

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C)877 of 2017

Sri Biswajit Paul,
son of Sri Surajit Paul,
resident of Durgabari, P.O. Tesaria,
P.S. Airport 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
Health and Family Welfare, Government
of Tripura, P.O. Kunjaban, P.S. New
Capital Complex, District : West Tripura.

2. The Director of Health Services,
Government of Tripura, P.O. Agartala,
P.S. West Agartala, District : West
Tripura.

3. The Interview Board,
represented by its Chairman, Health and
Family Welfare Department, Government
of Tripura, P.O. Agartala, P.S. West
Agartala, District : West Tripura.

..... **Respondent(s)**

For Petitioner(s) : Mr. A.Bhowmik, Adv.

For Respondent(s) : Mr. N. Majumder, Adv.

Date of hearing : 17.04.2019

Date of delivery of
Judgment & order : 30.07.2019

Whether fit for reporting :

YES	NO
	√

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER

There is no dispute that the petitioner has been considered to
have the requisite qualification for being appointed as the post O.T.
Assistant by the official respondents.

2. In order to fill up the vacancies in the post of Pharmacist (Allo) and in other posts namely Laboratory Technician, Radiographer, Plaster Technician, O.T. Technician, Physiotherapist, Audiometric Technician, Ophthalmic Assistant, Lower Division Clerk, Record Technician, Dental Technician, Histopathology Technician, Ward Master, Rehabilitation Assistant, Tailor, transport Officer, Carpenter and Pharmacist Homeo, the Director of Health Services, Government of Tripura issued the Employment Notification published in "Dainik Sambad" dated 27.05.2016, which is Annexure-1 to the writ petition being WP(C)No.786 of 2017[the lead case], hereinafter this will be referred to as the Employment Notification only. For purpose of reference, the entire text of the said notification is reproduced hereunder :

Employment Notification

Applications are invited for filling up vacancies for the following posts 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 [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	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 Course from a recognized Institution.

scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2800/-]		
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)	<u>Essential</u> : Madhyamik or its equivalent examination passed from recognized Board. <u>Desirable</u> : 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	<u>Essential</u> : Madhyamik or its equivalent examination passed from recognized Board. <u>Desirable</u> : 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.
Ophthalmic Assistant [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. Ophthalmic Assistant 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	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

with Grade Pay of Rs.2200/-]		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 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, 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 or its equivalent examination passed from recognized 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	2 (UR-1, ST-1)	1. Madhyamik or its equivalent examination passed from recognized Board.

Rs.8,434/- in the pay scale of Rs.5,700-24,000/- in the PB-2 with Grade Pay of Rs.2100/-]		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, Ex-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.

3. It is apparent that the eligible 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 15.6.2016, 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 [Annexure-4 to the writ petition being WP(C)No.664 of 2017] 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 schedule date and time. They were further asked to carry the original testimonials and receipt-token of the application, the interview card as issued by the Director of Health Services and sent by post.

4. 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 O.T. Assistant but the petitioner was not selected. Being unsuccessful, now he has questioned the legality and integrity of the selection process. The petitioner has alleged that the persons who have been selected were favoured in the selection inasmuch as, the very employment policy of the state is contrary to equality clause in the Constitution being unreasonable and arbitrary. That apart, there was no direction in the advertisement for producing any evidence of income but the petitioner has admitted that they were called upon to state and produce testimonials relating to their status as BPL/AAD. The petitioner has further stated that the interview board has followed the Employment Guidelines of 2016 and selected the candidates based on the policy parameters viz-

(1) merit on result - 75 marks.

(2) seniority-15 marks, 1 for each year from the year of passing.

(3) need i.e. family with income below 1.5 lakh and the family without a government employee.

5. Even the petitioner has asserted that policy parameters were not equally followed. In the perspective as referred, the petitioner has urged this court to declare the process of selection pursuant to the

Employment Notification as unfair, improper and illegal. As consequence of such declaration it has been further urged that the appointment issued in favour of the selected candidates should be quashed and set aside and the fresh process be directed to be initiated. In addition thereto the Constitutionality of the General Guidelines [the employment policy of the state] has been challenged

6. In the reply filed by the official respondents, the allegations made by the petitioner are squarely denied and they have asserted that by a fair process, the interview board had ascertained the academic performance, personality, aptitude, general performance etc. in the interview by questioning the candidates who were interviewed. 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 at all. The objection that was raised was after completion of the recruitment process when they found that they were not selected. In the reply, it has been categorically stated that on the basis of the recommendation of the interview board in strict adherence to the guidelines, the candidates who were selected were appointed. This writ petition has been filed out of frustration and the writ petitioner is estopped from raising any question against the selection process as he has participated in the process without demur.

