

Before G.S. Sandhawalia, J.

RAVINDER SINGH AND OTHERS—*Petitioner*

versus

**HARYANA STAFF SELECTION COMMISSION AND
ANOTHER**—*Respondents*

CWP No. 8634 of 2021

November 12, 2021

Constitution of India, 1950— Art. 226— Writ petition— Selection process for Art and Craft Teachers— Challenge to— Change of criteria after initiation of selection process — Different question paper to candidates at one centre— Candidates three times the advertised posts called for interview without deciding upon their eligibility, to the exclusion of the eligible — Also, candidates who were below the benchmark were called for scrutiny of documents, but their roll numbers did not figure for interview — Held, there has been a discrepancy by the Commission in not clearing eligibility of candidates first while scrutinizing the essential qualifications, before shortlisting the eligible ones — This gave rise to litigation — It is responsibility of the candidates to give true declarations of essential qualifications — The Board would only scrutinize the eligibility at a subsequent point of time after the candidates have cleared the minimum prescribed benchmark — Merely because a candidate has been called for interview will not give him a indefeasible right to be appointed — Can be declared ineligible at a later stage; principle of estoppel does not apply — Petitioners have only a right to consideration and no absolute right to appointment — Further held, relying upon the opinion of Chief Examiner that second paper was also of the same difficulty level as the first one, it cannot be said that on account of opening of second set of question paper by mistake, rights of candidates in other centres have been jeopardized —In order to prevent leakages sometimes different question papers are given to candidates, and a system of moderation is done by the Selecting Agencies — Petitions dismissed.

Held, that there is no doubt, as such, that there has been a discrepancy by the Commission to the extent that firstly the eligibility of the candidates should have been cleared while scrutinizing the essential qualifications and then by short listing the number of persons who are duly eligible and who had cleared the benchmark which had been given in the fresh notice dated 28.12.2020. General category candidates who had minimum qualifying marks in the written test of 50% and for SC and BC category 45% and for ESM category 40% should have been called in the order of merit to the extent of three times the number of vacancies. The decision, as such, of the Commission on 23.02.2021 (Annexure R-3/2) to call eligible candidates below 50% and upto 45% has led to the present round of litigation as ineligible candidates who did not possess the minimum bench mark as per the notice dated 28.12.2020 have now approached this Court on account of not having been called for interview at a subsequent point of time. This should have necessarily been avoided since even when the restraint order was passed in Punam Devi's case (*supra*), the said contention had, as such, prevailed with this Court that the merit had been dropped whereby, for the general category candidate, cut off had earlier been fixed at 102 and then reduced to 100 marks. This was on account of the argument, which was raised by the counsels at that point of time that the petitioners had secured the minimum qualifying marks applicable to their respective categories and that is why, they have been called for scrutiny of documents but their roll numbers did not figure for the purposes of interview.

(Para 27)

Further held, that it is the responsibility of the candidates as such while filling up the application form to give true declarations regarding the fact that they hold the requisite essential qualifications including the educational qualifications as prescribed in the advertisement and the relevant rules and instructions pertaining to the posts in question. The Board would only be required to scrutinize the eligibility at a subsequent point of time after the candidates have cleared the minimum benchmark. This is necessary in as much as it would also cut

down the number of applications which the Commission has to scrutinize in a recruitment process. It has been noticed already that from initial 10390 candidates who had applied, the number has trickled down to 5459 who had appeared in the written examination over a period of decade due to the litigation. Eventually only 3131 candidates were called for scrutiny of documents and 3 times the number, as such, of 816 were eventually to be called i.e. 2448 whereas, in the present case, number called is 2539, which is sought to be rightly justified on account of the fact that many candidates have the same amount of marks and, therefore, have to be given an equal chance, as such, to appear before the Commission for interview purposes.

(Para 29)

Further held, that merely because the candidate has been called for interview, it would not give him an indefeasible right to be appointed and that he could not be declared ineligible for selection at a later stage if there was a defect in his application. It was held that the Courts are to examine the reasons for holding candidates ineligible and whether same is valid or unreasonable or arbitrary and principle of estoppel would not apply.

(Para 30)

Further held, that therefore, it cannot as such lead to any irrebuttable conclusion that only on account of second paper having been distributed amongst the candidates, the candidates at Centre No. 15 had, at any stage, stolen the march or were placed in a better position. The examination process is a process which is to be guided by the subject experts and as noticed, report of the Chief Examiner was called for by the Chairman. He has opined that the second paper was also of the same difficulty level and, therefore, it cannot be said that on account of the said mistake which has happened on account of the Superintendents opening and distributing the wrong question paper, the rights of candidate at 39 other centres was jeopardized. In order to prevent leakage, some times different question papers are given to candidates and a system of moderation is also done by the Selecting Agencies and, therefore, it cannot be said that merely because 61 candidates

have been short listed for interview from centre no. 15, it was on account of any mala fide intention, as such, on the part of the respondent-Commission.

(Para 32)

S/Sh. Ravinder Bangar, Advocate, Sanchit Punia, Advocate,
 Jasbir Mor, Advocate, Shaveta Sanghi, Advocate, Ravinder Malik (Ravi), Advocate, S.S. Sahu, Advocate, Lalit Rishi, Advocate, Ravi Sharma, Advocate, Mazlish Khan, Advocate, Nisha Malik, Advocate for Vikram Sheoran, Advocate, S.S. Shekhawat, Advocate, Sajjan Singh Advocate, for Parveen Dahiya, Advocate, Vivek Sharma Vats, Advocate, S.K. Redhu, Advocate, *for the petitioner(s)*.

