

A SRI SRINIVAS K GOUDA

V.

KARNATAKA INSTITUTE OF MEDICAL SCIENCES & ORS.

(Civil Appeal No. 6217 of 2021)

B OCTOBER 08, 2021

[DR. DHANANJAYA Y CHANDRACHUD AND
B. V. NAGARATHNA, JJ.]

Service Law – Appointment – Appellant appointed as Junior

- C Lab Technician in the first respondent-Institute – Challenged by third respondent – Writ petition dismissed by Single Judge – Appeal allowed by Division Bench – Held: Marks awarded to the third respondent and the appellant bore a nexus to the yardstick determined by the Selection Committee – No mala fides could be imputed to the Selection Committee – Selection list not challenged by respondent –
 - D His only ground for challenge was that he had to be selected since he was more meritorious as he had better qualifying marks – Thus, determining the legality of the selection list and perusing the entire selection list to determine whether the appellant's selection was arbitrary was erroneous – Division Bench transgressed the limits of challenge in the writ petition – Constitution of India – Article 226.

Allowing the appeal, the Court

HELD: 1.1 The third respondent did not challenge the entire selection list dated 20 April 2009. He challenged the

- F appellant's selection and sought a direction for his appointment in place of the appellant. The third respondent did not challenge the entire selection since he and the appellant had applied under the same category, namely Category 1 – OBC. The basis of the claim of the third respondent to the post was that since he had secured higher marks as compared to the appellant in the qualifying examination in the Lab Technician's course, he ought to have been selected for the post. It was in the writ appeal that the third respondent challenged the selection criteria of allotting marks for experience and the interview. [Para 13][1153-D-E; 1154-A]

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1.2 Before proceeding to refer to the marks allotted to the third respondent and the appellant by the Selection Committee for experience and at the interview, it is necessary to refer to the criteria for allocation of marks devised by the Selection Committee. The Minutes of the Meeting of the Selection Committee state that the committee resolved to give proportionate weightage to the length of the service, with special preference to those candidates who have worked in government medical colleges. For the selection to the post of a ‘Junior Lab Technician’, the marks obtained in the qualifying examination were assigned a weightage of eighty-five percent. Ten marks were allotted to experience. Five marks were allotted for the personality of the candidate, as adjudged in the interview. The Selection Committee laid down two yardsticks for provision of marks for experience: (a) length of work experience of the candidate; and (b) preference would be given to those who had worked in teaching hospitals of government / autonomous medical colleges. The rationale of the Selection Committee on differentiating between work experience in a private and government institute was that those who had worked in a government institute would be more suitable for the post due to the similarity of working conditions owing to the fact that the first respondent is a government medical institution. It is in this background that this Court needs to determine whether the marks allotted to the appellant in the category of experience and personality are arbitrary. The appellant at the time of submitting the application had a one year work experience in Babuji Medical College, Devanagere (a private institution) and three years of work experience with the first respondent. On the other hand, the respondent at the time of the application, had six months’ experience of working under a doctor who was undertaking private practice. Not only did the appellant have more years of work experience, he had work experience in a governmental institution. Hence, the marks awarded to the third respondent and the appellant bore a nexus to the yardstick determined by the Selection Committee. On a comparison of the marks allotted to both the candidates with reference to the yardstick determined by the Selection Committee, no *mala fides* could be imputed to the Selection Committee. Nor is there an

