



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D. B. Civil Special Appeal (Writ) No. 103/2021

In

S. B. Civil Writ Petition No. 8330/2020

1. The State of Rajasthan, through its Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Rajasthan, Secretariat, Jaipur.
2. The Secretary, Rajasthan Public Service Commission, Ajmer, Rajasthan.

----Appellants/Respondents

Versus

1. Kavita Godara D/o Mahaveer Prasad Godara, Aged About 27 Years, R/o E-16, Engineers Colony, New Sanganer Road, Mansarovar, Jaipur (Rajasthan)
2. Deepika Bhawariya D/o Jai Narayan Bhawariya, Aged About 27 Years, R/o 35-B Jai Ambey Colony, Civil Lines, Jaipur 302006
3. Hemlata Meena D/o Late Shri Ram Lal Meena, Aged About 31 Years, R/o Village Bhambhori, Via Kalwar, Tehsil and District Jaipur-303706 (Rajasthan)

----Respondents-writ petitioners

Connected With

D. B. Civil Special Appeal (Writ) No. 106/2021

In

S. B. Civil Writ Petition No. 8329/2020

1. State of Rajasthan, through Principal Secretary, Department of Personnel, Secretariat, Government of Rajasthan, Jaipur.
2. Rajasthan Public Service Commission, Ajmer, through its Secretary.

----Appellants/Respondents

Versus

1. Rajesh Kumar Peeploda S/o Shri Ram Sahay Jat, Age 26 Years, R/o 53, Brij Mandal, Jhotwara Ward No.10, Jaipur (Rajasthan) Roll No.816732.
2. Jitin Agarwal S/o Shri Mahendra Kumar Garg, Age 27



Years, R/o Ward -01, Opposte Government Senior Secondary School, Village Ganj Kherli, Tarf Nooniya, Alwar (Rajasthan) - 321 606 Roll Number 811655

3. Balram Yadav S/o Shri Ram Sharan Yadav, Age 45 Years, R/o Jhamoowas, Palpur, Alwar (Rajasthan) - 301 702 Roll Number 810531.
4. Bharat Kumar Kumhar S/o Shri Gautam Lal Kumhar, Age 31 Years, R/o 541, Kumaharo Ki Gali, Kalyanpur, Semari, Udaipur (Rajasthan), Roll Number 818946.
5. Divya Jonwal D/o Shri Virendra Kumar Bairwa, Age 26 Years, R/o Kumharon Ki Chouki, Koliyo Ke Kuwe Ke Pass, Tonk (Rajasthan) - 304 001 Roll Number 800340.
6. Govind Meena S/o Shri Dinesh Meena, Age 26 Years, R/o House No.31, Uttam Nagar, Deoli Arab Marg, Borkheda, Kota (Rajasthan) - 324001 Roll Number 813809.
7. Mahima Khinchi D/o Shri Ramswaroop Khinchi, Age 24 Years, R/o Ganesh Metal, Mangrol Road, Bypass Tiraha, Baran (Rajasthan) - 325 205 Roll Number 810242.

-----Respondents-Writ Petitioners.

D. B. Civil Misc. Application No. 1/2021

In

D. B. Civil Special Appeal (Writ) No. 112/2021

In

S. B. Civil Writ Petition No. 8330/2020

Kuldeep Jaiman S/o Shri Narendra Kumar Jaiman, aged about 27 Years, R/o House No 121, Ward No. 10, Khasa Mohalla, Near Khas School, Alwar, Rajasthan 301001

-----Appellant/Respondent

सत्यमेव जयते
Versus

1. Kavita Godara D/o Mahaveer Prasad Godara, Aged About 27 Years, R/o E-16, Engineers Colony, New Sanganer Road, Mansarovar, Jaipur (Rajasthan)
2. Deepika Bhawariya D/o Jai Narayan Bhawariya, Aged About 27 Years, R/o 35-B Jai Ambey Colony, Civil Lines, Jaipur 302006
3. Hemlata Meena D/o Late Shri Ram Lal Meena, Aged About 31 years, R/o Village Bhambhori, Via Kalwar, Tehsil and District Jaipur-303706 (Rajasthan)

Respondents 1 to 3 Original Writ Petitioners



4. The State of Rajasthan, through its Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Rajasthan, Secretariat, Jaipur.
5. The Secretary, Rajasthan Public Service Commission, Ajmer, Rajasthan.

----Respondents



For State	:	Mr. M. S. Singhvi, Advocate General through Video Conferencing with Mr. Darsh Pareek Advocate and Mr. Siddhant Jain Advocate.
For RPSC	:	Mr. Mirza Faisal Baig Advocate with Mr. Govind Gupta Advocate.
For Respondents	:	Mr. R.N. Mathur, Senior Advocate through Video Conferencing with Mr. Shovit Jhagharia, Advocate Mr. Vigyan Shah Advocate with Mr. Kamlesh Sharma Advocate, Mr. Akshit Gupta Advocate, Mr. Harendar Neel Advocate Mr. Yash Joshi Advocate Mr. Aprit Jain Advocate Mr. Pukhraj Chawla Advocate.
For Applicant	:	Mr. Tanveer Ahmed Advocate with Mr. Manish Parihar Advocate through Video Conferencing.

HON'BLE MRS. JUSTICE SABINA
HON'BLE MR. JUSTICE MANOJ KUMAR VYAS

Judgment

02/03/2021

Vide this judgment abovementioned appeals as well as application would be disposed of, as they have arisen out of common order dated 17.12.2020 passed by the learned Single Judge.

Respondents had filed writ petitions challenging the result dated 09.07.2020 of Rajasthan State and Subordinate Services Combined Competitive (Mains) Examination, 2018.



Case of the respondents in the writ petitions, in brief, was that an advertisement dated 02.04.2018 had been issued for recruitment under various State and Subordinate Services under the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules, 1999 (hereinafter referred to as 'the Rules of 1999'). Initially, 405 vacancies were advertised in the State Services and 575 vacancies were advertised in Subordinate Services. Thereafter, a corrigendum advertisement dated 01.07.2020 was issued prescribing revised bifurcation of State and Subordinate Services wherein 421 posts were advertised in State Services and 593 posts were advertised in Subordinate Services making combined total of 1014 vacancies. Respondents had applied for the posts under their respective category. The selection process was to take place in three stages. Preliminary examination was conducted for shortlisting the candidates, who were required to appear in the main examination. No weightage was to be given to the candidates *vis-à-vis* their marks obtained in the preliminary examination. Main examination was based upon objective type questions consisting of four papers with 800 as total marks. Thereafter, the successful candidates were required to appear in the interview, which carried 100 marks. Initially the result of the preliminary examination was declared on 23.10.2018, wherein, cut off for Other Backward Class category was higher than the cut off of General category. The reserved category candidates, who were having more marks than the general category, were allowed to appear in the main examination. Extended result was declared on 13.12.2018 in pursuance to the interim order dated 01.12.2018 passed by this Court in S. B. Civil Writ Petition No. 24725/2018 titled as Surghan



Singh Vs. State of Rajasthan & Another. The impugned result was declared on 09.07.2020, wherein, 1953 candidates had been declared qualified in the main examination in Non-TSP Area, which comes to near about 1.92 times of the number of the vacancies advertised. Thus, for one post less than two candidates had been called for interview. As per Rule 15 of the Rules of 1999, the Rajasthan Public Service Commission (hereinafter referred to as 'the Commission') could prescribe minimum qualifying marks and also such candidates, who would acquire marks over and above the minimum qualifying marks fixed by the Commission, would be eligible to appear in interview. Hence, the impugned result confining the zone of consideration to 1.92 times of the number of vacancies was illegal, arbitrary and unwarranted.