Baldev Raj Mahajan, Advocate General, Haryana with Harish Nain, A.A.G. Haryana. Vijay Pal, Advocate, respondents No.4 to 19 in CWP-6911-2021.

G.S. SANDHAWALIA, J.

(1) The present judgment shall dispose of 32 writ petitions i.e. CWP Nos. 8634, 2983, 3001, 4960, 6108, 6124, 6127, 6202 (O & M), 6203, 6242, 6375, 6391, 6405, 6411, 6529, 6531, 6540, 6658, 6662, 6665, 6873, 6877, 6909, 6911, 6912, 6914, 7015, 7243, 7351, 7717, 8241, 8244 of 2021. The facts are being taken from ***CWP Nos. 8634 and 6911 of 2021***, as the issue is identical in the present bunch of cases regarding the challenge which has been raised to the procedure adopted by the Haryana Staff Selection Commission (in short 'the Commission') for conducting the recruitment process of the Art and Craft Teachers in the Education Department, Haryana against Advertisement No. 6 dated 20.07.2006, Category No. 22 (Annexure P-1) for filling up 816 posts of Art and Craft Teachers.

(2) The background of the case is necessary since the said recruitment process has a chequered history. The cut-off date was fixed as 21.08.2006 being the last date for receipt of applications. The breakup of the said posts is as under:-

“(General=387, SC A=82, SC B = 82, BC A=131, BC B=88, ESM (Gen)=29, ESM (SC-A)=1, ESM (SC-B)=1, ESM (BC-A)=3, ESM (BC-B)=3,

Outstanding Sportsperson (Gen)=4, Outstanding

Sportsperson (SC-A)=1, Outstanding Sportsperson (SC-B)=1, Outstanding Sportsperson (BC-A)=1, Outstanding Sportsperson (BC-B)=1”

(3) The essential qualifications are matriculation from Haryana School Education Board or equivalent qualification recognized by the said Board and the 2 years' Diploma in Art and Craft Examination conducted by the Haryana Industrial Training Department or an equivalent qualification recognized by the Haryana Education Department. The knowledge of Hindi upto matric standards was required for the post having pay scale of Rs.4,500-7,000/-. The relaxation in age in the case of reserved categories was as per the Haryana Government instructions and the reservation was to be also as per the Government instructions. Initially, 10,390 candidates applied in pursuance of the said advertisement and keeping in view the large number of applications received, the Commission had decided to hold written examinations as per the advertised qualifications on the cut off dates and subject to final determination of their eligibility later on. As per the notice dated 11.06.2008, the examination was to take place on 13.07.2008 and there were 100 objective type of multiple choice questions, each carrying 2 marks. The minimum qualifying marks in the written test were fixed as under:-

a)	General Category Candidates	50%
b)	SC, BC categories candidates	45%
c)	ESM candidates	40%
d)	DESM and outstanding sportsperson	As per General, SC, BC candidates, as the case may be

(4) The viva-voce was to carry 25 marks and the candidates equal to 3 times the number of vacancies were to be called for interview based on their performance in the written test, which would be clear from the notice dated 11.06.2008 (Annexure P-2). A month later, on 11.07.2008, the Commission decided to shortlist 8 times the candidates of the advertised posts in their respective categories for interviews on the basis of the essential academic qualification advertised, as mentioned above. Resultantly, the cut off prescribed in various categories was fixed as under:

S No.	Category	%age
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1	General	53%
2	SC	33%
3	BC-A	33%
4	BC-B	42%
5	ESM-GEN	33%
6	ESM-SC	49%
7	ESM-BCA	33%
8	ESM-BCB	52%
9	OSP-GEN	48%
10	OSP-SC	37%
11	OSP-BCA	46%
12	OSP-BCB	42%

(5) The interviews were to take place in September and October, 2008, at the Commission's office and various Rest Houses at District Headquarters spread over the State. On 31.07.2008 (Annexure P-4), the matter was reconsidered and the Commission decided to call all eligible candidates for interview for the said posts during the same period at the same places and accordingly, interviews were held, in which, 7106 candidates appeared and thereafter the result was declared on 25.03.2010. Resultantly, the process was challenged by filing various writ petitions and the lead case was *CWP No. 18482 of 2010, Suman Kumari versus State of Haryana and others decided on 20.02.2015* (Annexure P-5).

(6) The Learned Single Judge, after examining the record of the Commission, came to the conclusion that a tailor made criteria was being laid down considering the applications of the candidates to be selected for different posts. Resultantly, a finding was recorded that nothing could be deciphered from the records that the Commission ever took the decision in terms of the public notice for written test as per the prescribed qualifications and the marks prescribed and viva-voce 25 of marks which had been published. Resultantly, there being a change in the criteria for selection to 8 times the number of vacancies a finding was recorded that the Interview Committee was knowing the marks secured by the candidates and educational qualifications and marks had

been awarded accordingly to candidates who were to be selected who had secured more marks than the others.

