

GAHC010244632022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7675/2022

KRISHANU KUMAR BHAGABATI.

2: LAKHYA JYOTI DEKA RAJA

3: PINKY SARMAH

4: PALASH JYOTI SONOWAL

5: POOJA SONAR

6: PRINCE CLINTON RAVA

7: PURABI DEKA

8: DEEP JYOTI DEKA

9: JAHNABI JYOTI KALITA

10: HONEYSMITA DAS

11: KASHMIRI BEGUM

12: LOOPAMUDRA SARMA

13: MADHUSMITA DUTTA

14: KABIR HUMAYUN BIN KHABAR

15: JURI DEORI

16: MANISHA MEDHI

17: KRISHNA MOHAN CHUTIA

18: BISWAJYOTI DAS

19: HIRAKJYOTI DAS

20: NANDA KUMAR ROY

21: JIAUR RAHMAN

VERSUS

THE STATE OF ASSAM AND 164 ORS
REPRESENTED BY THE COMMISSIONER SECRETARY TO THE
GOVERNMENT OF ASSAM, ANIMAL HUSBANDRY AND VETERINARY
DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS CHAIRMAN
JAWAHARNAGAR
KHANAPARA
GUWAHATI-781022

3:THE SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI-781022

4:PRINCIPAL CONTROLLER OF EXAMINATIONS
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA
GUWAHATI-781022

5:ABHILASHA SHARMA
ROLL NO. 10600

6:MONALISHA AHMED
ROLL NO. 10332

7:RIMJHIM DAS
ROLL NO. 10480

8:NIBEDITA TAMULY
ROLL NO. 10367

9:BINDIYA MAHANTA
ROLL NO. 10091

10:RAJASHREE BHUYAN
ROLL NO. 10460

11:NEELAKSHI DEKA
ROLL NO. 10364

12:FULMONI KALITA
ROLL NO. 10185

13:PRIYANKA GHOSH
ROLL NO. 10443

14:HIMASRI DAS
ROLL NO. 10206

15:JYOTIMALITA ROY
ROLL NO. 10246

16:ANINDITA MALI
ROLL NO. 10031

17:ARJYARITTIK KALITA
ROLL NO. 10055

18:RIMJHIM MAHANTA
ROLL NO. 10481

19:KRISHNA KAMAL KALITA
ROLL NO. 10274

20:SHAHNAJ PARBIN AHMED
ROLL NO. 10532

21:PRIYANKA CHOUDHURY
ROLL NO. 10441

22:SIMANTA PATGIRI
ROLL NO. 10548

23:GYANDEEP CHOUDHURY
ROLL NO. 10198

24:PINKY SAIKIA
ROLL NO. 10411

25:CHAYANIKA MAZUMDER
ROLL NO. 10119

26:SABERA ISLAM CHOWDHURY
ROLL NO. 10502

27:KAUSHIK PORAN BORDOLOI
ROLL NO.10259

28:BANANI DAS
ROLL NO. 10073

29:JYOTI CHANDA KALITA
ROLL NO 10244

30:CHAYANIKA DAS
ROLL NO. 10118

31:SHARMISTA NATH
ROLL NO. 10540

32:SANGEETA DAS
ROLL NO. 10515

33:SUNITA KALITA
ROLL NO. 10564

34:AKASH MAHANTA
ROLL NO. 10010

35:PARAG SANKAR CHOUDHURY
ROLL NO. 10400

36:PRINCELINA BORA
ROLL NO. 10438

37:PRAKASH BRAHMA
ROLL NO. 10421

38:MINAKSHI KALITA
ROLL NO. 10323

39:SOUVIK SARMA
ROLL NO. 10555

40:RISHABH SARMAH
ROLL NO. 10484

41:MRINMOY CHOUDHURY
ROLL NO. 10345

42:SUMI ROY
ROLL NO. 10563

43:NIRIBILI RAJBANGSHI
ROLL NO. 10376

44:DEBPRIYO KUMAR DEY
ROLL NO. 10137

45:SHAHNUR RAHMAN
ROLL NO. 10534

46:RAJSEKHAR SAPCOTA

ROLL NO. 10466

47:SOPUN JYOTI BHUYAN

ROLL NO. 10553

48:PANKAJ CHAKRABORTY

ROLL NO. 10396

49:CHANDRAMITA BARMAN

ROLL NO. 10113

50:DIPANKAR PAUL

ROLL NO. 10164

