

Dalbir Singh and Another Vs. V.

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Court : Punjab and Haryana

Decided On : Feb-20-2014

Appellant : Dalbir Singh and Another

Respondent : V.

Judgement :

CWP No.8923 of 2012 [1]. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CWP No.8923 of 2012 (O&M) Date of decision: February 20, 2014 Dalbir Singh and another .. Petitioners v. State of Punjab and others .. Respondents CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL Present: Mr. HPS Ishar, Mr. H. S. Virk, Mr. D. S. Dadwal, Ms. Harmanpreet Kaur, Mr. Parvesh Saini, Mr. Mohit Jaggi and Mr. Rajneesh Chadwal, Advocates for the petitioner(s). Mrs. Monica Chhibber Sharma, Deputy Advocate General, Punjab. Mr. Girish Agnihotri, Senior Advocate with Mr. Saurabh Gulia, Advocate for private respondents in CWP Nos. 8014, 8923, 9082, 13508, 15083, 18970, 19442, 19579, 20442 of 2012. Mr. G. S. Bal, Advocate for PSEB in CWP Nos. 8923, 9082, 13508, 15083 & 18970 of 2012. Ms. Nidhi, Advocate for PSEB in CWP Nos. 8014, 19058 and 20282 of 2012. Mr. J.

S. Puri and Mr. Denesh Goyal, Advocates for PSEB. Rajesh Bindal J.

1. This order will dispose of CWP Nos. 8923, 8014, 9082, 13508, 15083, 18970, 19058, 19442, 19579, 20282 and 20442 of 2012 and 4899 of 2013, as common questions of law and facts are involved. Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [2].

2. CWP Nos. 8923, 9082, 13508, 18970, 19058, 19579 and 20442 of 2012 were earlier decided by this court vide judgment dated 31.10.2012. CWP No.15083 of 2012 was decided on 9.11.2012. CWP No.19442 of 2012 was decided on 31.10.2012 vide separate order. However, the selected candidates preferred LPA Nos. 1864 of 2012; 115, 464, 465, 468, 624, 627, 696 to 698, 739 to 744 of 2013 with a grievance that some of the selected candidates were not heard. In view of that, vide order dated 29.5.2013, the matters were remitted back.

3. In CWP No.4899 of 2013, challenge has been made to the order dated 11.10.2012 (Annexure P-14) passed by Secretary, Punjab School Education Board rejecting the representation filed by the petitioners in terms of a direction issued by this court. The grievance of the petitioners was that persons lower in merit had been selected.

4. Challenge in the bunch of petitions is to the selection and appointment to the posts of Laboratory Attendant made by Punjab School Education Board (for short, 'the Board').

5. To put the record straight and make the judgment comprehensive requiring no separate reference to the earlier judgment in parts and dealing with all the issues once again, I deem it appropriate to extract the same in entirety. The contentions raised by learned counsel for the selected candidates shall be considered separately. The judgment is as under:

1. This order will dispose of C.W.P. Nos. 8923, 9082, 13508, 18970, 19058, 19579 and 20442 of 2012, as

common questions of law and facts are involved.

2. Challenge in these petitions is to the selection and appointment to the posts of Laboratory Attendant made by Punjab School Education Board (for short, 'the Board').

3. Briefly, the facts are that on 27.4.2011, an advertisement was issued by the Board for selection to 31 posts of Laboratory Attendant. Last date for submission of application was 9.5.2011. A total of 4,752 candidates applied for the posts. Written test for short-listing of the candidates was held on 28.9.2011, in which 4,594 candidates appeared. The total marks of the written test were 60. A bench mark of 33%, namely, 20 marks out of 60 marks was prescribed for short-listing the candidates, as a result of which 1952 candidates were short-listed. They were interviewed on different dates and finally the selection was made, which has been impugned in the present bunch of petitions.

4. Learned counsel for the petitioners submitted that the process which has been adopted by the Board for selecting the candidates for the posts of Laboratory Attendant is totally arbitrary. The merit has been given a complete go by. The candidates, who were meritorious in their studies or had topped in the written test, have been ignored and those, who were average or even below average in their studies and were quite low in merit in the written examination, have been selected by giving higher marks in interview. In the advertisement, it was not prescribed that there would be a written test which shall be followed by an interview. Even after the written test was notified, the impression given was that the same was of 60 marks, whereas rest 40 marks will be for interview, but still the marks obtained by the candidates in the written test were totally ignored and the selection was made merely on the basis of interview in which some small portion of marks was for educational qualifications or the experience. Even as per the case set up by the Board, the criteria for selection was prescribed just before the interviews were to take place. It was like changing the horses midstream, which cannot be permitted. The criteria for any selection has to be prescribed in advance before even the advertisement is issued. It should not be tailor-made for the candidates who had applied in response to the advertisement to ensure that favourites are selected. In fact, once the written test was held, due weightage should have been given to the marks obtained therein. The persons, who had secured higher marks in the written test, have been totally ignored. The process, which has been followed for short-listing of the candidates, also cannot stand judicial scrutiny for the reason that for 31 posts, 1952 candidates were short-listed out of 4752 candidates, which can be said to be an eye-wash. The short-listing of candidates should have some relation with number of posts available. Only the candidates, who secured higher marks in the written test, should have been called for interview or for further selection process.

5. It was further submitted that even if the criteria is seen, the same is totally arbitrary. It provides five marks each for qualification and experience. Five marks have been provided for the rural candidates, which does not have legal sanction. Besides that, 15 marks have been provided for knowledge of science practical equipments and 20 marks were prescribed for interview. Practically out of 50 marks, 35 marks were for interview and five for rural area. Only 10 marks were for educational qualifications and experience. This was the root cause of entire manipulation, as the candidates, who secured less marks on account of their qualifications or experience, were given higher marks in the interview and knowledge of science practical equipments to enable them to steal a march over the meritorious candidates. Some of the candidates, who did not have any experience, were given higher marks in knowledge of science practical equipments, whereas persons having experience were given lesser marks. In fact, the interviews were over on 11.11.2011, however, the result was not declared. Final select list was prepared on 4.4.2012 when after Assembly elections, the new government had taken over. The result of only selected candidates was declared, whereas the result of all the candidates, who had appeared in the interview, should have been declared. It was further submitted that in general category, out of 15 selected candidates, nine belong to village Lambi, District Muktsar. In reply to paragraphs 6 and 8 in CWP No.9082 of 2012, it has specifically been admitted by the Board that selection has

