



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3195 of 2010.

Reserved on:16.9.2015.

Date of decision: 30.9.2015.

Dinesh Kumar.

Petitioner.

Versus

State of Himachal Pradesh and others.

Respondents.

Coram

The Hon'ble Mr.Justice Sureshwar Thakur, J.

Whether approved for reporting? Yes.¹

For the petitioner:

Mr. Gaurav Gautam, Advocate.

For the respondents:

**Mr. Vivek Singh Attri, Deputy Advocate
General, for respondents No.1 to 3 and 5.**

**Mr. Lalit K. Sharma, Advocate, for
respondent No.4.**

**Mr. Bhuvnesh Sharma and Mr. Ramakant
Sharma, Advocates, for respondent No.6.**

Sureshwar Thakur, Judge.

A vacancy of DPE arose in Government Senior Secondary School, Jaddu Kuljar. The PTA Committee of the school concerned resolved to fill the vacancy aforesaid. Applications were invited from the eligible candidates. The petitioner along with other eligible candidates applied for being considered for selection for the aforesaid post/vacancy. Interviews for selecting the most meritorious candidate amongst the competing aspirants were held by

¹ *Whether the reporters of the local papers may be allowed to see the Judgment?*

the duly constituted committee on 10.5.2007. Respondent No.6 having been awarded the highest marks by the selection committee concerned constituted him to be the most meritorious candidate amongst all the candidates, who participated in the interview for being considered to be selected to the post of DPE in the school concerned. The respondent No.6 being the most meritorious candidate amongst the candidates interviewed by the interviewing committee concerned sequelled his having come to be appointed as DPE (on PTA basis) in Government Senior Secondary School, Jaddu Kuljar. The petitioner herein filed a complaint before the Inquiry Committee, Ghumarwin headed by the SDM, Ghumarwin assailing therein the selection and appointment of the respondent No.6 as DPE in Government Senior Secondary School, Jaddu Kuljar. In the complaint filed by the petitioner herein before the aforesaid committee, it was alleged therein that the interviewing committee concerned had ignored the superior merit of the petitioner herein vis-a-vis respondent No.6, hence, had acted arbitrarily as well as discriminatorily vis-à-vis the petitioner herein. The inquiry committee headed by the

SDM, Ghumarwin while being seized of the complaint filed by the petitioner herein, challenging the selection and appointment of the respondent No.6 as DPE in the school concerned, proceeded to scan as well as evaluate the marks allotted by the interviewing committee concerned, to both the petitioner herein and to the respondent No.6 herein. The Inquiry Committee on scanning as well as evaluating the marks accorded to the petitioner herein and to the respondent No.6, by the interviewing committee concerned, discerned therefrom that the interviewing committee concerned in transgression of the purported apposite instructions regulating besides governing the awarding of marks to the petitioner herein and to the respondent No.6 herein, hence, had overlooked the superior merit of the petitioner herein vis-à-vis the respondent No.6 and had proceeded to, hence allot lesser marks to the petitioner herein qua his superior/higher educational qualifications than the one which were ordained to be meted qua them in consonance with the purported apposite instructions. In sequel the Chairman of the inquiry committee under his rendition comprised in annexure P-2 concluded that the

selection of the respondent No.6 herein by the Interviewing committee concerned was not liable to be upheld, besides it prepared a result-sheet awarding marks therein to the petitioner herein besides to the respondent No.6 herein, as also to one Rekha Kumari on the anvil of the notification of 27.5.2008 issued by the respondents No.1 to 3 and 5.

2. The respondent No.6 herein standing aggrieved by the rendition of the inquiry committee headed by the SDM, Ghumarwin comprised in annexure P-2 took to assail it by filing an appeal before the Additional District Magistrate, Bilaspur. The Additional District Magistrate, Bilaspur reversed and set aside the findings recorded in annexure P-2 under his rendition comprised in annexure P-3. The core ground which prevailed upon the Additional District Magistrate, Bilaspur while reversing the findings and conclusions recorded in annexure P-2 was anvilled upon the factum of the authority which rendered annexure P-2 having founded its conclusions qua the interviewing committee concerned which awarded marks to the competing aspirants under various heads of educational qualifications possessed by each of them in the interview held for selecting amongst

them, the candidate possessing the superior most merit for recommendation for appointment to the post of DPE in the school concerned, having detracted from the criterion/norms governing and regulating the awarding of marks to them solely by sheer mis-application to the method, manner and quantum of awarding of marks to the competing aspirants under each head of educational qualifications possessed by each of the candidates, the notification of 27.5.2008. However, given the fact that the process for selection from amongst the eligible aspirants who had applied for being selected to the post of DPE in the school concerned, the candidate possessing superior most merit, having commenced on 10.5.2007, then naturally the rules besides the notification governing the quantum of marks to be awarded by the interviewing committee concerned to each of the candidates for theirs possessing the educational qualifications, as in force then rather governed besides regulated the quantum of marks to be awarded by the interviewing committee concerned to the competing aspirants qua each of the heads of the educational qualifications possessed by each of them. In other words,