51:DHRUBA JYOTI KONWAR

ROLL NO. 10150

52:RUPJYOTI DUTTA

ROLL NO. 10499

53:BINITA BARUAH

ROLL NO. 10092

54:MONAMIKA NUNISA

ROLL NO. 10334

55:PARBIN SULTANA SAFIM ALAM

ROLL NO. 10401

56:DHYANJYOTI SARMA

ROLL NO. 10152

57:TANMOY MEDHI

ROLL NO. 10575

58:ARUNIMA KALITA

ROLL NO. 10061

59:SUNITA THAKURIA

ROLL NO. 10565

60:PRANJAL MONI NATH

ROLL NO. 10430

61:PRIYANKA BARMAN

ROLL NO. 10440

62:DR PURANPURNA GOSWAMI

ROLL NO. 10174

63:SHANKURAJ BORAH

ROLL NO. 10538

64:UPASANA BARUAH

ROLL NO. 10590

65:SAFEEDA SULTANA BEGUM

ROLL NO. 10504

66:UDIPTA BORTHAKUR

ROLL NO. 10589

67:PINKU TALUKDAR

ROLL NO. 10410

68:HEMANTA KUMAR DAS

ROLL NO. 10202

69:CHAHIDUR RAHMAN

ROLL NO. 10105

70:PRERONA PATOWARY

ROLL NO. 10436

71:DEBANGANA CHOUDHURY

ROLL NO. 10132

72:HUSSAIN MAHAMMAD FARHAD

ROLL NO. 10212

73:NITU THENGAL

ROLL NO. 10381

74:MAMTA PATHAK

ROLL NO. 10301

75:BHASKARJYOTI KALITA

ROLL NO. 10083

76:KANGKAN KALITA

ROLL NO. 10254

77:KULDEEP KALITA

ROLL NO. 10278

78:SAKIL AHMED

ROLL NO. 10506

79:NABANITA THAKURIA

ROLL NO. 10354

80:NANSWITA BORAH

ROLL NO. 10357

81:ARIFA KHATUN

ROLL NO. 10050

82:SANIDUR AHMED

ROLL NO. 10517

83:TULUMONI SEAL

ROLL NO. 10584

84:NIRMALI SARMA

ROLL NO. 10379

85:SIKDER JABIDUR ISLAM

ROLL NO. 10545

86:JEHIRUL ISLAM

ROLL NO.10230

87:PURABI GOGOI

ROLL NO.10448

88:PALLAB BORAH

ROLL NO.10391

89:NILUTPAL KARMAKAR

ROLL NO. 10372

90:ANJALI DAS

ROLL NO. 10035

91:MAFIDUL ISLAM

ROLL NO. 10297

92:KLINTON PEGU

ROLL NO. 10268

93:MOMOTA KARMAKAR

ROLL NO. 10331

94:W LOMEN SINGH

ROLL NO. 10597

95:DHRITISMITA BORUAH

ROLL NO. 10148

96:UDAY BHASKAR BHARATI

ROLL NO. 10586

97:JONMONI BARUA

ROLL NO. 10236

98:SUJEET CHHETRY

ROLL NO. 10558

99:SANJANA BORA

ROLL NO.10518

100:RAJ KISHORE GOGOI

ROLL NO. 10458

101:MIGOM MILI

ROLL NO.10321

102:BILIFANG DAIMARY

ROLL NO. 10089

103:ANUSMITA BAISHYA

ROLL NO. 10045

104:SIVASANKAR TAYE

ROLL NO. 10549

105:DIPIKA DEORI

ROLL NO. 10166

106:PRANAB BORO

ROLL NO.10422

107:REEMA TALUKDAR

ROLL NO. 10476

108:RICHA BORKAKOTI

ROLL NO. 10478

109:PRABHAMR SHIL

ROLL NO. 10418

110:MADHURIMA BHAJONI

ROLL NO. 10293

111:HIMASMITA BORAH

ROLL NO. 10205

112:PANKAJ PRASAD

ROLL NO. 10397

113:PURUSHUTTAM GOGOI

ROLL NO. 10449

114:MAHFUZA BEGUM

ROLL NO. 10298

115:DIMPI KHANIKAR

ROLL NO. 10162

116:POONAM DAS

ROLL NO. 10417

117:SANJUKTA GOHAIN

ROLL NO. 10521

118:MRINMOY JYOTI SENSUA

ROLL NO. 10346

119:LAKSHYA JYOTI KAKATI

ROLL NO. 10286

120:EKRAMUL HOQUE

ROLL NO. 10179

121:ANISUL HAMZA

ROLL NO. 10034

122:RITAM HAZARIKA

