

A TAJVIR SINGH SODHI & ORS.

v.

THE STATE OF JAMMU AND KASHMIR & ORS.

(Civil Appeal Nos. 2164–2172 of 2023)

B MARCH 28, 2023

[K. M. JOSEPH AND B. V. NAGARATHNA, JJ.]

- Service law: Selection process – Quashing of – Selection process conducted for appointment of drug inspectors – 64 persons including some appellants selected and appointed as drug inspectors and are serving on the said posts – However, the said selection and appointment challenged alleging discrepancies in the selection procedure – High Court quashed the selection and appointment – Upheld by the Division Bench – On appeal, held: Candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful – Candidates cannot approbate and reprobate at the same time – Simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process – Challenge ought not to have been entertained in light of the principle of waiver and acquiescence – Furthermore, no mala fide or arbitrariness is found in the selection process – Recasting the selection criteria was only with regard to allocation of marks for the respective educational qualification of the candidates – It was with a view to preserve the standards of the selection process – Furthermore, the assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee – In light of the pertinent selection procedure that was followed, the Court is unable to hold that the same was mechanical or casual or suffered from irregularities which were so grave or arbitrary in nature so as to justify quashing the entire selection process – Thus, the High Court not justified in quashing and setting aside the entire selection process, more so when sixty-four candidates including the appellants had been serving on the said post for over a decade – Jammu and Kashmir Subordinate Services Recruitment Rules, 1992 – rr. 9 and 9A.*

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Selection process for public employment – Scope of judicial review – Held: Courts generally avoid interfering in the selection process of public employment, to maintain the autonomy and integrity of the selection process – Process of selection involves a high degree of expertise and discretion – Not appropriate for Courts to substitute their judgment for that of a selection committee – Courts intervene only when there are proven allegations of malfeasance or violations of statutory rules, or inherent arbitrariness. A

Words and Phrases: ‘Pharmacology’ and ‘Pharmacy’ – Meaning of – Discussed.

Allowing the appeals, the Court C

HELD: 1.1 The Courts generally avoid interfering in the selection process of public employment, recognising the importance of maintaining the autonomy and integrity of the selection process. The Courts recognise that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice if the Court were to venture into reviewing the decision of experts who form a part of a selection board. Thus, it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene. Thus, the Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the *viva-voce* are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the Committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective criteria employed by the selection D

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- A board/interview panel in assessing the suitability of candidates, namely, that the candidates who had done their post-graduation had been awarded 10 marks and in the *viva-voce*, such PG candidates had been granted either 18 marks or 20 marks out of 20; and that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water. [Para 12, 12.1][748-C-D; 750-G-H; 751-A-C]

- 1.2. It is trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Thus, the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence. The only exception to the rule of waiver is the existence of *mala fides* on the part of the Selection Board. In the instant case, no *mala fide* or arbitrariness is found in the selection process and therefore the said exception cannot be invoked. [Para 13, 13.2][753-F-H; 754-A-B]

- 1.3 In the instant case, the entire selection of the appellants was set aside due to the non-availability of individual award rolls, despite, signed approval of the final Select List by the members G of the Board. Whether quashing the entire selection process was excessive or justified, would depend on the selection procedure adopted and whether the same is arbitrary or reveals any *mala fides* on the part of the selection board. [Para 14.4][755-F-G]

1.4. In light of the pertinent selection procedure that was followed, it cannot be held that the same was mechanical or casual or suffered from irregularities which were so grave or arbitrary in nature so as to justify quashing the entire selection process. Further, the requirement of individual rolls being signed and verified by the members of the Selection Board cannot be traced to any statute or rule. Therefore, the Court cannot sustain the finding of the High Court that the entire selection process was vitiated by such irregularity. The High Court was not justified in quashing and setting aside the entire selection process, more so when sixty-four candidates including the appellants had been serving on the said post for over a decade. [Para 14.6][759-H; 760-A-B] A

1.5. The expert in the Selection Board, Dr. Samina Farhat, Assistant Professor, Department of Pharmacology, was a doctor by profession with a Post Graduate degree (MD) and Ph.D. in Pharmacology to her credit. Rule 9A of the 1992 Rules provides that the Chairman may if he feels necessary appoint a specialist in the discipline in which appointment is to be made, as a member of the selection board. In the instant case, it was submitted that a person with a qualification in the field of pharmacy would have been better suited on the panel.[Para 15][760-C-E] D

1.6. It cannot be held that a doctor by profession with a Post Graduate degree (MD) and Ph.D. in Pharmacology was in any way underqualified or unsuitable for her role on the Selection Board. In fact, a pharmacologist is more appropriate to interview the candidates for the post of drug inspector. Further, it is to be noted that Rule 9 A provides that the Chairman *may* if he feels necessary appoint a specialist in the discipline in which appointment is to be made, as a member of the selection board. Similarly Rule 9 (iii) provides that the Chairman *may*, if he feels necessary associate with the Selection Committee expert/specialist in the discipline in which recruitment is to be made. The use of the word ‘may’ would indicate that the Chairman of the Board has discretion in this regard and there is no mandatory requirement to appoint on the selection panel a person having a qualification in pharmacy. To this extent, the findings of the Single E F G

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- A **Judge and the Division Bench of the High Court are upheld. [Para 15.3][761-E-G]**
- 1.7. The criteria for evaluation of a candidate's performance in an interview may be diverse and some of it may be subjective. However, having submitted to the interview process with no demur or protest, the same cannot be challenged subsequently simply because the candidate's personal evaluation of his performance was higher than the marks awarded by the panel. Only 20 out of 100 marks were allocated for interview/*viva-voce*. The same is only 20% of the total marks which cannot be said to be an excessive proportion out of the total marks. Further Courts cannot sit in judgment over the award of marks by an interview panel. That is best left to the judgment and wisdom of the interview panel. There is no merit in the contention of the writ petitioners regarding the award of marks to the candidates who appeared for *viva-voce* before the panel. Moreover, the award of 80% of the total marks is on objective criteria depending upon the educational qualification of the individual candidates. [Para 16.2][762-E-F; 763-D-E]**
- 1.8. The criteria was recast *vide* Corrigendum dated 12th June, 2009, by increasing the weightage accorded to candidates possessing a Degree in pharmacy or pharmaceutical chemistry and advanced qualifications such as post-graduate degrees, Ph.D etc., with a view to incentivise more qualified persons who had applied for the said posts. Recasting the criteria was only with regard to allocation of marks for the respective educational qualification of the candidates. It was with a view to preserve the standards of the selection process and was not motivated by *mala fide* or oblique motive. Higher the qualification a candidate possessed, higher marks were awarded. In other words, the minimum marks awarded for educational qualification was 65 and could increase to 80 depending on the higher qualifications of the candidates. Therefore, the selection process cannot be interfered on the ground that the award of marks was recast unilaterally. The reallocation of marks based on the educational qualification was in recognition of the higher qualification of the candidates which cannot be termed to be arbitrary. It is a no brainer that any candidate who was aggrieved by the recast of marks**
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would either withdraw his candidature or challenge the Corrigendum dated 12th June, 2009 at a preliminary stage in the selection process. However, the writ petitioners did not do so. Having participated in the selection process without any demur or protest, the writ petitioners cannot challenge the same as being tainted with *mala fides*, merely because they were unsuccessful. [Para 16.3][763-F-H; 764-A-C] A

1.9. One of the directions issued by the Single Judge in the Writ Petitions was to retain the successful candidates but, at the same time, to consider the case of the writ petitioners for appointment in the available posts. But if it was not possible to accommodate the writ petitioners, owing to non-availability of posts, then the entire selection was quashed and set aside and a fresh Selection Committee was to be constituted to conduct fresh interviews of all the candidates who had earlier appeared before it and a fresh Select List was to be prepared. Further, till the said exercise was to be carried out, the selected candidates were to be continued. The Division Bench, however, quashed the Selection List in its entirety and directed and observed that no further appointments could be made against the vacancies that may have occurred subsequent to the appointments already made and that a fresh selection was to be made by re-advertising the posts. Consequently, the selection of drug inspectors was quashed *in toto* and a direction was issued to complete the exercise afresh within six months and till then, the appointed candidates as drug inspectors were to be continued. The directions issued by both the Single Judge as well as by the Division Bench were not in accordance with law and hence, the said directions have to be quashed. [Para 17][764-D-F] C D E F

1.10. The judgment of the Single Judge of the High Court of Jammu and Kashmir at Srinagar, dated 18th December 2015 and the impugned judgment passed by the Division Bench, dated 29th October, 2021, are set aside. Consequently, the judgment of the High Court of Jammu and Kashmir at Jammu dated 6th July, 2017 following the order of the Single Judge of the High Court of Jammu and Kashmir at Srinagar, dated 18th December, 2015, is also set aside. [Para 18][764-G-H; 765-A] G

