

HC PRADEEP KUMAR RAI AND ORS.

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v.

DINESH KUMAR PANDEY AND ORS. ETC.

(Civil Appeal No.6549 of 2014)

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MAY 11, 2015

[RANJAN GOGOI AND PINAKI CHANDRA GHOSE, JJ.]

Service Law – Promotion – Of Constables and Head Constables – To the post of Sub-Inspectors – Process of promotion challenged by unsuccessful candidates – Single Judge of High Court allowed the writ petition on the grounds that there was substantial departure from Police Regulations, that number of candidates called for interview was much higher than the required four times, that sealed cover procedure was not followed and that members of Interview Committee did not give separate marks individually – Division Bench of High Court reversed the order of Single Judge – On appeal, held: Interference of Court with executive action is warranted only when there are oblique motives or there is miscarriage of Justice – The promotion process in the present case is not flawed – Moreover, the appellants having participated in the process of interview, cannot be permitted to challenge the process after declaration of the result – In the present case, in absence of any oblique motive or miscarriage of Justice, interference is not called for – Uttar Pradesh Police Regulations, 1976 – Regulation 445(B)(4).

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Dismissing the appeals, the Court

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HELD: 1. The procedure for selection of departmental candidates for the promotion to the rank of Sub-inspectors was changed and was amended by

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A every Government Order viz. the Government Order
 dated 23.01.1999 and 22.02.1999. Thus, the prior
 Government Order was impliedly repealed every time the
 new procedure was laid down. Regulation 445(B) (4) of
 B Uttar Pradesh Police Regulations, 1976 and clause 8 of
 the Government Order dated 27.02.1999 provide different
 requirement for being called for the interview. Clause 8
 of Government order did not provide the qualification
 but only eligibility for a candidate to come in the list of
 C interview. Clause 8 of the rule makes it mandatory to call
 for interview, all those who secure 40% marks separately
 in each subject and 50% marks aggregate in the written
 examination. If both the above quoted rules were to exist,
 it would create a contradictory situation. Therefore,
 D Regulation 445 cannot be said to prevail over or co-exist
 with the Government Order dated 27.02.1999, in respect
 of the number of candidates to be called for interview.
 [Para 14] [837-B, E, F-H] [838-A-C]

E *State of Rjasthan and Ors. Vs. Basant Agrotech (India)*
Limited (2013) 15 SCC 1 – referred to.

F 2. Regulation 445 of the Regulations of UP
 Government (as amended upto 31.08.1977) which
 provides for qualifications and procedure for promotion
 from rank of Constable and Head Constables to Sub
 Inspectors, are actually a compilation of Government
 Orders issued from time to time. Therefore, the
 Regulations are not a superior law as compared to the
 Government Orders and it may be amiss to suggest that
 G Regulations would prevail over the Government Orders
 by virtue of being called Regulations. [Para 10] [835-B-
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H 3. Furthermore, there is no rule of law as to the ratio
 of number of vacancies to the number of candidates for
 being called for interview; although it may be a rule of

prudence. Although it may be improper for the Selection Committee to call such large number of candidates for interview, but selection cannot be vitiated merely on this ground if such an action is not tainted by *mala fide* or oblique motive. Moreover, the appellants have not presented a case that had they been called for interview, being only four times the number of vacancies, they would have been short listed in that list. [Para 15] [838-D-G]

Mohinder Sain Garg Vs. State of Punjab and Ors. (1991) 1 SCC 662; 1990 (3) Suppl. SCR 108; Ashok Kumar Yadav Vs. State of Haryana (1985) 4 SCC 417; 1985 (1) Suppl. SCR 657 –relied on.