ROLL NO. 10486

123:LEOSMITA BURHAGOHAIN

ROLL NO. 10289

124:DEEPANJALI KALITA

ROLL NO. 10139

125:PUJA MECH

ROLL NO.10446

126:DHRUBA DAS

ROLL NO. 10149

127:KUSHAL RABHA

ROLL NO.10280

128:SUSHMITA BAISHYA

ROLL NO. 10572

129:JAGADISH HAZARIKA

ROLL NO. 10218

130:CHANDRIKA HAZARIKA

ROLL NO. 10116

131:PRERANA DAS

ROLL NO.10435

132:SIDDHANTA KAR

ROLL NO.10544

133:CHOW MANG SENG CHOWPU

ROLL NO. 10124

134:MANASJYOTI THAKURIA

ROLL NO. 10308

135:AJIJUL HOQUE

ROLL NO. 10007

136:LAKHYAJYOTI SAIKIA

ROLL NO. 10285

137:MINDER TERON

ROLL NO.10324

138:RITU RAJ SAIKIA

ROLL NO. 10488

139:SAMIRAN BORAH

ROLL NO.10510

140:CHINMOY DAS

ROLL NO.10121

141:L DRISTI SINGHA

ROLL NO.10282

142:INZAMUL ALAM

ROLL NO.10215

143:SAAN SWRANG

ROLL NO.10501

144:BANASHREE GOGOI

ROLL NO. 10075

145:MOKIDUR RAHMAN

ROLL NO. 10329

146:RUMI BASUMATARY

ROLL NO. 10496

147:RAJKUMAR MILI

ROLL NO.10464

148:JOSHUA BORO

ROLL NO.10237

149:KELESON BASUMATARY

ROLL NO. 10261

150:PRANAY TALUKDAR

ROLL NO. 10425

151:JAHNABI DOLEY

ROLL NO.10219

152:MEDINI HAZARIKA

ROLL NO. 10320

153:TRIDIP NARAYAN DAS

ROLL NO. 10581

154:GAUTAM MALAKAR

ROLL NO. 10189

155:RAMAN MAJUMDER

ROLL NO. 10470

156:KANGKAN DEKA

ROLL NO.10253

157:MD JAKIR HUSSAIN

ROLL NO. 10316

158:JAKIR HUSSAIN

ROLL NO.10221

159:BAISHALI DEB

ROLL NO.10071

160:AMIT RABIDAS

ROLL NO.10023

161:UTTAM RAJKHOWA

ROLL NO. 10593

162:MOKIBUL ISLAM MAZUMDER

ROLL NO.10328

163:ANAMIKA MAZUMDAR

ROLL NO. 10026

164:JENIFA AHMED

ROLL NO. 10231

165:MADHURJYA JYOTI BORAH

ROLL NO. 10295.

RESPONDENT NOS. 5 TO 165 ARE CANDIDATES OF SELECT LIST ISSUED
BY THE APSC FOR APPOINTMENT BY RESPONDENT NO. 1 I.E.
COMMISSIONER SECRETARY TO THE GOVERNMENT OF ASSAM
ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT
DISPUR
GUWAHATI- 781006

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, A.H and V. DEPT.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 09.02.2023.

Date of judgment : **17.02.2023.**

JUDGMENT & ORDER (CAV)

Heard Mr. K. N. Choudhury, learned senior counsel assisted by Mr. R. M. Deka, learned counsel appearing for the writ petitioners. Also heard Mr. D. Saikia, learned Advocate General, Assam assisted by Mr. D. Nath, learned Senior Government Advocate, Assam appearing for the respondent No.1 and Mr. T. J. Mahanta, learned senior counsel assisted by Mr. P. P. Dutta, learned counsel appearing for the respondent Nos.2, 3 and 4. Mr. P. K. Goswami, learned senior counsel assisted by Mr. B. P. Borah, learned counsel has appeared on behalf of the private respondent Nos.5 to 165.

