IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 494 of 2020

1. Rahul Kumar, son of Radheshyam Prasad, aged about 30 years, resident of village Chandandih, P.O. & P.S. Latehar, District-Latehar
2. Eman Safi, son of Alijan Ansari, aged about 44 years, resident of village Harnad P.O. Karma, P.S. Kasmar, District- Bokaro
3. Prakash Kumar, son of Babu Lal Ji, aged 30 years, resident of H.No. 16, Kishunpur, P.O. and P.S. Chatra, District- Chatra
4. Raj Kumar Minz, son of Late Sheo Bux Minz, aged 42 years, resident of MIG A/18, Harmu Housing Colony, P.O. Harmu, P.S. Argora, Harmu, Ranchi **... Petitioner**

-**Versus-**

1. The State of Jharkhand through its Chief Secretary, Government of Jharkhand, P.O. & P.S. Dhurwa, Ranchi
2. Principal Secretary Personnel and Administrative Department, Government of Jharkhand, P.O. & P.S. Dhurwa, Ranchi
3. Jharkhand Public Service Commission through its Chairman, Ranchi, P.O. G.P.O., P.S. Kotwali, District- Ranchi
4. The Secretary, Jharkhand Public Service Commission, Ranchi, P.O. G.P.O., P.S. Kotwali, District- Ranchi
5. The Controller of Examination, Jharkhand Public Service Commission, Ranchi, P.O. G.P.O., P.S. Kotwali, District- Ranchi
6. Sangram Murmu, aged about 32 years, son of Sri Salkhan Murmu, resident of Mission Gali, Opposite Premsons Motors, Kanke Road, P.O. Ranchi University, P.S. Gonda, District- Ranchi **... Respondents**

With
W.P.(S) No. 1408 of 2020

Abhishek Mani Sinha, aged 36 years, S/o Shri Lalmani Kumar Sinha, resident of 215 B, Gaurishankar Villa, Devangna Chowk, Korrah, P.O., P.S. and District-Hazaribagh **... Petitioner**

-**Versus-**

1. The State of Jharkhand through the Secretary, Personnel, Administrative Reforms and Rajbhasha Department, P.O. & P.S. Dhurwa, District- Ranchi
2. Jharkhand Public Service Commission through its Secretary, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
3. The Examination Controller, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. Lalpur, District- Ranchi **... Respondents**

With
W.P.(S) No. 1428 of 2020

Chandan, aged about 38 years, son of Late Deoki Paswan, resident of village Deogan P.O. Chaparwar, P.S. Chhatarpur, District-Palamau
... Petitioner

-**Versus-**

1. The State of Jharkhand
2. The Principal Secretary, Department of Personnel and Administrative Reform Department, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
3. Jharkhand Public Service Commission represented through its Secretary, Circular Road, P.O. G.P.O., P.S. Lalpur, District- Ranchi

... Respondents

With

W.P.(S) No. 1449 of 2020

Sanjay Kumar Mahto, aged about 44 years, Son of Ramjee Mahto, resident of Dundigachhi, Maganpur, P.O. and P.S. Ramgarh, District, Ramgarh **... Petitioner**

-**Versus-**

1. The State of Jharkhand through the Principal Secretary, Personnel and Administrative Reforms and Rajbhasa Department, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
2. Jharkhand Public Service Commission through its Chairman, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
3. The Chairman, Jharkhand Public Service Commission, Ranchi, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
4. The Secretary, Jharkhand Public Service Commission, Ranchi, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
5. The Controller of Examination, Jharkhand Public Service Commission, Ranchi, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
6. Sewa Ram Sahu, presently posted as Probationer Deputy Collector, Ranchi
7. Santosh Kumar Mahto, presently posted as Probationer Deputy Collector, Dumka
8. Jitendra Kumar Gupta, presently posted as Probationer Deputy Collector, Dumka
9. Avinash Ranjan, presently posted as Probationer Deputy Collector, Latehar
10. Abhishek Kumar, presently posted as Probationer Deputy Collector, Deoghar **... Respondents**

With

W.P.(S) No. 1451 of 2020

Kumar Avinash, aged about 28 years, son of Manoj Kumar Rajak, resident of Gonda, Town Kanke Road, P.O. Ranchi University, P.S. Gonda, District-Ranchi **... Petitioner**

-**Versus-**

1. The State of Jharkhand through Principal Secretary, Personnel and Administrative Reforms and Rajbhasa Department, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
2. Jharkhand Public Service Commission through its Chairman, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
3. The Chairman, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
4. The Secretary, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
5. The Controller of Examination, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
6. Vivek Kumar, presently posted as Probationer Deputy Collector, Chaibasa, West Singhbhum
7. Nidhi Rajwar, presently posted as Probationer Deputy Collector, Deoghar
8. Ajay Kumar Das, presently posted as Probationer Deputy Collector, Dumka **... Respondents**

With

W.P.(S) No. 1468 of 2020

1. Mukesh Kumar, son of Shiv Nath Singh, aged about 40 years, resident of Paharpur, P.O. Amnour, P.S. Amnour, District-Chapra, Bihar
2. Rajeev Ranjan Tiwari, son of Gorkh Nath Tiwari, aged 42 years, resident

of village Ranka, P.O. Ranka, Baulia, P.S. Garhwa, District-Garhwa
... Petitioners

-Versus-

1. The State of Jharkhand through its Chief Secretary, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
2. The Principal Secretary, Personnel and Administrative Department, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
3. Jharkhand Public Service Commission through its Chairman, P.O. G.P.O., P.S. Kotwali, District- Ranchi
4. The Secretary, Jharkhand Public Service Commission, through its Chairman, P.O. G.P.O., P.S. Kotwali, District- Ranchi
5. The Controller of Examination, Jharkhand Public Service Commission, P.O. G.P.O., P.S. Kotwali, District- Ranchi **... Respondents**

With

W.P.(S) No. 1486 of 2020

Ved Prakash Yadav, aged about 40 years, son of Ram Charitra Gope, resident of Brij Beena Apartment, Flat No. 3-D, Near ICE CREAM Factory, Itki Road, Piska More, P.O. Hehal, P.S. Sukhdeonagar, District-Ranchi **... Petitioner**

-Versus-

1. State of Jharkhand through the Chief Secretary, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
2. Secretary, Department of Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
3. Jharkhand Public Service Commission through its Secretary, Circular Road, P.O. G.P.O., P.S. Kotwali, District- Ranchi
4. The Examination Controller, Jharkhand Public Service Commission, P.O. G.P.O., P.S. Kotwali, District- Ranchi **... Respondents**

With

W.P.(S) No. 1487 of 2020

Nishu Kumari, aged about 27 years, daughter of Mahabir Singh, Resident of village Itta Childri, P.O. and P.S. Bero, District-Ranchi
... Petitioner

-Versus-

1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, P.O. Dhurwa, P.S. Jagarnathpur, District- Ranchi
2. The State of Jharkhand through the Secretary, Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
3. Jharkhand Public Service Commission through its Secretary, Circular Road, P.O. G.P.O., P.S. Kotwali, District- Ranchi
4. The Controller of Examination, Jharkhand Public Service Commission, Circular Road, P.O. G.P.O., P.S. Kotwali, District- Ranchi
5. Supriya Ekka, D/o Not known, aged about 29 years, bearing roll no. 68071366, currently holding post in Jharkhand Administrative Service, Batch 2610 of 6th Combined Civil Services Examination through Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi **... Respondents**

With

W.P.(S) No. 1501 of 2020

Pankaj Kumar, aged about 38 years, S/o Sudhir Kumar, resident of Qr. No. 217, Sector 3/D, P.O. Sector 3, P.S. Bokaro Steel City, District-

Bokaro **... Petitioner**

-Versus-

1. The State of Jharkhand through the Secretary, Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
2. Jharkhand Public Service Commission through its Secretary, Circular Road, Deputy Para, P.O. & P.S. Lalpur, District- Ranchi
3. The Examination Controller, Jharkhand Public Service Commission, Circular Road, Deputy Para, P.O. & P.S. Lalpur, District- Ranchi

... Respondents

With

W.P.(S) No. 1533 of 2020

1. Dilip Kumar Singh, aged about 41 years, Son of - Sri Raj Kumar Singh, R/o- 37, Nehru Bihar, Rajhara, Dhangaon, P.O., P.S. & District- Palamau
2. Seema Kumari Singh, aged about 34 years, D/o - Sri Ashok Kumar Singh, R/o- 188 B, Vikash Nagar, Dipugarha, P.O. Hazaribag, P.S.- Sadar, District- Hazaribag
3. Anand Kumar Sinha, aged about 44 years, S/o Sri Mithilesh Kumar Sinha, resident of village Chhawani P.O. & P.S. Ichak, District- Hazaribagh **... Petitioners**

-Versus-

1. The State of Jharkhand through the Chief Secretary, P.O. & P.S.- Dhurwa, District – Ranchi
2. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand, P. 0. & P.S.- Dhurwa, District – Ranchi
3. The Jharkhand Public Jharkhand Public Service Commission, through its Chairman, Circular Road, Deputy Para, P.O. & P.S.- Kotwali, District- Ranchi
4. The Secretary, Jharkhand Public Service Commission, through its Chairman, Circular Road, Deputy Para, P.O. & P.S.- Kotwali, District- Ranchi
5. The Controller of Examination, Jharkhand Public Service Commission, Circular Road, Deputy Para, P.O. & P.S Kotwali, District- Ranchi
6. Rahul Oraon
7. Niranjan Kumar Mishra
8. Abhishek Kumar
9. Ajay Kumar Das
10. Supriya Ekka
11. Suman Gupta
12. Ashok Kumar Bharti
13. Parth Nandan
14. Shakti Kunj
15. Jaipal Mahto
16. Saransh Jain
17. Abhishek Pandey
18. Deepak Prasad
19. Amrita Arshi
20. Dharmendra Kumar Dubey
21. Sushma Anand
22. Amit Kumar Jha
23. Anjali Mehta
24. Sudipt Raj
25. Pranjal

26. Ravindra Nath Thakur
27. Amardeep Singh Balhotra
28. Pranav Rituraj
29. Smriti Kumari
30. Pooja Kumar
31. Khagesh Kumar
32. Sumit Prakash
33. Santosh Pandey
34. Priyanka Priyadarshi
35. Anil Kumar
36. Bijay Kumar Mahato
37. Paritosh Priyadarshi
38. Aditi Gupta
39. Satyabala Sinha
40. Chandra Shekhar Kunal
41. Gautam Kumar
42. Ekta Verma
43. Anshu Kumar Pandey
44. Nupur Kumari
45. Shreyansh
46. Phanishwar Rajwar
47. Dhiraj Kumar
48. Anu Priya
49. Vikash Kumar
50. Ramesh Kumar Yadav
51. Santosh Kumar
52. Nishat Anjum
53. Nikita Bala
54. Kumar Kanishka
55. Komal Kumari
56. Pawan Kumar
57. Nitesh Bhaskar
58. Anvesha Ona
59. Pradeep Kumar
60. Ashutosh
61. Kundan Kumar Sahay
62. Hiranath Mahto
63. Vinay Kumar Pandey
64. Sana Usmani
65. Sudha Verma
66. Ranbir Kumar
67. Mahadeo Kumar Mahto
68. Amit Kumar
69. Santanu Kumar Singh
70. Rajeev Kumar
71. Vishal Kumar Pandey
72. Kapil Deo Thakur
73. Kumar Harsh
74. Nisha Kumari
75. Haldhar Kumar Sethi
76. Shiopujan Tiwary
77. Prashant Kumar
78. Vikram Anand
79. Smita Nagesia

80. Reshma Rekha Minj
81. Ishwar Dayal Kumar Mahto
82. Keshav Bharti
83. Abhay Kumar Dwivedi
84. Manoj Kumar Mishra
85. Abhinit Kumar Suraj
86. Savita
87. Kishori Yadav
88. Nageshwar Saw
89. Raj Kunwar Singh
90. Vikash Anand
91. Nilam Kumari
92. Sanjit Kumar Singh
93. Pawan Kumar
94. Manish Kumar
95. Avinash Kujur
96. Kumari Sheela Oraon
97. Girendra Tuti
98. Deepak Minj
99. Sushma Soren
100. Sangram Murmu
101. Chanchla Kumari
102. Supriya Bhagat
103. Prashant Dang
104. Reena Kujur
105. Vikash Soren
106. Arun Kumar Singh
107. Manoj Kumar Marandi
108. Lalit Kumar Bhagat
109. Nitesh Roshan Xalxo
110. Amit Kiskoo
111. Om Prakash Baraik
112. Seema Aind
113. Christina Richa Indwar
114. Deepa Xalxo
115. Ajay Kachhap
116. Sudeep Ekka
117. Kanti Rashmi
118. Rashmi Khushboo Minz
119. Pankaj Kumar Bhagat
120. Salkhu Hembram
121. Nawin Bhushan Kullu
122. Nilesh Kumar Murmu
123. Nikhil Gaurav Kaman Kachhap
124. Monica Baskey
125. Deepali Bhagat
126. Prashant Kumar Hembram
127. Ram Narayan Khalkho
128. Nityanand Das
129. Sunny Kumar Das
130. Ghanshyam Kumar Ram
131. Anil Ravidas
132. Pramod Anand
133. Vijay Kumar Das

134. Pramod Kumar
135. Prem Kumar Das
136. Lalit Ram
137. Taleshwar Ravidas
138. Akansha Kumari
139. Satyendra Narayan Paswan
140. Vivek Kumar
141. Nidhi Rajwar
142. Sewa Ram Sahu
143. Santosh Kumar Mahto
144. Jitendra Kumar Gupta
145. Avinash Ranjan
146. Md. Amir Hamza
147. Jyoti Kumari
148. Shambhu Lal Prasad
149. Ved Prakash Yadav
150. Manisha Tirkey
151. Sujeet Kumar Singh
152. Niyar Enem Horo
153. Somnath Purty
154. Kumar Deep Ekka
155. Manish Kumar Mehra
156. Vijay Kumar Nag
157. Md. Sarwar Alam
158. Praveen Ranjan
159. Nitesh Kumar
160. Prince Kumar
161. Abhay Kumar Shill
162. Kumara Nilam
163. Nishu Kumari
164. Vinay Kumar
165. Mithlesh Kerketta
166. Noor Alam Khan
167. Santosh Gupta
168. Suman Roy
169. Md. Wasim Ahmed
170. Binod Kumar
171. Atul Kumar Chaubey
172. Aparupa Paul Choudhary
173. Nayan Kumar
174. Das Sunanda Chandramoleshwar
175. Akash Kumar
176. Dinesh Kumar Mishra
177. Tony Premraj Toppo
178. Charles Hembrom
179. Anita Purty
180. Ashish Kumar Hembrom
181. Ajay Topno
182. Mithila Tudu
183. Sunil Shekhar Kujur
184. Kavita Khalkho
185. Abhishek Baraik
186. Randhir Kujur
187. Jagarnath Lohra

188. Manoj Kumar
189. Sanjeet Kumar
190. Deepak Ram
191. Mukul Raj
192. Rajesh Kumar Paswan
193. Bhutnath Rajwar
194. Shashanka Jamuar
195. Sangeet Ghosh
196. Nidhi Kumari
197. Chandan Kumar
198. Hari Narayan Bhagat
199. Atul Kumar
200. Mitali Mete
201. Navneet Kumar
202. Md. Shafique
203. Sanjeev Kumar Sinha
204. Rupam Mahato
205. Ankit Rampal
206. Sarjam Deogam
207. Rajath Subhra
208. Raushan Ram
209. Dileep Kumar Kaushal
210. Priyatam Kumar
211. Shubhra Nishant
212. Md. Afroz Alam
213. Umesh Ravi Das
214. Raghvendra Kumar Bipul
215. Ziaul Haque
216. Shalini Srivastwa
217. Sanjay Kumar
218. Rajeev Kumar Singh
219. Ranjan Kumar
220. Nitish Kumar
221. Sanjay Kumar Mahto
222. Rashmi Kumari
223. Kundan Kumar
224. Kumar Tusharendra
225. Kishore Kumar Gope
226. Pankaj Kumar Verma
227. Gautam Kumar
228. Awanindra Kumar Diwakar
229. Md. Imran
230. Ajay Kumar Tiwary
231. Rahul Kumar
232. Sudhir Kumar Upadhyay
233. Pankaj Kumar Gope
234. Anil Pandey
235. Arun Mahto
236. Romesh Kumar
237. Indu Anand
238. Kirti Vardhan
239. Sanjay Kumar
240. Satyam Kumar
241. Raj Krishna

242. Ankesh Alankar
243. Kasturi Tigga
244. Gautam Pathak
245. Vijay Mishra
246. Kiran Kumari
247. Shital Kumari
248. Prity Kerketta
249. Manish Minj
250. Binay Kumar Ekka
251. Jyoti Samad
252. Kriti Kujur
253. Ranjita Tirkey
254. Ashok Kumar Hansda
255. Reshma Tirkey
256. Premchand Oraon
257. Seema Kujur
258. Bishun Dayal Ekka
259. Shashi Bhushan Patpingua
260. Prativa Kujur
261. Jagdeep Bhagat
262. Poonam Tamsoy
263. Manish Madhukar Oraon
264. Sanjay Ekka
265. Mahadeo Murmu
266. Manoj Tudu
267. Rahul Kujur
268. Amit Prakash Singh
269. Birsing Hord
270. Reema Rejina Lakra
271. Sagar Bhagat
272. Sakshi Kachhap
273. Dominic Lakra
274. Dharmendra Kumar Bhagat
275. Seema Rani Ekka
276. Jirodh Ram
277. Ranjit Kumar
278. Akash Kumar
279. Amit Ravidas
280. Santosh Kumar
281. Vijay Kumar Ambedkar
282. Birendra Kumar Das
283. Surjeet Kumar
284. Mritunjay Kumar
285. Punita Kumari
286. Pradip Kumar Mehra
287. Anshuman Kumar
288. Dhananjay Prakash
289. Jitendra Kumar Mahto
290. Bindu Kumari Mehta
291. Sitaram Prasad
292. Md. Ameen Ansari
293. Naveen Prasad
294. Firoj Alam
295. Nischal Kumar

296. Mahendra Kumar Mahto
297. Naresh Chandra
298. Nitish Kumar Nishant
299. Shankar Prasad
300. Sukermani Linda
301. Saket Kumar Pandey
302. Asim Kumar
303. Anjana Bharti
304. Abhay Kumar
305. Chandan
306. Jayant Gautam
307. Ajay Kumar
308. Ankita Rai
309. Pradeep Kumar
310. Rohit Ranjan Singh
311. Rohit Kumar Rajwar
312. Dhananjay Kumar Ram
313. Suresh Prasad Yadav
314. Faizan Sarwar
315. Santosh Kumar Bhagat
316. Pankaj Kumar Tiwari
317. Prakash Kumar
318. Kumar Avinash
319. Sanjeev Kumar Singh
320. Soni Kumari
321. Shishir Kumar Pandit
322. Raj Kumar Sharma
323. Francis Kujur
324. Sameer Kullu
325. Shishir Tigga
326. Barun Kumar
327. Anup Kujur
328. Mukesh Kumar
329. Khoplal Ram
330. Raman Kumar
331. Anup Kumar **... Respondents**

With

W.P.(S) No. 1583 of 2020

Pradeep Ram, aged about 33 years, S/o Mahabir Ram, resident of Ramanand Dabra, P.O. and P.S. Lesliganj, District- Palamau

... Petitioner

-Versus-

1. The State of Jharkhand through the Chief Secretary, P.O. & P.S. Dhurwa, District- Ranchi
2. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, P.O. & P.S. Dhurwa, District- Ranchi
3. The Jharkhand Public Service Commission through its Chairman, Circular Road, Deputy Para, P.O. & P.S. Kotwali, District- Ranchi
4. The Secretary, Jharkhand Public Service Commission, through its Chairman, Circular Road, Deputy Para, P.O. & P.S. Kotwali, District- Ranchi
5. The Controller of Examination, Jharkhand Public Service Commission, Circular Road, Deputy Para, P.O. & P.S. Kotwali, District- Ranchi
6. Firoz Alam, son of Afzal Ansari, resident of Kokdoro, P.O. Kanke, P.S.

Pithoria, District-Ranchi
7. Rahul Oraon, aged about 32 years, son of Sri Budhadeo Oraon, resident of Kartik Nagar, Soso More, P.O. and P.S. Gumla, District- Gumla
8. Niranjan Kumar Mishra, Roll No.68026317 (Unreserved category), S/o not known to the petitioner, R/o not known to the petitioner
9. Abhishek Kumar, Roll No.6816155 (EBC Category), S/o not known to the petitioner, R/o not known to the petitioner
10. Ajay Kumar Das, Roll No.68018880 (SC category), S/o not known to the petitioner, R/o not known to the petitioner
11. Supriya Ekka, Roll No.680271366, D/o not known to the petitioner, R/o not known to the petitioner **... Respondents**

With

W.P.(S) No. 1613 of 2020

1. Ruby Sinha, aged about 42 years, Daughter of Hari Om Prasad, wife of Vikash Kumar Sinha, resident of Near Hanuman Mandir, Shastri Nagar, Giridih, P.O. and P.S. Giridih, District-Giridih
2. Prince Kumar, aged about 28 years, Son of Uday Shankar Prasad, resident of Shastri Nagar, Near Durga Mandir, Giridih, P.O. and P.S. Giridih, District-Giridih **... Petitioners**

-Versus-

1. The State of Jharkhand through its Chief Secretary, P.O. Dhurwa, P.S. Jagarnathpur, District- Ranchi
2. The Principal Secretary, Personnel and Administrative Reforms Department, P.O. Dhurwa, P.S. Jagarnathpur, District- Ranchi
3. Jharkhand Public Service Commission through its Chairman, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
4. The Secretary, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
5. The Examination Controller, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. Lalpur, District- Ranchi **... Respondents**

With

W.P.(S) No. 1718 of 2020

1. Sumit Kumar Mahato, aged about 34 years, S/o Iswar Chandra Mahato, resident of NPVR & Co. Flat No. 401 4th Floor, KC Apartment 137 Aam Bagan Sakchi, P.O. and P.S. Sakchi, Town Jamshedpur, District-East Singhbhum
2. Premjit Kumar Sahu, aged about 38 years, S/o Gyani Sahu, resident of village and P.O. Babhanbay P.S. Muffasil, District- Hazaribagh.

... Petitioners

-Versus-

1. State of Jharkhand through the Chief Secretary, Government of Jharkhand, P.O. Dhurwa, P.S. Jagarnathpur, District- Ranchi
2. The Principal Secretary, Personnel Administrative Reforms and Rajbhasha Department, P.O. Dhurwa, P.S. Jagarnathpur, District- Ranchi
3. Jharkhand Public Service Commission through its Secretary, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
4. The Controller of Examination, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
5. Pankaj Kumar Verma, son of Shri Kali Charan, Roll no. 68097394, office at Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, District- Ranchi
6. Rajat Shubhra, Son of Misir Kumar Mahatha, Roll no. 68015246 Office

at Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi
7. Pankaj Kumar Tiwari, Roll no. 68023410, office at Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi
8. Prakash Kumar, Roll no.68030450, office at Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi **... Respondents**

With
W.P.(S) No. 1827 of 2020

1. Ravikant Prasad, aged about 40 years, S/o Shri Babulal Prasad, R/o Gaipahari, P.O. Kalhabad & P.S. Barkatha, District Hazaribagh
2. Pankaj Kumar Mahato, aged about 41 years, S/o Bhabesh Chandra Mahato, resident of village Narodih, P.O. Ambona, P.S. Govindpur, District- Dhanbad
3. Somnath Kumar, aged about 37 years, S/o Sukar Saw, resident of village Jabra, P.O. Korrah P.S. Muffasil, District Hazaribagh
4. Gautam Prasad Mehta, aged about 30 years, S/o Vijay Prasad Mehta, resident of village Alaunja Khurd P.O. Ichak P.S. Ichak, District-Hazaribagh
5. Nitesh Kumar, aged about 39 years, S/o Tulsi Narayan Ram, resident of village Chandranagar, P.O. Kubri, P.S. Dhanwar, District- Giridih
6. Prakash Kumar, aged about 44 years, S/o Mani Lal Choudhary, resident of 356 A Indraprasth Chowk Kumhar Toli Near Mahabir Mandir, P.O. Hazaribagh, P.S. Sadar Hazaribagh, District- Hazaribagh
7. Pawan Kumar Bhaskar, aged about 40 years, S/o Piyari Pandit, resident of 26 village Leda, P.O. & P.S. Leda, District Giridih **... Petitioners**

-Versus-

1. The State of Jharkhand through the Chief Secretary, P.O. & P.S. Dhurwa, District- Ranchi
2. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
3. The Jharkhand Public Service Commission through its Chairman, Circular Road, Deputy Para, P.O. & P.S. Kotwali, District- Ranchi
4. The Secretary, Jharkhand Public Service , Circular Road, Deputy Para, P.O. & P.S. Kotwali, District- Ranchi
5. The Controller of Examination, Jharkhand Public Service Commission, Circular Road, Deputy Para, P.O. & P.S. Kotwali, District- Ranchi
6. Niranjan Kumar Mishra, Roll No.68026317 (UR)
7. Abhishek Kumar, Roll No.6816155 (EBC)
8. Ajay Kumar Das, Roll No.68018880 (SC),
9. Supriya Ekka, Roll No.680271366, (ST)

Resp. Nos. 6 to 9, R/o & S/o not known to the petitioners, through the Chairman/Secretary/Controller of Examination, JPSC, Circular Road, Deputy Para, P.O. & P.S. Kotwali, District- Ranchi **... Respondents**

With
W.P.(S) No. 1984 of 2020

Gautam Kumar, aged about 32 years, Son of Balkishun Prasad, resident of Village & P.O. Bariyatu, P.S. Balumath, District-Latehar

... Petitioner

-Versus-

1. State of Jharkhand through the Chief Secretary, Government of Jharkhand, P.O. Dhurwa, P.S. Jagarnathpur, District- Ranchi

2. The Secretary, Personnel Administrative Reforms and Rajbhasa Department, Government of Jharkhand, P.O. Dhurwa, P.S. Jagarnathpur, District- Ranchi
3. Jharkhand Public Service Commission through Secretary, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
4. The Controller of Examination, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. Lalpur, District- Ranchi
5. Santosh Kumar Mahato, S/o not known to the petitioner, Roll no. 6803875, currently holding the post in Jharkhand Administrative Service

... Respondents

PRESENT

HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners: Mr. Ajit Kumar, Sr. Advocate
(In WPS-1501, 1533, 1583 & 1827 of 2020)
Mr. Vikash Kumar, Advocate
Mr. R.S. Mazumdar, Sr. Advocate (In WPS-1613/2020)
Mr. Manoj Tandon, Advocate (In WPS-1408/2020)
Mr. Shubhashis Rasik Soren, Advocate (In WPS-494/20 & 1468/20)
Mr. Vinit Boris Ekka, Advocate
Mr. Rahul Kumar, Advocate (In WPS-1449/20 & 1451/20)
Ms. Apoorva Singh, Advocate
Mr. Amritansh Vats, Advocate
(In WPS-1486, 1487, 1718 & 1984 of 2020)
Mr. Sanjay Kumar Tiwari, Advocate (In WPS-1428/2020)

For the State : Mr. Rajiv Ranjan, Advocate General
Mr. Mukesh Kumar Sinha, Sr. S.C.-I
Mr. Mohan Kumar Dubey, A.C. to A.G.