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- A obvious or glaring error or perversity. The Court does not sit in appeal over the decision of the Selection Committee. [Paras 15, 16][1155-B-H; 1156-A]
- 1.3 The respondent had not challenged the selection list or the inclusion of the experience and the interview component for
- B the determination of the merit list in the Writ Petition but had only sought his appointment within the criteria prescribed. The Division Bench of the High Court set aside the appointment of the appellant on two grounds. *First*, the marks provided for candidates at the interview and for experience category were held to be arbitrary. To arrive at this conclusion, the Division Bench referred to the entire select list and found alleged discrepancies in the allotment of the marks for experience and a pattern where all the selected candidates were given higher marks for experience and at the interview. *Second*, the Division Bench held that the advertisement issued by the first respondent
- C did not mention the criterion of work experience but only provided the minimum educational qualifications. Thus, it held that the rules of the game were changed after the process had started. The appointment of the appellant was set aside by the Division Bench by finding that the additional selection criteria devised and the marks provided in those criteria were arbitrary.
- E As observed earlier, the selection list was not challenged by the respondent. His only ground for challenge was that he had to be selected since he was ‘more meritorious’ as he had better qualifying marks. Therefore, determining the legality of the selection list and perusing the entire selection list to determine
- F whether the selection of the appellant was arbitrary was erroneous as the Division Bench transgressed the limits of challenge in the writ petition. The impugned judgment and order of the High Court of Karnataka is set aside. [Paras 19-21]

G *Nagraj v. Karnataka Institute of Medical Science Decision of Karnataka High Court in WP Nos. 62758-62760/2009 – referred to.*

K Manjusree v. State of Andhra Pradesh (2008) 3 SCC 512 : [2008] 2 SCR 1025;

Bishnu Biswas v. Union of India (2014) 5 SCC 774 : A
[2014] 4 SCR 625 – held inapplicable.

Case Law Reference

[2008] 2 SCR 1025	held inapplicable	Para 17	A
[2014] 4 SCR 625	held inapplicable	Para 17	B

CIVIL APPELLATE JURISDICTION: Civil Appeal No.6217 of 2021.

From the Judgment and Order dated 31.03.2017 of the High Court of Karnataka at Dharwad Bench in Writ Appeal No.100580 of 2015 (S-RES). C

S. N. Bhat, D. P. Chaturvedi, Advs. for the Appellant.

Devadatt Kamat, Sr. Adv., Parikshit Angadi, Rajesh Inamdar, Anirudh Sanganeria, Advs. for the Respondents.

The Judgment of the Court was delivered by D

DR. DHANANJAYA Y CHANDRACHUD, J.

1. By a judgment dated 31 March 2017¹, a Division Bench of the High Court of Karnataka, at Dharwad allowed an appeal filed against the judgment of the Single Judge². The Division Bench quashed the selection of the appellant to the post of ‘Junior Lab Technician’ in the first respondent and directed it to consider the case of the third respondent for appointment to the post. The appellant moved this Court in Special Leave Petition to challenge the decision of the Division Bench. Leave was granted on 1 October 2021. E

2. On 2 September 2008, the first respondent issued a notification inviting applications for thirty-five vacancies in the post of ‘Junior Lab Technician’. The notification bifurcated the available vacancies on the basis of category and stipulated the minimum qualifications required for selection. The relevant portion of the notification reads as follows: F

1. Junior Lab Technicians:- General Merit 33 years, SC/ST/ Cat. I, 38 years and for other category 36 years. Pass in PUC with Chemistry and Laboratory Technician Training Course or pass in SSLC and 2 years Vocational Diploma Course in Laboratory G