2. By filing this writ petition the 21 petitioners have approached this Court challenging the select list dated 23.11.2022 prepared by the Assam Public Service Commissioner (in short, the APSC) for filling up 162 posts in the category of Veterinary Officer/ Block Veterinary Officer. The brief facts of the case are that on 22.07.2022, the Deputy Secretary to the APSC had issued an advertisement notice No.13/2022 inviting applications for filling up 162 vacancies in the category of Veterinary Officer/Block Veterinary Officer, Class-B, Class-I (Jr. Grade) under the Animal Husbandry and Veterinary Department by means of direct recruitment. In response to the advertisement notice dated 22.07.2022, the APSC had received as many as 695 applications out of which, 622 applications were found to be in order. The writ petitioners herein, besides the selected candidates, were amongst those 622 applicants. In the advertisement notice dated 22.07.2022 it was mentioned that the selection procedure would be notified later by issuing corrigendum/addendum, if required and that the Commission will decide the procedure of selection considering

the status, cadre and grade or the number of applications received for the advertised posts. Accordingly, notification dated 02.11.2022 was issued by the APSC notifying the dates of interview. In the notification dated 02.11.2022 the candidates were also instructed to download their intimation letters from the APSC website. The notification dated 02.11.2022 had made it clear that the selection process would be based on interview of the candidates. It was also mentioned that the reject list will be uploaded on 07.11.2022.

3. After processing the applications, the list of the 622 candidates, whose applications were accepted, was published whereafter, interview was conducted by the APSC during the period from 14.11.2022 to 21.11.2022. There is no dispute about the fact that the writ petitioners herein had also participated in the interview. Eventually, the select list, containing the names of 162 successful candidates, was published on 23.11.2022. However, the names of the writ petitioners were not included in the select list dated 23.11.2022. As such, the present writ petition has been filed alleging that the selection procedure was de hors the rules and therefore, the select list dated 23.11.2022 was liable to be interfered with by this Court. By an interim order dated 29.11.2022 passed in this proceeding, the learned Single Judge had restrained the authorities from acting on the results published by the APSC on 23.11.2022 consequent to the advertisement notice dated 22.07.2022, as a result of which, no order of appointment has been issued in favour of the selected candidates i.e. the private respondents till date.

4. The APSC has conducted the selection as per the provisions of the Assam

Public Service Commission (Conduct of Business) Procedure, 2019 (for short, the Procedure of 2019). The Secretary of the APSC has filed affidavit on behalf of the respondent Nos.2, 3 and 4 stating that Rule 4A of the Procedure of 2019 permits direct recruitment to be conducted only on the basis of interview. Since the number of post was 162, which is less than 5 times the total number of applications, hence, the APSC had followed Rule 4A and invited all eligible candidates to appear in the interview. Therefore, there is no infirmity in the selection process. In so far as the conduct of the writ petitioners is concerned, it has been averred in the affidavit that having participated in the selection process and having taken a chance, the petitioners are now estopped from questioning the validity of the select list on the ground of procedural irregularity.

5. A separate affidavit has been filed on behalf of the respondent No.1 i.e. the Secretary to the Government of Assam, Department of Animal Husbandry and Veterinary taking a more or less similar stand. In the aforesaid affidavit it has also been mentioned that as per the provisions of Rule 6(c) of the Assam Animal Husbandry, Veterinary and Dairying Service Rules, 1988 (for short, the Rules of 1988) read with Clause 4(A) of the Procedure of 2019, it was permissible for the Commission to prepare the select list only on the basis of interview without holding a written examination.

6. Mr. K. N. Choudhury, learned senior counsel appearing for the writ petitioners has argued that the authorities ought to have conducted the selection as per the provisions of Rule-4B of the Procedure of 2019 and hold a written test along with

interview for preparation of the final select list. The same not having been done, submits Mr. Choudhury, there is apparent irregularity in the selection process having a vitiating affect on the final select list. According to Mr. Choudhury, since the number of applicants were more than three times the total number of vacancies, hence, Rule 4A of the Procedure of 2019 would not be applicable in this case. Mr. Choudhury has further argued that since it is a case of violation of the Rules, the plea of waiver and estoppels would also not be applicable in the facts and circumstances of the present case. In support of his above arguments, the learned senior counsel for the petitioners has relied upon the decision of the Supreme Court rendered in the case of **Raj Kumar and others vs. Shakti Raj and others** reported in **(1997) 9 SCC 527**.