been made on the directions of the State Government. In support of the arguments, reliance was placed upon *Jaswant Singh and others v. State of Haryana and others*, 1989(1) RSJ556 *Pinki v. Kurukshetra University, Kurukshetra*, 1995(2) RSJ284 *Parveen Singh v. State of Punjab and others*, AIR2001SC152 and *B. Ramakichenin @ Balagandhi v. Union of India and others*, (2008) 1 SCC362 6. In response to the contentions raised by learned counsel for the petitioners, learned counsel for the respondents submitted that in the advertisement issued for selection, the qualifications required for the post were clearly mentioned. It was also mentioned that in case the candidates are more than the posts, the candidates shall be short-listed on the basis of merit. The written test conducted by the Board was merely for short-listing and not for selection as such. In the written test, minimum bench mark of 33% was prescribed. All the candidates who had secured marks above that were subjected to interview. The criteria for selection was prescribed by the Selection Committee before the interviews started. The same is quite reasonable. It gives marks for qualification and experience. As the post is of Laboratory Attendant, where practical knowledge of laboratory equipments is essential, for the purpose 15 marks were prescribed. The candidates who belong to rural area are certainly required to be given some advantage, hence, five marks were prescribed for that. Out of total 50 marks, only 20 marks were prescribed for interview, which were not on higher side. For class-III and class-IV post, entire selection could be merely on the basis of interview and without any written test. Interview was meant for testing the communication skills, presentation and personality of the candidates. The entire result of the selection was not required to be put on the website or printed in the newspaper. List of the selected candidates was displayed. Whosoever asked for the information, the same was supplied to him. There was no illegality or irregularity therein. The prayer was for dismissal of the writ petitions while upholding the selection.

7. Heard learned counsel for the parties and perused the paper book.

8. The undisputed facts are that the Board advertised 31 posts of Laboratory Attendant. In response, 4752 candidates applied. The advertisement issued provided that in case the candidates are more than the posts, they can be short-listed on the basis of merit. Written test was held for short-listing of candidates on 28.9.2011, in which 4594 candidates appeared. The written test was of 60 marks. A bench mark of 33%, i.e., 20 marks out of 60 marks was fixed for short-listing of candidates, as a result of which 1952 candidates were short-listed and interviewed on different dates. The selection was made on the basis of criteria where marks were given for basic qualification, rural area, experience, knowledge of laboratory equipments and interview.

9. To examine the merits of the controversy, the first issue which requires consideration by this court is as to whether the process, which was followed for short-listing of candidates was proper or not. If the exercise of short-listing was to be carried out and the selection was ultimately to be made on the basis of marks obtained in basic qualification and interview, whether there has to be limit of candidates to be short-listed, vis-a-vis, the number of posts and as to whether the candidates then had to be called on the basis of merit in the test conducted for short-listing or merely a bench mark could be fixed for calling all the candidates securing marks above that for interview irrespective of the number of posts advertised?. *Kumar Manoj* 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [7].

10. In the present case against 31 posts, 1952 candidates were called for interview, which is claimed to be after short-listing. A similar issue came up for consideration before Hon'ble the Supreme Court in *State of Punjab and others v. Manjit Singh and others*, (2003) 11 SCC559 wherein it was opined that as far as power of the appointing/selecting authority for short-listing of candidates is concerned, no exception can be taken thereto because many times the number of applications received in response to the advertisement are too many which are required to be short-listed to permit the candidates passing through that process to appear for final examination or for interview, but there has to be some limit on the persons to be called for further process. It has direct relation with number of posts advertised. In case all the candidates who had secured marks above the cut-off prescribed, are called for further test or interview, the same will not amount to short-listing. The ratio in the aforesaid case, which was found to be reasonable was five times the number of

vacancies advertised. The persons to be called for interview have to be on the basis of merit position in the written test conducted for short-listing. The relevant paragraphs of the aforesaid judgment are extracted below:

7. Now advertent to the point under consideration, it may be observed that so far as the powers and functions of the Commission in short-listing of candidates are concerned, there can certainly be no doubt about it. Say, for example, 10,000 candidates apply for recruitment of 100 posts, it would obviously not be possible to take full test/examination and interview of such a large number of applicants, though eligible. In that event shortlisting of the candidates by screening out those, in respect of whom it would serve no purpose to call them for further test, may be excluded by adopting the method of screening test. Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [8]. Generally speaking, a ratio of 3:5 candidates for one post is normally accepted depending upon the number of seats. Therefore, for 100 posts the selecting body may in order of merit take out about first 500 candidates for further test/interview. The rest of the candidates would be screened out. No candidate excluded by adopting such a method of shortlisting can raise any grievance whatsoever.

8. But for such shortlisting as indicated above, it is not necessary to fix any minimum qualifying marks. Any candidate on the top of the list at number 1 down up to 500 would obviously constitute the shortlisted zone of consideration for selection. For the purpose of elaboration it may be observed that in case some cut-off marks are fixed in the name of shortlisting of the candidates and the number of candidates obtaining such minimum marks, suppose is less than 100, in that event screening test itself will amount to a selection by excluding those who though possess the prescribed qualification and are eligible for consideration but they would be out of the field of consideration by reason of not crossing the cut-off marks as may be fixed by the recruiting body. This would not be a case of shortlisting. In shortlisting as observed above, any number of candidates required in certain proportion of the number of vacancies, may be shortlisted in order of merit from Serial No.1 up to the number of candidates required. xx xx xx 10. As observed earlier, for the purpose of shortlisting it would not at all be necessary to provide cut-off marks. Any number of given candidates could be taken out from the top of the list up to the number of the candidates required in order of merit. For example, there may be a situation where more than the required number of candidates may Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [9]. obtain marks above the cut-off marks, say for example, out of 10,000 if 8000 or 6000 candidates obtained 45% marks then all of them may have to be called for further tests and interview etc. It would in that event not serve the purpose of shortlisting by this method to obtain the given ratio of candidates, and the vacancy available. For 100 vacancies at the most 500 candidates need be called. If that is so, any candidate who is otherwise eligible up to the 500th position, whatever be the percentage above or below the fixed percentage would be eligible to be called for further tests. Thus the purpose of shortlisting would be achieved without prescribing any minimum cut-off marks.

