



IN THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

W.P. (C) No. 16 of 2019

1. Mr. Choda Bhutia,
(GT Bhutia/Adhoc)
S/o Late Dawa Ongdi Bhutia
R/o Kabi, North Sikkim.
2. Mr. Dorjee Needup Bhutia
(PGT Bhutia/Adhoc)
S/o Gaymi Bhutia
R/o Namchi, Ghurpisey, South Sikkim.
3. Mr. Wongda Lepcha
(PGT Bhutia/Adhoc)
S/o Topden Lepcha
R/o Khachopari, West Sikkim.
4. Mr. Hissay Namgyal Bhutia
(PGT Bhutia/Adhoc)
S/o Sangay Sung Bhutia
R/o Tashiding, West Sikkim
Presently working at Gyalsing Govt. College, West Sikkim.
5. Ms. Tshering Denka Bhutia, (Fresher)
D/o Karma Tshering Bhutia
R/o Pakyong, East Sikkim.
6. Ms. Yangchen Bhutia, (Fresher)
D/o Chungba Targay Bhutia
R/o Tashiding, West Sikkim.
7. Mr. Tshering Thendup Bhutia, (Fresher)
S/o Tenzing Tshering Bhutia
R/o Barapathing, East Sikkim.
8. Ms. Kunzang Longdol Lachenpa, (Fresher)
D/o Late Kunzang Lachenpa
R/o Lachen, North Sikkim.
9. Mr. Pema Namgyal Bhutia, (Fresher)
S/o Late Dawa Rinzing Bhutia
R/o Kabi, North Sikkim.
10. Ms. Pempa Doma Bhutia, (Fresher)
D/o Tshering Samdup Bhutia
R/o Martam, East Sikkim.
11. Karma Yishey Bhutia, (Fresher)
S/o Nem Dorjee Bhutia
R/o Khamdong, Namgaythang, East Sikkim.
12. Ms. Sonam Diki Bhutia, (Fresher)
D/o Chunku Bhutia
R/o Machong, East Sikkim.



13. Ms. Lakpa Dem Bhutia, (Fresher)
D/o Golay Tashi Bhutia
R/o Barapathing, East Sikkim.
14. Mr. Thutop Gyatso Bhutia,
(Ecclesiastical Teacher/Adhoc)
S/o Lako Tshering Bhutia, R/o Barapathing, East Sikkim
Presently working at Pathing Machong Monestic School.
15. Mr. Zamyang Bhutia,
(PGT Bhutia/Adhoc)
S/o Ugay Bhutia, R/o Lasothang, Pakyong, East Sikkim
Presently working at Assam Lingzee Sr. Sec. School, East Sikkim.
16. Ms. Rinzing Choden Bhutia,
(GT Bhutia/Adhoc)
D/o Tshering Dorjee Bhutia, R/o Rongay, East Sikkim
Presently working at Luing Sr. Sec. School, East Sikkim.
17. Mr. Choden Lepcha,
(GT Lepcha/Adhoc)
S/o Kenzong Lepcha, R/o Upper Dzongy, North Sikkim
Presently working at Karongthang Sr. Sec. School, South Sikkim.
18. Ms. Nimthit Lepcha,
(GT Lepcha/Adhoc)
D/o Chindi Lepcha, R/o Yangang, South Sikkim
Presently working at Gangyang Sr. Sec. School, South Sikkim.
19. Mr. Dawchen Lepcha,
(PRT Lepcha/in service)
S/o Tashi Pintso Lepcha, R/o Rinchenpong, West Sikkim
Presently working at Tafel Primary School, West Sikkim.
20. Ms. Phurmit Lepcha, (Fresher)
D/o Nim Tshering Lepcha,
R/o Lingee, South Sikkim.
21. Ms. Phurmit Lepcha, (PGT History/Adhoc)
D/o Lt Ching Lepcha, R/o Dzongu, North Sikkim
Presently working at Phodong Sr. Sec. School, North Sikkim.
22. Ms. Phu Doma Lepcha, (Fresher)
D/o Tamyang Lepcha,
R/o Middle Lingee, South Sikkim.
23. Ms. Selina Lepcha, (Fresher)
D/o Pema Tenzing Lepcha,
R/o Middle Lingee, South Sikkim.
24. Ms. Ongmit Lepcha, (PGT Lepcha/Adhoc)
D/o Gyaltsen Lepcha, R/o Makha Bazar, East Sikkim
Presently working at Chujachen Sr. Sec. School. East Sikkim.
25. Mr. Sanchaman Limboo, (GT Limboo/Adhoc)
S/o Bhara Lall Limboo, R/o Upper Rimbeck, West Sikkim
Presently working at Ven Sec. School, South Sikkim.