(7) An issue had been raised at that point of time that candidates from Kurukshetra University, who were having Diploma in Art and Craft, had been declared ineligible and same had been challenged in ***CWP No. 20630 of 2006, Suman Lata and others versus State of Haryana and others***, which had been allowed on 22.02.2007 and the candidates had been declared eligible. The said judgment had been challenged in ***SLP (C) No. 8670 of 2007, Davinder Bhankar and others versus State of Haryana and others*** wherein, an order of status quo had been granted on 10.07.2008 by the Apex Court but still, the result of the selection had been declared on 25.03.2010. Thus, a finding was recorded that the State was not even producing any record to show that the Commission had considered the issue of the pendency of the said litigation. Therefore, the eligibility of candidates itself was in a state of void but the result had been declared in violation of the directions of the Apex Court and the selection had been finalized.

(8) Resultantly, giving a finding that there was a change of criteria after the process of selection was initiated, the entire selection was held to be vitiated. The selection of the Art and Craft Teachers was, thus, quashed with directions to hold fresh selections in accordance with law. The said order was upheld by the Division Bench in ***Vinod Kumar and others versus State of Haryana and others***¹ on 10.11.2020. It is pertinent to notice that the Apex Court in ***Ramjit Singh Kardam and others versus Sanjeev Kumar and others***², prior to that, had upheld the judgment passed by the Single Judge of this Court and the Division Bench dated 11.09.2012 and 30.09.2013 pertaining to the setting aside of the selection to the post of Physical Training Instructors (in short 'PTI'). The same was also subject matter of Advertisement No. 6 of 2006 dated 20.07.2006 under category no. 23 and 1983 posts of PTIs had been advertised. In the said case, the following directions had been issued by the Apex Court permitting the applicants who had submitted applications in response to the advertisement to participate in the fresh selection. The compliance had to be done by the Commission within a period of 5 months after the lock down was over. The relevant portion of *Ramjit Singh Kardam's case (supra)* reads thus:-

¹ 2020 (4) SCT 702

² 2020 (2) SCT 491

“75. In view of the foregoing discussions and conclusions, we dispose of these appeals with the following directions:

a. The Commission shall conclude the entire selection process initiated by the advertisement No.6 of 2006 as per criterion notified on 28.12.2006 i.e. holding objective type written test of 200 marks and viva voce of 25 marks. All the applicants who had submitted applications in response to the above advertisement including those who were selected shall be permitted to participate in the fresh selection as directed.

b. The candidates who have been selected and have worked on the post of PTI shall not be asked to refund any of the salary and other benefits received by them as against their working on the posts. No refund shall also be asked from those candidates who after their selection worked and retired from service.

c. The entire process be completed by the Commission within a period of five months from the date Commission starts working after the present lockdown is over, which was the time fixed by the learned Single Judge for completing the process.”

(9) The Learned Division Bench, taking a cue from the orders of the Apex Court in *Kardam Singh's case (supra)*, dismissed the appeals by noticing that both PTIs' and the present Art and Craft Teachers' selection had been processed in a similar fashion. The criteria has been changed midway and, therefore, a parallel was to be drawn. Resultantly, the Commission was given five months' time to complete the selection process by permitting the selected candidates to apply afresh. *SLP No. 14481 of 2020, Vijay Pal and others versus Mohan Lal and others* was dismissed on 14.12.2020 (Annexure P-7 in CWP No. 8634 of 2021).

(10) In pursuance of the said directions, fresh notice was issued on 28.12.2020 by the Commission (Annexure P-8) that for all the concerned who had earlier applied, the Commission would conduct examinations on 31.01.2021. The criteria which had earlier been fixed of 200 marks for the written examination was the same. Similarly, the minimum qualifying marks also remained the same and the viva-voce/interview also was to carry 25 marks and candidates 3 times the number of vacancies had to be called for interview on the basis of the

performance in the written test. The total marks obtained in the written test and viva-voce was to determine the merit of the candidates in their respective categories. Vide notice dated 21.01.2021 (Annexure P-9), candidates were required to upload their required details including the photographs and signatures for the purpose of obtaining the admit cards. On 25.01.2021 (Annexure P-10 in CWP No. 8634 of 2021), candidates were given information that they could download their admit cards from 27.01.2021 (Annexure P-9) onwards. By similar notice on 30.01.2021 (Annexure P-11), candidates were given chance to download their roll numbers and a help line was provided regarding any difficulty, as such, being faced.

(10a) After holding the examination on 31.01.2021, in which 5459 candidates sat, notice dated 01.02.2021 (Annexure P-12) was issued whereby, the answer key was also uploaded on the website of the Commission and objections were invited between 03.02.2021 to 09.02.2021. The period of objections was reduced to 06.02.2021 vide notice dated 03.02.2021 (Annexure P-13). Vide notice dated 23.02.2021 (Annexure P- 14), 3131 number of candidates were called for scrutiny of documents provisionally to ascertain the eligible candidates against the advertised posts for the dates which had been fixed for between 01.03.2021 to 03.03.2021 at Tau Devi Lal Stadium, Sector 3, Panchkula, as per the schedule to be notified. Candidates were directed to bring all original documents, set of attested copies of all documents filled, scrutiny forms, I.D. Proof and self attested copy of the downloaded application form. A note was also put in the said notice that if a candidate is found eligible, it would not confer any right for interview and the candidates only falling within thrice the number of vacancies were to be called for interview. This exercise was apparently done after a meeting was held by the Commission on 23.02.2021 itself (Annexure R-1/6). The minutes of the proceedings of the meetings would go on to show that it was on the basis that the Commission was only in possession of the result register and selection list and representations were being received from candidates, that they belong to categories different than mentioned in the record as per the admit cards issued to them. The Commission had, thus, decided to resolve that the category of candidates was to be confirmed at the time of scrutiny of documents as per the actual documents submitted by the candidates.

