

**(2000) 08 RAJ CK 0015**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 01732, 2675, 2785, 2816, 2825, 2830, 2985, 3303, 3343, 3346, 3359, 3443, 3452, 3457, 3480, 3483 and 3508 of 2000.

Dharamveer Tholia and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

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**Date of Decision :** 10-08-2000

**Acts Referred:**

Constitution of India, 1950 — Article 14, 15, 16, 19, 21

**Citation :** (2000) 3 RLW 1809 : (2000) 3 WLC 399 : (2007) 3 WLN 569

**Hon'ble Judges :** Arun Madan, J;AR. Lakshmanan, J

**Bench :** Division Bench

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**Judgement**

AR. Lakshmanan, C.J.—This writ petition was filed by a practicing Advocate at Jaipur Bench of Rajasthan High Court with the following prayer:

(i) Issue an appropriate writ, order or direction directing the RPSC to prepare a list of candidate to the main examination by accommodating all reserved category candidates first in the general category if such candidates secured position in the general category on their merit standing and thereafter prepare a list for the reserved category candidates including the OBC category;

(ii) declaring the part of Rule 15 of the Rules that permits preparation of the list of candidates to be admitted to the main examination from the candidates who were taken the preliminary examination category wise as violative of Articles 14, 15, 16 and 21 of the Constitution of India.

2. It is stated that this writ petition was filed in public interest so as to protect the interest of other backward classes to ensure that benefit of reservation to OBC category is not denied to them. It is claimed that the petitioner has been associated with the movement for protection of the interest of other backward class of the State.

3. The other writ petitions were filed by petitioners who are members of the

other backward class community (OBC) who have submitted their application as members of the OBC for the current preliminary examination held by the Rajasthan Public Service Commission (hereinafter referred as the RPSC). It is stated that these writ petitions were filed by the petitioners challenging the action of the RPSC under which for the Rajasthan State & Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1999 (hereinafter referred as "the Rules of 1999") lists have been drawn for admission to the main examination in terms of Rule 15 of the Rules. The main grievance of the petitioners is that the RPSC has interpreted Rule 15 in a manner that has turned out to be highly oppressive to the interest of the reserved category i.e. SC, ST and OBC. It is stated that the grave injustice done to the SC, ST and OBC can be appreciated from the fact that while a general category candidate securing 203 marks has been admitted to the main examination, the OBC candidates securing 203 marks have been denied admission to the main examination. It is stated that the RPSC has prepared the list category wise in a manner that the list of general category candidates has been prepared excluding the entire reserved category notwithstanding the fact that reserved category candidates on account of their merit standing can be positioned in the general category. A direct consequence of this is that the RPSC has brought about a positive reservation of 51% in favour of the unreserved category. Such reservation in favour of unreserved category amounts to massive affirmative action in favour of general category which is constitutionally impermissible as it violates the mandate of Articles 14 and 16 of the Constitution of India. It is also further alleged that the reservation in favour of general category is constitutionally not envisaged and on that account also, the RPSC action cannot be sustained.

4. The examination of 1999 is being organised by the RPSC in terms of Rajasthan State & Subordinate Services (Direct Recruitment by Combined Competitive Examinations), Rules, 1999. The preliminary examination came to be held on 20.11.1999 and in respect of some papers it was held on March 12, 2000. The result of the preliminary examination came to be declared on 27.5.2000. The RPSC has permitted a general category candidate securing 203 marks to be admitted to main examination. However, in respect of OBC category, a candidate securing 203 marks or less has been denied admission to main examination. The cut-off marks for the general category has been reckoned 203 marks while for OBC category, the same has reckoned as 204 marks. It is, therefore, submitted that the action of the RPSC. ruins down the very concept of reservation.

5. Rule 15 of the Rules of 1999 is reproduced hereunder:

15. Scheme of Examination, Personality and Viva-voce Test: The Competitive Examination shall be conducted by the Commission in two stage 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 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 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.

6. According to the petitioners the rational interpretation of Rule 15 require that all reserved category candidates who secured place in the merit list on the strength of their merit deserve to be counted in the general category. In D.B. Civil Writ Petition No.3346/2000, the following questions of law have been raised:

(i) Whether it is permissible for the R.P.S.C. to draw a list in terms of Rule 15 by excluding reserved category from general category notwithstanding the fact that reserve category persons on their merit standing find placement in general category?

(ii) Whether it is permissible for the R.P.S.C. to have a higher cut off standard for the OBC as compare to the general category?

(III) Whether it is constitutionally permissible for the R.P.S.C. to operate Rule 15 in a manner that disadvantaged sections, reserved category (OBC) is made to suffer handicaps on account of reservation as compare to general category?