For the JPSC : Mr. Sanjay Piprawall, Advocate

For Pvt. Resp. : Mr. Sumeet Gadodia, Advocate
(In WPS-494, 1449, 1451, 1487, 1533, 1583, & 1827 of 2020)
Mrs. Shilpi Shandil, Advocate
Mr. Ritesh Kumar Gupta, Advocate
Mr. Indrajit Sinha, Advocate (In WPS-1533/20 & 1718/20)
Mr. Bibhash Sinha, Advocate
Mr. Hemant Kr. Shikarwar, Advocate (In WPS-1449/20 & 1827/20)
Mr. Vijay Kumar Roy, Advocate (In WPS-1533/2020)
Mr. Sushil Kumar Sharma, Advocate (In WPS-1449/20 & 1984/20)
Mr. Anil Kumar Sinha, Advocate (In WPS-1827/20)
Mr. Mukesh Kumar Mehta, Advocate (In WPS-1533/2020)
Mr. Anuj Kumar Trivedi, Advocate
Mr. Jorong Jedan Sanga, Advocate (In WPS-1533/2020)

C.A.V. on 11.02.2021 **Pronounced on 07.06.2021**

1. Heard Mr. Ajit Kumar, Mr. R.S. Mazumdar, learned Senior counsels for the petitioners, Mr. Manoj Tandon, Mr. Shubhasis Rasik Soren, Mr. Vikash Kumar, Mr. Vinit Boris Ekka, Mr. Sanjay Kumar Tiwari, Mr. Rahul Kumar, Ms. Apoorva

Singh and Mr. Amritansh Vats, learned counsel appearing for the petitioners, Mr. Rajiv Ranjan, learned Advocate General assisted by Mr. Mohan Kumar Dubey and Mr. Mukesh Kumar Sinha, learned counsels for the respondent-State, Mr. Sanjay Piprawall, learned counsel for the respondent-Jharkhand Public Service Commission and Mr. Sumeet Gadodia, Mrs. Shilpi Shandil, Mr. Ritesh Kumar Gupta, Mr. Indrajit Sinha, Mr. Bibhash Sinha, Mr. Hemant Kumar Shikarwar, Mr. Vijay Kumar Roy, Mr. Sushil Kumar Sharma, Mr. Anil Kumar Sinha, Mr. Mukesh Kumar Mehta, Mr. Anuj Kumar Trivedi and Mr. Jorong Jedan Sanga, learned counsel for the private respondents.

2. These writ petition have been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent these matters have been heard on merit.

3. In all these writ petitions, the disputes arising out of 6th Combined Civil service Examination, 2016 floated by the Jharkhand Public Service Commission (hereinafter referred to as the JPSC) are the subject matter and with the consent of the parties, all these writ petitions have been heard together as common question of facts and laws are involved in these writ petitions.

4. In these writ petitions, four points have been raised and that is why the Court decided to bifurcate these writ petitions in four groups. In the first group, W.P.(S) No. 494 of 2020 comes in which the petitioners have challenged resolution no. 5562 dated 19.04.2017. In the second group, W.P.(S) No.1408 of 2020 and W.P.(S) No. 1501 of 2020 are coming in which the prayer is made for consideration on the ground that the petitioners belonging to unreserved category, who have secured more than 600 marks but they have not been selected. The further prayer is made in these two writ petitions that qualifying

Paper-I marks have been added while preparing the merit list. In the third group, W.P.(S) No.1487 of 2020, W.P.(S) No.1984 of 2020, W.P.(S) No.1486 of 2020, W.P.(S) No.1451 of 2020, W.P.(S) No.1449 of 2020 and W.P.(S) No.1428 of 2020 are coming in which the prayer is made to consider the candidature in their respective reserved category i.e. Scheduled Caste, Scheduled Tribe, Backward Class-I and Backward Class-II respectively and to allocate Jharkhand Administrative Service to the petitioners. In the 4th group, W.P.(S) No.1533 of 2020, W.P.(S) No.1583 of 2020, W.P.(S) No.1468 of 2020, W.P.(S) No. 1827 of 2020, W.P.(S) No.1718 of 2020 and W.P.(S) No.1613 of 2020 are coming in which the prayer is made for quashing the result dated 21.04.2020 of 6th Combined Civil Service Examination, 2016 published by the JPSC and also the recommendation made by the JPSC to the State Government on the point of addition of minimum qualifying marks taken together in each paper, which is illegal. The prayer is also made for declaration that addition of two qualifying papers i.e. Paper-I and Paper-II in preparing merit list is illegal and the marks of the qualifying paper cannot be added in total marks.

5. The Court decided to bifurcate these writ petitions in the above manner. Accordingly, firstly group-I i.e. W.P.(S) No.494 of 2020 is being taken up for consideration in light of the arguments advanced by the learned counsel appearing for the parties.

W.P. (S) No. 494 of 2020

6. The facts of W.P.(S) No.494 of 2020 are quoted herein below:

> The prayer in this writ is made for quashing the resolution no.5562 dated 19.04.2017. The prayer is also made to cancel the Mains examination held from 28.01.2019 to 01.02.2019. The prayer is also made for direction to conduct a fresh Mains examination of 6th Combined Civil Service Examination. On 17.05.2015, the JPSC published

a notification for 6th Combined Civil Service Examination, 2016 vide Advertisement no.01/2015. The said advertisement was later on cancelled as requisition sent by the Personnel, Administrative Reforms and Rajbhasha Department was taken back. Again advertisement for the 6th Combined Civil Service Examination was published on 06.10.2016 for 326 vacancies. Pursuant to that advertisement, the petitioners have applied and appeared in the examination conducted by the JPSC. The JPSC published result of Preliminary examination on 23.02.2017 in which 5138 candidates were shortlisted. After the said publication, the JPSC released a press report on 02.03.2017 in which it was clarified that the candidates totalling to 15 times the vacant posts and those who have obtained similar marks, have been shortlisted for the Mains examination. It was further clarified that there was no benefit of reservation applicable in the Preliminary examination and no category wise cut-off marks have been notified. In the result, the petitioners have been declared successful. The last candidate, who got selected in the Preliminary examination, has obtained 206 marks out of 400 marks. The result of 15 times of the advertised posts have been declared successful in the Preliminary test. By resolution dated 13.04.2017, the ratio of 15 times of the vacancy for shortlisting the candidates for Mains examination was decided. The said result was challenged in W.P.(S) No. 1864 of 2017 (Deb Kumar v. State of Jharkhand & Others). The State of Jharkhand, during the pendency of the said writ petition, came out with resolution no.5562 dated 19.04.2017, whereby, it was decided that all such candidates belonging to the reserved categories, who obtained marks equal or more than that of last placed candidate in the list of 15 times of the shortlisted unreserved candidates shall be considered

successful for the Mains examination and the earlier resolution dated 13.04.2016 disclosing the ratio of 15 times of the notified vacancy shall be deemed to be relaxed to the aforesaid extent. The amended resolution was published on 11.08.2017, wherein, 6103 candidates were declared to be shortlisted for the Mains examination. The Mains examination was cancelled twice and vide memo no.1153 dated 12.02.2018, respondent no.2 i.e. the Principal Secretary, Personnel and Administrative Reforms Department, Government of Jharkhand, Ranchi has issued the said resolution, whereby, it was decided that in the 6th Combined Civil Service Examination, the candidates who have secured minimum qualifying marks in their respective categories shall be considered as selected for the Mains examination. The circular dated 12.02.2018 was challenged before this Court in W.P.(S) No. 1452 of 2018 (Pankaj Kumar Pandey v. State of Jharkhand & Others), which was dismissed vide order dated 18.05.2018. After passing of the said order in that writ petition, the JPSC again published second revised result of Preliminary test on 06.08.2018 and the JPSC has announced the date for Mains examination of 6th Combined Civil Service Examination. The petitioners were declared successful in the result dated 11.08.2017. The order dated 18.05.2018 passed in W.P.(S) No. 1452 of 2018 was challenged by the petitioners of that case before the Division Bench of this Court in L.P.A. No.399 of 2018. During the pendency of the said L.P.A., the JPSC announced the date for Mains examination of 6th Combined Civil Service Examination from 28.01.2019 to 01.02.2019 which was brought to the notice of the Division Bench in the said L.P.A. The Mains examination was not stayed by the Division Bench. The said L.P.A. was allowed vide order dated 21.10.2019 observing since the

written examinations have already been held by the JPSC, the respondent-JPSC was directed to publish the results of the Mains examination, confined to the candidates, declared successful in the first revised result published on 11.08.2017. The order passed by the Division Bench was challenged before the Hon'ble Supreme Court in S.L.P.(C) No. 726 of 2020. The said S.L.P. was dismissed by the Hon'ble Supreme Court vide order dated 10.01.2020.

7. In this background, Mr. Shubhasis Rasik Soren, learned counsel appearing for the petitioners submitted that first revised result was published, wherein, 6103 candidates were declared successful for Mains examination and thereafter the State came up with memo no. 1153 dated 12.02.2018, which was quashed by the Division Bench of this Court vide order dated 21.10.2019 passed in L.P.A. No.399 of 2018. By way of referring memo dated 12.02.2018, he submitted that the notification lost its effect since L.P.A. No.399 of 2018 was allowed, whereby, notification dated 12.02.2018 was quashed and S.L.P. was disposed of, therefore, it gives occasion to the petitioners to challenge the notification dated 19.04.2017 and, thereafter this writ petition has been filed by the petitioners on 10.02.2020. He further submitted that this writ petition has been filed before declaration of the Mains examination. He also submitted that vide order dated 19.02.2020, the Court directed the State and JPSC to file counter affidavit. He further submitted that in that view of the matter, this writ petition is maintainable. He referred paragraphs 26 to 28 and 32 to 34 of the order passed by the Division Bench of this Court in L.P.A. No.399 of 2018 and submitted that in view of the observations made in the aforesaid paragraphs, the impugned resolution dated 19.04.2017 is liable to be quashed. He also submitted that BC-I and BC-II category candidates were selected pursuant to impugned notification dated 19.04.2017, which was also discriminatory. He

further submitted that in light of Article 320(3) of the Constitution of India, the consultation of JPSC is a must, which is required to be adhered. He also submitted that the resolution crossed the mandate of 15 times of the vacancy, which clearly suggests that the rule of game has been changed. He further submitted that due to appearance of large number of candidates, anomalies have been occurred on the part of the JPSC. He also submitted that in light of Article 320(3) of the Constitution of India, the State was required to consult the JPSC, which was not done in the case in hand. He further submitted that in the Preliminary and Mains examination as well as in service allocation, various anomalies have been taken place. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Tanvi Sarwal v. Central Board of Secondary Education & Ors.***, reported in (***2015) 6 SCC 573***. Paragraph 23 of the said judgment is quoted herein below:

> ***"23.*** *We are aware that the abrogation of the examination would result in some inconvenience to all concerned and that some extra time would be consumed for holding a fresh examination with re-newed efforts therefor. This however, according to us, is the price, the stakeholders would have to suffer in order to maintain the impeccable and irrefutable sanctity and credibility of a process of examination, to assess the innate worth and capability of the participating candidates for being assigned inter se merit positions commensurate to their performance based on genuine and sincere endeavours. It is a collective challenge that all the role players would have to meet, by rising to the occasion and fulfil the task ahead at the earliest, so as to thwart and abort the deplorable design of a mindless few seeking to highjack the process for selfish gain along with the unscrupulous beneficiaries thereof. Though the Board has taken a plea that having regard to the enormity of the exercise to be undertaken, the same cannot be redone before four months, we would emphasise that this is an occasion where it (the Board) ought to gear up in full all its resources in the right spirit, in coordination with all other institutions that may be involved so as to act in tandem and hold the examination afresh at the earliest."*

By way of relying the said judgment, learned counsel for the petitioners submitted that the Hon'ble Supreme Court cancelled the entire examination in view of the anomaly in the examination process.

He further relied upon the judgment rendered by the Hon'ble Supreme

Court in the case of ***E.P. Royappa v.State of Tamil Nadu*** reported in ***1974 (4) SCC 3*** and submitted that in that case the Hon'ble Supreme Court held that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Articles 14 and 16 of the Constitution of India. He also argued that in light of the judgments on doctrine of legitimate expectation, the cases of the petitioners are fit to be allowed. He further submitted that the petitioner no.1 appeared till interview and he got selected very first result of Preliminary examination. The petitioner no.2 appeared till Mains examination and got selected in the very first result of Preliminary examination. The petitioner no.3 got selected under the notification impugned in the writ petition and to get back the sanctity of the JPSC, he came up in this writ petition and he did not appear in the Mains examination. The petitioner no.4 did not appear in the Mains examination despite he has been selected in the very first result of Preliminary examination. In light of the above facts, learned counsel appearing for the petitioners submitted that this Court may cancel the entire examination process to maintain the sanctity of the JPSC, which is a constitutional body.

8. Per contra, Mr. Sanjay Piprawall, learned counsel appearing for the JPSC vehemently opposed the arguments of Mr. Soren, learned counsel for the petitioners and submitted that the writ petition itself is not maintainable. The facts, he has narrated, have already been taken note of in the initial paragraphs of this judgment. He submitted that on 23.02.2017, the JPSC published the result of Preliminary examination and only those candidates were declared successful, who have secured minimum qualifying marks in respective categories i.e. 40% for unreserved category, 36.5% for BC-II category, 34.5% for EBC-I category and 32% for SC, ST and female candidates. The State

Government issued the notification dated 19.04.2017, whereby, 15 times formula was decided. The said notification was challenged in W.P.(S) No. 1864 of 2017 (Deb Kumar v. State of Jharkhand & Others), which was allowed by this Court vide order dated 25.07.2017. After passing of the said order by the Court, the JPSC published the amended result of Preliminary examination on 11.08.2017 by which 6103 candidates were declared successful. The State Government again issued circular dated 12.02.2018 by which it was decided that those candidates who have secured minimum qualifying marks as mentioned in the circular dated 27.11.2012, they will be deemed to be selected for the Mains examination. The said circular was challenged in W.P.(S) No. 1452 of 2018 (Pankaj Kumar Pandey & anr. v. State of Jharkhand & Others). The said writ petition was dismissed vide order dated 18.05.2018, thereafter, the JPSC again published the second revised result on 06.08.2018, wherein, the JPSC declared 34,634 candidates as successful for the Mains examination. The order passed in the said W.P.(S) No. 1452 of 2018 was challenged before the Division Bench in L.P.A. No. 399 of 2018 and during the pendency of the said L.P.A., the JPSC announced the date for Mains examination from 28.01.2019 to 01.02.2019, which was brought to the notice of the Division Bench but no stay was granted. The Mains examination in light of that took place. The petitioner nos. 1 and 2 also appeared in the Mains examination and vide order dated 21.10.2019, L.P.A. No. 399 of 2018 was allowed observing therein since the written examination have already been held by the JPSC, the respondent-JPSC was directed to publish the results of the Mains examination, confined to the candidates, declared successful in the first revised result published on 11.08.2017. The said order was challenged before the Hon'ble Supreme Court in S.L.P.(C) No.726 of 2020, which was dismissed on 10.01.2020. He further submitted that after the dismissal of the said S.L.P.,

this writ petition has been filed which is afterthought of the petitioners and the same is not maintainable. He also submitted that the circular dated 19.04.2017 has already been considered by this Court in W.P.(S) No. 1864 of 2017 and in terms of the order passed in the said L.P.A., the JPSC has published the result. He further submitted that second revised result was published pursuant to the order passed in W.P.(S) No. 1452 of 2018 vide order dated 18.05.2018. The said order was considered by the Division Bench of this Court in L.P.A. No.399 of 2018 and the same was allowed vide order dated 21.10.2019 directing the JPSC to publish the result of Mains examination confined to the candidates, declared successful in the first revised result published on 11.08.2017. The Hon'ble Supreme Court has dismissed the S.L.P.(C) No.726 of 2020. He also submitted that after the orders passed in the said S.L.P. and said L.P.A., there is no occasion to file this writ petition and, accordingly, the same is fit to be dismissed.

9. Mr. Mohan Kumar Dubey, learned A.C. to A.G. appearing for the respondent-State has accepted the arguments of Mr. Piprawall entirety.

10. Mr. Sumeet Gadodia, learned counsel appearing for respondent no.6 has submitted that the petitioners have filed I.A. Nos. 3245 of 2020 and 3246 of 2020 for interim relief and amendment respectively, which were not pressed. He further submitted that the petitioners have already abundantly claimed without the leave of the Court and in that view of the matter the entire relief cannot be allowed in favour of the petitioners. The principles enumerated under Order-II, Rule-2 of the Code of Civil Procedure would be applicable, which clearly lays down that if a person intentionally relinquishes any portion of his claim, the said person shall not afterwards be entitled to sue in respect of the portion of the claim so omitted or relinquished. He further submitted

that in that view of the matter, this writ petition is fit to be dismissed. To buttress his argument, he relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Kunjan Nair Sivaraman Nair v. Narayanan Nair & Ors.***, reported in ***(2004) 3 SCC 277***. Paragraphs 10 and 15 of the said judgment are quoted herein below:

> ***"10.*** *Order 2 Rule 2 sub-rule (3) requires that the cause of action in the earlier suit must be the same on which the subsequent suit is based. Therefore, there must be identical cause of action in both the suits, to attract the bar of Order 2 sub-rule (3). The illustrations given under the rule clearly brings out this position. Above is the ambit and scope of the provision as highlighted in Gurbux Singh case by the Constitution Bench and in Bengal Waterproof Ltd. The salutary principle behind Order 2 Rule 2 is that a defendant or defendants should not be vexed time and again for the same cause by splitting the claim and the reliefs for being indicted in successive litigations. It is, therefore, provided that the plaintiff must not abandon any part of the claim without the leave of the court and must claim the whole relief or entire bundle of reliefs available to him in respect of that very same cause of action. He will thereafter be precluded from so doing in any subsequent litigation that he may commence if he has not obtained the prior permission of the court.*
>
> ***15.*** *The doctrine of res judicata differs from the principle underlying Order 2 Rule 2 in that the former places emphasis on the plaintiff's duty to exhaust all available grounds in support of his claim, while the latter requires the plaintiff to claim all reliefs emanating from the same cause of action. Order 2 concerns framing of a suit and requires that the plaintiffs shall include whole of his claim in the framing of the suit. Sub-rule (1), inter alia, provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the very same cause of action. If he relinquishes any claim to bring the suit within the jurisdiction of any court, he will not be entitled to that relief in any subsequent suit. Further sub-rule (3) provides that the person entitled to more than one reliefs in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for such relief he shall not afterwards be permitted to sue for relief so omitted."*

11. In light of the above facts and the arguments of the learned counsel appearing for the parties, the only question requires to be answered in the facts of this writ petition as to whether in view of the order of the Division Bench in L.P.A. No. 399 of 2018, which has been considered by the Hon'ble Supreme Court, there is further scope of any interference by this Court in this writ petition or not. In W.P.(S) No. 1452 of 2018 (Pankaj Kumar Pandey &

another v. State of Jharkhand & Others), the prayer was made for quashing the circular being memo no. 1153 dated 12.02.2018, whereby, it was decided that the candidates, who have secured minimum qualifying marks in their respective categories shall be selected for Mains examination in the 6th Combined Civil Service Examination in pursuance to Advertisement no.23/2016. The learned Single Judge considering the judgment of the Hon'ble Supreme Court in the case of ***Dr. Krushna Chandra Sahu & Ors. v. State of Orissa & Ors***, reported in ***(1995) 6 SCC 1*** and the judgment in the case of ***Pitta Naveen Kumar & Ors. v. Raja Narasaiah Zangiti***, reported in ***(2006) 10 SCC 261*** and other judgments came to the conclusion that no case is made out by the petitioners for interference and dismissed the writ petition. The same was tested before the Division Bench in L.P.A. No.399 of 2018. The said order is on record as Annexure-8 at page 63 of this writ petition. The circular dated 12.02.2018 has been considered in detail by the Division Bench in paragraph 21 of the order of the L.P.A. In paragraphs 23 and 24 of the said order, the Division Bench has also considered the grounds for issuance of the said resolution. Article 320 of the Constitution of India has been considered by the Division Bench at paragraph 27 of the said judgment and in light of the judgment of the Hon'ble Supreme Court in the case of Pitta Naveen Kumar *(supra)* and the judgment rendered in the case of ***P. Mohanan Pillai v. State of Kerala & Ors.***, reported in ***(2007) 9 SCC 497***, the Division Bench came to the conclusion that so far as the earlier resolution of the State Government as contained in memo no.5562 dated 19.04.2017 is concerned, the same was approved by the High Court in Deb Kumar's case *(supra)* decided on 25.07.2017 which was followed by the JPSC by publishing the revised result on 11.08.2017 declaring 6103 candidates successful for appearing in the Mains examination and the resolution dated 12.02.2018 issued by the State

Government was quashed by the Division Bench and directed the JPSC to publish the result of the Mains examination, confined to the candidates, declared successful in the first revised results published on 11.08.2017 and the judgment of the learned Single Judge was set aside. The said judgment of the Division Bench was challenged in S.L.P.(C) No.726 of 2020 and the Hon'ble Supreme Court vide order dated 10.01.2020 has been pleased to dismiss the said S.L.P. In light of the judgment passed by the Division Bench, the JPSC published the result of the Mains examination, confined to the candidates, declared successful in the first revised results published on 11.08.2017, which was affirmed up to the Hon'ble Supreme Court. In view of the finality attained with regard to the said order and after dismissal of the S.L.P., this writ petition has been filed. Accordingly, no relief can be extended to the petitioners in this writ petition. The writ petition is misconceived which is fit to be dismissed with cost, but the Court is not imposing the cost, considering the petitioners are aspirants of the 6th Combined Civil Services Examination. The Court also finds force in the argument of Mr. Gadodia, learned counsel for respondent no.6 in light of the facts that the aforesaid I.As. have not been pressed and the petitioners have already abundantly claimed without the leave of the Court, which has been considered by the Hon'ble Supreme Court at paragraph 10 of the judgment passed in the case of ***Kunjan Nair Sivaraman Nair v. Narayanan Nair & Ors***. *(supra)*.

12. In light of these discussions, the point is answered in negative. No relief can be extended to the petitioners. Accordingly, the writ petition [W.P.(S) No. 494 of 2020] stands dismissed.

W.P.(S) No. 1408 of 2020 & W.P.(S) No. 1501 of 2020

13. Now the Court is taking up second group of the writ petitions in which the prayers have been made to consider the case of the petitioners for

appointment pursuant to the advertisement of the JPSC as the petitioners being unreserved category candidates have secured 601 marks, whereas, last selected candidate has secured only 600 marks in his category. W.P.(S) No.1408 of 2020 and W.P.(S) No. 1501 of 2020 are coming in this group.

14. In both the writ petitions, the prayer is made to appoint the petitioners being unreserved category candidates, who have secured 601 marks, whereas, last selected candidate has secured only 600 marks. The prayer is also made to declare that the JPSC has no power and jurisdiction to add marks of Paper-I in the merit list as the same was only qualifying in nature as per the advertisement itself. The petitioner of W.P.(S) No.1501 of 2020 did his Masters degree in M. Pharma from Birla Institute of Technology in first class with distinction. The petitioner of W.P.(S) No. 1408 of 2020 did his Bachelor of Engineering in Computer Science from the University at Pune. The JPSC issued an advertisement being Advertisement no.23/2016 for appointment on various posts as enumerated in Clause-1 of the advertisement. The petitioners being eligible candidates in all aspects submitted their applications on the post enumerated in Clause-1 of the advertisement. The petitioners were issued admit cards by the JPSC and the petitioners appeared in the examination and they were declared successful and thereafter they were allowed to appear in the Mains examination to be held from 28.01.2019 to 01.02.2019. The petitioners were also declared successful in the Mains examination and were asked to appear in the interview. The final result was published on 21.04.2020 in which the names of the petitioners were not reflected. The petitioner of W.P.(S) No.1501 of 2020 downloaded the marks statement from the website of the JPSC and he came to know that he has obtained 556 marks in the Mains examination and 45 marks in interview and in aggregate he got 601. The marks statement is annexed as Annexure-3 of W.P.(S) No. 1501 of 2020. The

petitioners belong to unreserved category. The cut-off marks for unreserved category is uploaded by the JPSC on its website as 600 marks, category wise. Aggrieved with this, the petitioners have approached this Court.

15. Mr. Ajit Kumar, learned Senior counsel appearing for the petitioner in W.P.(S) No.1501 of 2020 and Mr. Manoj Tandon, learned counsel appearing for the petitioner in W.P.(S) No.1408 of 2020 submitted that the petitioners have obtained 601 marks and in spite of that the petitioners have not been declared successful, whereas, the last selected candidate has obtained only 600 marks, which is arbitrary and the petitioners' cases are required to be considered by the JPSC. Mr. Ajit Kumar, learned Senior counsel appearing for the petitioner in W.P.(S) No.1501 of 2020 also submitted that the petitioner has secured 601 marks, whereas, last selected candidate has secured only 600 marks in his category. He further submitted that the petitioner has been awarded only 41 marks out of 150 marks in Paper-II of the Mains examination, which is absolutely unbelievable. Mr. Tandon drawn attention of the Court to Annexure-4 which is cut-off marks for final result i.e. 600 marks. By way of placing this document, he further drawn attention of the Court to Annexure-3 which is the marks obtained by the petitioner i.e. 601 marks. By way of referring these documents, he submitted that the petitioner is eligible in light of the cut-off marks fixed and in spite of that the petitioner has not got the appointment. He further referred to page 31 of the writ petition and submitted that in Paper-I only qualifying marks was required to be obtained and the same was not proposed to be added in final merit list. Mr. Tandon further submitted that the petitioner has been allowed to examine the answer sheet under Right to Information Act by the JPSC. By way of referring paragraph 6 of the rejoinder filed by the petitioner to the counter affidavit filed by respondent nos. 2 and 3, he submitted that the petitioner found that one of the answer of the

petitioner has not been considered. On these grounds, learned counsel appearing for both the petitioners submitted that these writ petitions are fit to be allowed.

16. Per contra, Mr. Sanjay Piprawall, learned counsel appearing for the JPSC submitted that the details of the fact of Preliminary examination, Mains examination and interview have already been submitted in the first group of writ petition itself. By way of referring Clause-3 of the advertisement, he submitted that there is condition precedent that only those candidates are eligible for consideration for appointment in Jharkhand Planning Service, who are having graduation in the subjects of Economics, Commerce, Statics, Maths, Geography, Agriculture Science or Bachelor in Civil Engineering. He further submitted that the marks secured by last successful candidate in unreserved category was 631 for Administrative Services, 679 for Police Service, 614 for Finance Services, 614 for Education Services, 613 for Co-operative Services, 613 for Social Security Services, 611 for Information Services and 600 for Planning Services. He also submitted that the petitioners got 601 marks and in light of the fixed cut-off marks, the petitioners were not entitled for consideration as cut-off marks for the Information Service was fixed as 611. The petitioners were only eligible to be considered for the Planning Services. He further submitted that the petitioners have no requisite qualification for appointment in Jharkhand Planning Services and that is why they were not eligible for appointment in the Planning Services. He also submitted that so far as adding of Paper-I marks is concerned, it has been mentioned in Clause 12(B) of Advertisement no.23/2016 that the Mains examination will be of 6 papers having total marks of 1050 marks and it has also been mentioned in Clause-12(B) of the advertisement that there are no optional subjects, all are common compulsory papers in the Mains examination and that is why the marks of

Paper-I has been added while preparing the result of Mains examination.