- A *Sadananda Halo v. Momtaz Ali Sheikh, (2008) 4 SCC 619 : [2008] 3 SCR 497; Trivedi Himanshu Ghanshyambhai v. Ahmedabad Municipal Corporation, (2007) 8 SCC 644 : [2007] 10 SCR 1041 – relied on.*
- B *Reserve Bank of India v. C.L. Toora (2004) 4 SCC 657: [2004] 3 SCR 847; Union of India v. Bikash Kuanar (2006) 8 SCC 192; University of Mysore v. C.D. Govinda Rao [1964] 4 SCR 575; Indian Railway Construction Co. Ltd. v. Ajay Kumar (2003) 4 SCC 579: [2003] 2 SCR 387; State of Bihar v. P.P. Sharma (1992) 1 Supp SCC 222 : [1991] 2 SCR 1; Ajit Kumar Nag v. Indian Oil Corporation Ltd. (2005) 7 SCC 764 : [2005] 3 Suppl. SCR 314; Union of India v. Ashok Kumar (2005) 8 SCC 760 : [2005] 4 Suppl. SCR 317; National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman (1992) 2 Supp. SCC 481;*
- C *B.C. Mylarappa v. Dr. R. Venkatasubbaiah (2008) 14 SCC 306 : [2008] 14 SCR 288; Baidyanath Yadav v. Aditya Narayan Roy (2020) 16 SCC 799 : [2019] 15 SCR 427; Mohd. Mustafa v. Union of India (2022) 1 SCC 294; Madan Lal v. State of J&K (1995) 3 SCC 486 : [1995] 1 SCR 908; Union of India v. Bilash Chand Jain (2009) 16 SCC 601; Anupal Singh v. State of Uttar Pradesh (2020) 2 SCC 173 : [2019] 12 SCR 1071; D. Sarojakumari v. R. Helen Thilakom (2017) 9 SCC 478 : [2017] 9 SCR 512; Sachin Kumar v. Delhi Subordinate Service Selection Board (2021) 4 SCC 631; Inderpreet Singh Kahlon v. State of Punjab (2006) 11 SCC 356 : [2006] 1 Suppl. SCR 772; Union of India v. Rajesh P.U. (2003) 7 SCC 285 : [2003] 1 Suppl. SCR 883; Ashok Kumar Yadav v. State of Haryana (1985) 4 SCC 417 : [1985] 1 Suppl. SCR 657; Buddhi Nath Chaudhary v. Abahi Kumar (2001) 3 SCC 328 : [2001] 2 SCR 18; Jasvinder Singh v. State of J&K (2003) 2 SCC 132; Secretary, State of Karnataka v. Umadevi (2006) 4 SCC 1 : [2006] 3 SCR 953; Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan AIR 1990 SC 434; Secy. (Health) Deptt. of Health & F.W. v. Dr. Anita Puri (1996) 6 SCC 282 : [1996] 5 Suppl. SCR 361; M. V. Thimmaiah*
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v. *Union Public Service Commission* (2008) 2 SCC 119 : [2007] 13 SCR 624; *Om Prakash Poplai and Rajesh Kumar Maheshwari v. Delhi Stock Exchange Association Ltd.* (1994) 2 SCC 117 : [1994] 1 SCR 120; *Manish Kumar Shahi v. State of Bihar*, (2010) 12 SCC 576; *Ramesh Chandra Shah v. Anil Joshi* (2013) 11 SCC 309 : [2013] 5 SCR 687; *Ashok Kumar v. State of Bihar*, (2017) 4 SCC 357 : [2016] 8 SCR 815; *Kumari Anamica Mishra v. UP Public Service Commission, Allahabad* AIR 1990 SC 461 : [1989] Suppl. SCR 124; *Mohinder Sain Garg v. State of Punjab*, (1991) 1 SCC 662 : [1990] 3 Suppl. SCR 108; *Minor A. Peeriakaruppan Etc. v. State of Tamil Nadu* (1971) 1 SCC 38 : [1971] 2 SCR 430; *Miss Nishi Maghu v. State of J & K* (1980) 4 SCC 95 : [1980] 3 SCR 1253; *Lila Dhar v. State of Rajasthan* AIR 1981 SC 1777 : [1982] 1 SCR 320 – referred to. A

P. Ramanatha Aiyar's Advanced Law Lexicon, 6th Edition, Vol. 3; *Oxford Concise Medical Dictionary*, 7th Edition – referred to. B

<u>Case Law Reference</u>			
[2004] 3 SCR 847	referred to	Para 7.1	E
(2006) 8 SCC 192	referred to	Para 7.2, 7.5, 7.7 & 13.2	
[2008] 3 SCR 497	relied on	Para 7.2	
[1964] 4 SCR 575	referred to	Para 7.2	
[2007] 10 SCR 1041	relied on	Para 7.3, 9.5 & 14.6	F
[2003] 2 SCR 387	referred to	Para 7.3	
[1991] 2 SCR 1	referred to	Para 7.3	
[2005] 3 Suppl. SCR 314 referred to		Para 7.3	
[2005] 4 Suppl. SCR 317 referred to		Para 7.3	G
(1992) 2 Supp. SCC 481 referred to		Para 7.4	
[2008] 14 SCR 288	referred to	Para 7.4	
[2019] 15 SCR 427	referred to	Para 7.4	H

A	(2022) 1 SCC 294 [1995] 1 SCR 908 (2009) 16 SCC 601 [2019] 12 SCR 1071	referred to referred to referred to referred to	Para 7.4, 7.7 Para 7.6, 7.7 & 7.9 Para 7.6 Para 7.7
B	[2017] 9 SCR 512 (2021) 4 SCC 631 [2006] 1 Suppl. SCR 772 [2003] 1 Suppl. SCR 883	referred to referred to referred to referred to	Para 7.7 Para 7.8 Para 7.8 Para 7.8, 14.3
C	[1985] 1 Suppl. SCR 657 [2001] 2 SCR 18 (2003) 2 SCC 132	referred to referred to referred to	Para 7.9 Para 7.10 Para 9.4
D	[2006] 3 SCR 953 AIR 1990 SC 434 [1996] 5 Suppl. SCR 361 [2007] 13 SCR 624	referred to referred to referred to referred to	Para 10.6 Para 12 (i) Para 12 (ii) Para 12 (iii)
E	[1994] 1 SCR 120 (2010) 12 SCC 576 [2013] 5 SCR 687 [2016] 8 SCR 815	referred to referred to referred to referred to	Para 12 (iv) Para 13 (i) Para 13 (ii) Para 13 (iii)
F	[1989] Suppl. SCR 124 [1990] 3 Suppl. SCR 108 [1971] 2 SCR 430 [1980] 3 SCR 1253	referred to referred to referred to referred to	Para 14.1 Para 14.2 Para 16 Para 16
G	[1982] 1 SCR 320	referred to	Para 16.1

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2164-2172 of 2023.

From the Judgment and Order dated 29.10.2021 of the High Court of Jammu & Kashmir and Ladakh at Srinagar in LPASW Nos. 277 of H 2015, 278, 279, 12, 97, 98, 105, 134 and 135 of 2016.

With

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Civil Appeal Nos.2182-2190, 2191-2199, 2200, 2173-2181, 2201-2203, 2204-2212, 2213-2215 and 2216-2221 of 2023.

Ms. Madhavi Goradia Divan, A.S.G., P. S. Patwalia, Sanjay R. Hegde, Ranjit Kumar, Rakesh Dwivedi, Sr. Advs., M. Shoeb Alam, Ujjwal Singh, Agastya Sen, Krishna Sumanth, Siddhant Buxy, Rajensh Singh Parihar, Sunando Raha, Raghav Gupta, Shah Rukh Ali, Ms. Fauzia Shakil, Anupam Raina, Ms. Purnima Krishna, G. M. Kawaosa, Ms. Pallak Mittal, Ms. Majula Gupta, Rushab Aggarwal, Japnish Singh Bhatia, Ms. Riddhima Juneja, Mukul Kumar, Shailesh Madiyal, Vaibhav Sabharwal, Akshay Kumar, Ms. Palak Mittal, Ms. S. Janani, Deepak Goel, Ms. Sarika Rai, Shiv Singh Yadav, Priya Ranjan Kumar, Ms. Beena Goyal, Hitesh Kumar Sharma, S. K. Rajora, Akhileshwar Jha, Ms. Niharika Dewivedi, Ms. Shweta Sand, Ravish Kumar Goyal, Anish Roy, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

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NAGARATHNA, J.

Leave granted.

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2. I.A. No. 21153/2022 for substitution of the legal representatives of the deceased petitioner therein and I.A. No. 21154/2022 for condonation of delay in filing I.A. No. 21153/2022 are allowed. The delay in filing I.A. No. 21154/2022 is condoned and the legal representatives are brought on record.

3. I.A. No. 3739/2022 for impleadment is also allowed.

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4. The present batch of appeals concern the selection process conducted on 8th September, 2009, for appointment of drug inspectors in the then State of Jammu and Kashmir, and the appointments published on 12th November, 2009, whereby sixty-four persons including the appellants in SLP (C) Nos.20781-20789 of 2021; SLP (C) Nos. 20790-20798 of 2021; SLP (C) Nos. 20799-20807 of 2021; SLP (C) No. 976/2022; SLP (C) Nos. 967-975 of 2022 and Diary No. 1194/2022, were selected and appointed as drug inspectors and are serving on the said posts since 12th November, 2009. The selection and appointments were challenged before the High Court of Jammu and Kashmir and were quashed by the learned Single Judge of the High Court of Jammu and

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- A Kashmir at Srinagar, by judgment and order dated 18th December 2015, in SWP No. 1356 of 2009 and connected matters. The said judgment was affirmed by the Division Bench of the High Court by the impugned judgment dated 29th October, 2021, passed in Letters Patent Appeal No. 277 of 2015 and connected matters. The appellants in SLP (C) No.976 of 2022 have challenged the judgment and order dated 6th July, 2017 passed by the learned Single Judge of the High Court of Jammu and Kashmir at Jammu, whereby, relying on the judgment and order of the learned Single Judge of the High Court of Jammu and Kashmir at Srinagar dated 18th December, 2015, the writ petition filed by some of the appellants herein was dismissed. Hence, these appeals.
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- C 5. Succinctly stated, the facts leading to the present appeals are as follows:
 - 5.1. On 05th May, 2008, the Jammu and Kashmir Subordinate Services Selection and Recruitment Board (hereinafter referred to as “the Board”) in exercise of the powers enshrined under the Jammu and Kashmir Subordinate Services Recruitment Rules, 1992, (hereinafter referred to as ‘1992 Rules’) issued Advertisement Notice No. 3 of 2008, inviting applications for filling up vacancies in twenty services. The Advertisement Notice provided the breakup of available vacancies as also the eligibility criteria prescribed under the relevant Recruitment Rules.
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- E The total number of posts advertised were 549. The said Advertisement invited applications for 72 posts of drug inspectors out of which 42 posts were to be filled from the open merit category; 14 posts were to be filled by Residents of Backward Areas (hereinafter referred to as “RBA”) and 16 posts were to be filled by various other reserved categories including Other Social Categories (hereinafter referred to as “OSC”).
- F The requisite qualifications prescribed in the advertisement, to apply for the post of drug inspector, was as under:
 - (a) The candidate must have a degree in Pharmacy or Pharmaceutical Chemistry or a Post-Graduate Degree in Chemistry with Pharmaceuticals as a special subject of a University established in India by law or must have an equivalent qualification recognized and notified by the Central Government for such purpose by the appointing authority or the Associateship Diploma of the Institution of Chemists (India) by passing the examination with analyst of drugs and pharmaceuticals as one of the subjects; or
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(b) The candidate must be a graduate in Medicine or Science from a University recognized for this purpose by the appointing authority and must have at least one-year post-graduate training in a laboratory under:

- i) Government Analyst appointed under the Act;
- ii) Chemical examiner of the Head of the institution specially approved for the purpose by the appointing authority.