(11) The Commission recorded that the fact that there was a different pass percentage for various categories as per the notice dated

28.12.2020. Therefore, since candidates had requested for change of category of candidates those having 45% marks in written examination were to be called for further selection process except in the case of ESM category wherein 40% marks were required in the written examination. Further, it was recorded that the decrease in the minimum percentage of marks required in the written examination would not make any candidate eligible for further selection process. His eligibility would only be considered on the basis of the category of the candidate and the marks required as per the eligibility criteria/pass percentage, as mentioned above. The Commission was to call only 3 times the eligible candidates in each category for interview. Vide notice dated 10.03.2021 (Annexure P-22) on the basis of the scrutiny of documents, candidates were called for interview provisionally. This further was subject to the fulfillment of the eligibility conditions as per the advertisement in question. The marks secured by the last short listed candidates was given in brackets against each respective category. For example:-

Sr. No.	Category	Cut Off Marks
1	General	102
2	SCA/SCB	90
3	BCA	96
4	BCB	100
5	ESM General	84
6	ESM SC-A	126
7	ESM BCA	94
8	ESM BCB	104
Sr. No.	Category	Cut Off Marks
9	OSP General	106

(12) The interview was to take place between 14.03.2021 to 18.03.2021. As per notes 2 and 3, candidates who were provisionally eligible were not to be provisionally interviewed (wrongly written otherwise) unless the candidate removed the objection. All supporting documents had to be brought at the time of interview to remove the objections raised during document verification. Clause 3 further provided that candidate who belongs to a category under which

category admit card was issued was supposed to bring his supporting certificate. Similarly, candidates who had submitted mark sheet where no date of issuance was mentioned or the issuing of the mark sheet was after the cut off date, he had to bring the certificate from the concerned issuing authority that the certificate be read as issued on the date and also the date of notification and declaration of result was to be mentioned in the certificate. As per clause 5, the candidate was to bring all supporting documents issued prior to the cut off date, which were to be considered for deciding the eligibility and as per clause 6. If candidates were eligible on the basis of Court judgment, they were required to bring the same. Clause 7 further provided that no further chance for submitting any documents was to be given and any representation made by the candidate after the interview was not to be entertained.

(13) A similar notice dated 18.03.2021 (Annexure P-28) was issued in continuation of the notice dated 10.03.2021 wherein, additional candidates were called for interview on 20.03.2021. The general category merit was reduced from 102 to 100 whereas, for BCA from 96 to 94 and for BCB from 100 to 98. Two additional clauses were put in the notes that candidates with directions from this Court would also come for interview and scrutiny on 20.03.2021 apart from the fact that the result was also available on the website of the Commission. On 23.03.2021, a restraint order was passed in CWP No. 6911 of 2021 by this Court keeping in mind the contention of the counsels that candidates had been called for scrutiny of documents keeping in view that they had secured the minimum qualifying marks belonging to the general category. But they had not been called in the notice for interview which had been issued on 18.03.2021 and the fact that without thrashing out the issue of eligibility, the Commission was calling candidates equal to 3 times the number of vacancies. On 05.04.2021 (Annexure P-30), the Commission uploaded the revised final answer key for both question papers bearing Codes 0121 and 1121 on its website.

(14) Counsel for the petitioners have accordingly argued that as per the essential educational qualifications, certain candidates were not eligible as per the last date of the advertisement while placing reliance upon the admit card dated 12.03.2021 (Annexure P-15) for interview issued to one Parvesh Kumari against Roll No. 2660003793 against the category of BCA. It is pointed out that she acquired her diploma in Art and Craft on 08.09.2008 (Annexure P-18), which is after the cut off

date i.e. 21.08.2006 which is also from Kurukshetra University. The necessary averments have been made in para no. 22 regarding such candidate. It is further specifically averred that even on an earlier occasion, the Single Judge in *Suman Kumari's case (supra)* had also referred to the ineligibility of the said candidate in para no. 7 of the judgment while referring to the candidates documents. It is pointed out that one of the certificate shows that she has given final year examination in 2006 and the result was dated 14.05.2006 (Annexure P-17) whereas, the other certificate showed that her final examination had taken place in May, 2008 and the result was declared on 08.09.2008. It is accordingly contended that if she was not eligible, the question of calling her for interview did not arise.

(15) The reply of the State is to the extent that the process of eligibility of the candidates was to be checked at the time of scrutiny of documents, which is to be conducted after the written examination and the burden of proving their eligibility was on the candidates before the cut off date. Reliance was placed upon the directions passed by the Co-ordinate Bench in *CWP No. 22746 of 2016, Satish Kumar Malik and others versus State of Haryana and others* dated 15.11.2016 to justify that the scrutiny was to take place after the written examination and the scrutiny of the documents to be verified would be reduced. It was admitted that the respondents had given chance to candidates to prove their eligibility till the date of interview and there is no mala fide on the part of the respondent- Commission. The notes given in the notice dated 10.03.2021 were accordingly relied upon. It was averred that provisionally allowed candidates who could not prove their eligibility had been weeded out from further selection process after interviews had taken place from 14.03.2021 to 18.03.2021. More candidates had been called for vide notice dated 18.03.2021 to complete the number of 3 times for interview as per the criteria and the final result. The candidates having marks as required in their respective category would be eligible and shall only be considered for the post in question.