17. Learned counsel for the respondent-State also supported the contentions of Mr. Piprawall that there was condition precedent for appointment in the Planning Services and the petitioners were not having qualification in those subjects and that is why there were not selected in the Planning Services as the petitioners were only eligible to be considered for the Planning Services.

18. In light of the above submissions of the learned counsel appearing for the parties, the Court has perused the advertisement. On perusal of Clause-3, it is crystal clear that the Graduation in the subjects of Economics, Commerce, Statics, Maths, Geography, Agriculture Science or Bachelor in Civil Engineering was the condition precedent. Admittedly, the petitioners are not having Graduation degree in those subjects which have been prescribed in Clause-3 of the advertisement. In paragraph 37 of the counter affidavit filed by the respondent-JPSC, the marks secured by the last selected candidate in unreserved category has been disclosed, which tallied from the submission of Mr. Piprawall. It is also an admitted fact that 611 marks was fixed for the Information Services. The petitioners have obtained 601 marks and their turn came for consideration in the Planning Services, but they are not having the requisite qualification for selection in the Planning Services and that is why the candidates who have secured equal or more than 611 marks, they have been selected for the Information Services. The petitioners have not been able to make out any case of interference in this regard. Although the petitioners have also prayed for declaration that the marks of Paper-I was not required to be added in the merit list, but in light of the facts that the petitioners have not made out any case of interference and even assuming that the marks of Paper-I was not required to be added in the merit list, no relief can be extended

to the petitioners in these writ petitions. It is settled position of law that the Court of law cannot grant any relaxation in the condition stipulated in the advertisement, as has been held by the Hon'ble Supreme Court in the case of ***Bedanga Talukdar v. Saifudaullah Khan & Ors.***, reported in ***(2011) 12 Supreme Court Cases 85***. Paragraphs 29 and 32 of the said judgment are quoted herein below:

> ***"29.*** *We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.*
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> *xxx xxx xxx*
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> ***32.*** *In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list."*

19. Accordingly, the writ petitions [W.P.(S) No.1408 of 2020 and W.P.(S) No. 1501 of 2020] stand dismissed.

20. However, adding of marks of Paper-I shall be dealt with while deciding fourth group of the writ petitions.

W.P.(S) Nos. 1428/2020, 1449/2020, 1451/2020, 1486/2020, 1487/2020 & 1984/2020,

21. Now, the Court is taking up third group of cases, wherein, prayer is made for migration to higher service. In this category, W.P.(S) Nos. 1428/2020, 1449/2020, 1451/2020, 1486/2020, 1487/2020 & 1984/2020 are coming. The common question of facts and laws are involved in all these writ petitions. The facts of W.P.(S) No.1449 of 2020 are being taken up for consideration on the submission of the learned counsel appearing for the petitioners in all the writ petitions.

22. The petitioner in this writ petition has prayed to command upon the respondent authorities to consider his case who belongs to reserved category of EBC-I for the purpose of recommendation and allotment of service and allot him Jharkhand Administrative Service as has been allotted to several reserved category EBC-I candidates even having lesser marks and merit than that of the petitioner. The prayer is also made to revise the final result of 6th Combined Civil Service Examination, 2016.

23. The petitioner possesses the qualification of B.A. and M.B.A. (Finance) and he was preparing for Combined Civil Services Examination. The petitioner belongs to the category of EBC-I and he has been issued valid caste certificate by the Deputy Commissioner, Ramgarh. Pursuant to Advertisement no. 23/2016 issued by the JPSC, the petitioner being eligible candidate applied for Jharkhand Administrative Service, Jharkhand Finance Service and Jharkhand Education Service Class-II, Jharkhand Cooperative Service, Jharkhand Social Security Service, Jharkhand Information Service and Jharkhand Police Service. The examination was to be completed in three parts i.e. Preliminary examination, Mains examination and interview. The petitioner applied and claimed reservation under the reserved category of EBC-I. The admit card was issued to the petitioner showing the petitioner to be of EBC-I category. The

petitioner appeared in the Preliminary examination. Thereafter in the revised result of Preliminary examination, the petitioner was declared successful. The JPSC issued an application form for Mains examination to the petitioner. The petitioner declared in unreserved category based upon his merit and marks in the Mains examination. The petitioner filled up the form indicating the preference of service; the first preference of the petitioner was Jharkhand Police Service, the second preference was Jharkhand Administrative Service and the third preference was Jharkhand Finance Service. The petitioner received call letter for interview and he was directed to appear for document verification on 25.02.2020 and for interview on 26.02.2020. The original caste certificate was also called. The final result of the selected candidates was published and the petitioner's name has been mentioned in the final result of Jharkhand Finance Service under unreserved category. The petitioner downloaded the marks statement, from where, he came to know that he got 621 marks and he has been allocated the Jharkhand Finance Service. The petitioner was surprised that one Sewa Ram Sahu, who also belongs to EBC-I category secured 607 marks in total and his name has been recommended for the Jharkhand Administrative Service. The petitioner secured 621 marks and he has been allocated the Jharkhand Finance Service.

24. Mr. Rahul Kumar, learned counsel appearing for the petitioner submitted that as per Clause-8 of the advertisement, if a candidate of reserved category is selected on the same parameters as fixed for unreserved category, he will not be treated against the vacancy of reserved category candidate. If reserved category candidate is given any relaxation or benefits, he shall be adjusted as against the vacancy for reserved category only. He further submitted that Clause-8 only dealt with the manner in which the calculation of the reservation is to be countered and it never stipulated that a reserved category candidate

cannot be adjusted for the purpose of service allocation as against the vacancy of the reserved category. He also submitted that Clause-14 of the advertisement provided for the merit list which had to be prepared on the basis of the final marks in unified and consolidated form. According to him, service and reservation-wise merit has to be maintained. He further submitted that the petitioner filed I.A. No.4398 of 2020 for impleading the persons, who got the Administrative Service, as party respondents in spite of having lesser marks. The said I.A. was allowed and the persons, who are having lesser marks in the reserved category and got the Administrative Service, have been impleaded in the writ petition. He also submitted that the petitioner belongs to EBC-I category and he secured 621 marks and the last selected candidate in the unreserved category has secured 601 marks, less than the petitioner and in view of Clause-8 of the advertisement, the petitioner has been considered as unreserved category candidate and he has been allocated Jharkhand Finance Service. He further submitted that Clause-8 of the advertisement only provides for the manner in which the reservation is to be counted and is not restrictive in relation to adjustment of the preference of the meritorious reserved category candidates. He also submitted that the petitioner has only prayed for his adjustment and migration on the principle of last come first go. The petitioner has challenged the appointment of the last selected candidate. To buttress his argument, he relied upon the judgment rendered in the case of ***Anurag Patel v. Uttar Pradesh Public Service Commission***, reported in ***(2005) 9 SCC 742***. Paragraphs 5, 6, 7 and 8 of the said judgment are quoted herein below:

> ***"5.*** *In the matter of admission to the medical college, the same difficulty was experienced and this Court held in Ritesh R. Sah v. Dr. Y.L. Yamult in SCC para 17 of the judgment at pp. 261-62 as follows:*
>
> > *"In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit*

though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate."

The same question was considered by this Court in State of Bihar v. M. Neethi Chandra wherein it was held in para 13 as follows:

"However, to the extent the meritorious among them are denied the choice of college and subject which they could secure under the rule of reservation, the circular cannot be sustained. The circular, therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum-choice basis for allotment of college/institution and subject."

In the instant case, as noticed earlier, out of 8 petitioners in Writ Petition No. 22753 of 1993, two of them who had secured Ranks 13 and 14 in the merit list, were appointed as Sales Tax Officer II, whereas the persons who secured Ranks 38, 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected Backward Class candidates shall be prepared separately including those candidates selected in the general category and their appointments to the posts shall be made strictly in accordance with merit as per the select list and preference of a person higher in the select list will be seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later. We do not think any error or illegality in the direction issued by the Division Bench of the High Court.

***6**. Mr R.N. Trivedi, learned Senior Counsel appearing for the Commission submitted that in case any rearrangement is made, the same persons who had already been appointed are likely to lose their posts. Going by the counter-statement filed by the State in Writ Petition No. 22753 of 1993 it appears that altogether 358 candidates were appointed and 57 posts earmarked for Backward Classes were filled up by the candidates belonging to Backward Classes. Amongst the 358 candidates, those from Backward Classes who secured higher marks than the cut-off mark for the general category also must have got selection in the general*

category even though they belong to the Backward Classes. If these candidates who got selection in the general category are allowed to exercise preference and then are appointed accordingly the candidates who were appointed in the reserved categories would be pushed down in their posts and the vacancies thus left by the general category candidates belonging to Backward Classes could be filled up by the persons who are really appointed against the quota reserved for Backward Classes. There will not be any change in the total number of posts filled up either by the general category candidates or by the reserved category candidates.

7. *Learned Senior Counsel for the Commission further pointed out that all these officers have been working against the posts since the last 11 years and that many of these affected parties were not made parties to the writ petition and if any reallocation of posts is made at this distance of time it will cause injustice to the affected parties. It is also pointed out by the respondent's counsel that in the writ petition filed by one Amrendra Pratap Singh i.e. Writ Petition No. 32346 before the Allahabad High Court, an interim order was passed in favour of the petitioner therein and the Division Bench directed that the appointment would be subject to the result of the writ petition and this order continued for some period and all the candidates were informed that their appointments would be subject to the result of the writ petition. Although that writ petition under review was dismissed, the candidates who were appointed were aware of the proceedings pending before the High Court. By the impugned order the High Court only directed reallocation of the posts according to the merit prepared in the select list. The decision rendered in Writ Petition No. 46029 of 1993 dated 15-4-1998 was followed in the decision in Writ Petition No. 22753 of 1993.*

8. *In the circumstances, we do not find any merit in these appeals. The appeals are dismissed accordingly. However, the State is directed to carry out the exercise of reallocation within a period of three months. The affected officers shall be given reasonable opportunity of being heard and to the extent possible the State shall give accommodation to such officers."*

He further relied upon the judgment rendered in the case of ***Union of India & anr. v. Ramesh Ram & Ors.***, reported in ***(2010) 7 SCC 234***. Paragraphs 20, 42, 60, 71 and 72 of the said judgment are quoted herein below:

"20. *In the light of the submissions made by the learned counsel appearing for different appellants, the following questions arise for consideration:*

I. Whether the reserved category candidates who were selected on merit (i.e.MRCs) and placed in the list of general category candidates could be considered as reserved category candidates at the time of "service allocation"?

II. Whether Rules 16(2), (3), (4) and (5) of the CSE Rules are inconsistent with Rule 16(1) and violative of Articles 14, 16(4) and 335 of the Constitution of India if, whether the order of the Central Administrative Tribunal was valid to the

extent that it relied on Anurag Patel v. U.P. Public Service Commission (which in turn had referred to the judgment in Ritesh R. Sah v. Dr. Y.L. Yamul, which dealt with reservations for the purpose of admission to postgraduate medical courses); and whether the principles followed for reservations in admissions to educational institutions can be applied to examine the constitutionality of a policy that deals with reservation in civil services.

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42. *Therefore, we are of the firm opinion that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore be offered to general category candidates. This is the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats. Hence, we see no hurdle to the migration of MRC candidates to the reserved category.*

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60. *The need for incorporating such a provision is to arrest arbitrariness and to protect the interests of the meritorious reserved category candidates. If such rule is declared redundant and unconstitutional vis-a-vis Articles 14, 16 and 335 then the whole object of equality clause in the Constitution would be frustrated and MRC candidates selected as per the general qualifying standard would be disadvantaged since the candidate of his/her category who is below him/her in the merit list, may by availing the benefits of reservation attain a better service when allocation of services is made. Rule 16 in essence and spirit protects the pledge outlined in the Preamble of the Constitution which conceives of equality of status and opportunity.*

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71. *With regard to the specific characteristics of UPSC examinations we hold that reserved category candidates (belonging to OBC, SC or ST categories among others) who are selected on merit and placed in the list of general/unreserved category candidates can choose to migrate to the respective reserved categories at the time of allocation of services. Such migration is enabled by Rule 16(2) of the Civil Services Examination Rules, which is not inconsistent with Rule 16(1) of the same or even the content of Articles 14, 16(4) and 335 of the Constitution of India.*

72. *We sum up our answers:*

(i) MRC candidates who avail the benefit of Rule 16(2) and adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will be offered to general category candidates.

(ii) By operation of Rule 16(2), the reserved status of an MRC candidate is protected so that his/her better performance does not deny him of the chance to be allotted to a more preferred service.

(iii) The amended Rule 16(2) only seeks to recognise the inter se merit between two classes of candidates i.e. (a) meritorious reserved category candidates (b) relatively

> *lower ranked reserved category candidates, for the purpose of allocation to the various civil services with due regard for the preferences indicated by them.*
> *(iv) The reserved category candidates "belonging to OBC, SC/ST categories" who are selected on merit and placed in the list of general/unreserved category candidates can choose to migrate to the respective reserved category at the time of allocation of services. Such migration as envisaged by Rule 16(2) is not inconsistent with Rule 16(1) or Articles 14, 16(4) and 335 of the Constitution."*

He further submitted that in the identical case in the case of ***Alok Kumar Pandit v. State of Assam***, reported in ***(2012) 13 SCC 516***, the Hon'ble Supreme Court has interfered. He relied upon paragraphs 9, 17 and 24 of the said judgment, which are quoted herein below:

> ***"9.*** *We have considered the argument/submission of the learned counsel for the parties. In our view, the questions framed in the opening paragraph of this order are no longer res integra and must be answered in the affirmative in view of the judgments of this Court in State of Bihar v. M. Neethi Chandra, Anurag Patel v. U.P. Public Service Commission and Union of India v. Ramesh Ram.*
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> *xxx xxx xxx*
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> ***17.*** *In Anurag Patel v. U.P. Public Service Commission2 this Court was called upon to consider whether more meritorious candidates of reserved category who were adjusted against the posts earmarked for general category were not entitled to make a choice of the post earmarked for reserved category. The facts as noticed by this Court were that the third respondent i.e. Rajesh Kumar Chaurasia in CA No. 4794 of 1998, who secured 76th place in the select list, filed Civil Miscellaneous Writ Petition No. 46029 of 1993 before the High Court of Allahabad contending that he was appointed as a Sales Tax Officer, although the appellant in CA No. 4794 of 1998 i.e. Nanku Ram (Anurag Patel) who was also a Backward Class candidate, was appointed as a Deputy Collector, who according to the third respondent, had secured 97th rank in the select list, a rank lower than him. Similarly, 8 persons, all belonging to Backward Classes, who find their names in the select list filed Writ Petition No. 22753 of 1993 alleging that they were entitled to get postings in higher cadre of service as the persons who secured lower rank in the select list were given appointment to higher posts. The first petitioner in the writ petition i.e. Shri Rama Sanker Maurya and the second petitioner i.e. Shri Abdul Samad were at Serial Nos. 13 and 14 in the select list. According to these petitioners, persons lower in rank who got appointment in the reserved category were given postings on the ground that those posts were earmarked for being appointed in Class II services.*
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> ***24****. As a sequel to the above, the questions framed in this appeal are answered in the following terms:*
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> *24.1. A reserved category candidate who is adjudged more meritorious than the open category candidates is entitled to choose the particular service/cadre/post as per his choice/preference and he cannot be compelled to accept*

> *appointment to an inferior post leaving the more important service/cadre/post in the reserved category for less meritorious candidate of that category.*
> *24.2. On his appointment to the service/cadre/post of his choice/preference, the reserved category candidate cannot be treated as appointed against the open category post."*

He further relied upon the judgment rendered in the case of ***Asha v. B.D. Sharma University of Health Science***, reported in ***(2012) 7 SCC 389***. Paragraphs 20 and 21 of the said judgment are quoted herein below:

> *"**20**. It is not necessary for the appellant to plead and prove mala fides, misconduct or favouritism and nepotism on the part of the parties concerned. Failure to do the same could be an error, intentional or otherwise, but in either event, we see no reason why the appellant should be made to suffer despite being a candidate of higher merit.*
> ***21**. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be a travesty of the scheme formulated by this Court and duly notified by the States, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a casualty. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law."*

He further relied upon the judgment in the case of ***Dega Venkata Harsha Vardhan & Ors. v. Akula Venkata Harshavardhan & Ors.***, reported in ***(2019) 12 SCC 735***. Paragraphs 11 and 22 of the said judgment are quoted herein below:

> ***"11**. In Union of India v. Ramesh Ram, this Court accepted the general proposition that unless a course of action was taken, which afforded meritorious reserved candidates the benefit of reservation insofar as allocation was concerned, lesser meritorious reserved candidates would be able to secure better disciplines. The judgment in Ramesh Ram2 was, however, rendered in relation to the Civil Services Examination in the context of Article 16 of the Constitution of India and Rule 16(2) of the Civil Services Examination Rules.*
> ***22**. In Ramesh Ram, this Court observed that there was an obvious distinction between qualifying in an entrance test for securing admission in a medical college and qualifying in the UPSC examination for filling up vacancies in various civil services. In the case of Civil Services Examinations, some services are more*

> *coveted than others and successful candidates compete amongst themselves to secure services of their choice. A meritorious reserved category candidate, who qualifies on his own merit to get a rank in the general list, should not be disadvantaged by reason of being assigned a less coveted service against the vacancies in the general category. Such a candidate, can therefore, choose to shift to the reserved category under Rule 16(2) of the Civil Services Examinations Rules. However, meritorious reserved category candidates who avail the benefit of Rule 16(2) and are adjusted in the reserved category, are to be counted in the reserved quota and the seats vacated by meritorious reserved candidates in the general category pool are to be offered to general category candidates. This principle is not attracted in cases of medical admissions."*

By relying these judgments, he submitted that the case of the petitioner is fit to be considered and migration to the Administrative Service may kindly be directed to be issued to the petitioner by the respondents.

Mr. Rahul Kumar, learned counsel appearing for the petitioner has maintained his aforesaid arguments in W.P.(S) No.1451 of 2020 also.

25. Mr. Amritansh Vats, learned counsel appearing for the petitioners in W.P.(S) No. 1486 of 2020, 1487 of 2020 and 1984 of 2020 supplemented the arguments of Mr. Rahul Kumar and submitted that in the case of ***Alok Kumar Pandit v. State of Assam & Ors.*** (*supra),* the Guwahati High Court dismissed the writ petition against which the matter went up to the Hon'ble Apex Court, wherein, it has been held that migration must be allowed in allocation of service considering the landmark judgment of the Hon'ble Supreme Court in the case of ***Union of India v. Ramesh Ram & Ors.*** *(supra)*. He has also interpreted Clause-8 of the advertisement as argued by Mr. Rahul Kumar. He further submitted that the petitioner of W.P.(S) No.1487 of 2020 got 626 marks. However, last selected candidate in unreserved category has got 607 marks, who has been given his choice of preference i.e. Administrative Service. The petitioner is unreserved category candidate and he has been allocated the Education Service. He also submitted that the petitioner of W.P.(S) No. 1984 of 2020 got 619 marks and last selected candidate under

unreserved category has got 607 marks, who has been given choice of preference. The petitioner's result was published under unreserved category and he has been allocated Finance Service. He further submitted that the petitioner of W.P.(S) No. 1486 of 2020 got 613 marks and he has been allocated Cooperative Service. He vehemently relied upon the judgment in the case of Alok Kumar Pandit *(supra)* and submitted that the cases of the petitioners are required to be considered for migration.

26. Mr. Sanjay Kumar Tiwari, learned counsel appearing for the petitioner in W.P.(S) No. 1428 of 2020 submitted that the petitioner got 611 marks and he has been selected in open merit and has been allocated Jharkhand Information Service. He further submitted that the candidates, who are having lesser marks than the petitioner in the reserved category, have got the Jharkhand Administrative Service. He also interpreted Clauses- 8 and 14 of the advertisement in the same manner as submitted by Mr. Rahul Kumar. He also relied upon the judgments rendered in the cases of Ramesh Ram and Alok Kumar Pandit *(supra)*. He also relied upon the judgment rendered in the case of ***Mukul Kumar Tyagi v. State of U.P.***, reported in ***(2020) 4 SCC 86***. By way of relying on these judgments, he submitted that the petitioner is a candidate of reserved category and it is well enough to give him choice of preference and hence the writ petition is fit to be allowed.

27. Mr. Sanjay Piprawall, learned counsel appearing for the JPSC submitted that in view of the Advertisement no.23/2016 issued by the JPSC, total 326 vacancies were requisitioned before the JPSC for different services and categories. He drawn attention of the Court to Clause-7 of the advertisement and submitted that in view of this Clause, benefits of reservation was to be extended only to local residents of the Jharkhand. By way of referring Clause-8 of the advertisement, he submitted that it is clearly stated in that

clause that the reserved category candidate, who is selected on merit like unreserved category, he will not be adjusted in the reserved category. He further submitted that the petitioners in these writ petitions have competed with unreserved category candidates and in light of Clause-8 of the advertisement, they have been rightly allocated the service in unreserved category. He also submitted that since the petitioners have secured more marks or equivalent marks to the last selected candidate in unreserved category i.e. 600 marks and as such in view of Clause-8 of the advertisement, the candidature of the petitioners as per their own merit has been considered in unreserved category. He further submitted that as per their merit and when the turn of the petitioners came for allocation of service, the petitioners have been allocated Jharkhand Education Service, Jharkhand Finance Service, Jharkhand Co-operative Service, Jharkhand Planning Service and Jharkhand Information Service respectively. He also submitted that there is no illegality in allocation of service. He further submitted that in light of letter no.12165 dated 31.10.2012, it is clearly stipulated that the meritorious candidates in reserved category will be considered in unreserved category. He also submitted that Clause-8 has been incorporated in light of letter no.12165 dated 31.10.2012, issued by the Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand. He further submitted that it is a policy decision taken by the State of Jharkhand that the reservation policy, as stated in the public advertisement shall be applicable only in the Mains examination and not in the Preliminary test and this aspect of the matter has been considered by the Division Bench of this Court in L.P.A. No.467 of 2015. In view of the said decision, this Court may not interfere with the policy decision of the State under Article 226 of the Constitution of India. He further submitted that at the time of starting of selection process of 6th combined Civil Services Examination

in terms of Advertisement no.23/2016, the State Government had not framed any Rules for migration of meritorious reserved category candidates from unreserved category to reserved category and at that point of time, letter no.12165 dated 31.10.2012 was in existence and, accordingly, Clause-8 was interpreted in the advertisement. He further submitted that the judgments relied by the petitioners have been decided on the existing Rules for particular examination and that Rule is not here in the State of Jharkhand and in light of these facts, the judgments are not supporting the case of the petitioners. He also submitted that so far as the case of Sewa Ram Sahu is concerned, he was over aged for unreserved category and that is why his candidature was considered in his own reserved category. On these grounds, he submitted that the writ petitions are lacking the merit and the same are fit to be dismissed.

28. Mr. Rajiv Ranjan, learned Advocate General assisted by Mr. Mohan Kumar Dubey, learned counsel appearing for the respondent-State submitted that letter no.12165 dated 31.10.2012, issued by the Department of Personnel, Administrative Reforms and Rajbhasa was applicable at the time of issuance of the said advertisement and accordingly Clause-8 was interpreted in light of that circular. He further submitted that the said circular is on record as Annexure-A to the counter affidavit filed by the respondent-State. He also submitted that the allocation of service is being done by the JPSC. He further submitted that in the judgments relied by the learned counsel for the petitioners, Rule was there, whereas, in the State of Jharkhand, Rule was not there and in light of circular dated 31.10.2012, Clause-8 was interpreted in the advertisement and in that view of the matter, the cases of the petitioners are fit to be dismissed.

29. Mr. Sumeet Gadodia, learned counsel appearing for respondent nos. 6, 8 and 9 in W.P.(S) No.1449 of 2020, for respondent nos. 6, 7 and 8 in W.P.(S)

No.1451 of 2020 and for respondent no.5 in W.P.(S) No. 1487 of 2020 submitted that the writ petitions are not maintainable on the ground that the amendment proposed regarding challenge the appointment of private respondents was not pressed by the petitioners and also on the ground that in the present writ petitions, no relief has been claimed against the private respondents by the petitioners in which the appointment of private respondents to the Probationer Deputy Collectors in Jharkhand Administrative Service has not been challenged. He further submitted that pursuant to the advertisement, the JPSC has already appointed the candidates as Probationer Deputy Collectors vide notification dated 29.07.2020. He also submitted that the petitioners have filed I.A. No.1438 of 2020 for impleadment of answering respondents as party-respondents in one of the writ petition. He drawn attention of the Court to the order dated 24.09.2020 and submitted that no consequential relief against the answering respondents have been prayed in the writ petition including the challenge their appointments in Jharkhand Administrative Service. He also submitted that the writ petitions are fit to be dismissed for non-joinder of necessary parties. So far as other grounds are concerned, Mr. Gadodia adopted the arguments of JPSC and the State of Jharkhand and submitted that there is no rule of migration to obtain service allocation of higher choice in the order of preference. On these grounds, he submitted that the writ petitions are fit to be dismissed.

30. In light of the above facts and submissions of the learned counsel appearing for the parties, the Court is required to answer following issues:

(i) Whether the petitioners are entitled for migration to other service in reserved category; and

(ii) Whether the reservation is a right or not.

31. Since both the issues are interlinked and that is why both the issues are

being taken up together.

32. It is an admitted fact that the petitioners are coming under the reserved categories. They have also applied under the reserved categories. For the correct appreciation of Clause-8, the same is being quoted herein below:

> **"8. कार्मिक, प्रशासनिक सुधार तथा राजभाषा विभाग, झारखण्ड सरकार के पत्रांक–12165 दिनांक–31.10.2011 के आलोक में निम्नांकित प्रावधान लागू होंगे:–**
> कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय भारत सरकार के कार्यालय ज्ञापन संख्या–36012/22/93 – ईस्ट (एस0सी0टी0) दिनांक–08.09.1993 तथा 36011/1/98 ईस्ट (रेंज) दिनांक–01.07.1998 से राज्य सरकार को यह समाधान हो गया है कि आरक्षित वर्ग के वैसे अभ्यर्थी जिनका चयन उन मानको के आधार पर होता है जो सामान्य अभ्यर्थियों के लिए विहित हो उन्हें आरक्षित वर्ग के रिक्तियो के विरूद्ध सांमजित नही किया जाएगा । दूसरे शब्दों में जब आरक्षित वर्ग के अभ्यर्थियों का चयन सामान्य वर्ग के अभ्यर्थियों की तुलना में ऊपरी उम्र सीमा में छूट/रियायत प्रदान कर दी जाती है तो वे संबंधित आरक्षित वर्ग के रिक्तियो के विरूद्ध सांमजित होंगे । ऐसे अभ्यर्थी अनारक्षित रिक्तयों के लिए अयोग्य समझे जायेंगे।**"**

On perusal of Clause-8, it is crystal clear a candidate belonging to reserved category, whose selection has been made as per the standard prescribed for general category candidates, cannot be adjusted against the vacancies for reserved category.