5.2. The Board notified the approved criteria to regulate the selection and appointment to the posts of drug inspectors. The same are as under:

i.	Degree in Pharmacy (B. Pharmacy) Or	55 Points
ii.	Degree in Pharmaceutical Chemistry Or	55 Points
iii.	P.G. in Chemistry with Pharmaceutical as a special subject Or	55 Points
iv.	Associateship diploma of the Institution of Chemists (India) by passing the examination with analyst of drugs and Pharmaceutical as one of the subjects Or	55 Points
v.	Graduate in Medicines or Science of a University recognised for this purpose by appointing authority and has at least one year Post Graduate training in a Laboratory under (i) Government Analyst appointed under the Act. (ii) Chemical Examiner (iii) the Head of an Institution specially approved for the purpose by the appointing authority	55 Points
vi.	P.G. Pharmacy/Medicine	25 Points
vii.	Viva-Voce	20 Points
	Total	100 Points

5.3. After receipt of application forms for the post of drug inspector in pursuance of the advertisement, the authorities issued a notification in a local daily on 31st May, 2009, notifying the short-listed candidates. Another notification dated 12th June, 2009 was issued by the Board captioned "Discrepancy noticed in criteria of drug inspector (Health)." By virtue of the said notification, the respondents recast the criteria of selection as under:

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A	1. Degree in Pharmacy (B. Pharmacy) Or 2. Degree in Pharmaceutical Chemistry Or 3. P.G. in Chemistry with Pharmaceutical as a special subject Or 4. Associateship diploma of the Institution of Chemists (India) by passing the examination with analyst of drugs and Pharmaceutical as one of the subjects Or 5. Graduate in Medicines or Science of a University recognised for this purpose by appointing authority and has at least one year Post Graduate training in a Laboratory under (i) Government Analyst appointed under the Act. (ii) Chemical Examiner (iii) the Head of an Institution specially approved for the purpose by the appointing authority	65 points 65 Points 65 Points 65 Points 65 Points
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C	6. P.G. Pharmacy/ Medicine/ Pharmaceutical Chemistry 7. Ph.D. 8. Viva-Voce	10 Points 05 Points 20 Points
	Total	100 points

- 5.4. On 8th September, 2009, the Board published the Select List D and recommended sixty-four candidates for appointment as drug inspectors in the Drug and Food Control Organisation of Jammu and Kashmir. The Select List comprised of 42 candidates selected from the open merit category and a total of 22 candidates were selected amongst the other reserved categories out of which 14 names were selected E under the RBA category. The Board, on 15th October, 2009, placed the Select List before the Health and Medical Education Department being the concerned department, for the issuance of appointment orders after verifying all original documents.

5.5. On 12th November, 2009, the Office of the Controller, Drug F and Food Control Organisation of Jammu and Kashmir, issued Appointment Orders, appointing the selected candidates as drug inspectors in the Pay Scale of Rs.9300-34800 and Pay Band of Rs.4,200/-.

5.6. Some candidates who remained unsuccessful in the selection G process filed Writ Petition (Service) No. 1685 of 2009 before the Jammu and Kashmir High Court at Jammu, with a prayer to quash the selection of 56 out of the total number selected candidates and to issue a writ in the nature of mandamus commanding the authorities to instead select and appoint the writ petitioners as drug inspectors. The salient grounds on which the selection process was challenged are as under:

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- a) That the candidates appointed as drug inspectors had acquired the prescribed qualifications for the post of drug inspector, from universities which were not affiliated with the Pharmacy Council of India. That the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast *vide* Notification dated 12th June 2009 and the criterion as regards the obtainment of qualifications from a University recognized and notified by the Central Government, was omitted. The petitioners in the Writ Petition contended that the reason why the qualification was omitted was neither gatherable nor understandable. A
- b) That the selection carried out by the Selection Committee was not legally sustainable as the quorum of the Selection Committee was not complete as the Chairman of the Board being one of the members of the interview committee which conducted the interview process did not participate in the interview process. Further, the expert member of the Interview Committee was not from the field of pharmacy. Instead of making a person member of the Interview Committee who had expertise in the concerned field, the authorities brought a member who had MBBS qualification. B
- c) That the candidates who had a post-graduation degree had been awarded 10 marks and in the *viva-voce*, such PG candidates had been granted either 18 marks or 20 marks out of 20. That although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process. C D E F

5.7. On identical grounds as those raised in SWP No. 1685 of 2009, three more Writ Petitions were filed by unsuccessful candidates challenging the selection process. These petitions were filed before the Srinagar Bench of the High Court of Jammu and Kashmir. Details of the said writ petitions have been set out hereinunder:

- i) Writ Petition SWP No. 1356 of 2009 was filed before the High Court seeking a writ in the nature of certiorari quashing the criteria to the extent of allocating 20 marks for *viva-voce* and a direction to the authorities to formulate a fresh selection list of the candidates on the basis of their merit obtained after G H

- A excluding the marks allocated to the candidates by the Committee while conducting the *viva-voce*. The writ petitioners further sought a writ in the nature of a mandamus directing that interviews be conducted afresh with an expert in the Selection Committee who possesses the requisite qualification.
- B ii) Writ Petition SWP No. 1535 of 2009 was filed by the Petitioner therein before the High Court at Srinagar, seeking a writ of certiorari quashing the Select List as published to the extent of the selection of drug inspectors; a direction to the authorities to produce the record pertaining to the interview for the post of drug inspector and a writ of mandamus directing the concerned authorities to select and appoint the writ petitioner therein against the post of drug inspector on the basis of his academic merit and the marks secured in the interview.
- C iii) Writ Petition SWP No. 1846 of 2009 was filed seeking a writ in the nature of certiorari quashing the selection list and a writ of mandamus commanding the concerned authorities to select and appoint the writ petitioner therein to the post of drug inspector with retrospective effect w.e.f. the date the successful candidates were selected.
- D 5.8. The learned Single Judge of the High Court, Srinagar Bench allowed the Writ Petitions i.e., SWP Nos. 1356 of 2009, 1846 of 2009 and 1535 of 2009 by way of common judgement and order dated 18th December 2015. The pertinent findings in the judgement dated 18th December 2015 have been culled out hereinunder:
- F i) The learned Single Judge dismissed the challenge thrown by the writ petitioners to the competence of the expert in the Selection Board, Dr. Samina Farhat, Assistant Professor, Department of Pharmacology. It was observed that the expert was a doctor by profession with a Post Graduate degree (MD) and Ph.D. in Pharmacology to her credit. Pharmacology is an important component in the study of Pharmacy and is included among the major areas of instruction in the curriculum of a degree in pharmacy at the Bachelor's and Master's levels. All those who study and undergo the training in pharmacy are necessarily to study Pharmacology. A pharmacist has to learn
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the effects of the medicine as well as the ways in which medicine can be introduced into the body. Pharmacists are medication experts and their responsibilities include dispensing medication to patients, monitoring patient health and progress and optimising the patient's response to medication therapies. That pharmacology and pharmacy, therefore, are not like chalk and cheese, too different from each other. One who has studied medicine, and is an expert in pharmacology is expected to have fairly good knowledge of pharmacy.

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- ii) The learned Single Judge was of the view that the Court while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the *viva-voce* are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the Committee. Thus, there was no reason to find fault with the marks awarded by the Selection Committee/Interview Board only because 100% marks had been awarded or that the marks awarded were on a higher side. That once the writ petitioners had participated in the Selection Process, they were not to feel aggrieved with the process for the reason that the marks awarded to them in the *viva-voce* were not up to their expectations or on the lower side. The learned Single Judge of the High Court, however, held that the Court may not look into the decision but it was within its domain to examine whether the procedure and guidelines were followed. The Court thus examined the decision-making process.
- iii) The learned Single Judge observed that in the case in hand, the award rolls prepared by the members of the Selection Board individually were not on the selection record. Even the final award roll reflecting the performance of the candidates in the *viva-voice* and the data of points secured on the basis of merit in the eligibility qualification and the qualification warranting extra weightage was not signed by the Members of the Selection Committee and there was nothing on record

- A to indicate the assessment of candidates individually made by the members of the Selection Committee and their overall merit including the marks awarded in the interview. That the absence of the award rolls prepared individually by the Members of the Selection Committee, vitiated the entire selection process and the selection process did not conform to the prescribed procedure.
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- iv) Upon perusal of the selection record, the learned Single Judge observed that it transpired that the Selection Board while making the selection had given extra weightage to some of the candidates when such candidates did not have postgraduate degrees in Pharmacy/Medicine to their credit and therefore, they did not deserve to be given extra weightage. That the Selection Committee without verifying whether Post Graduate Degree in Pharmacy claimed by a candidate was to the credit of the candidate and if so, whether the degree was obtained from a recognized University or not before the cut-off date, awarded extra points, presuming the candidates to have Post Graduate Degree and therefore, eligible for extra weightage. That this cast a cloud on the selection process.
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- 5.9. For the reasons set out above, the learned Single Judge allowed the said Writ Petitions and issued the following directions:
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- i) That successful candidates who were the respondents in the writ petitions, had been serving as drug inspectors for seven years (at the time) and there was no dispute as regards the eligibility of the said candidates to the advertised posts. Thus, the respondent authorities were given the discretion to retain the successful candidates and were also directed to accord consideration to the appointment of the writ petitioners in the three writ petitions against available clear vacancies of drug inspectors in the pay scale of Rs.9300-34800, in the respondent department and to complete such exercise within four weeks.
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- G ii) That if the appointment of the writ petitioners as directed by the Court was not possible due to the non-availability of posts, the Select List published by the Respondent Board on 8th September, 2009 and the appointment made pursuant thereto shall stand quashed and set aside. The Board would then be
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required constitute a Selection Committee to conduct fresh interviews of all candidates who earlier appeared before it and the members of the Selection Committee shall follow the prescribed procedure and shall individually assess and evaluate the candidates, prepare individual award rolls reflecting such assessment and handover the individual award rolls under sealed cover to the Convenor of the Selection Committee. That the Convenor of the Selection Committee shall compute the total marks awarded in the *viva-voce* and add the marks so obtained to the marks awarded to the candidates on the basis of merit in the eligibility qualification and higher qualification, if any, on *pro rata* basis, and prepare a final merit list duly signed by all the members of the Selection Committee. The Board on the basis of the final merit list was required to make recommendations to the intending department and the intending department was to act on the recommendations so made and issue appointment orders in favour of the selected candidates. The learned Single Judge directed the authorities to conduct such exercise within six months.

- iii) The learned Single Judge further observed that in case the respondent authorities decide to carry out direction No. (ii) above, the Board may allow the selected/appointed candidates to continue till the exercise undertaken in compliance with direction No. (ii) was completed and appointment orders were issued, as their ouster may result in administrative problems, risk to public health and would lead to the collapse of the entire machinery set up to achieve the objective of the Drugs and Cosmetics Act.

5.10. Thereafter, nine Letters Patent Appeals were filed before the High Court challenging the Order dated 18.12.2015 passed by the learned Single Judge. Out of the nine appeals, three LPAs (LPA Nos 277/2015, 278/2015 and 12/2016) were filed by persons who were selected in the open merit category and made party respondents in at least one of the writ petitions; three LPAs (LPA Nos. 279/2015, 134/2016 and 135/2016) were filed by the appellants herein, i.e., persons who were selected in the reserved category and were not made a party to any of the three writ petitions and three LPAs (LPA Nos. 97/2016, 98/2016 and 105/2016) were filed by the Board.

