

Mukul Kumar Tyagi vs The State Of Uttar Pradesh on 16 December, 2019

Equivalent citations: AIR ONLINE 2019 SC 1847, (2020) 1 SCALE 151

Author: Ashok Bhushan

Bench: Navin Sinha, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9026 OF 2019

MUKUL KUMAR TYAGI . . . APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH AND ORS. . . RESPONDENT(S)

WITH

CIVIL APPEAL NO. 9027 OF 2019

RAJIV KUMAR AND ORS. . . APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH AND ORS. . . RESPONDENT(S)

AND

CIVIL APPEAL NO. 9028 OF 2019

RAVI PRAKASH AND ORS. . . APPELLANT(S)
Signature Not Verified

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VERSUS

MEENAKSHI KOHLI
Date: 2019.12.16
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Reason:

THE STATE OF UTTAR PRADESH AND ORS. . . .RESPONDENT(S)

1
J U D G M E N T

ASHOK BHUSHAN, J.

These three appeals have been filed questioning the common judgment of High Court of Allahabad dated 09.05.2019 delivered by a Division Bench in Special Appeal No.585 of 2018 – Deepak Sharma and 05 Ors. Vs. State of U.P. with several other special appeals. By the impugned judgment, the Division Bench of the High Court has allowed the appeal setting aside the judgment of a learned Single Judge dated 07.10.2017 delivered in batch of writ petitions led by Writ Petition No. 41750 of 2015 – Prashant Kumar Jaiswal and 12 Others Vs. State of U.P. and 10 Others and dismissing all the writ petitions.

2. For deciding these appeals, it shall be sufficient to notice the facts and questions of law as arising in Civil Appeal No.9026 of 2019 – Mukul Kumar Tyagi Vs. The State of Uttar Pradesh And Ors., which is being treated as lead appeal. The learned Single Judge by judgment dated 07.10.2017 has decided the batch of writ petitions led by Writ Petition No.41750 of 2015 – Prashant Kumar Jaiswal and 12 Others Vs. State of U.P. and 10 Others, which judgment was subject matter of challenge in the Special Appeal No. 585 of 2018 and other appeals in which impugned judgment has been delivered. It is, thus, necessary to notice the relevant facts giving rise to Writ Petition No.47510 of 2015 and sequence of the events after judgment of the learned Single Judge dated 07.10.2017.

3. The subject matter of these appeals is recruitment to the post of Technician Grade-II in Uttar Pradesh Power Corporation Limited conducted by Uttar Pradesh Electricity Service Commission, Uttar Pradesh Power Corporation Limited, Lucknow. Under Uttar Pradesh Electricity Supply Act, 1948, the erstwhile Uttar Pradesh State Electricity Board had framed regulations constituting Electricity Service Commission, which was entrusted to conduct examination for the various posts to be filled up by competitive examination. After enactment of Uttar Pradesh Electricity Reforms Act, 1999, the Uttar Pradesh Electricity State Board ceased to exist and was replaced by the Corporation. The Corporation adopted the Regulations framed by Uttar Pradesh State Electricity Board including Uttar Pradesh Electricity Board of Operational Employees Category Service Regulations, 1995 (hereinafter referred to as “Regulations, 1995”), which provided for recruitment to the post of Technician Grade-II. The qualifications provided for in Regulations, 1995 were as follows:-

“Passing High School or its equivalent with Science and Mathematics as subject from UP Secondary Education Council and All India/State Trade Certificate in Electrical Trade”

4. The Corporation by O.M. dated 24.12.2010 provided that apart from qualification mentioned in Regulations, 1995 the persons must have three months certificate course in regard to knowledge of Windows issued by Computer Institutions recognised by State Government. On 29.01.2011, the Uttar Pradesh Power Corporation Ltd. issued an office memo by which with regard to computer qualification as prescribed earlier by Corporation, following was substituted:-

“Certificate of 80 Hours Course on Computer Concept (CCC) issued by DOEACC”

5. The Managing Director of the Corporation by Office Memo dated 05.07.2013 with regard to direct recruitment at the post of Technician Grade-II in place of the computer qualification of “Certificate of 80 Hours Course on Computer Concept (CCC) issued by DOEACC” substituted “Course on Computer Concept (CCC) Certificate or its equivalent computer qualification certificate” and sought for the approval of Board of Directors of the Corporation.

6. After Office Memo dated 29.01.2011 issued by Corporation, the Electricity Service Commission (hereinafter referred to as “Commission”) had advertised 2974 posts for Technician Grade-II in the year 2011 where Course on Computer Concept Certificate by DOEACC was one of the mandatory qualifications. The 2011 selection was completed with requirement of CCC certificate by DOEACC.

7. A fresh advertisement No.4/V.SE.Aa/2014 dated 06.09.2014 was issued by Electricity Service Commission inviting applications for 2211 vacancies. Paragraph 2 of the advertisement provides for compulsory qualifications to the following effect:-

“2. Compulsory qualifications:

(1) High School or its equivalent exam. pass from Board of Higher Secondary Education, U.P. with Science & Math subjects and All India/State Vocational Certificate in Electrician Trade & (2) Course on Computer Concept (CCC) Certificate or its equivalent computer qualification certificate.

Note: Certificate of Electrician Trade only would be admissible. Certificate received through Distant Education and certificate obtained on the basis of experience would not be admissible.”

8. Written examination was conducted on 08.11.2014 and candidates were called for interview in December, 2014/January, 2015. On 24.04.2015, a second advertisement was issued by Commission seeking to fill up 884 posts of Technician Grade II. On 14.07.2015, the Commission published a select list of 2211 candidates, in response to the first advertisement. On 31.07.2015, Writ Petition No.41750 of 2015 – Prashant Kumar Jaiswal and 12 Others Vs. State of U.P. and 10 Others was filed in which on

31.07.2015, learned Single Judge passed following order:-

“Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Sunil Kumar Srivastava, learned counsel appearing for the petitioners as well as learned Standing Counsel appearing for the respondent No.1 and Shri Ayank Mishra, learned counsel appearing for the respondents no. 2, 3 and 4.

Issue notice to the respondents no. 5 to 11 through the Secretary, Electricity Service Commission.

Learned counsel for the respondents pray for and is granted time till 6 th August, 2015 to file counter affidavit particularly with reference to the assertions made in paragraphs 24 to 28 of the writ petition.

On the request of the learned counsel for the respondents, put up as a fresh case on 6th August, 2015 before the appropriate Court.

Matter need not be treated as tied up or part heard. Learned counsel for the respondent submits that no final decision will be taken in pursuance to the impugned select list.

Order Date:- 31.7.2015”

9. The petitioners of Writ Petition No. 41750 of 2015 were not included in the select list published on 14.07.2015 by the Commission. Writ petitioners sought quashing of the select list dated 14.07.2015 and further sought revision of the select list after excluding therefrom the candidates, who have obtained computer eligibility certificate on date subsequent to 30.09.2014 and other candidates, who do not possess computer concept certificate as awarded by DOEACC society [renamed as National Institute of Electronics & Information Technology (NIELIT)]. In the writ petition, the petitioners had arrayed various selected candidates in representative capacity. The case of the petitioners was that CCC Certificate is granted only by DOEACC/NIELIT and none of the certificates issued by private or unrecognised institutions can be treated as equivalent thereto and thus, candidates, who have filed certificates from private and unrecognised institutions cannot be held to possess qualification as prescribed by the advertisement.