the norms or the notification in force at the time contemporaneous to the holding of interviews by the interviewing committee concerned for selecting a suitable candidate for recommendation for appointment to the post of DPE in the school concerned, regulated or governed the awarding of quantum of marks by the interviewing committee concerned to each of the aspirants qua each of the heads of educational qualifications possessed by each of them. In sequel, the Additional District Magistrate, Bilaspur in his rendition comprised in Annexure P-3 while reversing the findings and conclusions recorded by the SDM, Ghumarwin, who headed the inquiry Committee for deciding the complaint preferred by the petitioner herein, challenging the appointment of respondent No.6 herein, concluded that the criteria applied besides adopted by the duly constituted interviewing committee for selecting from amongst the competing aspirants the most meritorious candidates for being recommended for appointment to the post of DPE in the school concerned, was both reverable besides sustainable.

3. The petitioner herein is aggrieved by the rendition of the Additional District Magistrate, Bilaspur, comprised in annexure P-3. Consequently, he preferred a civil writ petition before this court wherein he challenged the rendition of the Additional District Magistrate, Bilaspur comprised in annexure P-3.

4. The learned Single Judge of this Court while deciding the writ petition preferred before this court at the instance of the petitioner herein, assailing the rendition of the Additional District Magistrate, Bilaspur, comprised in annexure P-3 for reasons as meted out therein, concluded that the impugned Annexure P-3 was unsustainable. The prime reason as meted out by the learned Single Judge for reversing the findings and conclusions recorded in annexure P-3 by the Additional District Magistrate, Bilaspur were anvilled upon the factum that with the latter having in paragraph 5 extracted hereinafter, recited therein the norms/criterion as applicable for the awarding of or allotment of marks to the competing candidates by the interviewing committee concerned, had remained oblivious besides overlooked the factum of 10% marks being

awardable to the petitioner herein for his possessing the educational qualification of M.Phil. Since the petitioner herein possessed the aforesaid educational qualification at the time contemporaneous to his having applied for being selected and appointed to the post concerned, hence, it was held that the interviewing committee concerned in derogation thereof having allotted to him only 2.6 marks, whereas in consonance thereto he was entitled for an award of 6.5 marks by the interviewing committee concerned especially when 6.5 marks comprised 10% of the marks allocable to him for his possessing at the time contemporaneous to his having applied for his being considered to be selected and appointed to the post of DPE in the school concerned, the aforesaid apposite educational qualification. In sequel with compliance having been not meted out by the interviewing committee concerned to the mandate elucidated in paragraph 5 of Annexure P-3, the learned Single Judge concluded that there was gross under allocation of marks to the petitioner herein by the interviewing committee concerned qua the aforesaid apposite educational qualification possessed by him.

Consequently, the learned Single Judge of this Court quashed and set aside annexure P-3.

“The criterion elucidated in paragraph 5 of annexure P-3 stands hereinafter extracted:-

i) Basic qualification Plus 2 or graduation	35%
ii) Professional education i.e. B. P.Ed or BPE	30%
iii) Higher Education i.e. M.P.Ed.	10%
iv) M. Phill/Ph.D	10%
v) Interview	10 marks
vi) Local dialects	5 marks

Total: 100 marks	

5. The decision rendered by the learned Single Judge in CWP No.3195 of 2010 was concerted to be reviewed by the respondent No.6 by his filing a Review Petition. However, the said Review Petition stood dismissed. Consequently, the respondent No.6 standing aggrieved by the rendition of the learned Single Judge of this Court of 20.12.2012, took to assail it by filing a Letters Patent Appeal before a Division Bench of this Court. The Principal Division Bench of this Court while deciding LPA No.23 of 2013 on 17th June, 2013, as had arisen from a decision rendered on 20.12.2012 by the learned Single Judge of this Court in CWP No.3195 of 2010, set aside the rendition of the learned Single Judge of this Court, besides the matter was remanded

to the learned Single Judge for rendering a re-adjudication upon CWP No.3195 of 2010.