26. Mr. Madan Hang Limboo, (GT Limboo/Adhoc)
S/o Sanman Limboo, R/o Gareythang, West Sikkim
Presently working at Upper Gerethang JH School, West Sikkim.
27. Ms. Dhan Maya Limboo, (PGT Limboo/Adhoc)
D/o Dom Bahadur Limboo, R/o Lingmoo, South Sikkim
Presently working at Mangshila Sr. Sec. School, North Sikkim.
28. Mr. Sukman Limboo, (GT Limboo/Adhoc)
S/o Sher Bahadur Limboo, R/o Bara Samdong, West Sikkim
Presently working at Timburbung Sr. Sec. School, West Sikkim.
29. Ms. Lasoti Limboo, (PGT Limboo/Adhoc)
D/o Purna Man Limboo, R/o Hee Patel, West Sikkim
Presently working at Rateypani Sr. Sec. School, South Sikkim.
30. Mr. Khem Bahadur Subba, (PGT Limboo/Adhoc)
S/o Durga Singh Subba, R/o Darap, West Sikkim
Presently working at Ranipool Biraspati Sr. Sec School, East Sikkim.
31. Mr. Prem Subba, (GT Limboo/in service)
S/o Ram Bahadur Subba, R/o Darap, West Sikkim
Presently working at Rimbik Sec. School, West Sikkim.
32. Mr. G. M. Subba, (GT Limboo/in service)
S/o Lal Bahadur Subba, R/o Langang, West Sikkim
Presently working at Sakyong Sr. Sec. School, West Sikkim.
33. Mr. Man Bahadur Limboo, (Forest Guard/In Service)
S/o Suk Bahadur Limboo, R/o Tepung, West Sikkim
Presently working at Soreng Range Wildlife, West Sikkim.
34. Ms. Sujata Subba, (Headmistress, Primary /In Service)
D/o Purna Bahadur Limboo, R/o Hee-Bazar, West Sikkim
Presently working at Srijanga Primary School, West Sikkim.
35. Ms. Man Rani Subba, (Fresher)
D/o Chandra Hang Subba,
R/o Timbrong, West Sikkim.
36. Ms. Bina Kumari Subba, (Fresher)
D/o It. Lak Bir Subba,
R/o Lungyak (Uttaray), West Sikkim.
37. Mr. Tiakram Subba, (Fresher)
S/o Mon Bahadur Subba,
R/o Sombaria, West Sikkim.
38. Mr. Sushil Subba, (PGT Limboo/Adhoc)
S/o Lt. Bhim Bahadur Subba, R/o Lingchom, West Sikkim
Presently working at Chujachen Sr. Sec. School, East Sikkim.
39. Ms. Suja Hangma Subba, (PRT Limboo/Adhoc)
D/o Chandra Bahadur Subba, R/o Namphok, South Sikkim
Presently working at Yangang Sr. Sec. School, South Sikkim.



40. Ms. Buddha Mati Subba, (GT Limboo/Adhoc)
D/o Lt. Dal Bahadur Subba, R/o Namphok, South Sikkim
Presently working at Nandu Goan Sr. Sec. School, South Sikkim.
41. Ms. B. S. Subba, (GT Limboo/In service)
D/o Kaziman Subba, R/o Gerethang, West Sikkim
Presently working at Gerethang Sr. Sec. School, West Sikkim.
42. Ms. Pabi Subba, (PRT Limboo/In service)
D/o Nar Sing Dhoj Subba, R/o Timberbung, West Sikkim
Presently working at West Point Sr. Sec. School, East Sikkim.