. [Emphasis Supplied].

11. In the present case, as against 31 posts advertised, 1954 candidates were short-listed which is more than 63 times of the number of posts. The process of interview continued for 19 days.

12. The violation of the principles laid down in the aforesaid judgment has resulted in disparity in the process of selection, as the candidates who were ultimately selected had secured far less marks in the written test and were quite low in merit as compared to the candidates who have been ignored. In fact, the case set up by the petitioners is that the candidates who had secured marks even more than 50 out of 60 in the written test were not selected, whereas the candidates who had secured merely 25 marks have been selected. The maximum marks obtained by a candidate in the written examination were 53. Though no merit list as such prepared of the candidates who appeared in the written test, was produced before the court by the Board stating that as the criteria was cut-off marks, but it is evident from list of candidates who had appeared in the written test as produced in CWP No.8923 of 2012. Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this

13. The criteria on the basis of which the selection was made is extracted below: CRITERIA FOR THE SELECTION OF LAB. ATTENDANTS i) Academic qualifications: Matriculation a) 1st Division 05 marks 05 b) 2nd Division 03 marks c) 3rd Division 02 marks Supporting Qualifications/Activities: a) Rural Area 05 b) Knowledge of Sc Practical Equipments 15 ii) Experience:

1. year 01 marks 05 2 years 02 marks 3 years 03 marks 4 years 04 marks 5 years 05 marks iii) Interview Marks:

20. Grand Total: i + ii + iii = 50.

14. It may be added here that though in the aforesaid criteria, total marks prescribed for interview are 50, however, in the office note dated 5.10.2011, which was approved by the Chairman on 7.10.2011, 40 marks were proposed for interview while mentioning that the criteria, which has been prepared has been kept separately in the file, hence, there is total mis-match in the decision taken and the action taken on the basis thereof. The manner in which the file was dealt with has been discussed in later part of the judgment.

15. The list of selected candidates in each category, as was produced in court by counsel for the Board, providing the marks obtained in interview and on the basis of qualification as Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [11]. per the criteria, mentioned above, is extracted below. In addition thereto, the place to which the selected candidate belong and the marks obtained by him/her in the written test have been added from the result-sheet of the written test.

GENERAL	Sr. Roll No.	Name of the applicant	District	Category	Marks obtained	Sub Marks obtained	Marks obtained	Total marks obtained	
					(50)	in written (15)	in practical in interview test (15)	(20)	
1.	105041	Shaganpreet Singh Tarn Taran	Gen.	34	10.00	11.67	13.67	35.34	
2.	102925	Balwinder Singh Shri Muktsar	Gen.	39	8.00	11.67	14.00	33.67	
3.	102630	Vakil Singh Shri Muktsar	Gen.	26	8.00	11.75	13.75	33.50	
4.	103254	Parminder Kaur Shri Muktsar	Gen.	39	8.00	11.50	14.00	33.50	
5.	102762	Ranjit Singh Shri Muktsar	Gen.	46	7.00	12.50	13.75	33.25	
6.	106316	Gaganpreet Singh Ludhiana	Gen.	26	6.00	12.00	14.00	32.00	
7.	102873	Ajaypal Singh Shri Muktsar	Gen.	37	5.00	13.00	14.00	32.00	
8.	106229	Jasvir Kaur Ludhiana	Gen.	38	6.00	12.50	13.50	32.00	
9.	106249	Manpreet Kaur Grewal Ludhiana	Gen.	25	5.00	12.50	13.50	31.00	
10.	102867	Paramjit Singh Shri Muktsar	Gen.	34	3.00	12.67	14.67	30.34	
11.	102655	Virpal Kaur Shri Muktsar	BC	327.00	11.25	11.75	30.00		
12.	102644	Lakhwinder Singh Shri Muktsar	Gen.	33	3.00	13.25	13.75	30.00	
13.	103002	Sukhpal Singh Shri Muktsar	Gen.	45	2.00	13.00	14.75	29.75	
14.	106512	Pardeep Kumar Patiala	Gen.	25	2.00	12.75	14.75	29.50	
15.	106783	Gurpreet Singh Mohali	Gen.	36	2.00	13.00	14.50	29.50	
SCHEDULE CASTE									
19.	104015	Harpal Singh Amritsar	SC	287.00	12.50	10.00	29.50		
20.	106861	Gurcharan Singh Mohali	SC	307.00	11.67	10.67	29.34		
21.	106417	Ranjit Kaur Patiala	SC	395.00	11.67	12.67	29.34		
22.	106809	Amandeep Singh Mohali	SC	258.00	10.33	11.00	29.33		
23.	102978	Rupinder Kaur Shri Muktsar	SC	388.00	11.00	10.33	29.33		
24.	104129	Didar Singh Amritsar	SC	408.00	10.75	10.50	29.25		
25.	104765	Santosh Kumari Hoshiarpur	SC	352.00	12.67	14.33	29.00		
26.	104866	Jasvir Kaur Jalandhar	SC	328.00	11.33	9.67	29.00		
BACKWARD CASTE									
29.	106670	Sanjeev Kumar Roop Nagar	BC	278.00	11.00	10.50	29.50		
30.	103095	Amarpal Singh Shri Muktsar	BC	368.00	10.50	10.75	29.25		
31.	106669	Amit Kumar Roop Nagar	BC	297.00	10.75	11.25	29.00		
HANDICAPPED									
33.	102545	Jasvir Kaur Shri Muktsar	Gen.	39	8.00	10.75	10.50	29.25	
Handicap EX-SERVICEMAN									
35.	104614	Vinod Kumar Gurdaspur	SC	EX	23	8.00	7.50	9.00	24.50
Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [12].									
36.	104155	Yogesh Sharma Amritsar	EX	283.00	9.25	11.00	23.25		
37.	101335	Harcharan Singh Barnala	GEN	EX	403.00	9.25	9.75	22.00	
SPORTS									
39.	101176	Manpreet Kaur Bathinda	GEN	4410.00	7.75	11.25	29.00		

16. In the selection criteria, 15 marks had been provided for qualification, experience and for rural area, which have been mentioned in the column with the title as sub total (15). In addition thereto, 15 marks are for

knowledge of science practical equipments and 20 marks for interview. The marks obtained by each candidate in the aforesaid two categories have been separately specified in the select list, as referred to above. A perusal of the select list shows that out of 15 marks meant for qualification, experience and rural area, some of the candidates had secured merely 2-3 marks. Meaning thereby that they had secured very less marks in their educational qualification and did not have any experience whatsoever.