Appellants in their reply to the writ petitions averred that the main examination, 2018 result had been declared on 09.07.2020. 2010 candidates had qualified for the interview in the ratio of 1:1.92 against the total 1051 advertised posts for the RAS Examination, 2018. Para 3, 7 and 10 of the reply filed in S.B. Civil Writ Petition No. 8330/2020 read as under:

"3. That the contents of **para No. 3 & 4** of the writ petition are replied in the terms that vide advertisement dated 02.4.2018 for the post of Rajasthan State and Subordinate Services (direct recruitment by Combined Competitive Examination) 2018 under Rules, 1999. That by the advertisement dated 02.4.2018 total 405 posts were advertised for the State Services out of it 162 General, 61 General women, 42 General SC, 15 SC women, 31 General ST, 13 ST women, 60 OBC, 20 OBC women and 01 post for MBC General were advertised. That 13 posts of Special Abled Person has been reserved and 25 for NGE were advertised. That for the subordinate services 575 posts were advertised out of it 213 posts were advertised for General Category, 82 General women, 70 posts for SC General and 24 for SC women, 57 for ST General, 16 for ST women, 79 for OBC General and 30 for OBC women, 4 posts for MBC general, 18 for



Special disabled, 65 for Ex-Army person, 5 for sports person, 45 for departmental/ministerial candidates were advertised. That by the advertisement dated 02.4.2018 applications were invited from the eligible candidates upto 11.5.2018. That by the subsequent corrigendum overall 1051 posts were advertised. That in pursuance of advertisement dated 02.4.2018 RPSC received the voluminous number of the applications overall 4,80,011 for RAS examination, 2018.

7. That the contents of **para No. 12 to 14** of the writ petition are replied in the terms that RPSC issued the result of RAS/RTS (main) examination, 2018 on 09.7.2020 therein against the advertised posts of non-TSP 1953 candidates were declared successful which is approx to 1.92 in the ratio, post so advertised. That overall for TSP and Non-TSP 2010 candidates were declared qualified for the interview against the total advertised posts i.e. 1051 (TSP/Non-TSP). That rule 15 of Rules, 1999 provides that RPSC can summoned the candidates for the interview as per its discretion who obtained such minimum qualifying marks in the main examination as may be fixed by the commission. That vide notification dated 09.6.2020 State Government amended the rules 15 of Rules 1999. The relevant part of rule 15(3) is reproduced as under:-

(3) Candidates who obtained such minimum qualifying marks in the main examination as may be fixed by the commission in their discretion shall be summoned by them for an interview.

That as such RPSC committed no irregularity to summon the candidates for interview in the ratio of 1:1.92 against the advertised post (non-TSP). That by the result dated 09.7.2020 RPSC called the 2010 (TSP/non-TSP) candidates for the interview. That by the press note dated 27.8.2020, RPSC declared the scheduled of the interview of 560 (TSP/Non-TSP) candidates which is going to be held from 05.10.2020 to 23.10.2020. The copy of press notes dated 27.8.2020 is annexed herewith and marked as **ANNEXURE-R/1**.

10. That the contents of **para No. 18 to 23** of the writ petition are replied in the terms that RPSC not committed any irregularity while summoning the candidates for the interview by the RAS (main) examination result dated 09.7.2020 in the ratio of 1:1.92 (non-TSP) against the overall advertised posts because as per rule 15(3) of Rules, 1999 RPSC is having discretion to summon the candidates by way of fixing minimum qualifying





marks in the main examination. That RPSC declared the 2010 candidates successful for the interview against the total advertised posts i.e. 1051. That upon calling candidates in the ratio of 1:1.92, 1953 candidates were summoned for the interview and out of them 560 (TSP/Non-TSP) candidates initially called for interview from 05.10.2020 to 23.10.2020 (18 days) and approx 31 candidates is required to interview in each of the day. That if, as per submission of the petitioners two times of the candidates against the advertised posts called then approximately more than 700 additional candidates will have to called and the ratio will be rise to more than 2.5 because between 1:1.92 to 1:2 ratio several candidates are standing on the similar marks and they were also required to call to maintain the parity. That if, such type of voluminous number candidates were called the quality of interview regarding assessment of knowledge and the personality of candidate could not be maintained and if, such number of the candidates was called the interview/selection process could not be completed within appropriate time. That as per rule 15(3) of Rules, 1999, RPSC rightly called the candidates in reasonable number to provide proper opportunity to the candidates as well as the experts of the board to assess the knowledge and the personality of the each candidate in the interview. As such RPSC committed no illegality."

Additional Affidavit dated 26.11.2020 was filed by the Appellant-Commission, wherein, it was averred that the examination had been conducted in pursuance to Rule 15 of the Rules of 1999 and result had been declared on 09.07.2020. Para No. 4 to 6 of the said affidavit filed in S.B. Civil Writ Petition No. 8330/2020 read as under:

"4. That in pursuance of rules 15 RPSC taken a full commission decision dated 06.7.2020 to call the candidates for interview as per the discretion provided by the rules. That in the full commission decision dated 06.7.2020 decision has been taken to call the 1.5 times of the general male and female candidates and if, on the said cut off if, reserved category candidates are not available upto the ratio of 1.5 they may be pickup from the bottom and the said process may be adopted for all horizontal category and the candidates may be pickup from the bottom if, they are not available in



the range of 1.5, the same process may also be adopted for widow and women candidates.

5. That as per full commission decision dated 06.7.2020 cutoff of the general male, general female, general women widow, general women divorce has been fixed and according to that cutoff for the remaining categories upto the extent the 1.5 times candidates were considered and if, candidates of the said categories were not available in the ratio of 1:5 then they were pickup from the bottom therefore, against 1014 posts of TSP overall 1953 candidates were declared provisionally qualified for the interview. That in the said process overall in the ratio of 1:1.92 candidates were called for the interview against the overall advertised posts.

6. That against the 1051 TSP and non-TSP advertised posts overall 2010 candidates has been called for the interview in the overall ratio i.e. 1:1.92. That if, RPSC declared two times candidates successful for the interview the additional 700 candidates would be interviewed and it will cross the range of 2.5 against the advertised posts. The decision was taken by the RPSC is as per his discretion and ample number of candidates are available to the RPSC for the interview. That to maintain the quality of interview and process of selection the decision was taken to call the candidates in the ratio of 1:1.5 even after as voluminous number of candidates having the same marks the said ratio raised upto 1:1.92. For the kind perusal Additional Factual Report is annexed herewith and marked as **ANNEXURE-R/A/1."**

Learned Single Judge vide impugned order dated 17.12.2020 allowed the writ petitions filed by the respondents.

Operative part of the impugned order reads as under:

"54. Accordingly, both the writ petitions succeed and are allowed with following directions:-

(a) The result of the RAS & RTS Mains Examination, 2018 dated 09/07/2020 is quashed and set aside with further direction to the respondents to declare result of the RAS & RTS Mains Examination, 2018 afresh by laying down a common minimum qualifying marks for all categories of candidates in such a manner as to call at least two times the number of candidates against the total posts advertised and further conduct the interviews accordingly;



(b) The RPSC shall apply Rule 15 as it existed prior to coming into force of the notification dated 09/06/2020 for the RAS & RTS Main Examinations, 2018 as well as to the interview and the final result shall be declared accordingly.

(c) It is held that the new Rule brought into force from 09/06/2020 is applicable only to the extent of Rule 15(2) and the Schedule to the present RAS & RTS Examination, 2018. The exercise, as above, shall be conducted expeditiously and preferably within a period of four months henceforth. No costs."

Aggrieved against the said order, State has filed the abovementioned appeals and the applicant has filed the application seeking leave of this Court to file the appeal.

