Chhanwal : (2014) 1 SCC 144 it has been opined that:

> **14. ……..Despite the indefatigable effort, we are not persuaded to accept the aforesaid preponement, for once the Respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice.**

13. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioner."

23. Finally, Mr. D. Sharma, learned Addl. G.A appearing for the official respondents and Mr. A. Bhowmik, learned counsel appearing for the private respondents have relied on a decision

of this court in **Rupak Das and Others vs. The State of Tripura and Others** [judgment and order dated **30.07.2019** delivered in **W.P.(C) No.664 of 2017**] emerging from the same employment notification. The following passage of that decision appears very relevant and accordingly those are being reproduced:

> **"16. Further, reliance has been placed on Sadananda Halo and Others versus Momtaz Ali Sheikh and Others reported in (2008) 4 SCC 619 where the mass recruitment was challenged as irregular and its validity was simultaneously challenged on the basis of microscopic details. The apex court has held that the court has to decide the case on the basis of pleadings and the unsuccessful candidate after participating in the selection process could not indulge in roving inquiry. For purpose of further reference, the following passages considering their relevance are gainfully reproduced below:**
>
> > **41. The question of large number of candidates appearing for the selection process again came up before this Court in Joginder Singh and Ors. v. : Roshan Lal and Ors.:(2002)9 SCC 765 . A complaint was made in this case that 323 candidates appeared for the test in two days and on that basis a select list was prepared by the Departmental Promotion Committee. The High Court called this selection process as a farce on the ground that fair chance was never given to the candidates to show their worth. The Court observed in para 5 as under:**
> >
> > > **5. On the facts on record we see no justification for the High Court to have come to this conclusion. The High Court in exercise of its jurisdiction under Article 226 of the Constitution is not supposed to act as an Appellate Authority over the decision of the Departmental Selection Committee. <u>If the Committee has been properly constituted, as in this case, and the post is advertised and a selection process known to law which is fair to all, is followed then the High Court could have no jurisdiction to go into a question whether the Department Selection Committee conducted the test properly or not when there is no allegation of malafides or bias against any member of the Committee.</u> Merely because there were a large number of candidates who appeared on two days, cannot ipso facto lead to the conclusion that the process of selection was a farce and fair chance was not given. Normally experienced persons are appointed as members of the Selection Committee and how much time should be spent with a candidate would vary from person to person. Merely because only two days were spent in conducting the interviews for the selection of Class IV posts cannot lead to the conclusion that the process of selection was not proper.**
> >
> > > *** *** *** *** ***
> >
> > > **58. <u>It is settled law that in such writ petitions a roving inquiry on the factual aspect is not permissible.</u> The High Court not only engaged itself into a non permitted fact finding exercise but also went on to rely on the**

findings of the Amicus Curiae, or as the case may be, the Scrutiny Team, which in our opinion was inappropriate. While testing the fairness of the selection process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such microscopic findings. It was not for the High Court to place itself into a position of a fact finding commission, that too, more particularly at the instance of those petitioner who were unsuccessful candidates. The High Court should, therefore, have restricted itself to the pleadings in the writ petition and the say of the respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the Selection Committee and also in the process assumed the role of an Appellate Tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any justification.

59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule.This position was reiterated by this Court in its latest judgment in Union of India and Ors. v. S. Vinod Kumar and Ors.: AIR 2008 SC 5 where one of us (Sinha, J.) was a party. This was a case where different cut off marks were fixed for the unreserved candidates and the Scheduled Caste and Scheduled Tribes candidates. This Court in para 10 of its judgment endorsed the action and recorded a finding that there was a power in the employer to fix the cut off marks which power was neither denied nor disputed and further that the cut off marks were fixed on a rationale basis and, therefore, no exception could be taken. The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.: [1986] 1 SCR 855 where it has been held specifically that when a candidate appears in the examination without protest and subsequently found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise. The Court further made observations in para 34 of the judgment to the effect:

19. .....There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

In para 20 this Court further observed that there are certain exceptions to the aforementioned rule. However, the court did not go into those exceptions since the same were not material.

60. In our opinion the first basic thing for such a selection process would be the lack of bona fides or, as the case may be, malafide exercise of powers by those who were at the helm of selection process. Both the courts below have not recorded any finding that they found any malafides on the part of any of the State officials who headed the interviews. On the other hand the tenor of the judgments show that the whole process did not suffer from malafides, lack of bonafides, bias or political interference.In Union of India and Ors. v.

Bikash Kumar: (2006) 8 SCC 192 this Court observed in para 14 thus:

14. <u>When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias. A presumption arises in regard to the correctness of the official act.</u> The party who makes any allegation of bias or favouritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice.

