

**THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

**WRIT PETITION No.31494 of 2016**

**ORDER:**

This writ petition is filed seeking to declare the order of selection, dated 20.06.2016 and the consequential order of appointment dated 22.06.2016, both passed by respondent No.1 appointing respondent No.3 as Assistant Director (PHM), as illegal and arbitrary and consequently direct respondent Nos.1 and 2 to appoint the petitioner as Assistant Director (PHM) at NIPHM from the date on which respondent No.3 was appointed, with all consequential benefits like seniority, arrears of pay, etc.

2. Heard the submissions of Dr.K.Laxmi Narasimha, learned counsel for the petitioner, Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing for respondent Nos.1 and 2 and Sri Goda Siva, learned Senior Counsel appearing for Ms.Goda Rama Lakshmi, learned counsel for respondent No.3 and perused the record.

3. The petitioner was appointed as a Scientific Officer (Bio pesticide and Bio control) in the 1<sup>st</sup> respondent institution on 02.05.2011 on deputation basis initially for a period of two years and subsequently, she was appointed on regular basis under direct recruitment. Her probation was also declared in the said post with

effect from 05.06.2013. When respondent No.1 has issued notification No.1 of 2016 to fill up, among other posts, one post of Assistant Director (PHM) Agri by way of direct recruitment or on deputation basis, the petitioner has participated in the selection process. Ultimately, when respondent No.3 was declared selected *vide* impugned order, dated 20.06.2016, the petitioner has challenged the same before the Central Administrative Tribunal, Hyderabad by filing O.A.No.721 of 2016, which was dismissed by the Tribunal *vide* order, dated 31.08.2016 on the ground that it lacks jurisdiction to try the said O.A, and petitioner was granted liberty to approach appropriate forum for redressal of her grievance. Hence, this writ petition.

4. Learned Counsel for the petitioner would submit that the selection of respondent No.3 to the subject post i.e., Assistant Director (PHM) Agri is illegal, arbitrary and bad in law. He contends that as per the notification, the selection should be made on the basis of written test, power point presentation and interview only, however, the Selection Committee, without any authority, has evolved its own method of selection, by giving weightage marks of 5 for M.Sc, 5 for Ph.D, 5 for work recognition, 5 for experience, 10 for advanced training, 10 for publications in journals, 20 for written test, 15 for presentation and 25 for interview, totalling to 100 marks. It is

also submitted that limiting the weightage marks for written examination to 20 and giving weightage marks of 25 for interview, vitiates the entire selection process.

5. In support of his contentions, learned counsel for the petitioner has relied on the following decisions:

1. **Umesh Chandra Shukla vs. Union of India**<sup>1</sup>
2. **Durgacharan Misra vs. State of Orissa**<sup>2</sup>
3. **Dr.Krushna Chandra Sahu and others vs. State of Orissa**<sup>3</sup>
4. **Manjusree vs. State of A.P.**<sup>4</sup>
5. **Hemani Malhotra vs. High Court of Delhi**<sup>5</sup>
6. **Mohd. Sohrab Kham vs. Aligarh Muslim University and others**<sup>6</sup>
7. **Bedanga Talukdar vs. Saifudaullah Khan and others**<sup>7</sup>
8. **Bishnu Biswas and others vs. UOI and others**<sup>8</sup>
9. **Sanjay K Dixit and others vs. State of U.P.**<sup>9</sup>
10. **Nitesh Kumar Pandey vs. State of Madhya Pradesh**<sup>10</sup>
11. **Ramjit Singh Kardam and others vs. Sanjeev Kumar and others**<sup>11</sup>

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<sup>1</sup> (1985) 3 SCC 721