... **PETITIONERS**

versus

1. State of Sikkim, Through the Secretary,
Human Resources & Development Department
Government of Sikkim
Tashiling, Gangtok, East Sikkim.
2. Sikkim State Teachers Recruitment Board,
Through the Secretary,
Upper Syari,
Gangtok, East Sikkim.
3. Mr. Tshering Norbu Bhutia, (PGT Bhutia/Adhoc)
R/o Tashiding, West Sikkim
Presently working at Yuksom Sr. Sec. School, West Sikkim.
4. Mr. Jigme Wangchuk Bhutia, (PGT Bhutia/Adhoc)
R/o Pelling, West Sikkim
Presently working at Lingmoo Sr. Sec. School, South Sikkim.
5. Ms. Palmu Bhutia, (Fresher)
R/o Sawyam, Phodong, North Sikkim
6. Mr. Karma Tashi Bhutia, (Fresher)
R/o Kewzing, South Sikkim.
7. Mr. Ringzing Chopel Bhutia, (PGT Bhutia/Adhoc)
R/o Lingdok, East Sikkim
Presently working at Lingdok Sr. Sec. School, East Sikkim.
8. Mr. Sonam Wangyal Bhutia, (PGT Bhutia/Adhoc)
R/o Sang, East Sikkim
Presently working at Mamring Sr. Sec. School, East Sikkim.
9. Ms. Tenzing Youden Lepcha, (PRT Private)
R/o Kabi, North Sikkim
Presently working at Manjushri Pvt. School, M G marg, Gangtok.
10. Mr. Sangay Tshering Bhutia, (PGT Bhutia/Adhoc)
R/o Gyalsing, West Sikkim
Presently working at Malli Aching Sr. Sec. School, West Sikkim.
11. Ms. Jumthey Bhutia, (GT General/In-service)
R/o Namgaythang, East Sikkim
Presently working at Sakyong Sec. School, East Sikkim.



12. Mr. Gyurme Sangay Bhutia, (GT General/Adhoc)
R/o Thingchem, North Sikkim
Presently working at NSA School Mangan, North Sikkim.
13. Ms. Tashi Lhamu Bhutia, (Fresher)
R/o Tikutam, Sang Martam, East Sikkim.
14. Mr. Sonam Tharchin Bhutia, (GT Bhutia/In-service)
R/o Tashiding, West Sikkim
Presently working at Modern Sec. School, East Sikkim.
15. Ms. Pempa Lhamu Bhutia, (Fresher)
R/o Sawyam, Phodong, North Sikkim.
16. Mr. Pema Ongyal, (Fresher)
R/o Nabay Sotak, East Sikkim.
17. Ms. Phurkit Lepcha, (GT Lepcha/In-service)
R/o Gangtok, East Sikkim
Presently working at TNSS School, East Sikkim.
18. Mr. Tomtuk Lepcha, (GT Lepcha/In-service)
R/o Chawang, North Sikkim
Presently working at TNSS School, East Sikkim.
19. Mr. Dupden Lepcha, (PGT General/In-service)
R/o Lower Burtuk, East Sikkim
Presently working at Lingdok Sr. Sec. School, East Sikkim.
20. Ms. Ongmit Lepcha, (GT General/In-service)
R/o Passingdang, North Sikkim
Presently working at Naga Sr. Sec. School, North Sikkim.
21. Ms. Tenzing Dolma Lepcha, (GT Lepcha/Adhoc)
R/o Bojoghari, East Sikkim
Presently working at Sombaria S.S. School, West Sikkim.
22. Ms. Laki Lepcha, (PGT Lepcha/Adhoc)
R/o Yanggang, West Sikkim
Presently working at Lingmoo Sr. Sec. School, South Sikkim.
23. Ms. Namsay Lepcha, (PRT Lepcha/In-service)
R/o Nandok, East Sikkim
Presently working at Nandok Sr. Sec. School, East Sikkim.
24. Ms. Kyondit Lepcha, (GT General/In-service)
R/o Rabong, Namchi Vok, South Sikkim
Presently working at Chuba Sr. Sec. School, Perbing, South Sikkim.
25. Ms. Mingmakit Lepcha, (PGT Lepcha/Adhoc)
R/o Pagong, Chungthang, North Sikkim
Presently working at Yuksom Sr. Sec. School, West Sikkim.
26. Mr. Lakden Lepcha, (Fresher)
R/o Lingmoo, Kolthang, South Sikkim.
27. Ms. Kessang Choden Lepcha, (GT Lepcha/Adhoc)
R/o Tashiding, Chongrong, West Sikkim
Presently working at Khandu Sec. School, West Sikkim.



