REPORTABLE

2023 INSC 966

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEALS NO. 6232-6236 OF 2013

NUTAN KUMARI **APPELLANT**

VERSUS

B.R.A. BIHAR UNIVERSITY AND OTHERS **RESPONDENTS**

O R D E R

1. The appellant[1] is aggrieved by the judgment dated 16th May, 2011, passed by the Division Bench of the High Court of Patna whereunder the appeals[2] filed by the respondents No. 5 to 8 herein working as Physical Training Instructors[3] in four different colleges under the respondent No.1- University were allowed and the judgment of the learned Single Judge dated 10th February, 2011 passed in CWJC No. 14680 of 2020 filed by the appellant terminating their services was quashed. It was further clarified that if the respondent No.1 – University, including the Chancellor were so inclined, they would be entitled to proceed afresh with the inquiry directed to be conducted in the matter after due notice to the private respondents herein.

1 Parties have been described in the manner in which they have been arrayed in Civil Appeal No. 6232/2013.
2 Letter Patent Appeals No. 408/2011, 482/2011, 593/2011, 713/2011 and 751/2011
3 For short 'PTI'

2. We may first take note of some relevant facts of the case.

2.1. An advertisement was issued by the respondent No.1-University on 13th July, 2008, inviting applications for appointment of PTIs in four of its constituent colleges. The said advertisement laid down three specific conditions which are as follows: -

(a) Each candidate would separately apply for the post of PTI in respect of each college.
(b) The eligibility criteria for applying for the subject post was possession of a Bachelor's degree in Physical Education or Graduation with Diploma in Physical Education from a recognized institution.
(c) The age limit for all the posts was prescribed to be as per the Government rules/orders.

2.2. Pursuant to the aforesaid advertisement, the appellant and the private respondents submitted their applications along with several other applicants. All the parties submitted separate applications in respect of each of the four colleges.

2.3. It is not in dispute that the appellant and the private respondents No.5 to 8 were found eligible and were called for an interview. For conducting the interview, the respondent No.1 - University constituted a five Members' Selection Committee[4].

2.4. The Selection Committee met on 6th November, 2008 and interviewed the applicants. The Committee conducted four different sets of interviews for each candidate in respect of the applications submitted by them for four colleges in question. Thereafter, a merit list was prepared. A perusal of the said merit list reveals that though all the parties in the present proceedings were interviewed by the Selection Committee for the posts available in the four colleges on the same day but at four different times, there was a great variation in the marks assigned to the

4 *Vide* office order dated 27th October, 2008

appellant and the respondents No.5 to 8 during the interview. This aspect was particularly noticed by the learned Single Judge, who observed as follows: -

> "At this stage, I may notice one thing that stands out in the tabulation of the merit list. As noted above, all the five writ petitioners were interviewed for all the four Colleges by the same Committee of five persons allegedly four times on the same day. All other marks with regard to academic qualifications and marks for higher qualifications and experience were the same in all the four charts but the marks given in interview (viva) varied drastically. For example, petitioner, Nutan Kumari in one interview was awarded 24 marks out of 30 in another 16 out of 30 in the third 12 out of 30 and in the 4th 20 out of 30. Such erratic variation is there in all the four merit lists where someone scores less in one and more in another. University is not able to give any justification for these markings. Details of other markings will be discussed at appropriate stage. Upon tabulation of results on 14th February, 2009 University issued appointment letters in favour of the four writ petitioners leaving aside Nutan Kumari. Apparently, the four selected petitioners gave their joining immediately in February, 2009 itself. Thereafter, pursuant to the orders of the Vice-Chancellor, by office order dated 13.05.2009, the Registrar of the University fixed their pay scale at Rs.5000-150-8000."

2.5. As is evident from the aforesaid observations, the appellant was interviewed four times by the same Selection Committee on the very same day and each time, the marks assigned to her varied from 12 to 16 to 20 to 24 (out of a total of 30 marks).

2.6. In February, 2009, the four selected candidates, i.e., respondents No.5 to 8 herein, gave in their joining report and pursuant to the orders passed by the Vice-Chancellor of the respondent No.1 - University, their pay scales were fixed *vide* order dated 13th May, 2009.