7. Responding to the above, Mr. D. Saikia, learned Advocate General, Assam submits that the procedure adopted for preparation of the select list is not only transparent but is also in strict compliance with the requirement of the relevant rules. Therefore, there is no scope for this Court to interfere with the select list. Mr. Saikia has further argued that due to operation of the interim order the Department has been prevented from implementing the various schemes meant for public benefit due to want of adequate number of officers. As such, this is a fit case for dismissal of the writ petition.

8. Mr. P. K. Goswami, learned senior counsel appearing for the private respondent Nos.5 to 165 has argued that the writ petition has been filed by suppressing material facts and particulars inasmuch as the petitioners have not disclosed the vital fact that the APSC had duly notified the procedure to be adopted

in this case which is "interview only" by issuing the notification dated 02.11.2022. Since the petitioners have approached this Court with unclean hand, no relief in equity can be granted to them.

9. In so far as merit of the case is concerned, Mr. Goswami submits that the Procedure of 2019 is very clear and the same confers discretionary power on the APSC to device the method of selection. Since as per Rule 4, interview is a permissible method for selection of candidates in case of direct recruitment, there is no infirmity in the select list dated 23.11.2022. Moreover, submits Mr. Goswami, the writ petitioners having participated in the selection process being fully aware of the procedure that has been adopted in this case, they would be estopped from turning back and questioning the method of selection after publication of the select list only because their names did not find place in the final select list. Mr. Goswami has, therefore, prayed for dismissal of the writ petition. In support of his above argument, the learned senior counsel has relied upon the decision of the Supreme Court rendered in the case of **Ashok Kumar and another vs. State of Bihar and others** reported in **(2017) 4 SCC 357**.

10. Mr. T. J. Mahanta, learned senior counsel appearing for the APSC authorities i.e. respondent Nos.2 to 4 has also argued on similar lines by contending that the process adopted in this case was as per Rule 4A of the Procedure of 2019. Since, in case of direct recruitment only oral interview is a permissible mode of selection under the law, hence, there is no merit in the case of the petitioners. Mr. Mahanta further submits that the APSC authorities have scrupulously followed the requirement of the

Rules and therefore, the allegation made in the writ petition are completely baseless.

11. I have considered the submissions made by the learned counsel for the parties and have also gone through the materials available on record.

12. After hearing the arguments advanced by the contesting parties, what transpires is that the entire controversy in this case, revolves around the core question as to whether, the process adopted by the APSC in preparing the select list by holding "interview only" was a permissible mode of selection under the Rules. The aforesaid question has to be answered in the context of Rule 4A and 4B of the Procedure of 2019. Therefore, the aforesaid provisions are reproduced herein below for ready reference :-

“4. DIRECT RECRUITMENT

A. Only by interview : where there is a provision for selection only by interview in respect of any post/posts or service/services considering the status, cadre and grade or where the number of applications received for the advertised posts is equal to or less than 5 times, the number of vacancies, recruitment for such post/posts or services/services by the Commission may be operated as follows-

(i) Eligible candidates may be shortlisted as per terms and conditions or advertisement, if required. Short-listing shall be done as per the following table-

No.	Total number of posts advertised including all services (if any)	The number of applications received for which no short-listing is required	Where the number of applications are more than the number mentioned in column 3, then the number of candidates to be called for interview after short-

			<i>listing.</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
1	1	20	10
2	2	30	15
3	3	40	20
4	4 to 10	Ten times	Six times
5	11 to 20	Eight times	Five times
6	21 to 50	Six times	Four times
7	51 to 100	Five times	Three times

The criteria for shot-listing will be decided by the Commission.

(ii) The interview will carry 11 marks.

(iii) In cases where the interview is a direct personality test, marks shall be allocated as below :

a. 50% on academic/professional qualification/service experience relevant to the post/preferential qualification/ additional qualification.

b. 50% for subject knowledge and general bearing, 25% shall be for subject knowledge and 25% for general bearing.

(iv) In case where the interview forms a part of written assessment test on a subject relevant to the post and a personality test, marks shall be allocated as below :

a. 50% marks on the written assessment.

b. 25% on academic professional qualification/ service experience relevant to the post/professional qualification /additional qualification.

c. 25% for subject knowledge and general bearing to be divided equally or as decided by the Commission.