Mr. M.S. Singhvi, learned Advocate General has submitted that the examination-in-question had been conducted as per Rule 15 of the Rules of 1999. So far as candidates, who were required to be admitted to the main examination, are concerned, categorywise candidates equal to 15 times of total number of vacancies, who had qualified the preliminary examination, were called. Thereafter, categorywise candidates equal to 1.5 times of number of vacancies, who had qualified the main examination, were called for interview. In this process, ultimately, 1.92 times candidates became eligible to appear in the interview. As per the past practice, candidates, who had qualified the main examination, were called for interview and it was left to the wisdom of the Commission, as to how many times of vacancies, the candidates were to be called for interview. Learned Advocate General, in support of his arguments, has placed reliance on judgment of the Hon'ble Supreme Court in **Chattar Singh & Others Vs. State of Rajasthan & Others, (1996) 11 SCC 742**, wherein, it was held as under:



"20. As regards the preparation of separate list of General, OBCs, SCs, STs and physically handicapped, in view of the fact that the latest amendment has been made explicit what was implicit in Rule 13, we are of the view that separate lists are required to be published by the Service Commission in respect of the candidates in the respective categories so as to make up number of candidates 15 times the notified or anticipated posts/vacancies so as to enable them to appear in the Main Examination. It is true that the amendment is prospective in operation. However, it does not detract from the efficiency of Rule 13 originally made. In view of the above, the Public Service Commission is directed to call all those candidates that constitute 15 times the posts/vacancies notified or anticipated in terms of the above declaration of law so as to enable them to appear in the Main Examination."

In order to support his argument that the appellant-State was well within its right to call categorywise candidates equal to 1.5 times of total number of vacancies for interview, learned Advocate General has placed reliance on judgment of the Hon'ble Supreme Court in **Ashok Kumar Yadav & Others Vs. State of Haryana & Others (1985) 4 SCC 417**, wherein, it was held as under:

"20. We do not think we can agree with this conclusion reached by the Division Bench. But whilst disagreeing with the conclusion, we must admit that the Haryana Public Service Commission was not right in calling for interview all the 1300 and odd candidates who secured 45% or more marks in the written examination. The respondents sought to justify the action of the Haryana Public Service Commission by relying on Regulation 3 of the Regulations contained in Appendix 1 of the Punjab Civil Service (Executive Branch) Rules, 1930 which were applicable in the State of Haryana and contended that on a true interpretation of that Regulation, the Haryana Public Service Commission was bound to call for interview all the candidates who secured a minimum of 45% marks in the aggregate at the written examination. We do not think this contention is well founded. A plain reading of Regulation 3 will show that it is wholly unjustified. We have already referred to Regulation 3 in an earlier part of the judgment and we need not reproduce it





again. It is clear on a plain natural construction of Regulation 3 that what it prescribes is merely a minimum qualification for eligibility to appear at the viva voce test. Every candidate to be eligible for appearing at the viva voce test must obtain at least 45% marks in the aggregate in the written examination. But obtaining of minimum 45% marks does not by itself entitle a candidate to insist that he should be called for the viva voce test. There is no obligation on the Haryana Public Service Commission to call for the viva voce test all candidates who satisfy the minimum eligibility requirement. It is open to the Haryana Public Service Commission to say that out of the candidates who satisfy the eligibility criterion of minimum 45% marks in the written examination, only a limited number of candidates at the top of the list shall be called for interview. And this has necessarily to be done because otherwise the viva voce test would reduced to a farce. It is indeed difficult to see how a viva voce test for properly and satisfactorily measuring the personality of a candidate can be carried out, if over 1300 candidates are to be interviewed for recruitment to a service. If a viva voce test is to be carried out in a thorough and scientific manner, as it must be in order to arrive at a fair and satisfactory evaluation of the personality of a candidate, the interview must take anything between 10 to 30 minutes. In fact, Herman Finer in his book on *Theory and Practice of Modern Government* points out that "the interview should last at least half an hour". The Union Public Service Commission making selections for the Indian Administrative Service also interviews a candidate for almost half an hour. Only 11 to 12 candidates are called for interview in a day of 5 1/2 hours. It is obvious that in the circumstances, it would be impossible to carry out a satisfactory viva voce test if such a large unmanageable number of over 1300 candidates are to be interviewed. The interviews would then tend to be casual, superficial and sloppy and the assessment made at such interviews would not correctly reflect the true measure of the personality of the candidate. Moreover, such a course would widen the area of arbitrariness, for even a candidate who is very much lower down in the list on the basis of marks obtained in the written examination, can, to borrow an expression used by the Division Bench, 'gatecrash' into the range of selection, if he is awarded unduly high marks at the viva voce examination. It has therefore always been the practice of the Union Public Service Commission to call for interview, candidates representing not more than twice or thrice the number of available vacancies. Kothari Committee's Report on the "Recruitment Policy and Selection Methods for the Civil Services Examination" also





points out, after an in-depth examination of the question as to what should be the number of candidates to be called for interview :

The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled...

Otherwise the written examination which is definitely more objective in its assessment than the viva voce test will lose all meaning and credibility and the viva voce test which is to some extent subjective and discretionary in its evaluation will become the decisive factor in the process of selection. We are therefore of the view that where there is a composite test consisting of a written examination followed by a viva voce test, the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest, thrice the number of vacancies to be filled. The Haryana Public Service Commission in the present case called for interview all candidates numbering over 1300 who satisfied the minimum eligibility requirement by securing a minimum of 45% marks in the written examination and this was certainly not right, but we may point out that in doing so, the Haryana Public Service Commission could not be said to be actuated by any mala fide or oblique motive, because it was common ground between the parties that this was the practice which was being consistently followed by the Haryana Public Service Commission over the years and what was done in this case was nothing exceptional. The only question is whether this had any invalidating effect on the selections made by the Haryana Public Service Commission.

21. We do not think that the selections made by the Haryana Public Service Commission could be said to be vitiated merely on the ground that as many as 1300 and more candidates representing more than 20 times the number of available vacancies were called for interview, though on the view taken by us that was not the right course to follow and not more than twice or at the highest thrice, the number of candidates should have been called for interview. Something more than merely calling an unduly large number of candidates for interview must be shown in order to invalidate the selections made. That is why the Division Bench relied on the comparative figures of marks obtained in the written examination and at the viva voce test by the petitioners, the first 16 candidates who topped the list in the written examination and the first 16 candidates who topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, and observed that these figures showed that there





was reasonable likelihood of arbitrariness and bias having operated in the marking at the viva voce test. Now it is true that some of the petitioners did quite well in the written examination but fared badly in the viva voce test and in fact their performance at the viva voce test appeared to have deteriorated in comparison to their performance in the year 1977-78. Equally it is true that out of the first 16 candidates who topped the list in the written examination, 10 secured poor rating in viva voce test and were knocked out of the reckoning while 2 also got low marks in the viva voce test but just managed to scrape through to come within the range of selection. It is also true that out of the first 16 candidates who topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, 12 could come in the list only on account of the high marks obtained by them at the viva voce test, though the marks obtained by them in the written examination were not of sufficiently high order. These figures relied upon by the Division Bench may create a suspicion in one's mind that some element of arbitrariness might have entered the assessment in the viva voce examination. But suspicion cannot take the place of proof and we cannot strike down the selections made on the ground that the evaluation of the merits of the candidates in the viva voce examination might be arbitrary. It is necessary to point out that the Court cannot sit in judgment over the marks awarded by interviewing bodies unless it is *proved or obvious* that the marking is plainly and indubitably arbitrary or affected by oblique motives. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the vice of arbitrariness. Moreover, apart from only three candidates, namely, Trilok Nath Sharma, Shakuntala Rani and Balbir Singh one of whom belonged to the general category and was related to Shri Raghubar Dayal Gaur and the other two were candidates for the seats reserved for Scheduled Castes and were related to Shri R.C. Marya, there was no other candidate in whom the Chairman or any member of the Haryana Public Service Commission was interested, so that there could be any motive for manipulation of the marks at the viva voce examination. There were of course general allegations of casteism made against the Chairman and the members of the Haryana Public Service Commission, but these allegations were not substantiated by producing any reliable material before the Court. The Chairman and members of the Haryana Public Service Commission in fact belonged





to different castes and it was not as if any particular caste was predominant amongst the Chairman and members of the Haryana Public Service Commission so as even to remotely justify an inference that the marks might have been manipulated to favour the candidates of that caste. We do not think that the Division Bench was right in striking down the selections made by the Haryana Public Service Commission on the ground that they were vitiated by arbitrariness or by reasonable likelihood of bias.”