7. The official respondents have asserted that the purported Employment Guidelines of 2016 was not applied in the selection process under reference.

8. Mr. A. Bhowmik, learned counsel appearing for the petitioner has succinctly submitted that the law of estoppel will not apply in the

present case, inasmuch as, the revised general employment guidelines for all departments of the state government for selection of candidates by open interview for Group-C and Group-D posts to be filled up by direct recruitment, as laid down by the Memorandum No.F.23(8)-GA(P & T)/14 dated 23.7.2018 has been applied, even though, the same is violative of the equality clause . According to that memorandum, there may be a common interview board to be constituted by the department concerned for selection of candidates from whole of the state, but if situation demands, the district wise or the sub-divisional wise distribution of posts for other policy reasons be made if the state government so decides from time to time. For large number of candidates from all over the state, the board may constitute selection committees district wise or subdivision wise. The advertisement in that respect shall explicitly mention the same. The selection made by the selection committees shall be consolidated by the state board for preparing panel. It has been further provided that the guidelines shall be strictly followed for assessing the suitability of the candidate. Each candidate shall be evaluated out of 100 marks broadly on 2 categories viz. on merit and need. For purpose of such assessment, 4 categories or means are provided in the said guidelines for evaluation in the oral interview (viva voce). The relevant category for the case in hand is the category which provides as follows :

“Category-2 –Selection of candidates for Group-C posts other than Persons with Disabilities.

(i) One mark for completion of each one year shall be awarded to the candidates (awaiting for job) from attaining the age of 18(eighteen) years or from the age he/she acquired the minimum educational qualifications (as prescribed in the Recruitment Rules of that post), whichever is later subject to a maximum of 15 marks.

(ii) Maximum marks to be allotted to evaluate Educational Qualifications:30 Marks in following manner:

(a) From 30% to less than 45% Marks obtained in qualifying Exam=20 Marks.

(b) From 45% to less than 60% Marks obtained in qualifying Exam=25 Marks.

(c) From 60% and above obtained in qualifying Exam =30 Marks.

(iii) Maximum marks to be allotted to evaluate General Knowledge : 30 marks.

(a) Knowledge on subject to be evaluated out of = 6 marks.

(b) Intelligence to be evaluated out of = 7 marks.

(c) Aptitude and interests on the field to be evaluated out of = 6 marks.

(d) Sense of Social Commitment to be evaluated out of = 6 marks.

(e) Co-curricular field (culture, sports etc.) to be evaluated out of = 5 marks.

(iv) 'Need' to be evaluated for 25 marks if fallen under the definition of 'Need'."

9. Mr. Bhowmik, learned counsel has submitted that the respondents have flouted even the said guidelines in assessing the petitioner vis a vis the other candidates who have been selected in the process. The information relating to the marks, the petitioner got on the basis of the results of the examinations is available in the records as produced.

10. Mr. Bhowmik, learned counsel has further submitted that the petitioner has also challenged the memorandum No.F.23(8)GA(P & T)/14 dated 23.07.2017 whereby Revised General Employment Guidelines on the ground of unreasonableness and discrimination. It is required to be noted that the petitioner has as well challenged the Employment Notification dated 27.05.2016. Thus, the petitioner has countenanced his challenge differently. However, the respondents have disputed that analogy by stating that the Revised Employment Guidelines dated 23.07.2016 was not applied in the selection. According to the official respondents in **WP(C)No.724 of 2017** titled as **Satyajit Debanath versus The State of Tripura & Others** [the lead case] the

appointment of selected candidates has been challenged and the similar challenge has been raised in this writ petition. The petitioner has asserted further that the parameters of the employment guidelines dated 23.07.2016 was followed by the official respondents while selecting the candidates and it has been urged that the respondents be asked to produce the records in this regard, if they claimed in the contrary.

11. Mr. N. Majumder, learned counsel appearing for the official respondents has submitted that Mr. A.K. Bhowmik, learned Advocate General has produced the records of the selection process under File No.2(1-273)-MS/Estt/2017 relating to the appointment of the Pharmacist (Allo) under the Health and Family Welfare Department and the supplementary File No. 2(1-273)-MS/Estt/2017 (Sub-IV) relating to appointment of Pharmacist(Allo), Laboratory Technician and O.T. Assistant in terms of the order dated 04.10.2018 in WP(C)No.664 of 2017. Those records are also the records of selection of this writ petition. It has been stated for the official respondents that the allegations are without any foundation and these are made on mere assumptions. That apart, Mr. Majumder, learned counsel has submitted that none of the private respondents in WP(C)No. 724 of 2017 was considered under 'need' category. The guide-lines as relevant were properly observed as would be evident from the records. Mr. Majumder, learned counsel for the official respondents has taken this court to the records of assessment in the selection process and also to the formation of the various boards made under Order No. 2(1-273)-MS/Estt/2016 (Sub-V) dated 1.9.2016. Mr. Majumder, learned counsel has submitted that the selection was made and thereafter assorted panels were

prepared for UR, SC, UR(PH), UR(EXS), ST(PH), ST(EXS), ST(PH) in accordance to the post identified in the following manner :