28. Mr. Kachyo Lepcha, (Adhoc)
R/o Passingdang, Lingthem, North Sikkim
Presently working at Asst. Professor, Sikkim University, Tadong.
29. Ms. Denmit Lepcha, (Fresher)
R/o Dentam, Khandu, West Sikkim.
30. Ms. Dikit Lhamu Lepcha, (Adhoc)
R/o Dzongu, North Sikkim
Presently working at Asst. Professor, Tadong College.
31. Mr. Denzong Lepcha, (GT Lepcha/In-service)
R/o Samdong, Makha, East Sikkim
Present working at Luang Sr. Sec. School, East Sikkim.
32. Ms. Nimkit Lepcha, (Fresher)
R/o Lingee, South Sikkim.
33. Ms. Ongmu Lepcha, (PPT In-service)
R/o Hee-Gaythang, North Sikkim
Presently working at Hee-Gaythang Sr. Sec. School, North Sikkim.
34. Mr. Chulthim Dorjee Lepcha, (PRT Lepcha/Adhoc)
R/o Tashiding Chongrong, West Sikkim
Presently working at Tashiding Chongrong JH School, West Sikkim.
35. Ms. Nimphutit Lepcha, (PRT Lepcha/In-service)
R/o Pentok, Mangan, North Sikkim
Presently working at Hee-Bermoik S.S. School, West Sikkim.
36. Mr. Tej Raj Limboo, (Adhoc)
R/o Bermoik, West Sikkim
Presently working at HOD, Asst. Professor, Sikkim University.
37. Ms. Kausila Subba, (Adhoc)
R/o Aho Santi, East Sikkim
Presently working at Asst. Professor, Sikkim University.
38. Ms. Sanjoti Subba, (Fresher)
R/o Malbasey, Soreng, West Sikkim.
39. Ms. Madhu Limboo, (In-service)
R/o Mangshila, North Sikkim
Presently working at Dentam BAC, West Sikkim.
40. Ms. Bal Hang Limboo, (PGT Limboo/Adhoc)
R/o Singpheng Darap, West Sikkim
Presently working at Pelling Sr. Sec. School, West Sikkim.
41. Mr. Lahang Subba, (GT Limboo/Adhoc)
R/o Nessa Tashiding, West Sikkim
Presently working at Gangyap Sec. School, West Sikkim.
42. Mr. Manjil Subba, (Adhoc)
R/o Langang, West Sikkim
Presently working at Asst. Professor, Namchi Govt. College.
43. Ms. Prithi Subba, (PGT Limboo/Adhoc)
R/o Lingchom, West Sikkim
Presently working at Lingchom S.S. School, West Sikkim.



44. Mr. Ashit Subba, (PGT Limboo/Adhoc)
R/o Daramdin, West Sikkim
Presently working at Daramdin Sr. Sec. School, West Sikkim.
45. Mr. Koncho Hang Limboo, (PGT Limboo/Adhoc)
R/o Timbrong, West Sikkim
Presently working at Yuksom Sr. Sec. School, West Sikkim.
46. Mr. Mohan Bikram Subba, (PGT Limboo/Adhoc)
R/o Bermoik Martam, West Sikkim
Presently working at Assam Lingzey Sr. Sec. School, East Sikkim.
47. Ms. Najum Hangma Subba, (Fresher)
R/o Darap, West Sikkim.
48. Mr. Mohan Subba, (IRBn 3rd Batterline/In-service)
R/o Yangang, South Sikkim
Presently working at IRBn, Gangtok.
49. Mr. Lall Man Limboo, (PGT Limboo/Adhoc)
R/o Darap, West Sikkim
Presently working at Darap Sr. Sec. School, West Sikkim.
50. Ms. Mona Hang Limboo, (Fresher)
R/o Darap Laghey, West Sikkim.
51. Mr. Sam Phungma Limboo, (Fresher)
R/o Lingchom, West Sikkim.