6. Even though in impugned annexure P-3, the Additional District Magistrate, Bilaspur has in the paragraphs preceding to and succeeding paragraph 5 delineated therein in extenso the apposite norms/criterion in force at the time contemporaneous to the holding of interviews of the competing aspirants by the interviewing committee concerned for selecting amongst them a suitable candidate for recommendation for appointment to the post of DPE in the school concerned and theirs while governing and regulating the method besides the quantum of marks allocable by the interviewing committee concerned to each of the aspirants for theirs possessing each of the academic qualifications, rendered their adoption by the interviewing committee concerned for awarding marks to the competing aspirants in consonance therewith to be vindicable. The Additional District Magistrate, Bilaspur while precedingly having held that the norms as comprised in the notification of 27.5.2008 were inapplicable besides did not govern the method of besides did not regulate the quantum of marks

allocable by the interviewing committee concerned to the competing aspirants, for their possessing each/any of the educational qualifications, rather when no retrospectivity in operation has been given to the notification of 27.5.2008, the application of the latter notification by the SDM, Ghumarwin in his rendition comprised in annexure P-2, to the method of awarding of marks or quantum of their allocation to each of the competing aspirants for their possessing any or all of the educational qualifications was hence, held by him to render its application by the SDM, Ghumarwin in his rendition comprised in annexure P-2 to vitiate it with an aura of legality. Moreover, it was impliedly held that the norms prevalent at the time contemporaneous to the initiation of process by the respondents for selecting a suitable candidate for recommendation for appointment to the post of DPE in the school concerned inasmuch as the ones in operation or in vogue besides in prevalence on 10.5.2007, when the process for filling up the post of DPE was initiated and as applied by the interviewing committee concerned were the ones which governed, regulated, besides the prescriptions therein carrying legal force as such

rendered the reliance placed upon them by the interviewing committee concerned to be sustainable. As such given the factum that the process for selection of a suitable aspirant for recommendation for appointment to the post of DPE in the school concerned commenced on 10.5.2007, obviously, then the norms though extracted in paragraph 5 of the impugned annexure came into force subsequent to the initiation of process by the respondents for selection for recommendation for appointment of a suitable aspirant to the post of DPE in the school concerned, as such when they could not be given retrospectivity in operation for regulating the allocation of marks by the interviewing committee concerned to each of the competing aspirants for their possessing each of the academic qualifications enumerated therein. Resultantly, the Additional District Magistrate, Bilaspur having formed a conclusion about the untenability of operation of norms/criterion of 27.5.2008 to the period preceding it when the process for selecting for recommendation for appointment of a DPE in the school concerned commenced, it appears that his having extracted in paragraph 5 the criterion/norms of 27.5.2008 and

hence, held them to be regulating the allocation of quantum of marks by the interviewing committee concerned to each of the competing aspirants qua each of the heads of academic qualifications possessed by them, though yet his in the paragraph succeeding it concluded that in the result-sheet prepared by the interviewing committee concerned qua each of the competing candidates, the allocation of marks to them in consonance therewith was not suffering from any infirmity, renders the extraction in paragraph 5 of the impugned annexure the norms of 27.5.2008 and reliance thereto by him to have arisen from sheer inadvertence. In other words, as a matter of fact, the Additional District Magistrate, Bilaspur in his impugned annexure comprised in annexure P-3 in paragraph 5 had inadvertently extracted the norms/criterion governing the allocation of quantum of marks by the interviewing committee concerned to each of the competing aspirants for theirs possessing each or all of the academic qualifications enumerated therein which were rather the norms, which had rather come into force on 27.5.2008 and which were in annexure P-3, precedingly concluded by him to be not applicable to the stage

contemporaneous to the initiation of process by the respondents for selecting for recommendation for appointment of a suitable candidate to the post of DPE in the school concerned, which process rather stood commenced besides stood initiated at a time prior to the coming into force of the norms of 27.5.2008, hence for reiteration were unavailable for invocation or attraction by the interviewing committee concerned for inconsonance thereto awarding marks to the competing aspirants who stood interviewed by it. Nonetheless, the extraction by the Additional District Magistrate, Bilaspur in paragraph 5 of annexure P-3 the norms enshrined in the notification of 27.5.2008 and their governing the allocation of quantum of marks by the interviewing committee concerned to the competing aspirants for theirs possessing all or any of the heads of educational qualifications besides obviously also appears to have arisen from sheer inadvertence especially when in the paragraph succeeding it he has not denounced or frowned upon the manner in which the quantum of marks by the interviewing committee concerned stood allocated to the petitioner herein or to the respondent No.6 herein, rather

when in the concluding paragraph of impugned annexure P-3 he has approbated the manner in which the interviewing committee concerned allocated marks to the competing aspirants for theirs possessing each, any or all of the educational qualifications enunciated therein, marks the fact of his in tandem with the findings recorded in the impugned annexure preceding paragraph 5 thereto concluded that the allocation of or awarding of marks by the interviewing committee to the competing aspirants inclusive of the petitioner herein and the respondent No.6 was in consonance with the norms/criterion in force then besides were the ones legally, appositely or tenably applicable to the stage contemporaneous to the initiation of process for selecting a suitable candidate for recommendation for appointment to the post of DPE in the school concerned. It appears that the extraction by sheer inadvertence in paragraph 5 of annexure P-3 of the norms of 27.5.2008 by the Additional District Magistrate, Bilaspur and theirs governing besides regulating the allocation of or the awarding of marks by the interviewing committee concerned to the competing aspirants for theirs possessing