10. On 17.02.2016, an order was passed by the learned Single Judge that all appointments to be made by the respondent would abide by the final decision of the writ petition. Learned Single Judge by its order dated 12.08.2016 noticing relevant aspects of the case called upon the Commission to file further affidavit. Commission filed an affidavit and referred to decision dated 27.01.2015 where respondents had treated certificate granted upon the culmination of a course spread over three months or 80 Hours as equivalent to CCC Certificate. Learned Single Judge after hearing the

writ petitioners, the Electricity Commission and the Uttar Pradesh Power Corporation allowed the writ petitions. Learned Single Judge quashed the select list drawn up pursuant to the advertisements in question insofar as it includes candidates who do not hold a CCC certificate conferred or recognised by NIELIT.

Learned Single Judge directed the respondents to redraw the select list restricting it to the candidates, who hold a recognised CCC certificate or a qualification recognised in law as being equivalent thereto. The Commission was directed to reframe the merit list and publish the results thereof afresh. The judgment of the learned Single Judge dated 07.10.2017 was accepted by the Commission. The merit list was revised in accordance with the judgment of the High Court dated 07.10.2017. The revised merit list was published on 21.06.2018. Several candidates, who did not possess CCC Certificate or equivalent were deleted from the select list. One of the candidates, whose name was deleted, filed a Writ Petition No. 13216 of 2018 -Rohit Vs. State of U.P. and 2 others, challenging the order dated 13.05.2018, by which his name was deleted. The writ petition was dismissed by a learned Single Judge on 30.05.2018 upholding the order of deletion of his name. A Special Appeal No. 582 of 2018 was filed by Rohit, the writ petitioner, which too was dismissed by the Division Bench on 22.06.2018 reaffirming the view of learned Single Judge that writ petitioner (Rohit) did not possess the certificate of Computer Course or its equivalent course. The certificate issued in October, 2015 by NIELIT having obtained after the last date of the application (i.e. 30.09.2014) was held not to make the candidate eligible. Consequent to the publication of the revised list on 21.06.2018 about 903 candidates went out of the select list. Other candidates, who had CCC certificate or equivalent thereto were included in the select list. The appellants in Civil Appeal No. 9026 of 2019 – Mukul Kumar Tyagi and Civil Appeal No. 9027 of 2019 – Rajiv Kumar and others are the appellants, who came in the select list after the revision of the select list and were issued appointment orders thereafter and have joined the post and are working as on date.

11. The Division Bench in Special Appeal No. 585 of 2018 and other connected appeals issued a direction to the respondent on 24.08.2018 to make equivalence of the qualification of ITI/ any Vocational qualification possessed by the appellants and persons similarly situated to the appellants. Questioning the judgment and direction of the Division Bench dated 24.08.2018, Special Leave to Appeal (C) No.24585 of 2018 was filed in this Court, which came to be disposed of on 01.10.2018. The direction issued by the Division Bench to the Commission was made inoperative in the interregnum. This Court requested the High Court to dispose of the Special Appeals as expeditiously as possible.

12. The special appeals came to be finally decided by the Division Bench vide its impugned judgment dated 09.05.2019. The special appeals have been allowed, judgment of learned Single Judge dated 07.10.2017 has been set aside and all the writ petitions were dismissed.

13. Aggrieved by the judgment of the Division Bench dated 09.05.2019, these appeals have been filed.

14. The appellants in Civil Appeal No.9026 of 2019, Mukul Kumar Tyagi Vs. State of Uttar Pradesh and Others, and Civil Appeal No. 9027 of 2019, Rajiv Kumar and Others Vs. State of Uttar Pradesh

and Others are candidates whose names were included in the revised select list dated 21.06.2018 drawn by the Commission consequent to the judgment of learned Single Judge dated 07.10.2017. The appellants of both the above appeals were also appointed on post of Technician Grade-II after they being included in the revised select list dated 21.06.2018.

15. In Civil Appeal No.9026 of 2019, first respondent is State of U.P., 2nd respondent is Uttar Pradesh Power Corporation Ltd., 3rd respondent is Managing Director, Uttar Pradesh Power Corporation Ltd. and 4th respondent is Electricity Service Commission, Uttar Pradesh Power Corporation Ltd. Respondent Nos.5 to 11 were respondent Nos. 5 to 11 in Special Appeal No.585 of 2018. Respondent Nos. 12 to 23 are proforma respondents, who were respondents in Special Appeal No.585 of 2018 along with Mukul Kumar Tyagi, appellant. The respondent Nos. 24 to 29 were the appellants in Special Appeal No.585 of 2018.

16. Civil Appeal No. 9028 of 2019, Ravi Prakash and Others Vs. State of Uttar Pradesh and Others, is appeal by those candidates who though appeared in the written examination and in the interview but were not included either in the original select list or in the revised select list. All the appellants are candidates who have CCC certificate from DOEACC despite that they could not find place in the original merit list or the revised merit list.

17. We have heard Shri P.S. Patwalia, learned senior counsel, Ms. Anjana Prakash, learned senior counsel and Ms. Mahalakshmi Pavani, learned senior counsel for the appellants. Shri Dushyant Dave, learned senior counsel, Shri Niraj Kishan Kaul, learned senior counsel and Shri Debashish Bharuka have appeared for private respondents. Shri Parag Tripathi, learned senior counsel has appeared for UPPCL and Electricity Service Commission.

18. Shri P.S. Patwalia, learned senior counsel for the appellant submits that the select list dated 14.07.2015 drawn by the Commission contained the names of the candidates who did not fulfil the eligibility as per the advertisement dated 14.09.2014. Several candidates who were included in the select list dated 14.07.2015 had no CCC certificate from DOEACC or NIELIT. The certificates which were relied by the large number of candidates were certificates obtained from private institutes which were unrecognised and who were not competent to issue any certificate nor such certificate could have been equivalent to CCC. Learned Single Judge after having found that the Commission included in the select list the candidates whose certificates were not equivalent to CCC and no exercise having been conducted by the Commission to verify the equivalence of certificates as claimed by large number of candidates directed the Commission by judgment dated 07.10.2017 to redraw the select list after verifying the equivalence of certificates of those candidates who had not filed CCC certificate.

19. Shri Patwalia submits that self-certification by candidates that their computer qualifications are equivalent to CCC was wholly unauthorised and illegal. The Commission in the selection process relied on self-certification by the candidates for including them in the select list which was unjustified and violative of Article 16 of the Constitution of India.

20. Shri Patwalia submits that qualifications which are prescribed by the employer for recruitment on the post of Technician Grade-II had to be strictly adhered to in the selection process. Shri Patwalia submits that CCC certificate was issued by DOEACC which subsequently became NIELIT which is the only recognised authority to issue CCC certificate. No other authority or body has been found to issue CCC Certificate. For declaring a computer certificate as equivalent to CCC, the recruiting authority/employer has to compare the course contents of the CCC Certificate and the course contents of the certificate which is claimed to be equivalent to CCC.