2.7. It transpires from the records that immediately thereafter, complaints were received by the Chancellor of the University of Bihar in respect of the aforesaid

selection process and *vide* order dated 18th June, 2009, a three Members' Committee (Inquiry Committee) was appointed to inquire into the selection process adopted in respect of the PTIs by the respondent No.1 - University.

2.8. The appellant herein also lodged a protest with the Chancellor as to the manner in which the Selection Committee had conducted the interviews. The Inquiry Committee submitted a report to the Chancellor of the respondent No.1 - University on 7th October, 2009, recommending cancellation of the appointments made and for action to be taken against the Vice Chancellor and the Registrar of the University. On receiving the said Inquiry report, the Chancellor directed cancellation of the appointments made to the post of PTIs and further directed the respondent No.1 - University to take necessary action in terms of the communication dated 5th January, 2010.

2.9. As a result, respondent No.1 - University issued a separate letter dated 15th February, 2010 to the respondents No.5 to 8, who were selected to the subject post calling upon them to show cause as to why their appointments should not be cancelled. The said notice was challenged by the respondents No.5 to 8, who filed separate writ petitions[5] before the High Court that came to be decided by the common judgment and order dated 10th February, 2011, passed by the learned Single Judge.

5 CWJC No. 3580 of 2010, CWJC No. 3611 of 2010, CWJC No. 3713 of 2010 and CWJC No. 3724 of 2010

3. Pertinently, before notices to show cause were issued to respondents No.5 to 8, the appellant herein filed a separate writ petition[6] challenging the selection of the respondents No.5 to 8. Afterwards, all the petitions filed by the appellant and respondents No.5 to 8 were taken up together and decided by the learned Single Judge *vide* common judgment and order dated 10th February, 2011. The writ petition filed by the appellant was allowed and those filed by the respondents No.5 to 8 were dismissed. The recommendations made by the Chancellor of the University were accepted.

4. Aggrieved by the aforesaid decision, respondents No.5 to 8 preferred intra court appeals[7] before the Division Bench. By the impugned judgement, the Division Bench has set aside the well-reasoned order passed by the learned Single Judge and held that merely because there were some variations in the marks obtained by various candidates in the four different interviews conducted by the Selection Committee would alone not indicate with certainty that the selection process was grossly vitiated for requiring interference. The Division Bench frowned upon the learned Single Judge for having gone into the said issue and observed that all the candidates had been subjected to the same yardstick and therefore, no discrimination could be alleged. As a result, the writ petition[4] filed by the appellant, which was allowed by the learned Single Judge, was dismissed as meritless.

5. As far as the respondents No.5 to 8 were concerned (appellants before the

6 CWJC No. 14680 of 2009
7 Letter Patent Appeals No. 482/2011, 408/2011, 593/2011, 713/2011 and 751/2011

Division Bench), it was observed that since no notice was issued to the said respondents at the stage of the inquiry ordered by the Chancellor, respondent No.1 – University, their termination was bad in law and in violation of the principles of natural justice. Resultantly, the orders terminating the services of the private respondents, including the directions issued by the Chancellor, were quashed and set aside with liberty granted to the authorities to proceed afresh with the inquiry after due notice to the respondents.

6. It is the aforesaid judgment that has brought the appellant before this Court. Learned counsel for the appellant has primarily argued that there was no good reason for the Division Bench to have interfered in a well-reasoned and analyzed judgment passed by the learned Single Judge where all aspects were carefully considered on merits before returning the findings. It is submitted that the Division Bench has completely ignored the fact that there were drastic variations in the marks assigned to the appellant in the interview which cannot be termed as *"some variation*" as sought to be described in the impugned judgment. While in one interview, the appellant had scored 24 marks out of 30 marks, on the same day, the same Selection Committee on conducting another interview of the appellant assigned her 12 marks out of 30 marks, thus materially affecting the outcome of the selection process.