all or any educational qualifications prescribed therein has led the learned Single Judge of this Court to, while adverting to Seriatim No.4 of the norms extracted in paragraph 5 of the impugned annexure, wherein 10% marks were allocable to the petitioner herein for his possessing M.Phil/Ph.D and in consonance therewith the interviewing committee concerned having not allotted marks to the petitioner herein, conclude that the impugned annexure P-3 is unsustainable. In case the learned Single Judge of this Court while deciding the instant Civil Writ Petition had read the impugned annexure P-3 in a wholesome and harmonious manner and not in a fragmentary manner, as he did, it would not have sprouted any mis-application to the stage contemporaneous to the holding of interview of the competing aspirants by the interviewing committee concerned for selecting amongst them the most suitable aspirant for recommendation for appointment to the post of DPE in the school concerned, the norms of 27.5.2008 which had operation in prospectivity and not any operation in retrospectivity as has been untenably foisted to them.

7. However, even if the Additional District Magistrate, Bilaspur in impugned annexure P-3 by gross inadvertence has extracted the norms of 27.5.2008, wherein though 10% marks were allocable to the petitioner for his possessing M.Phil degree, which percentum of marks having not come to be allotted to him, constrained the learned Single Judge of this Court to interfere with the impugned annexure P-3. Nonetheless, the reflection by sheer inadvertence of norms of 27.5.2008 in the impugned annexure P-3 would not render amenable to interference by this Court the awarding of marks by the interviewing committee concerned to each of the competing aspirants for theirs possessing each of the academic qualifications, unless such allocation or awarding of marks as personified in annexure P-4 by the interviewing committee concerned to each of the competing aspirants for theirs possessing each/any or all of the academic qualifications manifested therein, is palpably in dire transgression of the norms/criterion then in force. For testing the factum, whether the norms applied by the interviewing committee concerned while awarding marks to the competing aspirants

were in force then or had acquired a binding legal effect arising from their holding legal efficacy in contemporaneity with the initiation of process by the respondents for selecting a suitable candidate amongst the competing aspirants for recommendation for appointment to the post of DPE in the school concerned, it is necessary to advert to the factum displayed in annexure R-4/1. Evidently, the criterion/norms enshrined in annexure R-4/1 came into force in 2006. The process for selecting by the interviewing committee concerned a suitable aspirant possessing the superior most merit amongst the aspirants interviewed by it for his being recommended for appointment to the post of DPE commenced in 2007, hence, when the norms comprised in annexure R-4/1 had legal force till 10.5.2007, more so when it stood replaced only by the subsequent norms on 27.5.2008, in face thereof any reliance placed upon the norms of 27.5.2008 by the SDM, Ghumarwin in his rendition comprised in annexure P-2, was wholly ill-founded besides misconceived. Resultantly, then the norms/criterion prescribed in annexure R-4/1 held sway on 10.5.2007, when the interviewing committee concerned held interviews

for selecting the most meritorious candidates for his recommendation for appointment to the post of DPE in the school concerned. Now it is to be gauged whether the command or mandate of annexure R-4/1 which held legal sway in contemporaneity with the initiation of process by the respondents for selecting and appointing the most meritorious candidate to the post of DPE in the school concerned, has been given effect to by the interviewing committee concerned, a perusal of annexure P-4 the tally-sheet drawn up by the interviewing committee concerned qua the candidates interviewed by it, is imperative. Annexure P-4 pronounces the fact that in consonance with the prescriptions in annexure R-4/1 the interviewing committee concerned had in annexure P-4 drawn up the heads whereunder marks had come to be allotted to the competing aspirants, by it. For reiteration, a perusal of annexure P-4 unfolds the factum that the interviewing committee concerned reserved 35% of the total allocable marks for each of the competing aspirants for their possessing the basic qualification of 10+2/graduation for the post concerned. It also reserved 30% marks for allocation

to each of the competing aspirants for their possessing professional education for the post i.e. B.PEd or B.PE. 10% marks were reserved for allocation for higher education i.e. M.Ped. 4% marks were reserved for any candidate possessing M.Phil degree. 10 marks were reserved for Ph.d. degree, 10 marks were reserved for subject experience and 5 marks were reserved for local dialects. Hence, the reservation of marks in annexure P-4 by the interviewing committee concerned, which interviewed the competing aspirants for selection/appointment for the post of DPE in the school concerned is in consonance with the prescription in annexure R-4/1. In sequel the allocation of marks in annexure P-4 by the interviewing committee concerned to the competing aspirants does not suffer from any legal frailty. The prescription in annexure R-4/1 which is the PTA policy of 2006 stands extracted hereinafter:-

“Under the PTA policy 2006 for the appointment of D.P.E. on the P.T.A. basis, the following criteria was adopted by the P.T.A. committee of G.S.S.S. Jaddu Kulzar, District Bilaspur. The criteria is also shown in result sheet of D.P.E.