21. Shri Patwalia submits that in the Selection in question, there were no guidelines or criteria for declaring equivalence of the computer certificate to the CCC. In the entire selection process, no exercise was undertaken by the Commission to verify the certificates of the candidates who claimed certificate from private organizations, registered societies, which were not authorised to issue any computer qualification certificate.

22. It is submitted that all the appellants are candidates, who have passed CCC certificate from DOEACC and were entitled to be included in the merit list but for the inclusion of unqualified candidates in the original select list dated 14.07.2015, they could not find place in the merit list. The judgment of learned Single Judge dated 07.10.2017 has been accepted by the Corporation as well as the Commission and in compliance of the judgment, the revised merit list was drawn.

23. It is submitted that in revising the select list, the Order dated 03.05.2016 issued by the State of U.P. which provided a mode to be adopted for equivalence of computer qualification was adhered to and as per the Government Order dated 03.05.2016 equivalence of CCC certificate was declared and those candidates who fulfil the equivalence as per Government Order dated 03.05.2016 were included in the select list.

24. Shri Patwalia submits that the Division Bench has erroneously accepted the self-certification by the candidates as equivalent to CCC Certificate, which is unsustainable.

25. Shri Patwalia further submits that the ITI certificate and other vocational certificates which Division Bench held to be equivalent to CCC certificate is not sustainable. He submits that certificate of ITI and other vocational certificates do not conform to the course contents of CCC certificate and can never be held to be equivalent to CCC certificate. Shri Patwalia further submits that after the judgment of learned Single Judge dated 07.10.2017, the revised Select list was drawn which revised select list came to be challenged in the High Court separately by filing a writ petition, which was dismissed upholding the revision of select list. A special appeal filed against the judgment of learned Single Judge being Special Appeal No.582 of 2018 was also dismissed upholding the deletion of those candidates who did not have computer certificates equivalent to CCC.

26. It is submitted that a Division Bench of the High Court having upheld the exercise carried out by Commission consequent to the judgment dated 07.10.2017, the Division Bench in the impugned judgment could not have taken a contrary view. It is submitted that Division Bench judgment of the High Court in Special Appeal No.585 of 2018 has not even been referred to in the impugned judgment.

27. Shri Patwalia submits that the Division Bench committed error in setting aside the judgment of the learned single Judge and consequence of which is to restore the Select list containing the names of the candidates who do not fulfil the qualification for the post. It is submitted that Division Bench could not have diluted the qualifications which was prescribed in the advertisement more so when there was no challenge to the qualification by anyone. Shri Patwalia submitted that CCC certificate is given only by DOEACC/NIELIT and the CCC certificate which was required in the advertisement was the certificate issued by DOEACC/NIELIT.

28. Smt. Anjana Prakash, learned senior counsel appearing in Civil Appeal No. 9027 of 2019 adopted the submissions of Shri Patwalia and submits that all the appellants were included in the revised select list who have been appointed and are working.

29. Smt. Mahalakshmi Pavani, appearing in Civil Appeal No. 9028 of 2019, Ravi Prakash and Others Vs. State of Uttar Pradesh and Others submits that all the appellants in the appeal have CCC certificates from DOEACC but they could not be included in the original select list or revised select list. It is submitted that there are 161 vacancies on the post of Technician Grade-II caused due to resignation and non-joining, on which vacancies the appellants, who have CCC certificates and participated in written test and interview can be appointed. She prayed that appropriate direction be issued to appoint the appellants on the above vacant posts.

30. Shri Dushyant Dave, learned senior counsel appearing for the respondents refuting the submissions of learned counsel for the appellants supports the judgment of the Division Bench. Shri Dave submits that in the writ petition filed before the High Court selected candidates having not been made party, the learned Single Judge could not have quashed the select list. He submits that the judgment of learned Single Judge has been passed in violation of principle of natural justice since it was passed without hearing the selected candidates, who had acquired right consequent to the selection on the post. It is further submitted that writ petitioners have challenged the select list after having participated in the selection which challenge ought to have been repelled by the High Court. The candidates who have taken chance of being selected cannot turn around and challenge the selection having been declared unsuccessful. He further submitted that writ petitioners have never challenged the advertisement or qualifications in the advertisement.

31. Shri Dave submits that in view of the Office Memorandum dated 05.07.2013 issued by Managing Director of the Corporation which was ex post facto approved by Board of Directors on 23.11.2015, the requirement of having CCC certificate from DOEACC/NIELIT was done away with. He submits that there being no requirement of having CCC certificate from DOEACC/NIELIT, the certificates which were claimed by the respondents were certificates which fulfil the qualification as prescribed in the advertisement.

32. It is submitted that it is for the employer or recruiting agency to declare equivalence of certificate and the Commission having been satisfied with the equivalent certificate claimed by the respondents, learned Single Judge ought not to have interfered with declaration of equivalence by the Commission. It is submitted that the respondents in pursuance of select list dated 14.07.2015 were given appointment in August, 2015 and had joined the post and worked for about three years

till their appointment was cancelled in May/June 2018.

33. It is further submitted that most of the respondents have also obtained the CCC certificate before the date of interview and most of the candidates who have been deleted from the revised select list now are in possession of CCC certificates. He submits that in the present selection, there are no allegation of mala fide and arbitrariness on the part of Commission. He further submits that Regulations, 1995 which is statutory regulation for recruitment on the post of Technician Grade-II does not require CCC certificate. Shri Dave submits that self-certification is a mode which is prescribed in the advertisement itself. The advertisement has now given a go-bye to CCC certificate by DOEACC, there was no requirement of CCC certificate by DOEACC in the recruitment in question. He submits that ultimate conclusion of Division Bench is correct, which judgment needs no interference by this Court.

34. Shri Niraj Kishan Kaul in addition to submissions which have been made by Shri Dushyant Dave contends that present is not a case where learned Single Judge ought to have exercised jurisdiction under Article 226 to quash the select list. All the candidates, who were selected in the select list dated 14.07.2015 have cleared the written test and the interview and had obtained higher marks than the appellants. The candidates who were included in the initial select list had obtained different ITI and vocational certificates, which fulfil the necessary knowledge and requirement of computer qualification.

35. It is submitted that CCC certificate is a basic computer course and that the Commission having already found the candidates fulfilling the qualification, learned Single Judge ought not to have substituted his own view. The CCC certificate is a computer course which is a course designed for common man. The respondents having worked for three years are entitled to be allowed to continue on their post. He further reiterates that several of the respondents had obtained CCC certificate prior to interview.

36. Shri Bharuka also adopted the submissions of Shri Dave and Shri Niraj Kishan Kaul.

37. Shri Parag Tripathi, learned senior counsel appearing for Corporation and the Commission has referred to writ petition of Rohit Kumar which was filed challenging the action of the Commission declaring several candidates disqualified in pursuance of judgment dated 07.10.2017 of learned Single Judge, which writ petition was dismissed by learned Single Judge. The Division Bench also affirmed the judgment of learned Single Judge in Rohit Kumar's case.