... **RESPONDENTS**

**BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, C.J.**

For Petitioners : Mr. A. K. Upadhyaya, Senior Advocate.

For Respondents No.1 & 2 : Dr. Doma T. Bhutia, Additional Advocate General and Mr. Zigmee Bhutia, Advocate.

For Respondents No.3 to 51 : Mr. Zangpo Sherpa, Advocate.

Date of Hearing : 06.03.2020.

Date of Judgment :

JUDGMENT

Heard Mr. A. K. Upadhyaya, learned senior counsel for the petitioners. Also heard Dr. Doma T. Bhutia, learned Additional Advocate General, Sikkim appearing for respondents no. 1 & 2 and Mr. Zangpo Sherpa, learned counsel appearing for respondents no.3 to 51.



2. The respondent no.2 published an advertisement dated 22.08.2017, inviting applications from eligible candidates for filling up 233 numbers of posts, out of which 34 posts were earmarked for Post-Graduate Teacher (PGT) language, 31 posts for Graduate Teacher (GT) language and 168 posts for Primary Teacher (PT) in different languages. The qualification prescribed in PGT, as prescribed in the advertisement, was Master degree from a recognized university with minimum of 50% marks (45% for reserved category) and concerned language as Elective/MIL/Honours in Secondary, Senior Secondary and Graduation level. 34 posts of PGT were again divided into three categories – PGT in Bhutia Language, PGT in Lepcha Language and PGT in Limboo Language. 8, 13, 13 posts were earmarked for PGT in Bhutia Language, PGT in Lepcha Language and PGT in Limboo Language, respectively.

3. The petitioners, being eligible, applied for PGT in different languages. Petitioners no.1 to 17 applied for PGT in Bhutia Language, petitioners no. 18 to 24 had applied for PGT in Lepcha Language and petitioners no.25 to 42 (wrongly written as 43 as there are only 42 writ petitioners) had applied for PGT in Limboo Language. They were issued admit cards and they had also taken the written examination held on 04.11.2018. A merit list of candidates qualifying in written examination was published, which included names of the petitioners. They were also called for viva-voce.

4. Petitioners no.1 to 17 appeared for viva-voce on 28.11.2018, petitioners no.18 to 24 on 29.11.2018 and petitioners no.25 to 42 on 30.11.2018. All of them also gave class-room demonstration. The final merit list for the selected candidates in respect of PGT Language was published on 06.02.2019, wherein the petitioners had not come out successful.

5. The Writ Petition was filed on 18.04.2019 with defects and the same was re-submitted on 10.06.2019.

6. The grievance articulated in the Writ Petition is that the questions for the written examination were not based on the syllabus provided by the respondent no.2 and that in view of a Notification dated 03.04.2018, recruitment to the post of PGT



Language should have been made by way of direct recruitment through written examination to the extent of 70% and balance 30% by promotion through written examination and viva-voce. It is stated that they had raised objection in the examination hall itself and had appeared in the written examination without prejudice to their rights. Though rules of examination visualized maximum marks of 25 each in the subjects of General Knowledge and General English with duration of 40 minutes for each subject, questions were set for 100 marks in total and duration of examination was increased to three hours from the earlier allotted duration of 1 hour 20 minutes and such change came to be known to the petitioners only in the examination hall. It is also pleaded that candidates having Master degree in general subjects were given first preference and that candidates having Master degree in concerned subject/language were not given preference. The petitioners had raised grievances before the authorities, but to no avail. They prayed for setting aside advertisement dated 22.08.2017, cancelling the entire selection process for the PGT Language as well as the selection of respondents no.3 to 51 and directing the respondents no.1 and 2 to start a fresh selection process in terms of Notification dated 03.04.2018 after re-advertising the posts.

7. The respondent no.1 had filed a counter-affidavit stating that the petitioners had taken part in the entire selection process without any protest and/or objection and, therefore, they are estopped from challenging the selection process after declaration of the result. It is pleaded that Notification dated 03.04.2018 is meant for future recruitment and that same is not applicable to the case of the petitioners as the advertisement pursuant to which the petitioners had taken part in selection process was issued prior to issuance of such Notification. It is further pleaded that selection of the private respondents had been done purely on merit by following due selection process. It is denied that the petitioners had raised any objection during the written test. The assertion of the petitioners that the candidates having Master degree in general subjects were given first preference is categorically denied.