17. In the criteria, a candidate who had secured third division in Matriculation examination had been awarded two marks. Four candidates out of total 31 selected had secured merely two marks out of 15. It means that they had passed Matriculation examination in third division having no experience whatsoever. Four candidates had secured merely three marks, who may either be having third division in Matriculation examination with one year's experience or may be having second division in Matriculation. Nine out of 15 candidates selected in general category belong to Shri Muktsar Sahib District. Despite the fact that some of the selected candidates had not secured good marks in their Matriculation examination and were not having any experience whatsoever, but still they were given very high marks in knowledge of science practical equipments and interview. In fact, out of 50 marks, 35 marks were meant for interview only. The marks Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [13]. obtained by the aforesaid selected candidates in the written test were also quite low as compared to the candidates who had topped or had secured very high position in the written test, but they have been ignored. As per the declared policy of the Board, as was even mentioned in the advertisement itself, short- listing of the candidates was to be on the basis of merit, but as is evident in the case in hand, short-listing was merely by providing a bench mark and not taking the candidates who were high up in the merit list in the written test conducted for short- listing. The same is in violation of the law laid down by Hon'ble the Supreme Court.

18. The next issue which also has material bearing in the process of selection is the fixation of criteria. The Board did not produce before the court any material to show that the criteria for selection was fixed before the process therefor was started. Even as per the file produced before the court, the same was fixed merely on the date when the interviews were to start. By that time, the result of written test conducted for short-listing had already been declared. Nothing has been produced to show that before the written test was conducted for short- listing, any criteria was fixed as to how the candidates are to be taken for the purpose of interview etc. before final selection takes place.

19. The office file dealing with recruitment to the posts of Laboratory Attendant produced in court was perused. On 11.4.2011, while taking a decision to initiate process for selection, a Committee consisting of four officers was constituted for suggesting the method for short-listing the candidates. Advertisement inviting applications was published in the newspaper on 27.4.2011. The last date for submission of the applications was 9.5.2011. On 25.5.2011, a note was put up by the office that Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [14]. two of the posts, who were members of the Screening Committee, were lying vacant, hence a fresh Committee be constituted. Subsequently, on the same date, two members were substituted. A meeting of the Committee for short-listing the candidates was held on 14.9.2011 and, inter-alia, it was decided that decision to fix the criteria for short-listing the candidates shall be taken only after the result of written test being conducted for the purpose, is submitted to the Deputy Secretary (Legal). The written test was conducted on 28.9.2011. After the result of written test was submitted to the Deputy Secretary (Legal), the office had put up a note to seek guidance as to the candidates who are to be called for interview. The office note suggests that information was furnished to the effect that 2,027 candidates appeared in the written test and out of that 1,950 had secured more than 33% marks. The Chairman approved the note that all the candidates securing more than 33% marks be called for interview. The aforesaid information is contrary to what has been provided in court, in terms of which 4,594 candidates appeared in the written test and 1,952 secured more than 33% marks. Nothing in the official file was pointed out to suggest that any decision was taken by the Committee constituted for short-listing the candidates before the written test was conducted. After the result of written test was submitted in the office, the office note pointed out the number of candidates who had secured more than 33% marks (note dated 30.9.2011).

The Chairman directed that all of them be called for interview. It is apparent that in fact, exercise for short-listing the candidates was in futility as the number of candidates short-listed was 63 times the number of vacancies. Thereafter, the file was processed only for the purpose of Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [15]. fixation of dates for interview or change in dates thereof. The file was dealt with upto 8.11.2011 with noting sheet page No.28. Thereafter, at page No.29 of the noting sheet, a note is available dated 5.10.2011 seeking guidance for fixation of norms for selection while mentioning that written test of 60 marks had already been conducted and 40 marks have been prescribed for interview. It is further mentioned in the note on the same date, which was apparently approved by the Chairman on 7.10.2011, mentioning that a copy of the criteria prepared has been kept in the file. The aforesaid criteria was changed, as is evident from the note dated 10.10.2011 whereby five marks, which were earlier prescribed for NCC/NSS, were added towards the marks prescribed for knowledge of science practical equipments, which were increased from 10 to 15 marks. (In fact, the criteria on the basis of which the interviews were conducted, as is available in the file and has been referred to in preceding paragraph No.13 of the judgment, shows that the total marks for interview were taken as 50 and not 40, for which there is approval in the file). After the aforesaid noting concluded at page No.30 of the file on 10.10.2011, at page No.31 there is another noting of 5.10.2011 seeking permission to call the candidates who had passed the written test for interview. The aforesaid file was dealt with upto 12.10.2011 at page No.34. Thereafter, at page No.35 again, a fresh noting started on 10.10.2011 pertaining to inclusion of an expert in science practical. The other factor in the file which does not inspire confidence in the process followed for selection to the post of Laboratory Attendant is that in the note dated 4.10.2011, the dates of interview have been mentioned as 10.10.2011 to 1.11.2011. It was changed from 10.10.2011 to 11.11.2011 vide note dated 10.10.2011. In another note dated 5.10.2011, the dates of interview have been mentioned as 10.10.2011 to Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [16]. 11.11.2011, though the dates were changed on 10.10.2011. In the file, there is a portion containing some typed copies of the schedule of interview, public notices, office orders etc. Upto page 83, there is an order on record which was signed on 8.11.2011. Next documents are serialised from page Nos. 78 to 84. The title is 'Criteria for selection of Laboratory Attendants'. There are lot of cuttings on these documents prescribing the criteria. The same are initialled on 5.10.2011 and 10.10.2011. No minutes of meeting in the file were pointed out whereby any Committee constituted for the purpose had fixed the criteria. In fact, apparently the document from page Nos. 78 to 84 has been inserted in the file later on, as there is no continuation of dates in the file. After the document at page No.83 dated 8.11.2011, at page No.85 again there is a document initialled on 5.10.2011.