(16) Similarly, reference is made to the ineligibility of one general category candidate namely Menka while referring to her diploma again from Kurukshetra University (Annexure P-19) wherein, the Detail Marks Card was dated 14.08.2006 but there was a re-appear in the subject of Nature Drawing. The final diploma certificate was issued on 12.03.2007 for the exam held in November, 2006 (Annexure P-20). It is submitted that the said candidate was called for interview on 18.03.2021 vide admit card dated 12.03.2021 (Annexure P-21) against

roll no. 2660009929. The relevant averments were made in para no. 23 of the writ petition which were controverted in a common manner. A similar detail was also given by the petitioners of various roll numbers of the candidates who are similarly placed which read thus:-

“Roll Nos. 2660004386, 2660007520,
2660009734, 2660008528, 2660009755, 2660002198,
2660005705, 2660006002, 2660001144, 2660003126,
2660009920, 2660002664, 2660009121, 2660000562.”

(17) It was contended that documents were not readily available qua the said roll numbers but would be placed on record. Another specific averment has been made on the irregularity of one Pardeep Lamba having Roll No. 2660005780 who was issued admit card dated 12.03.2021 for interview on 16.03.2021 in the category of BCA (Annexure P-23). From the notice dated 10.03.2021 wherein, candidates were called for interview, it was pointed out that the candidate figures in the Scheduled Caste category. Resultantly, reliance has been placed upon the judgment of the Apex Court in *Bhupinder pal Singh and others versus State of Punjab*³ that candidates who are not having the eligibility and qualifications on the cut off date were not entitled to be considered. Similarly, it is contended that vide decision dated 23.02.2021 (Annexure R-3/2), the Commission wrongly called the persons who were not eligible by reducing the cut off to 45% and, therefore, the criteria had been wrongly changed, which is not permissible. It is accordingly contended that the Commission should have done its home work to the extent that firstly the ineligible candidates should have been weeded out and then only three times candidates who are eligible should have been called for interview. The argument raised is that the eligible candidates who had made the cut off have been excluded from the zone of consideration by calling candidates who are not even eligible for interview. Similarly, it has been submitted that candidates who had done their examination from Kurukshetra University had also been called for interview while also referring to the case of Parvesh Kumari and Menka, to point out the said examples. It is submitted that once the Apex Court had passed an order of status quo and the eligibility, as such, is subject matter of consideration by the Apex Court and the judgment has been also reserved on 05.08.2021.

³ 2000 (5) SCC 262

(18) Counsel has also accordingly submitted that the Commission itself, in its meeting held on 23.02.2021, has admitted that it is not in possession of the complete record, as such, of the candidates and is only having the result register and the selection list and, therefore, submits that record has been wrongly destroyed even though it was available for reference of the Single Judge at an earlier point of time on 20.02.2015. It is submitted that litigation was going on in as much as the LPA was pending and the matter went to the Supreme Court and, therefore, the question of destroying the record would not arise, as per the instructions of the Government itself when litigation is pending. Accordingly, reliance is placed upon the judgment of the Apex Court in *Poonam Rani @ Poonam* versus *State of Haryana and another*⁴ to contend that in such circumstances, fresh written test and interview be conducted after weeding out the ineligible candidates. The prayer that the exercise be conducted under the supervision of a retired High Court Judge was made on account of the Commission having failed in its duties twice over.

(19) It is further submitted that conflicting statements were being made before the Division Bench of this Court in the appeals filed whereby, interim stay had not been granted and also that the respondents, in their reply, themselves have admitted that in CWP No. 6911 of 2021, petitioner no. 15 namely Mahesh Kumar having Roll No. 2660007879 was having minimum marks required to be called for interview but due to inadvertent error, he had not been called.

(20) Reliance was placed upon the allegations made in para no. 19 of the writ petition that for centre at Kurukshetra where there were 250 candidates at Pipli at Center No. 15 and a different question paper, as such, had been given to the candidates whereas, for the other candidates who had appeared in the written test, question papers bearing Code Nos. 0121 and 1121 had been supplied. It was accordingly argued that a different question paper was supplied, which has been placed on record, which carried Code 1121-A.

(21) The factum of the same has been admitted by the respondents by averring in their reply that there were 40 centers and 2 sets of question papers have been printed and packed in different colour of boxes i.e. in red and green colour, which were delivered by the Flying Squad Officers in the examination centers. The Superintendents of the Centres were informed at 10 o'clock as to which box was to be

⁴ 2012 (6) SCC 596

opened since examination was to start at 10:30 a.m. In the Center at Government Senior Secondary School, Pipli, both the boxes had been opened by the Centre Superintendents and the wrong question paper was delivered, which was contained in the red box rather than the question paper in the green box. When the discrepancy came to the notice, the Chief Examiner was consulted and he advised that the difficulty level of both the question papers was the same. Therefore, the Commission had proceeded with the finalization of the result. The answer key to both question papers was put on notice and that candidates appearing in the concerned centres belong to different districts of Haryana and passed the examination like candidates from other centres. What happened was a mistake and, therefore, not intentional and, therefore, it was decided not to cancel the examination at the said centres and consider both the question papers as valid for evaluation of OMR based answer sheets.

