IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 12th OF JUNE, 2023

WRIT PETITION No.2110 of 2023

BETWEEN:-

SANJIV SUBHERWAL, S/O. LATE SHRI OM PRAKASH SUBHERWAL, AGED ABOUT 56 YEARS, OCCUPATION: ASSISTANT PURCHASE OFFICER, BMHRC, R/O. HIG DELUXE-20, KATARA HILLS, HOUSING BOARD COLONY, BHOPAL-462043 (M.P.)

.....PETITIONER

(BY SMT. SHOBHA MENON – SENIOR ADVOCATE WITH SHRI RAHUL CHOUBEY - ADVOCATE)

AND

1. **UNION OF INDIA, THROUGH ITS SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE, SHASTRI BHAWAN, NEW DELHI-110001**
2. **INDIAN COUNCIL OF MEDICAL RESEARCH, THROUGH: ITS SECRETARY/CHAIRMAN, V. RAMALINGASWAMI BHAWAN, ANSARI NAGAR, NEW DELHI-110001**
3. **INDIAN COUNCIL OF MEDICAL RESEARCH, THROUGH: DIRECTOR GENERAL, V. RAMALINGASWAMI BHAWAN, ANSARI NAGAR, NEW DELHI-110001**
4. **INDIAN COUNCIL OF MEDICAL RESEARCH, THROUGH: DEPUTY DIRECTOR GENERAL (ADMN.), V. RAMALINGASWAMI BHAWAN, ANSARI NAGAR, NEW DELHI-110001**
5. **BHOPAL MEMORIAL HOSPITAL & RESEARCH CENTRE, THROUGH ITS DIRECTOR, RAISEN BYPASS ROAD, KARONDH SQUARE, BHOPAL, MADHYA PRADESH-420038**

......RESPONDENTS

(SHRI PUSHPENDRA YADAV – DEPUTY SOLICITOR GENERAL FOR THE RESPONDENTS NO.1 TO 4)

(SHRI ASHISH SHROTI – ADVOCATE FOR RESPONDENT NO.5)

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Reserved on : 26.04.2023

Pronounced on : 12.06.2023

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This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

Since pleadings are complete and parties agreed to argue the matter finally, therefore, looking to the issue involved in the matter, it is finally heard.

2. Learned counsel for the petitioner, by the instant petition filed under Article 226 of the Constitution of India questioning the selection process adopted by the respondent no.5 for the post of Administrative Officer whereby the select list was issued in which petitioner finds place at serial no.1 and thereafter the respondents conducted interview on 11.01.2023 in which petitioner took part but he filed a petition on 22.01.2023 saying that the whole selection process is based upon the interview and that cannot be done. According to counsel for the petitioner, the mode adopted by the respondents for selecting the candidates to the post of Administrative Officer is contrary to law and the Supreme Court on so many occasions has deprecated the practice of selecting a candidate only on the basis of interview and as such, she submits that the whole selection be set aside. Learned senior counsel

further submits that in the advertisement which is available on record as Annexure P-9B and the rules under which selection was to be made, nowhere it is prescribed and even not intimated to the candidate that interview has to be conducted by the respondents but all of a sudden, after submitting the application and declaring the select list, interview was conducted and as such, counsel for the petitioner challenges the said mode saying that interview was not prescribed in the recruitment rules or not intimated prior to applying for the post of Administrative Officer and as such, selection is illegal.

3. Shri Pushpendra Yadav, learned Assistant Solicitor General appearing for respondents nos. 1 to 4 although not filed any reply to the petition but orally submits that the advertisement clearly provides the mode of selection and also contained a note according to which if a candidate is selected on the post of Administrative Officer, that selection would be treated to be selection by way of deputation and as such, all these requirements of interview and other things which is contending by the petitioner as illegal is not required to be looked into and contention of the petitioner as such is misconceived.

4. Shri Ashish Shroti, learned counsel appearing for respondent no.5 has submitted that the petition is misconceived and it merits dismissal on two counts, firstly that the petitioner even after intimating him to appear in the interview which was held on 11.01.2023 participated in the same and after participating when he realized that chances of his selection in view of his performance in the interview are very less, he filed a petition and in view of the law laid down by the Supreme Court in number of cases on which he has placed reliance, the petition is not maintainable and secondly that contention of counsel for

the petitioner that selection by way of only interview is not permissible is not sustainable. He relied upon several judgments of the Supreme Court in support of his contention that the mode adopted by the respondents for selecting the Administrative Officer is not illegal and, therefore, the selection which is being assailed by the petitioner cannot be said to be improper or contrary to law and, the petition is without any substance and deserves to be dismissed.