Academic Examination Criteria	Percentage
(1) Basic qualification for the post i.e. +2 or graduation	35%

(2) Professional education for the post i.e. B. PEd or B.PE	30%
(3) Higher education i.e. M.Ped.	10%
(4) (a) M. Phill (of the total percentage)	4%
(b) Ph. D.	10 (10 marks if Ph.D completed by the candidate)

Interview

(5) Subject exper./ M.M.	10
(6) Local dialects	05
Total	100 "

For reiteration the prescriptions therein, given the fact that the process for filling up the post of DPE in the school concerned was initiated/commenced in the year 2007, hence, rendering the prescriptions in annexure R-4/1 to be acquiring force, for regulating in consonance therewith the allocation of marks by the interviewing committee concerned to the competing aspirants for theirs possessing each of the academic qualifications elucidated therein, obviously then the allocation of marks by the interviewing committee concerned in consonance therewith cannot come to be faulted on any count. An accentuated vigor to the factum of the interviewing committee concerned having in consonance with annexure R-4/1 allocated marks to the competing

candidates for their possessing educational qualifications or any of the educational qualification as enshrined therein is borne out by manifestation in the tally sheet/marksheet prepared by the interview committee concerned comprised in annexure P-4. Moreover, the norms of 27.5.2008 as mis-applied by the learned Single Judge of this Court while reversing the findings and conclusions arrived at by the Additional District Magistrate, Bilaspur had prospectivity in operation and not retrospectivity in operation, as has been imputed to them by the learned Single Judge while reversing the findings and conclusions recorded by the Additional District Magistrate, Bilaspur merely on the score of the latter in paragraph 5 by sheer inadvertence having extracted the norms of 27.5.2008 yet in discordance therewith the interviewing committee concerned in annexure P-4 having not meted out to the aspirants, marks qua each head of the academic qualifications possessed by each of them constrained the learned Single Judge of this Court to interfere with the findings recorded in annexure P-3, whereas for the reasons as attributed hereinabove the said reflection in paragraph 5 of the impugned order of norms of

27.5.2008 is by sheer inadvertence and would not, when the order comprised in annexure P-3 is read in its entirety and not fragmentarily besides in isolation with the findings contrary to it precedingly and succeedingly recorded therein, render amenable to any interference, besides would not oust the awarding or allocation of marks in annexure P-4 by the interviewing committee concerned to the competing aspirants especially when allocation of marks therein by the interviewing committee concerned to the competing aspirants for theirs possessing each of the educational qualification as enshrined therein, is in consonance with besides stands encompassed within the domain of prescriptions expostulated in annexure R-4/1 reciting the norms then in force. Consequently, the allocation of marks under annexure P-4 while being in consonance with the norms governing besides applicable to the quantum of marks allocable by the interviewing committee concerned to the competing aspirants for theirs possessing each, any or all of the educational qualifications as enunciated therein, does not suffer from any legal frailty nor can the allocation of marks under annexure P-4 to the competing aspirants by

the interviewing committee concerned in any manner be construed to be constituting any misdemeanor on its part.

8. Amplifyingly rather scuttling of the allocation of marks under annexure P-4 by the interviewing committee concerned to the competing aspirants would beget infraction of the mandate of the PTA policy of 2006, which when in vogue at the time contemporaneous to the initiation or commencement of process by the respondents for selecting a suitable candidate for appointment to the post of DPE in the school concerned and entailed upon the interviewing committee concerned to in compliance with the prescriptions therein adopt the method, manner besides the quantum of allocation of marks to the competing aspirants for theirs possessing each, any or all of the educational qualifications enshrined therein, for facilitating it to select amongst them the candidate possessing the superior most merit for recommendation by it, for his being appointed to the post of DPE in the school concerned, which compliance for the reasons aforesaid having been meted out by the interviewing committee concerned while allocating marks under annexure P-4 to the competing aspirants, rather

spurs this Court to, with aplomb reverse besides uphold the manifestations in annexure R-4/1.