7. It is next submitted by learned counsel for the appellant that the respondent No.6 herein, Shri Chandrama Singh, who was selected and appointed as a PTI in a women's college (M.S.K.B. College, Muzaffarpur), was over-aged and therefore,

ineligible to have even applied for the subject post. Learned counsel submits that the respondent No.6 was born on 3rd April,1971; the advertisement in question was published on 13th July, 2008 and the last date of receipt of the applications was 5th August, 2008. As on 3rd April, 2007, the respondent No.6 had already completed 37 years of age and therefore, he was clearly over age on the date of the advertisement itself, i.e., on 13th July, 2008. This aspect was duly noted by the learned Single Judge and the submission made by the appellant was upheld but the Division Bench did not discuss the said issue at all in the impugned judgment.

8. On the aforesaid aspect, Dr. Adish C. Aggarwala, learned Senior Advocate appearing for the respondent No.6 seeks to place reliance on a document filed by the appellant with the appeal paper book and marked as “Annexure-P4” which is a typed copy of the file notings of the respondent No.1 - University wherein, it has been recorded by the Registrar that for the purposes of calculating the eligibility with respect to the age of the candidates, it was decided that the age shall be counted as on 1st January, 2008 since the advertisement process was commenced in the said year. The said recommendation made by the Registrar was duly approved by the Vice-Chancellor on the same day.

9. We have perused the records and given our thoughtful consideration to the arguments advanced by both sides.

10. It has been time and again held in judicial verdicts that the selection process is bound by the terms and conditions of an advertisement inviting applications from eligible candidates. Unless it can be demonstrated that an advertisement has been

issued contrary to any Statute or the applicable rules, it is binding on all the participants to the point that not even the Selection Committee has the jurisdiction to lay down a separate yardstick or basis for selection as that would be tantamount to legislating rules of selection. It is equally well settled that once the process of selection commences, the criteria prescribed in the advertisement for conducting the selection of the eligible candidates cannot be altered. There is sound logic behind the same which is that if the selection criteria is tinkered with in midstream, say for example by lowering the standards, a party can have a legitimate grievance that had it known that the criteria would be reduced subsequently, it too could have applied for the said post.

10.1. To elucidate the point above, we may usefully refer to the decision in ***Dr. Krushna Chandra Sahu and Others v. State of Orissa and Others***[8] where it has been held thus :

> "31. Now, power to make rules regulating the conditions of service of persons appointed on Government posts is available to the Governor of the State under the proviso to Article 309 and it was in exercise of this power that the present rules were made. If the statutory rules, in a given case, have not been made, either by Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions **(See: Sant Ram Sharma v. State of Rajasthan [AIR 1967 SC 1910 : (1968) 1 SCR 111 : (1968) 2 LLJ 830] .)**
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> 32. In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be de-

8 (1995) 6 SCC 1

> termined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homoeopathic Medical Officers, as the basis for determining their suitability.
>
> 33. **The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309**……"
>
> **[Emphasis added]**

(Also refer : ***B.S. Yadav and Others v. State of Haryana and Others***[9]; ***P.K. Ramachandra Iyer and Others v. Union of India and Others***[10]; ***Umesh Chandra Shukla v. Union of India and Others***[11]; and ***Durgacharan Misra v. State of Orissa***[12])

10.2. In ***Bedanga Talukdar v. Saifudaullah Khan and Others***[13], this Court highlighted the fact that any power of relaxation of the stipulated selection procedure ought to be mentioned in the advertisement in the following words:-

> "29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. **Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity**. This would be necessary to ensure that those

9 (1980) Supp. SCC 524
10 (1984) 2 SCC 141
11 (1985) 3 SCC 721
12 (1987) 4 SCC 646
13 (2011) 12 SCC 85

> candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. **Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.**
>
> 30. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India."
>
> **[Emphasis added]**

(Also refer: ***Krishna Rai and Others v. Banaras Hindu University and Others***[14]***)***

10.3. It is also a part of settled service jurisprudence that merely by applying for a post pursuant to an advertisement, a candidate does not automatically acquire any vested right of selection. He only acquires a right for being considered for selection strictly in accordance with the extant rules. This Court has held in ***N.T. Devin Katti and Others v. Karnataka Public Service Commission and Others***[15] as follows:

> "11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. **Generally, a candidate has right to be considered in accordance with the**