20. No deliberations in the form of minutes of meeting by the Selection Committee are available in the file showing fixation of criteria of selection, rather, number of documents and the cuttings made therein regarding fixation of criteria shows that apparently the same may have been tailor-made and so is the position with regard to fixation of bench mark for calling the candidates for interview which otherwise did not have any nexus with the object sought to be achieved, namely, short-listing of candidates on merits.

21. Another aspect which deserves to be mentioned here is that in the reply filed in CWP No.9028 of 2012, the stand taken by the Board in paragraphs 6 and 8 is that as per the directions of the government, 31 Laboratory Attendants were selected.

22. For the reasons mentioned above, in my opinion, the process of selection does not inspire confidence and deserves to be set aside. The posts be re-advertised for selection afresh within a period of two months by prescribing the criteria Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [17]. for selection and the process for short-listing in advance.

23. The petitions stand disposed of.. 6. As is evident from the list already extracted in the aforesaid reproduced judgment, there are total 31 candidates selected for the posts in different categories. Now all of them are represented by Mr. Girish Agnihotri, Senior Advocate assisted by Mr. Saurabh Gulia, Advocate.

7. Though the plea sought to be raised before the LPA Bench was that the selected candidates had not been heard, however, the fact remains that in CWP No.13508 of 2012 challenging the selection of the candidates of BC Category, service of the selected candidates was complete. They were even represented by a counsel. Though another counsel, namely, Mr. Satbir Rathore had appeared for the private respondents, however, there is nothing available on record as such to whom he was representing. Be that as it may, as the matters have been remitted back on the ground that the selected candidates are to be heard, the issues sought to be raised by learned senior counsel for all 31 selected candidates in different categories are being dealt with.

8. The record of the selection was produced in court and the same was even perused by the counsel representing the selected candidates to the extent possible.

9. Mr. Girish Agnihotri, learned senior counsel appearing for the selected candidates, while referring to the judgment of Hon'ble the Supreme Court in State of Punjab and others v. Manjit Singh and others, (2003) 11 SCC559 submitted that in the cases pertaining to reserved category, no cut-off marks should have been fixed in the qualifying examination for shortlisting of candidates, as there may be more number of posts and less number of candidates qualifying after the cut-off marks are prescribed. As a result, even all the posts may not be filled up. The candidature of an applicant is to be considered on the basis of qualifications laid down for the post. He further submitted that in the aforesaid judgment, it has not been laid down that in case in the process of shortlisting, more than 10 times candidates are called for, the next step of the selection should be set aside. It is the wisdom of the employer/selecting agency to take this decision. If the Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [18]. employer/selecting agency feels that they can deal with as number of candidates at the second step in the process of selection, they have the liberty to do so. The candidates in the aforesaid judgment had approached the court when the selection had not yet been finalised. In the present case, to challenge the selection process, the petitions were filed after the appointments had already been made.

10. Further, while referring to the judgment of Hon'ble the Supreme Court in Sardara Singh and others v. State of Punjab and others, 1991(3) SCT486 the submission is that the criteria laid down for selection was just and fair. It did not violate any rule regarding shortlisting or selection of candidates. Any criteria applied for selection to a post, it has to be considered with reference to the level of the post. In the present case, it was a Class-IV post. May be because 40% marks have been reserved for interview does not mean that the same are excessive. The personality, communication skills, humbleness etc. of a candidate are required to be judged, as he is to interact with the students. Qualification is another part. Merely because some of the candidates were more qualified does not confer any right on them to be appointed in preference to the candidates, who were otherwise eligible and were found to be more meritorious in the over-all selection process. The courts are not sitting in appeal to adjudge comparative merit of the candidates in the selection process. Reference was made to a judgment of Hon'ble the Supreme Court in Lila Dhar v. State of Rajasthan and others, AIR1981SC1777 11. It was further submitted that the petitioners have not shown as to how they have been prejudiced with the selection. At the most, with all the arguments raised by them, they are able to create some suspicion which cannot take the shape of a proof to set aside the selection.

12. Further, the submission was that after participating in the process of selection, the candidates do not have a right to challenge the process and permitted to plead that the criteria or the process was arbitrary. In support, reliance was placed upon a judgment of Hon'ble the Supreme Court in Om Prakash Shukla v. Akhilesh Kumar Shukla and others, AIR1986SC1043 Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [19].

13. On the other hand, in addition to the submissions as have already been noticed in the judgment passed by this court, learned counsel for the petitioners submitted that the criteria, which was adopted for selection of the candidates was never published, hence, there was no question of the candidates knowing it and challenging the same before the selection process was completed. It was further submitted that award of five marks for rural area in the criteria, as was not known to the candidates, requisite proof therefor could not be

attached, hence, those marks were not awarded to many candidates, though the criteria prescribed the same.

14. It was further submitted that in fact, there were total 35 marks for interview, namely, 15 marks for practical experience, which was nothing else but interview, and 20 marks for interview, out of total 50 marks. The educational qualifications merely had five marks and five marks were meant for experience. Five marks were reserved for the candidates belonging to rural areas. Meaning thereby, out of 50 marks, only 10 marks were meant for qualification and experience, rest all were for interview or for a candidate belonging to rural area. The intention is not that merely because some of the candidates are highly qualified so should have been appointed, but the fact remains that a matriculate, who has no experience, has been given more marks in practical experience and interview, as compared to a candidate who is better qualified and is having practical experience as well. That shows total arbitrariness in the process of selection, which can be gone into by the court only after the process of selection is over. The criteria of selection was prepared only after the written test for shortlisting had been conducted.

15. One of the contention raised by learned counsel for the petitioners was that some of the candidates would now become over-age with the passage of time and may not be eligible for any further government service, hence, setting aside of selection at this stage and directing for fresh advertisement may prejudice them, they being not at fault. The authorities should be directed to re-do the entire exercise on the basis of applications already received, as even if the writ petitions are allowed, but still the petitioners, who have become over-age now, will not have any opportunity Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [20]. to compete. While referring to the judgments of Hon'ble the Supreme Court in State of Maharashtra v. Raj Kumar, AIR1982SC1301 and V. N. Sunanda Reddy and others v. State of Andhra Pradesh and others, 1995(3) RSJ35(SC), the submission is that award of extra marks for the candidates belonging to rural areas is totally illegal, hence, that part of the criteria deserves to be set aside.