8. The respondent no.2, in its counter-affidavit dated 29.06.2019, has stated that the vacancies were to be filled up by direct recruitment for the posts of PGT in different languages. It is stated that no objections were raised when the written examination was held and no protest/objection was raised by the petitioners even after declaration of result of written examination and they had duly participated in the viva-voce test. As the selection test was same for all the candidates in their respective languages, no prejudice was caused to any of the candidates. Only after the petitioners had failed to qualify in the selection test, they have turned around and assailed the selection process. Even on the first legal notice, no grievance was raised with regard to any aspect of the selection process and it was only emphasized that respondents no.3 to 51 deserve selection in their respective language categories as they had put in best performance.

9. The respondents no.3 to 51 had also filed a counter-affidavit stating that on 23.03.2018, date for submission for application for the posts of PT, GT and PGT in Bhutia, Lepcha and Limboo Languages was extended with effect from 26.02.2018 to 15.03.2018 and that on 29.09.2018, posts in PGT in Bhutia Language, Lepcha Language and Limboo Language were increased to 14, 19 and 16, respectively. It is stated that an Office Order dated 11.06.2019 was issued in favour of respondents no.3 to 51, appointing them to the posts of PGT for which they had applied and they had joined their duties in their respective places. It is averred that Notification dated 03.04.2018 is not applicable as the advertisement was issued on 22.08.2017 and that the petitioners, having participated in selection process without any demur, cannot now challenge the selection process.

10. The petitioners had also filed rejoinder-affidavit to the counter-affidavit(s) filed by respondents no.1, 2 and 3 to 51, reiterating the stand taken in the Writ Petition and stating that as the date of written examination was fixed on 04.11.2018, which was subsequent to the issuance of Notification dated 03.04.2018, the recruitment process was liable to be governed by the aforesaid Notification dated 03.04.2018.



11. Mr. A. K. Updhayaya, learned senior counsel appearing for the petitioners, has submitted that even though the advertisement was issued prior to the Notification dated 03.04.2018, as written test was notified to be held on 04.11.2028, the respondent authorities acted illegally and arbitrarily in not following the prescription as laid down in Notification dated 03.04.2018. He has submitted that the respondents changed the rules of the game so far as the written examination is concerned by increasing total marks and duration of the written test, and the same had taken the petitioners by surprise, having seen such change in the examination hall. He, accordingly, submits that the entire selection process is vitiated. It is submitted by him that when the entire selection process is vitiated, the petitioners can successfully challenge the selection process though such challenge was made after publication of the result. In support of his submissions, learned senior counsel placed reliance on the judgments of the Hon'ble Supreme Court in the cases of ***Maharashtra State Road Transport Corpn. and Others Vs. Rajendra Bhimrao Mandve and Others***, reported in ***(2001)10 SCC 51*** and ***Sivanandan C.T. and Others Vs. High Court of Kerala and Others***, reported in ***(2018) 1 SCC 239***.

12. Abiding by the stand taken in the affidavit filed, Dr. Doma T. Bhutia, learned Additional Advocate General, has submitted that if the petitioners were really aggrieved by increase of the total marks and duration of time for the written test, they ought to have raised their grievance at least immediately after taking part in the written examination. On being duly selected in the written examination, they did not raise any issue and only when they found that they had not finally been selected after viva-voce, they have sought to raise such an issue. She submits that the recruitment process was started with the issuance of advertisement dated 22.08.2017, which was much prior to the issuance of Notification dated 03.04.2018 and, therefore, the plea taken by the petitioners that selection ought to have been conducted by following the same is not tenable in law. She had placed reliance on



the judgment of the Hon'ble Supreme Court in the case of ***Ashok Kumar and Another Vs. State of Bihar and Others***, reported in **(2017) 4 SCC 357**.