- A 5.11. By the impugned judgment dated 29th October, 2021, the Division Bench of the High Court upheld the findings of the learned Single Judge on merits and disposed of the appeals after modifying the directions issued by the learned Single Judge. The relevant observations in the impugned judgment dated 29th October, 2021 are as under:
- B i) The Division Bench of the High Court upheld the finding of the Single Judge *viz* the inclusion of Dr. Samina Farhat, Assistant Professor, Department of Pharmacology, Government Medical College, Srinagar, as an expert in the Selection Committee and held that it was expected that she had a fairly good knowledge of Pharmacy.
- C ii) The Division Bench also held that the final award roll as to the performance of the candidates in *viva-voce* and the points secured on the basis of merit in the eligibility qualification and the qualification warranting extra weight was not signed by members of the Selection Committee. Further, there was nothing on record to indicate the assessment of candidates individually made by members of the Selection Committee and their overall merit including the marks awarded in the interview.
- D iii) One of the Judges of the Division Bench, Justice Vinod Chatterji Koul observed that direction No.(i) issued by the learned Single Judge was contrary to and in conflict with direction No. (ii). That if the learned Single Judge had found the marks awarded in the interview/*viva-voce* to be not up to the mark and contradictory to the selection criteria, then direction No.(i) ought not to have been issued by the learned Single Judge as it would also have an impact on prospective candidates and would be contrary to judicial precedent.
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- G Direction No.(ii) was modified by the Division Bench to the extent that “*appointment of petitioners as directed is to be made*” was omitted by the Division Bench. The subsequent part of direction (ii) i.e., “*The select list published by respondent Board on 8th September, 2009 and appointments made pursuant thereto shall stand quashed and set aside.*” and the consequential directions were upheld by the Division Bench.
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Justice Vinod Chatterji Koul upheld direction No.(iii) issued by the learned Single Judge and held that the same shall remain intact and be implemented by the officials in letter and spirit. A

- iv) The learned Chief Justice (as he then was) in a separate opinion, concurred with the observations of Justice Vinod Chatterji Koul and the observations of the learned Single Judge to the effect that the Select List was not properly drawn. That there was nothing on record to indicate that the members of the Selection Committee had made the assessment of the candidates individually and the final award roll reflecting the performance of the candidates in the *viva-voce* and points secured on the basis of the merit in the eligibility qualification as well as extra weightage granted for additional qualification was also not in accordance with the norms. Therefore, the selection process did not conform to the prescribed procedure. However, he further held that the learned Single Judge, having made the above finding to the effect that some of the candidates had been arbitrarily awarded extra weightage without there being on record any material to show that they possessed the post-graduate degrees for grant of such extra marks, the learned Single Judge could not have saved the selection of the candidates merely for the reason that they had been serving in the department for the last seven years and they were qualified to hold the post. B C D E

Further, it was held that the learned Single Judge was not justified in directing the authorities to retain the successful candidates in service and to accord consideration to the appointment of the writ petitioners-unsuccessful candidates if they satisfy the eligibility criteria and to consider them for appointment against the available clear vacancies of the drug inspectors. The learned Chief Justice opined that the selection process pursuant to Advertisement Notice No. 3 of 2008 dated 5th May 2008 was completed with the publication of the Select List and the joining of the selected candidates. Therefore, no further appointments could be made on the basis of the said selection against the clear vacancies that may have occurred subsequently. The Division Bench held that all subsequent F G H

- A vacancies are to be filled up from the open market afresh and in case they are allowed to be filled up by the candidates of the earlier selection, it would certainly infringe upon the rights of the candidates who would have applied against the said vacancies if they were advertised afresh. The Division Bench thus held that once the selection was not found to be a valid one and therefore, the learned Single Judge could not have issued any direction such as direction No. (i).
- B v) With respect to the argument that the unsuccessful candidates had participated in the selection process and thus, were not entitled to challenge it, learned Chief Justice observed that the writ petitioners or the unsuccessful candidates could not have been debarred from filing the writ petition as the candidates appearing in the selection process can always bring to the notice of the court the illegalities committed during the selection, though, they may not have any locus to challenge the constitution of the Selection Committee or the eligibility of the members of the Selection Committee, having participated in the selection process with open eyes.
- C vi) The Division Bench thus quashed the selection list published by the Board on 8th September 2009 and gave the liberty to the Respondent-Board to constitute a Selection Committee to conduct fresh interviews of all the candidates who had appeared before it in accordance with the law, for selection against the posts advertised. The Division Bench further clarified that no post or vacancy which had not been advertised by the advertisement dated 5th May 2008 will be filled by the said selection process. The Division Bench directed that the exercise if undertaken, should be completed within six months and till such time the selected candidates appointed may be permitted to continue in the said posts to avoid administrative problems.
- D E F G 5.12. Aggrieved by the common impugned judgment passed by the Division Bench of the High Court of Jammu and Kashmir and Ladakh at Srinagar dated 29th October, 2021, the present appeals have been filed by various stakeholders. Further, SLP (C) No. 976/2022 has been filed assailing the judgment and order dated 6th July, 2017, passed by the H High Court in SWP No. 1685/2009, by way of which, the High Court

quashed the selection and the list published by the Board on 8th September 2009. A

Details of the various appeals filed before this Court, which were heard and are being disposed of by way of this judgment, have been presented for easy reference in a tabular form hereinunder:

Sl. No.	Special Leave Petition No.	Impugned Judgment and the Court which passed the same	Details of proceedings in which the Impugned Judgment came to be passed	Category of the parties aggrieved by the Impugned Judgment
1.	SLP (C) No. 20781-20789 of 2021	Impugned Judgment and Final Order dated 29 th October, 2021 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar	LPA Nos. 277/2015, 12/2016, 97/2016, 98/2016, 134/2016, 135/2016, 278/2015, 279/2015 and 105/2016.	The appeals have been filed by candidates who were selected in the Residents of Backward Areas (RBA) category <i>vide</i> the Select List dated 08.09.2009.
2.	SLP (C) No. 20790-20798 of 2021	Impugned Judgment and Final Order dated 29 th October, 2021 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar	LPA Nos. 277/2015, 12/2016, 97/2016, 98/2016, 134/2016, 135/2016, 278/2015, 279/2015 and 105/2016.	The appeals have been filed by Mr. Ashish Gupta, Ms. Rumessa Mohammad and Mr. Pankaj Malhotra who were selected in the Open Merit Category <i>vide</i> the Select List dated 08.09.2009.
3.	SLP (C) No. 20799-20807 of 2021	Impugned Judgment and Order dated 29 th October, 2021 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar	LPA Nos. 277 of 2015, 12 of 2016, 97 of 2016, 98 of 2016, 134 of 2016, 135 of 2016, 278 of 2015, 279 of 2015 and 105 of 2016.	The appeals have been filed by candidates who were selected in the Open Merit Category <i>vide</i> the Select List dated 08.09.2009.
4.	SLP (C) No. 976/2022	Impugned Judgment and Order dated 6 th July, 2017 passed High Court of Jammu & Kashmir at Jammu (Jammu Bench)	SWP No. 1685/2009 titled <i>Shivani Bakshi & Ors. v. State of J&K and Ors.</i>	The appeal has been filed by candidates who were selected <i>vide</i> the Select List dated 08.09.2009 in the Open Merit Category as well as in the posts reserved for Residents of Backward Areas (RBA).
5.	SLP (C) No. 967-975 of 2022	Impugned Judgment and Order dated 29 th October, 2021 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar	LPA Nos. 277 of 2015, 12 of 2016, 97 of 2016, 98 of 2016, 134 of 2016, 135 of 2016, 278 of 2015, 279 of 2015 and 105 of 2016.	The appeals have been filed by Mr. Gagan Bhardwaj who was selected in the Other Social Category (OSC) <i>vide</i> the Select List dated 08.09.2009.

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A	6.	Diary No. 1194/2022	Impugned Judgment and Order dated 29 th October, 2021 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar	LPA Nos. 279/2015, 134/2016 and 135/2016	The appeal has been filed by those who were selected in the Schedule Caste, Schedule Tribe and residents of the Actual Line of Control (A.L.C.) category <i>vide</i> the Select List dated 08.09.2009.
B	7.	SLP (C) No. 2642-2650 of 2022	Impugned Judgment and Order dated 29 th October, 2021 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar	LPA Nos. 277 of 2015, 12 of 2016, 97 of 2016, 98 of 2016, 134 of 2016, 135 of 2016, 278 of 2015, 279 of 2015 and 105 of 2016.	The appeals have been filed by the State of Jammu and Kashmir (Now U.T. of Jammu and Kashmir) and the Commissioner/Secretary to the Government, Health and Medical Education Department, U.T. of Srinagar.
C	8.	SLP (C) No. 3930-3932 of 2022	Impugned Judgment and Order dated 29 th October, 2021 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar	LPA Nos. 97/2016, 98/2016 and 105/2016.	The appeals have been filed by the Jammu and Kashmir Subordinate Services Selection and Recruitment Board.
D	9.	SLP (C) No. 4359-4364	Impugned Judgment and Order dated 29 th October, 2021 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar	LPA Nos. 277 of 2015, 12/2016, 134/2016, 135/2016, 278/2015 and 279/2015.	The appeals have been filed by the Jammu and Kashmir Subordinate Services Selection and Recruitment Board.

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6. We have heard learned Senior Counsel, Sri Ranjit Kumar and learned counsel Sri Shoeb Alam appearing on behalf of the appellants in SLP (C) Nos. 20781-20789 of 2021, learned Senior Counsel Sri Sanjay Hegde for the appellants in Diary No. 1194 of 2022, learned Senior Counsel Sri P.S. Patwalia appearing for the appellants in SLP (C) Nos.

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20790–20798 of 2021, learned Additional Solicitor General Smt. Madhavi Goradia Divan appearing for the Board and learned counsel Ms. S. Janani appearing on behalf of the Respondents herein-writ petitioners and other learned counsel appearing for the respective parties and perused the material on record.

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Submissions:

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7. Learned counsel Sri Shoeb Alam appearing on behalf of some of the appellants at the outset submitted that the impugned judgment of the High Court of Jammu and Kashmir and Ladakh at Srinagar dated 29th October, 2021 was based on an incorrect appreciation of the law and facts and therefore calls for interference by this Court.

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7.1. It was submitted that it was an admitted position that there was no rule or notification prescribing any procedure or requirement for the Selection Committee to retain the individual award rolls or have the final award rolls signed by the members. That the selection records culminated in the final Select List and the same was approved with the signatures of all seven members of the Board, including two members of the Selection Committee, after perusing the selection records. That the calculations made on the individual basis of the candidates had been verified with reference to the records. The consolidated points were fed into the computer by the Chairman of the Board himself and checked by another member of the Board. The final Select List prepared on this basis was approved by the Board, after perusal of the selection record, with the signatures of all members of the Board. However, the Single Judge did not refer to the same. Thus, the Impugned Order and the Single Judge's Order setting aside the entire selection of the appellants on the ground that the prescribed procedure was not followed and that the selections made by the Selection Committee were doubtful, is erroneous and contrary to law.