¹ WA No. 10580/2015

² WP No. 63973/2009

- A Technician or Pass PUC with Science and 2 years Laboratory Technician Course conducted by Para Medical Board, Karnataka or Pass in SSLC and 3 years Diploma in Medical Laboratory Technology in conducted by Para Medical Board, Karnataka.
- B 3. Both the appellant and third respondent applied for the post in category 1(OBC) in which one vacancy was advertised. The Selection Committee consisted of the Additional Secretary, Department of Health and Family Welfare (Medical Education), Director of Medical Education, a representative of the Rajiv Gandhi University of Health Sciences and the Director, Principal and CAO of the first respondent. On 22 August 2008, the Selection Committee assembled to discuss the modalities of selection. It was decided that the percentage of marks obtained in the qualifying exam in the Laboratory Technician's Course would be converted to 85%. Of the 15% marks set out for the interview, 10% of the marks were to be set apart for the length of work experience and/or additional training in teaching hospitals of a medical college, with special preference to those who had worked in teaching hospitals of government/ autonomous medical colleges. The remaining 5% marks were to be assigned to the personality of the candidate based on the viva-voce. The relevant extract of the Minutes of the Meeting is extracted below:
- C "The Selection Committee consisting of the Additional Secretary, Health & Family Welfare Department (Medical Education), Director of Medical Education, representative of the Rajiv Gandhi University of Health Sciences, Director, Principal and CAO of KIMS, Hubli held a meeting on 22.12.2008 at 11.30 a.m. to discuss the modalities of selection (Advertisement is dated 02.09.2008, prior to this). It was decided that in order to select the most suitable candidates, proportionate weightage based on the length of experience and/or additional training to the extent of 10 marks be given to those candidates who had work experience and/or additional training in Medical college teaching hospitals and especially those who had worked in Government/ Autonomous Medical College Teaching Hospitals. It was agreed that the type of work in these institutions most closely resembled the working conditions at 'Karnataka Institute of Medical Sciences, Hubli and hence the candidates who had experience in such institutions would be the most suitable. It was also decided
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to set apart a **maximum of 5 marks for the personality of the candidate and his/her presentation and performance.** The marks obtained in the interview (maximum 15) would be added to the average percentage obtained in the qualifying examination reduced to 85%. The total marks thus obtained by the candidates would be tabulated in the order of merit and final list would be prepared based on the roster system.” A
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(emphasis supplied)

The appellant scored an aggregate of 66.77%, while the third respondent scored 76.3% in the qualifying examination in the para medical course. The interview for the selection of candidates for the post was held on 22, 23 and 24 December 2008. C

4. The appellant was given 9.5 marks in the experience category and 4.5 marks in the personality/presentation category. On the other hand, the third respondent received one mark each in the components of experience and personality/presentation. On the cumulation of the marks received in the three categories namely, qualifying marks, experience and interview, the appellant secured 70.86 marks while the third respondent secured 66.84 marks. Since the appellant cumulatively received the highest marks in category 1, he was appointed to the post of Junior Lab Technician in category 1 on 21 April 2009. D
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5. The third respondent instituted a writ petition under Article 226 of the Constitution before the High Court of Karnataka to challenge the appointment of the appellant. He sought a direction for quashing the appointment of the appellant and his appointment in place of the appellant to the post. It was contended that the selection of the appellant to the post, inspite of having scored lower marks in the qualifying examination as compared to him was arbitrary. The petition was resisted by the appellant on the following grounds:

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- (i) The third respondent ought to have approached the Karnataka Administrative Tribunal to redress his grievances;
 - (ii) The Selection Committee is an expert body which was entitled to bifurcate and assign 85% for the marks in the qualifying examination in the para medical course, 10% for experience in a recognized health institution and 5% for vivo-voce; and
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- A (iii) The appellant passed his para medical course in 2002-2003 and had three years' experience in the hospital of the first respondent and one year's experience in Bapuji Medical College, Davangere. On the other hand, the third respondent passed his para medical course in 2007 and had experience only of six months working under a private medical practitioner.
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6. By a judgment dated 7 August 2015, the Single Judge dismissed the writ petition for the reason that (i) the advertisement stipulated that a candidate who had passed PUC must possess two years' experience; and (ii) since the third respondent did not have the requisite experience as prescribed, the Selection Committee was justified in awarding only one mark under the head of experience.
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7. The third respondent assailed the correctness of the judgement of the Single Judge in an intra court appeal and urged the following submissions : (i) the selection process was skewed to favour 'insider' candidates, namely candidates who were working for or had worked in the first respondent; (ii) the advertisement calling for applications did not specify the requirement of experience for the post of Junior Lab Technician, though it was prescribed for other posts; and (iii) For the above two reasons, providing marks based on experience is arbitrary.
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8. The Division Bench allowed the appeal and quashed the selection of the appellant and directed the first respondent to consider the case of the third respondent for appointment to the post of Junior Lab Technician within two months. The Division Bench held that:
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- (i) The Court cannot sit in appeal over the work of the Selection Committee, unless allegations of bias are established;
- (ii) Bye-law No. 10 states that relaxation of age and other conditions can be made during the process of selection at the discretion of the appointing authority in order to utilize the best talent and experience. However, the advertisement did not make any reference to the applicability of the Bye-
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- law 10 but only indicated that the selected candidate will be governed by the bye-laws of the first respondent; A
- (iii) The bye-law is vague and has not prescribed any guidelines for the exercise of discretion by the Selection Committee; B
- (iv) The Selection Committee evolved the criteria after the advertisement was issued and when the selection process had begun; B
- (v) Most of the selected candidates were given high marks of 9 or 9.5 in the experience category and 4.5 marks in the personal interview category. The marks were given arbitrarily under the head of experience : one candidate who only had four months' experience was given two marks for experience, while other candidates who had experience exceeding four months, were given one mark for experience; C
- (vi) No explanation has been furnished for dividing the marks in the ratio of 85:10:5. The absence of any criteria for the allotment of discretionary marks leads to an inference of bias and *mala fides*; and D
- (vii) The bifurcation of marks for experience and personality after the publication of the advertisement amounted to changing the rules of game after the process had begun. E