5. Considering the submissions made by learned counsel for the parties and perusal of record, the question emerges to be considered by this Court is whether the procedure adopted by the respondents calling the candidates after publishing the select list in which petitioner was placed at serial no.1 is contrary to law and is accordingly set aside and consequently the petitioner be declared to be selected to the post of Administrative Officer against the advertisement issued for the said post.

6. According to Smt. Menon, learned senior counsel, before issuing the advertisement/vacancy circular i.e. Annexure P-9B and even in the said vacancy circular it is not disclosed by the respondents that the selection was to be made after conducting an interview. According to her, when applications were invited and select list was published showing the petitioner to be the most eligible candidate placed at serial no.1, there was no occasion for the respondents to call the eligible candidates for interview. According to the learned senior counsel, the interview cannot be the sole basis for selecting a candidate and such method of selection is highly deprecated by the Supreme Court in number of occasions. In support of her contention, she has placed reliance upon a judgment passed by the Supreme Court in case of

Somraj and others Vs. State of Haryana and others (1990) 2 SCC 653. Para 6 of the said judgment is relevant which reads as under:-

> "**6**……..Therefore, though we may not agree with the learned counsel for the State that the Director had absolute discretion to pick and choose arbitrarily and make appointment of the posts, yet undoubtedly, he had power to appoint them. Normally the order of appointment would be in the order of merit of candidates from the list and must be in accordance with rules. His exercise of power should not be arbitrary. The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The Rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of Rule of Law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority……."

7. Further, reliance has been placed in a case of **Dr. Krushna Chandra Sahu and others Vs. State of Orissa and Others (1995) 6 SCC 1** wherein the Supreme Court in paragraphs 31 to 35 has observed as under:-

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

the criteria on the basis of which suitability of the candidates was to be determined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homoeopathic Medical Officers, as the basis for determining their suitability.

33. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309. It is basically the function of the rule-making authority to provide the basis for selection. This Court in State of A.P. v. V. Sadanandam [1989 Supp (1) SCC 574 : 1989 SCC (L&S) 511 : (1989) 11 ATC 391] observed as under: (SCC pp. 583-84, para 17)

> "We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusions, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive."

34. 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 P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141: 1984 SCC (L&S) 214 : (1984) 2 SCR 200] , it was observed: (SCC pp. 180-81, para 44)

> "By necessary inference, there was no such power in the ASRB to add to the required qualifications. 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."

35. Similarly, in Umesh Chandra Shukla v. Union of India [(1985) 3 SCC 721 : 1985 SCC (L&S) 919 : 1985 Supp (2) SCR 367] , it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in Durgacharan Misra v. State of Orissa [(1987) 4 SCC 646 : 1988 SCC (L&S) 36 : (1987) 5 ATC 148 : (1987) 2 UJ (SC) 657] and the limitations of the Selection Committee were pointed out that it had no jurisdiction to

prescribe the minimum marks which a candidate had to secure at the viva voce."

8. Further, the Supreme Court in case of **Praveen Singh Vs. State of Punjab and Others (2000) 8 SCC 633** has observed in paras 9 to 15 as under:-

"**9.** What does Kulshrestha case [(1980) 3 SCC 418 : 1980 SCC (L&S) 436 : AIR 1980 SC 2141] depict? Does it say that an interview should be the only method of assessment of the merits of the candidates? The answer obviously cannot be in the affirmative. The vice of manipulation, we are afraid cannot be ruled out. Though interview undoubtedly is a significant factor in the matter of appointments, it plays a strategic role but it also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon only may lead to a "sabotage of the purity of the proceedings". A long catena of decisions of this Court have been noted by the High Court in the judgment but we need not dilate thereon neither do we even wish to sound a contra note. In Ashok Kumar case [(1985) 4 SCC 417 : 1986 SCC (L&S) 88 : (1985) 3 SLR 200] (Ashok Kumar Yadav v. State of Haryana) this Court however in no uncertain terms observed: (SCC p. 451, para 25)

"There can therefore be no doubt that the viva voce test performs a very useful function in assessing personal characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination."