16. In CWP No.15083 of 2012, the submission is that though the petitioner belongs to rural area and had experience as well, but still he has not been awarded any mark under both the heads. If these are awarded, the petitioner will rank above the selected candidates in reserved category to which he belongs and may even fall in general category on his merit.

17. In CWP No.4899 of 2013, challenge has been made to the order dated 11.10.2012 passed by the Secretary of the Board in pursuance to a direction issued by this court for redressal of the grievance of the petitioners herein as they claim that the candidates, who were lower in merit, have been selected. The submission is that while passing the impugned order, the Secretary of the Board categorically stated that assignment of 40% marks for interview were inappropriate. Once it is admitted by the Secretary of the Board himself, nothing lies in the mouth of the Board or the selected candidates to claim otherwise, as the selections have been made by a Committee constituted by the Board. In this petition, notice has not been issued, though an application for impleading the selected candidates has also been filed, however, the fact remains that once all the selected candidates are represented before this court, to avoid further delay in disposal of the bunch of petitions, the same is being taken up and disposed of.

18. Learned counsel for the Board submitted that there are total 11 Adarsh Schools in the State of Punjab, out of which nine are located in Malwa region and out of that, five are in Muktsar Sahib, hence, the view taken by this court on the earlier occasion that many of the candidates belong to that area, hence, there may be some arbitrariness in the process of selection, deserves re-consideration for the reason that selections were meant primarily for that area. Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [21].

19. In response to the submissions made by learned counsel for the petitioners, learned counsel for the selected candidates submitted that the issue regarding grant of additional marks to the rural area candidates cannot be raised at this stage as the process of selection in the present case had already been completed before the judgment in Abhishek Rishi v. State of Punjab and others, 2013(3) SCT1 20. Heard learned counsel

for the parties and perused the paper book.

21. As the matters have been remitted back in the appeals filed by the selected candidates with a grievance that they were not heard before setting aside of their selection, primarily their contentions are required to be dealt with.

22. Before the issue is considered on merits once again and the contentions raised by learned counsel for the selected candidates are dealt with, I deem it appropriate to refer to the observations made by Hon'ble the Supreme Court in State of Bihar v. Upendra Narayan Singh and others, (2009) 5 SCC65 with a title Spoils system-- A bird's eye view. pertaining to the system of public appointments. The same are extracted below:

42. However, the hope and expectation of the framers of the Constitution that after independence every citizen will get equal opportunity in the matter of employment or appointment to any office under the State and members of civil services would remain committed to the Constitution and honestly serve the people of this country have been belied by what has actually happened in last four decades. The Public Service Commissions which have been given the status of constitutional authorities and which are supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoils system.

43. In the beginning, people with the distinction in different fields of administration and social life were appointed as Chairman and members of the Public Service Commissions but Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [22]. with the passage of time appointment to these high offices became personal prerogatives of the political head of the Government and men with questionable background have been appointed to these coveted positions. Such appointees have, instead of making selections for appointment to higher echelons of services on merit, indulged in exhibition of faithfulness to their mentors totally unmindful of their constitutional responsibility. This is one of several reasons why most meritorious in the academics opt for private employment and ventures.

44. The scenario is worst when it comes to appointment to lower strata of the civil services. Those who have been bestowed with the power to make appointment on Class III and Class IV posts have by and large misused and abused the same by violating relevant rules and instructions and have indulged in favouritism and nepotism with impunity resulting in total negation of the equality clause enshrined in Article 16 of the Constitution.

45. Thousands of cases have been filed in the courts by aggrieved persons with the complaints that appointment to Class III and Class IV posts have been made without issuing any advertisement or sending requisition to the employment exchange as per the requirement of the 1959 Act and those who have links with the party in power or political leaders or who could pull strings in the power corridors get the cake of employment. Cases have also been filed with the complaints that recruitment to the higher strata of civil services made by the Public Service Commissions have been affected by the virus of spoils system in different dimensions and selections have been made for considerations other than merit.

. [Emphasis supplied].

23. The cases in hand is also of similar kind. Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [23].

24. The first contention raised by learned counsel for the selected candidates is that merely because candidates more than 10 times of the number of vacancies, who appeared in the written examination conducted at the first place, had been called for interview, does not, in any way, suggest that the criteria adopted is arbitrary, especially when there are no rules or instructions which prescribe the number of candidates to be called for second stage of selection after shortlisting.

25. In the present case, total 31 posts were advertised. As per the information furnished in the court, 4,594

candidates appeared in the written test. As per the criteria laid down, all the candidates, who secured 33% or more marks, were shortlisted for second stage, namely, interview. The process of interview continued for 19 days. Shortlisting of 1,954 candidates as against 31 posts meant that the same were more than 63 times of the number of posts. While holding that adoption of aforesaid process was not fair, this court had referred to a judgment of Hon'ble the Supreme Court in Manjit Singh's case (supra), where it was opined that generally speaking, a ratio of 3:5 candidates for one post is normally accepted depending on the number of posts, as no candidate, who is excluded by adopting this process of shortlisting, can have any grievance. For the purpose of shortlisting, it would not at all be necessary to provide cut-off marks as the candidates are required to be taken from top of the list in order of merit. In the aforesaid judgment, example was also given, namely, if the cut-off marks is prescribed at 45% and out of 10,000 candidates appearing for written test, 6,000 to 8,000 candidates obtain 45% marks, it will not serve the purpose of shortlisting as it can very well be achieved without prescribing any minimum cut-off marks.