38. Shri Parag Tripathi had very candidly submitted that the Commission or the Corporation did not carry out any exercise to find out as to whether certificates submitted by the candidates were equivalent to CCC certificate prior to declaring the select list on 14.07.2015. Shri Tripathi has referred to the counter affidavit filed by the Electricity Secretary/Member, Electricity Service Commission in Civil Appeal No. 9026 of 2019, Mukul Kumar Tyagi Vs. State of Uttar Pradesh and others. Shri Tripathi submits that in carrying out the equivalence of CCC certificate the Commission has adopted the guidelines given under the Government order dated 03.05.2016. He submits that by subsequent Government Order dated 23.09.2016, Government of Uttar Pradesh extended the scope

of Government Order dated 03.05.2016 to all the posts of the Government Departments of the State. He submits that in pursuance of the Order of learned Single Judge dated 07.10.2017, Corporation constituted a committee to decide criteria on the basis of which the equivalence of CCC could be decided. The Committee, comprised of eight Officers, carried out the exercise consequent to which the revised select list was issued. After the judgment of learned Single Judge dated 07.10.2017, the candidature of several candidates who were included in the select list dated 14.07.2015 were cancelled holding them not eligible, which action of the Commission has received approval of High Court also.

39. We have considered the submissions of learned senior counsel for the parties and perused the record.

40. From the submissions of learned counsel for the parties and the pleadings on record, following points arise for consideration: -

(i) What is “Course on Computer Concept” (CCC) Certificate and the advertisement dated 06.09.2014 envisaged which CCC certificate?

(ii) Whether the advertisement dated 06.09.2014 envisaged self-certification by the candidates of “equivalence” to CCC certificate of their computer qualification and the self-certification by the candidates of their computer qualification was sufficient to treat them having possessed the required qualification?

(iii) Whether the Corporation or Commission had framed or adopted any criteria or guidelines to determine “equivalence” to CCC certificate?

(iv) Whether any exercise was conducted by the Commission in the process of recruitment to determine “equivalence” of computer qualifications of those, who did not possess CCC certificate?

(v) Whether the Division Bench of the High Court has rightly set aside the direction of learned Single Judge to exclude those, who do not have CCC certificate?

(vi) Whether the learned Single Judge ought not to have quashed the select list when the selected candidates were not impleaded in the writ petitions?

POINT NO.1

41. The Course on Computer Concept (CCC) certificate had been issued by DOEACC Society and thereafter by National Institute of Electronics and Information Technology (NIELIT), an Autonomous Scientific Society under the administrative control of Ministry of Electronics & Information Technology, Government of India, set up to carry out Human Resource Development and related activities in the area of Information, Electronics & Communications Technology had taken various steps. The Department of Electronics Accreditation Computer Courses (DOEACC) Society was formed in the year 1994 and registered under the Society Registration Act, 1860. The

management and administration of the Society is overseen by Governing Council, under the chairmanship of the Minister of State, Communications & Information Technology, Government of India. Members of the Council consist of eminent academia from IITs, Universities, etc. and professionals from the industry. Under the DOEACC Scheme, computer training institutes/organizations in the non-formal sector, subject to meeting well-defined norms and criteria, were granted accreditation for conducting specified Levels of courses. The different courses were accredited under the DOEACC Scheme. Computer Course Certificate is one of such certificates, which was being granted under the aegis of the DOEACC Society. The learned Single Judge in his judgment has extracted course contents of CCC certificate, which is on pages 143 to 145 of paper book. The duration of course is 80 Hours (Theory: 25 Hrs. + Practical:

50 Hrs. + Tutorial: 05 Hrs.), which can also be offered as 10 days full time intensive course.

Course contents envisages different chapters on the computer knowledge and contents and detailed syllabus. The copy of the syllabus of the CCC course has also been brought on the record as Annexure P-14 running into 05 pages detailing - Introduction to computer; Introduction to Gui Based Operating System; Elements of Word Processing; Spread Sheet; Computer Communication and Internet, WWW and Web Browser, Communication and Collaboration Making Small Presentations.

42. One of the certificates issued by DOEACC Society dated 10.05.2012 granted in favour of appellant – Mukul Tyagi has been brought on record, which mentions that “the candidate appearing has passed the examination of DOEACC Course on Computer Concepts.” The certificate further mentioned that “candidate is sponsored by Anubhav Infotech Limited, [FR UPTEC], MEERUT”. Thus, CCC certificate which was granted by DOEACC Society, which society is now taken over by National Institute of Electronics and Information Technology (NIELIT) functioning under Department of Information and Technology and Ministry of Communication and Technology, Government of India. CCC certificate, thus, is a well-known certificate, which is issued under the aegis of the Government of India, which certificates have been made part of essential qualifications for different posts throughout the country. Neither there is any case on the record nor any material to indicate that CCC certificate is also being granted by any other body or authority. There is no certificate brought on record by any of the applicants or the Corporation or Commission indicating that CCC certificate is granted by any other body or authority except DOEACC/NIELIT. The learned Single Judge has returned a finding that CCC certificate is granted only by NIELIT formerly known as DOEACC Society. The following findings have been recorded by learned Single Judge in this respect: -

“Although Sri Mishra contended that a CCC certificate can be granted by any organisation, this was not backed by any material or evidence. In fact, and to the contrary it appears on the basis of the material placed before this Court that a CCC certificate is granted only by NIELIT or centres recognised or accredited to it.”

43. In the special appeal, which was filed against judgment of learned Single Judge neither there was any ground nor any pleading that CCC certificate is being granted by any other body or authority. The Division Bench in the impugned judgment has not set aside the above finding of learned Single Judge that CCC certificate is granted only by NIELIT (formerly DOEACC Society).

44. One of the submissions, which has been advanced by Shri Dushyant Dave, learned senior counsel for the respondent is that the requirement of CCC certificate by DOEACC Society, which was provided for by O.M. dated 29.01.2011 was done away by O.M. Dated 05.07.2013 issued by the Managing Director of the Corporation, which subsequently was ex-post facto approved on 23.11.2015, hence there was no requirement of CCC certificate from DOEACC/NIELIT. It is true that in the O.M. dated 29.01.2011 issued by the Corporation, specific requirement was of CCC certificate issued by the DOEACC Society as noted above. The recruitment on the above basis was held by the Commission in the year 2011 for filling 2974 posts of Technician Grade-II. The Managing Director on 05.07.2013 issued an O.M. where in place of the CCC certificate by DOEACC as provided in O.M. dated 29.01.2011, it was provided that candidate must possess CCC certificate or equivalent computer qualification, which advertisement dated 06.09.2014 was issued containing the computer qualification as mentioned in the O.M. dated 05.07.2013. When the Managing Director referred to Course on Computer Concept (CCC) in the O.M. dated 05.07.2013, where he mentions that CCC certificate, it cannot be held that CCC certificate by DOEACC or NIELIT was not contemplated. When no other body or authority is issuing CCC certificate, it has to be held that CCC certificate mentioned in the O.M. of Managing Director and the advertisement was the CCC certificate issued by DOEACC/NIELIT. The Uttar Pradesh Power Corporation had added the computer qualification as the essential requirement to serve a particular purpose and to select the candidates having such qualification so that they could perform their duties of the job well. It cannot be accepted that Managing Director by deleting the CCC certificate from DOEACC wanted to do away with CCC certificate by DOEACC or wanted to introduce an uncertainty or a window for all kind of certificates to be recognised. It is, however, to be noted that when the qualification of equivalent computer certificate was provided and added, any certificate, which can be held to be equivalent to CCC certificate, shall also confer eligibility to a candidate. Thus, the true determination, which was to be done with regard to an equivalent computer certificate relied by candidate was to find out whether it was equivalent to CCC certificate or not. But the change in the qualification by Managing Director by O.M. dated 05.07.2013 cannot be read to mean that in the CCC certificate or equivalent computer qualification, the equivalence was to be found out and in which it shall not include only the CCC certificate issued by DOEACC or NIELIT. Any other view shall not be in the interest of either Corporation or Commission.