(22) Vide order dated 26.08.2021, while hearing arguments, this Court had directed that an affidavit be filed as to how many other candidates from the other centers had made a cut and as to whether Center No. 15 had got any undue benefit on account of having answered a different question paper altogether in comparison to the 39 other centres all over the State. The original record of the opinion by the Chief Examiner has come since his opinion regarding the discrepancy coming to his notice was also asked to be produced.

(23) In response to the said directions, affidavit dated 01.09.2021 was filed by the Secretary of the Commission giving the details of the 40 centres whereby, the percentage of candidates who had qualified the written examination and further been short listed for interview as Annexure R-3/1. Similarly, the equivalence certificate has also been filed which has been issued by Chief Examiner dated 02.02.2021 showing that the standard of both the question papers with code nos. 0121 and 1121 for the post of Art and Craft Teacher were same and there would not be a need of normalization as difficulty levels were same. The affidavit would, thus, show that out of the 250 candidates, only 134 candidates had appeared (53.60%) and 61 had been short listed for interview (45.52%). The chart, as such, would go on to show that the appearance in all centres varied from 47% to 58.50% maximum. The percentage of candidates short listed from interview from all 40 centres, as such, also varies from 39.76 to 57%.

(24) The Learned Advocate General has defended the selection and opposed the arguments raised on the ground that the selection is

under litigation for over a decade and Commission was making efforts to complete it within a time bound manner as directed by the Single Judge and upheld by the Division Bench. Therefore, all decisions taken were bona fide and allegations against the Chairman were uncalled for and he has no personal axe to grind. It was submitted that on account of the record being old, the Commission had resorted to calling the candidates for verifying their eligibility and a Single Judge had dismissed writ petition on an earlier occasion challenging the procedure against providing 75 minutes for the 100 multiple questions which had been challenged with no success before the Single Judge on 19.01.2021. Thereafter, the Division Bench in *Poonam and others versus State of Haryana and another*⁵ had also dismissed the appeal on 29.01.2021. It is submitted that *CWP No. 2796 of 2021, Tajinder Kumar and others versus Haryana Staff Selection Commission and another* had also been filed challenging the setting up of the issue of supply of different question papers, which had been dismissed in limine on 08.02.2021 by holding that it was the discretion of the Selecting Agency and it would not vitiate the exam as such. It is submitted that LPA No. 263 of 2021 is also pending against the same. Accordingly, it is submitted that bio matric attendance, as such, was taken of the candidates and, therefore, the allegations of impersonation which have been also alleged are without any basis as the Commission was well aware of its onerous responsibilities. The contention of the eligibility of the candidates of Kurukshetra University has been rebutted by the Advocate General by holding out that there was an order of status quo *inter se* the parties and the judgment of this Court has not been stayed. Therefore, counsel for the petitioners were not justified in contending that candidates from Kurukshetra University are ineligible, as such. Accordingly, it was prayed that the writ petition is liable to be dismissed and no case is made out for interference in the recruitment process which has been carried out to the best ability of the Commission.

Reasoning

(25) Keeping in view the nature of the dispute as such, this Court on 09.09.2021, had further directed the Secretary of the Commission to file a short affidavit giving the details of the number of candidates who had applied against the earlier advertisement and the number of candidates who had appeared in the written examination in pursuance

⁵ 2021 (3) SCT 491

of the fresh advertisement. Similarly, the number of candidates who had cleared the benchmark which had been fixed across all categories along with the breakup of the number of candidates who had been called for interview vide notice dated 10.03.2021 and 18.03.2021 was ordered to be furnished.

(26) In compliance of the order dated 09.09.2021, the Secretary of the Commission has furnished an affidavit dated 16.09.2021 in which, it has been mentioned that a total number of 10390 candidates had applied for the posts in the year 2006. After the advertisement dated 28.12.2020, 5459 candidates had appeared in the written examination on 31.01.2021. 3131 candidates were called for scrutiny of documents in view of the resolution dated 23.02.2021 which included candidates having 45% marks or more marks for all categories except ESM category against the total 816 posts advertised. The break up was also given and the number of candidates called for interview were 2539 against the total 816 posts advertised. It has also been specifically clarified that the Commission has not destroyed any record pertaining to the present selection after it had been constituted on 24.03.2015 under the present Government. It is, however, mentioned that it had, in its possession, 773 application forms of the candidates selected which had been received from the Director, School Education after the services had been terminated and the earlier selected candidates in view of the judgment dated 10.11.2020 in ***LPA No. 359 of 2015, Vinod Kumar and others versus State of Haryana and others***. Regarding the details of the persons who were stated to be ineligible given in para nos. 22 and 24 of CWP No. 8634 of 2021 namely Parvesh Kumari d/o Paras Ram bearing Roll No. 2660003793 and Menka d/o Ram Phal bearing Roll No. 2660009929 were controverted. It has been averred that their cases have been considered to be not eligible at the time of scrutiny of documents and interview. Similarly, qua candidate namely Vijay Kumar s/o Jagdish Prasad bearing Roll No. 2660005223 mentioned in para no. 8 of CWP No. 6911 of 2021 was also stated to be an ineligible candidate as his certificate in question of Diploma in Art and Craft was after the cut off date. Qua the other roll numbers mentioned above in para no. 16, it was specifically mentioned that all the candidates except two roll numbers i.e. 2660006002 and 2660005705 were found not eligible. The candidates against the above two roll numbers were, however, found eligible namely Rajnish having Diploma in Art and Craft dated 14.08.2006 before the cut off date of 21.08.2006. Similarly, another candidate Shashi Bala had got clarification from the concerned authorities at the time of scrutiny of