26. The issue was gone into by Hon'ble the Supreme Court recently in Duddilla Srinivasa Sharma and others v. V. Chrysolite, 2013(4) SCALE92 wherein it has been opined that shortlisting of candidates could not be on the basis of merely higher qualifications, may not be the correct proposition of law. While referring an earlier judgment of Hon'ble the Supreme Court in S. B. Mathur and others v. Chief Justice of Delhi High Court and others, (1989) Supp. (1) SCC34 which was a case of Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [24]. departmental promotion, a criteria limiting the zone of consideration in the multiple of 3 to 5 times the number of vacancies was upheld. It was held that the test is that the criteria adopted should be reasonable, based on rational and intelligible differentia which has nexus with the object sought to be achieved. The following para from S. B. Mathur's case is extracted below: In the case before us, zone has been restricted by prescribing that out of the total number of candidates who satisfy the eligibility requirement, the zone of consideration will be limited to a multiple of 3 to 5 times of the number of vacancies and the persons to be considered will be determined on the basis of their seniority in the combined merit list. It appears to us that there is nothing unreasonable in this restriction. It was open to the Delhi High Court to restrict the zone of consideration in any reasonable manner and limiting the zone of consideration to a multiple of the number of vacancies and basing it on seniority according to the combined merit list, in our view, cannot be regarded as arbitrary or capricious or mala fide. Nor can it be said that such restriction violates the principle of selection on merit because even experience in service is a relevant consideration in assessing merit.. 27. It was opined in Duddilla Srinivasa Sharma's case (supra) that whenever a particular criteria for shortlisting is adopted, the validity thereof is to be examined keeping in view as to whether the same is rational and having nexus with the object sought to be achieved. The same depends on the facts and circumstances of each case. However, where any criteria for shortlisting is provided in the rules or instructions, the same has to be followed.

28. In the case in hand, no rules or instructions have been cited by learned counsel for the Board, which specify the criteria to be adopted for shortlisting. In the absence thereof, this court has to see the reasonableness thereof and also whether it has the nexus with the object sought to be achieved. As has already been noticed above, the shortlisting Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [25]. was to the extent of 63 times the number of posts. The criteria adopted was minimum 33% marks obtained by the candidates in the test. Considering the number of posts and the candidates shortlisted, the same cannot be justified on the touch-stone of law laid down by Hon'ble the Supreme Court in the aforesaid judgments, as the same has no nexus with the object sought to be achieved, which always has to be merit. It has been consistently opined that shortlisting has to be 3 to 5 times of the number of vacancies, hence, the criteria adopted for shortlisting the candidates is found to be erroneous. Once the first step adopted by the recruiting agency in the process of selection is found to be erroneous, the very foundation goes and as a result the selection will also fall flat, as the number of candidates who have been finally selected fall far beyond five times the number of vacancies, as is evident from the pattern of marks awarded for practical experience and interview, whose qualification was only matric with no experience.

29. Another contention raised by learned counsel for the selected candidates was that in the process of shortlisting in case there are less number of candidates coming in a reserved category, even cut-off marks should not be prescribed as the number of vacancies may remain vacant. Hon'ble the Supreme Court in *S. Vinod Kumar v. Union of India*, (1996) 6 SCC580 upheld the fixation of cut-off marks by the competent authority during the course of recruitment in the interest of general merit, even if some of the vacancies remained unfilled, may be in general or reserved category. The decision of the competent authority not to lower the cut-off marks was upheld. Hence, there is no merit in this submission made by learned counsel for the selected candidates.

30. Another issue, which arises in the present petition is regarding award of five marks for the candidates belonging to rural areas, which is part of the criteria adopted for selection. The issue came up for consideration before Hon'ble the Supreme Court in *Kailash Chand Sharma v. State of Rajasthan*, (2002) 6 SCC562 In the aforesaid judgment, the provision providing for grant of bonus marks to the candidates belonging to rural areas was held to be violative of Article 14 of the Constitution of India. The issue pertaining to five additional marks, who passed their middle and matriculation examination from the schools situated in rural areas in Punjab, was subject-matter of consideration by a Full Bench of this Court in *Abhishek Rishi's case* (supra), wherein while over-ruling an earlier Division Bench judgment of this Court in *Sudesh Rani v. State of Punjab*, 2010(3) SCT1 it was opined that grant of five additional marks to the candidates who passed their 10th and 12th standard examination from the schools situated in rural areas of Punjab is ultra vires to the Constitution of India. Hence, the selection criteria adopted in the case in hand providing for five additional marks to the candidates belonging to rural areas was struck down.

31. The contention raised by learned counsel for the selected candidates that judgment of Full Bench of this court in *Abhishek Rishi's case* (supra) should be taken to be laying down law for prospective application is to be noticed and rejected. There was no such observation made by the Full Bench of this Court in *Abhishek Rishi's case* (supra). The issue was considered recently by a Full Bench of this court in *Amarbir Singh v. State of Punjab*, 2013 (3) SCT676 While referring to various judgments of Hon'ble the Supreme Court on the issue, it was opined that prospective declaration of law is a device innovated to avoid re-opening of settled issues. However, there shall be no prospective over-ruling unless it is so indicated in a particular judgment. The relevant paras thereof are extracted below:

65. The proposition of doctrine of prospective overruling has been considered in several other decisions as well i.e. *Ashok Kumar Gupta v. State of U. P.* 1997(2) SCT381 *M/s Raymond Ltd. v. M. P. Electricity Board*, 2001(1) RCR (Civil) 330, *Somaiya Organics (India) Ltd. and another v. State of U. P. and another* (2001) 5 SCC519 *Harsh Dhingra v. State of Haryana* 2002(2) RCR (Civil) 450, *M. A. Murthy v. State of Karnataka and others* 2003(4) SCT251 2003(7) SCC517 *Dr. Saurabh Choudhary and others v. Union of India and others*, 2004(2) SCT890 2004(5) SCC618 *Employees State Insurance Corporation and others v. Jardine Henderson Kumar Manoj* 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [27]. *Staff Association and others*, 2006(3) SCT691 2006(6) SCC581 *Amrik Singh Lyallpuri v. Union of India and others* 2011 (6) SCC535 66. The consistent view of the Supreme Court is that prospective declaration of law is a device innovated to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. The object of prospective declaration of law is that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in larger public interest. According to the Supreme Court, it was a rule of all judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly effecting the rights of people who acted upon the law adopted prior to the date of judgment overruling the previous law. There shall be no prospective overruling unless it is so indicated in the particular decision by the Supreme Court under Article 142 of the Constitution. Recently in *Bangalore City Cooperative Housing Society Ltd. v. State of Karnataka and others* 2012 (3) R. C.R. (Civil) 779:

2012. 3) Recent Apex Judgments (R.A.J.) 497:

2012. AIR SC1395 the Supreme Court has upheld the quashing of the notifications under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 on the ground that there was no useful scheme approved by the State Government prior to the issue of notifications. In the absence of such approval the land could not be acquired for public purpose. The society's prayer for invoking the doctrine of prospective overruling in favour of those members of the society who had already constructed the houses may not suffer incalculable harm was declined. The Estate Agent had charged huge money from the Society for getting the notifications issued under Sections 4(1) and 6(1) of the 1894 Act and sanction of lay out plan by the BDA. The Supreme Court found no justification to Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [28]. invoke the doctrine of prospective overruling and legitimate the illegal acts committed by the Estate Agent.