45. The candidates who had submitted application in response to advertisement dated 14.09.2014 had also understood the advertisement to the effect that equivalent computer qualification referred to in the advertisement is the equivalent computer qualification to CCC certificate of NIELIT. One of the applicants, who had filed self-declaration of equivalence of his qualification has made following statement 'as quoted by learned single Judge in his judgment': -

"...I, Abhijit Kumar son of Shri Birender Pandey do hereby declare that Computer Certificate produced by me at the time of interview for the post of Advertisement No.4/Visea/2014 Technician

Grade-2 (Electricity) is equivalent to the Course 'CCC' conducted includes in it. In case Computer Certificate produced by me is not found equivalent to 'CCC', then whatever decision would be taken by the Power Service Commission about candidature, the same would be acceptable to me. Even if my candidature is cancelled/rejected, then I would not make any kind of claim..."

46. Learned Single Judge vide his judgment dated 07.10.2017 had quashed the select list only to the extent it includes candidates who did not hold CCC certificate conferred or recognised by NIELIT. The operative portion of the judgment of learned single Judge is as follows: -

".....The select list drawn up pursuant to the advertisements in question insofar as it includes candidates who do not hold a CCC certificate conferred or recognised by NIELIT is quashed.

The respondents shall in consequence redraw the select list restricting it to candidates who hold a recognised CCC certificate or a qualification recognised in law as being equivalent thereto. The Commission shall as a result of the above, reframe the merit list and publish the results thereof afresh. All consequences to follow."

47. As noted above, the Commission and the Corporation accepted the judgment of learned Single Judge dated 07.10.2017 and proceeded to redraw the select list. The decision of the Board of Directors of the Corporation as communicated to Electricity Service Commission by letter dated 29.01.2018 which has been brought on record in the counter affidavit filed on behalf of respondent Nos. 2, 3 and 4 in Civil Appeal No. 9026 of 2019 also refers the CCC certificate issued by NIELIT/DOEACC while determining the equivalence of the certificate claimed by the candidates who do not possess CCC certificate by DOEACC/NIELIT.

48. It is useful to refer to letter written by Uttar Pradesh Power Corporation Limited dated 29.01.2018 to Secretary, Electricity Service Commission, which is to the following effect: -

"Secretary Electricity Service Commission U.P. Power Corporation Ltd.

S.L.D.C. Premises, Near Minister House, Vibhuti Khand, Gomti Nagar, Lucknow
Subject:- In the context of ensuring compliance of decision taken in the 136(08)th meeting of Board of Directors held on 17.01.2018 for determination of the equivalence of the 'CCC' certificates issued by NIELIT/D.O.E.A.C.C. Sir, Please accept the reference to the comments No. Nil dated 30.12.2017 by which the recommendation dated 28.12.2017 given by the committee formed by Office regulations/Pakali 2017-7regulation/17 dated 19.12.2017 for determination of the equivalence of the 'CCC' certificates issued by NIELIT/DOEACC has been sent for the approval of Board of Directors.

Matter was presented to board	of
directors in the 136(08)th meeting	of

Board of Directors held on 17.01.2018, in which approval was given for determination of the equivalence of the 'CCC' certificate issued by NIELIT/DOEACC in following terms: -

Director(P&A) informed that in compliance of the judgment dated 07.10.2017 passed in writ petition

No.41750 of 2015 a committee was formed under the chairmanship of Director(P&A) for determination of the equivalence of the 'CCC' certificate/course issued by other institutions and their validity in which the approval was given to act as per the provisions of G.O. No.2/2016/3/1/2015-

ka-2 dated 03.05.2016.

Board of Directors while approving the recommendation given by the above committee directed for inclusion of all latest G.O.'s issued by the U.P. Government after G.O.No. 2/2016/3/1/2015- ka-2 dated 03.05.2016 for determination of the equivalence of the 'CCC' certificate. End: Attaching the photocopy of the above decision of the Board of Directors I was instructed to say that in the said matter ensure compliance as per above.

Your's faithfully (Rakesh Bhatt) Deputy Secretary (Regulation and Ka.Vi.Ni.)"

49. The candidates who had CCC certificate from NIELIT/DOEACC and who were included in the merit list dated 14.07.2015 were not affected by the judgment of the learned Single Judge dated 07.10.2017 since the list was quashed only insofar as those candidates included in the merit list who did not have CCC certificate by NIELIT/DOEACC. The Division Bench in the impugned judgment has erroneously held that employer after judgment dated 07.10.2017 did not take into consideration the CCC Certificate of DOEACC or NIELIT. Following are the observations made by Division Bench in this regard: -

"...Heard learned counsels appearing on behalf of rival parties. At the threshold, it would be appropriate to state that the employer after accepting the judgment given by learned Single Bench has prepared a fresh select list and, while doing so, the certificate issued by DOEACC relating to "CCC" has not been taken into consideration...."

50. The Division Bench was not correct in making above observations since neither the learned Single Judge vide its judgment dated 07.10.2017 directed for not taking into consideration CCC certificate by DOEACC nor Corporation or Commission deleted those names from the merit list who had CCC certificate from DOEACC.

51. We, thus, are of the considered opinion that CCC certificate as mentioned in the advertisement dated 14.09.2014 was CCC certificate as granted by NIELIT/DOEACC.

POINT NO.2

52. The mandatory qualification as per the advertisement is CCC certificate or equivalent computer qualification. Some of the candidates who did not have CCC certificate and relied on computer qualification issued by private organizations and society had given a self-declaration that their computer qualification is equivalent to CCC Certificate. One of the self-declarations we have extracted above.

53. We need to find out as to whether the advertisement envisaged self-certification by the candidates that their computer qualification is equivalent to CCC. Clause (7) of the advertisement relates with submission of testimonials in support of qualification and other certificates. Clause (7) refers to self-attested and signed photocopies of qualification certificates/ mark sheets/ caste certificates etc. For ready reference, clause (7) of the advertisement is as follows: -

“7. Submission of qualification and other certificates: -

Candidates would be allowed to appear in written test provisionally on the basis of information made available by candidate in online application. Candidates would not earn right to selection merely on appearing in written test. Candidate would deposit self-attested & signed photocopies of qualification certificates/mark sheets/ caste certificate/ domicile certificate/ certificate concerning with computer/ certificate of dependant of Freedom Fighter and certificate of Ex-servicemen (as defined in Government orders and who have rendered minimum 05 years' service in Army) (leaving those which are irrelevant) concerning with qualifications for advertised post at the time of interview with printout of online application.