14 (2022) 8 SCC 713
15 (1990) 3 SCC 157

> **terms and conditions set out in the advertisement as his right crystallizes on the date of publication of advertisement, however he has no absolute right in the matter**. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. **Lest there be any confusion, we would like to make it clear 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 is accordance with the rules as they existed on the date of advertisement**. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."
>
> **[Emphasis added]**

(Also refer : ***Sureshkumar Lalitkumar Patel v. State of Gujarat***[16])

10.4. Further, once an advertisement has been issued and the selection criteria prescribed, there is little scope for relaxing the norms, more so, by the Selection Committee unless and until it can be adequately demonstrated that it had the power to do so. We may allude to a decision of this Court in ***Secretary, A.P. Public Service Commission and B. Swapna and Others***[17] which highlights the adverse consequences of interfering with the criteria of selection laid down under the rules in the following words:

16 2023 SCC OnLine SC 167
17 (2005) 4 SCC 154

> "14. The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. **(See P. Mahendran v. State of Karnataka [(1990) 1 SCC 411 : 1990 SCC (L&S) 163 : (1990) 12 ATC 727] and Gopal Krushna Rath v. M.A.A. Baig [(1999) 1 SCC 544 : 1999 SCC (L&S) 325] .)**
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> 15. Another aspect which this Court has highlighted is scope for relaxation of norms. Although the Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. **Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated.** In **P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141 : 1984 SCC (L&S) 214**] this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised."
>
> **[Emphasis added]**

11. Coming back to the case in hand, the learned Single Judge has scrupulously examined the records and the pleadings in the petitions and made the following pertinent observations in respect of the selection process adopted by the Selection

Committee constituted by the respondent No.1 - University :

> "There are three types of physical education qualification. The first is a three year physical education course after Intermediate resulting in degree of B.P.E. The second is a three year Graduation course in any subject after Intermediate plus one year physical education course conducted by University leading to B.P. Ed. Degree and the third is three year Graduation course in any subject after Intermediate and one year physical education diploma course conducted by School Examination Board leading to D.P. Ed. The selection committee on the date of interview evolved marking system for Graduation level which as noted above was as follows.
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> For candidates with B.P.E and B.P. Ed. their marks scored in B.P.E and B.P. Ed. were only taken and in a graded manner. If they had scored more than 75% they were awarded 40 out of 40, if they scored 60-75% they were awarded 30 out of 40, if they had scored 45-60% they were awarded 25 out of 40 and if they had scored below 45% they were awarded 20 out of 40 but when it came to D.P. Ed. their marks scored were calculated differently. Their marks out of 40 for Graduation was split into two of 20 marks each, 20 marks for their three years Graduation course and only 20 marks maximum for their physical education course. The result was that though petitioner, Nutan Kumari had 83.6% in D.P. Ed., she was awarded only 20 marks, whereas others who had scored lesser marks in physical education but had B.P.E. or B.P. Ed. were given higher marks on that basis ignoring their Graduation or other marks. For example, Ravi Shankar Kumar who had got 80% was given 40 marks, Mithilesh Kumar Mani who had scored 72.6% was given 30 marks, Chandrama Singh who had scored 55% was given 25 marks and Sanjay Kumar Singh scored 57% was given 25 marks.
>
> Then the challenge is to the marks on higher qualification and experience. It is submitted that the two are different criterion but the total marks combined has been fixed at 10 not disclosing any bifurcation or any criteria.
>
> Then is the marks for viva (interview), which is 30% of the total marks, as noted in the very beginning, the same set of five members on the same day interviewed the selected candidates four times, one time each for each College and gave drastically different marks. First, in this regard it is submitted that this shows the erratic irrational marking on subjective satisfaction, which interview marks being as high as 30% is irrational, especially, when it is showed that the difference between selection and non-selection was barely a few marks."