33. Clause-14 of the advertisement stipulates that the merit list shall be published for the State Service/Cadre-wise and Category-wise reservation for filling up the consolidated, unified vacancies from the successful candidates of Combined (Mains) Examination and after their interview, consolidated, unified, but in order of merit of Service/Cadre-wise and Category wise reservation, final result shall be issued/published. Clause-14 of the advertisement is quoted herein below:

> **"14. मेधा सूची** :– उपर्युक्त राज्य सेवा/संवर्गवार एवं आरक्षण कोटिवार उपर्युक्त संयुक्त प्रतियागिता परीक्षा की समेकित एकीकृत रिक्तियों को भरने के निमित्त सम्मिलित संयुक्त (मुख्य) प्रतियोगिता परीक्षा के सफल अभ्यर्थियों की विहित किन्तु समेकित एकीकृत मेधा सूची प्रकाशित की जायेगी तथा उनकी अन्तर्वीक्षा के पश्चात अंतिम परीक्षाफल भी समेकित एकीकृत किन्तु सेवा/संवर्गवार एवं आरक्षण कोटिवार मेधाक्रम में ही निर्गत/प्रकाशित किया जायेगा ।"

34. Thus, on perusal of Clause-8 to be read with Clause-14 of the advertisement, it transpires that the candidature of the reserved category candidates, who competes with the general category, shall be considered in the open category. Clause-8 has been incorporated pursuant to circular no.12165 dated 31.10.2012, which speaks that in any direct recruitment, the candidates belonging to any of the reserved categories, who are selected on the same standard as applied to the unreserved category, the candidates shall not be adjusted against reserved vacancies. In other words, if reserved category candidate is given any relaxation of age limit or experience certificate, he shall be adjusted against the vacancy for reserved category. Such candidates would be deemed as incompetent for consideration against unreserved vacancies. The circular no. 12165 dated 31.10.2012 is on the record as Annexure-A to the counter affidavit of the respondent-State. On perusal of Clauses-8 and 14 to be read with the circular no.12165 dated 31.10.2012, it transpires that the meritorious candidates of reserved category are required to be considered under unreserved category. Thus, the interpretations of Clauses-8 and 14 as argued by the learned counsel for the petitioner are not correct.

35. Moreover, reservation is not a right. The reservation is being provided only on the basis of constitutional goal. The reservation is meant that some weaker section may compete with other sections of the society. Moreover if the prayers of the petitioners are allowed, some selected reserved category candidates will be forced to out from the selection. This is not the spirit of the constitutional scheme. A reference in this regard may be made to the case of ***Rajesh Kumar Daria v. Rajasthan Public Service Commission***, reported in ***(2007) 8 SCC 785***. Paragraphs 7 and 9 of the said judgment are quoted herein below:

> ***"7.*** *A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in Anil Kumar Gupta v. State of U.P. thus:*
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> > *"The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied—in case it is an overall horizontal reservation—no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.)"*
>
> ***9.*** *The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)"*

36. The question arises whether Article 15(4) of the Constitution of India guarantees a fundamental right to reservation or is merely an enabling

provision. In ***M.R. Balaji & Ors. v. State of Mysore***, reported in ***1963 AIR 649***, it was observed that Article 15(4) and Article 16(4) are enabling provisions and they do not impose an obligation, but merely leave it to the discretion of the appropriate government to take suitable action. The first case in which it was laid down as part of the *ratio decidendi* that Article 16(4) does not grant a fundamental right to the backward class in the case of ***C.A. Rajendran v. Union of India***, reported in ***AIR 1968 SC 507***. It was observed that Article 16(4) does not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make a reservation for Scheduled Castes and Scheduled Tribes, either at the initial stage of recruitment or at the stage of promotion. Thus, Article 16(4) was described as an enabling provision, which confer a discretionary power on the State to make a reservation of appointment in favour of backward class of the citizens, in its opinion, is not adequately represented in the services of the State.

37. The petitioners have participated in the selection process by the terms and conditions stipulated in the advertisement by open eyes and after found to be eligible, they appeared in the examination. They have not questioned any clause of the advertisement on the earlier occasion and only after publication of the result, the same is being questioned by the petitioners. This aspect of the matter has been considered by the Hon'ble Supreme Court in the case of ***G. Sarana (Dr.) v. University of Lucknow***, reported in ***(1976) 3 SCC 585***. Paragraph 15 of the said judgment is quoted herein below:

> ***"15.*** *We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution*

> *of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:*
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> > *"It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."*

38. Similarly, the Hon'ble Supreme Court in the case of ***Om Prakash Jha v. Akhilesh Kumar Shukla***, reported in ***1986 Supp. SCC 285*** has held that if a candidate has appeared in examination without protest, he cannot invoke jurisdiction of the High Court under Article 226 of the Constitution of India realizing that he would not succeed in the examination.

39. Much emphasis has been placed on behalf of the learned counsel for the petitioners in the case of Ramesh Ram (*supra)*. In that case, the Hon'ble Supreme Court was considering the validity of amended Rule 16(2) of the Civil Services Examination Rules which permitted a candidate belonging to reserved category and recommended against unreserved vacancies, to be adjusted against reserved vacancies to enable the said candidate to get a service of higher choice in the order of preference. In the State of Jharkhand, there is no rule of migration at the time of 6th Combined Civil Services Examination. Thus, the judgment relied by the learned counsel for the petitioners is not helping the petitioners. The judgment relied by the learned counsel for the petitioners in the case of ***Alok Kumar Pandit*** *(supra)* is also not helping the petitioners because in that case the benefit was granted to the meritorious reserved category candidate for migration in their own reserved category for higher choice of service earmarked for reserved category on the basis of Rules and Regulations, whereas, in the State of Jharkhand at the time of starting of selection process of 6th Combined Civil Services Examination, there was no

such Rules. The advertisement itself on the basis of circular no.12165 stipulated that how a meritorious reserved category candidate will be considered in the merit list in the unreserved category. Rest of the judgments relied by the learned counsel for the petitioners are also on the different facts to the cases in hand and the said judgments are not supporting the case of the petitioners.

40. Accordingly, two issues are answered in negative. No relief can be granted to the petitioners in these writ petitions.

41. Accordingly, the writ petitions [W.P. (S) Nos. 1428 of 2020, 1449 of 2020, 1451 of 2020, 1486 of 2020, 1487 of 2020, and 1984 of 2020 1428 of 2020] are dismissed.

42. Pending interlocutory application, if any, stands disposed of.

W.P.(S) Nos. 1468 of 2020, 1533 of 2020, 1583 of 2020, 1613 of 2020, 1718 of 2020 and 1827 of 2020

43. Now, the Court is taking fourth group of the writ petitions, in which, the prayer is made for quashing the result of 6th Combined Civil Services Examination, 2016 and declaring that the action of the respondent-JPSC in adding the total marks obtained by the candidates and not the minimum qualifying marks in each paper and the marks of Paper-I while preparing the merit list is illegal.

44. In this category, W.P.(S) Nos. 1468 of 2020, 1533 of 2020, 1583 of 2020, 1613 of 2020, 1718 of 2020 and 1827 of 2020 are coming. The facts and law points involved in these writ petitions are common and that is why W.P. (S) No. 1533 of 2020 has been taken as a lead case.

45. An I.A. was filed by the petitioners in view of the provisions made under Order I Rule 8 of the Code of Civil Procedure, which was numbered as I.A. No. 4318 of 2020 and vide order dated 24.09.2020 the said I.A. was allowed and the direction was issued for institution of the writ petition be published in the

English daily newspaper, Jharkhand edition Times of India and Hindi daily newspapers Prabhat Khabar and Hindustan. The prayer was also made in the said I.A. for adding respondent nos. 6 to 9 as party respondents. The said prayer was allowed and notice upon respondent nos. 6 to 9 was directed to be issued. Pursuant to that the learned counsels appeared and filed I.A. Nos. 5770 of 2020, 5771 of 2020, 5772 of 2020, 5773 of 2020, 5774 of 2020, 5797 of 2020, 5823 of 2020 and 5824 of 2020. In the said I.As., it was stated that they have filed the said I.As. for intervention and *Vakalatnama* has already been filed. Mr. Sumeet Gadodia has filed *Vakalatnama* on behalf of 70 persons. Mr. Indrajit Sinha and Mr. Bibhash Sinha has filed *Vakalatnama* on behalf of 190 persons. Mr. Vijay Kumar Roy has appeared for one person. Mr. Mukesh Kumar Mehta appeared on behalf of two persons and the direction was issued for rest of the persons, who had not been made party in the writ petition to make them party respondents in view of the appearance of the learned counsel for the selected candidates and it was also directed to file amended writ petition. In light of the above, selected candidates have appeared.

46. The prayer made in this writ petition is for quashing the result/merit list of the 6th Combined Civil Services Examination, 2016 and also the consequential recommendation made by the respondent-JPSC to the State Government for appointment into the Combined Civil Services of the State and directing the respondent-State Government to institute a proper inquiry into the matter of deviation from the norms/inclusion of non-eligible from the merit list. The prayer is also made for declaring that the action of the respondent-JPSC in taking into account/adding the total marks obtained by the candidates in Paper-I of General Hindi and General English while preparing the merit list is out and out illegal and contrary to the respondent- JPSC's own policy decision dated 02.04.2013. The prayer is also made for declaring that the action of the

respondent-JPSC in not adhering to the conditions of testing the candidates/selectees having obtained minimum qualifying marks as prescribed in Clause-13 of the advertisement is illegal. The prayer is also made for direction to correct and revise the merit list as published by the JPSC. The prayer for quashing the entire examination process is also made in the writ petition.

47. It has been contended in the writ petition that in the year 2012 on 24.03.2012, the JPSC had constituted an Expert Committee under the chairmanship of Sri V.S. Dubey, former Chief Secretary, Jharkhand, with other most experienced and respected members for giving their recommendation on revision of examination pattern of Combined Civil Services Examination which submitted its report on 02.04.2013. In its meeting held on 02.04.2013 itself the JPSC considered the said Expert Committee's report as well as other aspects of the matters and accepted the proposals for revised examination pattern of the Combined Civil Services Examination to be held by the JPSC and unanimously recommended the Government for acceptance of the said Expert Committee report with the stipulations as narrated in the minutes of the meeting of the JPSC dated 02.04.2013. The said minutes of the meeting dated 02.04.2013 is on the record as Annexure-1 of the writ petition. In the said resolution, it has been resolved as under:

(a) So far Paper I (General Hindi and General English) was supposed to be of 10th Standard of 50 marks each and it was stipulated that: "It will be only a qualifying paper in which out of 100 (combined both Hindi and English) every candidate will have to secure only 30 marks. Thus, inclusion of 50 marks general English component will not adversely impact the chances of students from Hindi/regional language background."

(b) Total marks (Mains) was prescribed as 900 however it was clarified that Paper I will be of qualifying nature only.

(c) In the recommendation portion also at Clause-1, it was clearly mentioned that 100 marks language paper of Mains be of qualifying nature only in which a candidate shall secure minimum 30 marks out of Combined Hindi and English (10th Standard) paper of 100 marks.

As per the resolution of the JPSC, the above revised examination pattern was supposed to be effective from 6th Combined Civil Services Examination. The State Government accepted the resolution of the JPSC and thereafter the JPSC advertised the vacancies for 6th Combined Civil Services Examination vide Advertisement no.23/2016. The original advertisement syllabus for Preliminary test and Mains examination had been well appended and the said syllabus and conditions were later on revised and conditions reemphasized, therefore, the Advertisement no.23/2016 along with the original and the later/revised syllabus made out the final conditions and ultimate guide for the JPSC for evaluation and preparation of merit list of the competitive examination in question. In light of the above backgrounds, the petitioners being eligible and complying with the terms and conditions stipulated in the aforementioned advertisement, participated in the examination process. After clearing the Preliminary examination, they participated in the Mains examination. It has been disclosed in the writ petition that the State Government had also appointed one High Power Committee called Saryu Rai Committee for the same purpose, which has however given its recommendations on various subject matters including for raising the total marks of language Paper-II in the Mains examination from 100 to 150 and the State Government had adopted and notified the recommendations vide resolution issued vide memo no. 7052

dated 17.08.2016. The said recommendations were also duly incorporated in the JPSC's Advertisement no.23/2016 and its syllabus which became part and parcel and conditions for 6th Combined Civil Services Examination. So far the subject matter of Paper-I (General Hindi and General English) is concerned, it was specified in the original advertisement, may be in few words that "this paper is qualifying in which minimum 30 marks is mandatory." Paper-I was made to be only qualifying and its marks not supposed to be accounted for in the total marks for preparation of merit list, whereas, in other papers including in Paper-II condition was different. In light of the above conditions, the petitioners did not put much effort in preparing for or while writing the Paper-I and they had been satisfied by answering only those questions which would obtain him the qualifying marks i.e. 30. The JPSC has wrongfully accounted or counted the marks obtained by the candidates in the said Paper-I of General Hindi and General English and they have changed the entire rule of the game while preparing the merit list. It has been stated that to the rough estimation of the petitioners approximately 150 candidates have been wrongfully included in the final merit list/gradation list than the candidates like the petitioners, who have obtained more marks as per the norms and conditions. The petitioners have been advised to bring on record and analyse the marks obtained by few successful as well as unsuccessful candidates and the matter of their inclusion or exclusion from the merit list so as to indicate the injustice done to the deserving ones including the petitioners, which are brought on record as Annexure-4 Series of the writ petition. It has also been contended that the respondents have intentionally given a manipulated and wrongful interpretation to the above provisions concerning Paper-I ignoring the fact that the same was purposely made of 10th Standard, only qualifying and the purpose being judging minimum working knowledge of the persons and not

their merit otherwise. The respondent-JPSC has again disturbed and unsettled with respect to the condition contained in Clause-13 of the Advertisement no.23/2016, which reads as under:

13. *Minimum qualifying marks for Prelims and Mains examination:*

Unreserved	*40%*
Backward Class-I	*34%*
Backward Class-II	*36.5%*
Scheduled Caste/Tribe and Woman	*32%*

The determination of minimum qualifying marks as prescribed above shall be applicable for competitive examinations of all services/class for different reserved category in relation to all written examinations (objective or subjective equally). All candidates shall be compulsorily required to obtain 30 marks in Paper-I (General Hindi and General English) of Mains examination. As per the resolution no.8315 dated 16.09.2015 issued by the Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand, the compulsory nature of minimum qualifying marks in interview in Civil Services Competitive Examination has been done away with. The aforesaid stipulation even fell for consideration before this Court in W.P.(S) No. 5046 of 2018 with W.P.(S) No. 4188 of 2018 so far its applicability into Preliminary test of the 6th Combined Civil Services Examinations as well as before the Hon'ble Supreme Court in Civil Appeal No. 9217 of 2018, whereby, this Court and the Hon'ble Supreme Court held that the qualifying criteria shall apply on each subjects separately and not on combined basis. It has been further stated that the above referred Clause-13 speaks of Preliminary and Mains examination both, thus the issue has been settled that the qualifying marks prescribed for each category will apply for each subjects and shall not be taken as combined marks obtained by a candidate in all subjects. It has also been stated that

contrary to the above conditions and stipulation, the respondent-JPSC has relaxed the said conditions and has even included such good number of candidates in the merit list/gradation list who have not obtained minimum qualifying marks applicable to their category in one or the other optional in the Mains examination and thereby even those candidates who have qualified in all papers and have obtained more marks in optional paper but have obtained less marks in Paper-I have been declared as unsuccessful and ousted from the merit list/gradation list and the non-qualified candidates have been included and thereby gross injustice has been done to them including the petitioners. The final merit list was published on 21.04.2020. On theses backgrounds, the present writ petition has been filed.

48. Mr. Ajit Kumar, learned Senior counsel appearing for the petitioners submitted that the respondent-JPSC has published the result arbitrarily and against the provision of Clause-13 of the advertisement. He further submitted that the issue of minimum qualifying marks has already been adjudicated upon by this Court so far as Preliminary examination of 6th Combined Civil Services Examination is concerned. He also submitted that Clause 13 of the advertisement is equally applicable for Preliminary as well as Mains examination. He further submitted that the petitioners being eligible in all respects have applied for the same and thereafter appeared in the Preliminary examination held on 18.12.2016 and thereafter the result of the Preliminary examination was declared, but the same was published category-wise, which was challenged before this Court in W.P. (S) No. 1864 of 2017, upon which amended result was published by the respondents. On 25.10.2017, a press communique was published by the JPSC cancelling the date fixed for Mains examination till further information. Subsequently, the dates for Mains examination were announced being 29.01.2018 to 07.02.2018, however, again

vide press communique dated 25.01.2018 the dates for Mains examination was cancelled. Vide memo no.1153 dated 12.02.2018, issued by the State Government, it has been decided that the qualifying marks of the Preliminary examination shall be considered as per the resolution dated 27.11.2012 of the State Government. Against the said resolution dated 12.02.2018, one Pankaj Kumar Pandey moved before this Court by filing W.P.(S) No.1452 of 2018, which was dismissed by a coordinate Bench of this Court vide order dated 18.05.2018 with a direction to the respondent authorities to take immediate steps for holding Mains examination and publication of results in terms of the resolution dated 12.02.2018. Thereafter, amended result of approximately 34000 candidates had been published on 06.08.2018. The result declared by the JPSC was again subject to adjudication before this Court in W.P.(S) No. 5046 of 2018 and W.P.(S) No. 4188 of 2018, Gaurav Priyadarshi/Joy Guria v. State of Jharkhand & Ors. by some of the candidates who did not secure minimum cut-off marks in both the papers of Preliminary examination individually and who contended that the aggregate marks obtained in both the papers together shall have to be taken into account. The said writ petition was dismissed vide order dated 20.12.2018 and the same has not been challenged before this Court or the Apex Court. Mr. Kumar, learned Senior counsel appearing for the petitioners further submitted that the respondents were very much supposed to complete the recruitment process strictly as per the rules and the conditions stipulated in the advertisement as interpreted in the judgment rendered by a coordinate Bench of this Court in the case of Joy Guria, as referred above. He also submitted the JPSC has misconducted the process and the results have been published contrary to the conditions pertaining to the Paper-I of the Mains examination. Clause-13 of the advertisement pertaining to minimum qualifying marks applicable to each paper of the Mains

examination and also against the ratio laid down by the Hon'ble Supreme Court. He further submitted that the issue of applicability of Clause-13 of the advertisement has already been raised and settled by this Court in view of the judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 9217 of 2018, which was considered in W.P.(S) No. 5046 of 2018 in the case of Joy Guria. He further submitted that the respondent-JPSC took a stand in the said writ petition subsequent to the order passed by the Hon'ble Supreme Court in Rakesh Kumar's case that the applicability of the minimum qualifying marks is subject wise and not in aggregate. He also submitted that much emphasis had been placed by the respondents in paragraph 23 of the judgment in the case of ***Taniya Malik v. The Registrar General of the High Court of Delhi*** and the learned Single Judge has considered the judgment passed in the case of ***Rakesh Kumar v. State of Jharkhand & Ors.*** in Civil Appeal No.9217 of 2018 and held that Clause-13 is to be interpreted requiring the candidates to individually qualify in each paper of the examination. In the said writ petition, it was also held that minimum qualifying marks was to be obtained by the candidates in each paper. Mr. Kumar, learned Senior counsel appearing for the petitioners further submitted that admittedly even after the observations made by the Hon'ble Supreme Court in Rakesh Kumar's case, the respondents took a specific stand before a coordinate Bench of this Court and interpreted Clause-13 of the advertisement in the line of Taniya Malik judgment and this Court sanctioned the said view *qua* the same parties. Admittedly, Clause-13 commonly applies upon both the examinations i.e. Preliminary and Mains, thus different interpretation cannot be allowed for the purposes of the Mains examination. Such action of the respondents is hit by the principle of *res judicata*. He further submitted that the respondent-JPSC is not authorized to change the rule of game. He further submitted that in the instant matter of

applicability of minimum qualifying marks in each subject has already been decided by a coordinate Bench of this Court and it has been specifically observed that the judgment of Rakesh Kumar case can be of no help to the candidates for taking the minimum qualifying marks in aggregate. The same issue has already been decided between the parties. Thus, the stand of the JPSC is hit by the principle of *res judicata* and it does not permit the respondents to change the rule of the game. He referred the judgment on the issue of *res* judicata, rendered by the Hon'ble Supreme Court in the case of ***Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy***, reported in ***(1970) 1 SCC 613***. He relied on paragraphs 4, 5 and 11 of the said judgment, which are quoted herein below:

> ***"4.*** *The rule of res judicata applies if "the matter directly and substantially in issue" in a suit or proceeding was directly and substantially in issue in the previous suit between the same parties and had been heard and finally decided by a competent Court. The Civil Judge, Junior Division, Borivli, decided the application between the parties to the present proceeding for determination of standard rent in respect of the same piece of land let for construction of buildings for residential or business purposes. The High Court has held that a decision of a competent Court may operate as res judicata in respect of not only an issue of fact, but mixed issues of law and fact, and even abstract questions of law. It was also assumed by the High Court that a decision relating to the jurisdiction of the Court to entertain or not to entertain a proceeding is binding and conclusive between those parties in respect of the same question in a later proceeding.*
>
> ***5.*** *But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in*

issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

xxx xxx xxx

11. *It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."*

He further referred the judgment on the same issue in the case of ***K.H. Siraj v. High Court of Kerala***, reported in ***(2006) 6 SCC 395*** held in paragraph 76, which is quoted herein below:

"76. *One more factor has also to be noticed in regard to the civil appeals filed by Mr. K.H. Siraj which, in our opinion, is also hit by res judicata. His writ petition in the High Court was OP No. 5219 of 2002. That was partly allowed without giving him any relief for a direction for appointment. On the other hand, the High Court set aside the selection of candidates occupying Ranks Nos. 60, 62, 64, 66, 68, and 70. The High Court filed Writ Appeal No. 1496 of 2004 before the Division Bench. Mr K.H. Siraj himself filed WA No.*

> *1584 of 2004 against that part of the impugned judgment which was against him. Candidates occupying Rank No. 60, etc. who are affected by the judgment had themselves filed WAs Nos. 1498, 1510, 1526, 1527, 1541, 1588 and 1574 of 2004. All these appeals filed by the High Court and by these parties were allowed setting aside the judgment of the learned Single Judge. Mr K.H. Siraj's appeal (WA No. 1584 of 2004) was dismissed. However, Mr. Siraj has chosen to file appeals only against the decision in WA No. 1496 of 2004 filed by the High Court and WA No. 1584 of 2004 filed by himself and has not chosen to file any appeal against the decision in the other appeals, WA No. 1498 of 2004, etc. filed by the affected parties. The decision therein has become final and, therefore, operates as res judicata and Mr K.H. Siraj's appeal is to be dismissed as such."*

He submitted that in view of the earlier judgments in the cases of Joy Guria and Rakesh Kumar *(supra)*, the JPSC cannot be allowed to take a new stand in the present writ petition.

He further submitted that the action of the respondent authorities in interpreting the Clause-13 as applicable in each paper in the Preliminary and to the applying the same Clause 13 as aggregate in the Mains examination is thoroughly arbitrary and unlawful and it amounts to change in the rules of the game midway. To buttress this argument, he relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Maharashtra SRTC v. Rajendra Bhimrao Mandve***, reported in ***(2001) 10 SCC 51***. By referring paragraph 5 of the said judgment, he submitted that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced as the same would amount to changing the rules of the games.

He further submitted that the interpretation of the terms and conditions of the advertisement has to be done keeping in view the Rules and in case of any contradiction, the Rules will have primacy over the terms of the advertisement. He referred the judgment rendered by the Hon'ble Supreme Court in the case of ***Indian Institute of Technology & anr. v. Paras Nath Tiwari & Ors.***, reported in ***(2006) 9 SCC 670***. Paragraph 12 of the said

judgment is quoted herein below:

> ***"12.*** *Learned counsel for the respondent took up the stand that there was no obligation on the part of the first respondent to produce such a licence. He repeatedly contended that there was no such requirement indicated in the advertisement of the vacancy and, therefore, the respondent was not obliged to produce any such licence. We are unable to accept this contention. In the first place, as rightly contended by Mr. Ganguli, what is required by law must be read overridingly into every contract of employment. That the Rules require a licence for a person to be employed as Maintenance Engineer of an aircraft is clear, irrespective of whether the advertisement prescribed it or not. Such a requirement must be read into the advertisement and to the contract of employment. Apart therefrom, the letter of appointment in clear term states (vide clause 4) that the first respondent was required to produce an AME licence for the requisite type of aircraft owned by the Institute. This was clearly understood by the first respondent, as seen from his correspondence wherein he did not deny such a requirement, but kept asking for time and extension of probation. The contention of the learned counsel for the first respondent is, therefore, without merit and cannot be accepted."*

He further submitted that the *ratio decidendi* of a judgment is the only part binding upon the parties. He referred the judgment rendered by the Hon'ble Supreme Court in the case of ***Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.***, reported in ***(2007) 5 SCC 428***. By way of referring paragraph 26 of the said judgment, he submitted that an *obiter dictum* of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court.

He further submitted that the *ratio decidendi* is required to be looked into, as has been held by the Hon'ble Supreme Court in the case of ***Arasmeta Captive Power Co. (P) Ltd. & anr. v. Lafarge India (P) Ltd.***, reported in ***(2013) 15 SCC 414***. Paragraphs 32 and 34 of the said judgment are quoted herein below:

> ***"32.*** *In Ambica Quarry Works v. State of Gujarat it has been stated that the ratio of any decision must be understood in the background of the facts of that case. Relying on Quinn v. Leathem it has been held that the case is only an authority for what it actually decides, and not what logically follows from it.*
>
> *xxx xxx xxx*
>
> ***34.*** *In Krishena Kumar v. Union of India12 the Constitution Bench, while dealing with the concept of ratio decidendi, has*

referred to Caledonian Railway Co. v. Walker's Trustees. and Quinn2 and the observations made by Sir Frederick Pollock and thereafter proceeded to state as follows:

> *"20. ... The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or Judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th Edn., Vol. 26, para 573):*
>
> > *'The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear ... it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi.'"*
>
> *(emphasis supplied)"*

By way of referring paragraph 23 of the judgment passed in the case of ***Taniya Malik v. The Registrar General of the High Court of Delhi***, reported in ***(2018) 14 SCC 129***, he submitted that minimum qualifying marks is required to be prescribed for each subject and not the aggregate marks. Paragraph 23 of the said judgment is quoted herein below:

> ***"23.*** *Coming to the question whether minimum cut-off marks in the written examination be relaxed from 40% to 33% and whether we should interfere on the ground that as a person who has obtained the highest marks, could not clear one of the papers by narrow margin of one mark. It was also urged that the person having the highest marks has not been called for interview and as he could not clear the minimum percentage in one of the written paper and persons having lesser marks in aggregate have been called for interview. In our opinion minimum passing marks in each of the paper could have been prescribed and that is absolutely necessary so as to adjudge the academic knowledge in various subjects. Merely by scoring highest marks in general knowledge and language paper is not going to help. Minimum knowledge in other subjects, civil and criminal law was also requisite and that is true for vice versa too, and that is why minimum passing marks had been prescribed and fixation of 40% was quite reasonable and proper and it would be not proper for*

> *this Court to interfere in the same. We find no fault in prescribing the minimum passing marks for written papers. It may happen in any examination that a person who is having better aggregate may not fare well in one of the papers and may be declared "failed". That cannot be a ground to order relaxation or to doubt the correctness of the evaluation process. When we were shown the marks of a candidate who secured highest marks, it became apparent that the performance of the candidate in paper general knowledge and language was far better as compared to the performance in civil and criminal papers. Thus when a single examiner, has done valuation, same yardstick has been applied to all the candidates. We find no ground to interfere on the various grounds urged by the petitioners.*

He further referred the judgment on the issue of aggregate marks rendered by the Hon'ble Supreme Court in the case of ***Director-General, Telecommunication v. T.N. Peethambaram***, reported in ***(1986) 4 SCC 348***. By way of referring paragraphs 1 and 2 of the said judgment, he submitted that the intent of Clause 13 i.e. the requirement of minimum qualifying marks in each of the paper is imperative so as to adjudge the academic knowledge of the candidates in various subjects. He further submitted that merely by scoring highest marks in General Knowledge and language paper cannot be of any help.