Learned Advocate General has further argued that it has been time and again held by the Hon’ble Supreme Court that the Courts should not indulge in judicial review and it should be left to the wisdom of the Commission to determine the number of eligible candidates required to be called for interview. In support of his argument, learned Advocate General has placed reliance on the judgment of the Hon’ble Supreme Court in **West Bengal Central School Service Commission & Others Vs. Abdul Halim & others, (2019) 18 SCC 39**, wherein, it was held as under:

“27. It is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision-making process to ascertain whether there was such infirmity in the decision-making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.

28. In any case, the High Court exercises its extraordinary jurisdiction under Article 226 of the Constitution of India to enforce a fundamental right or some other legal right or the performance of some legal duty. To pass orders in a writ petition, the High Court would necessarily have to address to itself the question of whether there has been breach of any fundamental or legal right of the petitioner, or whether there has been lapse in performance by the respondents of a legal duty.

29. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal



right is obliged to prevent abuse of power and neglect of duty by public authorities.

30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari."

Learned Advocate General has further argued that when Rule 15 of the Rules of 1999 is read in continuity, it would be evident that the number of candidates required to be called for interview must be determined categorywise. It is submitted that practice based on construction of rules could not be upset. In support of his argument, learned Advocate General has placed reliance on judgment of the Hon'ble Supreme Court in **N. Suresh Nathan & Another Vs. Union of India & Others 1992 Supp (1) SCC 584**, wherein, it was held as under:

"4. xxxxxxxxxxxx The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.

5. xxxxxxxxxxxx In our opinion, the contention of the appellants degree-holders that the rules must be construed to mean that the three years' service in the



grade of a degree-holder for the purpose of Rule 11 is three years from the date of obtaining the degree is quite tenable and commends to us being in conformity with the past practice followed consistently. It has also been so understood by all concerned till the raising of the present controversy recently by the respondents. The tribunal was, therefore, not justified in taking the contrary view and unsettling the settled practice in the department."

Learned Advocate General has next placed reliance on judgment of the Hon'ble Supreme Court in **Nair Service Society Vs. Dr. T. Beermasthan & Others (2009) 5 SCC 545**, wherein, it was held as under:

"32. In our opinion an accepted practice which has been followed by PSC for so long a period should not be lightly disturbed, unless there are compelling reasons. If two interpretations of the Rules are possible, the interpretation which favours the practice which was being followed for a long period should ordinarily be preferred unless it is clearly in violation of the Rules.

54. The High Court in its observation quoted above has sought to find out the intention of Rules 14 to 17. In our opinion the question of finding the intention arises only when a statute is not clear. If the statute is clear as it is in this case, it has to be read as it is, and the literal rule of interpretation is to be applied. In our opinion intention seeking is ordinarily to be done only when the statute is not clear."

Learned Advocate General has further argued that it was not a case of *mala fide* or any oblique motive on the part of the Commission, while fixing the criteria as to how many times the candidates, who had qualified the main examination, were required to be called for interview *vis-à-vis* the number of vacancies. Learned Advocate General has placed reliance on judgment of the Hon'ble Supreme Court in **Pradeep Kumar Rai & Others Vs. Dinesh Kumar Pandey & Others (2015) 11 SCC 493**, wherein, it was held as under:





"**15.** Furthermore, we find that there is no rule of law as to the ratio of number of vacancies to the number of candidates for being called for interview; although it may be a rule of prudence. This Court has found in *Mohinder Sain Garg v. State of Punjab* (1991) 1 SCC 662, as also in *Ashok Kumar Yadav Vs. State of Haryana* (1985) 4 SCC 417, that although it may be improper for the Selection Committee to call such large number of candidates for interview, but selection cannot be vitiated merely on this ground if such an action is not tainted by mala fide or oblique motive. In *Mohinder Sain Garg*, this Court gave one more reason not to accept this argument which squarely applies to this case as well; this Court found that the respondents stood no chance of being called for interview if candidates upto three times the number of posts were called for interview."

Learned Advocate General has next placed reliance on judgment of the Hon'ble Supreme Court in **Andhra Pradesh Public Service Commission Vs. Baloji Badhavath & Others** (2009) 5 SCC 1, wherein it was held as under:

"**27.** The Commission contends that in all the past examinations held, the vacancies pertaining to the reserved categories had been filled up. The vacancies were not required to be carried forward as sufficient numbers of candidates belonging to the reserved category were available. It is in the aforementioned context, a statement was made in *G. Raju v. Govt. of A.P. WP No. 24247 of 2004 decided on 31-12-2004* (AP) that the Commission shall not carry-forward the vacancies.

28. In *Pitta Naveen Kumar v. Raja Narasaiah Zangiti* (2006) 10 SCC 261, this Court held: (SCC p. 278, para 52)

"52. The authority of the State to frame rules is not in question. The purport and object for which the said notifications were issued also cannot be said to be wholly arbitrary so as to attract the wrath of Article 14 of the Constitution of India. The appellants herein no doubt had a right to be considered but their right to be considered along with other candidates had not been taken away. Both the groups appeared in the preliminary examination. Those who had succeeded in the preliminary examination were, however, allowed to sit in the main examination and the candidature of those had been taken into consideration for the purpose of viva voce test who had passed the written examination."



Learned Advocate General has further argued that whenever a particular course is adopted for filling up the posts, some hardship is liable to occur to some candidates, but the same cannot be a ground for setting aside the procedure so adopted. In support of his argument, learned Advocate General has placed reliance on judgment of the Hon'ble Supreme Court in **Kumari N. Vasundara Vs. State of Mysore & Another (1971) 2 SCC 22**, wherein, it was held as under:

"8. The petitioner's argument that candidates whose parents have of necessity to remain out of Mysore State and who have also by compelling reasons to shift their residence frequently from one State to another without completing ten years in any one State, would suffer because their parents cannot afford to arrange for their children's residence in Mysore State for ten years during the first 17 years of their age, merely suggests that there is a likelihood of some cases of hardship under the impugned rule. But cases of hardship are likely to arise in the working of almost any rule which may be framed for selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule unconstitutional. For relief against hardship in the working of a valid rule the petitioner has to approach elsewhere because it relates to the policy underlying the rule. Redress for the grievance against the wide gap between the number of seats in the medical colleges and the number of candidates aspiring to become doctors for earning their own livelihood and for serving the needs of the country, is also to be sought elsewhere and not in this Court, which is only concerned with the constitutionality of the rule."

