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KU. RASHMI MISHRA

*v.*

MADHYA PRADESH PUBLIC SERVICE COMMISSION AND ORS.

OCTOBER 19, 2006

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[S.B. SINHA AND DALVEER BHANDARI, JJ.]

*Constitution of India, 1950—Article 226—Writ petition—Non-joinder of necessary party—Selection of Assistant Registrars in State University—Questioned by Appellant by filing a writ petition—Only two of the seventeen selected persons impleaded as Respondents in the petition— Effect of—Held: All the seventeen selected persons were necessary parties and they not having been impleaded except two, no relief could be granted to Appellant—Service Law—Madhya Pradesh State University Service Rules, 1982—Rules 5, 8 and 12.*

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**Seventeen persons including Respondent Nos.3 and 4 were selected as Assistant Registrars in the State University of Madhya Pradesh. The selection was done through the State Public Service Commission. Appellant, though qualified for the post was not selected. He filed writ petition challenging the validity/legality of the selection process but did not implead all the seventeen selected candidates as parties therein. Only Respondent Nos.3 and 4, against whom allegations were made to the effect that they were selected due to favouritism/nepotism allegedly shown in their favour by the Selection Committee, were impleaded. High Court dismissed the writ petition.**

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**In appeal to this Court, the question which arose for consideration is whether all the seventeen selected persons having been not impleaded as parties in the writ petition, no relief could be granted to Appellant.**

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**Dismissing the appeal, the Court**

**HELD: 1.1. All the seventeen selected candidates were necessary parties in the writ petition. The number of selected candidates was not large. There was no difficulty for Appellant to implead them as parties in the said proceeding. The result of the writ petition could have affected the appointees. They were, thus, necessary and/or in any event proper parties. [714-C-D]**

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**1.2. As all the selected candidates were not impleaded as parties in the writ petition, no relief can be granted to the appellant. [720-E]** A

*Prabodh Verma & Ors.* v. *State of Uttar Pradesh & Ors.*, **[1984] 4 SCC 251;** *All India SC & ST Employees Assn. & Anr. etc.* v. *A. Arthur Jeen & Ors. etc.*, **[2001] 6 SCC 380 and** *Indu Shekhar Singh & Ors.* v. *State of U.P. & Ors.*, **(2006) 5 SCALE 107, relied on.** B

**2. The post of Assistant Registrar in the Universities requires no professional experience. What was required to be seen was academic qualification, experience and other abilities of the candidate. Whereas the ability of communication and other skills may have to be judged through interview, experience of the candidate as also the marks obtained by him in the written examination could not have been ignored. It is not that the Public Service Commission was not called upon hold a written examination. The Madhya Pradesh State University Service Rules, 1982 enabled the Commission to do so. Such a written examination in fact was held. However, the same was held only for the purpose of short-listing the candidates and not for any other purpose. It was not a fair exercise of power. The marks obtained by the candidates in the said written examination should have been taken into consideration. Evidently, the Commission did not do so. For the reasons stated hereinbefore, the State of Madhya Pradesh is directed to consider the desirability of amending the Rules suitably so that such charges of favoritism or nepotism by the members of the constitutional authority in future is not called in question. Although for one reason or the other, the High Court had not addressed itself on this question, but, the very fact that such allegations had been made is a sufficient ground for the State or the Commission to take appropriate steps for amending the Rules for the said purpose.** C D E

**[719-H; 720-A-E]** F

*Ajay Hasia* v. *Khalid Mujib Sehravardi,* **[1981] 1 SCC 722;** *Ashok Kumar Yadav & Ors. etc.* v. *State of Haryana & Ors. etc.*, **[1985] 4 SCC 417;** *State of U.P. etc.* v. *Rafiquddin & Ors. etc.*, **[1987] Supp. SCC 401;** *Jaswinder Singh & Ors.* v. *State of Jammu & Kashmir & Ors.*, **[2003] 2 SCC 132;** *Vijay Syal & Anr.* v. *State of Punjab & Ors.*, **[2003] 9 SCC 401;** *K.H. Siraj* v. *High Court of Kerala & Ors.*, **[2006] 6 SCC 395;** *Sardara Singh & Ors.* v. *State of Punjab & Ors.*, **[1991] 4 SCC 555 and** *Munindra Kumar & Ors.* v. *Rajiv Govil & Ors.*, **[1991] 3 SCC 368 and AIR [1991] SCC 1607, referred to.** G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4559 of 2006.