4. The process of sealed cover procedure was devised to prevent any prejudice being caused to the persons against whom the disciplinary or criminal proceedings are pending. In the present case, it is nobody's case that such persons are prejudiced. [Para 17] [839-D, E]

5. The purpose of constituting multi member interview panel is to remove the arbitrariness and ensure objectivity. It is required by each member of the interview panel to apply his/her own mind in giving marks to the candidates. The best evidence of independent application of mind by each panelist is that they awarded separate marks. However, only because the panelists on the interview committee did not award separate marks, cannot be a ground to quash the entire process. Also, the Government Order dated 03.02.1999 which provided that the marks must be separately awarded by interview panelists, was in continuation of the Government Order dated 23.01.1999, which was superseded expressly by Government Order dated 27.02.1999. The Government

A Order dated 27.02.1999 did not provide any condition that the marks were to be separately awarded by each interview panelist. Thus, it cannot be said that the Government did not follow the rules framed by itself. [Para 18] [839-G-H; 840-C-E]

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Lila Dhar Vs. State of Rajasthan and Ors. (1981) 4 SCC 159: 1982 (1) SCR 320 – relied on.

C 6. It is a settled law that in cases like the present one, where an Executive action of the State is challenged, Court must tread with caution and not overstep its limits. The interference by Court is warranted only when there are oblique motives or there is miscarriage of justice. In the present case, there is no oblique motive or any D miscarriage of justice warranting interference by this Court. [Para 19] [840-F-G]

E 7. The appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the F interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were G conducted. [Para 16] [839-A-C]

Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Ors. (2011) 1 SCC 150: 2010 (12) SCR 944; K.H. Siraz Vs. High Court of Kerala and Ors. (2006) 6 H SCC 395: 2006 (2) Suppl. SCR 790 – relied on.

Case Law Reference

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(2013) 15 SCC 1 referred to. **Para 14**

1990 (3) Suppl. SCR 108 referred to. **Para 15**

1985 (1) Suppl. SCR 657 relied on. **Para 15**

B

2010 (12) SCR 944 relied on. **Para 16**

2006 (2) Suppl. SCR 790 relied on. **Para 16**

1982 (1) SCR 320 relied on. **Para 18**

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6549 of 2014.

From the Judgment and Order dated 14.03.2008 of the Division Bench of the Lucknow Bench of the High Court of Judicature at Allahabad in Special Appeal No. 579 of 2007.

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With

C.A. Nos. 6550, 6551, 6552, 6553, 6554, 6555 and 6556-6561 of 2014, 4327, 4328, 4329, 4330, 4331 and 4332 of 2015, W. P. (C) No. 1057 of 2014.

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Nagendra Rai, Gaurav Bhatia, AAG, Kavin Gulati, Pragya Baghel, Rohit Sthalekar, Avi Tandon, Jayant Mehta, Prashant Shukla, Prashant Chaudhary, Shakil Ahmed Syed, Mohd. Parvez Dabas, Uzmi Jameel Husain, Mir Imtiyaz, Smarhar Singh, Shantanu Sagar, Aakash Kumar, Prerna Singh, T. Mahipal, Pankaj Kumar Shukla, Pawan Kumar Shukla, K. L. Janjani, Mukesh Verma, Yash Pal Dhingra, Mayuri Raghuvanshi, Vyom Raghuvanshi, Dr. Vinod Kumar Tewari, Vishwa Pal Singh, Pramod Swarup, Praveen Swarup, Sushma Verma, Suresh Kumar, Viresh Kumar Yadav, M. M. Singh, Rameshwar Prasad Goyal, Abhinav Malik, Vibhu Tiwari,