Pharmacist(Allo) Total Post-80 (UR-21,UR(PH)-1,UR(EXS)-4 ST-37, ST(PH)-3,ST(EXS)-2 SC-10,SC(PH)-1, SC(EXS)-1)	Laboratory Technician Total Post-142 (UR-52,UR(PH)-4,UR(EXS)-3 ST-59, ST(PH)-3,ST(EXS)-2 SC-17,SC(PH)-1, SC(EXS)-1)	O.T. Assistant Total Post-16 (UR-7,UR(PH)-1, ST-5, SC-3
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12. Mr. Majumder, learned counsel for the official respondents has stated that not a single petitioner raised any objection at the time of interview or immediately after the interview was complete. All the petitioner waited till the outcome of the selection process is published. That apart, no allegation of bias has been attributed to the selection board. The allegation of high handedness, nepotism and unfairness are totally absent in the records. Allegations are laid without any material. The writ petitioner is therefore hit by the law of estoppel. The process of this kind has also been held fair and valid by the apex court. To nourish his submission, Mr. Majumder, learned counsel has placed reliance on a few decisions of the apex court.

13. In **Dalpat Abasaheb Solunke and Others versus Dr. B.S. Mahajan and Others** reported in **(1990) 1 SCC 305** the apex court had occasion to observe that it is needless to emphasis that it is not the function of the court to hear appeals over the decision of the selection committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committed can be interfered with only on limited grounds such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved malafides affecting the selection etc.

Mr. Majumder, learned counsel has submitted that there is no such irregularity or illegality established by the petitioner and hence, this court may not invoke its jurisdiction to interfere with the selection.

14. Even though **Uttar Pradesh Secondary Education Service Commission versus Smt. Santosh Chowdhary and Others** reported in **1990(Supp)SCC 711** has been referred to by Mr. Majumder, learned counsel but this report has no relevance in the context of the case inasmuch as the observation made therein by the apex court was made completely in a different context.

15. Mr. Majumder, learned counsel has as well placed reliance on **Joginder Singh and Others versus Roshan Lal and Others** reported in **(2002) 9 SCC 765** for getting support from the following passage :

"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. 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 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]

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. 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. 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. It is settled law that in such writ petitions a roving inquiry on the factual aspect is not permissible. 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. 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 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. 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."

[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. Majumder, learned counsel 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. Majumder, learned counsel 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 Petitioner had applied to the post of Professor of Anthropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the Petitioner 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:

"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 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 Petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a Petitioner.

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 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."

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. Thereafter, Mr. N. Majumder, learned counsel appearing for the official-respondents has submitted that neither the Employment Notification nor the General Guidelines published vide memorandum dated 23.07.2016 can be challenged after participation in the selection process without demur. Moreover, the challenge to the General Guidelines dated 23.07.2016 is not based on any foundation, atleast those foundations or grounds are not available in the writ petition. The preference as created cannot be treated as reservation for the economically backward candidates. It is a matter of pure preference. There is a distinction between reservation and preference. The Constitution of India vide Article 38 under part-IV : Directive Principles of State Policy has directed the state to minimize the inequalities of income and to take endeavours to eliminate inequality in status, facilities and opportunities for the individuals as well. Moreover, that policy has not been utilized in the selection.

20. 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, the allegation of discrimination has been but that the 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 illegality. The petitioner has not raised or

registered any protest while participating in the selection process. In this case, what has been observed is that no such protest was raised till the selection was made. Only thereafter the petitioner has by filing the writ petition agitated his grievance against his 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 his discovery that he was not selected. It is well settled law that unless material irregularity or illegality in the selection process is established by the petitioner, 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.

21. The challenge to the General Guidelines and to the Employment Notification cannot be entertained by this court for the simple reason that the challenge is interrelated with the selection where the petitioner had taken part without demur and he was substantially aware of the process as adverted beforehand by the Employment Notification. That apart, the petitioner has failed to establish that the General Guidelines as challenged was made the basis for the selection. It appears that the selection Board has followed uniform parameters. That apart, on the face of the categorical statement made by the official respondents that the selection was made on the basis of merit, the challenge in respect of discrimination on the basis of economic status turns to be irrelevant.

22. Having observed thus, this court does not find any merit in this writ petition and accordingly, it is dismissed. However, there shall be no order as to costs.

JUDGE