From the Judgment and Order dated 21.3.2005 of the High Court of H

A Judicature of Madhya Pradesh at Jabalpur in W.P.S. No. 2665/2004 and Order dated 24.6.2005 in Review Petition M.C.C. No. 1080/2005.

S.B. Sanyal and Prakash Shrivastava for the Appellant.

S.K. Gambir, M.P. Jha, Ram Ekbal Roy and Harshvardhan Jha for the B Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** Leave granted.

C The principal question raised before us in this appeal is the validity/ legality of the selection process involved in selecting Assistant Registrars, Class II gazetted post.

Appellant is holder of a Post Graduate degree. She had also done B.Ed. and was having 7 years' teaching experience. The 1st respondent-Public D Service Commission issued an advertisement on or about 24.7.2003 for recruitment to the post of Assistant Registrar in the State University of Madhya Pradesh. The Commission was called upon by the State to fill up 17 posts, the essential qualifications wherefor are stated to be as under :

> "C. Essential Qualifications : The postgraduate degree from any E recognized University in minimum of the IInd Class or its equivalent degree.
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> Requirement : The work experience on the post of Teaching/ Administrative post."

F It was stated that the essential qualifications stipulated in the advertisement were the minimum.

The State of Madhya Pradesh, in exercise of its power conferred upon it by sub-Section (2) of Section 15-A of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 made Rules known as Madhya Pradesh State University G Service Rules, 1982 (for short, 'the 1982 Rules'), Rules 5 and 8(ii) which are relevant for our purpose read as under :

> "5. *Method of recruitment*.- (1) Without prejudice to the provisions of rule 7, recruitment to the Service after the commencement of these rules, shall be by the following methods, namely:-

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(a) by direct recruitment, A

(b) by promotion of persons, holding a lower post which may or may not comprise the Service, to a higher post comprising the Service, and

(c) by deputation from the State Government or any organization other than the Universities as the Kuladhipati may deem fit, B

(2) The number of persons recruited by various methods under sub-rule (1) shall be in accordance with the percentage shown in Schedule I.

(3) Notwithstanding anything to the contrary contained in sub-rules (1) and (2), if in the opinion of the Kuladhipati, the exigencies of C Service so require, he may, in consultation with the Commission, adopt such methods of recruitment to the service, other than those prescribed in sub-rule (1) as he may, by an order issued in this behalf, specify."

"8. *Conditions of eligibility of direct recruits.*- In order to be eligible D for direct recruitment to the Service a candidate must satisfy the following conditions, namely:-

(i) .....

(ii) A candidate who is a retrenched Government or University employee E shall be allowed to deduct from his age the period of all temporary service previously rendered by him upto a maximum limit of 7 years even if it represents more than one spell provided that the resultant age does not exceed the upper age limit by more than three years."

Rule 11 provides for mode of direct recruitment. F

Rule 12 of the Rules is as under :

"12. *List of candidates recommended by the Commission.*- (1) The Commission shall forward to the Kuladhipati a list arranged in order of merit of the suitable candidates who have qualified by such standards G as the Commission may determine and of the candidates belonging to the Scheduled Castes and Scheduled Tribes who, though not quali by that standard, are declared by the Commission to be suitable for appointment to the Service with due regard to the maintenance of efficiency of administration. The list shall be published for general H

A information.

(2) Subject to the provisions of these rules, candidates will be considered for appointment to the available vacancies in the order in which their names appear in the list.

B (3) The inclusion of a candidate's name in the list shall confer no right to appointment unless the Kuladhipati is satisfied, after such enquiry as may be considered necessary, that the candidate is suitable in all respects for appointment to the Service."

Pursuant to or in furtherance of the said advertisement, 6158 candidates C filed applications. The Commission conducted a preliminary examination on 23.11.2003. 4767 candidates appeared therein. 55 candidates were short-listed, having been found to be eligible for appearing at the viva voce test. Interviews were held between the period 9.2.2004 and 11.2.2004. Whereas 17 persons, including Respondent Nos.3 and 4 herein were selected, Appellant was not.

D She filed a writ petition before the Madhya Pradesh High Court, which was registered as Writ Petition No.2665 of 2004. All the selected candidates were not impleaded as parties therein. Only Respondent Nos.3 and 4, against whom allegations were made to the effect that although they were inexperienced and were having inferior academic qualification, were selected being influential E persons were impleaded, stating :

"That, it would be pertinent to mention here that the husband of respondent No.3, is a Deputy Collector and is presently posted as S.D.M. Ujjain. He is having high political link and is related to influential personality. Inspite of having no experience, much less any F teaching or administrative experience, she has been adorned with the selection on the post of Assistant Registrar. Similarly respondent No.4 and other selected candidates, who lack any teaching experience, having been selected, whereas the petitioner who satisfied all the requisite qualifications, for the aforesaid post, has not been selected."

