

# SUPREME COURT OF INDIA

Veerendra Kr.Gautam & Ors.

Vs.

Karuna Nidhan Upadhyay & Ors.

C.A.No.3361 of 2015

(Fakkir Mohamed Ibrahim Kalifulla and S.A.Bobde,JJ.,)

15.07.2016

## JUDGMENT

### **Fakkir Mohamed Ibrahim Kalifulla,J.,**

1. These appeals are directed against the common judgment of the Division Bench of the High of Allahabad dated 23.04.2012 in Writ Application No.34198 of 2008 etc. batch, by which, the Division Bench dealt with the challenge made to the selection dated 15.05.2007, to the post of Principals in the Degree Colleges in the State of Uttar Pradesh and the selection dated 30.06.2008 and 02.07.2008 to the post of Principals in different Post Graduate Colleges also in the State of Uttar Pradesh. While dealing with the said challenges made, the Division Bench ultimately set aside the select list dated 30.06.2008 and 02.07.2008 as well as the select list dated 15.05.2007 in respect of the Principals to P.G Colleges and degree colleges respectively by allowing W.P.No.34198 of 2008 along with connected writ petitions of Group-I and writ petition No.44358 of 2007. By the very same impugned judgment the Division Bench also dealt with another writ petition in W.P.No.70062 of 2006, by which, some of the selected candidates applied for Mandamus to give effect to the recommendations dated 15.05.2007 and simultaneously prayed for quashing the order of the State Government dated 12.06.2007, by which the State Government appointed the Divisional Commissioner, Allahabad to hold the preliminary enquiry regarding allegations against the selection dated 15.05.2007. In the very same writ petition, prayer was also made for quashing the order dated 16.06.2007 of the Divisional Commissioner by which certain information was called for from the Uttar Pradesh Higher Education Services Commission, Director of Education, who also issued a direction not to give any posting in pursuance of the select list dated 15.05.2007.

2. Brief facts which are required to be stated are that there were many number of post graduate and degree colleges situated in the State of U.P. affiliated to the University Governed by U.P. State Universities Act, 1973. The selection and appointment in the post graduate and degree colleges were earlier made by the respective colleges in accordance with the provisions of the U.P. State Universities Act, 1973 (hereinafter called the '1973 Act'). As

there were numerous complaints regarding the selection of candidates for both the post of Teachers as well as the Principals in the post graduate colleges as well as the degree colleges, the State Government enacted U.P. Higher Education Services Commission Act, 1980 (hereinafter called the 1980 Act) to establish a Service Commission for the selection of Teachers which includes the post of Principals for appointment to the colleges affiliated to or recognized by the University under the 1973 Act. The Commission consisted of a Chairman and not less than two and not more than six members to be appointed by the State Government. The management of the colleges were expected to intimate the existing as well as future vacancies in the course of the ensuing academic year to the Director of Education and the Director in turn was required to notify the vacancies to the Commission. The Commission thereafter undertakes the process of selection in accordance with the Act, Rules and Regulations. At this juncture, it is necessary to note the relevant provisions of the 1980 Act as well as the relevant provisions in the Regulations and the Rules formulated under the provision of the 1980 Act.

3. Under Section 4(1) of 1980 Act it is stipulated that the Commission shall consist of a Chairman and not less than two and not more than six other members to be appointed by the State Government. Sub Section (2) of Section 4 prescribes the qualification for appointment as a Chairman. What is relevant for our purpose is Section (4)(2)(e) as per which, a person will be held to be qualified to be appointed as Chairman, if he is in the opinion of the State Government an eminent person having made valuable contribution in the field of education. Sub-Section (2-a) of Section 4 prescribes the qualification for appointment of members. Here again, under Section 4(2-a)(g) it is stipulated that a person shall be qualified for appointment as a member if in the opinion of the State Government he is an eminent person having made valuable contribution in the field of education. Section 8 of the Act prescribes that no act or proceeding of the Commission shall be deemed to be invalid merely on the ground of any defect or irregularity in such act or proceeding not affecting the substance. It also stipulates that such invalidity will not take place on the ground of any vacancy or defect in the constitution of the Commission or any defect or irregularity in the appointment of a person acting as a member thereof. The powers and duties of the Commission have been set out in Section 11. Under Section 11(b), the Commission is empowered to conduct examinations, where consider necessary, hold interviews and make selection of candidates for being appointed as such Teachers. Under Section 12(4) it is stipulated that the manner of selection of persons for appointment to the post of a Teacher of a College shall be, as may be determined by the Regulations. Under Section 31, the Commission has been empowered, with the previous approval of the State Government, to make Regulations, among other things for conducting examinations, holding interviews and for laying down the procedure to be followed by the Commission for discharging its duties and performing its functions under the Act.

4. By virtue of the powers under Section 31 of the 1980 Act, the Uttar Pradesh Higher Education Services Commission (Procedure for Selection of Teachers) Regulations 1983 (hereinafter called the 1983 Regulations) came to be framed and was notified on 20.08.1983. Regulation 2(h) defines a 'Teacher' to mean a person employed for imparting instructions in a college and includes a Principal. The qualification, experience etc., for appointment as a

Teacher has been set out in Regulation 3, as per which, the minimum qualification for appointment of a Teacher shall be as given in the Statutes referred to in Section 50 of the Uttar Pradesh State Universities Act, 1973. Regulation 6 is an important provision which requires to be considered in detail in these appeals and therefore the whole of Regulation 6 is extracted, which reads as under:

"6. Procedure for selection. – (1) The Commission shall scrutinize the applications and call for interview such number of candidates as it may consider proper : Provided that, if on account of excess number of applications or for any other reasons, the Commission considers it desirable to limit the number of candidates to be called for interview, it may–

(i) in the case of the post of a teacher, not being the post of principal, either hold preliminary screening on the basis of academic record or hold a competitive examination, so however that no competitive examination shall be held before the recruitment year 1984.

(ii) in the case of the post of the Principal, hold preliminary screening on the basis of academic record, teaching the administrative experience ; Provided further that the number of candidates to be called for interview for any category of post shall, as far as possible, be between three to eight times the vacancies as the Commission may consider proper.

(2) The Commission shall interview the candidates in accordance with the criteria, minimum standards and guidelines set out by it. The Commission may, if it considers necessary, hold practical test also as part of interview.

(3) No candidate shall be recommended unless at least one expert concurs with the selection.

(4) The Commission shall prepare two separate lists of selected candidates, one of the women candidates only and the other a 'general list' of all the candidates (including women candidates included in the first list). The names of women candidates who specifically opt not to be posted in women's colleges shall not be included in the list of women candidates. The names of the candidates in the two lists shall be arranged in order of merit and the number of names shall not be more than three times the number of vacancies or the number of vacancies plus four whichever is more."

5. Under the Uttar Pradesh Higher Education Services Commission (Procedure and Conduct of Business) Regulations 1983, provision of Constitution of Interview Board, Constitution of panel of experts in the Interview Board are all set out. These are the Statutory provisions which are required to be noted while dealing with these appeals where a challenge to the Division Bench order is made.