Mr. Vigyan Shah, learned counsel for the respondents (in D.B. Civil Special Appeal (Writ) No. 103/2021) has opposed the appeals and has submitted that the action of the appellants in calling categorywise candidates equal to 1.5 times of the number of advertised posts was unjustified, illegal and arbitrary. The said action had no object to achieve. As per Rule 15 of the Rules of 1999, candidates who obtained such minimum qualifying marks in



the main examination as may be fixed by the Commission in its discretion shall be summoned by it for interview. The rule does not prescribe that the number of candidates required to be called for interview have to be fixed categorywise. Thus, the top qualified candidates to the extent of twice the number of advertised posts should have been called for interview. Calling of categorywise candidates equal to 1.5 times of the advertised posts has caused injustice to the respondents, who belong to OBC category. The respondents had more marks than the candidates in the general category, but had not been called for interview because the criteria of calling the candidates for interview had been fixed categorywise. Any minimum qualifying marks should have been fixed in respect of vertical and horizontal reservation category to call the candidates for interview on the concept of competitiveness, whereby, candidates based upon their performance in main examination and interview are selected by the appellants. The stand of the Commission that in previous selections also, the result had been based on categorywise zone, could not legalise its illegal action. In support of his arguments, learned counsel has placed reliance on the judgment of this Court in **Mahesh Kumar Khandelwal & 16 Others Vs. State of Rajasthan & Others, 1994 SCC OnLine Raj 442**, wherein, it was held as under:

"3. Rule 8 of the Rules deals with inviting of applications and provides that on requisition having been received from the Government for specified posts to be filled by direct recruitment in services mentioned in Schedule I & Schedule II, the commission shall call for applications for permission to appear in the examination by publishing a notice to that effect in the official Gazette and in such other manner, as the Commission may deem just.



Rule 9 of the Rules deals with contents of notice and instructions connected therewith. This rule reads as follows:-

"9. Contents of Notice and instructions connected therewith:-

(1) Subject to the provisions of these Rules such notice shall among other things state-

(i) number of post to be filled in the various services on the rules of each examination, indicating separately the number of posts reserved for candidates of the Scheduled Castes and the Scheduled Tribes;

(ii) date of submission of application for admission;

(iii) qualifications required for admission at the examination and the steps to be taken by the candidates to establish their eligibility; and (iv) date and place of examination.

(2) In addition to the notice, the Commission may issue, in such other manner as the Commission may deem fit, such instructions including the syllabus for the guidance of the candidates."

36. It was next contended that fixing of cut-off percentage has resulted in elimination of large number of candidates belonging to SC/ST category. It is submitted that the petitioners belonging to SC/ST category had no lis with the general category candidates and laying down of the cut-off percentage common to all the candidates was violative of the reservation policy. In this very context, it has been urged that the amendment is violative of the fundamental rights of SC/ST category candidates enshrined in Articles 14 & 16 of the Constitution of India. On behalf of the respondents, it is contended that the proviso to amended Rule 13 of the Rules takes adequate care of the interests of SC/ST candidates and the cut-off marks for SC/ST candidates are upto 5% less than the general candidates. It is submitted that the reservation in favour of SC/ST candidates has to be consistent with the dictates of efficiency of administration as provided in Article 335 of the Constitution of India.

37. We have considered the rival contentions and have carefully analysed the provisions relating to cut-off percentage of marks to be obtained by the candidates at the preliminary examination so as to qualify the candidates for taking the main examination. A relaxation of 5% has already been made by proviso to Rule 13 in favour of SC/ST candidates. In our opinion, this takes adequate care of the rights and interests of SC/ST candidates. By the very nature of relaxation, SC/ST candidates stand on a more privileged pedestal than the ordinary and general candidates and it cannot be said that fixing of a general cut-off percentage of marks is violative of the reservation made in their favour or is violative of Articles 14 & 16 of the





Constitution of India. Article 335 of the Constitution of India reads as follows:-

"335. Claims of Scheduled Castes and Scheduled Tribes to Services and posts.- The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

38. It was for the executive Government to devise ways and means as to how reservation in favour of SC/ST candidates has to be achieved consistent with the provisions of Article 335 of the Constitution of India. If the rule making authority did not deem it proper to make it incumbent for the RPSC to prepare separate lists of general category and SC/ST candidates qualifying at the preliminary examination, no fault could be found with the provision, which does guarantee a reservation in favour of SC/ST categories in a particular manner, as thought suitable by the rule making authority.

42. A grievance was made that a large proportion of general candidates qualified at the preliminary examination than the SC/ST category candidates and this has violated the reservation policy. The RPSC had explained that there may be situations when a number of vacancies are advertised for the reserved category candidates but the persons belonging to such categories may not be found suitable for posts so advertised. No fault could be found with the logic and as already indicated, reservation has to be ensured within the parameters of Article 335 of the Constitution of India, and this has been properly done by the RPSC. We may observe that even the screening test is a part of the competitive examination as made clear by clause I of the Schedule. It is not a mere screening test as contended on behalf of the petitioners. In a competitive process, a certain minimum attainment is expected of all the candidates and those who fail to achieve the minimum cannot complain that they have been left out of the competition at the threshold. The scheme of the competitive examination envisaged in the schedule to the Rules, already reproduced elsewhere makes it abundantly clear that non-achievers have to be eliminated at different stages; some are eliminated as a result of the preliminary test; others are eliminated at the main examination; lastly, some are bound to be eliminated at the viva voce stage. SC/ST candidates cannot complain that a separate list should have been prepared with regard to these candidates, when the Rules do not mandate it, either by express words or even by necessary implication. We, therefore, reject the contentions raised in this behalf."





Learned counsel has next placed reliance on judgment of the Hon'ble Supreme Court in **Chattar Singh & Others (supra)**, wherein, it was held as under:

"5. Rule 13 of the Rules prescribes the mode of conducting preliminary as well as Main Examination. It reads as under:

"13. Scheme of Examination, personality and viva voce test:-The competitive examination shall be conducted by the Commission in two stages, i.e., Preliminary Examination and Main Examination as per the scheme specified in Schedule III. The marks obtained in the Preliminary Examination by the candidates, who are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Examination will be 15 times the total approximate number of vacancies to be filled in the year in the various services and posts; provided they are otherwise eligible, but in the said range all those candidates, who secure the same percentage of marks as may be fixed by the Commission for any lowest range will be admitted to the Main Examination:

Provided further that if adequate number of candidates belonging to the Scheduled Castes/Scheduled Tribes are not available amongst the candidates to be declared qualified for admission to the Main Examination, the Commission may at their discretion keep the cut-off marks up to 5 (five) per cent less than the General candidates.

Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission in their discretion shall be summoned by them for an interview. The Commission shall award marks to each candidate interviewed by them, having regard to their character, personality, address, physique and knowledge of Rajasthani culture. However for selection to the Rajasthan Police Service candidates having 'C' certificate of NCC will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate."

10. Shri Sushil Kumar Jain, learned counsel for the appellant raises threefold contention. According to the learned counsel, the main part of Rule 13 does not speak of any minimum marks so as to enable the candidate to appear in the Main Examination. The rule requires consideration of all those candidates who have applied for the post, if they have fulfilled basic qualifications prescribed for the posts. The qualified





candidates are eligible to write Preliminary Examination conducted by Public Service Commission. While calling the qualified candidates to the Main Examination, the PSC should announce results in such a way that candidates numbering 15 times the total posts earmarked for each category, are called to write the Main Examination. Under Rule 13 on working out the number, the Public Service Commission has to put the minimum of the marks in such a way that there would be available opportunity to the 15 times the candidates belonging to various categories to appear for the Main Examination. Therefore, the prescription of the minimum of the marks and elimination of the candidates irrespective of the fact whether or not they reached 15 times the posts is an arbitrary procedure adopted by the Public Service Commission.