G The aforesaid respondents ware said to have been impleaded in a representative capacity purportedly because Appellant was not having the addresses of the candidates who were selected. The learned Single Judge of the High Court, by reason of the impugned judgment, did not find any merit in the writ petition and dismissed the same opining that Appellant having participated in the selection process knowing fully well the conditions of H advertisement and having not been selected in the interviews, could not

question the selection process. A

Mr. S.B. Sanyal, the learned Senior Counsel appearing on behalf of the appellant, *inter alia*, submitted :

(i) 1982 Rules were *ultra vires* as no selection could be made only on the basis of interview ignoring the marks obtained in the written examination B and/or academic qualification and experience;

(ii) Selection entirely on viva voce tests may be permissible in respect of the post which requires professional experience and not for the teachers of the Universities wherefor academic qualification as also the experience are relevant factors. Strong reliance, in this behalf, has been placed on *Ajay Hasia* v. *Khalid Mujib Sehravardi,* [1981] 1 SCC 722 and *Ashok Kumar Yadav & Ors. etc.* v. *State of Haryana & Ors. etc.,* [1985] 4 SCC 417; and C

(iii) Having regard to the academic qualification and experience held by Appellant, she had a legitimate expectation of being appointed.

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Mr. S.K. Gambhir, the learned Senior Counsel appearing on behalf of the Madhya Pradesh Service Commission, on the other hand, contended that-

(i) As the viva voce test was the only criteria fixed for selection of Assistant Registrar in terms of the statutory rules, no illegality can be said to have been committed; E

(ii) Appellant could have challenged the *vires* of the Rules at the threshold, but, having taken part in the selection process, could not be permitted to question the same, having not been selected by the Public Service Commission;

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(iii) The selected candidates having not been impleaded as parties, the writ petition was not maintainable. Reliance in this behalf has been placed on *Prabodh Verma & Ors.* v. *State of Uttar Pradesh & Ors.,* [1984] 4 SCC 251].

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It is not in dispute that all the 17 selected candidates were not impleaded as parties. Respondent Nos.3 and 4, although, purported to have been impleaded as parties, the same, as noticed hereinbefore, was done on a different premise. Allegations of favoritism against them having been made, indisputably they were necessary parties. In the writ petition, although, the appellant contended that they were being impleaded in their representative H

A capacity; admittedly no step had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto.

The High Court did not go into the question as to whether any favoritism or nepotism had been shown in favour of the respondent Nos.3 and 4 by the members of the Selection Committee. Notices having been issued and the B respondents having filed their responses before the High Court, we may presume that the contention in regard to favoritism or nepotism allegedly shown by the Selection Committee in favour of respondent Nos.3 and 4 had not been pressed.

In the aforementioned situation, all the seventeen selected candidates C were necessary parties in the writ petition. The number of selected candidates was not large. There was no difficulty for Appellant to implead them as parties in the said proceeding. The result of the writ petition could have affected the appointees. They were, thus, necessary and/or in any event proper parties.

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In *Prabodh Verma* (supra) this Court held :

> "The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, E namely, the reserve pool teachers, were not made parties - not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected F by its judgment being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them G being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

(See also *All India SC & ST Employees Assn. & Anr. etc.* v. *A. Arthur Jeen & Ors. etc.*, [2001] 6 SCC 380 and *Indu Shekhar Singh & Ors.* v. *State* H *of U.P. & Ors.*, [2006] 5 SCALE 107).

Furthermore, the validity of 1982 Rules was not in question in the writ petition. What was in question was only the selection process. In the absence of any prayer made in the writ petition in that behalf and/or grounds for such a declaration having not been set out, evidently the High Court could not have gone thereinto. We are, therefore, are not in a position to declare the said Rules as *ultra vires* as was urged by Mr. Sanyal. We, however, cannot refrain ourselves from observing that the said Rules apparently do not satisfy the requirements of the law as laid down by this Court. Interview, indisputably, is one of the relevant factors for selection. This Court, however, had noticed that nepotism or favoritism in making selection cannot be ruled out and as such, categorically laid down that a low percentage of the total marks only should be fixed for interview.