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Reliance was placed on ***Reserve Bank of India vs. C.L. Toora, (2004) 4 SCC 657***, to contend that where no procedure is prescribed for a Selection Committee, it can formulate its own procedure which is reasonable and not arbitrary in nature.

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7.2. It was further submitted that it is a settled position of law that when a Selection Committee recommends the selection of a person, the same cannot be presumed to have been done in an erroneous or mechanical manner in the absence of any allegation of favoritism or bias. That a presumption arises as regards the correctness of the decision of a Selection Committee and the party who makes the allegation of bias or favoritism is required to prove the same. Thus, in the absence of *mala fides* against the members, selection by a Selection Committee cannot be doubted. To buttress his argument, learned counsel placed

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- A reliance on *Union of India vs. Bikash Kuanar*, (2006) 8 SCC 192; *Sadananda Halo vs. Momtaz Ali Sheikh*, (2008) 4 SCC 619 (*Sadananda Halo*) and *University of Mysore vs. C.D. Govinda Rao*, (1964) 4 SCR 575.

- 7.3. It was contended that this Court in the context of non-availability of any part of selection records has, in *Trivedi Himanshu Ghanshyambhai vs. Ahmedabad Municipal Corporation*, (2007) 8 SCC 644 (*Trivedi Himanshu Ghanshyambhai*) held that only because the records could not be produced in view of the fact that they were not available, no inference as to *mala fides* can be drawn against the members of a Selection Committee and the selection cannot be cancelled. In this regard it was submitted that the impugned judgment and the judgment of the Single Judge, setting aside the entire selection of the appellants herein due to the non-availability of individual award rolls, despite, signed approval of the final Select List by the Board, is contrary to law. That the burden of establishing *mala fides* is heavily on the person who alleges it and the allegations of *mala fides* are more than often easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility, *vide Indian Railway Construction Co. Ltd. vs. Ajay Kumar*, (2003) 4 SCC 579; *State of Bihar vs. P.P. Sharma*, (1992 Supp. (1) SCC 222); *Ajit Kumar Nag vs. Indian Oil Corporation Ltd.*, (2005) 7 SCC 764; *Union of India vs. Ashok Kumar*, (2005) 8 SCC 760.

- 7.4. It was further contended on behalf of the appellants that in the absence of any rule or regulation requiring a Selection Committee or Board to record reasons for selection and appointment, no fault can be found with the selection process due to the lack of individual award rolls. Reliance in this regard was placed on *National Institute of Mental Health and Neuro Sciences vs. Dr. K. Kalyana Raman*, 1992 Supp. (2) SCC 481; *B.C. Mylarappa vs. Dr. R. Venkatasubbaiah*, (2008) 14 SCC 306; *Baidyanath Yadav vs. Aditya Narayan Roy*, (2020) 16 SCC 799; *Mohd. Mustafa vs. Union of India*, (2022) 1 SCC 294 (*Mohd. Mustafa*).

- 7.5. It was asserted that the power of judicial review does not extend to conducting a microscopic inquiry beyond the pleadings in the writ petition. Reliance was placed on *Sadananda Halo* to contend that this Court has held that a roving and microscopic inquiry on factual aspects is not permissible in a writ petition. That a Writ Court cannot place itself

as a fact-finding commission and cannot go all the way into the facts and microscopic details, which are revealed not *via* the pleadings but on the basis of an unnecessary investigation. That in the present case, the High Court had called for the selection records, gone through the same, undertaken a fact-finding exercise and rendered microscopic findings for specific individuals, and all of it, not on the basis of pleadings. Thus, the present case is a perfect example of what a writ court ought not do in the exercise of its powers under Article 226 of the Constitution.

7.6. It was thus contended that the High Court cannot act as an appellate authority over the choice of candidates/selection process under Article 226. To buttress his submission, learned counsel cited ***Madan Lal vs. State of J&K, (1995) 3 SCC 486 (Madan Lal)*** wherein this Court held that it was in the exclusive domain of the expert committee to decide whether more marks should be assigned and the Court cannot sit as a Court of appeal over the assessment made by the Committee. Reliance was also placed on ***Union of India vs. Bilash Chand Jain, (2009) 16 SCC 601*** to submit that it is settled law that a Writ Court is not an Appellate Court. Thus, the High Court exceeded the Writ Jurisdiction while setting aside the selection of the appellants herein.

7.7. It was averred that persons who participated in the selection process and interview cannot challenge the same upon being unsuccessful since they do not have a cause to challenge the same and a writ petition filed by them is not maintainable, *vide Madan Lal; Anupal Singh vs. State of Uttar Pradesh, (2020) 2 SCC 173; Sadananda Haloi and Mohd. Mustafa*. Reliance was also placed on ***D. Sarojakumari vs. R. Helen Thilakom, (2017) 9 SCC 478***. That in the present case, none of the writ petitioners was selected on merit and they were not even on the waiting list, therefore, the writ petitions filed by them were not maintainable on the ground of the same being devoid of any locus.

7.8. Learned counsel Sri Shoeb Alam submitted that in the absence of a large-scale systematic irregularity that denudes the legitimacy of the selection exercise, the entire selection cannot be set aside. That this Court in ***Sachin Kumar vs. Delhi Subordinate Service Selection Board, (2021) 4 SCC 631; Inderpreet Singh Kahlon vs. State of Punjab, (2006) 11 SCC 356; Union of India vs. Rajesh P.U., (2003) 7 SCC 285 (Rajesh P.U.)*** has held that those who are innocent of wrongdoing should not pay a price for those who are actually found to be involved in irregularities and therefore, the selection as a whole cannot

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- A be set aside for specific instances of irregularities. It was submitted that unless there is a systematic malaise affecting the integrity of the selection and denying equal opportunity, the entire selection cannot be set aside by taking away the appointment of innocent and meritorious candidates.

- 7.9. That it was within the exclusive domain of the expert committee to decide whether more marks should be assigned to the candidates and hence, it cannot be a subject-matter of an attack before a Writ Court, as it does not sit as a Court of appeal over the assessment made by the Committee so far as the candidates interviewed by them are concerned. To buttress this submission, the learned counsel cited the decisions of this Court in *Madan Lal and Ashok Kumar Yadav vs. State of Haryana, (1985) 4 SCC 417*.

- 7.10. It was next submitted that appellants have been working as drug inspectors since their appointment on 12th November, 2009, i.e., for a period of over 13 years, without any complaint against them and no fault on their part has been attributed at any point. Thus, their appointment should not be set aside due to the long period of service rendered. Further, the petitioners are now at an age where they will not be able to secure any alternate employment, *vide Buddhi Nath Chaudhary vs. Abahi Kumar, (2001) 3 SCC 328*.

- 7.11. That the writ petitions filed challenging the selection process were not maintainable, the same being defective as all the appointees were not impleaded as parties.

- 7.12. Specific submissions were made by learned Senior Counsel Mr. Patwalia as regards the selection of Mr. Pankaj Malhotra, Mr. Ashish Gupta and Ms. Rumeesa Mohammad. It was submitted that that there is no discrepancy in the selection of the aforesaid three individuals as doubted by the High Court as all three individuals comfortably find a place in the Select List even if no weightage for the M. Pharma degree is added to their score. As to the alleged discrepancies in the selection of the aforesaid three individuals as pointed out by the Writ Court, the learned Senior Counsel for the petitioners submitted as under:

- i) Rumeesa Mohammad: That her M. Pharma degree was not given weightage at the time of her selection as grades were allotted to her by her University for the said degree and the formula for conversion of such grades into percentage was not known. That even without such

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weightage, she was selected at rank 17. Subsequently, she made a representation to the Board along with the conversion formula, pursuant to which weightage was given to her M. Pharma degree *vide* Order dated 30th November, 2010, revising her rank from 17 to 4.

- ii) Ashish Gupta: That the final award roll records a remark that his M. Pharma degree was from Baba Mast Nath University and Vanika Mission. The Committee had his degree but it required a clarification about the institute that issued the degree as Baba Mast Nath University was derecognized and he was shifted to Vinayaka Mission under Court Orders. It was submitted that he got his degree from Vinayaka Mission and even if no weightage was given to his M. Pharma degree, his rank in the Select List would shift from 14 to 29 whereas the cutoff rank was 42.
- iii) Pankaj Malhotra: It was submitted that he could not enclose his marksheets along with his application as he had obtained the final marksheets only after submitting his application, however, he produced his final marksheets for the M. Pharma course at the time of the interview. He could not produce the original degree as it had not been issued by then, although he had passed the course. Thus, he had “acquired” the qualification of M. Pharma at the time of the interview. That even if no weightage was given to his M. Pharma degree, his rank in the Select List would shift from 2 to 14 and the cutoff rank was 42.

8. Sri Sanjay Hegde, learned Senior Counsel for the appellants in Diary No. 1194 of 2022, i.e., persons who were appointed as drug inspectors in the Scheduled Caste, Scheduled Tribe and residents of the Actual Line of Control (A.L.C.) categories submitted that the Division Bench of the High Court erred in setting aside and quashing the Select List published by the respondent board on 8th September, 2009, thereby quashing all the appointments made pursuant thereto. That the selection list was correct as the same was published by the Board after following lawful procedure and that the selection list has attained finality by efflux of time.

8.1. It was further submitted that denial of opportunity of being heard before the Writ Court and the cancellation of their appointments,

- A on the ground of non-joinder of parties, warrants setting aside of the impugned judgment. That the High Court was not justified in quashing the whole selection list and appointments thereof as no such prayer *qua* the appellants in Diary No. 1194 of 2022 was maintainable as there was no grievance against such persons. That such appellants' selection/appointment was at no point of time ever challenged by the respondents/unsuccessful candidates and they did not figure as parties in any of the Writ Petitions, thus, violating the principles of natural justice and the Writ Petitions were hit by non-joinder of necessary parties.

8.2. It was next submitted that there was no candidate from among

- C the non-selectees, who could have challenged the selection of these petitioners, because they belong to the Scheduled Tribe, Scheduled Caste and residents of Actual Line of Control (A.L.C.) category and *vide* the Advertisement Notice dated 5th May, 2008, seven posts of Scheduled Tribe category, six posts of Scheduled Caste category and two posts of candidates belonging to and residing within or near the A.L.C. were
- D advertised and there were fewer candidates available than the number of posts advertised under Scheduled Tribe and Scheduled Caste category. In so far as the A.L.C. category posts are concerned, it was submitted that only three candidates applied against the two posts and the one unsuccessful candidate under ALC never challenged the selection of the petitioners belonging to ALC and this factum was evident from the Select List issued by the Board while recommending the sixty-four candidates for appointment as drug inspectors. Four posts out of seven posts belonging to Scheduled Tribe, and three posts out of six posts belonging to Scheduled Caste remained vacant due to the non-availability of candidates.