14. In view of the respective contentions, the first question that arises for consideration is whether Rule 13, as interpreted by Shri Sushil Kumar Jain, is valid in law? To be fair to the learned Judges of the High Court, the first question was not addressed before the learned Judges in the manner in which it was argued before us. The thrust of the arguments before them was on proviso to Rule 13. A reading of Rule 13 would indicate that competitive examination shall be conducted by the Public Service Commission in two stages, namely, Preliminary Examination and Main Examination. As per the Scheme specified in Rule 7 and Schedule III, Preliminary Examinations are conducted on the subjects as per the syllabus and aggregate marks are taken into consideration to call the candidates for Main Examination. Marks obtained in the Preliminary Examination by a candidate would not be counted for the purpose of Main Examination to determine final order of merit. The number of candidates to be admitted to the Main Examination will be 15 times the total approximate number of vacancies to be filled in the year of recruitment in the various services and posts/vacancies notified or expected. However, the candidates Would be otherwise eligible in a particular range. All those candidates, who secure the same percentage of marks as may be fixed as the lowest range will be admitted for the Main Examination. It would thus be seen that Rule 13 read with Rule 7 and Schedule III does not prescribe any minimum of the lowest range of marks for calling the candidates for appearing in the Main Examination. What requires to be done is that the Public Service Commission has to consider the number of vacancies notified or likely to be filled in the year of recruitment for which notification was published. Then candidates who had appeared for the Preliminary Examination and qualified for Main Examination are to be screened by the test. The





object is to eliminate unduly long list of candidates so that opportunity to sit for Main Examination should be given to candidates numbering 15 times the notified posts/vacancies in various services; in other words for every one post/vacancy there should be 15 candidates. There would be wider scope to get best of the talent by way of competition in the examination. The ultimate object is to get at least three candidates or as is prescribed, who may be called for viva voce. Therefore, the lowest range of aggregate marks as cut-off for general candidates should be so worked out as to get the required number of candidates including OBCs, Scheduled Castes and Scheduled Tribes. The lowest range would, therefore, be worked out in such a way that candidates numbering 15 times the notified posts/vacancies would be secured so as to afford an opportunity to the candidates to compete in the Main Examination."

Learned counsel has next placed reliance on judgment of the Hon'ble Supreme Court in **Andhra Pradesh Public Service Commission Vs. Balaji Badhavath & Others (supra)**, wherein it was held as under:

"3. The selection process takes place in two phases; the first being holding of an examination for the purpose of shortlisting of the candidates and the second being holding of the main examination followed by interview. Both for the preliminary examination as also the main examination, two criteria used to be adopted; one for the General Category candidates and the other for the reserved category candidates. Validity of the said procedure came up for consideration before a Division Bench of the Andhra Pradesh High Court as far back in the year 1984 in *S. Jaffer Saheb v. State of A.P.* (1985) 2 APLJ 380. Indisputably, a similar question came up for consideration again in *G. Raju v. Govt. of A.P.* WP No. 24247 of 2004 decided on 31-12-2004 (AP).

4. In *S. Jaffer Saheb*, the contention of the State was that the reservation of posts used to be made while admitting the candidates for examination itself and not in the final selection in the ratio of 1:15. The question which, thus, posed, was as to whether admission of candidates for the main examination by applying compensatory preference even at the stage of admission in the main examination is violative of Articles 14 and 16 of the Constitution of India.

5. Taking note of the provisions contained in Articles 14, 16 and 335 of the Constitution of India, the High Court in *Jaffer Saheb* held: (APLJ p. 386, paras 11-12)



"11. The purpose of holding a screening test is to ensure the basic standard of eligibility of the candidates and even at the stage of admission to the main examination the rule of reservation of posts cannot be applied. Reservation for applicants is not permissible under Article 16(4).

12. The learned Advocate General submits that if reservation rule is not followed even at the stage of admitting candidates for the main examination, a reserved vacancy is likely to remain unfilled. It is nobody's case that as many candidates as there are reserved vacancies have not been qualified for the main examination. Is there any rule of relaxation based on reservation for a pass in the HSC examination or intermediate examination or BA Examination? There can be no relaxation or waiver of a basic standard of performance. There can be no compromise with the maintenance of administrative efficiency which is barred by Article 335 of the Constitution."

7. Indisputably, pursuant to or in furtherance of the said judgment of the High Court dated 28-12-1984, the State of Andhra Pradesh issued fresh GOMs No. 570 dated 31-12-1997, providing that the candidates who had applied for Group I Services would be shortlisted based on a preliminary examination (screening test) in the ratio of 1:50 to the total number of vacancies available at the material time *irrespective of community*, the relevant portions whereof read as under:

"...The number of candidates to be admitted to the written examination (convention type) would be 50 (fifty) times to the total number of vacancies available at the material time irrespective of communities.

3. The papers except paper 2 i.e., General English may be answered in English or Telugu or Urdu chosen by the candidates. However, a candidate is not permitted to write part of the paper in English and part of it in Telugu.

4. The paper on General English is a qualifying one and the standard of this paper is that of SSC. The minimum qualifying marks in this paper are 40% for OCs, 35% for BCs and 30% for SC/STs and PH. These marks are not counted for ranking.

5. In the event of the SC and ST candidates not coming up for selection with the existing minimum prescribed for the selection in the competitive examination conducted by the Commission, their selection shall be considered on the basis of rank with reference to their performance in the written and oral competitive examination."





8. Indisputably, when in terms of the said GOMs No. 570 dated 31-12-1997, a Notification in Advertisement No. 21 of 2003 calling applications for Group I Services was issued in the year 2003, another writ application came to be filed by G. Raju and seven others questioning the legality thereof. The Andhra Pradesh High Court by a judgment and order dated 31-12-2004 opined:

"13. The contention of the learned counsel for the petitioners is that at least the ratio of 1:50 should be maintained in respect of each post reserved for community reservation, in such an event, it will enable the reserved candidates to effectively participate in the selection and candidates from out of them would be selected within the reservation category, but this contention though appears to be appealing, cannot be accepted. There cannot be any upper limit. If this has to be taken into consideration, then 1:50 ratio should be considered to be appropriate and reasonable, and inasmuch as it is assured by the A.P. PSC that there will not be any carry-forward vacancies, we are not inclined to interfere with the order passed by the Tribunal."

However, in that writ petition, the validity of GOMs dated 31-12-1997 was not in question.

11. Aggrieved by and dissatisfied therewith, the respondents filed a writ petition before the Andhra Pradesh High Court which by reason of the impugned judgment has been allowed. The Commission was impleaded as a party in the writ petition. The High Court, however, directed the Commission to prepare a statement showing the ratio as also category wise data of the candidates permitted to appear for the main examination as per the Commission. Despite noticing the ratio laid down in regard to certain category of candidates, as for example, OC, BC(C), BC(E), women and physically handicapped candidates, in its earlier decisions in *S. Jaffer Saheb* as also in *G. Raju*, it was held that in the said case as the ratio of the candidates in respect of those categories fell much short of 1:15 ratio, the said GOMs dated 31-12-1997 as also the notification dated 27-12-2007 were held to be ultra vires Articles 14 and 16 of the Constitution of India. It was stated that both in *S. Jaffer Saheb* as also in *G. Raju*, GOMs No. 570 dated 31-12-1997 was not challenged at all."

Learned counsel has further submitted that a wrong practice cannot be said to be legal and valid. In support of his argument, learned counsel has placed reliance on judgment of the





Hon'ble Supreme Court in **D. Stephen Joseph Vs. Union of India & Others (1997) 4 SCC 753**, wherein, it was held as under:

"5. It appears to us that the State Government is labouring under a wrong impression as to the applicability of the past practice as indicated in *Suresh Nathan case* 1992 Supp (1) SCC 584. This Court in the said decision, has only indicated that past practice should not be upset provided such practice conforms to the rule for promotion and consistently for some time past the rule has been made applicable in a particular manner. In our view, the decision in *Nathan case* only indicates that past practice must be referable to the applicability of the rule by interpreting it in a particular manner consistently for some time. Any past practice dehors the rule cannot be taken into consideration as past practice consistently followed for long by interpreting the rule. It may be indicated here that a similar question also came up for consideration before this Court in *M.B. Joshi v. Satish Kumar Pandey* 1993 Supp (2) SCC 419. The decision in *Suresh Nathan case* was distinguished in the facts of that case and it was indicated that when the language of the rule is quite specific that if a particular length of service in the feeder post together with educational qualification enables a candidate to be considered for promotion, it will not be proper to count the experience only from the date of acquisition of superior educational qualification because such interpretation will violate the very purpose to give incentive to the employee to acquire higher education."