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- A Gaurav Shrivastava, Ravi Prakash Mehrotra, Jatinder Kumar Bhatia, Ajay Kumar Singh, Digendra Sharma, Dr. Monika Gusain, Hariom Yaduvanshi, Abhinav Jain, Mohd. Muztaba, Pramod K. Tewari, Anupam Dwivedi, Aseem Chandra, T. M. Singh, Prachi Bajpai, Satish Pandey, Man Mohan Sharma,
- B Prabhat Kumar Rai, Sanjay Kumar Tyagi, S. G. Hasnain, Sangeeta Kumar, Vithika Garg, Dinesh Kr. Tiwary, Shailendra Kumar Mishra, Chandan Kr., Jaya Kumari, Rajat Sharma, Rajesh Chandra Tiwari, Raghvendra Tiwari, Anilendra Pandey, N. N. Jha, Vishnu Shankar Jain, Dr. Kailash Chand, Santosh
- C Kumar Tripathi, Varun Sarin, Ashok Mathur, Anuvrat Sharma, Deepak Goel, Gunnam Venkateswara Rao, Jitendra Mohan Sharma, Rohit Singh, Manoj K. Mishra, Shekhar Kumar, S. R. Setia, Tayenjam Momo Singh, Indu Sharma, Mridula Ray
- D Bhardwaj, Pratibha Jain, Kamalendra Mishra, Vijay Kumar, Gopal Prasad, Sandhya Goswami, A. N. Bardiyar, Mukul Kumar, Dharam Bir Raj Vohra, M. A. Krishna Moorthy, Ramvir Singh for the appearing parties.

E The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J: 1. Leave granted in the special leave petitions. I.A. No.52 of 2015 is allowed.

F 2. This batch of appeals raises a common controversy relating to the promotion of Constables and Head Constables to the rank of Sub-Inspectors in the State of Uttar Pradesh. The process of promotion started way back in 1999 and has since embroiled in litigation. Basically, the candidates

G appearing for promotion from the rank of Constable or Head Constable to the rank of Sub-Inspector have challenged the selection and promotion process at various stages of the promotion process.

H 3. The facts necessary for disposal of this case are that the Government of Uttar Pradesh took a decision on

23.01.1999 for recruitment of departmental candidates to the posts of Sub-inspectors in the State, both by direct recruitment and by promotion of Constables and head Constables. In continuation of the order dated 23.01.1999, another Government Order was issued on 3.02.1999, according to which all the vacancies of Sub-inspectors till 31.12.1999 were to be filled up. On 27.02.1999, the Government of Uttar Pradesh issued another Order which superseded the earlier Order dated 23.01.1999. The 27.02.1999 order provided a complete pattern of the examination and process of selection and promotion. As per the new pattern the promotion process was to be conducted in three steps: (1) The preliminary written examination and infantry test/physical test; (2) Main written Examination; and (3) Interview. Candidates who qualified the preliminary examination and IT/PT were eligible to appear in the main written examination.

4. As per the existing rules in 1999, 50% of total vacancies were to be filled up by promotion of persons serving as Constables and Head Constables and the remaining 50% vacancies were to be filled up by direct recruitment. It appears that at the time the selection process began, there were 2956 vacancies of the rank of Sub-inspectors in the State. So initially the number of vacancies for promotees quota were 1478. However, It appears that vide order dated 10.01.2000, another 86 posts were added to the promotees quota to be filled up by the departmental examination in pursuance of the direction made by State Backward Classes Commission, to maintain the ratio of promotees and direct recruits at the rate of 50%. Thus, the number of vacancies for promotees quota became 1564. It is to be noted that pursuant to the Division Bench judgment of the High Court of Allahabad in Special Appeal No.1372 of 1999: **State of Uttar Pradesh Vs. Ranbir Singh**, the Government of Uttar Pradesh created another class of promotees which consisted of 385 Head Constables who were

A to be promoted directly by virtue of the length of their service
without undergoing the selection process. The creation of this
class is not contended before us and that controversy is settled
by prior litigation. Thus, eventually it appears that total
vacancies for people who were to be promoted after the
B selection process was 1176.