Certificates concerning with qualifications of candidates invited for interview who are declared successful in written test, would be scrutinized at different levels. In case of giving/receiving any kind of wrong information, right to cancel candidature at any stage and depriving of the selection process without any notice is reserved.

Note:

(1) Certificate of Electrician Trade only would be admissible.

(2) Technical Certificate equivalent to it obtained thorough Distant Education Systems or on the basis of experience or desired trade would not be admissible.”

54. It is further relevant to notice that the above clause in the advertisement only refers to self-attested and signed photocopies of qualification certificates, mark sheets, caste certificates, etc. Self-attestation is a well-known concept according to which a candidate making any application

instead of obtaining attestation by Gazetted Officer of the certificates may self-attest the certificates and submit them, which is subject to subsequent scrutiny and verification. When application is submitted online, self-attestation by candidate is sufficient to consider the candidature of the candidate for purposes of calling him to appear in the written test. Last part of clause (7) further contemplates that “all the certificates concerning with qualification of candidates declared successful in written test, could be scrutinised.” The Clause (7) does not contemplates any self-declaration or self- certification of equivalence of computer qualification of the candidate. The advertisement neither envisaged nor permitted the candidates to give any self-certification or self-declaration that their computer qualification is equivalent to CCC.

55. The equivalence of qualification as claimed by a candidate is matter of scrutiny by the recruiting agency/employer. It is the recruiting agency which has to be satisfied as to whether the claim of equivalence of qualification by a candidate is sustainable or not. The purpose and object of qualification is fixed by employer to suit or fulfil the objective of recruiting the best candidates for the job. It is the recruiting agency who is under obligation to scrutinise the qualifications of a candidate as to whether a candidate is eligible and entitled to participate in the selection. More so when the advertisement clearly contemplates that certificate concerning the qualification shall be scrutinised, it was the duty and obligation of the recruiting agency to scrutinise the qualification to find out the eligibility of the candidates. The self- certification or self-declaration by a candidate that his computer qualification is equivalent to CCC has neither been envisaged in the advertisement nor can be said to be fulfilling the eligibility condition.

56. The Division Bench in the impugned judgment has held that self-certification by the candidates of equivalence of their computer qualification was sufficient to treat them eligible. The Division Bench has further observed that no error was committed by employer (Recruiting Agency) in relying on self- declaration by the candidates for computer qualification equivalent to CCC. Following observations have been made in the impugned judgment:-

“....In present days, computer literacy is just equivalent to letter literacy in earlier days. For letter literacy, self- certification was always acceptable and in line of the same, the computer literacy on self-certification can very well be accepted. In this factual background, we are of considered opinion that the employer did not commit any wrong while having a declaration on basis of self-

certification for computer literacy equivalent to CCC....”

57. We are unable to concur with the above view taken by the Division Bench. Scrutiny of Computer qualification claimed by candidate to be equivalent to CCC certificate is the obligation and duty of the recruiting agency/employer as per the advertisement itself as noted above. The recruiting agency or the employer cannot abdicate their obligation to scrutinise the eligibility of candidate pertaining to computer qualification and reliance on self- certification by the candidate is wholly inappropriate and may lead to participation of candidates who does not fulfil the mandatory qualification as per the advertisement.

58. In view of the foregoing discussions, we conclude that advertisement dated 14.09.2014 do not envisage self-certification by the candidate of equivalence to CCC certificate of the computer qualification and further, self-certification by the candidates of their computer qualification was not sufficient to treat them having passed the required qualification. POINT NOS.3, 4 AND 5 TOGETHER

59. The Corporation or the Commission had not brought on record either before the High Court or before this Court any guidelines or criteria to determine equivalence to CCC certificate. High Court has noticed the submission of learned counsel for the Commission that on 22.01.2015, a decision was taken by the respondent to treat certificates granted upon culmination of a course spread over three months or 80 Hours as equivalent to CCC certificate. The above submission of learned counsel for the Commission itself indicates that no criteria or guideline was framed either by Commission or Corporation before proceeding with the recruitment. 27.01.2015 is the date by which both written examination and interviews were over. The scrutiny of eligibility of candidates was required to be made at-least before the candidates appeared for interview. In the call letters, which were issued to the candidates for interview, the candidates were required to bring several documents and certificates. One of the requirements as mentioned in the call letter for interview in clause 5 is as follows:-

“CCC’ computer course qualification certificate or any other equivalent certificate.”

60. It is relevant to note that in the earlier recruitment, which was held in 2011 for the post of Technician Grade-II only CCC certificate issued by DOEACC was part of mandatory qualification and it was for the 2014 recruitment that CCC certificate or equivalent computer qualification was provided for.

When equivalent qualification to CCC was provided for as a mandatory qualification, it was incumbent on the Corporation as well as on the recruitment agency to reflect on the said issue and to lay down criteria or guidelines to declare equivalence of the CCC certificate. It is, thus, clearly proved from the record that no criteria or guidelines were framed or determined either by the Corporation or the Commission before completion of the recruitment process. The employer, who had issued advertisement and required fulfilling of qualification as prescribed ought to be keenly interested in selecting candidates, who fulfil the qualification and serve the post as per requirement of employer. Preparation of the select list without scrutiny of the computer qualification of the candidates, who do not possess CCC certificates is abdication of duty and obligation, both by Corporation and the Commission. It has been noted by learned Single Judge in his judgment that it was only after direction by the Court in the writ petition, the Corporation and Commission became alive to the obligation, which was on them to find out equivalence.

61. We have already held that equivalence of qualification cannot be left to candidates by their self-declaration. There has to be norms and guidelines, which may sub serve the purpose and object of making equivalent qualification as an eligibility for the post. The word “equivalent” has been defined in “Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition” in following manner:-

“Equivalent. Equal in worth or value.

Equal in value, measure, force, effect etc. Equivalent, Equal. Equal expresses the fact that two things agree in anything which is capable of degree, e.g., in quantity, quality, value, bulk, number, proportion, rate, rank and the like.

Equivalent is equal in such properties as affect ourselves or the use which we make of things, such as value, force, power, effect impact and the like (as) “Equivalent of money.”