<sup>2</sup> (1987) 4 SCC 646

<sup>3</sup> (1995) 6 SCC 1

<sup>4</sup> (2008) 3 SCC 512

<sup>5</sup> (2008) 7 SCC 11

<sup>6</sup> (2009) 4 SCC 555

<sup>7</sup> (2011) 12 SCC 85

<sup>8</sup> (2014) 5 SCC 774

<sup>9</sup> 2019 SCC Online SC 260

<sup>10</sup> (2020) 4 SCC 70

<sup>11</sup> (2020) 20 SCC 209

**12. Krishna Rai (dead) through LRs and others vs. Banaras Hindu University through Registrar and others<sup>12</sup>**

**13. Sureshkumar Lalithkumar Patel and others vs. State of Gujarat and others<sup>13</sup>**

6. Respondent Nos.1 and 2 have filed counter-affidavit stating that the Director General of respondent No.1-Institution constitutes expert committees (including outside experts) for filling up various posts in the Institution. In the present case, the selection committee consisted of five experts in their respective fields and the said selection committee has adopted the same guidelines as adopted on earlier occasions and in fact, the petitioner has also gone through the similar selection process and got selected for the post of Scientific Officer as a direct recruitee during the year 2011. Thus, having gone through the similar selection process earlier to the post which is being held by the petitioner at present, she cannot contend that the said process is illegal. It is stated that the unofficial respondent No.3 was selected based on the marks/merit secured by her in accordance with the approved guidelines. It is admitted that in the notification, though no weightage marks were prescribed for the written test, the written test was conducted for 80 marks and 20 marks weightage was given. Interview was also conducted for 45 marks and 25 marks weightage was given to the same. It is stated that a logical and

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<sup>12</sup> (2022) 8 SCC 713

<sup>13</sup> 2023 SCC Online SC 167

impartial procedure to test the suitability of the candidates was followed as has been done on earlier occasions, therefore, there is absolutely no merit in the writ petition and the same is liable to be dismissed.

7. Respondent No.3 i.e. the unofficial respondent who got selected pursuant to the present notification, has filed separate counter-affidavit apart from adopting the contents of the counter filed by respondent Nos.1 and 2. It is stated by respondent No.3 that pursuant to the notification issued by the respondents, she participated in the selection process and got selected to the post of Assistant Director (PHM) Agriculture and is discharging her duties as such. It is stated that though the selection process was completed and appointment letter was issued to her on 22.06.2016 itself and in spite of being aware of all the proceedings, the petitioner has kept quiet and has filed the present writ petition belatedly on 16.09.2016 without valid ground to interfere with the selection process adopted by the respondents. Accordingly, she prayed for dismissal of the writ petition.

8. Case of the petitioner is that as per the notification, selection to the post of Assistant Director (PHM) Agri will be based on the written test, power point presentation and interview and no specific marks are prescribed under the said three heads. However, the

Selection Committee has revealed the guidelines followed by it only on 16.06.2016 i.e. on which date, the written test, power point presentation and interviews were conducted. The said guidelines reveal allocation of weightage marks, i.e., 5 marks for M.Sc., 5 for Ph.D., 5 for work recognition, 5 for experience, 10 for advance training, 10 for publications in journals, 20 for written test, 15 for presentation and 25 for interview, totalling to 100 marks, which is not permissible.

9. Coming to the judgments relied on by the learned counsel for petitioner;

In **Umesh Chandra Shukla's case** (1 supra), when moderation of marks was done at the instance of High Court after announcing list of candidates qualified for viva voce test with a view to qualify those who failed but for one or two marks only and a second list was brought out including few more candidates for viva voce test, it is held that addition of marks by way of moderation is illegal, unfair, arbitrary and invalid. It is also held that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in aggregate, different from the minimum already prescribed by the Rules.

In **Durgacharan Misra's case** (2 supra), it is held that minimum qualifying marks for viva voce test cannot be prescribed by the selecting body in the absence of such a provision in the statutory rules.

In **Dr. Krushna Chandra Sahu & others v. State of Orissa & others** (3 supra), it is held that selection criteria cannot be laid by the Selection Board or Selection Committee unless specifically authorized. It is also held that 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 authorized specifically in that regard by the Rules made under Article 309.

In **K. Manjusree v. State of Andhra Pradesh & another** (4 supra), it is held that introduction of the requirement of 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. It is also held that power to prescribe minimum marks in the interview should be explicit and cannot be read by implication for the obvious reason that such deviation from the Rules is likely to cause irreparable and irreversible harm.