9. The Principal Division Bench of this Court while deciding LPA No.23 of 2013 on 17th June, 2013 has underlined in paragraph 5 thereof that even though there is a prescription in the apposite criteria, which has been held by this Court to be applicable to the stage contemporaneous to the holding of interviews by the interviewing committee concerned for selecting amongst the interviewed candidates, the candidate possessing the superior most merit, for his being recommended for appointment to the post of DPE in the school concerned, of 35% marks being allocable to basic qualification for the post i.e. 10+2 or graduation, 30% being allocable to professional education i.e. B. PED or B.PE, 10% being allocable for higher education i.e. M.Ped, 4% marks being allocable for M. Phill and 10 marks being allocable for Ph.D and 10 marks being allocable for subject experience and 5 marks being allocable for local dialects. Hence, when qua some of the heads of academic qualifications possessed by the competing aspirants there is a mandate therein to the interviewing committee concerned to allocate the

optimum allocable percentum to the competing aspirants, yet the optimum percentum of marks allocable to the competing aspirants are not compatible with the maximum marks inasmuch as 100 being awardable to them by the interviewing committee concerned. In sequel, it was observed in paragraph 5 of the decision of the Principal Division Bench of this Court that the optimum allocable percentum of marks qua some of the heads of educational qualifications possessed by the competing aspirants, is not compatible to the actual optimum awardable marks under such heads, hence, an incongruity exists vis-à-vis the optimum percentum of marks under such head of educational qualifications qua which marks in percentum are earmarked for allocation to them vis-à-vis the optimum awardable marks to them under such heads. Naturally then it was observed that the optimum allocable percentum of marks under such heads of educational qualifications cannot ultimately constitute such optimum awardable percentum of marks qua them to beget theirs totaling 100 marks, the latter constituting the maximum marks awardable to the candidates appearing in the interview concerned. However,

to the considered mind of this Court anomaly if any as may exist gets subsumed besides gets submerged in the factum that if any of the competing aspirants under certain heads of educational qualification qua which optimum allocable marks are upto a prescribed percentum thereof, possesses the fullest marks in the heads aforesaid, then adequate fullest marks in percentum in commensuration thereof would come to be meted to him. In other words, if any of the aspirant scores in each of the relevant educational heads of the score-sheet, the fullest or the optimum marks, then in commensuration thereto he would be awarded or allocated marks in percentum not beyond, but yet upto the maximum percentum thereof as prescribed under such educational head. In that event, the acquisition of the fullest percentum of marks by any of the aspirants under each of such heads qua which award in percentum is prescribed in annexure R-4/1 would obviously beget allocation to him marks in equivalence thereof. In other words awarding of 35% marks which is the fullest percentum or the fullest marks under such head/heads of educational qualification qua which awarding of marks in percentum has been enshrined in the

apposite instructions would constitute the optimum awarding of marks under such head/heads. Necessarily then if an aspirant has in his +2 qualification or in his graduation has obtained the fullest marks in the score-sheet of the apposite examination, he would be awarded the fullest percentum of marks as enshrined qua it in Annexure R-4/1. Likewise qua other educational qualifications qua which allocation in percentum has been mandated in Annexure R-4/1, the acquisition by him of the fullest marks in the score sheet/tally sheet of the apposite educational qualifications would render him fit to obtain the highest or the optimum percentum prescribed in annexure R-4/1. Consequently, the factor of awarding of marks percentum wise under any of the head/heads of educational qualification manifested in annexure R-4/1, is not to be construed to be constituting their awarding to any of the competing aspirants to the post of DPE in the school concerned, to be suffering from any ambiguity or any anomaly merely on the score of the apposite criterion while prescribing the awarding of marks to any of the aspirants in percentum in commensuration to the marks obtained by him in the score sheet/tally sheet of the

apposite educational qualifications which he possesses, not meeting the target of the maximum/optimum marks awardable in the interview concerned to the competing aspirants being not upto 100.

10. The learned counsel appearing for the petitioner herein has relied upon a judgment of the Hon'ble Apex Court in **Kailash Chand Sharma vs. State of Rajasthan**, reported in (2002) 6 Supreme Court Cases 562, wherein at paragraph 31 which stands extracted hereinafter:-

"31. The two grounds pleaded in justification of preferential treatment accorded to rural area candidates found favour with the Division Bench of the High Court in Baljit Kaur's case (1992 WLR Raj. P.83) and Arvind Kumar Gochar's case (decided on 6.4.94). Shri Rajeev Dhawan appearing for the selected candidates who have filed SLPNo.

10780/2001, did his best to support the impugned circular mainly on the second ground, namely, better familiarity with the local dialects. The learned counsel contends that when the teachers are being recruited to serve in Gram Panchayat areas falling within the concerned Panchyat Samiti, those hailing from the particular district and the rural areas of that district are better suited to teach the students within that district and the Panchyat areas comprised therein. He submits that the local candidates can get

themselves better assimilated into the local environment and will be in a better position to interact with the students at primary level. Stress is laid on the fact that though the language/mother tongue is the same, the dialects varies from district to district and even within the district. By facilitating selection of local candidates to serve the Panchyat run schools, the State has not introduced any discrimination on the ground of residence but acted in furtherance of the goal to impart education. Such candidates will be more effective as primary school teachers and more suitable for the job. It is therefore contended that the classification is grounded on considerations having nexus with the object sought to be achieved and is not merely related to residence. We find it difficult to accept this contention, though plausible it is. We feel that undue accent is being laid on the dialects theory without factual foundation.