62. When issue is of the equivalence of a qualification, which is mandatory qualification for a post, there should be yardsticks declaring equivalent or equivalence, which has to be declared by any body entrusted with such jurisdiction and who is competent to declare equivalence of a qualification. In absence of any such declaration, it is for the employer to provide for the methodology for determining the equivalent qualification. The CCC certificate is issued by DOEACC/NIELIT, which is on a particular syllabus. Syllabus of the CCC certificate is placed before us at pages 225 to 230 of the paper book. For declaring any other certificate as equivalent to CCC, the syllabus on which CCC certificate has been granted is most material factor, which has to be looked into. In the present case, no exercise has been done by the Corporation or the Commission to determine the equivalence of the qualification claimed by the candidates, who had not passed CCC certificate from DOEACC/NIELIT. Learned Single Judge has, after consideration of materials on record, made following observations:-

“As is evident from the above discussion, the question of equivalence was left to hinge solely upon a self-declaration of the candidate. Neither the Corporation nor the Commission had any list of recognised equivalent certificates to guide them on the subject. The policy on equivalence which came about on 27 January, 2015 was a decision taken not only too late but as noted above suffered from fundamental flaws. There was a complete and evident lack of enquiry on course content. Leaving these issues to be decided solely on the basis of a self- declaration of candidates is unequivocal evidence of a failure to exercise powers and an abject abdication of functions vesting in the Commission. More fundamentally, none of the certificates other than CCC were shown or established to be a legally recognised equivalent.”

63. This Court in *Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and Others*, (2017) 8 SCC 670, in paragraph 570 laid down following:-

“56.Where the State embarks upon public employment, it is under the mandate of Articles 14 and 16 to follow the principle of equal opportunity. Affirmative action in our Constitution is part of the quest for substantive equality. Available resources and the opportunities provided in the form of public employment are in contemporary times short of demands and needs. Hence, the procedure for selection, and the prescription of eligibility criteria has a significant public element in enabling the State to make a choice amongst competing claims. The selection of ineligible

persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, selection of a person who is not eligible allows someone who is ineligible to gain access to scarce public resources. Secondly, the rights of eligible persons are violated since a person who is not eligible for the post is selected. Thirdly, an illegality is perpetrated by bestowing benefits upon an imposter undeservingly.....”

64. In the process of recruitment, the Commission included the candidates in the select list, who claimed equivalent qualification to CCC certificate. Without any scrutiny, the inclusion of persons with whom there was no satisfaction by the Commission that their qualification was equivalent to CCC is nothing but permitting unqualified persons to be included in the select list. We, thus, conclude that neither there was any criteria or guidelines framed by employer or the recruitment agency to determine the equivalence nor any exercise was conducted by the Commission during the process of recruitment and without there being scrutiny of the equivalent qualification claimed by several candidates, their names were included on the basis of self- certification. The Division Bench of the High Court in its impugned judgment has not overturned the findings of the learned Single Judge that neither there was a criteria nor any scrutiny was undertaken by the Commission in the recruitment process. The Division Bench relied on self-certification by the candidates regarding equivalence of their qualification. The Division Bench approved the action of the employer and the Commission to rely on self-certification and has held:-

“In this factual background, we are of considered opinion that the employer did not commit any wrong while having a declaration on basis of self-certification for computer literacy equivalent to CCC.”

65. The above view of the Division Bench cannot be approved when the advertisement itself referred to the scrutiny of the qualification and in the recruitment for the first time, the equivalent qualifications were also made mandatory qualification, both the Corporation and the Commission ought to have been more careful in the recruitment process since it is in the interest of both the Commission and the Corporation to select the candidates, who fulfil the qualification, which may subserve the public interest and fulfil the requirement of Article 16 of the Constitution of India. The Division Bench set aside the direction of learned Single Judge by which learned Single Judge had directed to exclude those, who did not have the CCC certificates. The direction of the learned Single Judge as extracted above is in two parts. Learned Single Judge directed :- (i) the select list drawn up pursuant to the advertisements in question insofar as it includes candidates who do not hold a CCC certificate conferred or recognised by NIELIT is quashed; (ii) The respondents shall in consequence redraw the select list restricting it to candidates who hold a recognised CCC certificate or a qualification recognised in law as being equivalent thereto.

66. The above direction indicates that select list insofar as the candidates, who had certificates from NIELIT/DOEACC was not quashed, their position in select list was not disturbed and select list was partly quashed only with regard to those candidates, who did not have CCC or NIELIT certificate. The object or purpose of the direction was to scrutinise the qualifications of those candidates, who have claimed equivalent certificate. The above direction of the learned Single Judge was only for the

purpose to scrutinise the qualification of those candidates, who are found possessing equivalent computer qualification so as to retain their names in the select list. After the judgment of learned Single Judge dated 07.10.2017, the Commission in revising the merit list accepted the guidelines given under the Government Order dated 03.05.2016. The guidelines prescribed under the Government Order dated 03.05.2016 are as follows: -

“a) The qualification of High School or Intermediate examination with an independent subject or Computer Science from Madhyamik Shiksha Parishad, Uttar Pradesh or from any Institution/Education Board/Council established by the Central or any State Government.

b) If any candidate has obtained Diploma or Degree in Computer Science then he shall also be eligible to be recruited as Junior Assistant/Stenographer.” Thus, in the revised select list apart from candidates, who had CCC certificates from DOEACC/NIELIT, the candidates who were covered under guidelines dated 03.05.2016 were also treated as equivalent to CCC and were given place in the merit list subject to marks secured by them in the written test and interview.

67. The Division Bench opined that self- certification by the candidates for the qualification was sufficient to uphold the earlier action of the recruitment agency in which candidates were included without scrutiny of equivalent certificate. The direction of the learned Single Judge was in accordance with law and has done substantial justice, which did not deserve to be set aside by the Division Bench. We may further notice that after the exercise undertaken by the Commission for redetermining the select list, large number of candidates, whose certificates were not found equivalent to CCC certificates were deleted from the select list. Some of the candidates whose names were deleted from the select list due to their qualification having not found equivalent had filed the writ petitions in the High Court. One Writ Petition of Rohit (Writ Petition No. 13216 of 2018 -Rohit Vs. State of U.P. and 2 others), whose name was deleted on 13.05.2018 has been referred to and relied by the appellants. A special appeal was also filed by Rohit against the dismissal of the writ petition where Division Bench upheld the judgment of learned Single Judge holding that writ petitioner of that petition having not possessed CCC certificate was rightly excluded from the select list.

68. Thus, the deletion of names of certain candidates from the select list was upheld by an earlier Division Bench of the High Court. The Division Bench of the High Court in the impugned judgment without advertting to cases of those whose deletion of names were upheld by the earlier Division Bench of the High Court had restored the select list, which was in existence on 14.07.2015. For the above reasons, the judgment of the Division Bench cannot be sustained. POINT NO.6

69. Shri Dushyant Dave, learned senior counsel appearing for the respondent has submitted that candidates in the select list being not before the learned Single Judge, they had no opportunity to place their case and the learned Single Judge erred in quashing the select list, which judgment of the learned Single Judge is in clear breach of principles of natural justice.

70. It is true that all the names, who were in the select list were not impleaded in the writ petition, which was filed challenging the select list dated 14.07.2015 and subsequent select list. For example, in the Writ Petition No. 41750 of 2015 – Prashant Kumar Jaiswal and 12 Others Vs. State of U.P. and 10 Others, which was lead writ petition, there were select candidates impleaded though in representative capacity, which fact has been noticed by learned Single Judge in the impugned judgment in following words: -

“.....The petitions have arrayed various selected candidates in representative capacity. Although the said candidates were represented by counsels, none appeared or advanced submissions on their behalf. On behalf of none of the selected candidates, Sri Nandan alone has appeared in Writ-A. NO. 18129 of 2017.”