12. After carefully examining the entire records, the learned Single Judge has made the following pertinent observations:-

"Having considered the rival submissions, in my view, the hostile discrimination and arbitrariness is writ large on the face of the records. No one with any amount of reasonable certainty knew the selection procedure or the process. It stands undisputed that the criterion were laid down only on the date of interview even then it was not made known to people. This is a clear cut case of bad and wrong administrative action. There is absolutely no transparency and such process cannot be sanctified by the Court. On top of it to say that petitioner, Nutan Kumari had participated in the selection process and, as such, could not challenge it after appointments were made, would be travesty of justice. Anyone could have challenged the criteria if they were disclosed in the advertisement or before the interview or before the selection but all that was kept secret. That came to be known much later after appointments were made. That cannot estop Nutan Kumari from challenging what she did not know and what was never made public. This objection by the University and the other petitioners cannot be sustained. In my view, the law is settled. **If a person participates in selection process with his eyes open knowing the selection process then upon failure to get selected he cannot turn around and challenge the same. He would be deemed to have acquiescence to the same. That is not at all the case in the present as noted above. Nutan Kumari challenged the process even before the enquiry committee gave its report. The challenge cannot be said to be belated in any aspect of the matter. The criterion were not disclosed. It is only after the criterion were disclosed to some extent can it be said that a person was in a position to challenge.** If that is kept in mind it would be seen that there was no unreasonable delay in the challenge at all. Moreover, the extent of arbitrariness in the selection process, as would be noticed, fully justifies in setting aside the selection process and the selection itself.

Now, coming to the markings in respect of Graduation. As noted above, there are three types of physical education courses. One is a three year course after Intermediate and the other two being one year courses after three years Graduation in any subject. It matters little whether it is a one year Diploma course or one year degree course because under statute University alone can grant degree, the School Examination Board cannot and that is the only reason for this distinction. **If classification had to be made, subject to it being reasonable, it could be between the three years physical education course and the one year physical education course but the moot point to be noted here is that in the advertisement all are treated similarly for eligibility with no preference. or**

> **distinctions. If the advertisement itself did not provide for any differentiation or different treatment then at the time of evaluation no new criteria could be laid down.** The effect is evident from the marks sheet of petitioner, Nutan Kumari. She got 83.6% marks in D.P.Ed and in three years Graduation course she had got 48.8%. Thus, totally she was given 32 marks being 20 plus 12 respectively out of 40 marks. Ravi Shankar Kumar, had 80% either in B.P.E. or B.P.Ed. he was given 40 marks out of 40. **There are various instances, as noted earlier, to show the arbitrary results of this arbitrary criteria, which criteria, as noted above, was decided at the time of interview. When all applications had been scrutinized the assertion that these criterion were evolved to promote certain candidates cannot, thus, be said to be unfounded.**
>
> **Again, when we come to marks of higher qualifications and experience, no one has disclosed as to what was the criteria of awarding marks under this head. Again, it is left to the whims of the selection committee which cannot be countenanced. Again, we come to the case of marks for interview, the things are worst. The same set of five people on the same day interviewed all the five petitioners four times. for the same job and in each interview the marks drastically varied.** These are subjective evaluation based on subjective satisfaction it is these marks which have made substantial difference, as noted above, the margin being very small. Apart from this, to this Court it appears that subjective marks cannot be, in the nature of appointment, as high as 30%. These two things coupled together make the process quite arbitrary and discriminatory. Thus, the process as a whole as adopted cannot be said to be valid in law. The process must thus be struck down and is struck down. Consequently, it is held that the selection was bad."
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> **[Emphasis added]**

13. As can be seen from the above, the learned Single Judge took pains to scrutinize the entire process adopted by the Selection Committee and returned a finding that the same was arbitrary, irrational and liable to be set aside. We are in concurrence with the said findings returned by the learned Single Judge.

14. Keeping in mind the challenge laid by the appellant herein to the selection process what emerges from the observations made by the learned Single Judge is

as follows:-

(i) That the Selection Committee proceeded to fix the criteria for assigning marks to the candidates on the date of conducting the interviews. The said criteria was neither revealed in the advertisement, nor disclosed to the candidates prior to or even at the time of conducting the interviews.

(ii) That though the advertisement only laid down the eligibility criteria by virtue of the qualifications prescribed for inviting applications from applicants, the Selection Committee on its own fixed a total of 100 marks and assigned different marks for different academic qualifications, i.e., 10 marks for matriculation, 10 marks for intermediate and 40 marks for graduation.