. [Emphasis supplied].

32. The issue had also been gone into by a Full Bench of this Court in Commissioner of Income-Tax v. Smt. Aruna Luthra, (2001) 252 ITR76 wherein it was opined that a declaration by the court is-- This was the law, this is the law. This is how the provisions have to be construed. The court merely declares law. An earlier decision by the court is simply no law.. Relevant paras thereof are extracted below: A court decides a dispute between the parties. The cause can involve decision on facts. It can also involve a decision on a point of law. Both may have bearing on the ultimate result of the case. When a court interprets a provision, it decides as to what is the meaning and effect of the words used by the Legislature. It is a declaration regarding the statute. In other words, the judgment declares as to what the Legislature had said at the time of the promulgation of the law. The declaration is This was the law. This is the law. This is how the provision shall be construed. Julius Stone in Social Dimensions of Law and Justice (First Indian Reprint 1999) (Chapter XIV), while dealing with the subject of Judge and Administrator in Legal Ordering, observes as under: If, then, a main impulse underlying the stare decisis doctrine is that justice should respect reasonable reliance of affected parties based on the law as it seemed when they acted, this impulse still has force when reliance is frustrated by an overruling. Despite this, it has long been assumed that a newly emergent rule is to be applied not only to future facts, and to the necessarily past facts of the very case in which it emerges, but to all cases thereafter litigated, even if these involved conduct, which occurred before the Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [29]. establishment of the new rule. This has proceeded ostensibly on the conceptual basis, clearly formulated since Blackstone, that the new holding does not create, but merely declares, law. So that any prior putative law under which the parties acted is to be regarded as simply not law.. (emphasis supplied). The above observations clearly support the principle that the court merely declares law. An earlier decision as declared by the court is simply no law.. [Emphasis supplied].

33. In the case in hand, nothing has been pointed out from the judgment of Full Bench in Abhishek Rishi's case (supra) that the judgment will have prospective effect. Still further, the selection in the case had not attained finality but were subject-matter of challenge before the court before the judgment in Abhishek Rishi's case (supra) was pronounced. If the criteria followed for selection is considered in the light of law laid down by this Court, the same has to be set aside as to some of the selected candidates, marks have been awarded for rural area, which has been declared to be ultra vires to the Constitution of India. A Full Bench of this Court in Aruna Luthra's case (supra) clearly provides that the court only declared law. An earlier law declared by the court is simply no law. Hence, even this contention of learned counsel for the private respondents is rejected being misconceived.

34. Other contentions raised by learned counsel for the selected candidates that the petitioners have not shown as to how they are prejudiced and further that they having participated in the process of selection cannot be permitted to challenge the same, are totally misconceived. Once the petitioners have been able to plead and prove before this court that no criteria was formulated and published before the selection process was initiated, the manner in which the candidates were shortlisted was erroneous and award of additional marks for candidates belonging to rural areas is violative of Article 14 of the Constitution of India, in my opinion, all the candidates who have not been selected in the process have been prejudiced Kumar Manoj

2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [30]. as the process adopted for selection was not fair, hence, they have the right to challenge the selection made.

35. Further, a perusal of the criteria adopted by the authorities for selection shows that out of total 50 marks, five marks were for qualifications and five marks were earmarked for experience. Five marks were meant for the candidates belonging to rural areas (which has been struck down). 35 marks (15+20) were earmarked for knowledge of science practical equipments and interview. Meaning thereby after reducing five marks provided for the rural areas, the total marks would be 45, out of which 10 marks would be for qualification and experience and 35 marks would be for knowledge of science practical equipment's and interview, which may be quite on higher side. As is evident from the list of selected candidates, some of them, who secured 2 marks out of 15 marks meant for qualification, experience and rural areas (meaning thereby third divisioner in Matriculation with no experience) have been awarded higher marks in knowledge of science practical equipments and interview to permit them to make in the select list. Further, many of these candidates had secured far far low marks in the written test conducted for shortlisting. The award of marks judging the knowledge of science practical equipments and interview, both are on the basis of subjective satisfaction of the members of the Interview Committee, as the marks obtained in the written test, which though is not part of the selection criteria and qualification and experience, have no relation with the marks so awarded under these two heads.

36. While deciding the writ petitions earlier, this court had directed that the posts be re-advertised by prescribing the criteria for selection and process for shortlisting in advance, however, I find merit in the submission made by learned counsel for the petitioners to the extent that some of the candidates, who earlier applied may become over-age, hence, instead of scrapping the selection as such, in my opinion, it would be appropriate if on the basis of the written test already conducted for shortlisting of the candidates, on which no finger has been raised by any of the petitioner, the Selection Committee shall proceed further from the result of the written test conducted for shortlisting of candidates. Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document CWP No.8923 of 2012 [31].

37. For the reasons mentioned above, the writ petitions are allowed. The impugned selection of Laboratory Attendant is set aside. The official respondents are directed to carry out fresh exercise in terms of the following directions: (i) Candidates five times the number of vacancies be called for second stage of selection in the order of merit as per the test conducted for shortlisting of candidates. (ii) The minimum marks can still be prescribed even if the result is that some vacancies remain unfilled as the same is in the interest of general merit. [Reference- S. Vinod Kumar's case (supra)]. (iii) The criteria for award of marks for rural area is set aside. (iv) The marks assigned for qualification, experience, knowledge of science practical equipments and interview should be in such proportion that marks for knowledge of science practical equipments and interview are not more than 1/3rd of the total marks.

38. The aforesaid process be carried out within a period of three months from the date of receipt of a copy of the order. (Rajesh Bindal) Judge February 20, 2014 mk Kumar Manoj 2014.03.06 09:22 I attest to the accuracy and integrity of this document

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