In *Ajay Hasia* (supra), it was held :

> "The second ground of challenge questioned the validity of viva voce examination as a permissible test for selection of candidates for admissions to a college. The contention of the petitioners under this ground of challenge was that viva voce examination does not afford a proper criterion for assessment of the suitability of the candidates for admission and it is a highly subjective and impressionistic test where the result is likely to be influenced by many uncertain and imponderable factors such as predelictions and prejudices of the interviewers, his attitudes and approaches, his pre-conceived notions and idiosyncrasies and it is also capable of abuse because it leaves scope for discrimination, manipulation and nepotism which can remain undetected under the cover of an interview and moreover it is not possible to assess the capacity and calibre of a candidate in the course of an interview lasting only for a few minutes and, therefore, selections made of the basis of oral interview must be regarded as arbitrary and hence voilative of Article 14. Now this criticism cannot be said to be wholly unfounded and it reflects a point of view which has certainly some validity.

The Court, upon noticing the criticism of the reputed authors in this behalf, observed :

> ".....the oral interview method continues to be very much in vogue as a supplementary test for assessing the suitability of candidates wherever test of personal traits is considered essential. Its relevance as a test for determining suitability based on personal characteristics

A has been recognised in a number of decisions of this Court which are binding upon us."

In regard to the criterion to be fixed for interview, it was stated :

".....Now there can be no doubt that, having regard to the drawbacks B and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the Court as free from the vice of arbitrariness. It may be pointed out that C even in *Peeriakaruppan's* case (supra), where 75 marks out of a total of 275 marks were allocated for the oral interview, this Court observed that the marks allocated for interview were on the highside. This Court also observed in *Miss Nishi Maghu* case [1980] 4 SCC 95 : "Reserving 50 marks for interview out of a total of 150...does seem excessive, D especially when the time spent was not more than 4 minutes on each candidate". There can be no doubt that allocating 33 1/3 per cent of the total marks for oral interview is plainly arbitrary and unreasonable. It is significant to note that even for selection of candidates for the Indian Administrative Service, the Indian Foreign Service and the Indian Police Service, where the personality of the candidate and his E personal characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for oral interview are 250 as against 1800 marks for the written examination, constituting only 12.2 per cent of the total marks taken into consideration for the purpose of making the selection. We must, therefore, regard the allocation of as high a F percentage as 33 1/3 of the total marks for the oral interview as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained."

In *Ashok Kumar Yadav* (supra), while stating that interview is must for G professional experience, this Court opined :

"It is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages H over the viva voce test, there are yet no written tests which can

evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by viva voce test, much depending on the constitution of the interview board."

However, it was observed :

".....There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts."

In *State of U.P. etc.* v. *Rafiquddin & Ors. etc.* [1987) Supp. SCC 401, this Court was considering selection of Judicial Officers. While doing so, it noticed *Ashok Kumar Yadav* (supra) opining :

"....The enacting clause of Rule 19 provided guidance for the Commission in preparing the list of approved candidates on the basis of the aggregate marks obtained by a candidate in the written as well as in viva voce test. Clause (2) of the proviso to Rule 19 did not no doubt expressly lay down that the minimum marks for the viva voce had to be prescribed but the language used therein clearly showed that the Commission alone had the power to prescribe minimum marks in viva voce test for judging the suitability of a candidate for the service. ..... The viva voce test is a well recognised method of judging the suitability of a candidate for appointment to public services and this method had almost universally been followed in making selection for appointment to public services. Where selection is made on the basis of written as well as viva voce test, the final result is determined on the basis of the aggregate marks. If any minimum marks either in the written test or in viva voce test are fixed to determine the suitability of a candidate the same has to be respected."

(See also *Jaswinder Singh & Ors.* v. *State of Jammu & Kashmir & Ors.*,

A [2003] 2 SCC 132, *Vijay Syal & Anr.* v. *State of Punjab & Ors.*, [2003] 9 SCC 401 and *K.H. Siraj* v. *High Court of Kerala & Ors.*, [2006] 6 SCC 395.)

In *Sardara Singh & Ors.* v. *State of Punjab & Ors.*, [1991] 4 SCC 555, this Court opined that in the selection of Patwaris, the ratio in *Ashok Kumar Yadav* (supra) cannot have application, holding :

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> "It is then contended that the written test, conducted by the previous Service Selection Board, was abandoned and only oral interviews were conducted. The selection, therefore, is illegal. Normally it may be desirable to conduct written test and in particular of handwriting which is vital for a Patwari whose primary duty is to record clearly entries in revenue records followed by oral interview. The Rules do not mandate to have both. Options were given either to conduct written test or viva voce or both. In this case the Committee adopted (sic opted) for viva voce as a method to select the candidates which cannot be said to be illegal."