9. The appellant moved this Court in a Special Leave Petition. This Court issued notice by an order dated 20 July 2012 and stayed the operation of the judgment of the Division Bench. The appellant who was appointed in 2009 has continued in the post for eleven years. F

10. Mr SN Bhat, counsel appearing on behalf of the appellant has sought to challenge the judgment of the Division Bench of the High Court has urged the following grounds :

- (i) The marks allotted to the appellant under the heads of experience and interview are not arbitrary. The appellant had an experience of one year in a private institute and an experience of three years and one month in a government medical institution as on the date of the application. On the other hand, the third respondent had an experience of only six months working under a doctor in private practice at the relevant time; G
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- A (ii) Though the advertisement did not prescribe experience as a minimum qualification, there is a difference between prescribing a minimum qualification and providing guidelines for identification of suitability of a candidate from the selected pool. The Selection Committee has the power to evolve criteria for determining the suitability of candidates among those who fulfil the minimum criteria mentioned in the advertisement;
- B (iii) The Selection Committee resolved to segregate the work experience into government and private sectors and decided to give more weightage to those who have work experience in the government sector. The committee was of the opinion that candidates who have worked in a governmental institution would be more suitable for the post in the first respondent since they would be familiar of the modalities of work. Thus, the marks allotted by the Selection Committee were guided by a sound rationale;
- C (iv) The third respondent has not challenged the entire selection list but only the selection of the appellant. Thus, the Court could not have referred to the alleged irregularities in the marks provided to candidates in other categories to impute *mala fides*; and
- D (v) The selection list was challenged before the Karnataka High Court in **Nagaraj v. Karnataka Institute of Medical Sciences**³. The writ petition was dismissed by the Single Judge and there was no appeal against the order. Since the order of the Single Judge has attained finality, the respondent cannot now raise arguments on the alleged arbitrariness of the selection list.

11. Mr Devadatt Kamal, counsel appearing on behalf of the third respondent has urged the following submissions:

- G (i) The advertisement calling for applications to the post of a ‘Junior Lab Technician’ does not prescribe an experience criterion;
- (ii) The Selection Committee has uniformly given all the selected candidates, 9.5 marks for experience and 4.5 marks for the

H ³ WP Nos. 62758-62760/2009

interview. Candidates who have not been selected were uniformly given one mark each for experience and at the interview; A

(iii) The rules of the game have been changed after the selection process had set in; and B

(iv) The merit list shows that the Selection Committee arbitrarily awarded marks for experience. For instance, a candidate having four months' experience in a private institution was given two marks while a person having more than a year of experience in a private institute was only given one mark. C

12. The rival submissions fall for consideration.

13. A preliminary observation needs to be made at this stage of the analysis. The third respondent did not challenge the entire selection list dated 20 April 2009. He challenged the appellant's selection and sought a direction for his appointment in place of the appellant. The third respondent did not challenge the entire selection since he and the appellant had applied under the same category, namely Category 1 – OBC. The basis of the claim of the third respondent to the post was that since he had secured higher marks as compared to the appellant in the qualifying examination in the Lab Technician's course, he ought to have been selected for the post. The Single Judge while dismissing the writ petition noted the submission of the third respondent thus: D E