6. The Division Bench having considered the various submissions of the respective parties formulated the following issues for consideration which are as under:

- "1. Whether the writ petition No. 34198 of 2008, Dr. Karuna Nidhan and another Vs. State of U.P. and others is liable to be dismissed since the petitioner's earlier two writ petitions were dismissed as withdrawn on 3.7.2008 without obtaining any leave to file a fresh writ petition?
2. Whether the appointment of Members of U.P. Higher Education Service Commission respondents No. 4 to 13 in writ petition No. 34198 of 2008 were invalid and the said appointments are liable to be set aside?
3. Whether the members of selection Board should be higher in rank and stature to the candidate whom they are going to interview?
4. Whether U.P. Higher Education Services Commission has framed appropriate guidelines providing for criteria, minimum standard, for conducting selection as provided by Regulation 6(2) of Regulations 1983?
5. Whether the Commission has truthfully followed the screening guidelines fixed by it for calling the candidates to appear in the interview for the selection?
6. Whether the Commission having fixed the ratio of candidates to be called i.e. 1:8 with regard to advertisement No. 39 vide its meeting dated 13.5.2008 was justified in calling the candidates in excess of ratio 1:8?
7. Whether several candidates who had been called for interview and selected did not fulfill the minimum qualification as required?
8. Whether five women candidates, who had applied for being considered against the male category posts were illegally shifted to the post meant for female category permitting five candidates to be included in the select list, who could not have been otherwise included in the select list against the Principal of male category?
9. Whether the procedure adopted by the Commission in conducting selection of Principals of post graduate and degree colleges was fair, reasonable and in accordance with the provisions of the Act, Regulations and the Guidelines?
10. Whether against the post of Principal which is single post in an institution, horizontal reservation for physically handicapped and dependent of freedom fighter is applicable and the selection made of reserved categories candidates namely; dependent of freedom fighter and physically handicapped is valid who otherwise could not have been included in the select list?

11. Whether the petitioners who had participated in the interview are estopped by their conduct and cannot be allowed to challenge the selection on the post of Principal declared on 15.5.2007 and 30.6.2008/2.7.2008?

12. Whether the State Government had power and jurisdiction to direct for inquiry regarding process of selection conducted by the Higher Education Service Commission in exercise of its power either under section 6 of the Act or in exercise of the executive power as provided under the Constitution?

13. To what relief the petitioners are entitled in these writ petitions?"

7. On issue No.1 the Division Bench took the view that the writ petition was maintainable, that the writ petitioners were entitled to challenge the ultimate selection made in the select list dated 15.05.2007,30.06.2008 and 02.07.2008. As far as the challenge made based on invalid appointment of the Members of the Commission, who were arrayed as respondent Nos.4 to 9 in the writ petition, the Division Bench found that those respondents had since subsequently ceased to be members of the Commission, held that there was no scope to examine the validity of their appointment as members of the Commission, but applying the de facto doctrine, proceeded to hold that strict analysis of the selection made by those members was necessitated.

8. On the above said basis, the Division Bench proceeded to deal with the other issues formulated by it. The Division Bench in its ultimate analysis held that there were serious lapses in the procedure followed by the Commission in making the selection for the post of Principals of the Post Graduate as well as Degree colleges in as much as the Regulation 6 of the 1983 Regulation was not strictly followed and that the necessary guidelines under the said Regulation were not formulated both for screening the candidates as well as in the matter of holding the interview, apart from serious violation in the matter of calling of the candidates for interview beyond the prescribed limit as provided under the Regulation 6. It was on the above said basis, the Division Bench ultimately, set aside the entire selection and directed the State Government to redo the selection afresh.

9. Before proceeding further it will be necessary to make reference to an earlier judgment of this Court in Civil Appeal No.2351 of 2011 along with connected civil appeals and transfer petitions reported in *State of Uttar Pradesh and others Vs. Bharat Singh and others'* wherein, this very selection came to be considered under different circumstances. In the said appeal the challenge was to a judgment of the Allahabad High Court dated 07.08.2008, by which the High Court directed the Director, Higher Education to give effect to the recommendation made by the U.P. Higher Education Service Commission for the post of Principals in aided / affiliated degree colleges. The State Government was aggrieved in as much as the State Government had earlier directed for holding an enquiry into the misfeasance in the matter of selection made by the Commission, which was the subject matter of challenge before the High Court. This Court while holding that the selection was for the post of Principal to different colleges and since the selection was being made for a single post, Rule of Reservation will not apply, that the order dated 12.06.2007 issued by the Government

appointing the Divisional Commissioner, Allahabad as an Enquiry Officer to hold an enquiry into the validity of selection process and the report submitted by the said Enquiry Officer, shall stand quashed and the order of the High Court to that effect was affirmed. However, this Court took note of the pending writ petitions in the High Court wherein, challenge to the selection was substantially raised and held that the High Court was free to examine all issues regarding the selection process in question including the validity of the procedure followed in making the same. Significantly, this Court took note of the undertaking made by the selected candidates during the pendency of the appeal who were appointed to the post of Principals pursuant to the interim orders of this Court to be permitted to be impleaded as parties in the writ petitions where the selection was under challenge. The interim order dated 20.11.2008, stipulated that in the event of the selection being set aside, all those candidates will stand reverted to the post of Readers and that whatever additional payments received by them shall be recoverable from them. Further in the said judgment dated 08.03.2011, it was observed that in the writ petitions filed by the aggrieved candidates before the High Court, all aspects of the matter is open for examination, in which, everyone connected with the selection process will have an opportunity to place his / her point of view.

10. Keeping the above judgment dated 08.03.2011, passed in C.A.No.2351 of 2011, we proceeded with the hearing of these appeals. We heard the submissions of Mr. S. Gurukrishna Kumar, Mr. Amarendra Saran and Mr. Rajiv Dutta, learned senior counsels and Mr. Sanjay Mani Tripathi, Mr. Vijay Kumar, Mr. Manoj K. Mishra, Mr. Sumit Kumar, Mr. Makarand D. Adkar, Mr. Yatendra Sharma for the appellants, Mr. Jaideep Gupta, learned senior counsel for the Commission, Mr. C. U. Singh learned senior counsel for respondents 1 and 2 and Mr. Jitendra Mohan Sharma, learned senior counsel for the intervenors.

11. Mr. S. Gurukrishna Kumar, in his submissions after referring to the relevant facts and the regulations submitted that the Regulations gave the discretion to the Commission whether to limit the number of candidates or not, the ratio prescribed in the Regulations under the proviso to Regulation 6(1) viz., 3 to 8 times of the candidates is only a guideline and not a Rule and, therefore, not to be mandatorily applied for making the selection, that exceeding a ratio by itself cannot be held to be arbitrary, that this was not a case where no guidelines were in place and that under Regulation 6(1), the Commission had every power to limit or not to limit the number of applicants. The learned senior counsel submitted that the Commission gave ample reasons for the ratio it adopted in making the selection and that by making reference to some of the selected candidates alone, the Division Bench ought not to have interfered with the whole selection. The learned senior counsel ultimately submitted that the withdrawal of the earlier writ petitions barred the filing of the present writ petition when such withdrawal was without any reservation, that High Court having written a specific finding that the action taken by the members of the Commission 4 to 9 were protected by de facto doctrine ought not to have struck down the selection, that there was nothing alleged against the appellants as regards their merits or demerits and therefore their selection should not have been interfered with. In support of his submissions, the learned senior counsel relied upon the decisions reported in *Gokaraju Rangaraju v. State of Andhra Pradesh*<sup>2</sup>- *Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors.*<sup>3</sup> -, Dr. Keshav Ram Pal, Reader and *Head of Sanskrit Department and Offg. Principal, Lajpat Rai Post-Graduate College, Sahibabad,*

*Distt. Ghaziabad, U.P. v. U.P. Higher Education Services Commission, Allahabad & Ors.*<sup>4</sup> -, *State of Madhya Pradesh v. Narmada Bachao Andolan and Anr.*<sup>5</sup> -, *Ashok Kumar Yadav and Ors. v. State of Haryana & Ors.*<sup>6</sup>- and Bharat Singh (supra).