- F 8.3. It was contended that the fact that such appellants were never made parties and yet the entire selection was set aside, was itself a stand alone reason and ground for setting aside the impugned judgment, *qua* the appellants in Diary No. 1194 of 2022. That the impugned judgment decided the fate of such appellants despite non-joinder as necessary parties.

With the aforesaid submissions, it was prayed that the present appeals be allowed and the impugned judgment of the High Court dated 29th October, 2021 and the judgment of the learned Single Judge dated 18th December 2015 be set aside.

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9. Ms. Madhavi Goradia Divan, learned ASG appearing for the Board submitted that neither the learned Single Judge nor the Division Bench found any *mala fides* against the members of the Selection Committee and the Division Bench concurrently found that a court cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the *viva-voce* test were excessive and not corresponding to the performance in such test. Therefore, quashing the selection process, *de hors* any finding as to *mala fides* against the members of the Selection Committee, would not be sustainable.

9.1. It was further submitted that the Selection Committee was formed as per Rule 9 of the 1992 Rules. Rule 9(1) clearly stipulates that the Chairman of the Board may nominate a Committee which shall consist of one or more members of the Board for the purpose of conducting examinations and holding interviews and tests for the purposes of selection of candidates to be appointed to the State Cadre. Further, Rule 9(iii) empowers the Chairman to associate with the Selection Committee, an Expert/Specialist with the Board if he feels necessary, in the discipline in which recruitment is sought to be made.

Thus, to ensure the selection of meritorious candidates was carried out with all fairness and transparency the Selection Committee comprised of (i) the Chairman of the Board (an IAS officer); (ii) a Member of the Board (Kashmir Administrative Officer); and (iii) an Expert/Specialist who was employed as an Assistant Professor in the Government Medical College at Srinagar. It was contended that if there was any ulterior motive to manipulate the scores in the *viva-voce* to benefit certain candidates, the Chairman of the Board could have just constituted a one-member Committee comprising of only himself to conduct the *viva-voce* for the selection of candidates.

9.2. It was further contended that each member of the three-member Selection Committee individually assessed each candidate and awarded points in the *viva-voce* which were averaged by dividing by the number three and the same could be evidenced from the marks awarded to the candidates in the *viva-voce* such as 11.67, 13.67, 11.33 etc.;

9.3. In so far as the marks awarded by the expert member of the Selection Committee are concerned, the learned ASG brought to the

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- A Court's notice, Order dated 18th December, 2015 passed by the learned Single Judge wherein it was categorically held that a Court while exercising the power of judicial review cannot step into the shoes of the Selection Committee and neither can it assume an appellate role in examining whether the marks awarded by the Selection Committee in the *viva-voce* were excessive and not corresponding to the performance in such test.

Further, that the respondents chose not to file an appeal/LPA challenging the above finding and in fact, the aforesaid observation of the learned Single Judge *vis-à-vis* the marks allotted by the Selection Committee was affirmed by the Division Bench.

- C The learned ASG further submitted that no SLP had been filed by the Respondents challenging the observation of the Division Bench as regards the discretion exercised by the Selection Committee in awarding marks in the *viva-voce*. Thus, the observation that the marks awarded by the Selection Committee in the *viva-voce* test cannot be reviewed by a Court in the facts and circumstances of the present case, has attained finality.

9.4. The learned ASG placed reliance on *Jasvinder Singh vs. State of J&K, (2003) 2 SCC 132* wherein it was held that in the absence of any specific allegations of any *mala fides* or bias against the Board

- E constituted for selection or anyone in the Board, it cannot be held that a conscious effort was made for bringing some candidates within the selection zone. It was further held that picking up a negligible few instances cannot provide the basis for either striking down the method of selection or the selections ultimately made. In the said case, it was also observed
- F that there is no guarantee that a person who fared well in the written test, will or should be presumed to have fared well in the *viva-voce* test also.

9.5. The learned ASG cited Rule 10 of the 1992 Rules which provides for Recruitment and Selection to contend that there is no

- G prescribed procedure for the appointment of drug inspectors. Rule 10(i) states that the Board shall finalize the selections after holding such tests or examinations as may be prescribed under rules or if there are no such rules, as the Board may consider necessary. Thus, it is a matter of record that no rules have been prescribed for the selection of drug inspectors and in the absence of prescribed rules, the Selection Committee and the

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Board carried out the selection process in a fair and transparent manner. A
That merely because the record of the case was not traceable when it was called for by the Single Judge in February 2015, i.e., 6 years after the selection/appointments were made, cannot be a ground to set aside the entire selection process.

Reliance was placed on *Trivedi Himanshu Ghanshyambhai*, B wherein it was held that merely because the records could not be produced since they were lost and not available, the appointment could not be cancelled.

9.6. As regards the selection of Pankaj Malhotra, Rumessa Mohammad and Ashish Gupta, learned ASG submitted that the finding of the Single Judge in paragraph 16 of his judgment that the Selection Committee had given weightage to some candidates for degrees which they did not possess, was erroneous. C

It was submitted that Mr. Pankaj Malhotra produced his M. Pharma degree before the Selection Committee and the same was considered on the date of his interview. Further, the High Court overlooked the fact that even if the marks awarded by the Selection Committee on account of M. Pharma degree were excluded in his case, the candidate would still be selected even though his rank would go down from Serial No. 2 to Serial No. 14. D

Secondly, in the case of Ms. Rumessa Mohammad, marks of her M. Pharma Degree were not added to her final score and the error was later on rectified by the Board by the issuance of a subsequent notification dated 30th November, 2010, thereby, revisiting the position of Ms. Rumessa Mohammad in the selection list from Serial No. 17 to Serial No. 4. This notification was a part of the record. E F

Thirdly, in the case of Mr. Ashish Gupta, marks were rightly awarded to him on account of possessing an M. Pharma degree which was filed along with the application form before the cut-off date.

With the said averments, it was contended that the present appeals be allowed and the impugned judgments of the High Court be set-aside. G

10. *Per contra*, learned counsel Ms. S. Janani appearing on behalf of the Respondents herein-writ petitioners before the High Court, supported the impugned judgments of the High Court and submitted that the same do not warrant any interference by this Court as the judgments H

- A were passed based on an unimpeachable appreciation of the law and facts.

10.1. It was averred that the Selection Committee formed was defective and inadequate as the Chairman opted for an expert and took on board the Selection Committee, Dr. Samina Farhat who was a doctor by profession with M.D. and Ph.D. in Pharmacology to her credit. That the role of a doctor in Pharmacology is to research, develop, and test new medications, as well as run clinical trials for new drug discoveries. On the other hand, the responsibility of a drug inspector is to inspect whether the medicines maintain legal standards of sanitation, limpidness, and grading. They are entrusted with the task to ensure that licensing conditions are being followed and they also have to obtain and send the drug for testing or analysis if there is a reason to suspect that the drug is being sold or stocked in violation of the Act or Rules. Thus, the learned counsel for the respondents asserted that the expert selected by the Chairman cannot be said to be an expert or specialist in the discipline in which the recruitment was being made.

10.2. It was next contended that the eligibility criteria were changed midway. That initially, the eligibility criteria required that the equivalent qualification was to be recognised and notified by the Central Government. However, in the approved criteria, the same was dropped. E The respondents contended that the criteria were changed after the applications had been received pursuant to the advertisement. As a result of the above, several candidates and brighter people may not have applied and several persons from unrecognized colleges would have got selected. Further, the Selection Board had no mechanism to verify the genuineness of the certificates or whether the universities were recognized or not.

F 10.3. That some of the selected candidates did not produce their original mark sheet of B. Pharma or M. Pharma at the time of the interview and some of them did not even produce their birth certificates. This was contrary to what was laid down in the advertisement as according to the advertisement, the candidates had to produce the original qualification certificates at the time of the interview and any candidate who failed to produce the same was not to be allowed to appear in the written or oral test.

G 10.4. It was contended that the process was tainted by arbitrariness and casualness with which the Selection Committee had acted. That H

this was evidenced by the fact that there were some candidates who were not given marks for their M. Pharma Degree and they had to later approach the Board. That 11 selected candidates were given 20 out of 20 marks and three were given 19 out of 20. Thus, almost 20% of the selected candidates were given unusually higher marks in the *viva-voce* which facilitated their selection.

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10.5. It was submitted that there was no blanket estoppel to challenge the selection by the candidates who participated in the selection. In the instant case, the Petitioners before the High Court were not aware when they participated in the selection that the Selection Committee was faulty nor were they aware till the Select List was published that several selected candidates had not produced their original certificates of qualification or birth certificates at the time of the interview. That even the Selection Board did not have the facility to verify the veracity of the certificates produced.

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10.6. The learned counsel for the respondents placed reliance on *Secretary, State of Karnataka vs. Umadevi, (2006) 4 SCC 1* to contend that the petitioners cannot seek the protection of their appointment on the plea that they had been working for long years, if their initial selection was held to be illegal and faulty.

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10.7. Learned counsel for the respondents concluded the submissions by stating that the total sanctioned strength of drug inspectors is 84 and out of the total strength, 65 are currently working. In fact, out of the 65 inspectors, 4 had been promoted, thus, there are 25 vacancies as of now and only 17 candidates are contesting before this Court and all other petitioners before the High Court have not chosen to contest the matter even though notice was issued by this Court in ordinary mode and also by way of publication in newspapers. Thus, all the petitioners can be adjusted and appointed in the vacant posts.

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With the aforesaid submissions, it was prayed that the impugned judgments of the High Court be affirmed and the present appeals be dismissed as being devoid of merit.

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Points for Consideration:

11. Having regard to the submissions of the learned Senior Counsel and learned counsel for the respective parties, the following points would arise for our consideration:

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- A i) Whether the High Court of Jammu and Kashmir at Srinagar erred in quashing and setting aside the selection process conducted on 8th September, 2009, for appointment of drug inspectors in the State of Jammu and Kashmir, and the appointments published on 12th November, 2009?
- B ii) What order?