5. The preliminary test was held on 05.09.1999 and the
result was announced on 05.11.1999 and those who qualified
the preliminary test were permitted to appear in IT/PT which
C was held in December 1999. The result of IT/PT test was
declared on 11.02.2000, which was challenged before the High
Court of Allahabad in Writ Petition No.9694/2000: **Triloki Nath
Pandey and others Vs. State of Uttar Pradesh**, and the
entire process was stayed till the conclusion of litigation. Thus,
D at the end of that round of litigation the State of Uttar Pradesh
was directed to go ahead with the selection procedure.
Government Notification for the main written examination was
issued on 9.12.2004 and the main written examination was
conducted on 25.12.2005. Result of the main written test was
E declared on 24.01.2006 and pursuant thereto, 9671
candidates were called for interview. The interviews were held
at four centres between 15.05.2006 to 20.07.2006. The results
of the interviews were made available on 11.11.2006.

F 6. 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
G 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
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the candidates who were selected after the interview already held, for the rank of Sub-Inspectors. A

7. The learned Single Judge decision weighed on the following points:

(i) There was substantial departure from the Police Regulations as amended upto 1977 in the entire process of selection and promotion. B

(ii) The number of candidates called for interview was much higher than the required four times the number of vacancies available. The four time the vacancies rule is found in paragraph 445 of Uttar Pradesh Police Regulations, 1976. C

The sealed cover procedure was not followed for the candidates against whom any disciplinary or criminal proceedings are pending. The names of such persons were also displayed on the tentative list of selected candidates. D

(iii) The members of the Interview committee who conducted the interviews did not give separate marks individually but a single collective marking for each candidate was done by the committee. E

The names of the persons who are already dead or are under training in some other Wing of Police Department like PAC, were also included in the tentative list of selected candidates after the interview. F

8. The Division Bench found that the learned Single Judge had made findings on three basic points. The Division Bench upturned those three findings and reversed the judgment on following grounds: G

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- A (i) The Division Bench found that the rule of number of candidates being called for interview be not more than four times the number of vacancies was found in 1977 UP Police Regulations and same was superseded by the Government Order of 27.02.1999. The 27.02.1999 order provided that all candidates securing 50% marks in main written exam shall be called for the interview.
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- (ii) It further held that once the candidates had participated in the process of selection without raising objections; they could not be allowed to challenge the process at a later stage.
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- (iii) With respect to sealed cover procedure, the Division Bench noted that this procedure was a requirement under the order dated 23.01.1999 but not under order dated 27.02.1999. Since the latter specifically superseded the former order, the sealed cover procedure was not requirement as such.
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- (iv) The Division Bench, with respect to composite marking in the interview, found that it is for the examining body to decide as to how marking should be done. Separate marking or consolidated marking are two methods of assessment and it is for the examining body to decide, not the Court, which method is preferable.
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- (v) Division Bench further refused to accept the argument that the later government order of 27.02.1999 was not to govern the selection for vacancies which were announced by order dated 23.01.1999 and 03.02.1999. It found that this was a mischievous argument and very clearly the procedure set out under order dated 27.02.1999 was followed throughout the selection process.
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HC PRADEEP KUMAR RAI v. DINESH KUMAR PANDEY 835
[PINAKI CHANDRA GHOSE, J]

9. We have heard the learned counsels appearing for the parties. We find that the Division Bench of the High Court was very lucid and correct in its findings and conclusion reached thereupon. Nevertheless, we will discuss all the points raised before us and give our findings. A