On the point of Paper-I as a qualifying paper, he submitted that the examination pattern of the JPSC had been subject to consideration before a Committee under the Chairmanship of Sri V.S. Dubey. The JPSC made its recommendation to the State Government vide its communication dated 02.04.2013, which is annexed as Annexue-1 of the writ petition. He referred the said recommendation and submitted that it would reflect that the Mains examination was to be comprised of Paper-I consisting of General Hindi and General English (50 marks each). The said papers were to be of 10th Standard. The report at page 37 of the writ petition in clear language specifies that the Paper-I will be only a qualifying paper in which out of 100 (combined both Hindi & English), every candidates will have to secure only 30 marks. Thus, inclusion of 50 marks General English component will not adversely impact the

chances of students from Hindi/Regional Language background. He further submitted that the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand vide notification dated 25.09.2013 approved the said recommendations including Appendix- Ka, Kha and Ga and the same were made applicable with effect from the 6th Combined Civil Services Examination. He also submitted that on the basis of Saryu Rai Committee Report, later on 150 marks for Paper-II and for remaining four papers each of 200 marks was adopted and it was clarified that Paper-I is meant to test the working knowledge of the candidates of Matric standard only and it will only be a qualifying paper and every candidate will have to secure only 30 marks. He further submitted that the JPSC has wrongly added the marks of Paper-I in preparing the merit list. He also submitted that the Advertisement no.23/2016 in fact stipulates what has been provided in the State resolution and the language and object and condition remained the same. He further submitted that the Rules make it very clear that even if the Mains examination was supposed to be consisting of 1050 marks, how the marks to be obtained in Paper-I was to be considered is very clear and a purposive interpretation shall be that even if the six papers of Mains examination were supposed to be for 1050 marks, the marks of Paper-I could not be taken for merit and in that paper only 30 marks was considerable for all those candidates who qualified in that Paper-I. The Paper-I was solely for the purpose of assessing the working knowledge of the candidates and the marks obtained therein cannot be included for determining the merit of the candidates. He further submitted that adding of the marks obtained in Paper-I has adversely affected the meritorious students and the same is not even in the spirit of the JPSC. He further referred Annexure-4 of the writ petition and submitted that the marks statement of the Mains examination would reflect that the final marks of the Mains examination

included the entire marks obtained by the candidates in Paper-I, whereas, as per the recommendations, rules and the advertisement conditions, the candidates were required to obtain 30 marks in the said paper. He further submitted that the contentions raised by the respondents, as per para (B) and Clause-12 of the advertisement, are not correct and the provisions cannot be interpreted in the manner as suggested by the respondents. He also submitted that the principles of interpretation has been considered by the Hon'ble Supreme Court in the case of ***Meeta Sahai v. State of Bihar***, reported in ***(2019) 20 SCC 17***.

He further submitted that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it. The Hon'ble Supreme Court has held that the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. He submitted that if the illegality is there for participation, the candidate is at liberty to approach the Court. He further submitted that the Court cannot read anything into a statutory provision which is plain and unambiguous, the language employed in a statute being the determinative factor of legislative intent. He further submitted that the Law Commission of India in its 183rd Report on a Continuum on the General Clauses Act, 1897 with special reference to the admissibility and codification of external aids of interpretation of statutes at page no.7 observed that "it is well settled principle of law that as the statute is an edict of the Legislature, the conventional way of interpreting or construing a statute is to seek the intention of legislature. The intention of legislature assimilates two aspects; one aspect carries the concept of meaning i.e. what the word means and another aspect carries the concept of purpose and object or the reason or spirit pervading through the statute. The process of construction, therefore, combines both the literal and purposive approaches.

However, necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute. If the language is clear and unambiguous, no need of interpretation would arise….” He further submitted that the provisions with respect to the syllabus of Paper-I and Clause-12 have to be read harmoniously in order to avoid making other provisions of the Rules/advertisement nugatory and redundant.

On these grounds, Mr. Ajit Kumar, learned Senior counsel appearing for the petitioners submitted that the prayer made in the writ petition is fit to be allowed and this Court is well within its jurisdiction to grant the relief and pass direction for rectification of the merit list.

49. Mr. R.S. Mazumdar, learned Senior counsel appearing for the petitioners in W.P. (S) No.1613 of 2020 supplemented the arguments of Mr. Ajit Kumar and advanced the arguments on the same line so far Paper-I of Mains examination is concerned. He relied upon the judgment rendered by the Hon’ble Patna High Court in the case of ***Ramjee Prasad v. State of Bihar***, reported in ***(1991) 2 PLJR 477*** and submitted that the mode of selection as appearing from the advertisement is that Paper-I of Mains examination will be a qualifying paper, meaning thereby, its marks cannot be added to the score of the candidate while calculating the total score for drawing the merit list. He further submitted that the qualifying paper has also been understood by the JPSC not to be included while calculating total marks of a candidate, which has happened with regard to the advertisement of 5th Combined Civil Services Examination. He also submitted that the precedent followed by the JPSC coupled with the terms of advertisement and contents of the syllabus gave a legitimate expectation to the candidates that precedent of not counting

qualifying marks will be adhered to. He has also drawn attention of the Court to the report of the V.S. Dubey Committee report. On the ground of legitimate expectation, he relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***M. Ramesh v. Union of India***, reported in ***(2018) 16 SCC 195***. Paragraph 25 of the said judgment is quoted herein below:

> ***"25.*** *The main attack against the decision of the Government is on the ground that the candidates had a legitimate expectation that pursuant to the written test and interview, their result would be declared and if found successful, they would be appointed. It is a well-settled law that even if there is no vested right, the principle of legitimate expectation can be invoked. Legitimate expectation arises when the citizens expect that they will be benefited under some policy or decision, announced by the State. At the same time, the law is well settled that the Legislature and the Executive can change any policy for good reasons. These good reasons must be such which are not arbitrary, which are not mala fide and the decision has been taken in the public interest. If the decision to change the policy is arbitrary or capricious then it may be struck down."*

He also submitted that counting marks of qualifying paper will amount to non-adherence to the selection process stipulated in the advertisement and changing the rules of game after game has begun. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Bedanga Talukdar v. Saifudaullah Khan***, reported in ***(2011) 12 SCC 85***. Paragraph 29 of the said judgment is quoted herein below:

> ***"29.*** *We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would*

> *be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India."*

He also referred the judgment rendered by the Division Bench of this Court in L.P.A. No.57 of 2018 and submitted that it is well settled position of law that the conditions stipulated in the advertisement are to be complied in its letter and spirit.

He further referred the judgment rendered by the Hon'ble Supreme Court in the case of ***K. Manjusree v. State of AP***, reported in ***(2008) 3 SCC 512*** and submitted that minimum marks were prescribed only for written examination, which were subsequently applied to interview and the said action held to be impermissible. Paragraph 27 of the said judgment is quoted herein below:

> ***"27.*** *But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier Resolutions dated 24-7-2001 and 21-2-2002 and held that what was adopted on 30-11-2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them — P.K. Ramachandra Iyer v. Union of Indiat, Umesh Chandra Shukla v. Union of India and Durgacharan Misra v. State of Orissa."*

He also submitted that so far as the case of K. Manjusree is concerned, that has been referred to the larger Bench, however the same will not effect the ratio held in the K. Manjusree case, at this stage.

He has also elaborated V.S. Dubey Committee report. He further submitted that the advertisement has contradictory provisions giving rise to ambiguity and hence the benefit of such ambiguity may be given to the

candidates. He relied upon the judgment rendered in the case of Rakesh Kumar v. State of Jharkhand *(supra)* in Civil (Appeal) No.9217 of 2018.

50. Mr. Shubhashis Rasik Soren, learned counsel appearing for the petitioners in W.P. (S) No. 1468 of 2020 has supplemented the arguments of Mr. Ajit Kumar and Mr. R.S. Mazumdar, learned Senior counsels and submitted that in view of the illegality and lowering the faith of candidates over the constitutional body like JPSC, this Court may cancel the entire selection process. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Tanvi Sarwal v. Central Board of Secondary Education & Ors.***, reported in ***(2015) 6 SCC 573***. He submitted that there would also be a lurking possibility of unidentified beneficiary candidates stealing a march over them, on the basis of the advantages availed by them due to the laxity of the JPSC authorities and the same if compromised may weaken with faith reposed in the system. He also submitted that the entire selection process, in its entirely, suffered with various discrepancies. He further submitted that the *modus operandi* of the 6th Combined Civil Services Examination has become apparent and may warrant immediate cancellation of the besieged examination/result in order to sustain faith of all and sundry in the existing system of examination to judge the *inter se* merit of the participating candidates. He further submitted that every examination process should be unblemished process involving public participation and the 6th Combined Civil Services Examination is apparently suffers from an infraction of its expected requirement of authenticity and credence. He also submitted that the State has to function for welfare for all however, the irony of the matter is that the State itself trying to save the entire process and if such is allowed then merit would be a casualty generating a sense of frustration in the genuine candidates. He referred certain marks obtained by the candidates and also drawn attention of the Court to Article

320(3) of the Constitution of India.

51. Rest of the learned counsels appearing for the petitioners in other writ petitions have adopted the arguments advanced by Mr. Ajit Kumar, Mr. R.S. Mazumdar and Mr. Shubhashis Rasik Soren.

52. Per contra, Mr. Sanjay Piprawall, learned counsel appearing for the JPSC submitted that after receiving requisition from the Department of Personnel, Administrative Reforms and Rajbhasha, the JPSC started the selection process of 6th Combined Civil Services Examination, 2016 and published Advertisement no.23/2016. The JPSC conducted the Preliminary Test examination on 18.12.2016 and the result was published on 23.02.2017 and only those candidates were declared successful who have secured minimum qualifying marks in respective categories. The State Government issued circular dated 19.04.2017 by which decision was taken to declare all such candidates belonging to reserved categories whose marks are equal or more than that of the last placed candidate in the list of the 15 times of the shortlisted unreserved category candidates. The said circular was challenged before this Court in W.P. (S) No. 1864 of 2017 (Deb Kumar v. State of Jharkhand & Ors.), which was allowed vide order dated 25.07.2017. After passing of the order in the said writ petition, the JPSC has published amended result of Preliminary examination on 11.08.2017 by which 6103 candidates were declared successful. Thereafter, the State Government again issued circular dated 12.02.2018 by which it was decided that those candidates who have secured minimum qualifying marks as mentioned in circular dated 27.11.2012 will be deemed to be selected for the Mains examination. The said circular dated 12.02.2018 was challenged before this Court in W.P. (S) No. 1452 of 2018 (Pankaj Kumar Pandey & Anr. v. State of Jharkhand & Ors.), which was dismissed vide order dated 18.05.2018. After passing of the order in the said

writ petition, the JPSC again published the 2nd revised result of Preliminary examination on 06.08.2018, whereby, 34,634 candidates, who have secured minimum qualifying marks in each paper as per their respective categories, have been declared successful. The order dated 18.05.2018 passed in W.P.(S) No. 1452 of 2018 was challenged before the Division Bench of this Court in L.P.A. No.399 of 2018. One candidate i.e. Rakesh Kumar, who belongs to unreserved category and was not declared successful in the 2nd revised result of Preliminary examination dated 06.08.2018 as he has not secured minimum qualifying marks in each paper, has filed Civil Appeal No. 9217 of 2018 before the Hon'ble Supreme Court, which was disposed of vide order dated 10.09.2018 observing that the petitioner has in fact obtained 40% in both the papers taken together, he shall be allowed to appear for the Mains examination and since the petitioner/appellant was alone before the Hon'ble Supreme Court, it was made clear that anything said in the order will not be treated as a precedent. After passing of the said order by the Hon'ble Supreme Court in Civil Appeal No. 9217 of 2018, W.P.(S) No. 1488 of 2018 (Joy Guria & Ors. v. State of Jharkhand & Ors.) was filed before this Court with a prayer to declare the petitioners successful in 2nd revised Preliminary examination result dated 06.08.2018 in view of the fact that they have secured more aggregate marks in both the papers taken together in spite of that they have not been declared successful in the 2nd revised Preliminary examination result. The JPSC appeared in that writ petition and filed counter affidavit and stated therein that only those candidates category-wise have been declared successful for their appearance in the Mains examination who have secured minimum qualifying marks in each papers i.e. Paper-I and Paper-II and in the counter affidavit the order passed by the Hon'ble Supreme Court in Civil Appeal No. 9217 of 2018, dated 10.09.2018 was also enclosed. W.P.(S) No. 4188 of 2018 was heard

along with W.P.(S) No. 5046 of 2018 and vide order dated 20.12.2018, both the writ petitions were dismissed by this Court. Mr. Piprawall, learned counsel appearing for the JPSC submitted that the JPSC also filed Review Petition (C) No. 36 of 2019 before the Hon'ble Supreme Court for reviewing the order dated 10.09.2018 passed in Civil Appeal No.9217 of 2018 on the ground that 40% marks has to be secured by the unreserved category candidate in each paper. He further submitted that during the pendency of L.P.A. No.399 of 2018, the JPSC announced the date of Mains examination of 6th Combined Civil Services Examination from 28.01.2019 to 01.02.2019 which was also brought to the notice of the Division Bench of this Court, but no stay order was granted. On 28.01.2019, the Mains examination was started and on 29.01.2019, Review Petition (C) No.36 of 2019, filed by the JPSC was dismissed by the Hon'ble Supreme Court. He further submitted that after conducting the Mains examination from 28.01.2019 to 01.02.2019, the JPSC started the evaluation of answer sheets of the candidates of the Mains examination through examiner. He also submitted that the result of the Preliminary examination was published by the JPSC on the basis of minimum qualifying marks in each paper. He further submitted that the stand of the JPSC in W.P. (S) No.4188 of 2018 was that the candidates are required to secure minimum qualifying marks in each paper, but the stand of the JPSPC to the effect that 40% marks has to be secured by the candidates under unreserved category in each paper has been dismissed by the Hon'ble Supreme Court in Review Petition (C) No. 36 of 2019. He also submitted that the State Government vide its resolution dated 27.11.2012 fixed the minimum qualifying marks i.e. 40% for unreserved category, 36.5% for Backward Category, 34% for EBC-I and 32% for SC, ST and female category candidates. He further submitted that on the query of the JPSC, the Urban Planning and Housing Development Department, Government of Jharkhand

informed that there is no provision of securing minimum qualifying marks in each paper. He also submitted that the Combined Civil Services Examination is governed by the Bihar Civil Services (Executive Branch) and Bihar Junior Civil Services (Recruitment) Rules, 1951, which has already been adopted by the Government of Jharkhand vide notification no.6184 dated 09.11.2002 in terms of Bihar Reorganization Act. He referred Rule 16(b) of the Rules, 1951 and submitted that the total marks obtained at the written examination and not the marks obtained in any particular subject shall be taken into consideration. He further submitted that so far as V.S. Dubey Committee report is concerned, the contentions of the petitioners are not correct. V.S. Dubey Committee report stated that it should not be necessary to prescribe a minimum cut-off for individual paper though it will be necessary for Commission to determine an overall minimum cut-off to call the candidates for the personality test. He further submitted that L.P.A. No.399 of 2018 was allowed by the Division Bench of this Court vide order dated 21.10.2019 and directed the JPSC to publish the results of the Mains examination, confined to the candidates, declared successful in its first revised result published on 11.08.2017. He also submitted that it is well settled law that error in eligibility requirement mentioned in the advertisement being inconsistent of the Rules would not create any right in favour of the candidate and in that case Rules will prevail. He relied upon the judgment rendered in the case of ***Malik Mazhar Sultan & Anr. v. U.P. Public Service Commission & Ors.***, reported in ***(2006) 9 SCC 507***. Paragraphs 21 to 24 are quoted herein below:

> ***"21.*** *The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only*

if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.

22. *The Rules postulate timely determination of vacancies and timely appointments. The non-filling of vacancies for long not only results in the avoidable litigation but also results in creeping of frustration in the candidates. Further, non-filling of vacancies for a long time, deprives the people of the services of the judicial officers. This is one of the reasons of huge pendency of cases in the courts.*

23. *It is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of the final results and issue of orders of appointments. For all these and other steps, if any, it is necessary to provide for fixed time schedule so that the system works automatically and there is no delay in filling up of vacancies. The dates for taking these steps can be provided for on the pattern similar to filling of vacancies in some other services or filling of seats for admission in medical colleges. The schedule appended to the regulations governing medical admissions sets out a time schedule for every step to be strictly adhered to every year. The exception can be provided for where sufficient number of vacancies do not occur in a given year. The adherence to strict time schedule can ensure timely filling of vacancies. All the State Governments, the Union Territories and/or the High Courts are directed to provide for time schedule for the aforesaid purposes so that every year vacancies that may occur are timely filled. All the State Governments, the Union Territories and the High Courts are directed to file within three months details of the time schedule so fixed and date from which the time schedule so fixed would be operational.*

24. *Now, to the present case, the only dispute is in respect of the age requirement. The resolution of the dispute would depend upon implementation of Rule 10 of the Rules. According to the main part of Rule 10, the minimum and maximum age requirement has to be as on ist July next following the year in which the notification for holding the examination by PSC inviting applications is published. That publication inviting applications is dated 22/28-11-2003. The next following year is "2004". Therefore, on the plain reading of the main part of Rule 10, the age requirement is to be seen as on 1-7-2004."*

On the same line, he relied upon the judgment rendered in the case of ***Indian Institute of Technology & Anr. v. Paras Nath Tiwary & Ors.***, in ***Civil Appeal No. 7240 of 2001***, dated 21.02.2006.

By referring these judgments, Mr. Piprawall vehemently submitted that it would be evident from the facts that in Appointment Rules, 1951, circular dated 27.11.2012 and in V.S. Dubey Committee report only requirement is

minimum qualifying marks taken together in all papers of the written test examination and not in each paper and the Hon'ble Supreme Court also rejected the stand of the JPSC that minimum qualifying marks is required in each paper, in Review Petition (C) No. 36 of 2019 vide order dated 29.01.2019.

He further submitted that in light of these facts, the JPSC has taken into consideration the minimum qualifying marks for preparation of the result on the basis of total marks obtained by the candidates in all papers and not in each paper and published the result of the Mains examination on 15.02.2020 and altogether 990 candidates were declared successful in the Mains examination including the petitioners. The interview of the successful candidates was started on 24.02.2020.

On the point of publication of the Mains examination result on the basis of minimum qualifying marks taken together in all papers, Mr. Piprawall submitted that in view of the order passed in W.P. (S) No.1452 of 2018 and after publication of the second revised result dated 06.08.2018, Rakesh Kumar, who has not secured minimum qualifying marks i.e. 40%, filed Civil Appeal No.9217 of 2018 which was disposed of and he was allowed to appear for the Mains examination and it was also observed that anything said in the said order will not be treated as a precedent. Before starting the Mains examination, W.P.(S) No.4188 of 2018 and W.P.(S) No.5046 of 2018 were filed before this Court with a prayer to declare the petitioners successful in the Mains examination in view of the fact that they have secured more aggregate marks in both the papers taken together on the basis of order dated 10.09.2018 passed in Rakesh Kumar's case. The JPSC appeared in those cases and filed counter affidavit and stated therein that only those candidates category-wise have been declared successful for their appearance in the Mains examination, who have secured minimum qualifying marks in each paper. The said writ

petitions were dismissed by this Court vide order dated 20.12.2018. He further submitted that the Review Petition (C) No. 36 of 2019, filed by the JPSC was dismissed by the Hon'ble Supreme Court vide order dated 29.01.2019 and the same is binding upon the JPSC and the same will operate as *obiter dictum*. He referred the judgment rendered by the Hon'ble Supreme Court in the case of ***Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.***, reported ***(2007) 5 SCC 428***.

He further submitted that in light of these facts, there is no question of *res judicata*. He also vehemently argued that the Urban Planning and Housing Development Department, Government of Jharkhand informed the JPSC that there is no provision for securing minimum qualifying marks in each paper. The Appointment Rules, 1951 has already been adopted by the Government of Jharkhand. It has been mentioned in V.S. Dubey Committee report that it should not be necessary to prescribe minimum cut-off marks for individual paper. The Division Bench of this Court in L.P.A. No.399 of 2018 has also directed the JPSC to publish the result. The JPSC has published the result of Mains examination of the successful candidates on the basis of minimum qualifying marks taken together on 15.02.2020. He further submitted that it is also settled law that illegality cannot be perpetuated. Article 14 does not envisage negative equality if the State committed the mistake it cannot be forced to perpetuate the same mistake. He relied upon the judgment rendered by the Hon'ble Supreme Court reported in ***(2006) 3 SCC 330***. He further relied upon the judgment rendered in the case of ***Directorate of Film Festivals & Ors. v. Gaurav Ashwin Jain & Ors.***, reported in ***(2007) 4 SCC 737*** and submitted that the Hon'ble Supreme Court held in paragraph 22 that the High Court has to first examine whether the petitioner who has approached the Court has established a right, entitling him to the relief sought on the facts

and circumstances of the case or not. He further submitted that petitioner no.1 of W.P.(S) No.1533 of 2020 i.e. Dilip Kumar Singh is unsuccessful candidate and he has not secured minimum qualifying marks in the Mains examination, which would be evident from perusal of page 63 of W.P.(S) No.1533 of 2020. He also submitted that in view of these facts, there is no illegality in preparing the result on the basis of minimum qualifying marks and, hence, these writ petitions are fit to be dismissed.

On the point of publication of the Mains result after adding the marks of Paper-I i.e. qualifying paper, Mr. Piprawall submitted that V.S. Dubey Committee in its report has made recommendation that the existing compulsory General Hindi paper of the Mains examination of the Jharkhand Civil Services be replaced by a composite paper of Matric standard of General Hindi and General English, carrying a maximum of 100 marks. This paper will have two distinct segments, one of General Hindi and the other one of General English; each of 50 marks. It is further suggested that the marks obtained in this paper should be counted, like that of any other paper of the Mains examination, for preparation of the final gradation list. He further submitted that Saryu Rai Committee has made recommendation for enhancement of marks from 1000 marks to 1050 marks which includes 100 marks of paper i.e. optional paper. He also submitted that in view of Clause-12(B) of the advertisement, minimum qualifying marks were prescribed. In view of the aforesaid criteria, as mentioned in the advertisement, the marks of Paper-I has to be added/included while preparing the result of the Mains examination and accordingly the marks of Paper-I has also been added while preparing the merit list of the Mains examination. He further submitted that so far as 5th Combined Civil Services Examination is concerned, there is mentioning in specific terms that marks of qualifying Paper-I will not be added and thus such contentions

of the petitioners are not correct. He also submitted that the petitioners were well aware about the terms and conditions of the advertisement and thereafter they have participated in the selection process and when they have not been declared successful, they are questioning the criteria that marks of qualifying paper cannot be added while preparing the result of the Mains examination, which is misconceived and not maintainable in view of the judgment rendered by the Hon'ble Supreme Court in the case of ***Union of India & Ors. v. S. Vinodh Kr. & Ors.***, reported in ***(2007) 8 SCC 100***.

He further submitted that the instant selection process was started for appointment against 326 posts and in the Mains examination's result total 990 candidates have been declared successful and after publication of the Mains result, 990 candidates were appeared before the interview board and after conducting the interview, the JPSC has published the final result on 21.04.2020.

On these grounds, he submitted that the contentions of the petitioners are fit to be rejected and there is no merit in these petitions and the same are liable to be dismissed.

53. Mr. Rajiv Ranjan, learned Advocate General assisted by Mr. Mohan Kumar Dubey, appearing for the respondent-State has also argued on the same line as argued by Mr. Sanjay Piprawall and he has also enumerated the facts which has already been noted in the arguments of Mr. Sanjay Piprawall. He submitted that the circular dated 12.02.2018 was challenged before this Court in W.P.(S) No.1452 of 2018, which was dismissed vide order dated 18.05.2018 and thereafter the JPSC again published the 2nd revised result of Preliminary examination on 06.08.2018. In the 2nd revised result dated 06.08.2018, the JPSC declared 34,634 candidates as successful for the Mains examination. Mr. Rajiv Ranjan, learned Advocate General further submitted that the order dated 18.05.2018 passed in W.P. (S) No. 1452 of 2018 was challenged before the

Division Bench of this Court in L.P.A. No.399 of 2018. He also submitted that one candidate i.e. Rakesh Kumar, who belongs to unreserved category and was not declared successful in the 2nd revised Preliminary examination result dated 06.08.2018 because he has not secured minimum qualifying marks i.e. 40% in each paper, has filed Civil Appeal No. 9217 of 2018 before the Hon'ble Supreme Court, which was disposed of vide order dated 10.09.2018 observing that the petitioner has in fact obtained 40% in both the papers taken together, he shall be allowed to appear for the Mains examination and since the petitioner/appellant was alone before the Hon'ble Supreme Court, it was made clear that anything said in the order will not be treated as a precedent. After passing of the said order by the Hon'ble Supreme Court in Civil Appeal No. 9217 of 2018, W.P.(S) No. 1488 of 2018 (Joy Guria & Ors. v. State of Jharkhand & Ors.) was filed before this Court with a prayer to declare the petitioners successful in 2nd revised Preliminary examination result dated 06.08.2018 in view of the fact that they have secured more aggregate marks in both the papers taken together in spite of that they have not been declared successful in the 2nd revised Preliminary examination result. W.P.(S) No. 4188 of 2018 was heard along with W.P.(S) No. 5046 of 2018 and vide order dated 20.12.2018, both the writ petitions were dismissed by this Court. Learned Advocate General also submitted that the Review Petition (C) No. 36 of 2019 was filed by the JPSC before the Hon'ble Supreme Court for review of the order dated 10.09.2018 passed in Civil Appeal No.9217 of 2018 on the ground that 40% marks has to be secured by the unreserved category candidate in each paper, which was dismissed on 29.01.2019. He further submitted that the date of Mains examination of 6th Combined Civil Services Examination was announced from 28.01.2019 to 01.02.2019 which was also brought to the notice of the Division Bench of this Court in L.P.A. No.399 of 2018, but no stay order was

granted. He further submitted that the result of the Preliminary examination was published on the basis of minimum qualifying marks in each paper. He also submitted that the stand of the JPSC in W.P. (S) No.4188 of 2018 was that the candidates are required to secure minimum qualifying marks in each paper, but the stand of the JPSPC to the effect that 40% marks has to be secured by the candidates under unreserved category in each paper has been dismissed by the Hon'ble Supreme Court in Review Petition (C) No. 36 of 2019. He also submitted that the State Government vide its resolution dated 27.11.2012 issued by the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand fixed the minimum qualifying marks i.e. 40% for unreserved category, 36.5% for Backward Category, 34% for EBC-I and 32% for SC, ST and female category candidates. He further submitted that the Urban Planning and Housing Development Department, Government of Jharkhand informed the JPSC that there is no provision for securing minimum qualifying marks in each paper. He also submitted that the Combined Civil Services Examination is governed by the Bihar Civil Services (Executive Branch) and Bihar Junior Civil Services (Recruitment) Rules, 1951, which has already been adopted by the Government of Jharkhand vide notification no.6184 dated 09.11.2002 in terms of Bihar Reorganization Act. He referred Rule 16(b) of the Rules, 1951 and submitted that the total marks obtained in the written examination and not the marks obtained in any particular subject shall be taken into consideration. He has also drawn attention of the Court to the report of V.S. Dubey Committee and submitted that the Committee has also opined that it should not be necessary to prescribe a minimum cut-off for individual paper through it will be necessary for Commission to determine an overall minimum cut-off to call the candidates for the personality test. He further submitted that L.P.A. No.399 of 2018 was allowed by the Division Bench of this

Court vide order dated 21.10.2019 and directed the JPSC to publish the results of the Mains examination, confined to the candidates, declared successful in its first revised result published on 11.08.2017. Mr. Rajiv Ranjan, learned Advocate General also relied upon the judgment rendered in the case of ***Malik Mazhar Sultan & Anr. v. U.P. Public Service Commission & Ors.***, reported in ***(2006) 9 SCC 507***.