Selection Process for Public Employment: Interference by Courts:

12. Before proceeding further, it is necessary to preface our judgment with the view that Courts in India generally avoid interfering in the selection process of public employment, recognising the importance of maintaining the autonomy and integrity of the selection process. The Courts recognise that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice for us if we were to venture into reviewing the decision of experts who form a part of a selection board. The law on the scope and extent of judicial review of a selection process and results thereof, may be understood on consideration of the following case law:
- i) In ***Dalpat Abasaheb Solunke vs. Dr. B.S. Mahajan, AIR 1990 SC 434***, this Court clarified the scope of judicial review of a selection process, in the following words:
 - F “9...It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc.....”
 - ii) In a similar vein, in ***Secy. (Health) Deptt. Of Health & F.W. vs. Dr. Anita Puri, (1996) 6 SCC 282***, this Court observed

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as under as regards the sanctity of a selection process and the grounds on which the results thereof may be interfered with: A

“9. ... It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of *mala fide* are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation.....” B

iii) This position was reiterated by this Court in *M. V. Thimmaiah vs. Union Public Service Commission, (2008) 2 SCC 119*, C in the following words: D

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...” F

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30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. G H

- A If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions.....”
- B *iv) Om Prakash Poplai and Rajesh Kumar Maheshwari vs. Delhi Stock Exchange Association Ltd., (1994) 2 SCC 117*, was a case where an appeal was filed before this Court challenging the selection of members to the Delhi Stock Exchange on the ground that the Selection Committee formed for the aforesaid purpose, arbitrarily favoured some candidates and was thus, against Article 14. This Court rejected the allegation of favouritism and bias by holding as under:
- “5. ...the selection of members by the Expert Committee had to be done on the basis of an objective criteria taking into consideration experience, professional qualifications and similar related factors. In the present cases, we find that certain percentage of marks were allocated for each of these factors, namely, educational qualifications, experience, financial background and knowledge of the relevant laws and procedures pertaining to public issues etc. Of the total marks allocated only 20 per cent were reserved for interviews. Therefore, the process of selection by the Expert Committee was not left entirely to the sweet-will of the members of the Committee. The area of play was limited to 20 per cent and having regard to the fact that the members of the Expert Committee comprised of two members nominated by the Central Government it is difficult to accept the contention that they acted in an unreasonable or arbitrary fashion.....”
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- 12.1. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.
- Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate

role to examine whether the marks awarded by the Selection Committee in the *viva-voce* are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/ Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective criteria employed by the selection board/interview panel in assessing the suitability of candidates, namely, (i) that the candidates who had done their post-graduation had been awarded 10 marks and in the *viva-voce*, such PG candidates had been granted either 18 marks or 20 marks out of 20. (ii) that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water.

13. The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast *vide* a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:

- i) In ***Manish Kumar Shahi vs. State of Bihar, (2010) 12 SCC 576***, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.
- ii) In ***Ramesh Chandra Shah vs. Anil Joshi, (2013) 11 SCC 309***, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were *ultra vires* the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the

- A reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:
- B “24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”
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- D iii) Similarly, in *Ashok Kumar vs. State of Bihar, (2017) 4 SCC 357*, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twenty-seven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared a list. The High Court declined to approve the Select List on the ground that the ratio of full marks for the written examination and the interview ought to have been 90:10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks - 90 and qualifying marks - 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants
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were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

“13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, 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. Vinod Kumar (2007) 8 SCC 100, this Court held that: “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 also Munindra Kumar v. Rajiv Govil (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission (2006) 12 SCC 724)”.
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13.1. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought

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- A not to have been entertained in light of the principle of waiver and acquiescence.

13.2. This Court in ***Sadananda Halo*** has noted that the only exception to the rule of waiver is the existence of *mala fides* on the part of the Selection Board. In the present case, we are unable to find any B *mala fide* or arbitrariness in the selection process and therefore the said exception cannot be invoked.

Cancellation of the entire selection process: Whether justified?

14. In the present case, the entire selection of the appellants has been quashed by the High Court primarily on the ground of non-availability C of individual award rolls or marksheets awarding marks individually. Whether such an irregularity would vitiate the entire selection process and set it at naught is the next aspect of the matter that requires consideration.

14.1. The decision of a three-judge Bench of this Court in ***Kumari Anamica Mishra vs. UP Public Service Commission, Allahabad, AIR 1990 SC 461*** involved recruitment to various posts in the educational services of the State of Uttar Pradesh. There was a two-stage recruitment involving a written test and an interview therein. It was found that after the written examination, due to the improper feeding of data into the E computer, some candidates who had a better performance in the written examination were not called for interview and candidates who secured lesser marks were not only called for the interview but were finally selected. The entire process was cancelled by the Public Service Commission. In the said context, this Court observed as under:

F “4. We have heard counsel for the parties and are of the view that when no defect was pointed out in regard to the written examination and the sole objection was confined to exclusion of a group of successful candidates in the written examination from the interview, there was no justification for cancelling the written part of the recruitment examination.”

G The aforesaid case is therefore representative of a situation where the cancellation of the entire recruitment process was held to be not justified since there was no systemic flaw in the written test, and the issue was only with regard to award of marks to the candidates in the interview. The situation could have been remedied by setting aside the H

selection made after the interview stage and calling for a fresh interview of all eligible candidates if the case so warranted which is also not so in the instant case. A

14.2. In *Mohinder Sain Garg vs. State of Punjab, (1991) 1 SCC 662*, 1200 candidates were called for the interview, for filling up 54 posts. Though not through a proper course to have been adopted it was held that it would not vitiate the selection, more particularly when it could not be said to be tainted with *mala fides* or ill motive. B

14.3. The observations of this Court in *Rajesh P.U.* are highly instructive as regards the question, whether, setting aside the entire selection process would be excessive or disproportionate a remedy in a given case. The pertinent findings of this Court in the said case are as under: C

“...Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.” F

14.4. In the present case, the entire selection of the appellants was set aside due to the non-availability of individual award rolls, despite, signed approval of the final Select List by the members of the Board. Whether quashing the entire selection process was excessive or justified, would depend on the selection procedure adopted and whether the same is arbitrary or reveals any *mala fides* on the part of the selection board. G

14.5. The selection process adopted in the instant case may be summarized as under:

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- A i) The process of selection was governed by the 1992 Rules made by the General Administration Department of the Government of Jammu and Kashmir.

Rule 9 (i) of the said Rules provided that the Chairman of the Board may nominate a committee of “one or more members” of the Board for, *inter alia*, holding interviews for the purpose of selecting candidates for being appointed to the State Cadre.

B Under Rule 9 (iii), the Chairman may, if he feels necessary associate with the Selection Committee an Expert/Specialist in the discipline in which recruitment is to be made.

C The first *proviso* to Rule 9 provides that the selection made by the said Committee shall be approved by the Board before the same is forwarded to the appointing authority.

D For a better appreciation, Rule 9 and 9A of the 1992 Rules are extracted as under:

“9. Nomination of Committees:

- E (i) The Chairman may nominate a Committee “which shall consist of one or more members” of the Board for conducting examination and for holding interviews and tests for purposes of selection of candidates for being appointed to the State Cadre;
- F (ii) Every such Committee shall be chaired by the Chairman and where the Chairman is not a member of the Committee, by a member to be nominated by the Chairman, and
- (iii) Chairman may, if he feels necessary associate with the selection committee expert/specialist in the discipline in which recruitment is to be made.
- G (iv) The Chairman may nominate a Committee of not less than three persons for conducting and holding examinations, interviews and tests for purposes of making selection of candidates for being appointed to divisional and District Cadre;

H Provided that the said Committee shall be presided over by a member of the Board nominated by the Chairman and

the other members of the Committee shall be nominated by the Chairman out of the panel or names drawn up and approved by the Board from time to time in this behalf. The selection made by the said Committee shall be approved by the Board before the same is forwarded to the appointing authority. A

Provided further that in respect of selection for the posts falling in the District cadre, the District Officer of the discipline in which selection is required to be made, may also be accepted as member in the said Committee. B

Provided also that the Chairman of the Board may constitute District Level Selection Committees for each district with Deputy Commissioner as Convenor/Chairman for selection of Patwaris, as one time exception, for the year 1995 – 96. C

“**9-A.** Notwithstanding anything contained in these rules, the Government may for any special employment drive authorize the chairman to constitute following committees for the conduct of examination/tests and for holding interviews or both, as the case may be, for purposes of selection of candidates for being appointed to the State/ Divisional/District cadre posts: D E

I. State Cadre posts

1. Chairman or any other Member of the Board to be nominated by the Chairman.
2. Head of the indenting Department or the Secretary of concerned Administrative Department. F
3. Any other officer to be nominated by the Chairman.

II. Divisional Cadre posts

1. Member of the Board to be nominated by the Chairman, G who shall be Convenor of the Committee.
2. Additional Commissioner of the concerned Division.
3. Head of the indenting Department.

- A 4. Any other person to be nominated by the Member of the Board chairing the Committee.

III. District Cadre Posts.

- B 1. Member of the Board to be nominated by the Chairman who shall be the Convenor of the Committee.

- B 2. District Employment Officer of the district.

- B 3. District Head of the indenting office/Department.

- B 4. Any other person to be nominated by the Member of the Board chairing the Committee.

- C Provided that: -

- (a) the Chairman may if he feels necessary coopt an expert, specialist in the discipline in which appointment is to be made in respect of the State Cadre post;

- D (b) the Member presiding over the Divisional level Selection Committee/district level Selection Committee may if he feels necessary coopt an expert, specialist in the discipline in which recruitment is to be made in respect of Divisional/District cadre posts as the case may be;

- E (c) The above Committees shall be presided over by the Chairman/Member of the Board as the case may be;

- E (d) In case of special circumstances, the Board may authorize the aforesaid Committee/Committees to forward the select list to the appointing authority and this action shall be deemed to have the approval of the Board;

- F (e) The District Employment Officers shall be responsible to receive, compile and short-list applications for district cadre posts;”

- G ii) In June 2009, a three-member Selection Committee constituted by the Chairman of the Board conducted Interviews. The Committee comprised of Chairman of the Board, Ms. Salma Hamid and Dr. Samina Farhat. Thereafter, the marks awarded by the said Selection Committee in the *viva-voce/interview* and the marks

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awarded for the academic qualifications were tabulated for all candidates by way of a Final Award Roll. The Final Award Roll was produced by the Board before the High Court and was also secured by the petitioners through RTI.

- iii) On 07th September, 2009, the Board approved the Select List prepared by the Selection Committee. The approval letter enclosing the final Select List was signed by all seven members of the Board. Two out of these seven members were members of the Selection Committee along with a subject expert who was appointed under Rule 9(iii). The process of preparing the Select List was as under:
- a. Interviews of short-listed candidates were held in a ratio of 1:5.
 - b. On completion of the interview, the award was sealed by each member in an envelope and handed over to the Board through the Convenor for further process.
 - c. At the time of initiation of the selection process, the sealed envelopes of the Convenor and Members of the Committee were opened and fed into the computer for calculation and addition of marks, obtained in the interview with the weightage of academic marks as per the criteria framed for the purpose.
 - d. The basic data input of interview awards and correction in academic merit was received through a pen drive for consolidation and had been fed into the computer by the Chairman himself, and checked by another member of the Board.
 - e. The entire record of selection had been perused by the Board and was accordingly approved.
 - f. Select List was prepared on the basis of total marks allocated for academic qualifications as well as marks secured in the interview.