12. Mr. Rajiv Dutta, learned senior counsel appearing for the appellants in C.A.No.3361 of 2015 in his submissions contended that the High Court had gone beyond the pleadings, the writ petitioners having participated fully were not entitled to challenge the process subsequently and that the appellants having been appointed in 2008 and working till date and there being no allegation of any adverse report against them, their appointments should not be interfered. The learned senior counsel relied upon *Madan Lal & Ors. v. State of J & K and Ors.*<sup>7</sup> -and *N.T. Devin Katti and Ors. v. Karnataka Public Service Commission & Ors.*<sup>8</sup> - in support of his submissions.

13. Shri Amarendra Saran, learned senior counsel appearing for the appellants in C.A.No.3366 of 2015 by making specific reference to the details of each of the appellants, sought to contend that the High Court factually erred in holding that those appellants did not satisfy the prescribed qualifications such as experience, possession of necessary qualification etc., and therefore the judgment is liable to be set aside. The learned senior counsel submitted that each and every finding in respect of those appellants was erroneous and against the material facts, that the finding of the High Court that the candidate did not have the requisite qualification was not a correct finding, that the finding that more candidates were called is based on a misreading of the Regulation 6(1)(ii) and the further finding that the Commission members were lower in rank and status was not tenable and that the finding on the principle of estoppel was contrary to law.

14. The learned senior counsel representing the other appellants adopted the arguments of Mr. S. Gurukrishna Kumar and Mr. Amarendra Saran.

15. Mr. Makarand D. Adkar, learned counsel for the appellant in C.A.3363 of 2015 submitted that the said appellant top the list in women's list, the appellant was posted in women's college exclusively meant for women and therefore the writ petitioners have no locus to challenge the selection of the said appellant. In other respects the learned counsel adopted the arguments of the other senior counsel.

16. Mr. Jaideep Gupta, learned senior counsel for the Commission submitted that two groups of petitioners made a challenge and that one group went to Court at the time of advertisement but withdrew without reserving any liberty but later filed substantive writ petition after the interview result, where grounds were raised even relating to the process of selection. According to the learned senior counsel the other group never raised a challenge to the advertisement and came after the interview. According to learned senior counsel, principle of estoppel operate differently in that those who participated in the interview are estopped from raising a challenge which is covered by the decision of this Court reported in *Madan Lal* (supra). As far as those who filed the writ petition and withdrew the same without liberty, the *Sarguja Transport Service, v. State Transport Appellate Tribunal, Gwalior and Ors.* - AIR 1987 SC 88 principle will apply and that the reasons for the withdrawal of the writ petition

were irrelevant and they were not entitled to challenge the selection. The learned senior counsel submitted that the Rules only provided for interview and there was no written test prescribed and therefore where the selection is based on academic qualification and interview, there is no limit for prescription of marks for interview. The learned senior counsel argued that the screening guidelines were issued as early as on 06.11.2006 both for degree colleges as well as post graduate colleges and that for post graduate colleges by subsequent proceedings of the Commission dated 10.04.2008, 13.05.2008 and 22.05.2008, guidelines were altered and cut-off marks were fixed as per the guidelines and necessary resolutions were passed for the ultimate cut-off mark of 34.1. The learned senior counsel would contend that the Commission taking into account the total number of applications received decided to call all the candidates for interview irrespective of the cut-off marks as it had possessed necessary powers under Regulation 6. The learned senior counsel submitted that the decision was not with any ill-motive, in order to hold that the whole selection should be set aside. On Regulation 6(2) the learned senior counsel submitted that from a reading it cannot be said that without any guidelines U. P. Higher Education Services Commission cannot carry on with the interview, that where there are criteria, it should be followed and that guideline have been framed as early as on 06.10.1983, which have been duly followed. The learned senior counsel submitted that the said 1983 guidelines were also accepted by this Court in the judgment reported in Dr. Keshav Ram Pal (supra). The learned senior counsel further contended that those guidelines were sufficient for the Commission to make the selection in the interview. As regards the composition of members, the learned senior counsel contended that the High Court having applied the de facto doctrine, there was no scope for the High Court to interfere with the selection.

17. As against the above submissions, Mr. C. U. Singh, learned senior counsel appearing for the contesting private respondents, in his submissions, while meeting the arguments on estoppel, contended that there were 16 writ petitions in which the Division Bench passed the impugned judgment and therefore, the withdrawal of two earlier writ petitions will not have any effect on this judgment. The learned senior counsel also submitted that in any event, in Bharat Singh's case (supra) while issuing directions for the disposal of the writ petitions, this Court observed that opportunities should be extended to all concerned and therefore the present case is completely different one and not covered by any of the judgments passed earlier in order to apply the principle of estoppel. The learned senior counsel also submitted that the withdrawal of the earlier writ petition was not with an intent of forum shopping since that writ petition was filed at the stage when interview was not held and since by the time the writ petition was taken up, the whole interview was over, the writ petition was withdrawn and fresh writ petition was filed challenging the whole selection. The learned senior counsel then contended that the High Court after finding that respondents 4 to 9 had already ceased to be the members of the Commissions, there was no scope to consider the prayer for quo warranto and consequently applying the de facto doctrine made a deeper scrutiny of the whole selection and gave valid reasons for setting aside the selection. The learned senior counsel pointed out that the grounds raised in the writ of quo warranto were very formidable grounds in as much as the appointment of respondents 4 to 9 were not in accordance with Section 4(2)(e) or 4(2-a)(g) of the 1980 Act. The learned senior counsel therefore contended that the course adopted by the High Court in having made a deeper scrutiny and its findings

on each one of the issues, to hold the selection invalid was well justified. The learned senior counsel relied upon the decision reported in *State of Punjab Vs. Salil Sabhlok and others* <sup>9</sup>-

18. Mr. Jitendra Mohan Sharma, learned senior counsel who appeared for the petitioner in a writ petition before the High Court and who has filed I.A.No.15/2013 in C.A.3361 of 2015 for intervention, submitted that when the whole process of selection was challenged, the consideration of individual cases is of no consequence. The learned senior counsel pointed out that when the term of invalid members viz., respondents 4 to 9 before the High Court was over, the High Court was not in a position to deal with the issue of quo warranto and consequently, it made a thorough examination of the process of selection as to its validity and found the same to be wholly invalid for setting aside the same. The learned senior counsel placed reliance reported in *Union of India & Ors. v. O. Chakradhar*<sup>10</sup> Krishan Yadav (supra) and Bharat Singh (supra) in support of his submissions.