10. The situation envisaged by Chinnappa Reddy, J. in Lila Dhar case [(1981) 4 SCC 159 : 1981 SCC (L&S) 588 : AIR 1981 SC 1777] (Lila Dhar v. State of Rajasthan) on which strong reliance was placed is totally different from the contextual facts and the reliance thereon is also totally misplaced. Chinnappa Reddy, J. discussed about the case of services to which recruitment has necessarily been made from persons of mature personality and it is in that perspective it was held (at SCC p. 164, para 6) that "interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied". The facts in the present context deal with Block Development Officers at the Panchayat level. Neither the job requires mature personality nor the recruitment should be on the basis of interview only, having regard to the nature and requirement of the jobs concerned. In any event, the Service Commission itself has recognised a written test as also a viva voce test. The issue therefore pertains as to whether on a proper interpretation of the rules read with the instructions note, the written examination can be deemed to be a mere qualifying examination and the appointment can only be given through viva voce test — a plain reading of the same however would negate the question as posed.

11. A close look at the qualification as prescribed and the information-sheet, however, in our view would depict otherwise. The qualifications prescribe that the candidates will be required to qualify for the following written test at the time of recruitment and the qualification standard in the test has been fixed to be at 33% pass marks in each paper with 45% however in the aggregate (emphasised) and para 4 of the information-sheet, as above, in no uncertain term records that no candidate shall be eligible to appear in the viva voce test unless he obtains 33% marks in each paper and 45% marks in the aggregate.

12. Reading the two requirements as above, in our view question of having the written test written off in the matter of selection does not and cannot arise. Had it been the intent of the Service Commission, then and in that event question of there being a totality of marks would not have been included therein and together with the specified marks for viva voce tests, would not have been there. Neither would there have been any requirement of qualifying pass marks nor would there have been any aggregate marks as noticed above.

13. Further, in the event, the interview was the sole criteria and the written test being treated as qualifying test, the Public Service Commission ought to have clearly stated that upon completion of the written elimination test, selection would be made on the basis of the viva voce test only as is available in the decision of Ashok v. State of Karnataka [(1992) 1 SCC 28 : 1992 SCC (L&S) 38 : (1992) 19 ATC 68] . Be it noted that there is always a room for suspicion for the common appointments if the oral interview is taken up as the only criteria. Of course, there are posts and posts, where interviews can be a safe method of appointment but to the post of a Block Development Officer or a Panchayat Officer wherein about 4500 people applied for 40 posts, interview cannot be said to be a satisfactory method of selection though however it may be a part thereof — in the factual score we have the advantage of having the rules prescribing the mode and method of appointments and specific marks are earmarked for written examinations of various subjects together with totality of marks for viva voce test. As a matter of fact, out of 450 marks only 50 marks have been allotted for interview by the Service Commission itself — why these 400 marks allotted for a written examination in four different subjects, if the interview was to be the guiding factor; there has been however, no answer to the same excepting that the Court ought not to interfere in the matter of selection process in the absence of mala fides — true it is that in the event the selection is tainted with mala fides, it would be a plain exercise of judicial power to set right the wrong — but is it also realistic (sic unrealistic) to assume that when the Commission in clear and categorical language recorded that 450 marks would be the total marks for the examination and out of which only 50 marks are earmarked for viva voce test, the Commission desired that these 50 marks would be relevant and

crucial and the other 400 marks would be rendered totally superfluous and of no effect at all. The language used is rather plain and is not capable of the interpretation as is being presented before us during the course of hearing and as has been held by the High Court. Reliance on 50 marks only and thereby avoiding the other 400 marks cannot in our view having due regard to the language used, be said to be reasonable or devoid of any arbitrariness.

14. The action of the respondent Commission thus is wholly unreasonable, unfair and not in accordance with the declared principles. Appointment procedure is evident from the documentary evidence disclosed in the proceedings and the Commission ought to have taken note of the written examination results as well. As a matter of fact the High Court while recording its acceptance to the method of selection on the basis of the viva voce test only, was pleased to observed as below:

> "However, we consider it absolutely imperative to observe that the Government should get the rules examined and make proper amendment so that its intention of making distinction between qualifying test and viva voce test does not remain obscure. We also direct the PPSC to take extra precautions while issuing any future advertisement so that no inconsistency remains between the rules and the contents of the advertisement.