14.6. In light of the pertinent selection procedure that was followed, we are unable to hold that the same was mechanical or casual or suffered from irregularities which were so grave or arbitrary in nature so as to justify quashing the entire selection process. Further, we are unable to

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- A trace the requirement of individual rolls being signed and verified by the members of the Selection Board, to any statute or rule. Therefore, we cannot sustain the finding of the High Court that the entire selection process was vitiated by such irregularity. The High Court was not justified in quashing and setting aside the entire selection process, more so when sixty-four candidates including the appellants had been serving on the said post for over a decade.

Reliance in this regard may be placed on *Trivedi Himanshu Ghanshyambhai*, wherein it was held that merely because the records could not be produced since they were lost and not available, the appointment could not be cancelled.

- C 15. The next prong of the challenge relates to the competence of the expert in the Selection Board, Dr. Samina Farhat, Assistant Professor, Department of Pharmacology. The expert was a doctor by profession with a Post Graduate degree (MD) and Ph.D. in Pharmacology to her credit. Rule 9A of the 1992 Rules provides that the Chairman may if he feels necessary appoint a specialist in the discipline in which appointment is to be made, as a member of the selection board. In the present case, it is the contention of the writ petitioners that a person with a qualification in the field of pharmacy would have been better suited on the panel. In order to consider if there is any merit in this contention, it is necessary to discuss the meaning of ‘pharmacology’ as juxtaposed with ‘pharmacy.’
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15.1. According to P. Ramanatha Aiyar’s Advanced Law Lexicon, 6th Edition, Vol. 3, ‘pharmacology’ is defined as, “*the study of drugs. Applied in analyzing and identifying drugs submitted as evidence.*”

- F ‘Pharmacy’ is defined as “*a branch of knowledge or trade; the preparation and dispensing of drugs.*”

As per the Oxford Concise Medical Dictionary, 7th Edition, pharmacology is the science of the properties of drugs and their effects on the body. Pharmacy on the other hand is the preparation and dispensing of drugs. It defines a pharmacist to mean a person who is qualified by

- G examination and registered and authorized to dispense medicines or to keep open a shop for the sale and dispensing of medicines.

15.2. What emerges on a consideration of the said definitions is as under:

- i) The science of pharmacology and the practice of pharmacy are both concerned with a study of chemical substances and how they affect the functioning of the body. A
- ii) In a nutshell, the main difference between pharmacology and pharmacy is that pharmacology is the science of developing and understanding the effects of drugs and other substances, while pharmacy is the science and practice of collecting, preparing, standardizing, and distributing drugs to patients after a medical professional orders a prescription for a drug. B
- iii) Despite their differences, pharmacology and pharmacy have some similarities. Both fields are concerned with the use of drugs in healthcare, and both require an understanding of drug action, dosage, and potential side effects. Pharmacology and Pharmacy are both important fields in healthcare, but they differ in their focus and level of advancement. Pharmacology is generally considered more advanced than pharmacy because it involves more complex research into the mechanisms of drug action and the development of new drugs. C D

15.3. We therefore, cannot hold that a doctor by profession with a Post Graduate degree (MD) and Ph.D. in Pharmacology was in any way underqualified or unsuitable for her role on the Selection Board. In fact, we think that a pharmacologist is more appropriate to interview the candidates for the post of drug inspector. Further, it is to be noted that Rule 9 A provides that the Chairman **may** if he feels necessary appoint a specialist in the discipline in which appointment is to be made, as a member of the selection board. Similarly Rule 9 (iii) provides that the Chairman **may**, if he feels necessary associate with the Selection Committee expert/specialist in the discipline in which recruitment is to be made. The use of the word ‘may’ would indicate that the Chairman of the Board has discretion in this regard and there is no mandatory requirement to appoint on the selection panel a person having a qualification in pharmacy. To this extent, we affirm the findings of the learned Single Judge and the Division Bench of the High Court. We do not find any substance in the arguments of learned counsel for the respondent/writ petitioners in this regard.

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A 16. This Court has upheld the legitimacy of conducting interviews as a part of a selection process, even where marks earmarked for the same has been found to be *prima-facie* excessive, *vide Minor A. Peeriakaruppan etc. vs. State of Tamil Nadu, (1971) 1 SCC 38; Miss Nishi Maghu vs. State of J & K, (1980) 4 SCC 95.*

B 16.1. This Court in *Lila Dhar vs. State of Rajasthan, AIR 1981 SC 1777* made the following pertinent observations as to the importance of a *viva-voce* or interview in a selection process:

C “It is now well recognised that while a written examination assesses a candidate’s knowledge and intellectual ability, an interview test is valuable to assess a candidate’s overall intellectual and personal qualities. While a written examination has certain distinct advantage over the interview test there are yet no written tests which can evaluate a candidate’s initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness, in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the Constitution of the interview Board.”

E 16.2. The criteria for evaluation of a candidate’s performance in an interview may be diverse and some of it may be subjective. However, having submitted to the interview process with no demur or protest, the same cannot be challenged subsequently simply because the candidate’s personal evaluation of his performance was higher than the marks awarded by the panel. In this case the break up of the marks referred to above is reiterated as under:

	Criteria as per the Advertisement Notification dated 05th May, 2008	Recast Criteria as per the Corrigendum dated 12th June, 2009
G	01. Degree in Pharmacy (B. Pharmacy = 55 points OR	01. Degree in Pharmacy (B. Pharmacy = 65 points OR
	02. Degree in Pharmaceutical Chemistry OR	02. Degree in Pharmaceutical Chemistry = 65 points OR
H	03. PG in Chemistry with Pharmaceutical as a special subject = 55 points OR	03. PG in Chemistry with Pharmaceutical as a special subject = 65 points OR

04. Associateship diploma of the Institution of Chemists (India) by passing the examination with analyst of drugs and Pharmaceutical as one of the subjects = 55 points OR 05. Graduate in Medicines or Science of University recognized for this purpose by the appointing authority and has at least one year post graduate training in a laboratory under (i) Govt. Analyst appointed under Act (ii) Chemical examiner of (iii) the Head of an Institution specially approved for the purpose by the appointing authority = 55 points 06. P.G. Pharmacy/medicine = 25 points 07. Viva Voce = 20 points Total = 100 points	04. Associateship diploma of the Institution of Chemists (India) by passing the examination with analyst of drugs and pharmaceutical as one of the subjects = 65 points OR 05. Graduate in medicines or Science of a University recognized for this purpose by appointing authority and has at least one year post graduate training in a laboratory under (i) Govt. analyst appointed under act (ii) chemical Examiner of (iii) the Head of an Institution specially approved for the purpose by the appointing authority = 65 points 06. P.G. Pharmacy/ Medicine/ Pharmaceutical/ Chemistry = 10 points 07. Ph.D = 05 points Across the Board 08. Viva-voce = 20 points Total = 100 points
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Only 20 out of 100 marks were allocated for interview/*viva-voce*. The same is only 20% of the total marks which cannot be said to be an excessive proportion out of the total marks. Further Courts cannot sit in judgment over the award of marks by an interview panel. That is best left to the judgment and wisdom of the interview panel. In the above premise, we do not think there is any merit in the contention of the writ petitioners regarding the award of marks to the candidates who appeared for *viva-voce* before the panel. Moreover, the award of 80% of the total marks is on objective criteria depending upon the educational qualification of the individual candidates.

16.3. Further, it appears to us the criteria was recast *vide* Corrigendum dated 12th June, 2009, by increasing the weightage accorded to candidates possessing a Degree in pharmacy or pharmaceutical chemistry and advanced qualifications such as post-graduate degrees, Ph.D etc., with a view to incentivise more qualified persons who had applied for the said posts. Recasting the criteria was only with regard to allocation of marks for the respective educational qualification of the candidates. In our view, it was with a view to preserve the standards of the selection process and was not motivated by *mala fide* or oblique motive. Higher the qualification a candidate possessed, higher marks were awarded. In other words, the minimum marks awarded for educational qualification was 65 and could increase to 80 depending on

- A the higher qualifications of the candidates. Therefore, we are unable to interfere with the selection process on the ground that the award of marks was recast unilaterally. The reallocation of marks based on the educational qualification was in recognition of the higher qualification of the candidates which cannot be termed to be arbitrary. It is a no brainer
- B that any candidate who was aggrieved by the recast of marks would either withdraw his candidature or challenge the Corrigendum dated 12th June, 2009 at a preliminary stage in the selection process. However, the writ petitioners did not do so. Having participated in the selection process without any demur or protest, the writ petitioners cannot challenge the same as being tainted with *mala fides*, merely because they were
- C unsuccessful.

17. One of the directions issued by the learned Single Judge in the Writ Petitions was to retain the successful candidates but, at the same time, to consider the case of the writ petitioners for appointment in the available posts. But if it was not possible to accommodate the writ petitioners, owing to non-availability of posts, then the entire selection was quashed and set aside and a fresh Selection Committee was to be constituted to conduct fresh interviews of all the candidates who had earlier appeared before it and a fresh Select List was to be prepared. Further, till the said exercise was to be carried out, the selected candidates were to be continued. The Division Bench, however, quashed the Selection List in its entirety and directed and observed that no further appointments could be made against the vacancies that may have occurred subsequent to the appointments already made and that a fresh selection was to be made by re-advertising the posts. Consequently, the selection of drug inspectors was quashed *in toto* and a direction was issued to complete the exercise afresh within six months and till then, the appointed candidates as drug inspectors were to be continued.

We find that the aforesaid directions issued by both the learned Single Judge as well as by the Division Bench were not in accordance with law and hence, the said directions have to be quashed.

- G 18. In light of the aforesaid discussion, the present appeals are allowed. The judgment of the learned Single Judge of the High Court of Jammu and Kashmir at Srinagar, dated 18th December 2015 and the impugned judgment passed by the Division Bench, dated 29th October, 2021, are set aside. Consequently, the judgment of the High Court of H Jammu and Kashmir at Jammu dated 6th July, 2017 following the order

of the learned Single Judge of the High Court of Jammu and Kashmir at A
Srinagar, dated 18th December, 2015, is also set aside.

18.1. The candidates who were declared successful in selection process conducted on 8th September, 2009, for appointment of drug inspectors in the State of Jammu and Kashmir, and the appointments published on 12th November, 2009, were permitted to continue in service B by virtue of stay of the impugned judgment. The stay order is made absolute.

18.2. All pending applications stand disposed of in the aforesaid terms.

No order as to costs. C

Nidhi Jain
(Assisted by : Tamana, LCRA)

Appeals allowed.