documents-cum-interview that she had appeared in the final year exam held in May, 2006 of the said diploma in Art and Craft and cleared the same on 14.08.2006 i.e. prior to the cut off dated. The Advocate General, thus, has rightly pointed out that by virtue of filing the additional affidavit dated 16.09.2021, the ambiguity, as such, which had initially been raised has been cleared to that extent. The persons who were ineligible have not been considered eligible on account of the discrepancies, as such, in their essential qualifications and eligibility certificates before the cutoff date, which is the requisite condition for consideration of the candidates for the recruitment for the post in question.

(27) There is no doubt, as such, that there has been a discrepancy by the Commission to the extent that firstly the eligibility of the candidates should have been cleared while scrutinizing the essential qualifications and then by short listing the number of persons who are duly eligible and who had cleared the benchmark which had been given in the fresh notice dated 28.12.2020. General category candidates who had minimum qualifying marks in the written test of 50% and for SC and BC category 45% and for ESM category 40% should have been called in the order of merit to the extent of three times the number of vacancies. The decision, as such, of the Commission on 23.02.2021 (Annexure R-3/2) to call eligible candidates below 50% and upto 45% has led to the present round of litigation as ineligible candidates who did not possess the minimum bench mark as per the notice dated 28.12.2020 have now approached this Court on account of not having been called for interview at a subsequent point of time. This should have necessarily been avoided since even when the restraint order was passed in *Punam Devi's case (supra)*, the said contention had, as such, prevailed with this Court that the merit had been dropped whereby, for the general category candidate, cut off had earlier been fixed at 102 and then reduced to 100 marks. This was on account of the argument, which was raised by the counsels at that point of time that the petitioners had secured the minimum qualifying marks applicable to their respective categories and that is why, they have been called for scrutiny of documents but their roll numbers did not figure for the purposes of interview. This doubt, as such, has now been cleared by the table contained in the additional affidavit which reads thus:-

Sr. No.	Category	Number of Posts	Break-up of 3131 Candidates Called for	Number of candidate Required to Be	Number of Candidates called for interview	Number of Candidate Found eligible

			Scrutiny of documents Vide result dated 23.02.2021 for determining categories in view of resolution dated 23..02.2021 (45% or more marks For all categories except ESM	called for interview (three times category- wise)	Total= (First Notice dated 10.03.2021 +Second Notice dated 18.03.2021	
	1	2	3	4	5	6
1	General	387	1720	1161 (1172+94)	1266 (1172+94)	1120 No further candidate In General category Can be called because last candidate In Gen Category Called for interview secured 100 marks Which is Equal to minimum required Marks in Gen Category

2	SC	82+82=1 64	509	246+246=4 9 2	499	447 No Further candidate in SC-A & SC-B category Can be called because last candidate in SC-A & SC-B Category Called for interview secured 90 marks Which is Equal to minimum required Marks in SC Category
3	BCA	131	471	393	426 (396+29)	393 Required Number of candidates Are found eligible during interview in BCA category
	BCB	88	363	264	311 (281+30)	270 Required number of candidates are found eligible during interview in BCB category

5	ESM DESM DFF-GEN	29	9 22+5=36	87	30	25 No Other eligible candidates available in this category
6	ESM DESM DFF-SC	01+01=2	0 1 0	6	1	1 No Other eligible candidates available in this category
7	ESM DESM DFF-BCA	03	2	9	2	1 No Other eligible candidates available in this category
8	ESM DESM DFF-BCB	03	4	9	2	1 No Other eligible candidates available in this category
9	OSP-GEN	04	5	12	2	1 No Other eligible candidates available in this category
10	OSP-SC	01+01=2	0	6	0	0 No Other eligible candidates available in this category

11	OSP-BCA	02	0	6	0	0 No Other eligible candidates available in this category
12	OSP-BCB	01	0	3	0	0 No Other eligible candidates available in this category
	Total	816	3131		2539	

(28) A perusal of the same would go on to show that for example against the 387 posts of general candidates, 1161 candidates were to be called, which was 3 times the number. However, on account of lowering the benchmark, the respondents had called 1720 at the first instance. Thereafter, in pursuance of the two interview notices, 1172+94 (total 1266) candidates were called, out of which, only 1120 were found eligible having secured the benchmark of 100 marks, 50% required in the written test. The reasoning, as such, and justification given for this lapse is stated only on account of the fact that the posts were advertised in the year 2006 and the recruitment process had been time bound by this Court. Thus, there were difficulties with the Commission regarding the record which it had in its possession to the extent of the details of the eligibility of the candidates. The arguments, thus, which have been raised by the counsels that even before the written examination, the eligibility should have been considered of the candidates is not justified.