15. The High Court admittedly therefore found inconsistency and obscurity in the entire process and as a matter of fact, the High Court has suggested incorporation of proper amendments in the rules so as to avoid confusion and obscurity. We are however, constrained to note that having come to a finding about the inconsistency and obscurity in the process, the High Court thought it fit to decry the claim of the writ petitioner being the appellant herein on the plea of the employers' right but the documents through which the right flows indicates a contra situation and as such the action suffers from the vice of arbitrariness and unreasonableness warranting intervention of this Court. In the wake of the above, the order of the High Court stands set aside and quashed. Consequently the appointments are also set aside. The Public Service Commission is directed to complete the process of selections in terms of the existing rules so that both the written and the viva voce test be taken into consideration for the purpose of effecting appointments. It is made clear that no further advertisement or examination shall take place but reconsideration of the entire process be effected upon due reliance on the written as well as viva voce test. The process be completed within a period of 3 months from the date thereof. It is further made clear that the appointments if any, already made shall continue, but shall be subject to the further results which may be declared by the Public Service Commission in regard to filling up of the posts of Block Development and Panchayat Officers. The appeal thus stands allowed. There will however be no order as to costs."

9. The Supreme Court in case of **State of Punjab Vs. Salil Sabhlok and others (2013) 5 SCC 1** in paragraphs 7, 32 and 112 has held as under:-

> "**7.** Thereafter, the Full Bench of the High Court delivered the judgment and order dated 17-8-2011 [Salil Sabhlok v. Union of India, CWP No. 11846 of 2011, decided on 17-8-2011 (P&H) (FB)] directing that till such time a fair, rational, objective and transparent policy to meet the mandate of Article 14 is made, both the State of Haryana and the State of Punjab shall follow the procedure detailed hereunder as part of the decision-making process for appointment as Members and Chairman of the Public Service Commission:
>
> **7.1.** There shall be a Search Committee constituted under the chairmanship of the Chief Secretary of the respective State Governments.
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> **7.2.** The Search Committee shall consist of at least three members. One of the members shall be serving Principal Secretary i.e. not below the rank of Financial Commissioner and the third member can be serving or retired bureaucrat not below the rank of Financial Commissioner, or member of the Armed Forces not below the rank of Brigadier or of equivalent rank.
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> **7.3.** The Search Committee shall consider all the names which came to its notice or are forwarded by any person or by any aspirant. The Search Committee shall prepare a panel of suitable candidates equal to three times the number of vacancies.
>
> **7.4.** While preparation of the panel, it shall be specifically elicited about the pendency of any court litigation, civil or criminal, conviction or otherwise in a criminal court or civil court decree or any other proceedings that may have a bearing on the integrity and character of the candidates.
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> **7.5.** Such panel prepared by the Search Committee shall be considered by a High-Powered Committee consisting of the Hon'ble Chief Minister, Speaker of Assembly and Leader of Opposition.
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> **7.6.** It is thereafter that the recommendation shall be placed with all relevant materials with relative merits of the candidates for the approval of the Hon'ble Governor after completing the procedure before such approval.
>
> **7.7.** The proceedings of the Search Committee shall be conducted keeping in view the principles laid down in Centre for Public Interest Litigation case [Centre for PIL v. Union of India, (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609] .

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32. The Division Bench of the High Court, therefore, thought it necessary to make a reference to the Full Bench and has given its reasons for the reference to the Full Bench in paras 6 and 7 of its order dated 13-7-2011 [Salil Sabhlok v. Union of India, CWP No. 11846 of 2011, order dated 13-7-2011 (P&H) (DB)] , which are quoted hereinbelow:

> "6. Even though, Article 316 of the Constitution does not prescribe any particular procedure, having regard to the purpose and nature of appointment, it cannot be assumed that power of appointment need not be regulated by any procedure. It is undisputed that person to be appointed must have competence and integrity. Reference may be made to the judgments of the Hon'ble Supreme Court in Ram Ashray Yadav, In re [Ram Ashray Yadav, In re, (2000) 4 SCC 309 : 2000 SCC (L&S) 670] , Ram Kumar Kashyap v. Union of India [(2009) 9 SCC 378 : (2009) 2 SCC (L&S) 603 : AIR 2010 SC 1151] and Mehar Singh Saini, In re [Mehar Singh Saini, In re, (2010) 13 SCC 586 : (2011) 1 SCC (L&S) 423] .
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> 7. If it is so, the question is how such persons are to be identified and selected and whether in the present case, procedure adopted is valid and if not, effect thereof. We are of the view that these questions need to be considered by a Bench of three Hon'ble Judges. Accordingly, we refer the matter to a Bench of three Hon'ble Judges."