71. Shri Dave placing reliance on Ashok Kumar and Another Vs. State of Bihar and Others, (2017) 4 SCC 357 contends that the candidates, who have participated in the process could not have been allowed to challenge the selection. This Court in paragraphs 13 to 19 laid down following: -

“13. The law on the subject has been crystallised in several decisions of this Court. In Chandra Prakash Tiwari v.

Shakuntala Shukla, (2002) 6 SCC 127, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100, this Court held that: (SCC p.

107, para 18) “18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724.)”

14. The same view was reiterated in Amlan Jyoti Borooah, (2009) 3 SCC 227, wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15. In Manish Kumar Shahi v. State of Bihar (2010) 12 SCC 576, the same principle was reiterated in the following observations: (SCC p. 584, para 16) “16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection.

Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in *Madan Lal v. State of J&K*, (1995) 3 SCC 486, *Marripati Nagaraja v. State of A.P.*, (2007) 11 SCC 522, *Dhananjay Malik v.*

State of Uttaranchal, (2008) 4 SCC 171, *Amlan Jyoti Borooah v. State of Assam*, (2009) 3 SCC 227 and *K.A. Nagamani v. Indian Airlines*, (2009) 5 SCC 515.”

16. In *Vijendra Kumar Verma v. Public Service Commission*, (2011) 1 SCC 150, candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

17. In *Ramesh Chandra Shah v. Anil Joshi*, (2013) 11 SCC 309 candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p. 318, para 18) “18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

18. In *Chandigarh Admn. v. Jasmine Kaur*, (2014) 10 SCC 521, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In *Pradeep Kumar Rai v. Dinesh Kumar Pandey*, (2015) 11 SCC 493, this Court held that: (SCC p. 500, para

17) “17. 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. This, 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.” This principle has been reiterated in a recent judgment in *Madras Institute of Development Studies v. K. Sivasubramanian*, (2016) 1 SCC 454.

19. In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place that written examination would carry ninety marks and the interview, ten marks. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The High Court noted in the impugned judgment¹ that the interpretation of Rule 6 was not free from vagueness.

There was, in other words, no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90 : 10 allocation.”

72. The present is a case where writ petitioners were not aggrieved by any qualifications as prescribed in the advertisement. The cause of action had arisen to them to seek judicial review only when the persons, who do not fulfil the essential qualifications were included in the select list.

73. Further, before issuance of appointment letters to the selected candidates an order was passed in writ petition on 31.07.2015 which has been extracted above wherein learned counsel appearing for corporation had made a statement that no final decision will be taken in pursuance of impugned select list. The High Court by its order dated 17.02.2016, extracted above has made all appointments subject to the result of the writ petition.

74. There is one more aspect which needs to be noted. The Commission had obtained an undertaking from the candidates who had claimed that they have equivalent qualification to CCC that in event their qualification is not found equivalent to CCC, whatever decision will be taken by the Commission same will be acceptable to him. One of such letters given by one of the candidates has been brought on record as Annexure P-3 in the short Rejoinder- Affidavit on behalf of petitioners in SLP(C) No.12943 of 2018 (Now Civil Appeal No.9026 of 2019), which is to the following effect: -

“To, Secretary, Power Service Commission, U.P. Power Corporation Limited
Lucknow.

Sub:- Regarding equivalency of ‘CCC’ Certificate of Computer.

Sir, I, Abhijeet Kumar son of Birendra Pandey do hereby declare that Computer Certificate submitted by me at the time of interview for the post of Technician Grade-2(Power) Under Advertisement No.4/PSC/2014, is equivalent to Course ‘CCC’ conducted by NIELIT and the complete course covered under ‘CCC’ includes in it.

In case Computer Certificate submitted by me is not found equivalent to ‘CCC’, then whatever decision will be then by the Power Service Commission about my candidature, the same would be acceptable to me. In case my candidature is rejected, I will not raise any kind of claim.

Dated 02.01.2015 Sd/-

(ABHIJEET KUMAR) Roll No.2013120008”

75. The present is a case where the writ petitioners had not raised any challenge to a particular qualification of any individual candidate rather their challenge was that without scrutiny large number of candidates, who were claiming qualification equivalent to CCC certificate have been included without there being any scrutiny and without they fulfil the qualification. The case of the writ petitioners was that the computer certificate issued by the private organisations and unregistered societies, who neither were recognised by the State Government or Central Government or by any statutory body could not issue any certificate. We may further notice that Division Bench also noticed the above argument of non-impleadment of all the selected candidates in the writ petition but Division Bench has not based its judgment on the above argument. When the inclusion in the select list of large number of candidates is on the basis of an arbitrary or illegal process, the aggrieved parties can complain and in such cases necessity of impleadment of each and every person cannot be insisted. Furthermore, when select list contained names of 2211 candidates, it becomes unnecessary to implead every candidate in view of the nature of the challenge, which was levelled in the writ petition. Moreover, few selected candidates were also impleaded in the writ petitions in representative capacity.

76. For the reasons as noted above, we are of the opinion that the judgment of learned Single Judge cannot be faulted on the ground that all the selected candidates were not impleaded in the writ petitions filed in the High Court challenging the select list dated 14.07.2015.

77. One of the submissions, which has been made by learned counsel for the appellant appearing in Civil Appeal No. 9028 of 2019 – Ravi Prakash & Ors. Vs. The State of Uttar Pradesh & Ors. is that although the names of the appellants have not been included in the original select list or revised select list, but there being number of vacancies due to non-joining and resignation and they having computer certificate equivalent to CCC certificate, the respondent be directed to fill those vacancies by persons, who are next in the order of merit. It is submitted that appellants are those who have CCC certificates. We may observe that the fact that there are several vacancies due to non-joining or resignation of the candidates is a subsequent event, with regard to which, it is for the Corporation to take any decision and no direction need to be issued in this appeal in this regard. If so advised, the appellants - aggrieved candidates can always represent to the Corporation.

78. One more submission, which has been advanced by learned counsel appearing for those candidates, who were initially in the select list dated 14.07.2015 and went out of the select list due to redrawing of select list is that there are still vacancies on which they can be accommodated, it is submitted that equities have to be adjusted by this Court in facts of this case. The candidates, who were already in the select list dated 14.07.2015 were appointed in August, 2015 and worked for about 03 years, which is a factor, which may be sympathetically considered by this Court. We only observe that these are the issues, which need to be addressed to the Corporation. Whether the existing vacancies have to be filled up by the recruitment, which was undertaken in 2014 or for existing vacancies any further steps are to be taken up, are the issues which have to be considered by

the Corporation and we need not issue any direction in that regard. We, however, observe that there shall be liberty to such candidates to represent to the Corporation, which is the authority, to take a decision in accordance with law.

79. In view of the foregoing discussions, we allow all the appeals and set aside the judgment of the Division Bench dated 09.05.2019 and restore the judgment of the learned Single Judge dated 07.10.2017. Parties shall bear their own costs.

.....J. (ASHOK BHUSHAN)J. (NAVIN SINHA) New Delhi, December 16, 2019.