By way of referring V.S. Dubey Committee report and the judgment passed by the Hon'ble Supreme Court in Review Petition (C) No.36 of 2019, dated 29.01.2019, he submitted that there was no requirement of securing minimum qualifying marks in each paper.

He further submitted the interview of the successful candidates was started on 24.02.2020 and after conducting the interview, the JPSC has published the result of the successful candidates for appointment on 21.04.2020. He further submitted that on 29.05.2020, the JPSC made recommendation for appointment of the successful candidates before the State Government. The successful candidates have already been appointed by the State Government and, hence, in terms of Advertisement no.23/2016, selection process has already been completed. He further argued that there is no illegality in preparing the merit list on the basis of minimum qualifying marks taken together in all the papers in the written examination and not in each paper. Even, the same analogy has been argued by Mr. Piprawall, so far minimum marks in each papers are concerned. Mr. Rajiv Ranjan, learned Advocate General further submitted that the illegality cannot be perpetuated. Article 14 does not envisage negative equality if the State committed the mistake, it cannot be forced to perpetuate the same mistake. He also relied upon the judgment rendered by the Hon'ble Supreme Court reported in ***(2006) 3 SCC 330***. He further submitted that the persons, who approached the Court,

have required to establish their right, entitling them to the relief sought in the facts and circumstances of the case. He further submitted that the petitioners have not established their right and as such they are not entitled for relief.

On the point of adding the marks of Paper-I i.e. qualifying paper, Mr. Rajiv Ranjan, learned Advocate General submitted that there is no illegality in adding the marks of Paper-I. He further submitted that in light of V.S. Dubey Committee report and Saryu Rai Committee report, the marks of Paper-I has rightly been added in preparing the merit list. He has drawn attention of the Court to Clause-12(B) of the advertisement and submitted that it has been noted that there are no optional subjects and all are common compulsory papers and accordingly, the marks of Paper-I has also been added while preparing the merit list and as such there is no illegality in adding the marks of Paper-I in light of the V.S. Dubey Committee report as well as in terms of the advertisement no. 23.2016 at Clause-12(B), wherein, it has been mentioned that the examination was of total 1050 marks and there are no optional subjects, all are common compulsory papers. He also submitted that the contentions of the petitioners are not correct that marks of Paper-I are not required to be added. Lastly, he submitted that the petitioners were well aware about the terms and conditions of the advertisement and thereafter they have participated in the selection process and when they have not been declared successful, they are questioning the criteria that marks of qualifying paper cannot be added while preparing the result of the Mains examination, which is misconceived and not maintainable, in view of the fact that after appearing in the examination, the terms and conditions of the addition of the marks of qualifying marks cannot be challenged by the unsuccessful candidates. He referred the judgment rendered by the Hon'ble Supreme Court in the case of ***Union of India & Ors. v. S. Vinodh Kr. & Ors.***, reported in ***(2007) 8***

SCC 100.

On these grounds, he submitted that there is no merit in these writ petitions and the same are fit to be dismissed.

54. Mr. Sumeet Gadodia, learned counsel appearing for about 70 successful candidates submitted that so far as addition of marks of Paper-I is concerned, the learned counsel for the petitioners have heavily relied on Appendix-1 (kha) of the advertisement i.e. "it will be only a qualifying paper in which out of 100 (combined both Hindi & English) every candidate will have to secure only 30 marks. Thus, inclusion of 50 marks General English component will not adversely impact the chances of students from Hindi/Regional Language background." He further submitted that it is required to be interpreted by harmonious construction of the advertisement. He submitted that a plain reading of the advertisement would reveal that the Mains examination comprised of six papers towards written test and the total marks was 1050. If the arguments of the petitioners are accepted, the total marks of 1050 prescribed in the advertisement would be reduced to either 950 or 980 marks, which will make the total marks of 1050 prescribed in the advertisement as nugatory. He further submitted that as per the clauses of the advertisement, the total marks was 1050, but in respect of Paper-I, it was clearly prescribed that minimum qualifying 30 marks is mandatory and if a candidate fails to achieve the said marks, he/she will not be qualified in the Mains examination. There is no indication whatsoever in the advertisement to the effect that the marks obtained higher than 30 marks in Paper-I will not be added for determining *inter se* merits. He also submitted that the terms of the advertisement have to be harmoniously considered and the clauses of the advertisement should be given contextual meaning to avoid any anomaly and absurdity. To buttress this argument, he relied upon the judgment rendered by

the Hon'ble Supreme Court in the case of ***Mohinder Kumar & Ors. v. High Court of Madhya Pradesh & Ors.***, reported in ***(2013) 11 SCC 87***. Paragraph 44 of the said judgment is quoted herein below:

> ***"44.*** *The Division Bench, while considering the said submission of the learned Senior Counsel, held as under in para 6:*
>
> *"Mr Nagrath submitted that both sub-clauses (jv) and (vi) of Para 9 of the advertisement have to be harmoniously constructed. We agree with the learned counsel for the petitioner that sub-clauses (jv) and (vi) of Para 9 have to be harmoniously construed. Harmonious construction would mean such a construction as will ensure that both sub-clauses (iv) and (vi) of Para 9 are given effect to. If we construe sub-clause (vi) of Para 9 to mean that the number of candidates to be called for interview shall be twice the number of vacancies irrespective of their performance in the written examination as suggested by the learned counsel for the petitioner then sub-clause (iv) of Para 9 which provides that only such candidates will be called for interview as the High Court may decide on the basis of valuation of their performance in the written examination, will be rendered nugatory. On the other hand, if we construe sub-clause (vi) of Para 9 of the advertisement to mean that aggregate marks in the written and interview obtained by only those candidates who are called for interview on the basis of their performance in the written examination are to be taken into consideration for the selection of the candidates then both sub-clauses (jv) and (vi) of Para 9 are given effect to. A harmonious construction of sub-clauses (iv) and (vi) of Para 9 of the advertisement would thus mean that only candidates who secure the qualifying marks on the valuation of the written examination, are called for interview and the marks of such candidates called for interview are aggregated to find out their position in the merit list for the purpose of selection."*
>
> *(emphasis supplied)*
>
> *Having regard to our conclusions stated above, we find that the conclusion of the Division Bench is also well justified."*

On the ground of interpretation, he relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Paul Enterprises & Ors. v. Rajib Chatterjee and Company & Ors.***, reported in ***(2009) 3 SCC 709***. Paragraphs 24 and 32 of the said judgment are quoted herein below:

> ***"24.*** *In a situation of this nature, the interpretation clause should be given a contextual meaning. It is not exhaustive. It is trite that when a statutory enactment defines its terms, the same should govern what is proved, authorised or done under or by reference*

> *to that enactment. It is also trite that all statutory definitions have to be read subject to the qualification variously expressed in the interpretation clause, which created them.*
>
> *xxx xxx xxx*
>
> ***32.*** *The advertisement in question keeping in view the text and context in which it was issued clearly goes to show that for the purpose of applying for grant of a liquor shop, the respondents were qualified having been continuing to be registered in the employment exchange and having been granted a certificate in that behalf by the person specified in the advertisement. It is not a case where the word "unemployed" should be given a literal or even the dictionary meaning. In our view, it is required to be given a purposive meaning; a meaning which is capable of being translated in the action; a meaning which would not lead to an anomaly or absurdity; a meaning which satisfies the text and context in which the word has been used."*

He referred Annexure-1 at page 98 of the counter affidavit filed by the respondent-JPSC relating to 5th Combined Civil Services Examination and submitted that in the said advertisement, it was specifically provided, *inter alia*, that the marks obtained of the qualifying paper would not be added to the marks obtained in other papers for determining the *inter se* merits of the candidates. He referred legal maxim namely *Expressio unius est exclusion alterius* i.e. express inclusion of one thing is the exclusion of all others. He submitted that in the present advertisement, it has been expressly included that the total marks would be 1050 in written examination and, thus, inclusion of 1050 marks as total marks is exclusion of all others including the contention of the petitioners that only 30 marks of Paper-I was to be added for determining *inter se* seniority in the merit list. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Mohd. Alauddin Khan v. Karam Thamarjit Singh***, reported in ***(2010) 7 SCC 530***. Paragraph 24 of the said judgment is quoted herein below:

> ***"24.*** *As the principle of statutory construction, expressio unius est exclusio alterius states, the express inclusion of one thing is the exclusion of all others. In this case, the specific inclusion of a condition for filing a recriminatory petition under Section 97 of the Act, namely, that a declaration that the election petitioner or any other candidate is the returned candidate should be filed, excludes its filing in all other cases. Simply put, Section 97 of the Act bars filing of a counterclaim by way of a recrimination petition when an election petition is filed without seeking for a declaration*

> *that the election petitioner or any other candidate is the returned candidate. In such a case, the application of Order 8 Rule 6-A would not be permissible, as permitting the same would amount to allowing indirectly, what is prohibited by law to be done directly. It is settled law that whatever is prohibited by law to be done directly cannot be allowed to be done indirectly. The decision of the Court in Jagir Singh v. Ranbir Singh® may be referred to, wherein it was held thus:*
>
> > *"5. .. We do not think that it is permissible to do so. What may not be done directly cannot be allowed to be done indirectly; that would be an evasion of the statute. It is a 'well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance' (per Abbot, C.J. in Fox v. Bishop of Chester). 'To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.' (Maxwell/, 11th Edn., p. 109)"*

On the point of minimum marks to be obtained in each subjects, Mr. Gadodia submitted that a plain reading of the advertisement would reveal that Clause-13 of the advertisement provided *inter alia* that a candidate was required to obtain the aggregate percentage of marks in all subjects to qualify in Mains examination. The same would be evident from the mere fact that in the advertisement, so far as Paper-I is concerned, it was specifically provided that a candidate has to secure minimum 30 marks which was prescribed as "qualifying marks". He submitted that as per Clause-13 of the advertisement, a candidate was required to obtain the minimum marks as prescribed for each paper, then there was no occasion to prescribe minimum qualifying 30 marks for Paper-I, separately. According to him, Clause-13 of the advertisement itself has been the subject matter of interpretation by the Hon'ble Apex court in Civil Appeal No. 9217 of 2018 and the Hon'ble Apex Court, vide its judgment dated 10.09.2018, while interpreting Clause-13 of the advertisement in respect of Preliminary examination, in categorical terms, has held that a candidate was required to obtain only aggregate marks of the prescribed percentage in respect of all papers as opposed to obtain minimum percentage of marks in each paper. He further submitted that it is trite law that even *obiter dicta* of

the Hon'ble Apex Court is binding upon the High Courts unless there is a direct decision of the Hon'ble Apex Court on the subject. He further submitted that even *obiter dicta* of the Hon'ble Supreme Court has persuasive value before the Hon'ble Supreme Court itself. The Hon'ble Supreme Court, in the instant case, in categorical term, while interpreting Clause-13 of the advertisement, has held that the said Clause prescribed aggregate percentage of marks to be obtained in respect of all papers as opposed to minimum percentage of marks to be obtained in each paper. He also submitted that the said judgment, even if not having any precedential value, will still be binding upon the High Court and would have at least persuasive authority upon the High Court in view of the law laid down by the Hon'ble Apex Court in the case of ***Municipal Committee, Amritsar v. Hazara Singh***, reported in ***(1975) 1 SCC 794***. Paragraph 4 of the said judgment is quoted herein below:

> ***"4.*** *It is plain from submission of counsel that the appellant's grievance is not so much against the acquittal as against a passing reference by the Sessions Court to an obiter observation of this Court in Malwa Cooperative Milk Union Ltd., Indore v. Biharilal. Obviously, the Sessions Judge had concluded that a minor error in the chemical analysis might have occurred. He was perhaps not right in saying so. Anyway, a reading of his judgment shows that the mention of this Court's unreported ruling (Supra) was meant to fortify himself and not to apply the ratio of that case. Indeed, this Court's decision cited above discloses that Hidayatullah, J. (as he then was) was not laying down the law that minimal deficiencies in the milk components justified acquittal in food adulteration cases. The point that arose in that case was whether the High Court was justified in upsetting an acquittal in revision, when the jurisdiction was invoked by a rival trader, the alleged adulteration having been so negligible that the State had withdrawn the prosecution resulting in the acquittal. Certainly, the revisional power of the High Court is reserved for setting right miscarriage of justice, not for being invoked by private persecutors. Such was the ratio but, in the course of the judgment, Hidayatullah, J. to drive home the point that the case itself was so marginal, referred to the microscopic difference from the set standard. To distort that passage, tear it out of context and devise a new defence out of it in respect of food adulteration cases, is to be grossly unjust to the judgment. Indeed, the Kerala case cited before us by counsel viz. State of Kerala v. Vasudevan Nair itself shows that such distortion of the passage in the judgment did not and could not pass muster. When pressed with such misuse of this ruling, the High Court repelled it. The law of food adulteration, as also the right approach to decisions of this Court, have been*

set out correctly there:

> *"Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Article 141. Statements on matters other than law have no binding force. Several decisions of the Supreme Court are on facts and that Court itself has pointed out in Gurcharan Singh v. State of Punjab and Prakash Chandra Pathak v. State of Uttar Pradesh that as on facts no two cases could be similar, its own decisions which were essentially on questions of fact could not be relied upon as precedents for decision of other cases. The standard fixed under the Act is one that is certain. If it is varied to any extent, the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair and consistent decisions are great."*

He further relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Peerless General Finance & Investment Co. Ltd. v. Commissioner of Income Tax***, reported in ***(2019) SCC Online SC 851***.

Paragraph 13 of the said judgment is quoted herein below:

> ***"13.*** *While it is true that there was no direct focus of the Court on whether subscriptions so received are capital or revenue in nature, we may still advert to the fact that this Court has also, on general principles, held that such subscriptions would be capital receipts, and if they were treated to be income, this would violate the Companies Act. It is, therefore, incorrect to state, as has been stated by the High Court, that the decision in Peerless General Finance and Investment Co. Limited (supra) must be read as not having laid down any absolute proposition of law that all receipts of subscription at the hands of the assessee for these years must be treated as capital receipts. We reiterate that though the Court's focus was not directly on this, yet, a pronouncement by this Court, even if it cannot be strictly called the ratio decidendi of the judgment, would certainly be binding on the High Court. Even otherwise, as we have stated, it is clear that on general principles also such subscription cannot possibly be treated as income. Mr. Ganesh is right in stating that in cases of this nature it would not be possible to go only by the treatment of such subscriptions in the hands of accounts of the assessee itself. In this behalf, he cited a decision of the Division Bench of the Allahabad High Court in Commissioner of Income Tax Vs. Sahara Investment India Ltd., reported as Volume 266 ITR page 641 in which the Division Bench followed Peerless General Finance and Investment Co. Limited (supra), and then held as follows:*
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> > *"In Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India (1992) 75 Comp Case 12, the Supreme Court on similar facts held that the deposits were capital receipts and not revenue receipts (vide paragraphs 67 & 68 of the aforesaid judgment). That case also pertains to a finance company which used to collect deposits, and credited part of its deposits to the*

profit and loss account, as in the present case. Hence, the ratio of the said decision, in our opinion, applies to this case also.

It is well settled in income-tax law that book keeping entries are not decisive or determinative of the true nature of the entries as held by the Supreme Court in CIT v. India Discount Co. Ltd. [1970] 75 ITR 191 and in Godhra Electricity Co. Ltd. v. CIT [1997] 225 ITR 746 (SC). It has been held in those decisions that the court has to see the true nature of the receipts and not go only by the entry in the books of account.

We agree with the Tribunal that these deposits are really capital receipts and not revenue receipts. In Chowringhee Sales Bureau P. Ltd. v. CIT [1973] 87 ITR 542 (SC) which was followed in Sinclair Murray and Co. P. Ltd. v. CIT [1974] 97 ITR 615, the Supreme Court observed (page 619):

> *"It is the true nature and quality of the receipt and not the head under which it is entered in the account books that would prove decisive. If a receipt is a trading receipt, the fact that it is not so shown in the account books of the assessee would not prevent the assessing authority from treating it as trading receipt.*
>
> *It has been held by the Supreme court that the primary liability and onus is on the Department to prove that a certain receipt is liable to be taxed vide Parimisetti Seetharamamma v. CIT [1965] 57 ITR 532 (SC).*
>
> *Sri Chopra then relied on the decision of the Supreme Court in CIT v. Lakshmi Vilas Bank Ltd. [1996] 220 ITR 305. In our opinion that decision is also distinguishable because in that case the deposit was forfeited and the result of the transaction was that the bank became full owner of the security and the amount lying in deposit with it became its own money. In the present case there is no such finding that the deposit was forfeited or that at the end of the transaction the security deposit became the property of the assessee or that changed from a capital receipt to a revenue receipt. Hence, that decision is clearly distinguishable."*

On the point of *obiter dictum*, he relied upon the judgment rendered in the case of ***Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.***, reported in ***(2007) 5 SCC 428***. Extract of relevant paragraph 26 of the said judgment is quoted herein below:

> ***"26.*** *..... An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority. ....."*

He further submitted that the judgment relied by the petitioners in the case of Gaurav Priyadarshi *(supra)* is of no help, as the said judgment, is *per incuriam*, as it failed to note the settled legal principle that even an *obiter dicta*

of the Hon'ble Apex Court is binding upon the High Courts. He further submitted that any ambiguity in advertisement should be interpreted in favour of the candidate. He submitted that even if, for the sake of arguments, it is presumed that Clause-13 of the advertisement was ambiguous and it did not clearly spell as to whether minimum percentage of marks to be obtained by a candidate was for each subject or was aggregate of the total percentage pertaining to all papers, then also benefit of such ambiguity is to be extended in favour of the candidate. Under the said circumstances also, a candidate, who secured aggregate 40 marks pertaining to all subjects, would have been qualified in the Mains examination. He relied upon the judgment rendered in the case of ***Parvaiz Ahmad Parry v. State of Jammu and Kashmir & Ors.***, reported in ***(2015) 17 SCC 709***. Paragraph 15 of the said judgment is quoted herein below:

> ***"15.*** *In our considered view, firstly, if there was any ambiguity or vagueness noticed in prescribing the qualification in the advertisement, then it should have been clarified by the authority concerned in the advertisement itself. Secondly, if it was not clarified, then benefit should have been given to the candidate rather than to the respondents. Thirdly, even assuming that there was no ambiguity or/and any vagueness yet we find that the appellant was admittedly having BSc degree with Forestry as one of the major subjects in his graduation and further he was also having Master's degree in Forestry i.e. M.Sc. (Forestry). In the light of these facts, we are of the view that the appellant was possessed of the prescribed qualification to apply for the post in question and his application could not have been rejected treating him to be an ineligible candidate for not possessing prescribed qualification."*

He also submitted that the JPSC in paragraph 28 of its counter affidavit, itself stated that there was lack of clarity in the circular dated 27.11.2012 issued by the State of Jharkhand. He submitted that the examining body itself is accepting that there was ambiguity in the advertisement and under the aforesaid circumstances, the benefit has to be given to the candidates. He further submitted that in the present case, there has been no discrimination by the JPSC in declaring the candidates securing aggregate 40% marks as

successful for the Mains examination and the petitioners as well as private respondents have been treated equally by the respondent-JPSC by qualifying them on the basis of the aggregate marks in respect of all the papers and, thus, the benefit of ambiguity has been extended to one and all the candidate and there is no arbitrariness and/or *mala fide* on the part of the respondent-JPSC.

With regard to change of stand by the JPSC, Mr. Gadodia submitted that the respondent-JPSC was entitled under law to rectify its mistake committed during the Preliminary examination, especially after the judgment rendered by the Hon'ble Apex Court in Civil Appeal No.9217 of 2018. He submitted that the prescribed percentage was the aggregate marks to be obtained by the candidates in respect of all subjects/papers and not the minimum marks in respect of each paper. There is no estoppel against law and non-acceptance of a mistake is not a heroic deed. He relied upon the judgment rendered in the case of ***Rural Litigation and Entitlement Kendra v. State of U.P.***, reported in ***1989 Supp. (1) SCC 504***. Paragraph 40 of the said judgment is quoted herein below:

> ***"40.*** *Adverting to the question as to whether mining activity in this area should be permitted to a limited extent, keeping the principles of ecology in view, the affidavit stated:*
>
> *The Union Government has all along taken the stand that the Doon Valley is a fragile ecosystem and is endowed by nature with perennial water streams, lush green forests and scenic beauty. All these factors have contributed to Mussoorie being called the queen of hill stations and Dehradun becoming an important place of tourist attraction as well as centre of education. The unscientific and uncontrolled limestone quarrying operations spread over the entire 40 km. belt on the Mussoorie slopes however, endangered the delicate ecological balance resulting in ugly scars, excessive debris flow, drying up of water streams and perennial streams and rivulets and deforestation.*
>
> *Taking note of the disastrous ecological consequences, the technical group constituted by the State and Union Governments since 1979 have consistently recommended only controlled mining in this area. The Technical Expert Committee constituted by the Honourable Supreme Court under the Chairmanship of Shri D.N. Bhargav examined all*

the operating quarries and came to the conclusion that all of them, to a larger or smaller extent, have violated the statutory provisions relating to mines. Conditions in some of the mines were considered to be so bad that 20 of these were closed immediately in 1983. The Committee, under the Chairmanship of Shri D. Bandyopadhyay examined the Mining and Environmental Management Plans prepared by parties and came to the unanimous conclusion that none of these plans are satisfactory. Therefore, the Bandyopadhyay Committee strongly recommended that none of the mines reviewed by it should be allowed to operate. It is relevant to reiterate here that closure of these mines has been recommended by the Bandyopadhyay Committee not just on the ground that they are located within the Mussoorie city limits but after due consideration of the environmental implications, status of preparedness of mining and Environmental Management Plans and capability of the lessee to undertake mining operations on a scientific basis so that the damage to life and property, apart from environmental degradation, is avoided. None of the mines already closed is, therefore, fit to be considered for operation.

It is the view of Government that to prevent any further degradation of the ecology and environment in the area and to allow for rejuvenation, it is essential that limestone mining operations, if they are to continue, should be on a limited scale and completely regulated to ensure that they are done in an entirely scientific manner consistent with the imperatives of preservation and restoration of the ecology and environment in this area. In order to meet the essential requirements of steel industry, it would be necessary to maintain supply of low silica limestone from the Dehradun-Mussoorie area. The State Government of U.P. also has brought to our notice that certain other vital industrial and agricultural operations are dependent on limestone supplies from this area. In view of these considerations, it is felt that limestone mining on a limited scale may have to continue under strict regulation.

This affidavit of Dr. Maudgal was not accepted by this Court as it did not fulfil the requirements of the directions given in this Court's order dated 19-10-1987. Then came another affidavit dated 24-2-1988, by Shri T.N. Seshan, Secretary in the Ministry of Environment and Forests. This affidavit indicated that 90 per cent of the low silica high grade limestone was supplied by the Rajasthan mines to the Steel Authority of India Ltd. and 10 per cent of supplies came from the Dehradun quarries. Tata Iron and Steel Company at Jamshedpur, however, received a sizeable supply from the Dehradun quarries. According to this affidavit, in 1986, the total production of high grade limestone in the Dehradun-Mussoorie area was 6.02 lakh tonnes. The affidavit indicated availability of such limestone in several other parts of the country. In regard to import of limestone and foreign exchange components, this affidavit indicated that as low silica high grade limestone is available from indigenous sources, import thereof could be dispensed with. In paragraph 5 of this affidavit, the question as to whether keeping in view the principles of ecology, mining activity in the Dehradun-Mussoorie area could be permitted to a limited extent, perhaps as pleaded in the earlier affidavit. has been dealt with. This affidavit stated:

> *"5.2 Now that high grade low silica limestone is also available in the extensive deposits covering large areas in the State of Rajasthan which can meet the requirements of the steel industry which also includes defence requirements, there is justification for discontinuance of the existing mining operations in the Dehradun-Mussoorie area and, in fact, complete closure of the said mines in this area."*
>
> *It is a fact that while in the first affidavit controlled and limited mining was suggested, in the second affidavit filed after a gap of about three months total stoppage of mining activity in this area has been stressed. Counsel appearing on behalf of the State of Uttar Pradesh and UPSMDC offered serious criticism against this changed stance and we were called upon to reject the second affidavit also. We do not find any justification in this plea for rejection of the affidavit. This Court in its order of 19-10-1987, had in clear terms indicated what aspects were exactly required to be answered by the affidavit of the Union of India. Since the first affidavit did not answer those points it was rejected and a further affidavit was directed to be filed. There can be no two opinions that both the affidavits pleaded for banning of mining; but the first affidavit suggested controlled and limited mining in view of the demands while the second affidavit, on consideration of the fact that alternate sources were available for supply of the limestone of the desired quality, asked for total stoppage of mining operations. As we have already indicated in another part of this judgment, awareness of the environmental problem has been gradually increasing and though in the first affidavit, the Union of India had expressed its view that limited and controlled mining could be permitted, on a reconsideration of the matter and taking into account the relevant aspects for reaching its conclusion, the Union of India has come to adopt the view that there should be no mining in this area. We can well gather why the UPSMDC would feel aggrieved by the second affidavit but so far as the State of Uttar Pradesh is concerned, we do not see any justification in its critical stand against the second affidavit on the plea that the stand accepted in the first affidavit has been given a go by. Maintenance of the environment and ecological balance is the obligation of the State and the Central Governments and unless there was any real objection to the opinion of the Union of India as to continuing or closing down of mining activity, it should have been taken in the proper light and the little modified stand adopted in the second affidavit should have been welcomed."*

On the same point, he further relied upon the judgment rendered in the case of ***State of Rajasthan & Anr. v. Surendra Mohnot & Ors.***, reported in ***(2014) 14 SCC 77***. Paragraphs 17 and 29 of the said judgment are quoted herein below:

> ***"17.*** *It is well settled in law that there can be no estoppel against law. Consent given in a court that a controversy is covered by a judgment which has no applicability whatsoever and pertains to a different field, cannot estop the party from raising the point that the same was erroneously cited.*
>
> *Xxx xxx xxx*

> ***29.*** *Similarly, the Division Bench in the intra-court appeal instead of adverting to the concept of consent decree as stipulated under Section 96(3) of the Code of Civil Procedure, should have been guided by the established principles to test whether the concession in law was correct or not. In this context, it is useful to refer to a passage from City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala, wherein this Court, while delineating on the power of jurisdiction under Article 226, has expressed thus:*
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> > *"30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:*
> >
> > *(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*
> >
> > *(b) the petition reveals all material facts;*
> >
> > *(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;*
> >
> > *(d) person invoking the jurisdiction is guilty of unexplained delay and laches;*
> >
> > *(e) ex facie barred by any laws of limitation;*
> >
> > *(f) grant of relief is against public policy or barred by any valid law; and host of other factors.*
> >
> > *The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."*
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> *The abovequoted passage speaks eloquently and we respectfully reiterate. And we add, non-acceptance of a mistake is not a heroic deed. On the contrary, it reflects flawed devotion to obstinacy. The "pink of perfection" really blossoms in acceptance."*

On the aforesaid grounds, Mr. Gadodia submitted that there is no merit in these writ petitions and the same are fit to be dismissed.