It will be clear from paras 6 and 7 of the order dated 13-7-2011 [Salil Sabhlok v. Union of India, CWP No. 11846 of 2011, order dated 13-7-2011 (P&H) (DB)] quoted above that the Division Bench of the High Court found that Article 316 of the Constitution, which provides for appointment of the Chairman and other Members of the Public Service Commission by the Governor, does not prescribe any particular procedure and took the view that, having regard to the purpose and nature of appointment, it cannot be assumed that the power of appointment need not be regulated by any procedure. The Division Bench of the High Court was further of the view that the persons to be appointed must have competence and integrity, but how such persons are to be identified and selected must be considered by a Bench of three Judges and accordingly referred the matter to the three Judges. The Division Bench also referred the question to the larger Bench of three Judges as to whether the procedure adopted in the present case for appointing Mr Harish Dhanda as the Chairman of the Punjab Public Service Commission was valid and if not, what is the effect of not following the procedure. I do not, therefore, find any merit in the submission of Mr Rao that the Division Bench of the High Court having found in its order dated 13-7-2011 [Salil Sabhlok v. Union of India, CWP No. 11846 of 2011, order dated 13-7-2011 (P&H) (DB)] that the

irregularities and illegalities pointed out in the writ petition against Mr Harish Dhanda are unsubstantiated, should not have made an academic reference to the larger Bench of the High Court.

* * *

112. It is true that no parameters or guidelines have been laid down in Article 316 of the Constitution for selecting the Chairperson of the Public Service Commission and no law has been enacted on the subject with reference to Schedule VII List II Entry 41 of the Constitution. It is equally true that the State Government and the Governor have a wide discretion in the procedure to be followed. But, it is also true that Mohinder Singh Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] refers to Lord Camden as having said that wide discretion is fraught with tyrannical potential even in high personages. Therefore, the jurisprudence of prudence demands a fairly high degree of circumspection in the selection and appointment to a constitutional position having important and significant ramifications."

10. Further, the Supreme Court in case of **Pradeep Kumar Rai and Others Vs. Dinesh Kumar Pandey and Others (2015) 11 SCC 493** in paragraph 5 has held as under:-

"**5.** It was after the declaration of the result of interview that the present round of litigation began, whereby the unsuccessful candidates challenged the interview process on several grounds. Initially the writ petition was filed before the Allahabad High Court, Lucknow Bench, which allowed the petition and directed the State to conduct fresh interview for the 1176 vacancies of the rank of Sub-Inspectors. The Division Bench of the Allahabad High Court allowed the appeal filed by the State Government, thus, reversing the judgment of the learned Single Judge. The Division Bench directed the State to appoint the candidates who were selected after the interview already held, for the rank of Sub-Inspectors."

11. *Per contra*, Shri Ashish Shroti, learned counsel appearing for respondents no.2 to 5-the contesting respondents has relied upon the reply filed by the respondents and also submitted that the petition deserves to be dismissed in view of the settled proposition of law that the challenge was made by the petitioner after participating in the selection process and as such, criticizing the process is not proper. He further submits that petitioner has not raised any objection with regard

to conducting an interview in which petitioner himself has participated but when undergoing the same he had a suspicion evaluating the performance in the same that his selection is not possible, he filed this petition challenging the method adopted by the respondents for selecting the candidates to the post of Administrative Officer. He submits that the select list was published on 31.12.2022, interview held on 11.01.2023 but petition filed on 22.01.2023 after participating in the interview. He further submits that still nobody knows that after conducting the interview, appointment will be made in whose favour. According to him, no cause of action accrues at this stage because there is every possibility of selection of the petitioner and, therefore, petition is liable to be dismissed. He further submits that the Supreme Court has already deprecated the practice of selection only on the basis of written examination or without conducting any interview. He submits that on the contrary the Supreme Court has not prohibited the method of selecting a candidate only on the basis of interview. He further submits that there is no illegality committed by the respondents in conducting the interview for making final selection and it is still not clear that who will be selected after conducting the interview. According to the learned counsel, there is no allegation of malafide made against any of the party and in such a circumstance, the selection process cannot be interfered with. In support of his submission, he has placed reliance upon the judgment of the Supreme Court in case of **Lila Dhar Vs. State of Rajasthan AIR 1981 SC 1777** wherein the Supreme Court in paras 1 and 6 has held as under:-

> "**1**.What is the ideal mode of selection to a public service, by written examination, by oral test (viva voce), or by a combination of both? If the last, what is the proper, relative weight that should be attached to the written examination and the oral test? Is the oral test so

pernicious in practice, as suggested by some, that it should be abandoned without regrets or the weight to be attached to it be made minimal? Has any such consensus emerged among the informed and the cognoscenti as to require the court to scrap a selection as arbitrary on the sole ground that the weight accorded to the oral test appeared to be high?