In **Hemani Malhotra v. High Court of Delhi** (5 supra), it is held that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before commencement of selection process, the authority concerned cannot, either during the selection process or after the selection process, add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Changing rules of the game during selection process or when it is over is not

permissible. In this case, initially there was prescription of minimum marks for written test only and not for viva voce, however, minimum marks for viva voce was prescribed after written test was over, it is held that same is not permissible, as introduction of the requirement of minimum marks for interview after the entire selection process was completed, would amount to changing the rules of the game after the game was played.

In **Mohd. Suhrab Khan v. Aligarh Muslim University & others** (6 supra), it is held that generally, decision of Selection Committee, which is an expert body, should be respected but Selection Committee cannot change selection criteria/qualification midway.

In **Bedanga Talukdar v. Saifudaullah Khan & others** (7 supra), it is held that the selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of relaxation is or is not provided in relevant rules, it must be mentioned in advertisement. Such power, if exercised should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution.



In **Bishnu Biswas & others v. Union of India & others** (8 supra) and in **Sanjay K. Dixit & others v. State of Uttar Pradesh & others** (9 supra), it is held that when recruitment rules provide only for written examination, interviews cannot be conducted.

In **Nitesh Kumar Pandey v. State of Madhya Pradesh** (10 supra), it is held that when scheme applicable to entire State is made under common guidelines, alteration of requirement by prescribing additional criteria only in respect of one District without such authority to do so, is unsustainable.

In **Ramjit Singh Kardam & others v. Sanjeev Kumar & others** (11 supra), it is held that the candidates who participates in the selection process cannot turn around and challenge the criteria of selection and constitution of Selection Committee. However, in the absence of any criteria being published by the Commission on basis whereof candidates were going to be selected and candidates participated in the process and said criteria being published for the first time along with final result, candidates cannot be stopped from challenging the selection criteria and process.

In **Krishna Rai (dead) through Legal Representatives v. Banaras Hindu University through its Registrar & others** (12 supra), it is held that where law requires something to be done in a particular manner and if it is not done in that manner, it would have no existence in law. It is also held that if the Selection Board/Board of Examiners violates the criteria laid down under the Statutory Rules, the principle of estoppel is not applicable.

In **Suresh Kumar Lalitkumar Patel & others v. State of Gujarat & others** (13 supra), it is held that an advertisement made pursuant to a notification, binds the parties. It has got all the trappings of a statutory prescription, unless it becomes contrary to either a rule or an Act. A change, if any, can only be brought forth by way of an amendment and nothing else. Such an amendment even if it is permissible can be tested on the touchstone of Article 14 of the Constitution of India.

All the aforesaid judgments relied on by the learned counsel for petitioner are applicable to the facts of the present case, as the sum and substance of the law laid down in those judgments is that the Selecting Body/Board cannot change the method of selection or cannot allocate weightage marks under different heads in the midstream, without rules provide for that and without prior intimation to the aspiring candidates, as has been done in the present case.

10. On the other hand, the learned Senior Counsel appearing for respondent No.3 has contended that the petitioner, having participated in the selection process which was followed on earlier occasion also when she was selected as a Scientific Officer, cannot challenge the same when she is not selected to the present post. In support of his contentions, the learned counsel for respondent No.3 has relied on the following judgments:

In **Siya Ram v. Union of India and others**<sup>14</sup>, it is held that it is not for the Court to suggest as to what marks should be allocated for interview and sometimes, only interview is considered to be best method of selection for certain posts.

In **Rajya Sabha Secretariat and others v. Subhas Baloda and others**<sup>15</sup>, wherein it is held that if the candidates are adequately communicated about allocation of marks for interview etc. by way of advertisement or call letter, then such allocation of marks is permissible.

Both the above judgments are not applicable to the facts of the present case, as in the present case, the candidates are not informed about the allocation of marks under different categories, till the date of written examination, power point presentation and interview.

In **Javid Rasool Bhat and others v. State of Jammu and Kashmir and others**<sup>16</sup>, which relates to admissions in universities, where, an allegation is made that a member of Selection Committee was closely associated to a candidate.

This judgment is also not applicable to the present case, as it relates to admission of students into university.