13. Mr. Zangpo Sherpa, learned counsel appearing for private respondents no.3 to 51, has submitted that the Human Resource Development Department (Pre-Primary Teachers, Primary Teachers, Graduate Teachers and Post Graduate Teachers) Recruitment Rules, 1991 (for short, Rules of 1991), as amended vide Notification dated 29.04.2017, which was holding the field at the time when the advertisement was issued, provided for 100% direct recruitment through written examination and viva-voce for the post of PGT and the same was also duly notified in the advertisement and, therefore, the contention advanced by the petitioners that selection process should have been in terms of Notification dated 03.04.2018 is untenable. Endorsing the submission of Dr. Doma T. Bhutia, he also contends that the petitioners, in the facts and circumstances, are estopped from questioning the selection process and the appointment of the private respondents no.3 to 51. In support of his submissions, he placed reliance on the judgments of the Hon'ble Supreme Court in the cases of ***N.T. Devin Katti and Others Vs. Karnatakan Public Service Commission and Others***, reported in **(1990) 3 SCC 157** and ***Secretary (Health) Department of Health & F.W. and Another Vs. Dr. Anita Puri and Others***, reported in **(1996) 6 SCC 227**.

14. I have considered the submissions of learned counsel for the parties and have perused the materials on record.

15. At the very outset, it is to be noted that the allegation of the petitioners that initially the written test in the subjects of General Knowledge and General English were to be held for 25 marks each with duration of 40 minutes each and that subsequently the same was changed to total of 100 marks with duration of three hours is not disputed in the affidavit(s) of the respondents. There is no explanation in the affidavit filed, either by the respondent no.1 or by the respondent no.2, as to what had necessitated such change. Whether change, in the attending facts and circumstances, can be held to have vitiated the selection process would be



considered at a later point of time. However, what needs to be emphasized is that in the matter of holding of examination, the authorities have to be sensitive as the prospective examinees are always under some amount of stress and changes should not be brought about in the selection process in a causal manner.

16. Before proceeding further, it will be appropriate to take note of the judgments cited at the Bar.

17. The Hon'ble Supreme Court in ***N. T. Devin Katti*** (supra) had laid down that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules, which existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection process unless the amended rules are retrospective in nature.

18. In ***Dr. Anita Puri*** (supra), one of the questions that had fallen for consideration was whether sub-division of marks by the Public Service Commission on different facets and awarding only 2½ marks for higher qualification can be said to be arbitrary? This question has not fallen for consideration in this case as it is not the case of any of the parties that any mark on account of weightage for higher qualification was earmarked.

19. In ***Maharashtra State Road Transport Corpn.*** (supra), the Hon'ble Supreme Court held that the rules of the game, meaning thereby, the criteria for selection cannot be altered by the authorities concerned in the middle or after the selection process has commenced.

20. In ***Ashok Kumar*** (supra), the Hon'ble Supreme Court has held as follows:-

"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 crystallised in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla [Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127 : 2002 SCC (L&S) 830] , 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 [Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] , this Court held that: (SCC p. 107, para 18)*

"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 Munindra Kumar v. Rajiv Govil [Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] .)"

14. *The same view was reiterated in Amlan Jyoti Borooah [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.*

15. *In Manish Kumar Shahi v. State of Bihar [Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , the same principle was reiterated in the following observations: (SCC p. 584, para 16)*

"16. We also agree with the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC OnLine Pat 321 : (2009) 4 SLR 272] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the



petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of J&K [Madan Lal v. State of J&K, (1995) 3 SCC 486 : 1995 SCC (L&S) 712] , Marripati Nagaraja v. State of A.P. [Marripati Nagaraja v. State of A.P., (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , Dhananjay Malik v. State of Uttaranchal [Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 : (2008) 3 PLJR 271] , Amlan Jyoti Borooah v. State of Assam [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] and K.A. Nagamani v. Indian Airlines [K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57] .”

16. *In Vijendra Kumar Verma v. Public Service Commission [Vijendra Kumar Verma v. Public Service Commission, (2011) 1 SCC 150 : (2011) 1 SCC (L&S) 21] , 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 [Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309 : (2011) 3 SCC (L&S) 129] , candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p. 318, para 18)*



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

18. *In Chandigarh Admn. v. Jasmine Kaur [Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521 : 6 SCEC 745], 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 [Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493 : (2015) 3 SCC (L&S) 274], this Court held that: (SCC p. 500, para 17)*

"17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted."