* * *

6. Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. That was what was decided by this Court in Periakaruppan v. State of Tamil Nadu [(1971) 1 SCC 38 : (1971) 2 SCR 430] , Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722; 1981 SCC (L&S) 258 : AIR 1981 SC 487] and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview-test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great a weight, to the interview-test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview-test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission."

12. Further, reliance is placed upon a judgment passed in case of

Indrajeet Khurana Vs. State of Haryana and others (2007) 3 SCC 102 in which the Supreme Court in para 16 has observed as under:-

> "**16**. In the absence of the Rules prescribing any method of recruitment, the appointing authority was at liberty to follow any reasonable and appropriate procedure for selection. In this case, the selection was made purely on the basis of merit. The procedure adopted for assessing the inter se merit on the basis of five years' ACRs and interview (set out in para 6 above) is reasonable and does not suffer from any infirmity, as rightly held by the High Court."

13. Considering the observations made by the Supreme Court in the cases relied by learned counsel for the parties and after perusal of the record, I am of the opinion that indisputably, neither in the notice vacancy circular any mode of recruitment was prescribed nor any rules placed before this Court to point out as to what procedure was to be followed by the respondents. Indisputably, the list was published vide Annexure P/12 sorting out the eligible candidates on 31.12.2022 showing that the candidates including the petitioner was found eligible to participate in the interview which is scheduled on 11.01.2023. Thus, it is clear that the said list was not the final select list in which the petitioner was placed at serial no.1. The list further contained that the final selection would be made by the authority after conducting an interview. The petitioner participated in the interview scheduled on 11.01.2023 but did not raise any objection and dis-agreement before the authority and, therefore, now criticizing the method of selection by saying that it was not required as he had already been selected and found meritorious amongst all candidates is not proper.

14. Considering the decisions on which reliance has been placed since there is nothing available on record to indicate as to in what manner the selection was to be done and what was the procedure

prescribed to have been followed, the mode adopted by the respondents without there being any allegation of *malafide* cannot be said to be illegal.

15. I do not find any substance in the submission made by learned counsel for the petitioner that the list (Annexure P/12) is a final select list and that foundation has no support because list itself contained the names of candidates eligible for appearing in the interview. There was nothing illegal on the part of the respondents in conducting the enquiry in absence of any specific procedure, not permitting or prohibiting the respondents to conduct an interview. The Supreme Court in case of Liladhar (**supra**) has not deprecated the method of selection even only on the basis of interview. The Supreme Court further in case of Indrajeet (**supra**) has also observed that in absence of any specific rules prescribing any method of recruitment, the appointing authority having full prerogative to make selection even only on the basis of merit, meaning thereby if rules do not provide any specific procedure of recruitment, the appointing authority can adopt proper procedure. In the present case, the post of Administrative Officer is being filled up on deputation or promotion and the previous record of the candidate was made basis for short-listing them as eligible candidates and thereafter for finalizing their selection if any method of interview is also adopted and it was shown in the list itself in which petitioner has participated and thereafter raising objection, the same is not acceptable, especially under the circumstance when there is no allegation of *malafide* made. It is only an apprehension that might come in the mind of the petitioner evaluating himself that he did not perform well in the interview but that cannot be made basis for challenging the process of selection. It is also not alleged by the petitioner that he is sure that interview is being

conducted and organized only to select a particular person. Thus, as per settled principle of law, when there is no arbitrariness apparent on the part of the selection committee or any allegation of *malafide* is made, interference by the Court should be very slow, therefore, in the present case, I do not find any substance in the submission made by learned counsel for the petitioner so as to interfere in the selection process declaring the action of the respondents illegal for conducting the interview making the same the sole criteria of selection. The petition, therefore, is without any substance and is hereby **dismissed**.

(SANJAY DWIVEDI)
JUDGE

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