In **K.Manjusree v. State of Andhra Pradesh and another**<sup>17</sup>, wherein, it is held that the selection criteria has to be prescribed in advance and the rules of the game cannot be changed afterwards.

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<sup>14</sup> (1998)2 SCC 566

<sup>15</sup> (2013)5 SCC 169

<sup>16</sup> (1984)2 SCC 631

<sup>17</sup> (2008)3 SCC 512

This judgment is not applicable to the case of the respondents, but rather it is applicable to the case of the petitioner, as in the present case, the method of selection was changed in the midstream.

In **Lila Dhar vs. State of Rajasthan and others**<sup>18</sup>, wherein, it is held that it is for the interviewing committee to take a general decision whether to allocate marks under different heads or to award marks in a single lot.

Though there is no dispute with regard to the law laid down in this judgment, in the present case, the issue relates to non-communication of the selection process in advance, to the candidates. There ought not have been any objection had the selection process been informed to the candidates well in advance. Therefore, this judgment is also not helpful to the respondents.

In **Srinivas K.Gouda vs. Karnataka Institute of Medical Sciences and others**<sup>19</sup>, wherein, while dealing with the aspect of splitting up of marks for experience and personality after publication of advertisement, the Hon'ble Supreme Court has held that the Courts cannot sit in appeal over the decision of Selection Committee. The Court has to decline to interfere in the matter in the absence of any challenge to the entire selection list.

This judgment is also not applicable to the facts of the present case, as in the present case, there is no selection list of candidates, as

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<sup>18</sup> (1981)4 SCC 159

<sup>19</sup> (2022)1 SCC 49

there is only one post for which notification is issued and respondent No.3 is selected to the said post.

11. In the instant case, respondent No.1 did neither issue any administrative instructions nor did it supply the criteria on the basis of which suitability of the candidates was to be determined. The members of the selection committee, on their own, decided to adopt the modalities and proceeded with the same. The members of the selection board are for that matter, any other selection committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorized specifically in that regard. It is basically the function of the rule making authority to provide the basis for the selection. The selection committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In the instant case, by necessary inference, there is no such power given to the selection committee to adopt its own methodology for selection. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm. Thus, the selection committee does not possess any inherent power to lay down its own standards in addition to what was prescribed under the rules. Admittedly, in the present notification, only three heads were prescribed i.e. written test, PPT and interview for selection to the

subject post of Assistant Director (PHM) Agri. But the selection committee, in the midway i.e. after conducting the written examination, laid down its own norms in addition to what was prescribed in the notification and went on with the said process. Therefore, allocating marks under different heads by the selection committee in addition to what was mentioned in the notification, that too, in the midst of the selection process i.e. after conducting the written examination, would amount to changing the rules of the game after the game has started, which is clearly impermissible. The power to prescribe marks under various heads should be explicit, which is patently absent in the instant case. Nothing prevented respondent No.1 from laying down the methodology adopted by the selection committee in the notification itself. Having not done so, respondent No.1 cannot be permitted to change the rules of the game after it has started. Viewed thus, this Court is of the considered opinion that the selection process adopted by the selection committee in the instant case is illegal and arbitrary and the same is liable to be set aside.

12. Accordingly, the Writ Petition is disposed of with the following directions:

1. The selection process undertaken by the selection committee pursuant to notification No.1 of 2016 is hereby set aside holding the same as illegal and arbitrary.

2. Consequently, the order dated 20.06.2016 passed in F.No.2(310)2016-rf.AD(PHM)-Estt, selecting respondent No.3 to the post of Assistant Director (PHM) Agri at respondent No.1-Institute and the consequential offer of appointment vide F.No.2(310)2016-rf.AD(PHM)-Estt, dated 22.06.2016 are hereby set aside.
3. The respondents are directed to issue a comprehensive notification for the post of Assistant Director (PHM) Agri afresh containing all the norms for selection and select a candidate pursuant to the same basing on merit, within a period of four(4) months from the date of receipt of a copy of this order.

Pending miscellaneous applications, if any, shall stand closed.

There shall be no orders as to costs.

Date: 28.08.2023  
ssp/ajr

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**JUVVADI SRIDEVI, J**