19. Having heard the respective counsel and having bestowed our serious consideration to various submissions and having gone through the impugned judgment, we feel that it will be appropriate to note the sum and substance of various submissions and find out whether there is any scope for interference with the judgment impugned in this case. The submissions of the learned counsel for the appellants can be noted as under:

“(i) Since some of the contesting private respondents had moved the High Court earlier by way of a writ petition raising certain challenges to the very same selection and since those writ petitions were withdrawn without any reservation or liberty asked for, the subsequent writ petitions raising a challenge to the very same selection was hit by the principle of Estoppel. Reliance was placed upon the judgment reported in *Sarguja Transport Services* (supra).

(ii) When once the High Court decided to apply the de facto doctrine on finding that respondents 4 to 9 ceased to hold office as members of the Commission, it ought not to have interfered with the selection, by applying the principles laid down in the judgment reported in *Gokaraju Rangaraju* (supra).

(iii) The Commission gave reasons for the ratio it adopted while making the selection, that is between 06.11.2006 and 22.05.2008 viz., on 06.11.2006, 10.04.2008, 13.05.2008 and 22.05.2008, the Commission fixed the norms after the Advertisements, reframed the guidelines for the PG college selection, the cutoff index was fixed which was subsequently altered, all of which were done well before the interview was held.

(iv) The selection made by the commission was in accordance with Regulation 6 of the 1983 Regulations, that there were guidelines both for initial screening as well as for evaluating the merits at the time of interview.

(v) As far as the individual cases who are the appellants in C.A.3363 of 2015 against whom specific findings have been rendered by the High Court to hold that their selection was bad, the question for consideration is whether such finding of facts are true or not.

(vi) Even if the individual cases where the Division Bench held that they were not qualified, but yet selected and assuming such conclusion drawn by the Division Bench was correct, that will not have any effect on the entire selection.

(vii) On the issue pertaining to reservation, it was pointed out that in the earlier round i.e. in the judgment reported in Bharat Singh (supra), this Court ruled that since the posts of Principal are single post, rule of reservation will not apply. Therefore, when no reservation was possible, if any of the candidate has been appointed on the ground of reservation, the same will not survive, but applying the Rule of Reservation, four candidates got the benefit, of the four candidates one candidate did not join, while one joined and left and one other person had resigned and one is going to retire and therefore on that score, there was no scope for interference.”

20. As far as the first submission is concerned, the same is raised based on the doctrine of estoppel. The contention was that earlier prior to the holding of the interview, two writ petitions were filed viz., W.P.Nos.26501 and 27600 of 2008, which were simply withdrawn on 03.07.2008. It is therefore contended that when the very same selection was the subject matter of challenge in those writ petitions and the writ petitions were withdrawn without any reservation and without asking for any liberty to raise a challenge at a later point of time, the writ petitioners were estopped from filing the present writ petition viz., W.P.No.34198 of 2008. The said contention was rejected by the High Court by holding that the earlier writ petition was filed before the interview commenced and that when subsequently, after the interview, select list for the post of Principals of post graduate Colleges was declared on 30.06.2008 and 02.07.2008, the petitioners choose to withdraw those writ petitions and thereafter file the present W.P.No.34198 of 2008. The Division Bench therefore held that the withdrawal of the earlier writ petition without any reservation did not cause any prejudice in as much as at the time when the earlier writ petition was filed, the select list was not announced and therefore when at the stage prior to the interview, those writ petitions were filed there was nothing wrong in the writ petitioners moving the High Court subsequent to the declaration of the results by raising a challenge to the select list. We do not find anything wrong with such a conclusion arrived at by the Division Bench of the High Court. That apart, in the case on hand, as rightly pointed out by Mr. C. U. Singh learned senior counsel for the contesting private respondents, there were as many as 17 writ petitions, which were pending before the High Court along with W.P.34198 of 2008. Therefore withdrawal of the earlier two petitions by the writ petitioner in W.P.No.34198 of 2008 could not have in any manner prevented the High Court from examining the correctness of the challenge made in the other writ petitions. Further, in Bharat Singh's case (supra), when this Court in its order dated 08.03.2011, passed in C.A.2351 of 2011, observed that in the writ petitions filed by the aggrieved candidates before the High Court all aspects of the matter shall be open for

examination, in which everyone connected with the selection process will have an opportunity to place his/her point of view, we do not find any serious impediment in the case of the writ petitioner in W.P.No.34198 of 2008 to voice his grievance along with other writ petitioners which was virtually permitted by this Court earlier.

21. Reliance was placed on behalf of the appellants in the decision reported in *Ramesh Chandra Sankla Vs. Vikram Cement & Ors*<sup>11</sup>.- paragraph 61 was relied upon which reads as under:

"61. From the above case law, it is clear that it is open to the petitioner to withdraw a petition filed by him. Normally, a Court of Law would not prevent him from withdrawing his petition. But if such withdrawal is without the leave of the Court, it would mean that the petitioner is not interested in prosecuting or continuing the proceedings and he abandons his claim. In such cases, obviously, public policy requires that he should not start fresh round of litigation and the Court will not allow him to re-agitate the claim which he himself had given up earlier."

22. Reliance was placed upon a recent decision of this Court reported in Pradeep Kumar Rai and others Vs. Dinesh Kumar Pandey and others - (2015) 11 SCC 493, paragraph 17 was relied upon to contend that the candidates having participated in the process of interview and not challenged it till the results were declared cannot be allowed to approbate and reprobate and on that principle, the challenge was rejected. When we read paragraph 17 we find that the appellants in that case participated in the process of interview and challenged the results after a gap of four months from the date of interview and the declaration of results. This Court therefore held that such an indifferent attitude displayed in making the challenge disentitle them to seek for any relief. The said case is not comparable at all to the case on hand, where before the interview was conducted there was a challenge and during the pendency of the said challenge, the interview was held and ultimately results were announced. Thereafter, the challenge was made on very many substantial grounds such as invalid members constituted the Commission, several procedural lapses in applying Regulation 6 of 1983 Regulations and serious allegation of invalid candidates having been permitted to participate in the interview who were found to be ultimately selected and appointed as Principals. Having regard to such extreme serious allegations of malpractice in the matter of selection, there is no scope to apply the said decisions to the facts of this case.

23. On behalf of the respondents reliance was placed upon a decision of this Court reported in *G.N.Nayak Vs. Goa University and others*<sup>12</sup>- on the question of estoppel. In an identical situation, this Court held that when the cause of action were different, the withdrawal of earlier writ petition without liberty to file a fresh application, will not have any impact in making the challenge when the subsequent challenge was to the selection ultimately held while the earlier challenge was on the basis of an apprehended bias. We find the said line of reasoning fully supported the case of the writ petitioners. Even in the case on hand, earlier when writ petitioners filed the writ petition, the same was at a stage when the interview was about to be held. By the time when the writ petition was pending, since the interview was held and the results were ultimately published, the withdrawal of the earlier writ petition

without liberty and a fresh challenge made to the ultimate selection on various grounds cannot be held to have disentitled the writ petitioners to raise the challenge.

24. It was contended on behalf of the appellants that the withdrawal of the earlier writ petition by one of the writ petitioners would disentitle and estop the petitioners from making a challenge to the selection made in the interview. We have extensively discussed the said issue and have held how in the facts of this case such an abstract proposition of law cannot be applied. We therefore do not find any merit in the said submission on the ground of principle of estoppel. We therefore reject the said submission outright.