10. Regulation 445 of the said Regulations of UP Government (as amended upto 31.08.1977) provides for qualifications and procedure for promotion from rank of Constable and Head Constables to Sub Inspectors. The procedure therein consists of Notice, pre-examination (essay type written exam), examination of character roll, main written examination and finally interview. The Regulation provides that the number of candidates called for interview, on the basis of the merit of the main written examination, shall be four times the number of vacancies. In the interview, 40% marks are to be allocated to the service record. It has been submitted and clarified to us that these regulations are actually a compilation of Government Orders issued from time to time. Therefore, we find that the Regulations are not a superior law as compared to the Government Orders and it may be amiss to suggest that Regulations would prevail over the Government Orders by virtue of being called Regulations. Having said that, we go on to examine the Government Orders issued by the UP Government in 1999. B
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11. Government Order dated 23.01.1999 is worded as "His Excellency the Governor hereby orders to adopt the following procedures for selection of departmental candidates as Sub Inspectors, Civil Police of UP Police." The said Order provides for preliminary examination (objective type), main written examination and the personality test (or the interview). It provided that the panelists conducting personality test must give marks to each candidate separately and the head of the Recruitment Board must aggregate the marks given by all F
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A panelist and thereafter the final result would be declared. The Order also provided for character roll and service record shall also be assessed. The Order was addressed to the Secretary, Police/P.A.C. Recruitment Board, Headquarters, Director General of U.P. Police and directed the Secretary to make arrangements in terms of the procedure set out in the said Order.

12. Then comes the Government Letter dated 03.02.1999, addressed to the Secretary, Police/P.A.C. Recruitment Board, Headquarters, Director General of U.P. Police. This Order directed the Secretary of Recruitment Board to begin the Selection procedure for the 1478 seats of the rank of Sub-Inspectors in Civil Police. We have already mentioned that the number of seats was later reduced to 1176 (for reasons already discussed) and there is no controversy on that.

13. Then comes the Government Order dated 27.02.1999, again addressed to the Secretary, Police/P.A.C. Recruitment Board, Headquarters, Director General of U.P. Police. This order very categorically provided that the Order dated 23.01.1999 is superseded by this Order and it set out a new procedure for selection of the departmental candidates. The procedure provided by this order included a Preliminary Written Examination (objective type), Physical Test and Infantry Test for those who qualify the preliminary examination, main written examination and then the interview. It provided that all those who secured 40% marks separately in each subject and 50% aggregate in the main written examination would be called for the interview. Further the Order provided that for the purpose of interview/Personality Test and assessment of character roll/service record, a selection panel shall be constituted as per the requirement and its members shall be determined keeping in mind the reservation policy of the Government. It may be noted that the Order did not say that the interview panel was to

HC PRADEEP KUMAR RAI v. DINESH KUMAR PANDEY 837
[PINAKI CHANDRA GHOSE, J]

be constituted or was to function as per the Regulation 445 discussed above. The order also did not mention that the members of selection panel were to give separate marks for each candidate. A

14. Now analysing all these government orders and regulations, we find that the procedure for selection of departmental candidates for the promotion to the rank of Sub-inspectors was changed and was amended by every Government Order. Learned counsel appearing for the appellants cited the case of *State of Rajasthan and Ors. Vs. Basant Agrotech (India) Limited*, (2013) 15 SCC 1, contending the scope of delegated legislation vis-à-vis parent legislation. However, in the present case, as already mentioned, the regulations cannot be said to prevail over the Government orders. Thus, the above cited judgment is not relevant for our purpose, because Regulations are merely compilation of previous G.Os. Herein, the argument of implied repeal has been forwarded. It is contended by the learned counsel for the State that the prior Government Order was impliedly repealed every time the new procedure was laid down. To examine this argument, it will be expedient to set out the relevant clauses from Regulation 445 and the Government Order dated 27.02.1999. Regulation 445(B)(4) reads as follows: "About 4 time candidates to the number of vacancies, in the marker cadet should be called for interview according to the merit from the aforesaid list." The 'aforesaid list' mentioned in Regulation 445(B)(4) refers to the merit list of the main written examination. Clause 8 in the Government Order dated 27.02.1999 reads: "The candidates securing 40% marks separately in each subject and an aggregate 50% in all subjects of main written examination shall be called for interview." On a plain reading of the above two provisions the conflict is apparent. Both these provisions provide different requirement for being called for the interview. It was argued that Clause 8 B
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- A of Government order did not provide the qualification but only eligibility for a candidate to come in the list of interview. However, this contention cannot hold good since the word used in Clause 8 is "shall". The rule makes it mandatory to call all those who secure 40% marks separately in each subject and
- B 50% marks aggregate in the written examination to be called for the interview. If both the above quoted rules were to exist, it would create a contradictory situation. Therefore, we find that Regulation 445 cannot be said to prevail over or co-exist with the Government Order dated 27.02.1999, in respect of the
- C number of candidates to be called for interview.