(v) A consolidated merit list will be prepared on the basis of the interview scores.

(vi) Final selection will be prepared as per advertised vacancies and recruitment rules considering relevant reservation criteria from the consolidated merit list.

B. By written competitive examination and interview :- where there is a provision of selection by means of written examination and interview for any post/posts or service/services or where the number of applications is more than 5 (five) times the number of all advertised vacancies for the purpose of recruitment for such post(s) by the Commission through written examination and interview :

(i) Written examination and interview shall be conducted. The written examination may either be OMR based objective type or conventional type.

(ii) There will be negative marking in OMR based question papers for each wrong answer @ 0.25 against each question.

(iii) Candidates 5(five) times the category-wise and sub-category wise number of advertised vacancies or in the ratio prescribed in recruitment rules or in the ratio prescribed by the Commission, will be shortlisted for interview in the order of their merit in the merit list and on the basis of relevant category and sub-category.

(iv) The list of roll numbers of all the candidates shortlisted for interview shall be published in the website in increasing order of roll numbers.

(v) The date of interview shall be declared for candidates shortlisted for interview. Any date can be scheduled for interview after 15 days of declaration of written examination results being released.

(vi) The total marks for the interview shall not exceed 12.2 percent of the total marks of written examination.

(vii) There shall be no qualifying marks for the interview who are qualified in written test whereby there will be no restriction on candidates of any category and subcategory to obtain a minimum marks in the interview.

(viii) The consolidated merit list of candidates shall be prepared on the basis of written examination and interview scores.

(ix) Final selection list will be prepared as per advertised vacancies and recruitment rules considering relevant reservation criteria from the consolidated merit list for recommendation."

13. As noted above, this is a case of direct recruitment and in the advertisement notice itself, the APSC authorities have provided that the methodology for holding the selection will be notified later. Accordingly, by issuing the notification dated 02.11.2022 it was notified that the selection process will be conducted on the basis of "interview". Not only that, even the dates of the interview were notified on 02.11.2022 and the candidates were asked to download their intimation letters from the website. Therefore, it is apparent that the petitioners were not only aware of the method of selection but they had also appeared in the interview process without raising any protest.

14. A plain reading of Rule 4A of the Procedure of 2019 makes it clear that in case of direct recruitment the select list can be prepared only on the basis of interview. It is no doubt correct that Rule 4A speaks of short-listing the candidates by following the ratio indicated therein. However, it is also to be noted herein that the Rules clearly mention that the criteria for short-listing will be decided by the Commission.

15. By referring to entries made in the 1st column in the 7th row of Rule 4A(i), Mr.

Choudhury has argued that the ratio provided by the aforesaid provision is confined only to cases where the total number of posts is 100 and not beyond. According to Mr. Choudhury, since the total number of posts was 162, hence, Rule 4A ought not to have been resorted to by the authorities. Mr. Choudhury submits that Rule 4B would have been more appropriate in this case. Considering the number of applicants, the authorities were obliged to hold written competitive examination and interview. I am afraid, the said submission of Mr. Choudhury cannot be accepted. There is nothing in Rule 4A to indicate that the number of posts indicated in column (2) of the Table was exhaustive. Rather, the inclusion of the expression "the criteria for short-listing will be decided by the Commission" makes it amply evident that if the posts were to be more than 100 it was open for the Commission to decide on the criteria of short-listing. The ratio is to be applied for short-listing of candidates but the fact of the matter is that there has been no short-listing of candidates, whatsoever, in the present case. Since all the eligible candidates including the writ petitioners were allowed to participate in the interview process, it is evident that there has been no violation of Rule 4A in this case.

16. It is no doubt correct that under Rule 4B the APSC would be required to hold a written competitive examination. However, Rule 4B would be applicable when the number of applicants is more than 5(five) times the number of advertised vacancies, which is not the case in hand. It is correct that the number of applicants were more than 500, but as per Rule 4A, when the number of applicants is equal to or less than five times the number of vacancies, recruitment to such posts can be made only on the basis of oral interview. In this case the number of applicants was less than five

times the number of vacancies.