Mr. R.N. Mathur, learned Senior Counsel appearing on behalf of the respondents (in D.B. Civil Special Appeal (Writ) No. 106/2021) has opposed the appeals and has submitted that so far as the respondents, whom he is representing, are concerned, the only question raised by them was that the Commission should have called the candidates, who had qualified the main examination, equal to twice the number of vacancies for interview. In the other services, the candidates twice the number of advertised posts were being called for interview. There was no explanation as to why the practice of calling the candidates twice





the number of advertised posts had been changed. The object of examination is to allow the candidates to compete with each other so that the best talent is picked up for filling up the posts. There was no justification for calling categorywise candidates equal to 1.5 times of the advertised posts. In support of his arguments, learned Senior Counsel has placed reliance on judgment of the Hon'ble Supreme Court in **Municipal Committee, Amritsar Vs. Hazara Singh (1975) 1 SCC 794**, wherein it was held as under:

"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 1972 FAC 549** and **Prakash Chandra Pathak v. State of Uttar Pradesh AIR 1960 SC 195** 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."

Learned Senior Counsel has next placed reliance on judgment of the Hon'ble Supreme Court in **Sarwan Singh Lamba & Others Vs. Union of India & Others (1995) 4 SCC 546**, wherein, it was held as under:

"**17.** Now we come to the next question, viz., whether non-compliance with the direction regarding the High Powered Selection Committee vitiates the amendment. Normally even an obiter dictum is expected to be obeyed and followed. In our view further discussion would be purely academic for the simple reason that without amending Section 6(7) the dicta of the Court has in fact been made effective by the appointment of High Powered Selection Committees both at the Central level as well as the State levels with minor modifications. Since these Committees are now expected to make the choice of candidates whose



names may be recommended to the Chief Justice of India for final approval, the order of 5-5-1987 is fully complied with. Of course, names may be suggested to the Committee by any source but the ultimate decision has to be taken by the Committee and if the Chief Justice of India is not personally heading the Committee, the final decision would have to be taken by him on the recommendation of the Committee. It would, thus, be seen that without amending Section 6(7), the Government has given effect to the Court's view expressed in the order dated 5-5-1987 which renders the challenge academic and unnecessary to examine."

Learned Senior Counsel has further submitted that so far as the finding recorded by the Hon'ble Supreme Court in the case of **Ashok Kumar Yadav & Others (supra)** is concerned, the same was *obiter dicta*.

Mr. Tanveer Ahamed, learned counsel appearing on behalf of the applicant has adopted the submissions made by learned Advocate General and has submitted that the writ petitions filed by the respondents were liable to be dismissed.

Present appeals relate to Rajasthan State and Subordinate Services Combined Competitive (Mains) Examination, 2018.

First question that requires consideration is as to whether the action of the appellants in calling 1.5 times of categorywise candidates *vis-à-vis* the number of posts advertised is legal and valid. In this regard, it would be appropriate to reproduce Rule 13 of the Rajasthan State and Subordinate Service (Direct Recruitment by Combined Competitive Examinations) Rules, 1962 (hereinafter referred to as 'the Rules of 1962'), which reads as under:



"[13. Scheme of Examination, personality and Viva-voce Test.- The Competitive Examination shall be conducted by the Commission in two stages i.e. preliminary Examination and Main Examination as on the scheme specified in Schedule III. The marks obtained in the preliminary Examination by the candidates, who are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Examination will be 15 times the total approximate number of vacancies to be filled in the year in the various services and posts; provided they are other eligible, but in the said range all those candidates who secure the same percentage of marks as may be fixed by the Commission for any lowest range will be admitted to the Main Examination:

Provided further that if adequate number of candidates belonging to the Scheduled Castes/Scheduled Tribes are not available amongst the candidates to be declared qualified for admission to the Main Examination, the Commission may at their discretion keep the cut off marks upto 5 (five) percent less than the General candidates.

Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission in their discretion shall be summoned by them for an interview. The Commission shall award marks to each candidate interviewed by them, having regard to their character, personality, address, physique and knowledge of Rajasthani Culture. However for selection the Rajasthan Police Service Candidates having "C" certificate of N.C.C. will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate.]"

The said Rule was amended vide Rules of 1999 and Rule 15 of the Rules of 1999 reads as under:

"15. Scheme of Examination, Personality and Viva-voce Test:- The competitive examination shall be conducted by the Commission in two stages i.e. Preliminary Examination and Main Examination as per the scheme specified in Schedule-III. The marks obtained in the Preliminary Examination by the candidates, are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Examination will be 15 times the total approximate number of vacancies (category wise) to be filled in the year in the various services and posts but in the said range all those candidates who



secure the same percentage of marks as may be fixed by the Commission for any lower range will be admitted to the Main Examination.

Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission in their discretion shall be summoned by them for an interview. The Commission shall award marks to each candidates interviewed by them, having regard to their character, personality, address, physique and knowledge of Rajasthani Culture. However, for selection to the Rajasthan Police Service candidate having 'C' Certificate of N.C.C. will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate:

Provided that the commission, on intimation being received from the Government before declaration of the result of the Preliminary Examination, may increase or decrease the number of vacancies advertised."

Vide notification dated 09.06.2020, Rule 15 has been amended and the relevant part of the notification in this regard reads as under:

"2. Substitution of rule 15.- The existing rule 15 of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules 1999, hereinafter referred to as the said rules, shall be substituted by the following, namely:-

"15. Scheme of Examination, Personality and Viva-Voce Test.- (1) The Competitive Examination shall be conducted by the Commission in two stages i.e. Preliminary Examination and Main Examination as per the scheme specified in Schedule-III. The marks obtained in the Preliminary Examination by the candidates declared qualified for admission to the Main Examination, will not be counted for determining their final order of merit.

(2) The number of candidates to be admitted to the Main Examination will be fifteen times the total approximate number of vacancies to be filled in the year through the examination but in the said range all those candidates who secure the same marks as may be fixed by the Commission for any lower range will be admitted to the Main Examination:

Provided that, if the Commission is of the opinion that sufficient number of candidates belonging to reserved category are not available on the basis of general standard for appearing in the Main Examination, relaxed standard may be applied by the Commission for admitting candidates belonging to such reserved category so that sufficient number of



candidates in that category are available to appear in the Main Examination. For this purpose, the zone of consideration of 15 times the total approximate number of vacancies shall stand relaxed. However, candidates so additionally qualified for the main examination will be eligible for selection to the posts reserved for respective categories only.

Provided further that in case of Rajasthan State and Subordinate Services Combined Competitive Examination 2013, 2016 and 2018, process for which has already been completed or commenced, candidates belonging to reserved category called by the Commission in excess of 15 times the posts reserved for respective reserved category for appearing in the main examination, as candidates of respective reserved categories, because of having secured equal or more marks than the cut-off marks for general category in the preliminary examination for that year, shall be considered qualified for appearing in the main examination for that year.

Note: For the purpose of this rule "reserved category" means any such category for which reservation, either horizontal or vertical is applicable.

(3) Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission in their discretion shall be summoned by them for an interview.

(4) The candidates appearing in the main examination shall be required to obtain minimum 10% marks in each paper and 15% marks in aggregate out of the total marks of all papers in the main examination to qualify for appearing in personality and viva voce examination:

Provided that relaxation of 5% in such minimum marks shall be given to the candidates belonging to Scheduled Castes/Scheduled Tribes categories.

(5) The Commission shall award marks to each candidate interviewed by them, having regard to their character, personality, articulation, physique and knowledge of culture of Rajasthan. However, for selection to the Rajasthan Police Service candidates having 'C' Certificate of N.C.C. will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate:

Provided that the Commission, on intimation being received from the Government before declaration of the result of Preliminary Examination, may increase or decrease the number of vacancies advertised."