25. The next submission of the appellants was that once the High Court decided to apply the de facto doctrine, on finding that the members of the Commission viz., the respondents 4 to 9 in the writ petition ceased to hold office, it ought not to have interfered with the selection and in support of the said submission, reliance was placed upon Gokaraju Rangaraju (supra). Paragraph 4 of the said judgment is relevant where the principle has been set out which reads as under:

"4. We are unable to agree with the submissions of the learned counsel for the appellants. The doctrine is now well established that "the acts of the officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure" (Pulin Behari v. King Emperor). As one of us had occasion to point out earlier "the doctrine is founded on good sense, sound policy and practical expedience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. Hence the de facto doctrine" (vide Immediseti Ramakrishnaiah Sons Vs. State of A.P.)"

26. It is no doubt well settled that the acts of the officers de facto performed by them within the scope of their assumed authority in the interest of the public or the third persons and not for their own benefits are generally held valid and binding as if they were the acts of the officers de jure. A reading of the said paragraph does not give an omnibus authority even while applying de facto doctrine to hold that every illegal acts or acts performed which smacks of very many illegalities and incongruities should be merely ignored and validated. It has to be kept in mind that even while applying the de facto doctrine whether such acts performed were aimed at the prevention of public and private mischief and for the protection of public and private interest. The doctrine is intended to prevent invalidation of Acts, such as appointments, on the sole ground that they were performed without de jure authority. Therefore, keeping the well thought out principles set down in the said judgment in mind when we examine the approach of the Division Bench we find that the Division Bench having noted that the respondents 4 to 9 in the writ petition ceased to hold office had to necessarily not deal with the challenge made to their appointment for issuance of quo

warranto. It also rightly applied the de facto doctrine but the approach of the Division Bench in stating that even while applying the de facto doctrine, the selection made required deeper scrutiny cannot be held to be improper. It must be stated that the allegations as against the appointment of respondents 4 to 9 as members of the Commission were not without any basis. The Division Bench also noted the fact that the details of respondents 4 to 9 disclosed that except respondent No.9, the other respondents viz., 4 to 8 were working as Readers in different post graduate and degree colleges in the State of U.P. The scale of pay drawn by them was far less than the scale of pay of Principal, for which post, the selection process was initiated. It was also noted that one of the members viz., one Shri Ramveer Yadav was working as Reader in Narayan College, Firozabad, was also an applicant for the post of Principal pursuant to the Advertisement No.36 of 2003. The Division Bench has also noted that all the above members came to be appointed on the basis that they satisfied the qualification viz., "an eminent person having made valuable contribution in the field of education". The Division Bench though did not want to proceed with the writ of quo warranto yet found that when such challenge is made with reference to the appointment of respondents 4 to 9 as members of the Commission, had substantial basis in making the challenge. Therefore, though, it had to apply the de facto doctrine, thought it fit to make a strict scrutiny of the entirety of the selection procedure.

27. Reliance was then placed upon decision of this Court reported in Madan Lal (supra). Paragraph 10 was relied upon in support of the submissions, wherein, this Court held that when the interview committee consisted of a sitting High Court Judge, to judge the relative merits of the candidates, who were orally interviewed, based on the guidelines laid down by the relevant rules governing such interviews, the assessment on merit as made by such an expert Committee cannot be brought in challenge only on the ground that the assessment was not proper or justified. Even going by the said expressions used by this Court, the said paragraph need not be elaborated further to compare the facts of this case, where the Division Bench was not inclined to examine the validity of the appointment of the Chairman and members of the Commission who ceased to exist at the time when the writ petitions were heard. Therefore, the Division Bench rightly chose to make a deeper scrutiny of the manner of selection made and found very many illegalities in making the selection. In such circumstances, the ratio laid down in the said judgment in the background of facts, i.e., the Committee was headed by a Sitting High Court Judge, can have no application to the facts of this case.

28. We are in full agreement with the said approach of the Division Bench and, therefore, we hold that even while applying the de facto doctrine, the Division Bench was well justified in proceeding to examine the correctness of the selection made by making a deeper scrutiny and, therefore, we are not able to appreciate the said submission that once de facto doctrine was applied the selection should have been upheld. The said submission also stands rejected.

29. When we come to the third submission, the contention of the appellants was that while making the process of screening, as stipulated under Regulation 6(1) of the 1983 Regulations, the Commission duly followed the required norms depending upon the selection it wanted to make for the number of existing vacancies and the anticipated vacancies by

taking appropriate decisions as between 06.11.2006 and 22.05.2008 when the Commission fixed the norms while permitting all the candidates to be interviewed and by making appropriate changes in the cut-off index to enable all the candidates to participate in the interview. The challenge to such a course adopted by the Commission was on the ground that the last of the advertisement was in Advertisement No.39 issued in February, 2005 and the corrigendum issued on 23.02.2006, the last day for submission of the application was 03.04.2006. It was therefore contended that the Rules as existed on the last date of the submission of the application have to be followed and any change of the recruitment process or rules of recruitment after the cut-off date was not permissible. Any change in the screening process or guidelines without any valid reason can always be interfered with on being substantiated. With that basic principle in mind when we consider the submission, we find that the Division Bench was able to note that the details of the candidates for the post of Principal in Post graduate colleges were called in excess of the ratio of 1:8 as provided in Regulation 6(1) which resulted in allowing 18 candidates in the female category and 95 candidates in the male category to participate in the interview. It also noted that such permission granted by the Commission ultimately resulted in around 15 candidates who were otherwise not entitled to participate in the interview, participated and got selected.

30. In this context when we refer to Regulation 6(1), the substantive part of the said regulation viz., 6(1) empowers the Commission to scrutinise the applications and call for interview such number of candidates, as it may consider proper. The proviso, however, empowers the Commission to limit the number of candidates to be called for the interview if there were excess number of applications or for any other reasons. For the expression "for any other reasons" must always be appropriately substantiated, if on that ground the limiting of the number of candidates was resorted to by the Commission. Under proviso (ii) in the case of the Principal, it is specifically stipulated that preliminary screening on the basis of academic record, teaching and administrative experience to be carried out and that as far as possible, the ratio between 3 to 8 times the vacancies can be determined by the Commission, which it finds appropriate. A reading of the Regulation 6(1) on the whole thus shows that the Commission has been invested with substantive power to call for interview such number of candidates as it may consider proper. Therefore, it cannot be held that it should always restrict it to the minimum 3 to 8 times the vacancies, as the Commission may consider proper.

31. In the case on hand, initially, the Commission decided to limit the number of candidates by fixing the norms. The Commission by fixing the cut-off mark as 34.9 for female candidates 35.1 for male candidates proceeded to process the applications. But it came to light that subsequently the index norms were altered and ultimately it decided to call all the candidates. Such decisions were taken on 06.11.2006, 10.04.2008, 13.04.2008 and 22.05.2008. When we take into account the above facts, we find that while initially the Commission decided to limit the number of candidate by fixing index norms for female and male candidates, and proceeded to hold the interview, based on such norms, the question for consideration is whether the Commission could have resorted to variation of such index norms and ultimately allow all the candidates to participate in the selection. Such variation in the norms was resorted to by the Commission and the ultimate selection came to be made

and it was alleged that such variation was adopted by the Commission with a view to favour certain candidates who otherwise did not come within the zone of consideration for participation in the interview. Such an allegation is definitely a very serious allegation and therefore it cannot be held that such allegations are to be simply brushed aside by accepting the stand of the Commission that ultimately the ratio was far below 1:8 or within the said range. We are concerned with the decision of the Commission which it took at the initial stages before the commencement of the interview, though not before the last date of submission of the application viz., 03.04.2006. Though the Commission has been invested with ample powers under Regulation 6, in the matter of calling of the candidates for interview and also limit such calling of the candidates, the Commission is expected to display its honest approach in its dealings. The Commission cannot follow certain practices, which gives scope for serious criticisms especially where it relates to the matter of selection for very responsible post of Principal to various aided and affiliated colleges of the State University.