55. Mr. Indrajit Sinha assisted by Mr. Bibhash Sinha, learned counsel appearing for the other successful candidates/respondents supplemented the arguments of Mr. Sumeet Gadodia and Mr. Sanjay Piprawall and submitted that the petitioners cannot be allowed to challenge the merit list or the selection process after having been declared unsuccessful. All the petitioners participated in the selection process without any demur or protest and only after being unsuccessful, these writ petitions have been filed. The question

being raised at this stage ought to have been raised by the petitioners at the earliest. The terms and conditions have not undergone any change nor did the petitioners think at any point of time that the clauses of the advertisement were vague and/or ambiguous. The petitioners have not represented before the JPSC or the State Government raising any apprehension or seeking any clarity on the issues which they seek to raise before this Court. The petitioners have accepted the advertisement and terms and conditions contained therein and hence cannot be allowed to approbate and reprobate at the same time and, accordingly, the writ petitions are fit to be dismissed as they are barred by principles of waiver, estoppel and acquiescence. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Air Commodore Naveen Jain v. Union of India & Ors.***, reported in ***(2019) 10 SCC 34***. Paragraphs 23 and 24 of the said judgment are quoted herein below:

> ***"23.*** *Apart from the policy, we also find that the appellant is estopped to challenge the policy after participating in the selection process on the basis of such policy. It has been so held by this Court in Madan Lal v. State of J&K:*
>
> > *"10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."*
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> ***24.*** *In a judgment reported as Ashok Kumar v. State of Bihar, a three-Judge Bench held that the appellants were estopped from turning around and challenging the selection once they were declared unsuccessful. The Court held as under:*

"17. In Ramesh Chandra Shah v. Anil Joshi, candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that:

> *'18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.'*

18. In State (UT of Chandigarh) v. Jasmine Kaur, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey, this Court held that:

> *"17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.'*

This principle has been reiterated in a recent judgment in Madras Institute of Development Studies v. K. Sivasubramaniyan.

19. In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place that written examination would carry ninety marks and the interview, ten marks. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The High Court noted in the impugned judgment in Anurag Verma v. State of Bihar that the interpretation of Rule 6 was not free from vagueness. There was, in other words, no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90:10 allocation."

He further submitted that the contention of the petitioners that the

marks of Paper-I of the Mains examination should not be added is completely misconceived. The advertisement in no uncertain terms states that the total marks would be 1050 and if the submission of the petitioners is to be accepted then the above part of the advertisement would be rendered otiose. The petitioners have not pointed out any positive term in the advertisement or elsewhere where it has been expressly stated that the marks of Paper-I of the Mains examination will not be added to the total. The contentions of the petitioners are based on conjectures, surmises and assumption. He further submitted that the advertisement is noticeably clear that Paper-I is a qualifying examination, and a candidate must obtain a minimum of 30%. According to him, it cannot be deciphered as from where the petitioners are claiming as a matter of right that the marks of the said paper should not be added. He also submitted that it cannot be said that the procedure adopted by the JPSC or the State in the instant case is in deviation from the express terms of the advertisement or the extant Rules. By applying any principle of interpretation, though the same are not strictly applicable to advertisement/notices, it is submitted that there being no ambiguity in the advertisement regarding the total marks being 1050 the said term must be construed literally. On plain reading of the advertisement, it is vividly clear that in the Mains examination, a candidate would be judged on 1050 marks leaving no scope to contend that the marks of Paper-I will not be added. The respondent-JPSC being the author of the advertisement its understanding and interpretation has great weight. He relied upon the judgment rendered in the case of ***Ritu Bhatia v. Ministry of Civil Supplies, Consumer Affairs & Public Distribution & Ors.***, reported in ***(2019) 3 SCC 422***. Paragraphs 20 and 21 of the said judgment are quoted herein below:

> ***"20.*** *The word "as" used in the advertisement should be given a literal meaning. The respondent is the author of the*

advertisement and they are the best person to consider what they meant by using the word "as". It is the specific case on behalf of the respondents that the intention behind the advertisement was that the applicant must have been appointed "as" a Company Secretary in PSU/company of repute and functioned as such for five years to be eligible for appointment. According to the respondent, the purpose was that the person should have held the position of a Company Secretary in a PSU/company of repute and discharged the statutory functions as such i.e. should have held the position of responsibility. Therefore, when the word "as" is specifically used, the same is to be considered strictly and therefore the experience of the appellant, while working as a "Management Trainee" cannot be considered as an experience of working "as" a Company Secretary and/or it cannot be said that she was appointed "as" a Company Secretary. If the period during which the appellant had worked as a "Management Trainee" is excluded, in that case, admittedly, the appellant would not be fulfilling the requisite eligibility criteria of having been appointed "as" a Company Secretary in a PSU/company of repute. It cannot be said that the appellant had, while working as a "Management Trainee", functioned "as" a Company Secretary.

21.** If submission on behalf of the appellant is accepted that by performing duties as "Management Trainee" she was also performing some duties as "Company Secretary" and therefore she can be said to have fulfilled the eligibility criteria of having been appointed "as" a Company Secretary, in that case, it would be against the intent. If the intention was such, in that case, the wording in the advertisement should have been that the candidate should have the experience of the similar nature of work as "Company Secretary". In the advertisement, it has been specifically and categorically stated that a candidate shall have post-qualification experience of five years "as" Company Secretary. The word used "experience as Company Secretary" has to be given meaning that a candidate must have been appointed "as" a Company Secretary and shall have actually worked "as" a Company Secretary for five years. Giving other meaning would be changing the eligibility criteria as mentioned in the advertisement. As observed hereinabove, the appellant has no experience of five years "as" Company Secretary, as she was appointed and/or worked as "Management Trainee" or "Assistant Company Secretary"."*

On the point of the cut-off percentage fixed for each subject and not on the total, he submitted that the contention of the petitioners is completely in the teeth of the statutory Rules especially proviso to Rule 16 of the Bihar Civil Services (Executive Branch) and the Bihar Junior Civil Service (Recruitment) Rules, 1951. The respondent-State has taken stand in their counter affidavit that the total marks obtained at the written examination and not the marks obtained in any particular subject shall be taken into consideration. He further submitted that there cannot be any dispute on the proposition of law that the

terms of an advertisement cannot override the statutory provision and error if any in the advertisement being inconsistent with the Rules would not create any right in favour of the candidates. He relied upon the judgment rendered in the case of ***Malik Mazhar Sultan & Anr. v. UP Public Service Commission & Ors.***, reported in ***(2006) 9 SCC 507***.

He also submitted that there cannot be any doubt that in the Mains examination, which determines the suitability of a particular candidate for appointment, the total marks obtained at the written examination has to be taken into consideration and not the marks obtained in a particular subject. He further submitted that the advertisement also does not say that the cut-off marks for each subject will form the basis for selection of a candidate in the Mains examination. The Mains examination is the examination which determines the suitability of a particular candidate for appointment and, hence, the proviso to Rule 16 of the Rules of 1951 will come into play with full force. The Preliminary examination is not a part of the Mains examination and the merit of a candidate is not judged in a Preliminary examination. It is only an eligibility criterion which a candidate must fulfil before he/she is permitted to appear in the Mains examination. He relied upon the judgment rendered in the case of ***A.P. Public Service Commission v. Baloji Badhavath & Ors.***, reported in ***(2009) 5 SCC 1***. Paragraphs 25, 29 and 32 of the said judgment are quoted herein below:

> ***"25.*** *How the Commission would judge the merit of the candidates is its function. Unless the procedure adopted by it is held to be arbitrary or against the known principles of fair play, the superior courts would not ordinarily interfere therewith. The State framed Rules in the light of the decision of the High Court in S. Jaffer Saheb. Per se, it did not commit any illegality. The correctness of the said decision, as noticed hereinbefore, is not in question having attained finality. The matter, however, would be different if the said Rules per se are found to be violative of Article 16 of the Constitution of India. Nobody has any fundamental right to be appointed in terms of Article 16 of the Constitution of India. It merely provides for a right to be considered therefor. A procedure evolved for laying down the mode and manner for*

consideration of such a right can be interfered with only when it is arbitrary, discriminatory or wholly unfair.

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29. *Indisputably, the preliminary examination is not a part of the main examination. The merit of the candidate is not judged thereby. Only an eligibility criterion is fixed. The papers for holding the examination comprise of general studies and mental ability. Such a test must be held to be necessary for the purpose of judging the basic eligibility of the candidates to hold the tests. How and in what manner the State as also the Commission would comply with the constitutional requirements of Article 335 of the Constitution of India should ordinarily not be allowed to be questioned.*

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32. *Judging of merit may be at several tiers. It may undergo several filtrations. Ultimately, the constitutional scheme is to have the candidates who would be able to serve the society and discharge the functions attached to the office. Vacancies are not filled up by way of charity. Emphasis has all along been made, times without number, to select candidates and/or students based upon their merit in each category. The disadvantaged group or the socially backward people may not be able to compete with the open category people but that would not mean that they would not be able to pass the basic minimum criteria laid down therefor."*

He further submitted that by now it is well settled that fixation of a cut-off marks even after the examination process is over, cannot be called in question unless the same is found to have been done in a manner not justifiable in law. The decision of the JPSC to allot paper wise cut-off in the Preliminary examination was upheld by this Court, but no document has been brought on record that a similar decision was taken by the State Government for the Mains examination as well. In absence of any such case being pleaded by the petitioners merely on their asking and on a misconceived interpretation of Clause-13 of the advertisement, no relief can be granted to them. The petitioners have not read Clause-13 of the advertisement in its right perspective. He also submitted that the object of Preliminary examination is different from the Mains examination and the recruitment process must be conducted in terms of the statutory Rules as also that the petitioners have failed to establish any legal right in this regard, the said submission of the petitioners are fit to be rejected.

On these grounds, Mr. Indrajit Sinha submitted that these writ petitions are fit to be dismissed.

56. Mr. Mukesh Kumar Mehta and Mr. Anuj Kumar Trivedi, learned counsel appearing on behalf of respondent nos. 164 and 200 submitted that in this case, rule of estoppel would be applied because the petitioners have participated in Preliminary examination thereafter they were participated in Mains examination after knowing all the facts. The petitioner have not challenged the Rules/policy decision dated 02.04.2013. Both the counsel have adopted the arguments of Mr. Sumeet Gadodia and Mr. Indrajit Sinha on the point of Paper-I and cut-off marks in the Mains examination for all the papers.

57. Rest of the learned counsel appearing for the respondents have adopted the arguments of the learned counsel for the respondents.

58. In light of the above facts and submissions of the learned counsel appearing for the parties, the Court comes to conclusion that following issues are required to be answered by the Court:

(i) Whether as per the scheme of the Rules and advertisement, marks of Paper-I (General Hindi and General English) was required to be added in the merit list or not?

(ii) Whether the issue of minimum qualifying marks required under Clause-13 has already been adjudicated upon by this Court in relation to the Preliminary examination of 6th Combined Civil Services examination, 2016 and the JPSC being the constitutional body on whose instance that has been upheld, the respondents can take any contrary stand or not?

(iii) Whether the respondent-JPSC has published the result against the provision of Clause-13 of the advertisement, applying the requirement of minimum qualifying marks in aggregate rather

than in each paper or not?

59. The Court is firstly taking up issue no. (i) i.e. with regard to addition of marks of Paper-I in the merit list. It is an admitted position that the examination pattern of the JPSC had been subject to consideration before a Committee under the Chairmanship of Sri V.S. Dubey. The JPSC made its recommendation to the State Government vide communication dated 02.04.2013, which is at Annexure-1 of the writ petition. In the said recommendation, the JPSC, so far as papers are concerned, has recommended as follows:

> *"The Mains Examination shall comprise of*
>
> ***Paper-I***
>
> *General Hindi (10th standard) - 50 Marks*
> *General English (10th standard) - 50 Marks*
> *(Descriptive 100 Marks)*
>
> *It will be only a qualifying paper in which out of 100 (Combined both Hindi & English) every candidate will have to secure only 30 marks. Thus inclusion of 50 marks General English component will not adversely impact the chances of students from Hindi/Regional Language background.*
>
> ***Paper-II***
>
> *Language and Literature of any one of 9 regional languages of Jharkhand or other six languages namely, Hindi, Urdu, Sanskrit, Oriya, Bangla, English*
> *(Descriptive 100 Marks)*
>
> ***Paper-III***
>
> *General Studies Paper-I (History & Geography)*
> *(Subjective 200 Marks)*
>
> ***Paper-IV***
>
> *General Studies Paper-II*
> *(Indian Constitution, Polity, Public Administration, Good Governance)*
> *(Subjective 200 Marks)*
>
> ***Paper-V***
>
> *General Studies Paper-III*
> *(Indian Economy, Globalization, Sustainable Development)*
>
> ***Paper-VI***
>
> *General Studies Paper-IV*
> *(General Science, Environment & Technology Development)*
> *(Subjective 200 Marks)*
>
> ***Total Marks (Mains)*** - *900 marks*
> *(Paper-I will be of qualifying nature only)*
> ***Personality Test*** - *100 marks only*
> ---
> *Grand Total for 900+100 =*
> *Total Marks for preparing Merit List-1000"*

60. On perusal of the said recommendation, it is clear that the Mains examination was to be comprised of Paper-I consisting of General Hindi and

General English and the same was of 10th Standard. It was stipulated that Paper-I will be only a qualifying paper in which out of 100 marks (combined both Hindi & English) every candidate will have to secure only 30 marks. It was also stipulated that inclusion of 50 marks General English component will not adversely impact the chances of the students from Hindi/Regional Language background. In light of Annexure-G of the counter affidavit filed by the JPSC, the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand vide notification dated 25.09.2013 approved the said recommendation including Appendix- Ka, Kha and Ga, as recommended by the V.S. Dubey Committee. It was made applicable with effect from 6th Combined Civil Services Examination. Appendix- Kha of V.S. Dubey Committee report is on the record at page 63 of the counter affidavit filed by the respondent-JPSC, which makes is clear that the scheme of Mains examination was consisting of six compulsory papers; two language papers each of 100 marks and remaining four papers each of 200 marks. On the report of Saryu Rai Committee report, Paper-II was later on made of 150 marks. The object and purpose of Paper-I (General Hindi and General English) was prescribed to test the working knowledge of the candidates of Matric Standard only and it will be only a qualifying paper and every candidates are required to secure only 30 marks. It has been further noted that thus inclusion of 50 marks General English component will not adversely impact the chances of students from Hindi/Regional Language background. So far as Paper-II (Language and Literature) is concerned, it was clearly stated that this paper will be set of 100 marks and the marks obtained in this paper shall be counted for preparation of the gradation list of the Mains examination. So far as adding of Paper-II (Language and Literature) is concerned, that has been specifically considered by V.S. Dubey Committee report. Thus, the object and purpose of Paper-I was

only to test the knowledge of Matric Standard of the candidates. To interpret the condition so far as Paper-I and even Clause-12 (B) of the advertisement along with page 63 of the counter affidavit of the respondent-JPSC are concerned, it requires to be considered with the Rules, which make it very clear that even if the Mains examination was supposed to be consisting of 1050 marks, how the marks to be obtained in Paper-I was to be considered, as already indicated in Clause-B of the advertisement in which it has been noted that so far Paper-I is concerned, the marks could not be taken for merit and minimum 30 marks is mandatory, which suggests that Paper-I was qualifying in nature and only 30 marks was required to be obtained by the candidates. In the report and also in the recommendation of the JPSC, it has been stated in clear terms that Paper-I is qualifying in nature and the candidates are required to obtain only 30 marks. It has been further noted that thus inclusion of 50 marks General English component will not adversely impact the chances of students from Hindi/Regional Language background. On perusal of this recommendation and Clause 12(B) of the advertisement, it transpires that the said Paper-I was only for the purpose of assessing the working knowledge of the candidates and marks obtained therein cannot be counted in determining the merit of the candidates. The marks statement of the Mains examination of one candidate, which is at Annexure-4 of the writ petition, suggests that the final marks of the Mains examination included the marks obtained by the candidates in Paper-I. The respondents have supported their actions and result and contended by relying para (B) of the advertisement that since the total marks of the Mains examination was 1050 and according to them the marks obtained by the candidates in Paper-I was also supposed to be accounted for merit. According to the respondents, if Paper-I was made qualifying the marks or higher marks obtained by the candidates in that paper was accountable.

Annexure- Kha of the report of the V.S. Dubey Committee report read with Clause 12 of the advertisement suggests that Paper-I was only qualifying with other specific objects to be achieved. Accordingly, Annexure-Kha of the report of the V.S. Dubey Committee report read with Clause-12 of the advertisement makes it clear that the marks obtained by the candidates over and above 30 marks would not have been accounted and the candidates who obtained less than 30 marks in that paper, they must have been declared as failed. The provision in a statute must be read in their original grammatical meaning to give its words a common textual meaning. It is the responsibility of the Courts to interpret the text in a manner which eliminates any element of hardship. It has been held by the Hon'ble Supreme Court in the case of ***Meeta Sahai v. State of Bihar***, reported in ***(2019) 20 SCC 17*** in paragraphs 20, 21, 22, 23 and 27, which are quoted herein below:

> ***"Statutory Interpretation***
>
> ***20.*** *It is a settled canon of statutory interpretation that as a first step, the courts ought to interpret the text of the provision and construct it literally. Provisions in a statute must be read in their original grammatical meaning to give its words a common textual meaning. However, this tool of interpretation can only be applied in cases where the text of the enactment is susceptible to only one meaning. Nevertheless, in a situation where there is ambiguity in the meaning of the text, the courts must also give due regard to the consequences of the interpretation taken.*
>
> ***21.*** *It is the responsibility of the courts to interpret the text in a manner which eliminates any element of hardship, inconvenience, injustice, absurdity or anomaly. This principle of statutory construction has been approved by this Court in Modern School v. Union of India, by reiterating that a legislation must further its objectives and not create any confusion or friction in the system. If the ordinary meaning of the text of such law is non-conducive for the objects sought to be achieved, it must be interpreted accordingly to remedy such deficiency.*
>
> ***22.*** *There is no doubt that executive actions like advertisements can neither expand nor restrict the scope or object of laws. It is therefore necessary to consider the interpretation of the phrase "government hospital" as appearing in the Rules. Two interpretations have been put forth before us which can be summarised as follows:*
>
> *(a) Only hospitals run by the Government of Bihar.*
>
> *(b) Hospitals run by the Bihar Government or its instrumentalities, as well as any other non-private hospital within the territory of Bihar.*
>
> *The former interpretation to the term, as accorded to it by the*

respondents, forms a narrower class whereas the latter interpretation used by the appellant is broader and more inclusive.

Literal Interpretation

23. *At the outset, the respondents' contention that meaning of the term "government hospital" would be bound by the restrictive definition of "Government" under Rule 2(a) of the Rules, does not sound well. It is settled that grammatical rules must be given due weightage during statutory interpretation.12 Rule 2 is a definitional provision and defines "Government" as a noun. However, it would not necessarily govern instances where the word has been used in another form.42 Under Rule 5, the operative phrase is "any government hospital". Here, "Government" is restrictively defining the noun "hospital" to exclude those run by certain entities. Thus, "Government" as part of "government hospital" is a noun adjunct and has been used as an adjective. Such usage of a noun in its adjectival form changes its character altogether and it would be unwise to import the meaning of its noun form. This is especially true considering how the prefatory portion of Rule 2 explicitly provides that the definitions as prescribed thereunder shall be referred to unless otherwise required in context. The phrase "government hospital" therefore cannot be construed to exclude other non-private hospitals which are otherwise run exclusively with the aid and assistance of the Governments. Additionally given the difference in common usage wherein "government hospital" refers to all non-private hospitals and not hospitals established by a particular Government, Rules 5 & 6(iii) would not be bound by Rule 2(a).*

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Purposive Interpretation

27. *In pursuance of the above analysis, we are of the view that it is necessary to resort to purposive interpretation of the provisions of the Rules, in light of its objectives. Otherwise also as per the prefatory part of Article 309, the Rules framed thereunder must be in conformity with all other constitutional provisions, which necessarily includes Part III. Dealing with recruitment in government hospitals, it is clear that the object and purpose of the Rules too must satisfy the test of Article 16."*

61. It is well settled position that when the words of a statute are clear, plain or ambiguous, the Courts are bound to give effect to that meaning irrespective of consequences. The Hon'ble Supreme Court in the case of ***State of Jharkhand v. Govind Singh***, reported in ***(2005) 10 SCC 437*** observed the principles of plain reading of a provision in paragraphs 10, 11, 12 and 17, which are quoted herein below:

"10. *When the words of a statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. (See J.P. Bansal v. State of Rajasthan.)*

11. *As a consequence, a construction which requires for its*

support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As was noted by the Privy Council in Crawford v. Spooner:

> *"We cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there."*

The view was reiterated by this Court in State of M.P. v. G.S. Dall and Flour Mills and State of Gujarat v. Dilipbhai Nathjibhai Patel?. Speaking briefly, the court cannot reframe the legislation, as noted in J.P. Bansal case for the very good reason that it has no power to legislate.

12. *It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.*

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17. *Where, therefore, the "language" is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here."*

62. However, necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provisions gives a different meaning defeating the object of the statute. It has been clearly stipulated in the advertisement as well as in the recommendation of the V.S. Dubey Committee report that Paper-I will be only a qualifying paper in which out of 100 marks every student will have to secure only 30 marks. Thus the inclusion of 50 marks General English component will not adversely impact the chances of the students from Hindi/Regional Language background. It is well settled position that the principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, unanalysed or unbridled power. The JPSC has contended, with regard to 5th Combined Civil Services Examination that Paper-I marks will not be added and the same is absent in the 6th Combined Civil Services Examination's advertisement. The said contention is not acceptable to the Court in view of the recommendation of the JPSC vide

Annexure-1 for adopting the recommendation of V.S. Dubey Committee report and Clause-12(B), which clearly stipulate that Paper-I was only qualifying in nature. In the Mains examination of Language Paper-II, it has been clearly stated that the marks of that paper will be added for preparation of the merit list. Thus, on the plain reading of this Clause, it is crystal clear that the marks of Paper-I was only qualifying in nature, which was not to be added and the same is also suggestive from the document at Annexue-1 of the writ petition, which is the recommendation to the Government by the JPSC as quoted *supra*.

63. So far as the judgment relied by Mr. Sumeet Gadodia, learned counsel for the successful candidates in the case of Paul Enterprises v. Rajib Chatterjee *(supra)* is concerned, it has been observed in paragraph 26 of that judgment that it is well settled that the provisions of the statute are to be read in the text and context in which they have been enacted. It is well settled that in construction of a statute an effort should be made to give effect to all the provisions contained therein. It is equally well settled that a statute should be interpreted equitably so as to avoid hardship. The judgment relied by Mr. Sumeet Gadodia in the case of Mohd. Alauddin Khan v. Karam Thamarjit *(supra)* is on the point of express inclusion of one thing is the exclusion of all others. Merely saying that 1050 marks was mentioned in the advertisement will not suggest that Paper-I marks was required to be added. In view of the specific condition put in the advertisement itself suggests that Paper-I was qualifying in nature. Thus, the judgments relied by Mr. Sumeet Gadodia with regard to harmonious consideration is not helping the respondents.

64. In light of these discussions, issue no. (i) is being answered by this Court in term that "the marks of Paper-I was not required to be added in the merit list".

65. Accordingly, issue no. (i) is answered as above.

66. Now, the Court is taking up issue nos. (ii) and (iii) simultaneously as both the issues are interlinked. Clause-13 of the Advertisement no.23/2016 at Annexure-1 of the writ petition provides that minimum qualifying marks is required to be obtained by the candidates. Clause-13 of the advertisement is quoted herein below:

"13. प्रारंभिक एवं मुख्य परीक्षा का न्यूनतम अर्हतांकः–

अनारक्षित	40 प्रतिशत
पिछडा वर्ग – I	34 प्रतिशत
पिछडा वर्ग – II	36.5 प्रतिशत
अनुसूचित जाति/जनजाति एवं महिला वर्ग	32 प्रतिशत

न्यूनतम अर्हतांक का उपर्युक्त रुप मे निर्धारण सभी सेवाओ/संवर्गो की प्रतियोगिता परीक्षाओ के लिए विभिन्न आरक्षण कोटियो के लिए सभी लिखित परीक्षाओ (वस्तुनिष्ठ/विषयनिष्ठ) पर समान रूप से लागू रहेगा । **मुख्य परीक्षा के प्रथम पत्र (सामान्य हिन्दी/सामान्य अंग्रेजी) मे सभी कोटि के उम्मीदवारो को 30 अंक प्राप्त करना अनिवार्य होगा ।**

नोट :– कार्मिक, प्रशासनिक सुधार तथा राजभाषा विभाग के संकल्प संख्या–8315 दिनांक–16.09.2015 के आलोक में सिविल सेवा प्रतियोगिता परीक्षा में साक्षात्कार हेतु न्यूनतम अर्हतांक की अनिवार्यता को समाप्त कर दिया गया है ।"

67. On perusal of Clause-13 of the advertisement, it transpires that the minimum qualifying marks are required to be obtained in different categories in Preliminary and Mains examination with a stipulation that the requirement of minimum qualifying marks shall be applicable to all written examinations, objective as well as subjective. It further creates an exception that irrespective of the minimum qualifying marks as provided for other subjects, the candidates have to obtain 30 marks in Paper-I of the Mains examination. The applicability of Clause-13 has already been raised before the Hon'ble Supreme Court in the case of Rakesh Kumar *(supra)* in Civil Appeal No.9217 of 2018, which is on the record as Annexure-5/1 of the writ petition. The Hon'ble Supreme Court allowed the appellant-Rakesh Kumar to appear in the Mains examination considering that the appellant was alone before the Hon'ble Supreme Court.