Thus, a perusal of the above rules reveals that there are three stages for the examination. First stage is that the candidates have to appear for preliminary examination.





Thereafter, the candidates equal to 15 times of the total approximate number of vacancies, who qualify the preliminary examination, are to be called to take the main examination. Further perusal of the above rules reveals that candidates, who obtained such minimum qualifying marks in the main examination as may be fixed by the Commission in its discretion, shall be summoned by it for interview. In this regard, the Rules of 1962 as well as the Rules of 1999 are similar. Even the amendment made vide notification dated 09.06.2020 is also similar.

So far as notification dated 09.06.2020 is concerned, the amendment proposed vide it came into force with immediate effect, except second proviso to sub-rule (2) of Rule 15 and second proviso to clause (a) of sub-head (ii) Main Examination of head (1) Scheme of examination of Schedule-III, which shall be deemed to have come into force with effect from 17.06.2013.

So far as present appeals are concerned, the controversy involved is only with regard to the candidates, who have been called for interview after they had qualified the main examination. As per Rules of 1999, the number of candidates liable to be admitted to the main examination would be 15 times the total approximate number of vacancies categorywise to be filled in the year for various services and posts. Thus, it can be said that emphasis was made to fill up the vacancies categorywise. In these circumstances, there is force in the argument raised by learned Advocate General that for interview also, the candidates were required to be called categorywise as per the discretion exercised by the Commission.



It is also the case of the appellants that for all the examinations conducted till date for filling up various services and posts in terms of the Rules of 1962 as well as the Rules of 1999, the practice followed by the Commission was that for interview, the number of candidates, who had qualified the main examination had been fixed categorywise.

Learned counsel for the respondents have failed to demonstrate that the submission made by learned Advocate General with regard to past practice adopted by the Commission was incorrect. Rather, it has been submitted by Mr. Vigyan Shah, learned counsel for some of the respondents that a wrong practice cannot be said to be legal and valid. However, in view of the fact that the Commission has been consistently following the practice of calling the candidates for interview, who had qualified the main examination, by fixing their number categorywise and it is not a case where the said action is hit by *mala fide* or any ulterior motive, the action of the appellants in fixing the number of candidates to appear for interview after qualifying the main examination categorywise is legally justified and cannot be said to be in violation of relevant rules. Rule 15 of the Rules of 1999, when read as a whole, justifies the action of the appellants in calling the candidates categorywise for interview, after they had qualified main examination, to fill up the vacancies. Moreover, learned counsel for the respondents has failed to establish that any candidate lower in merit has been called for the interview. Hence, it cannot be said that merit has been compromised by adoption of the procedure of calling the candidates categorywise (who have qualified main examination) for interview. Therefore,



learned counsel for the respondents has failed to establish any prejudice suffered by his clients.

So far as the fixation of calling of number of the candidates for interview after qualifying the main examination is concerned, the rule as such does not specifically provide as to whether the number of candidates are to be called categorywise *vis-à-vis* the number of posts or the candidates are to be called from a common list. In this situation, the practice adopted by the Commission was one of the possible method for calling the successful candidates for interview. The construction of the rule made by the Commission had been followed over a long period of time and the past practice is based on one of the possible construction of the rules and there is no justification for upsetting the said past practice, as has been held by the Hon'ble Supreme Court in the case of **N. Suresh Nathan & Another (supra)**. Hence, we are of the considered opinion that the action of the appellants in calling the successful candidates for interview by fixing their number categorywise cannot be said to be illegal or unjustified. Merely because hardship (if any) has been caused to some of the candidates with regard to the criteria fixed by the Commission is no ground to hold that the action of the appellants was illegal. Whenever selection for any post is made, some hardship is liable to be suffered by some of the candidates for one reason or the other. For example, some of the candidates cannot apply, as they become overage or they had not acquired the qualification up to the date fixed in the advertisement etc. Thus, the case of hardship is likely to arise in working of any rule, but in





the present case, the Commission has fixed the criteria in its wisdom with a view to select the best candidates from all categories.

The next question that requires consideration is as to whether the decision of the Commission in calling 1.5 times of the candidates in the present selection for interview out of the candidates, who had qualified the main examination, is justified.

In this regard, the decision rendered by the Hon'ble Supreme Court in the case of **Ashok Kumar Yadav & Others (supra)** is the most relevant one. In the said case, it was observed by the Hon'ble Supreme Court that the number of candidates to be called for interview in order of marks obtained in the written examination should not exceed twice or at the highest thrice the number of vacancies to be filled. We are not convinced by the argument raised by Mr. R.N. Mathur, learned Senior Counsel that the said finding of the Hon'ble Supreme Court in the case of **Ashok Kumar Yadav & Others (supra)** is *obiter dicta*. In the present case admittedly, the Commission had called successful candidates 1.5 times of the number of vacancies to be filled for interview. By doing so as per Rule 15 of the Rules of 1999, in-fact, the number of candidates, who were called for interview, came upto 1.92 times. Thus, the number of candidates called by the Commission for interview came to about twice the number of vacancies to be filled. There is nothing on record to suggest that the decision taken by the Commission in calling candidates equal to 1.5 times of the number of vacancies to be filled was on account of any *mala fide* or oblique motive. There is also nothing on record to further suggest that the such number



has been fixed to help any particular category of candidates or to put a particular category of candidates at a disadvantage. The Commission, in its wisdom, felt that the right course to follow in the present case would be to call candidates equal to 1.5 times of the number of vacancies to be filled. In doing so, the number of candidates, which were sought to be called for interview, now comes to 1.92 times, which is almost twice the number of vacancies to be filled. Moreover, this Court would not exercise the power of judicial review, while exercising writ jurisdiction over an administrative decision in case the said decision does not suffer from an error, which is self evident on the face of it or if the decision is clouded by *mala fide* or some oblique motive. The Commission in its wisdom has thought that by calling categorywise candidates equal to 1.5 times of the number of vacancies to be filled, for interview would enable it to fill up the advertised vacancies by getting the best talent.

In the facts and circumstances of the present case, we are of the opinion that the learned Single Judge fell in error in directing the appellants to lay down common minimum qualifying marks for all categories of candidates in such a manner so as to call at least two times the number of candidates against the total advertised posts and conduct interviews accordingly. It was not in the domain of this Court to have fixed the number of candidates required to be called for interview, as such number was required to be fixed by the Commission while exercising its administrative powers. The Commission, while fixing up the number of candidates required to be called for interview, had to take in account various factors such as the number of days required to



interview all the candidates etc. It has been argued by learned Advocate General that in case the candidates twice the number of vacancies are ordered to be called for interview, then, in-fact, the number of candidates required to be called would be 2.5 times of the number of vacancies. Learned Advocate General has submitted that about 2010 candidates were required to be called for interview and in case the directions of the learned Single Judge are to be followed, then 700 more candidates would be required to be called for interview. It has been submitted by learned Advocate General that there was no requirement of calling more candidates, as the best talent would be picked up if the criteria adopted by the Commission is followed for filling up the vacancies.

Hence, we are of the opinion that the learned Single Judge has erred in allowing the writ petitions filed by the respondents, whereas, the writ petitions filed by the respondents deserve dismissal.

Accordingly, appeals filed by the State are allowed. Consequently, order dated 17.12.2020 passed by the learned Single Judge is set aside and writ petitions filed by the respondents are dismissed.

So far as Application No. 1/2021 seeking leave of this Court to file appeal is concerned, the same has been rendered infructuous in view of dismissal of writ petitions and is disposed of accordingly.

(MANOJ KUMAR VYAS),J

(SABINA),J

MANOJ NARWANI /