32. It will also be worthwhile to make a reference to a recent decision of this Court reported in *Salil Sabhlok* (supra). This Court while considering the competence and validity of appointment of a Chairpersons of the Public Service Commission of the State of Punjab made a reference to two earlier decisions of this Court viz., *Ashok Kumar Yadav* (supra) and *In R/o Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission*<sup>13</sup>- respectively. The extracted part of the above two referred to decisions can be usefully quoted which are as under:

"94. In *Ashok Kumar Yadav v. State of Haryana*, (1985) 4 SCC 417 this Court looked at the appointment of the Chairperson and members of the Public Service Commission from two different perspectives: firstly, from the perspective of the requirement to have able administrators in the country and secondly from the perspective of the requirement of the institution as such. In regard to the first requirement, it was said:

"It is absolutely essential that the best and finest talent should be drawn in the administration and administrative services must be composed of men who are honest, upright and independent and who are not swayed by the political winds blowing in the country. The selection of candidates for the administrative services must therefore be made strictly on merits, keeping in view various factors which go to make up a strong, efficient and people oriented administrator. This can be achieved only if the Chairman and members of the Public Service Commission are eminent men possessing a high degree of calibre, competence and integrity, who would inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them."

In regard to the second requirement, it was said:

"We would therefore like to strongly impress upon every State Government to take care to see that its Public Service Commission is manned by competent, honest and

independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merit."

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42. In R/O Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission (supra), Dr. A.S. Anand, C.J. speaking for a three Judge Bench, cautioned:

"The credibility of the institution of a Public Service Commission is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and members of the Public Service Commission must forever remain vigilant and conscious of these necessary adjuncts."

33. After noting the above statement of law and oft quoted principles in para 99 it has been held as under:

"99. While it is difficult to summarize the indicators laid down by this Court, it is possible to say that the two most important requirements are that personally the Chairperson of the Public Service Commission should be beyond reproach and his or her appointment should inspire confidence among the people in the institution. The first 'quality' can be ascertained through a meaningful deliberative process, while the second 'quality' can be determined by taking into account the constitutional, functional and institutional requirements necessary for the appointment."

34. We are referring to the above passages reported in the said decisions only to highlight as to how the Division Bench in the impugned judgment was justified in having frowned upon the nature of appointments of the members and the Chairman of the Commission at whose instance the selection came to be made and though the Division Bench could not consider the writ of quo warranto filed against those members who were arrayed as respondents 4 to 9 in the writ petitions as they ceased to be members by that time when the writ petitions were taken up for hearing and when it applied the de facto doctrine, the Division Bench was obliged to make a deeper scrutiny of the whole issue for reaching its own conclusions. We find full justification in the said approach made by the Division Bench in the impugned judgment.

35. Therefore, when the Division Bench was able to note serious allegations as against the respondents 4 to 9 who were inducted as members of the Commission and whose qualification to be appointed as members was seriously put to challenge and further in the course of making the selection, it was pointed out that the Commission did not adopt a

definite course in making the selection, instead, it varied its norms on different dates, certainly, the conclusion of the Division Bench in having frowned upon such approach made by the Commission cannot be found fault with.

36. On behalf of the appellants, reliance was placed upon the Four Judges Bench decision of this Court reported in Ashok Kumar Yadav (supra). Specific reliance was placed upon paragraph No.21 of the said judgment wherein, this Court considered the arguments made against a selection, which was upheld by a Division Bench of the High Court. The submission was on the ground that as many as 1300 and more candidates representing more than 20 times the number of available vacancies were called for interview. So far as the said contention was concerned, this Court held that even if more than the required number of candidates were called, that by itself will not vitiate the selection, in as much as something more than merely calling and unduly large number of candidates for interview in order to invalidate the interview and selections made.

37. So far as the said principle is concerned, in the case on hand, it is not merely a violation of the proportion of the candidates called for the interview vis-a-vis the number of posts, which were to be filled up. The Division Bench has noted, which we have also seen, where we have found that the Commission even while exercising its power under Regulation 6(1) was not consistent in the matter of calling the candidates for the interview. For very valid reasons, stated by the Division Bench, we have found that for reasons best known to it, the Commission was varying the cut-off index and in that process it came to light that ineligible candidates numbering more than 100 were allowed to participate and amongst whom 15 got selected for the post of Principal. That apart, the Division Bench has also pointed out various other discrepancies in the selection to show that everything was wrong in the selection made especially when it declined to examine the plea of quo warranto on the ground by applying the de facto doctrine. Therefore the said decision does not anyway apply to the facts of this case.

38. We are, therefore, of the view that the Division Bench was well justified in holding that the changing of the norms while applying Regulation 6(1) for the initial screening thrown considerable doubt about the genuineness in the selection process adopted by the Commission. In the said circumstance the conclusion of the Division Bench that when greater faith and trust was invested with the Commission and when the Commission breached its own criteria and thereby acted contrary to the standards laid by it, which resulted in an arbitrary selection made by it has to be held as well justified. We are, therefore, not able to appreciate the submission of the learned senior counsel for the appellants and the same is also rejected.

39. The next submission of the learned senior counsel was that the selection made by the Commission is in accordance with Regulation 6, that there were guidelines both for initial screening as well as for evaluating the merits at the time of interview. In support of the said submission both on behalf of the Commission as well as the appellants it was pointed out that the guideline as required under Regulation 6(2) was formulated as early as on 06.10.1983 and that based on the said guideline, the selection process was made. The said guideline was

in fact placed before the Division Bench and the Division Bench has extracted the guidelines dated 06.10.1983 which is to the following effect:

"Each of the Members of an Interview Board irrespective of whether he is a Member of the commission or an Expert shall award marks in writing to each candidate out of a maximum of 50 marks and as per the following scheme of grading and evaluation:-

Grade Numerical range of grader  
Percent of marks Marks cut of 50

1. Outstanding 85% and above 43 and above
2. Excellent 75%-85% 38-42
3. Very Good 65%-75% 33-37
4. Good 55%-65% 28-32
5. Fair 45%-55% 23-27

6. Poor Below 45% 22 or less The award of 22 marks or less to candidate by an Expert shall imply that the said Expert does not consider the candidate settled for appointment. In order for a candidate to be considered any further for merit ranking, it would be necessary that at least one of the participating Experts should have awarded 23 marks or more to the candidate. The awards given by the Members of the Interview Board shall then be pooled together to determine the overall merit individual evaluation salary of the will be done as per the following table, so as to ensure parity between the block of Members of the Interview Board who are also Members of the Commission on the one hand and the block of Experts on the other.