The contention of the State Government has been observed by the Hon'ble Supreme Court in that appeal as follows:

> *"We have also been informed by the State Government that owing to the supposed ambiguity in the advertisement, a Committee has gone into the same and has since opined what was meant by "preliminary examination" is that 40 per cent minimum marks should be obtained in each paper."*

68. The Hon'ble Supreme Court allowed the appeal vide order dated 10.09.2018 with an observation that anything said in the order would not be treated as a precedent. Thereafter, writ petitions have been filed being W.P.(S) No. 5046 of 2018 with W.P.(S) No.4188 of 2018, Gaurav Priyadarshi/Joy Guria before this Court challenging therein applicability of minimum qualifying marks on aggregate basis of both the papers of the Preliminary examination. The respondent-JPSC, by relying upon the judgment passed in the case of Taniya Malik v. Registrar General of High Court of Delhi *(supra)* took stand in the case of Gaurav Priyadarshi/Joy Guria that a candidate who has secured 40 marks collectively i.e. in Paper-I and Paper-II as a whole, is deemed to be successful for Mains examination. The stand of the JPSC was recorded in paragraph 7 of the said judgment, which is quoted herein below:

> ***"7.*** *…….. Learned counsel further argues that from the materials available on record, it would be evident that the present petitioners belong to different categories and have not secured minimum qualifying marks either in Paper-I on in Paper-II and as such they have not been declared successful in the re-revised result dated 06.08.2018 and as such there is no illegality in the revised result dated 06.08.2018. Learned counsel further argues that a candidate who secured 40% marks (Unreserved category) collectively, i.e. in Paper-I and Paper-II as a whole is deemed to be successful for Mains examination in view of the resolution of the State Government and as such not declaring the petitioners as successful in the re-revised result, although they have secured the minimum qualifying marks as a whole i.e. 40% marks together in I and II papers is illegal. Such contention of the petitioners cannot be accepted in the facts and circumstances of the case. To buttress his arguments, learned counsel for the respondents places heavy reliance on para-23 of the judgment passed by the Hon'ble Apex Court in case of* ***Taniya Malik Vs. the Registrar General of the High Court of Delhi*** *[W.P.S. (C) No.764 of 2017] and also the judgment passed by the Hon'ble Apex Court in case of* ***Rakesh Kumar Vs. State of Jharkhand & Ors.*** *(Civil Appeal No.9217 of 2018)."*

69. Thus, it is apparent that in the aforesaid case, the State and the JPSC relied upon the ratio laid down by the Hon'ble Supreme Court in Taniya Malik case instead of the observation/obiter made by the Hon'ble Supreme Court in Rakesh Kumar case and the coordinate Bench of this Court has decided that Clause-13 is to be interpreted requiring the candidates to individually qualify in each paper of the examination. The said writ petition was dismissed vide order dated 20.12.2018 and the coordinate Bench of this Court held that minimum qualifying marks was to be obtained by the candidates in each paper. Paragraphs 8 and 9 of the order dated 20.12.2018 passed in W.P.(S) No.5046 of 2018 with W.P.(S) No.4188 of 2018 are quoted herein below:

> ***"8.*** *..... It is very much clear that as per the syllabus mentioned in the advertisement two papers were prescribed for preliminary test, i.e. General Studies Paper-I and General Studies Paper-II having in different subjects and the candidates had to obtain 40% marks in each paper and those, who have secured minimum qualifying marks were only considered and declared successful in the Preliminary Test Examination. The same principles was applied for other categories also and the earlier results, revised results and amended results are based on the same principles. From perusal of the records, it appears that JPSC has adopted uniform pattern and has not deviated from its principle of considering 40% as the minimum qualifying in both the subjects separately i.e. in each paper and not the aggregate. In the instant writ petition, the petitioners belongs to different categories and have not secured minimum qualifying marks either in Paper-I or in Paper-II and as such, they have not been declared successful in the revised result dated 06.08.2018.*
>
> ***9.*** *The main contention of the learned counsel for the petitioners is that as the said criteria was never in the advertisement and as such, in case of ambiguity in the advertisement, the benefits must fall in favour of the candidates. The said contention of the petitioner is not acceptable to this Court simply on the ground that a Committee has gone into the same and has since opined what was meant for Preliminary Examination is that 40% minimum marks should be obtained in each paper. As the earlier results, revised results and the amended results were all declared considering the same principles and earlier this Court had already dismissed one writ petition viz. W.P.(S). No. 1452 of 2018 and the petitioner therein had never challenged nor approached this Court regarding the said ambiguity. It was only after the stay order passed by the Hon'ble Apex Court, the present writ petition was filed. The order passed by the Hon'ble Apex Court in case of Rakesh Kumar Vs. State of Jharkhand & Ors. (Civil Appeal No. 9217 of 2018), is of no help to the present petitioner as it has been clearly held in the said order that, "Since the appellant alone is before us, we make it clear that anything said in the order will not be treated as a precedent" and*

> *as such, the present petitioners cannot be benefited out of the said order. The said order was pronounced in the peculiar facts and circumstances of that case and as such, it was clearly held by the Hon'ble Apex Court that anything said in the order will not be treated as a precedent and only the appellant of that case was allowed to appear in the Mains Examination and as such, the present petitioners cannot get favour out of the same…."*

70. Thus, it is clear that the respondent-JPSC after the order passed by the Hon'ble Supreme Court in Rakesh Kumar case, took stand before the coordinate Bench of this Court and interpreted Clause-13 of the advertisement in the line of Taniya Malik's judgment, which was sanctioned by the coordinate Bench. On perusal of Clause-13, it is crystal clear that it applies upon both the examinations i.e. Preliminary and Mains. Thus, different interpretation cannot be allowed for the purpose of the Mains examination. Certainly it will amount to change the rule of game during the recruitment process and has prejudiced the petitioners because the candidates, who have not qualified in each paper of the Mains examination, have been included in the final select list. The coordinate Bench of this Court has also considered the order of the Hon'ble Supreme Court in the case of Rakesh Kumar and considered that the Hon'ble Supreme Court has observed that the order will not be treated as a precedent and the coordinate Bench has decided the case. At this stage, it is strange that the JPSC took different stand and published the result on the total marks and may not consider minimum qualifying marks in each paper. The question remains whether on the stray observation made by the Hon'ble Supreme Court in Rakesh Kumar case, the stand of the JPSC can be allowed to be changed at this stage or not. For the sake of brevity, paragraph 23 of the judgment rendered in the case of ***Taniya Malik*** *(supra)* is quoted herein below:

> ***"23.*** *Coming to question whether minimum cut-off marks in the written examination be relaxed from 40% to 33% and whether we should interfere on the ground that as a person who has obtained the highest marks, could not clear one of the papers by narrow margin of one marks. It was also urged that the person having the highest marks has not been called for interview and as he could not clear the minimum percentage in one of the*

> *written paper and persons having lesser marks in aggregate have been called for interview. In our opinion minimum passing marks in each of the paper could have been prescribed and that is absolutely necessary so as to adjudge the academic knowledge in various subjects. Merely by scoring highest marks in general knowledge and language paper is not going to help. Minimum knowledge in other subjects, civil and criminal law was also requisite and that is true for vice versa too, and that is why minimum passing marks had been prescribed and fixation of 40% was quite reasonable and proper and it would be not proper for this Court to interfere in the same. We find no fault in prescribing the minimum passing marks for written papers. It may happen in any examination that a person who is having better aggregate may not fair well in one of the papers and may be declared 'failed'. That cannot be a ground to order relaxation or to doubt the correctness of the evaluation process. When we were shown the marks of a candidate who secured highest marks, it became apparent that the performance of the candidate in paper general knowledge and language was far better as compared to the performance in civil and criminal papers. Thus when a single examiner, has done valuation, same yardstick has been applied to all the candidates. We find no ground to interfere on the various grounds urged by the petitioners."*

71. The issue of minimum qualifying marks has already been decided by the coordinate Bench of this Court considering the judgment of the Hon'ble Supreme Court in the case of Rakesh Kumar, which has not been challenged either of the parties and the same has attained finality. Accordingly, the JPSC on whose instance that has been decided cannot be allowed to take contrary stand.

72. Accordingly, it is held that the stand taken by the respondent-JPSC and the respondent-State has attained finality. Moreover, it can be softly said that it amounts to change the rule of game in the midway of the game. When Clause-13 specifically provides that minimum qualifying marks is required to be obtained in each paper, which has been upheld by the coordinate Bench of this Court on the contention of the JPSC and State, preparation of merit list on total marks of each paper will amount to change the rule of game in the midway. The question further arises whether the JPSC was authorised or was well within its jurisdiction to change the rule of game. The Hon'ble Supreme Court in the case of ***Maharashtra SRTC v. Rajendra Bhimrao Mandve***,

reported in ***(2001) 10 SCC 51*** has observed in paragraph 5 that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced as the same would amount to changing the rules of the games. Paragraph 5 of the said judgment is quoted herein below:

> ***"5.*** *The serious dispute and controversy raised relates to the claim of the Corporation that Circular No. 17 of 1996 dated 24-6-1996, only came to be issued by way of clarification and it was not only necessary to be issued but also governed the selection of Drivers in question. The writ petitioners, who were unsuccessful, asserted that it is the circular dated 4-4-1995 which should govern the selection and consequently the selections ought to have been made by assigning 87.5% marks for written/trade test and 12.5% for the oral test (personal interview) and results declared, accordingly. On going through the above circular orders, we find that the procedure for recruitment of Drivers is separate from recruitment for other categories where written test/trade test has been specifically laid down and that it is only where the written test and interview are stipulated, the percentage of weightage for written test/interview has been resolved by the Board, under the directions of the State Government, to be fixed at 87.5% and 12.5% respectively. The directions of the State Government in their letter dated 2-1-1995 only fixes the weightage to be given between marks obtained in written test and those in interview and no reference is found therein of any trade test or driving test. The resolution of the Board dated 21-3-1995 also seems to be on the same lines and is with reference to marks obtained in written test and interview respectively and not otherwise. Apparently, in view of the above and in the absence of reference to driving test or other trade test too, that the Corporation claims to have issued Circular Order No. 17/1996 dated 24-6-1996, on the basis of the earlier Circular No. 52/80 for pass in driving test to be presented to the ST Committee and No. 25/90 dated 2-7-1990 pertaining to award of marks in the interview, by fixing the average of the marks awarded by the ST Sub-Committee to be the final and deciding factor in the matter of selection of a candidate. Therefore, the High Court cannot be said to be correct in holding that the circular order dated 24-6-1996 is illegal or arbitrary or against the orders of the State Government or the resolution of the Board of the Transport Corporation. Instead, it would have been well open to the High Court to have declared that the criteria sought to be fixed by the circular dated 24-6-1996 as the sole determinative of the merit or grade of a candidate for selection long after the last date fixed for receipt of application and in the middle of the course of selection process (since in this case the driving test was stated to have been conducted on 27-11-1995) cannot be applied to the selections under consideration and challenged before the High Court. It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court, to the extent it pronounced upon the invalidity of*

the circular orders dated 24-6-1996, does not merit acceptance in our hand and the same are set aside."

73. The argument on behalf of the respondents that if any ambiguity is there rule will prevail, is misplaced at this stage as the interpretation of Clause-13 has already attained its finality that too the stand taken by the respondent-JPSC and the respondent-State. The Court is conscious of the fact that the JPSC has taken stand that since Rakesh Kumar case has been allowed that is why the procedure has been changed. However, the Hon'ble Supreme Court in that case in clear terms has observed that anything said in the order will not be treated as a precedent. The stand of the respondents with regard to obtain minimum qualifying marks has already been observed in that judgment. In that view of the matter, whether the stand of the JPSC and State can be accepted by this Court, the answer is negative in view of the fact that it is well settled that mere stray observation of the Court is not binding. The *ratio decidendi* of a judgment is the only part binding upon the parties. The Hon'ble Supreme Court in the case of ***Oriental Insurance Co. Ltd. v. Meena Variyal***, reported in ***(2007) 5 SCC 428*** has observed in paragraph 26 that an *obiter dictum* of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. Paragraph 26 of the said judgment is quoted herein below:

"26. *Learned counsel for the respondent contended that there was no obligation on the claimant to prove negligence on the part of the driver. Learned counsel relied on Gujarat SRTC v. Ramanbhai Prabhatbhai in support. In that decision, this Court clarified that the observations in Minu B. Mehta case are in the nature of obiter dicta. But, this Court only proceeded to notice that departures had been made from the law of strict liability and the Fatal Accidents Act by introduction of Chapter VII-A of the 1939 Act and the introduction of Section 92-A providing for compensation and the expansion of the provision as to who could make a claim, noticing that the application under Section 110-A of the Act had to be made on behalf of or for the benefit of all the legal representatives of the deceased. This Court has not stated that on a claim based on negligence there is no obligation to establish negligence. This Court was dealing with no-fault liability and the departure made from the Fatal Accidents Act and the theory of strict liability in the scheme of the Act of 1939 as*

> *amended. This Court did not have the occasion to construe a provision like Section 163-A of the Act of 1988 providing for compensation without proof of negligence in contradistinction to Section 166 of the Act. We may notice that Minu B. Mehta case was decided by three learned Judges and the Gujarat SRTC case was decided only by two learned Judges. An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority. On a careful understanding of the decision in Gujarat SRTC{ we cannot understand it as having held that in all claims under the Act proof of negligence as the basis of a claim is jettisoned by the scheme of the Act. In the context of Sections 166 and 163-A of the Act of 1988, we are persuaded to think that the so-called obiter observations in Minu B. Mehta case govern a claim under Section 166 of the Act and they are inapplicable only when a claim is made under Section 163-A of the Act. Obviously, it is for the claimant to choose under which provision he should approach the Tribunal and if he chooses to approach the Tribunal under Section 166 of the Act, we cannot see why the principle stated in Minu B. Mehta case!2 should not apply to him. We are, therefore, not in a position to accept the argument of learned counsel for the respondents that the observations in Minu B. Mehta case deserve to be ignored."*

74. The observation made by the Hon'ble Supreme Court was considered by the coordinate Bench of this Court in the case of Joy Guria *(supra)* wherein the coordinate Bench has interpreted Clause-13 of the advertisement on the basis of the judgments of the Hon'ble Supreme Court in the case of Taniya Malik *(supra)*. The respondent-JPSC and the respondent-State were party in Joy Guria case and they cannot be allowed to take contrary view that too when the judgment in Joy Guria case has attained finality. This Court is bound to accept that judgment of the coordinate Bench. It is well settled position that a decision often takes its colour from the question involved in the case in which it is rendered. The Hon'ble Supreme Court in the case of ***Divisional Controller, KSRTC v. Mahadeva Shetty***, reported in ***(2003) 7 SCC 197*** has held and observed in paragraph 23, which is quoted herein below:

> ***"23.*** *So far as Nagesha case relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the court dealing with it should carefully try to*

> *ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expressions carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority."*

75. The respondents are relying upon a mere stray observation of the Hon'ble Supreme Court in Rakesh Kumar case ignoring the fact that the Hon'ble Supreme Court itself observed that the said order cannot be taken as a precedent. Clause-13 clearly stipulates that the same will be applicable upon both the Preliminary and Mains examination. The intent of Clause-13 of the advertisement is that minimum qualifying marks in each paper are required to be obtained by the candidates. The point with regard to minimum qualifying marks will be for each paper or aggregate has already been considered in the case of Taniya Malik *(supra)*, which was also taken into account by the coordinate Bench of this Court in the case of Joy Guria *(supra).* The Hon'ble Supreme Court in the case of ***Director-General, Telecommunication v. T.N. Peethambaram***, reported in ***(1986) 4 SCC 348*** has held and observed in paragraphs 1 and 2, which are quoted herein below:

> ***"****Fails" in one subject, but "passes" the examination! It is nota tongue-in-the-cheek remark, for, passing an examination does not mean passing or securing the minimum passing marks in each subject or item of examination provided the candidate secures the minimum passing marks in aggregate, and he is entitled to be declared as having passed the examination according to the Central Administrative Tribunal (Tribunal hereafter), Hyderabad, which has upheld the aforesaid proposition canvassed by the respondent. The validity of this view is in focus before this Court in the present appeal by special leave.*
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> ***2.*** *Rule 2 in Appendix III of the Telegraph Engineering Service (Group 'B') Recruitment Rules, 1981, for Limited Departmental Qualifying Examination, in the context of which the controversy*

has arisen, reads thus:

2. Limited Departmental Competitive Examination:

(i)(a) Advanced Technical Paper — General .. 100 marks

(b) Advanced Technical Paper — Special .. 100 marks

(c) General Knowledge and Current Affairs .. 50 marks

(d) Assessment of Confidential Reports 75 marks

(ii)(a) The minimum pass marks in the examination shall be 50 per cent for general candidates and 45 per cent for Scheduled Castes and Scheduled Tribe candidates.

This rule was interpreted by the concerned department as requiring the candidates to secure 50 per cent minimum pass marks for the general candidates and 45 per cent minimum pass marks for Scheduled Castes and Scheduled Tribes in "each" of the four subjects or items The Tribunal has taken the view that the department was wrong in so interpreting the Rule and has formed the opinion that on a true interpretation, the requirement as regards securing minimum pass marks in the examination by the candidates concerned is referable to "aggregate" marks and not to each of the four subjects or items of the examination. It has been overlooked by the Tribunal that the "rule" does not employ the expression "aggregate", and that it is impossible to inject the said word in the Rule in the disguise of interpretation, as it would lead to absurd results. An illustration will make the "obvious" point "more obvious". The illustration might be viewed in the scenario of a medical degree examination. Can one who secures zero, say in surgery, but secures high marks in the other papers, so that the minimum aggregate standard is attained, be declared to have passed the examination? Such an interpretation would result in havoc and have catastrophic consequences. Examining the examination rule in the present context, the nihilist result is equally conspicuous. Say, a candidate secures zero in the first paper of Advanced Technology (General), or second paper of Advanced Technology (Special), but secures full marks in the rest of the subjects (or items). He would be securing (0 plus 100 plus 50 plus 75) or (100 plus O plus 50 plus 75) (equal to 225 i.e. 56.25 per cent) minimum passing marks and would be entitled to be declared as having passed and having become entitled to the outflowing preferential treatment. Similar would be the outcome also in a case where a candidate's Confidential Record is bad and he earns no point in that item. Such an interpretation would thus be self-defeating and lead to absurd results, and accordingly, would be contrary to well established canons of construction, not to speak of a common-sense-oriented approach. Since the Rule does not specify a different passing standard for "each" subject, the prescribed minimum passing standard must be the yardstick to apply to each of the subjects or items. Minimum must mean a minimum in each, as much as, minimum in aggregate. The Tribunal should not have therefore upset the decision of the concerned department and imposed on the department the mistaken interpretation propounded by it. In the result, the decision of the Tribunal must be reversed."

76. The judgments relied by Mr. Sumeet Gadodia, learned counsel for the successful candidates in the case of Municipal Committee, Amritsar v. Hazara Singh, Peerless General Finance & Investment Co. Ltd. v. Commisioner of

Income Tax and Oriental Insurance Co. Ltd. v. Meena Variyal & Ors *(supra)* are of no help to the respondents as the Hon'ble Supreme Court has clearly observed in the case of Rakesh Kumar that anything said in the order will not be treated as a precedent and in the case of Joy Guria *(supra),* Clause-13 of the advertisement has been rightly interpreted on the arguments of the learned counsel for the JPSC and State.

77. Similarly, so far as the stand of the JPSC and State with regard to minimum qualifying marks in each paper is concerned, the same has got no leg to stand because on the vehement argument of the JPSC and the State, coordinate Bench has interpreted Clause-13 of the advertisement on the basis of the judgments of the Hon'ble Supreme Court in the case of Taniya Malik *(supra)*. The respondent-JPSC and the respondent-State were party in Joy Guria case and they cannot be allowed to change the rule of game.

78. In view of the above discussions, issue nos. (ii) and (iii) are answered as follows:

(i) The minimum qualifying marks under Clause-13 of the advertisement has already been adjudicated by this Court in the case of Joy Guria in relation to the same examination and the respondents cannot be allowed to take contrary view.

(ii) The respondent-JPSC has published the result without following the criteria of minimum qualifying marks in each paper.

79. The appointment to any public post must be absolutely transparent and fair and it must be in accordance with the prescribed procedure. Even ad-hoc appointment should not be encouraged as far as possible and should be adhered to only when public exigency required and appointment in accordance

with the prescribed procedure would take a fairly long time and non-filling of the post would be against the public interest. Thus, Article 16 of the Constitution of India has been violated. If appointment is made without following the rules, the same being a nullity the question of confirmation of an employee upon the expiry of the purported period of probation would not arise. The Constitution Bench in the case of ***Secretary, State of Karnataka v. Uma Devi***, reported in ***(2006) 4 SCC 1*** made a detail survey of the case laws operating in the field. Article 16(1) of the Constitution of India guarantees equality of opportunity to all citizens in matters relating to appointment. There is no doubt that after appearance in the examination, the candidates are not allowed to challenge the criteria as argued by the learned counsel appearing on behalf of the JPSC, State and successful candidates. However, it is also well settled that a candidate by agreeing to participate in selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rule and discriminating consequences arises therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is required to be followed. Thus, the judgment relied by the learned counsel for the respondents are not helping them. The JPSC is a constitutional and autonomous body constituted under Article 315 of the Constitution of India. A reference in this regard may be made to the judgment in the case of ***Ram Kumar Kashyap & anr. v. Union of India & anr.***, reported in ***(2009) 9 SCC 378***. Paragraphs 14 and 16 of the said judgment are quoted herein below:

> ***"14.*** *The Public Service Commission is an institution of utmost importance created by the Constitution of India under Article 315. For the efficient functioning of a democracy it is imperative that the Public Service Commissions are manned by people of the highest skill and irreproachable integrity, so that the selections to various public posts can be immunised from all sorts of extraneous factors like political pressure or personal favouritism and are made solely on considerations of merit.*
>
> *xxx xxx xxx*

> ***16.*** *It is very clear that since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of dismissals of government employees cannot be extended to the proceedings for the removal and suspension of the members of the said Commissions. Hence, we are of the opinion that the en bloc suspension of the eight members and the Chairman of the Haryana Public Service Commission by the Hon'ble Governor of Haryana by an order dated 9-8-2008 under Article 317(2) of the Constitution and the impugned Notification dated 9-8-2008 are valid and not liable to be quashed. The writ petitions are dismissed."*

80. Thus, the Court finds that the merit list was not prepared by the JPSC by following the criteria laid down in the advertisement and as suggested by the Expert Committee.

81. There is no doubt, the Commission is master of its working and the Courts normally are not entitled to question the mechanism of selection. But at the same time, if the illegality has been brought to the knowledge of the Court, the same cannot be ignored and the Court is bound to interfere.

82. In the case of ***Union Public Service Commission v. Gyan Prakash Srivastava***, reported in ***2012 AIR SCW 1***, the Hon'ble Apex Court observed that the Public Service Commission is a constitutional body, but its actions and decisions are not immune from judicial review and if a competent judicial forum finds that the impugned action is *ultra vires* the Constitution or any legislation or is otherwise arbitrary or discriminatory, there will be ample justification to nullify the same.

83. In the case of ***Jitendra Kumar v. State of Haryana***, reported in ***(2008) 2 SCC 161***, the Hon'ble Supreme Court observed that the Commission holds a constitutional duty to see that the entire selection process is carried out strictly in accordance with law fairly, impartially and independently. The selectors appointed by the Commission or its Chairman and members are forbidden to take recourse to favouritism. Showing any favour to any candidate as an irrelevant or extraneous consideration would be contrary to the constitutional norms of equality envisaged under Articles 14 and 16 of the

Constitution of India. Fear or favour on the part of the Commission cannot be condoned.

84. The Public Service Commission have no power to relax the recruitment norms. In the case in hand, the JPSC deviated from the norms prescribed in the advertisement.

85. The JPSC has admitted that the marks of Paper-I has been added in the merit list of the Mains examination. The JPSC has also admitted that minimum qualifying marks of each paper has not been taken into consideration and only total marks has been taken for preparing the merit list.

86. In view of the above, the writ petitions are allowed in the following manner:

(i) The merit list prepared by the JPSC is held to be illegal as marks of Paper-I was added in the merit list and Clause-13 of the advertisement with regard to minimum qualifying marks in each paper has not been followed and consequence thereof, the merit list prepared by the Commission is, hereby, quashed.

(ii) Consequently, the appointments made without following the procedure held to be nullity.

(iii) The JPSC is directed to prepare a fresh merit list with reference to marks in written test and interview without adding the marks of Paper-I in the merit list considering minimum qualifying marks in each paper and thereafter finalize the selection in accordance with law, within a period of eight weeks from the date of receipt/production of a copy of this order and recommend the same to the State of Jharkhand within four weeks thereafter and in furtherance, the competent authority of the State of Jharkhand is directed

to issue appointment letter in favour of the successful candidates based upon the fresh merit list forthwith.

87. Before parting with the order, the Court is however of the view that the State Public Service Commission, although is a constitutional body, but that does not mean that if any illegality has been committed, which is apparent from the reasoning and finding recorded by the Court herein above, if the Court will not pass any direction to take appropriate legal action against the Commission, it will be unjustified at least for two reasons,

(i) The Commission is only authorized to recommend the name of the successful candidate strictly based upon the advertisement/statutory rule invoked and it is due to arbitrary decision taken by the Commission by deviating from such advertisement of the statutory rule, for which, Commission in its entirety is liable to be proceeded; and

(ii) If only result of the successful candidate based upon such extraneous consideration when the Court has already struck down the entire merit list, then why the candidates will only allow to suffer as because the candidates, who have been declared successful only due to such extraneous consideration.

88. This Court, therefore, relying upon the decision of the Hon'ble Supreme Court in the case of Ram Kumar Kashyap *(supra)* is of the view that appropriate direction is required to be passed by the Court to deal with the Commission, otherwise very sanctity of the Commission and the confidence of the people on the Commission will be shattered. Hence, the competent authority of the State of Jharkhand is directed to take appropriate action upon the Commission by fixing accountability and by taking appropriate legal action so that such

illegality may not occur and sanctity of Commission and confidence of people upon the Commission may prevail.

89. With the above observations and directions, these writ petitions [W.P.(S) Nos. 1468 of 2020, 1533 of 2020, 1583 of 2020, 1613 of 2020, 1718 of 2020 and 1827 of 2020] stand allowed and disposed of.

90. Pending interlocutory applications, if any, stand disposed of.

(Sanjay Kumar Dwivedi, J.)

High Court of Jharkhand, Ranchi
Dated: the 7th day of June, 2021
Ajay/ A.F.R.