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Unfortunately, the effect of the *Ashok Kumar Yadav* (supra) had not been considered therein in great details.

We are, however, not oblivious of a decision of this Court in *Munindra Kumar & Ors.* v. *Rajiv Govil & Ors.*, [1991] 3 SCC 368 : AIR (1991) SCC 1607, when this Court refused to exercise its discretionary jurisdiction in directing creation of posts and/or granting relief to the appellants therein on equitable grounds despite quashing the Rules in question, but stated :

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> "....The last candidate out of the 25 selected candidates in general category has secured 134.5 marks. Out of the 25 candidates selected in the general category, 5 candidates have secured lesser marks than Rajeev Govil in written test, 9 candidates below Vivek Aggarwal and 2 below Gyanendra Bahadur Srivastava. A perusal of the mark-sheet also shows that 50 candidates are such who have not been selected instead (sic inspite) of having secured 87.5 marks or above in written test, 79 candidates who have secured above 85 marks, and more than 100 candidates who have secured more than 81 marks in the written test. Even if we were inclined to give a further chance of interview and group discussion by keeping 10 per cent and 5 per cent marks respectively for interview and group discussion, in all fairness it would be necessary to give chance to all such candidates who have secured higher marks in the written test in comparison to the

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respondents-writ petitioners. We have already taken the view that we do not consider it just and proper to set aside the selections already made. In these circumstances even if we were inclined to give direction to the Board to create three more posts and give chance to all the candidates securing equal or higher marks in the written examination than the writ petitioners, there was a remote chance of the writ petitioners being selected. In our view such exercise would be in futility, taking in view the chance of success of the writ petitioners.

In the result, we allow these appeals in part and quash the rule made by the U.P. State Electricity Board keeping 40 marks for interview and 40 marks for group discussion being arbitrary. *We direct that in future the marks for interview and group discussion shall not be kept exceeding 10 per cent and 5 per cent of the total marks, respectively.* The selection already made by the Board for the posts of Assistant Engineers (Civil) shall not be disturbed."

(Emphasis supplied)

It is unfortunate that the respective State Governments had not noticed the decisions of this Court.

A statutory rule, it is trite, must not only be, in consonance with the legislative intent, but also must satisfy the constitutional requirements contained in Articles 14 and 16 of the Constitution of India. Our Constitution professes equality. Equality clauses contained in Articles 14, 15 and 16 of the Constitution of India are heart and soul of our Constitution. A constitutional authority, although, would be presumed to act fairly, this Court, while laying down the norms on which such statutory authorities must function keeping in view the possibility of showing nepotism or favoritism in favour of one candidate or the other, laid down the same having regard to the doctrine of reasonableness and with a view to refrain the constitutional and statutory authorities from acting arbitrarily. The sole purpose of issuing such directions by this Court had been to uphold the doctrine of equality enshrined in our Constitution. We have noticed hereinbefore that this Court has not set down any fixed rules. It had advocated flexibility. But the rule of flexibility was directed to be applied having regard to the nature of post as also the duties and functions of the incumbents thereof.

The post of Assistant Registrar in the universities was not of such nature which would answer the requirements of the tests laid down by this

A Court at certain times. The post requires no professional experience. What was required to be seen was academic qualification, experience and other abilities of the candidate. Whereas the ability of communication and other skills may have to be judged through interview, experience of the candidate as also the marks obtained by him in the written examination could not have been ignored. It is not that the Commission was not called upon hold a B written examination. The Rules enabled the Commission to do so. Such a written examination in fact was held. However, the same was held only for the purpose of short-listing the candidates and not for any other purpose. It was not a fair exercise of power. The marks obtained by the candidates in the said written examination should have been taken into consideration. C Evidently, the Commission did not do so. For the reasons stated hereinbefore, we would direct the State of Madhya Pradesh therefor to consider the desirability of amending the Rules suitably so that such charges of favoritism or nepotism by the members of the constitutional authority in future is not called in question.

D We would, at the cost of repetition, would state that although for one reason or the other, the High Court had not addressed itself on this question, but, the very fact that such allegations had been made is a sufficient ground for the State or the Commission to take appropriate steps for amending the Rules for the said purpose.

E In the instant case, however, as all the selected candidates were not impleaded as parties in the writ petition, no relief can be granted to the appellant.

The appeal is dismissed with the aforementioned observations and directions. No costs.

B.B.B. Appeal dismissed.