**Table: Scaling Factor**

Composition of the Interview Board Member of the Commission; Expert	Scaling factor for The marks awarded by the block consisting of Members of the Commission	Total of the mau. The marks awarded by the block Experts	Marks
1. 3M+3E	1	1	300
2. 3M+2E	1	1.5	300
3. 2M+3E	1.5	1	300
4. 2M+2E	1.5	1.5	300

40. After referring to the said guideline, the Division Bench has examined whether the guidelines did satisfy the requirement as stipulated in Regulation 6(2). Regulation 6(2) mentions that the Commission should interview the candidates in accordance with the criteria, minimum standards and the guidelines set out by it and if it consider necessary can

hold practical test also as part of interview. We are not concerned with the practical test part of the Regulation 6(2). We are only concerned with the requirement of prescription of criteria, minimum standards and guidelines. After referring to the guidelines dated 06.10.1983, the Division Bench has found that, the said guidelines merely provided for grading of the candidates as Outstanding, Excellent, Very Good, Good, Fair and Poor and therefore found that what was the criteria that is to be applied, the minimum standard to be prescribed have not been spelt out in the guidelines dated 06.10.1983.

41. In this context, the Division Bench has referred to the decision of this Court in *Kiran Gupta and others Vs. State of U.P. and others*<sup>14</sup>-, wherein, the selection made to the post of Principal of Secondary Schools in the State of U.P. were under challenge, and one of the grounds of challenge was about the laying down of the guidelines of the Commission on which ground the selection was sought to be invalidated. This Court, while dealing with the said challenge, has noted the following features in paragraph 29. Paragraph 29 as extracted by the Division Bench can be noted again, which reads as under:

"29. In the guidelines framed by the Commission the following aspects are to be kept in mind while evaluating a candidate:

"Madhyamik Shiksha Ayog- The candidates called for interview have to be adjudged by members of the Board for 75 Marks, keeping in view the following factors:

1. Personality.
2. Knowledge of the subject.
3. Knowledge of current ideas and problems of the educational work diagnostic attitude towards them.
4. General Knowledge.
5. Administrative ability regarding school management.
6. Self expressive and impressive views.
7. Achievement in curricular activities of the regional and State levels."

42. After having prescribed such various factors with reference to which the merits of a candidate was to be tested in the interview, this Court found that though maximum marks for each of the item were not allocated, it held that the members of the Commission who interviewed the candidates awarded marks in lump individually after evaluating the candidates on the basis of the afore mentioned factors. It was based on the said consideration, the Court ultimately held that there was no illegality in the procedure of overall evaluating of the candidates fixing marks for each of the items noted above. The said case is of no comparison to the case on hand. In the case on hand, the contention was that even though

under Regulation 6(2) it was specifically stipulated that interview will be held based on the guidelines which should specifically state as to how consideration should be made while holding the interview, no guidelines were formulated and thereby leaving it open for the members of the Commission to arbitrarily award marks while making the selection and thereby provided scope for arbitrariness.

43. This Court after noting the specific criteria prescribed in the guidelines for evaluating the merits of a candidate held that since the guidelines provided for sufficient criteria to assess the merit of a candidate the selection made based on such guidelines cannot be interfered with. The Division Bench having noted the above ruling of this Court, therefore, held that what is prescribed in the guideline dated 06.10.1983, would at best only enable the Interviewing Committee to grade the candidates based on their performance in the interview and that it did not provide sufficient guidelines as was required to be provided for under Regulation 6(2). As far as the guideline dated 06.10.1983 was concerned, as was noted by the Division Bench as well as by us, it merely showed as to what will be the effect of the percentage of marks that were to be allotted to each individual candidates. Unlike the decision referred to above where each of several factors such as personality, aptitude etc., have been specifically prescribed in the guideline, there was no such specific factors determined by way of guideline as was required to be done by the Commission under Regulation 6(2). In such circumstances, the said decision is of no assistance to the appellants but on the contrary it is in favour of the respondents. We are therefore in full agreement with the above said conclusion of the Division Bench and the said submission of the learned senior counsel for the appellants as well as that of the Commission stands rejected.

44. The next submission of the appellants was that the Division Bench committed a serious factual error in respect of certain candidates with reference to whom it gave a finding that they were permitted to participate in the interview even though they did not fulfill the minimum qualification and on that ground, held that their selection was unjustified. Such cases were related to Dr. Ramesh Chand Pathak, Dr. Shashi Misra, Dr. Ram Avtar Singh, Dr. Ikbal Habib, Dr. Udyan Misra and Dr. Suresh Jain.

45. Mr. Amarendra Saran learned senior counsel appearing for those appellants took pains to draw our attention to various documents to show that the finding of fact reached by the Division Bench was wrong and that going by the details furnished by the respective candidates, they did fulfill the minimum qualification as well as experience and therefore the finding to the contrary reached by the Division Bench should be set aside. However forceful the contention may be, when we refer to the Division Bench judgment on issue No.7 which pertains to the above submissions, we find that the Division Bench after noting the qualification and experience prescribed in the advertisement examined the case of each of the above referred to candidates and has rendered a factual finding to the effect that they did not fulfill the minimum qualification nor the experience. In as much as such a factual finding has been rendered by the Division Bench after detailed reference to the facts placed before it, we are not inclined to look into any of the documents which were placed before us at the instance of those appellants in order to do the very same exercise as regards the facts relating

to those candidates for reaching a different conclusion. Therefore, the said submission is also rejected.

46. In fact, while examining the said issue No.7, the Division Bench has also referred to the case of one Phool Chand Singh with reference to whom, it has found that he was involved in a serious criminal case in case No.217/1989, wherein, charges under Sections 147, 148, 149 and 302 I.P.C. have been framed and that even the said person was selected. It has made a detailed reference to the criminal case filed against the said Phool Chand Singh to state that the Commission failed to act appropriately in holding the selection and thereby gave scope for reaching the conclusion that the whole selection was seriously infected and consequently, the whole selection was liable to be set aside.

47. It was then contended that even if the individual cases where the Division Bench held that they were not qualified, yet allowed to participate and got selected, based on such conclusion, the entire selection should not have been interfered with. In so far as the said submission is concerned, in the first instance, it must be noted that after finding the serious flaw in the matter of selection made by the Commission, where the Division Bench noted serious allegations as against those who were inducted as members of the Commission who ceased to hold office by the time the writ petitions came to be heard and thereby the Division Bench was obliged to apply the de facto doctrine and consider the whole selection with little more care and caution, in which process, the Division Bench was able to find out that the relevant regulation viz., regulation 6 was seriously breached, in as much, as there were serious flaws in the preliminary screening as well as in permitting ineligible candidates to participate apart from lack of necessary guidelines as prescribed under the Regulation 6(2) for holding the interview in order to assess the merits of the candidates and therefore as a step further, the Division Bench took note of certain instances where it pointed out how the various factors noted by it did show the serious lacuna in the overall selection made by the Commission. Therefore, the individual cases cannot be isolated to state that setting aside of the selection should be restricted to only those individual cases and the entirety of the selection cannot be affected. We are not able to countenance such a submission put forth on behalf of the appellants and the same stands rejected.