“2. [...] It is the petitioner's grievance that his name appeared at Serial No.213, wherein the percentage of marks obtained by the petitioner is shown at 76.28%, whereas the name of respondent no.3, who had actually been selected for the post of Junior Laboratory Technician, had appeared at Serial No.170 and the percentage of marks of respondent no.3 was shown as 66.77%. In spite of this, it is the petitioner's grievance that respondent no.3 had been appointed apparently on the basis of the marks obtained at the interview and it is the petitioner's suspicion that the marks were granted in favour of respondent no.3 at the interview notwithstanding; that he was less meritorious than the petitioner and it is on this ground that the present petition is filed seeking to question the appointment of respondent no.3 and rejection of his application.” F G

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- A It was in the writ appeal that the third respondent challenged the selection criteria of allotting marks for experience and the interview. It was argued before the Division Bench that the advertisement had only mentioned the requirement of a minimum educational qualification and that since it did not stipulate a requirement of experience, the selection based on marks provided for experience was arbitrary since the rules of the game were changed after the selection process had commenced.
- B 14. The selection list for the post of 'Junior Lab Technician' was challenged before the High Court in another proceeding - **Nagaraj** (supra) - but the writ petition was dismissed by the Single Judge. In **Nagaraj**, the casual labourers working in the first respondent challenged the selection list for the post of 'Junior Lab Technician' on the ground that they ought to have been regularised and appointed to the post. It was also contended that the selection process adopted by the first respondent was not transparent. The Single Judge rejected the submission and held that the Selection Committee had selected candidates to the post in accordance with the Bye laws and the guidelines devised by the Selection Committee. The High Court held :
- C "8. After careful perusal of the stand taken by the respondents specifically with reference to Annexure R1, **authorities have followed the procedure and mode of selection as per terms and conditions notified in By-laws of the first respondent**. Selection Committee consists of experts in the relevant field having rich knowledge are well acquainted with the procedures for selection category wise. **Taking into consideration the marks secured by the candidate in the examination, performance, experience certificate, certificate issued by the concerned authorised officer regarding their experience, practical knowledge of work in the lab, all the candidates herein are selected on merit basis having regard to their better marks, better experience. [...] Taking into consideration all these relevant aspects and due to efflux of time**, the prayer sought by the petitioners, may not survive for consideration and interference by this Court is not called for, nor I find any good ground to interfere in these writ petitions. Hence, all these petitions are dismissed as being devoid of merits."
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Since the order of the Single Judge in **Nagaraj** has not been appealed, it has attained finality and thus the marks allotted to candidates in other categories cannot be scrutinised to cast doubt on the selection in Category 1.

15. Before proceeding to refer to the marks allotted to the third respondent and the appellant by the Selection Committee for experience and at the interview, we find it necessary to refer to the criteria for allocation of marks devised by the Selection Committee. The Minutes of the Meeting of the Selection Committee held on 20 August 2008 state that the committee resolved to give proportionate weightage to the length of the service, with special preference to those candidates who have worked in government medical colleges. For the selection to the post of a 'Junior Lab Technician', the marks obtained in the qualifying examination were assigned a weightage of eighty-five percent. Ten marks were allotted to experience. Five marks were allotted for the personality of the candidate, as adjudged in the interview. The Selection Committee laid down two yardsticks for provision of marks for experience: (a) length of work experience of the candidate; and (b) preference would be given to those who had worked in teaching hospitals of government/ autonomous medical colleges. The rationale of the Selection Committee on differentiating between work experience in a private and government institute was that those who had worked in a government institute would be more suitable for the post due to the similarity of working conditions owing to the fact that the first respondent is a government medical institution.