(iii) That the marks for the interview were fixed by the Selection Committee as 30 per cent of the total marks on the day of the interview itself. Instead of conducting a single interview for each candidate particularly, since all of them had applied and submitted separate applications for seeking appointment in the four constituent colleges under the respondent No.1 – University, the Committee decided to conduct four sets of interviews in respect of each of the candidates who had applied for appointment in different colleges. A close look at the marks assigned in the interviews showed the erratic assessment made by the Members of the Selection Committee.

15. In view of the above facts and circumstances, the learned Single Judge rightly

concluded that the entire process adopted by the Selection Committee was vitiated and could not withstand judicial scrutiny.

16. As for the respondent No.6, besides the observations made above, we may additionally note that the maximum age limit for appointment to the subject post as prescribed by the State Government for General category male candidates, which in the instant case all the private respondents before the Court fall under, was 37 years and for the unreserved Category (Women) was 40 years. In the counter affidavit filed by the respondent No.3, Registrar, University of Bihar, it has been stated in paragraph 14 as follows:-

> *"That in reply to paragraph 5(c) of ground it is stated that as contained in advertisement, the age limit for the post will be applicable as per Government Rule or Order. It is stated that the Government has provided the cut off date to be 1st of August, of the each year for determination of age."*

17. In the light of the aforesaid categorical stand taken by the respondent No.1 - University that the cut-off date for determining the age limit of the applicants in terms of the applicable rules was to be taken as the first day of August of each year, which in the present case would mean 1st August, 2008, quite evidently, the respondent No.6 was not qualified for even applying for the subject post, having crossed the maximum age prescribed for a general category (Male) candidate, i.e., 37 years. In any event, the Government Rule/ Order mentioned in the advertisement having been elaborated by the respondent No.3 in the counter affidavit, any reliance sought to be placed by the respondents No.5 to 8 on the internal file notings of the University that too, much after the date of issuance of the advertisement (25th October, 2008 to 27th

October, 2008), would not be of any consequence.

18. As a result of the aforesaid discussion, we are of the opinion that the impugned judgment cannot be sustained and the same is accordingly quashed and set aside. The judgment of the learned Single Judge dated 10th February, 2011 is restored. As a sequitur to the aforesaid order, the appointment orders in respect of the respondents No.5, 7 and 8 are quashed and set aside. It is further held that the respondent No.6 being ineligible for applying to the subject post, his application ought to have been rejected outright and therefore, his appointment order is hereby quashed. This leaves us with four posts of PTI's in four constituent colleges under the respondent No.1 - University that are required to be filled up. For this purpose, it is deemed appropriate to direct the University to constitute a Selection Committee, which shall consider the candidature of the appellant and the respondents No.5, 7 and 8. The Selection Committee shall conduct a single interview in respect of the aforesaid candidates irrespective of the number of applications that they may have been filed for the subject posts. While conducting the interview, no separate marks shall be assigned for the different qualifications possessed by the candidates inasmuch as the advertisement issued by the respondent No.1 - University did not contain any such stipulation.

19. A common merit list shall be prepared by the Selection Committee, keeping in mind the qualifications of each of the aforesaid candidates as also the marks allocated to them in the interview to be conducted. Thereafter, a seniority list shall be drawn and the candidates shall be assigned to the respective colleges, in

accordance with the said list. The entire exercise shall be completed within eight weeks from the date of constitution of the Committee and the results shall be declared under intimation to the appellant and the respondents No. 5, 7 and 8.

20. It is further directed that in view of the past history of the matter where serious allegations were levelled against the Vice-Chancellor and the Registrar of the respondent No.1 - University and the report submitted by the Inquiry Committee constituted by the Vice-Chancellor has indicted the aforesaid officers, we leave it to the discretion of the Chancellor to constitute a Selection Committee in accordance with law within four weeks from the date a copy of this order is placed before him.

21. It is made clear that since no other candidate had approached the High Court except for the appellant herein and the respondents No.5 to 8, the selection process shall be confined to the said parties alone.

22. The civil appeals are allowed and disposed of on the above terms. There shall be no orders as to costs.

……J.
(HIMA KOHLI)

……J.
(AHSANUDDIN AMANULLAH)

NEW DELHI;
12th October, 2023