48. On behalf of the contesting respondents, reliance was placed upon the decision of this Court reported in *Satpal and others Vs. State of Haryana and others*<sup>15</sup>- paragraph 9 is relevant for our purpose, the relevant part of it reads as under:

"9. We would like to make it clear that we have limited our consideration to the procedure adopted at the pre-selection stage and have not thought it necessary to examine the procedure at the post-selection stage, once we hold that the entire selection process was tainted, we are not able to uphold the submission of the learned counsel for the appellants that since the appellants had received training and had passed the examination, they should be protected. We think that once the process of selection is found to be tainted, whatever had flowed consequent thereto must also fall along with the process of selection. We, therefore, see no merit in this plea."

The above referred to principle laid down by this Court fully supports the stand of the respondents and also in tune with what we have held in this judgment.

49. In this context, it will be worthwhile to refer to the decisions relied upon by Mr. Jitendra Mohan Sharma, learned senior counsel who appeared for the intervenors viz., the decisions reported in O. Chakradhar (supra) and Krishan Yadav (supra). The above decisions fully support the stand of the private respondents that when the whole process of selection is challenged, individual cases are of no consequence.

50. We also find full support to our conclusions when we deal with the submission of Mr. Saran and Mr. Krishnakumar in contending that merely because selection relating to some of the candidates were tainted the whole of the selection should not be upset. In this context, the reliance placed upon the decision reported in O. Chakradhar (supra) by Mr. Jitender Mohan Sharma, learned senior counsel for the intervenor is well founded. Paragraph 12 of the said decision can be usefully referred to which reads as under:

"12. As per the report of the CBI whole selection smacks of mala fide and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing final result. In such circumstances it may not be possible to pick out or choose any few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so inter-mixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large scale widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishna Yadav (supra) applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserve to be allowed."

51. A reference to the said paragraph amply demonstrate in a case of this nature, it will be difficult to identify such of those candidates whose selection can be upheld and deal with the rest differently.

52. To the very same effect is the decision reported Krishan Yadav (supra), paragraph 20 is relevant, which reads as under :

"20. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, Conceived in fraud and delivered in deceit, Individual innocence has no place as "fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors."

53. Therefore, by applying the said principle, we do not find any scope for interfering with the decision of the Division Bench.

54. One other submission made was that on the issue of reservation. In spite of a ruling of this Court in Bharat Singh's case reported in Bharat Singh (supra) some candidates were selected based on reservation and in that respect only four such candidates came to be selected and even in respect of the said four candidates, one did not join, one joined and left, one resigned and another person is going to retire soon and consequently on that ground the selection need not be interfered with. As was noted by us, in the earlier paragraph it is not that single instance which weighed with the Division Bench to interfere with the selection. The Division Bench after finding serious flaw in the whole of the selection process found that there was serious breach of the regulations governing the selection process and consequently set aside the whole selection. In that process, the Division Bench also found that in spite of clear dictum of this Court in Bharat Singh's case, the Commission applied the rule of reservation and quoted those instances while setting aside the selection. Therefore, the non-joining or resignation of some of the candidates or the likelihood of the retirement of one other candidate will be of no consequence when the whole process of selection was affected by serious illegalities. Therefore, the said submission also does not merit any consideration and stands rejected.

55. Reliance was placed upon the decision reported in N.T. Devin Katti (supra) in particular paragraph 15, where this Court even after finding that the selection made for the post of Tahsildars was liable to be set aside, ultimately was not inclined to terminate the services instead allowed the appointees to continue in service and also directed the State Government to create supernumerary post of Tahsildars for appointing the appellants in that case. In that case also by way of an interim order, during the pendency of the appeal, the appointment orders containing specific term that the appointment should be subject to the result of the writ petition, filed by the appellants therein. We must state that the said case is not comparable to the facts of this case, wherein, the number of appointments are more apart from the fact that the appointments were allowed to be made by specific order dated 20.04.2008 by which, it was directed that the selected candidates should execute an undertaking that in the event of they loosing the battle, they will stand reverted to the post of Readers and that they also undertook to pay back the difference in salary.

56. Before concluding, it is necessary to note that when in the earlier round of litigation, dealt with by this Court in C.A.2351 of 2011, initially an interim order came to be passed on 20.11.2008, by which, the selected candidates were directed to be appointed, subject to filing of an undertaking into this Court within one month from that date and the undertaking was to the effect that in the event if they lose the battle, they will be automatically reverted as Readers and the difference of salary that would be taken as a Principal should be recovered and paid back to the petitioners viz., the State Government. In the final order passed by this Court on 08.03.2011, this Court has noted in paragraph 11 that the said interim order was complied with and based on the undertaking, all the selected candidates were duly appointed subject to the outcome of the said appeal. Finally, on 08.03.2011, while disposing of the said appeal, the said interim order was allowed to be continued till the writ petitions are disposed of by the High Court. When these appeals were moved at the S.L.P. stage, while issuing notice by order 10.05.2012, pending further orders of this Court, the operation of the impugned judgment and order was directed to be stayed. The interim order was subsequently continued by order dated 31.03.2015. The last para of the judgment of the Division Bench is as follows:

"In result, all the writ petitions are decided in following manner:-

- (i) Writ Petition Nos.70062 of 2006 and 29524 of 2007 are dismissed.
- (ii) Writ Petition Nos.34198 of 2008 and other writ petitions of group-1 are allowed. The select lists dated 30.6.2008 and 2.7.2008 are set aside. The selected candidates shall take steps in compliance of their undertaking given before the apex Court in Civil Appeal No. 2351 of 2011 and other connected appeals in accordance with law.
- (iii) Writ petition No. 44358 of 2007 is allowed. The select list dated 15.5.2007 is set aside. The selected candidates shall take steps in compliance of their undertaking given before the apex Court in respective Civil Appeals.
- (iv) Writ petition No. 38714 of 2003 and other writ petitions of group-3 are allowed in view of the judgment of the apex Court in Civil appeal No. 2352 of 2011 and other connected appeals dated 8.3.2011 in State of U.P. Vs. Bharat Singh and others.
- (v) The U.P. Higher Education Service Commission shall consider and frame appropriate guidelines for conduct of interview for selection on the post of Principal of Postgraduate/Degree Colleges in accordance with law as mandated by Regulation 6(2) of the 1983 Regulations and further take early steps for filling the vacant posts of Principal of Postgraduate/Degree Colleges in accordance with law.

Parties shall bear their own costs."

57. We fully affirm the above directions of the Division Bench and the appeals stand dismissed.

**Judgment Referred.**

<sup>1</sup>(2011) 4 SCC 0120

<sup>2</sup>(1981)3 SCC 0132

<sup>3</sup>(1981)1 SCC 0722

<sup>4</sup>(1986) 1 SCC 0671

<sup>5</sup>(2011) 7 SCC 0639

<sup>6</sup>(1985) 4 SCC 0417

<sup>7</sup>(1995) 3 SCC 0486

<sup>8</sup>(1990) 3 SCC 0157

<sup>9</sup>(2013) 5 SCC 0001

<sup>10</sup>(2002) 3 SCC 0146

<sup>11</sup>(2008) 14 SCC 0058

<sup>12</sup>(2002) 2 SCC 0712

<sup>13</sup>(2000) 4 SCC 0309

<sup>14</sup>(2000) 7 SCC 0719

<sup>15</sup>(1995) *Supp 1* SCC 206