The assertion that dialects and nuances of the spoken language varies from district to district is not based upon empirical study or survey conducted by the State. Not even specific particulars are given in this regard. The stand in the counter affidavit (extracted supra) is that "each zone has its distinct language". If that is correct, the Zila Parishad should have mentioned in the notification that the candidates should know particular language to become eligible for consideration. We are inclined to think that reference has been made in the counter to 'language' instead of 'dialects' rather inadvertently.

As seen from the previous sentence, the words dialects and language are used as interchangeable expressions, without perhaps understanding the distinction between the two. We therefore take it that what is meant to be conveyed in the counter is that each Zone has a distinct dialects or vernacular and therefore local candidates of the district would be in a better position to teach and interact with the students. In such a case, the State Government should have identified the zones in which vernacular dissimilarities exist and the speech and dialects vary. That could only be done on the basis of scientific study and collection of relevant data. It is nobody's case that such an exercise was done. In any case, if these differences exist zone-wise or region-wise, there could possibly be no justification for giving weightage to the candidates on the basis of residence in a district. The candidates belonging to that zone, irrespective of the fact whether they belong to x, y or z district of the zone could very well be familiar with the allegedly different dialects peculiar to that zone. The argument further breaks down, if tested from the stand point of award of bonus marks to the rural candidates. Can it be said reasonably that candidates who have settled down in the towns will not be familiar with the dialects of that district? Can we reasonably proceed on the assumption that rural area candidate are more familiar with the dialects of the district rather than the town area candidates of the same district? The answer to both

the questions in our view cannot but be in the negative. To prefer the educated people residing in villages over those residing in towns big or small of the same district, on the mere supposition that the former (rural candidates) will be able to teach the rural students better would only amount to creating an artificial distinction having no legitimate connection to the object sought to be achieved. It would then be a case of discrimination based primarily on residence which is proscribed by Art. 16(2)."

Wherein the Hon'ble Apex Court has held that any reservation of 5 marks for allocation amongst the competing aspirants on the ground of his being a resident of a rural area of a district would tantamount to discrimination based primarily on residence, which would infract the mandate of Article 16(2) of the Constitution of India. The counsel contends that in the apposite guidelines, the respondents having reserved 5 marks for being allocated to candidates possessing proficiency in local dialects tantamounts to discrimination amongst the competing aspirants on the anvil primarily of residence. Hence, the reservation of 5 marks on the score aforesaid in the apposite guidelines in force at the time contemporaneous to the

holding of interviews by the interview committee concerned for selection amongst them the most meritorious candidate for recommendation for appointment to the post of DPE in the school concerned, too suffers from the vice of discrimination anvilled primarily on residence besides infracts the mandate of Article 16(2) of the Constitution of India.

11. The counsel for the petitioner contends that given the pronouncement in the hereinabove extracted paragraph of the verdict of the Hon'ble Apex Court, that the distinctivity in dialects and speeches existing in different zones should have been borne out in a scientific study carried out by the respondents and such study unearthing data qua distinctivity in speech and dialects prevailing in different zones or areas rather would have provided a firm legal bedrock to the prescription in the apposite guidelines of 5 marks being reserved for allocation to the competing aspirants for theirs possessing proficiency in local dialects. He contends that when no material is forthcoming on the part of the respondents that preceding theirs reserving 5 marks in the apposite guidelines for allocation to the

competing aspirants for their possessing proficiency in local dialects, they had conducted any scientific study. In sequel with no material in this regard having emanated the prescription of 5 marks in the apposite guidelines for their being allocable to candidates possessing proficiency in local dialects besides any allocation under the aforesaid head constitutes contravention of the mandate of the Hon'ble Apex Court comprised in paragraph 31 of its judgment which stands extracted hereinabove.

12. Before testing, whether the mandate of the Hon'ble Apex Court constituted in the hereinabove extracted paragraph is applicable to the facts at hand, it is necessary to bear in mind that in the judgment relied upon by the learned counsel for the petitioner there was a prescription therein of 5 marks being reserved for allocation to the residents of rural areas of district. The said reservation of 5 marks for their allocation or awarding to candidates, who were residents of rural areas of district, was held by the Hon'ble Apex Court to be a discrimination not anchored upon any reasonable classification founded upon any intelligible differentia having a nexus with the object sought to be

achieved besides it was held that it tantamounted to discrimination based primarily on residence which infringed the mandate of Article 16(2) of the Constitution of India. However, in the instant case in distinctivity to the judgment relied upon by the counsel for the petitioner wherein 5 marks were reserved for allocation to residents of rural areas of district, in the instant case in the apposite guidelines there is a reservation of 5 marks for allocation to those competing aspirants who possess proficiency in local dialects. The marked distinctivity inter se the head qua which 5 marks had been reserved for allocation to the competing aspirants in the judgment relied by the learned counsel for the petitioner vis-a-vis the apt head/factual matrix of the case at hand, naturally constrains this Court to not accept the contention of the learned counsel for the petitioner herein that the reservation of 5 marks in the apposite guidelines for their allocation to candidates possessing proficiency in local dialects is to be construed to be constituting a head analogous to "residents of rural areas of a district", reservation of marks whereunder in the judgment relied upon by the learned counsel for the