(29) It is the responsibility of the candidates as such while filling up the application form to give true declarations regarding the fact that they hold the requisite essential qualifications including the educational qualifications as prescribed in the advertisement and the relevant rules and instructions pertaining to the posts in question. The Board would only be required to scrutinize the eligibility at a subsequent point of time after the candidates have cleared the minimum benchmark. This is necessary in as much as it would also cut down the number of applications which the Commission has to scrutinize in a recruitment

process. It has been noticed already that from initial 10390 candidates who had applied, the number has trickled down to 5459 who had appeared in the written examination over a period of decade due to the litigation. Eventually only 3131 candidates were called for scrutiny of documents and 3 times the number, as such, of 816 were eventually to be called i.e. 2448 whereas, in the present case, number called is 2539, which is sought to be rightly justified on account of the fact that many candidates have the same amount of marks and, therefore, have to be given an equal chance, as such, to appear before the Commission for interview purposes.

(30) Reliance can also be placed upon the judgment of the Apex Court in *T. Jayakumar* versus *A. Gopu and another*⁶. In the said case, a candidate had challenged the appointment of the appellant before the Tribunal on the ground that he was better qualified and the Tribunal had taken the view that the candidate had been called for interview and, therefore, it was not open to the authorities to exclude him from consideration on the ground that his application was not in order. The matter had been challenged before the High Court and eventually, it was carried to the Supreme Court. It was held that merely because the candidate has been called for interview, it would not give him an indefeasible right to be appointed and that he could not be declared ineligible for selection at a later stage if there was a defect in his application. It was held that the Courts are to examine the reasons for holding candidates ineligible and whether same is valid or unreasonable or arbitrary and principle of estoppel would not apply. The relevant portion in *T. Jayakumar's case*(*supra*) reads thus:-

“We are not aware any principle of law under which once a candidate is allowed participation in the selection process the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light. It is surely open to the Tribunal to examine whether the reason assigned by the selection authority for holding a candidate ineligible for selection was valid or

⁶ 2008 (9) SCC 403

unreasonable and arbitrary. If the reason for excluding a candidate from the selection process is found to be unreasonable or arbitrary the Tribunal may certainly intervene but if the reason itself is valid the tribunal cannot interfere simply because the candidate was allowed participation in the selection process by being called for interview. The principle of estoppel has no application in such a case.”

(31) The issue, in the present case, as noticed, is that the candidates who had not cleared the bar of getting the minimum marks in written examination have been held to be ineligible and not called for interview. There is no such error in the action of the respondent-Commission to that extent since it was the criteria which has been fixed and prescribed before the examination and the Commission is duly bound by it and cannot change the same. The petitioners only have a right of consideration and no absolute right of appointment and, therefore, cannot contend that having called once for scrutiny of documents, they would have a right of appointment.

(32) The issue regarding the two question papers, as such, having been distributed and candidates of Centre No. 15 having received a different question paper has also been noticed above. The additional affidavit dated 01.09.2021 given by the State would also go on to show that only 53.60% of the candidates had appeared in the said Center and only 45.52% were short listed for interview. The percentage, as such, is similar to candidates from other centres wherein also, appearances were between 47% to 58.50% and shortlisting was also from 39.76% to 57%. Therefore, it cannot as such lead to any ir-rebuttable conclusion that only on account of second paper having been distributed amongst the candidates, the candidates at Centre No. 15 had, at any stage, stolen the march or were placed in a better position. The examination process is a process which is to be guided by the subject experts and as noticed, report of the Chief Examiner was called for by the Chairman. He has opined that the second paper was also of the same difficulty level and, therefore, it cannot be said that on account of the said mistake which has happened on account of the Superintendents opening and distributing the wrong question paper, the rights of candidate at 39 other centers was jeopardized. In order to prevent leakage, some times different question papers are given to candidates and a system of moderation is also done by the Selecting Agencies and, therefore, it cannot be said that merely because 61 candidates have been short listed for interview from centre no. 15, it was on account of any *mala fide*

intention, as such, on the part of the respondent-Commission.

(33) Resultantly, there is no merit in the said argument also. It is also to be noticed that similar argument has also been rejected by another co-ordinate Bench in *CWP No. 2796 of 2021, Tejinder Kumar and others versus Haryana Staff Selection Commission and another*, when the writ petition was dismissed in limine at that stage on 08.02.2021 though the LPA No. 263 of 2021 might be pending.

(34) Similarly, the question whether the candidates from Kurukshetra University have to be debarred as such on account of the pending litigation *inter se* the parties, the same would not also detain the Court for long.

(35) It is not disputed that *Suman Lata's case (supra)*, has been allowed and the candidates having Diploma in Art and Craft from Kurukshetra University were held eligible. The order of status quo which has been granted to another set of candidates who have approached the Apex Court would be *inter se* the parties and the said stay would not be binding, as such, upon the Commission. As noticed earlier, the Division Bench had upheld the order of the Single Judge and further directed that the selection process be started afresh by allowing the applicants who had submitted applications in response to the above advertisement and permitting them to participate in fresh selection. No such objection was raised at that point of time that the matter should not be finalized till the pendency of the matter before the Apex Court and, therefore, there is no merit in this argument raised by counsel for the petitioners.

(36) Accordingly, the present set of writ petitions is dismissed.

(37) It is, however, observed that the Commission would be well advised in future to ensure that the screening and the eligibility part of the candidates is considered and done at an earlier point of time. Then only three times the number of eligible candidates should be called for interview, as it would cut out a lot of unnecessary litigation in future regarding other selection also. It is also to be pointed out that in the case of *Satish Kumar Malik and others (supra)* similar directions have already been issued regarding the competition which is to be confined to the eligible candidates and the State Government/Commission had been directed to implement the directions passed after weeding out all ineligible candidates.