17. This Court finds that there is no ambiguity in Rules 4A and 4B of the Procedure of 2019. The Rule 4A, read in the context of Rule 6(c) of the Rules of 1988, which permits the Commission to make selection by holding test or interview, makes it amply clear that the procedure adopted by the APSC viz. holding interview only was not in violation of the applicable Rules. Even if the arguments of Mr. Choudhury is accepted on the face value, even then, it can at best be said that it was open for the authorities either to take recourse to Rule 4A or 4B for holding the selection process. As such, viewed from any angle it cannot be said that the procedure adopted by the APSC for preparation of the select-list by taking recourse under Rule 4A was impermissible in the eye of law.

18. By referring to the notification dated 04.12.2021, by means of which, Rules 4B and 4(D)(v) were amended, Mr. Choudhury has argued that even as per the amended Rule 4(D)(v), it was incumbent upon the respondents to conduct a written test since the number of posts were more than 76 and the ratio of candidates called for interview was more than 1: 3. The aforesaid argument of Mr. Choudhury also cannot be accepted on account of the fact that Rule 4(D)(v) merely prescribes the ratio at which candidates are to be short-listed. As noted above, there has been no short-listing of candidates. Therefore, the ratio prescribed by the Rules for short-listing of candidates will not have any application in this case. However, even assuming that the respondents have called for interview candidates beyond the ratio of 1 : 3, even then, the said fact was well within the knowledge of the petitioners. Therefore,

the petitioners cannot now turn back and question the said procedure merely because they were unsuccessful in the selection process. Moreover, as has been already held, the procedure applicable in this case was as per Rule 4A and not 4(D) (v) of the Procedure of 2019. In view of the above, this Court is of the considered opinion that the select list cannot be interfered with on the ground of contraventions of provisions of Rule 4(D)(v) of the Procedure of 2019.

19. Coming to the next question of estoppel, what is to be noted herein that the law on this issue has been settled by the Hon'ble Supreme Court in the decision rendered in the case of **Madan Lal and others vs. State of J & K and others** reported in **(1995) 3 SCC 486** wherein it was held that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

20. In the case of **Chandra Prakash Tiwari and others vs. Shakuntala Shukla and others** reported in **(2002) 6 SCC 127** a similar view has been expressed whereby, it has been held that challenge to a selection process after participating in it without protest would debar remedy to the candidate against the selection process under the principles of estoppel.

21. In the case of **Amlan Jyoti Borooah vs. State of Assam and others** reported in **(2009) 3 SCC 227** it was held that a candidate who had subjected himself to a faulty selection process could not later on turn around and question the same.

22. Taking note of the decisions rendered by the Supreme Court the law on the

subject was further enunciated in the case of **Ashok Kumar and another** (supra) whereby the Apex Court has made the following observations in paragraphs 12, 13 and 14 :-

“12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.

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

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

14. The same view was reiterated in *Amlan Jyoti Borroah* (supra) where it was held to be well settled that candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.”

23. From a careful analysis of the ratio laid down in the aforesaid decisions, what follows is that the petitioners, having participated in the selection process, without any protest and being fully aware of the procedure adopted by the APSC, which is interview only and they being unsuccessful candidates, would be estopped from turning around and challenging the select list on the ground of procedural irregularity merely because their names did not find place in the final select list. For the above reason, no relief whatsoever, can be granted to the writ petitioners in this proceeding, in respect of the select list dated 23.11.2022.

24. Insofar as the decision in the case of **Raj Kumar and others** (supra) relied upon by Mr. Choudhury is concerned, it is to be noted herein that, in that case, the selection was conducted in total violation of the rules applicable to the post. It is in the context of such fact situation that the Supreme Court had observed that the Government had committed glaring illegalities in the procedure and also in the method of selection. It was held that by ignoring the prescription of the Rule the selection process itself was taken out from the purview of the SSSB which was the authority competent to hold the process. On such ground, it was observed that the principles of estoppel by conduct or acquiescence would not have any application to facts of that case. After careful reading of the aforesaid judgment, this Court is of the opinion that the ratio of the decision in the case of **Raj Kumar and others** (supra) would not have any bearing in the facts and circumstances of the present case.

25. For the reasons stated herein above, I do not find any merit in the writ petition. The same is accordingly dismissed. The interim order dated 29.11.2022 stands

vacated.

Parties to bear their own cost.

JUDGE

T U Choudhury/Sr.P.S.

Comparing Assistant