61. The learned Single Judge relying upon the decision in Raj Kumar and Ors. v. Shakti Raj and Ors.: AIR 1997 SC 2110 seems to have found an exception to this Rule and has more particularly relied on the observation made in para 16 to the following effect:

> **16...But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board 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 Government or the Committee as well as the action taken by the Government are not correct in law.**
>
> **We do not think that this case is apposite for the present controversy. In the reported decision the court found a clear cut breach of 1955 Rules. It also found that the names, though were required to be called from the Employment Exchange, were not so called. The Court also found fault with the procedure involved. We are afraid such is not the case in the present situation. No deviation from the rules or no inherent defect in the selection process which would render the whole selection illegal have either been alleged or proved.**
>
> **62. We have already shown in the earlier part of our judgment that there were proper advertisements issued and reasonable procedure was chalked out in the earlier meetings held by the authorities, even the guidelines were defined and the interviews proceeded along those guidelines. <u>A mere expression of doubts only on the ground of large number of candidates appearing and their not being objectively and properly tested without any further material, in our opinion, cannot by itself render the whole selection process illegal."</u>**

[Emphasis added]

17. To contend that the court should exercise restraint to interfere readily with administrative decisions unless there is clear violation of some constitutional provision or statute, Mr. Bhowmik, learned Advocate General has relied on Dilip Kumar Garg and Another versus State of Uttar Pradesh and

Others reported in (2009) 4 SCC 753 where the apex court had occasion to observe as follows:

> **"15. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a Court of Appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. See Union of India v. Pushpa Rani and Ors.: (2008) 9 SCC 243 and Official Liquidator v. Dayanand and Ors.: (2008)10SCC1.**
>
> **16. The decision to treat all Junior Engineers, whether degree holders or diploma holders, as equals for the purpose of promotion is a policy decision, and it is well-settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case.**
>
> **17. In Tata Cellular v. Union of India: AIR 1996 SC 11, it has been held that there should be judicial restraint in administrative decision. This principle will apply all the more to a Rule under Article 309 of the Constitution."**

18. When a candidate consciously takes part in the selection process, he cannot subsequently turn around and question the very selection process, even on merits or on contention that selection process bypassed the regulation when found not correct. Mr. Bhowmik, learned Advocate General has referred for this purpose, the apex court decision in Madras Institute of Development Studies and Another versus K. Sivasubramaniyan and Others reported in (2016) 1 SCC 454 where it has been enunciated as follows :

> **"14. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra.**
>
> **15. In Dr. G. Sarana v. University of Lucknow and Ors.: (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the Petitioners had applied to the post of Professor of Athropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the Petitioners rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:**
>
> **"<u>15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the Appellant knew all the</u>**

relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the Appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

'9.....It seems clear that the Appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.'"

16. In Madan Lal and Ors. v. State of J&K and Ors.: (1995) 3 SCC 486, similar view has been reiterated by the Bench which held that:

"9. Before dealing with this contention, we must keep in view the salient fact that the Petitioner as well as the contesting successful candidates being Respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioner also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the Petitioner as well as the contesting Respondents concerned. Thus the Petitioner took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this Court that when the Petitioners appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a Petitioners.

17. In Manish Kumar Shahi v. State of Bihar: (2010) 12 SCC 576, this Court reiterated the principle laid down in the earlier judgments and observed:

> **"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 Petitioners is not entitled to challenge the criteria or process of selection. <u>Surely, if the Petitioners's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioners 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 Petitioners clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."</u>**

18. In the case of Ramesh Chandra Shah and Ors. v. Anil Joshi and Ors.: (2013) 11 SCC 309, recently a Bench of this Court following the earlier decisions held as under:
"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the Respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the Respondents."

[Emphasis added]

19. Having appreciated the submissions of the learned counsel for the parties and scrutinized the records as produced by the official respondents, this court does not find any illegality in constitution of the selection committee/board or in the selection process. Though allegation of malpractice has been raised, but that allegation is not even supported by necessary pleadings or particulars. No bias against any member of the selection board has been attributed by any candidate. On scrutiny of the records of selection, this court does not find any apparent error or trace of malpractice. So far the objection raised in respect of very short time for interview, this court is of the view that the selection process is dissected in various parts including the scrutiny of records and viva voce. Mere statement that no question was put to the petitioner or any of the petitioner is not sufficient. Such allegation has to be established by the person who alleged likewise. He had to immediately react to the method by filing the representation or raising protest. In this case, what has been observed is that no such protest was raised. Only after selection was made, the petitioner started agitating their grievance against their non-selection. From the reports, as relied, it transpires clearly that the grounds as raised are not sufficient to reverse the selection. The petitioner cannot be allowed to turn around and challenge the selection process after their discovery that they were not selected. It is well settled law that unless material irregularity or illegality in the selection process is established by the petitioners, the law of estoppel would operate against him and he would not be allowed to challenge the selection after participation. Moreover, it has not been disputed by the petitioner that the candidates who are selected lack the

> **required qualification or eligibility. No other perspective fact which would persuade this court to interfere has been laid."**

24. When the process of assessment is vitiated either on the ground of bias, malafide or arbitrariness, in that event, the selection calls for interference. As already discussed, there is no allegation of malafide or bias. But it appears that the process has been questioned on the ground of arbitrariness. But in **Union of India vs. A. K. Narula** reported in **(2007) 11 SCC 10** the apex court has enunciated the law unambiguously as under:

> **"Where the DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by the DPC, the court will not interfere (vide State Bank of India v. Mohd. Mynuddin : (1987) 4 SCC 486, Union Public Service Commission v. Hiranyalal Dev (1988) 2 SCC 242 and Badrinath v. Government of Tamil Nadu (2000) 8 SCC 395)."**
>
> **[Emphasis added]**

25. In **Joginder Singh and Others vs. Roshan Lal and Others** reported in **(2002) 9 SCC 765** it has been held thus:

> **"On the facts on record we see no justification for the High Court to have come to this conclusion. The High Court in exercise of its jurisdiction under Artilce 226 of the Constitution is not supposed to act as an Appellate Authority over the decision of the Departmental Selection Committee. If the Committee has been properly constituted, as in this case, and the post is advertised and a selection process known to law which is fair to all, is followed, then the High Court could have no jurisdiction to go into a question whether the Departmental Selection Committee conducted the test properly or not when there is no allegation of mala fides or bias against any member of the Committee. Merely because there were a large number of candidates who appeared on two days, cannot ipso facto lead to the conclusion that the process of selection was a farce and fair chance was not given. Normally, experienced persons are appointed as members of the Selection Committee and how much time should be spent with a candidate would vary from person to person. Merely because only two days were spent in conducting the interviews for the selection of Class IV posts cannot lead to the conclusion that the process of selection was not proper."**
>
> **[Emphasis added]**

26. There was no allegation in this writ petition of divergent methods for interview or following a process which is asymmetric, so far the process of assessment is concerned. There is no allegation against the process to be unfair, partial and unreasonable. So far the unreasonableness in respect of the time of interview allotted for each of the candidates is concerned that has been well explained by various decision of the apex court. True it is that, no selection which is made on oral interview is spared from criticism. To hold the selection out of a large candidates is itself a challenging task. But on overall assessment of the process this court is satisfied that it is not a case where this court shall interfere.

27. Having appreciated the submission made by the learned counsel for the parties, certain distinct features have emerged before this court. The petitioner did not raise any objection in respect of the selection process even though they knew quite categorically from the call letter that the selection would be made by walk-in-interview to be held spreading over three days. Even immediately after they were interviewed they did not raise any objection. No such fact has been averred in the writ petition and no such objection was brought to the notice of this court. When the petitioner came to know that they were not selected they filed the writ petition to challenge the process. As such the petitioner's claim is hit by estoppel and the law enunciated in **Ashok Kumar** (supra) would apply against the petitioner. Resultantly, the writ petition is liable to be dismissed.

There is no grievance against the members of the interview board, even no malafide has been attributed to them. Nor any member of the interview has been made party in the proceeding. For obvious reason, as there is no allegation or malafide or bias against any member of the committee and in view of what has been observed by the apex court in **Sadananda Halo** (supra) that if the Committee has been properly constituted, as in this case, and the post is advertised and a selection process known to law which is fair to all, is pursuaded the High Court could have no jurisdiction to go into the question whether the Selection Committee conducted the test properly or not when there is no allegation of malafides or bias against any member of the Committee. Merely because there were a large number of candidates who appeared on two days, cannot ipso facto lead to the conclusion that the process of selection was a farce and fairness was denied. Normally experienced persons are appointed as members of the selection committee and how much time should be spent with a candidate would vary from person to person. As only two days were spent in conducting the interviews for the selection that cannot ipso facto lead to the conclusion that the process of selection was not proper. It has been further held in **Sadananda Halo** (supra) that in such a writ petition a roving inquiry is not acceptable and unsuccessful candidates cannot turn back and assail the selection process. A mere expression of doubts only on the ground of large number of candidates appearing, and their not being objectively and properly tested

and without any further material, in **Sadananda Halo** (supra) it has been held, cannot by itself render the whole selection process illegal. When a selection committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner. Absence of any allegation of favouritism or bias, raises the presumption as to the correctness of the official act.

28. In **Madras Institute of Development Studies and Another vs. K. Sivasubramaniyan and Others** reported in **(2016) 1 SCC** what has been held by the apex court has crystallized the law that it is not necessary to go into the question of reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he appear for the interview and at no point in time he raised even his little finger against the constitution of the selection committee or the mode. The candidate, then, seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not open to that candidate to turn round and question the constitution of the committee or the mode of selection. Even in this case, there is no challenge against the constitution of the selection committee.

29. In view of the **Madan Lal** (supra) and **Manish Kumar** (supra) this court has no hesitation to hold that the writ petitioner is estopped to project any challenge against the selection where they participated without demur. Moreover, the

non-joinder of the all selected candidates renders this writ petition not maintainable for the reasons as recorded by the apex court. The other technical issues as raised, such as, not having the break-up of marks etc. is a mere technical issues and on the basis of those the selection cannot be disturbed. Thus this writ petition fails and accordingly it is dismissed.

There shall be no order as to costs.

JUDGE

Moumita