16. It is in this background that we need to determine whether the marks allotted to the appellant in the category of experience and personality are arbitrary. The appellant at the time of submitting the application had one year work experience in Babuji Medical College, Devanagere (a private institution) and three years of work experience with the first respondent. On the other hand, the respondent at the time of the application, had six months' experience of working under a doctor who was undertaking private practice. Not only did the appellant have more years of work experience, he had work experience in a governmental institution. Hence, the marks awarded to the third respondent and the appellant bore a nexus to the yardstick determined by the Selection Committee. It is not the case of the third respondent that the appellant was given more marks for experience despite having less work experience. On a comparison of the marks allotted to both the candidates

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- A with reference to the yardstick determined by the Selection Committee, no *mala fides* could be imputed to the Selection Committee. Nor is there an obvious or glaring error or perversity. The Court does not sit in appeal over the decision of the Selection Committee.
- B 17. During the course of his submissions, counsel for the third respondent referred to the judgments of this Court in **K Manjusree v. State of Andhra Pradesh⁴** and **Bishnu Biswas v. Union of India⁵**. In **K Manjusree**, in issue was the selection of candidates to ten posts of District and Sessions Judge (Grade II) in the Andhra Pradesh State Higher Judicial Service. The first merit list was prepared by cumulating the marks obtained in the written examination out of hundred and the interview marks out of twenty five. However, when the merit list was placed before the committee, the list was sent back for reconsideration on the ground that the marks for the written test were to be converted to eighty five. Further, the committee also introduced a minimum mark qualification for the interview. Therefore, the ratio of written (examination) and oral (interview) marks was changed from 4:1 to 3:1 and an additional requirement of minimum marks for the interview was introduced. This was challenged by candidates who were in the first merit list but were left out in the second merit list. The change in the ratio of marks from 4:1 to 3:1 was upheld by this Court on the ground that the resolution of the committee was misinterpreted while publishing the first merit list based on the 4:1 ratio. However, the Court held that the prescription of minimum marks for interview was illegal since such an additional requirement was prescribed *after* the commencement of the selection process. In this regard, Justice Raveendran writing for a three judge Bench observed:
- C “ 33. [...] We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for the written examination and interviews, or prescribe minimum marks for written exam but not for the interview [...]. But if the Selection Committee wants to prescribe minimum marks, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement.[...].”
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⁵(2014) 5 SCC 774

18. In **Bishnu Biswas** (*supra*), the rules had provided that candidates for eight Group D posts would be selected based on the written exam of fifty marks. However, after the written exam was held, a press notice was issued calling successful candidates for an interview for which fifty marks were allotted. Referring to various judgments of this Court including **Manjusree** (*supra*), the selection list was quashed on the ground that the rules of the game (by including the interview component) had changed after the selection process was initiated. A

19. As we have noted earlier, the respondent had not challenged the selection list or the inclusion of the experience and the interview component for the determination of the merit list in the Writ Petition but had only sought his appointment within the criteria prescribed. Hence, the reliance placed by the respondent on **Bishnu Biswas** and **Manjusree** would not aid the case of the third respondent. B

20. The Division Bench of the High Court set aside the appointment of the appellant on two grounds. *First*, the marks provided for candidates at the interview and for experience category were held to be arbitrary. To arrive at this conclusion, the Division Bench referred to the entire select list and found alleged discrepancies in the allotment of the marks for experience and a pattern where all the selected candidates were given higher marks for experience and at the interview. *Second*, the Division Bench held that the advertisement issued by the first respondent did not mention the criterion of work experience but only provided the minimum educational qualifications. Thus, it held that the rules of the game were changed after the process had started. The appointment of the appellant was set aside by the Division Bench by finding that the additional selection criteria devised and the marks provided in those criteria were arbitrary. As observed earlier, the selection list was not challenged by the respondent. His only ground for challenge was that he had to be selected since he was ‘more meritorious’ as he had better qualifying marks. Therefore, determining the legality of the selection list and perusing the entire selection list to determine whether the selection of the appellant was arbitrary was erroneous as the Division Bench transgressed the limits of challenge in the writ petition. C

21. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court of Karnataka dated 31 March 2017. D

22. Pending application(s), if any, stand disposed of. E