15. Furthermore, we find that there is no rule of law as to the ratio of number of vacancies to the number of candidates for being called for interview; although it may be a rule of

D prudence. This Court has found in *Mohinder Sain Garg Vs. State of Punjab and Ors.*, (1991) 1 SCC 662, as also in *Ashok Kumar Yadav Vs. State of Haryana*, (1985) 4 SCC 417, that although it may be improper for the Selection Committee to call such large number of candidates for

E interview, but selection cannot be vitiated merely on this ground if such an action is not tainted by mala fide or oblique motive. In *Mohinder Sain Garg* (supra), this Court gave one more reason not to accept this argument which squarely applies to

F this case as well; this Court found that the Respondents stood no chance of being called for interview if candidates upto three times the number of posts were called for interview. In the case on hand, on this score, learned counsel for the State of Uttar Pradesh has made a similar contention. Even the appellants

G herein have not presented a case that had they been called for interview, being only four times the number of vacancies, they would have been short listed in that list. Thus, we find this argument as a misplaced one.

H 16. Moreover, we would concur with the Division Bench

on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted. (See *Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Ors.*, (2011) 1 SCC 150, and *K.H. Siraz Vs. High Court of Kerala and Ors.* (2006) 6 SCC 395)

17. Further, in our view, the Division Bench has correctly dealt with the issue of sealed cover procedure. The process of sealed cover procedure was devised to prevent any prejudice being caused to the persons against whom the disciplinary or criminal proceedings are pending. In the present case, it is nobody's case that such persons are prejudiced. Therefore, this contention does not hold any merit in the present case.

18. Now, so far as the question of awarding consolidated marks by all the panelists in the interview is concerned, we are in agreement with the finding of the learned Single Judge. The purpose of constituting multi member interview panel is to remove the arbitrariness and ensure objectivity. It is required by each member of the interview panel to apply his/her own mind in giving marks to the candidates. The best evidence of independent application of mind by each panelist is that they awarded separate marks. However, if only consolidated marks are awarded at the interview, it becomes questionable, though

A not conclusive, whether each panelist applied his/her own mind independently. Having said that, we note that this Court cautioned in *Lila Dhar Vs. State of Rajasthan and Ors.*, (1981) 4 SCC 159, that it is not for the Courts to re-determine the appropriate method of selection unless obvious oblique motives are proved in a particular case. Even in Lila Dhar's case (supra), the issue was regarding the marks awarded by the Selection Committee as one consolidated marks; the Court refused to interfere with the appointment process on this ground. Only because the panelists on the interview committee did not award separate marks, cannot be a ground to quash the entire process. Also, with respect to the legal argument that the Government Order dated 03.02.1999 provided that the marks must be separately awarded by interview panelists, we hold that the Government Order dated 3.02.1999 was in continuation of the Government Order dated 23.01.1999, which was superseded expressly by Government Order dated 27.02.1999. The Government Order dated 27.02.1999 did not provide any condition that the marks were to be separately awarded by each interview panelist. Thus, it cannot be argued that the Government did not follow the rules framed by itself.

19. Further, it is a settled law that in cases like the present one, where an Executive action of the State is challenged, Court must tread with caution and not overstep its limits. The interference by Court is warranted only when there are oblique motives or there is miscarriage of justice. In the present case, there is no oblique motive or any miscarriage of justice warranting interference by this Court. Hence, the appeals and the writ petition are dismissed.