This principle has been reiterated in a recent judgment in Madras Institute of Development Studies v. K. Sivasubramaniyan [Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454 : (2016) 1 SCC (L&S) 164 : 7 SCEC 462].

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 [Anurag Verma v. State of Bihar, 2011 SCC OnLine Pat 1289.] 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."

21. In ***Sivanandan C.T.*** (supra), the Hon'ble Supreme Court took note of the observation in the case of ***K. Manjusree v. State of A.P.***, reported in **(2008) 3 SCC 512**, wherein the Hon'ble Supreme Court had held that introduction of the requirement of the minimum marks for interview, after the entire selection process consisting of written examination and interview was completed, would amount to changing the rules of the game after the game was played, which is clearly impermissible. However, the correctness of the decision rendered in ***K. Manjusree*** (supra) was doubted in ***Tej Prakash Pathak v. Rajasthan High Court***, reported in **(2013) 4 SCC 540**, and reference was made to a larger Bench. In view of the same, the case of ***Sivanandan C.T.*** (supra) was also referred to a larger Bench to be heard along with ***Tej Prakash Pathak*** (supra).

22. Rules of 1991, as amended, which was in force when the advertisement was issued, provided for 100% direct recruitment through written examination and viva-voce for the post of PGT. The advertisement dated 22.08.2017 also made it explicitly clear that the posts were to be filled up by direct recruitment. Although, initially 34 posts (8 posts for Bhutia Language, 13 for Lepcha Language and 13 for Limboo Language) were notified in the advertisement, subsequently, number of posts for Bhutia Language, Lepcha Language and Limboo Language was increased to 14, 19 and 16, respectively and the select list dated 06.02.2019 in respect of PGT Language also correspondingly contains names of 14, 19 and 16 candidates.

23. The Notification dated 03.04.2018 states that the rules and the schedule for appointment of Primary language teachers, Graduate language teachers and Post-Graduate language teachers as per the amended Recruitment Rules, 2018 shall come into force with immediate effect. By the said Notification, two methods were provided for filling up the posts of PGT: 70% by direct recruitment through written



examination and viva-voce by Sikkim State Teachers Recruitment Board (for short, SSTRC) and 30% by promotion through written examination and viva-voce by SSTRC.

24. A candidate has a limited right for being considered for selection in accordance with rules, which existed on the date of the advertisement. At the cost of repetition, it is stated that relevant rule on the date of the advertisement prescribed for filling up the posts of PGT by 100% direct recruitment. The Notification dated 03.04.2018 is prospective in nature. It is immaterial that written test was held after Notification dated 03.04.2018 was issued.

25. There is another facet. What cannot be lost sight of the fact is that the petitioners participated in the selection process and waited till the declaration of the final select list. They had not raised an issue that in view of the Notification dated 03.04.2018, the selection process, initiated by the advertisement dated 22.08.2017, needed to be cancelled and a fresh selection process is to be started. Likewise, if they had any grievance with regard to change of total marks and duration of the written test, they should have agitated the matter, at least, as submitted by Dr. Doma T. Bhutia, immediately after the written test was over. Whether or not they had raised any objection during the examination, in the attending fact and circumstances, pales into insignificance in view of the subsequent course of action adopted by the writ petitioners. They waited for the publication of the result of the written test. They having come out successful, appeared in the viva-voce and also participated in class-room demonstration. Even in the first legal notice dated 05.03.2018 (evidently year has wrongly been typed as 2018. It should have been 2019), no grievance was articulated with regard to the selection process and all that was said was that having regard to their performance, they ought to have been selected. It was only in the legal notice dated 30.03.2018 (again year is wrongly typed as 2018 instead of 2019), which was issued recalling back the earlier legal notice, that the aspects regarding Notification dated 03.04.2018 and change of marks and duration of examination time were raised. It is crystal clear from the



decision in ***Ashok Kumar*** (supra) and the number of judgments referred to therein that a candidate, who had willingly participated in a selection process, cannot turn around and complain that the process of selection was wrong or unfair or not in accordance with law after knowing of his or her non-selection. The principles of estoppel operate against such candidates. The candidates cannot be allowed to approbate and reprobate at the same time.

26. In view of the above discussions, I find no merit in this petition and, accordingly, the same is dismissed.

27. No cost.

Chief Justice