petitioner constrained the Hon'ble Apex Court to hold that it being a reservation based primarily on residence hence infringed the constitutional mandate enshrined in Article 16(2) of the Constitution of India, rather concomitantly with a marked distinctivity inter se, the head of reservation of marks in the case relied upon by the learned counsel for the petitioner inasmuch as therein the head of reservation of five marks for allocation to the competing aspirants therein stands constituted or encapsulated in the phraseology "residents of rural areas of district" vis-a-vis the head of proficiency in local dialects qua which head 5 marks have been reserved for allocation to such candidates who possess proficiency therein, cannot render the mandate of the Hon'ble Apex court comprised in the hereinabove extracted relevant paragraph of its judgment, to be applicable to the relevant head of proficiency in local dialects enunciated in the apposite guidelines, for proficiency whereof there is a prescription therein of an optimum of five marks being allocable to any of the competing aspirants nor also it can be said that the said reservation of 5 marks under the apposite guidelines under the aforesaid head is not anvilled upon any

intelligible differentia having no nexus with the object sought to be achieved, besides it cannot be said that it is a discrimination primarily based on residence, hence, infracting the mandate of Article 16(2) of the Constitution of India. Contrarily in the relevant paragraph 31 of the judgment of the Hon'ble Apex Court, it having been held that even if dis-similarities or distinctivities in speech exist such distinctivities in speech should stand constituted in a data compiled by a scientific study carried out by the Government concerned for foisting constitutional validity to the prescription of marks to the competing aspirants to the post concerned, for theirs possessing proficiency in local dialects. Even if there is no material forthcoming from the records produced by the respondents that they had carried out a scientific study qua the dis-similarities in speeches and dialects prevailing in the different areas/zones in the State of Himachal Pradesh in commensuration thereof, they prepared any relevant data qua dis-similarities in speeches and dialects prevailing in various zones/areas in the State of Himachal Pradesh and such studies also comprising the area where a suitable aspirant was to be selected to be appointed

as DPE on PTA basis in the school concerned whereas such data manifesting the distinctivity in dialect prevailing in the apposite area would have hence validated the prescription in the apposite guidelines of 5 marks being allocable to candidates possessing proficiency in local dialects. Nonetheless when the duly constituted interviewing committee concerned for interviewing candidates appearing before it for being considered for selection by it to the post concerned comprised of the Pradhan as well as the Secretary of the PTA concerned, besides the Principal of the school concerned they are presumed to be hence possessing the necessary expertise to gauge as well as test the proficiency in the local dialect of the competing aspirants to the post of DPE, besides they are to be also presumed to be well acquainted with the finer and subtle nuances of the accent of the dialect spoken in the area where a suitable candidate was to be selected for appointment as DPE, especially when no material has been placed on record before this Court to dislodge the said presumption. Obviously then their expertise to assess the ability besides the proficiency of the competing aspirants to with flair communicate with the

students in the finer and subtle nuances of the accent of the local dialect prevailing in the area where the school concerned is situated, cannot warrantedly be construed to be wanting in any respect. In sequel when they proceeded to award marks to the petitioner as well as to the respondent No.6 in consonance to their testing their proficiency besides ability to communicate in local dialects, the said awarding of marks by the interviewing committee concerned under the head local dialects, while being the subjective assessment of experts qua the said facet cannot be subjected to any interference by this court. Even otherwise, the school where the students were to be imparted education by the selected aspirant, is located in a rural area where the imparting of education to the students in a local dialect would be both desirable besides necessary, as it would beget satisfactory results inasmuch as of ensuring percolation in the minds of the students, the transmission to them of knowledge in the subject concerned. The said holistic object prevailing in the mind of the rule makers, besides it being the predominant factor for incorporation by them in the apposite guidelines, a

prescription for the awarding of 5 marks by the interviewing committee concerned to the competing aspirants for proficiency in local dialects, naturally when the aforesaid prescription in the apposite guidelines stand anvilled upon an intelligible differentia besides it has a nexus with the object sought to be achieved, inasmuch as the holistic object of ensuring percolation in the minds of students, who belong to rural backgrounds and who can comprehend to the fullest transmission to them, the dissemination of enlightenment by the teachers concerned only when purveyed in the local dialect.

13. For the foregoing reasons, I find no merit in the petition, which is accordingly dismissed. No costs.

30th September, 2015.

(Sureshwar Thakur)
Judge.