(iv) Whether Rule 15 as interpreted by R.P.S. Cr is unconstitutional has offended Articles 14, 15(4) and 16(4) of the Constitution of India?

(v) Whether Rule 15 as interpreted by R.P.S.C. is contrary to law Laid down by apex court?

(vi) Whether general category can be codified as non-reserved category and excluded in all situations meritorious reserved category candidates and can find place in general category on their own merit standing?

(vii) Whether the massive affirmative action in favour of general category (non-reserved category) is permissible under Articles 15 and 16 of the Constitution of India?

7. In these circumstances, the public interest litigant - Advocate preferred the above public interest litigation so as to challenge the action of the RPSC under which list of candidates to be admitted to the main examination has been prepared category wise in which reserved category candidates, notwithstanding their merit, have been kept out from general category and interpretation-constitutional validity of Rule 15 to the extent Rule 15 permits category wise preparation of list by holding general category as consisting only of un-reserved category. The impugned action of the RPSC has been challenged as against the provisions of Articles 14, 15, 16 and 21 of the Constitution of India, It is also submitted that the Constitution provides for reservation in favour of SC/ST under Article 15(4)(A) and in favour of backward classes of citizens under Article 16(4) and 15(4) and that the principle of equity enshrined in Article 14 and 16(1) can be qualified by an affirmative action only in favour of SC/ST and backward class citizens and for no other category much less the unreserved category.

8. It is also urged that the reservation for the OBC category candidates is to the extent of 21% while the percentage of participating population in this category is much in excess of 21% and, therefore, the RPSC was required to prepare list on the same pattern on which the list is prepared in terms of Rule 17 of the Rules of 1999 while making recommendations to the Government.

Rule 17 of the Rules of 1999 runs thus:

17. Recommendation, of the Commission: (1) The Commission shall prepare for each Service, a list of the candidates arranged in order of merit of the candidates as disclosed by the aggregate marks finally awarded to each candidate. If two or more of such candidates obtain equal marks in the aggregate the Commission shall arrange their names in the order of merit on the basis of their general suitability for the service:

Provided that the candidate(s) belonging to the Other Backward Classes/Scheduled Castes/Scheduled Tribes, who get placement in the merit list as a result of special concession given to them in terms of "age" and "fees" or such other concession granted by the Government shall be counted against the reserved vacancies determined for the candidate belonging to the Other Backward Classes/Scheduled Castes/Scheduled Tribes irrespective of the marks obtained by them.

(2) The Commission, while giving weightage to the preference for the posts in the different services expressed by a candidate in his/her application, may recommend him/her for appointment to any post in any such service for which it considers him suitable.

(3) The list compiled under this rule shall be immediately sent to the Government and also be published for general information.

9. In this view of the matter also it is submitted that the impugned action is not sustainable in law. The public interest litigation in WP 3346/2000 was argued by

Mr, Jagdeep Dhankar Senior Advocate, and for some of the petitioners by Mr. Praveen Balwada, Mr. P.P. Singh, Mr. D.V. Tholia, Mr. Ajay Rastogi, Mr. Manish Bhandari, Mr. Ved Prakash, Mr. Rajendra Soni, Others have adopted the arguments of learned Sr. Advocate Mr. Jagdeep Dhankar. On behalf of the State of Rajasthan Mr. R.N. Mathur, Additional Advocate General was heard. Mr. J.P. Joshi assisted by Mr. S.N. Kumawat have addressed arguments on behalf of the RPSC. On behalf of the interveners Mr. A.K. Sharma and Mr. Bharat Vyas have argued the case.

10. On behalf of the State of Rajasthan and RPSC, separate reply affidavit have been filed. An additional affidavit dated 1.8.2000 was placed before the Bench by the RPSC for its perusal as directed vide order dated 28.7.2000 by a Division Bench. On 31.7.2000, when the matters were listed, it was suggested that pending final adjudication on the questions of law raised, it was suggested that since main examinations are scheduled to be held on 6.8.2000 for which intimation letters have already been issued to all those candidates who were successful and list whereof was prepared by the RPSC, that the candidates - students who have approached this Court be permitted to sit In the examination to be held on 6.8.2000 and that the result of the examination to be held on 6.8.2000 will not be declared without the permission of this Court. Mr. Jagdeep Dhankar, learned Counsel appearing for the public interest litigant submitted that since the RPSC has in general category excluded the entire reserved category notwithstanding merit, and that the OBC candidates having above cut-off marks compared to general candidates should be permitted to appear for the examination. Mr. Joshi, learned Counsel appearing for the RPSC was not agreeable to the said submission. Mr. Joshi submitted that if the reservation has to take place in accordance with the interpretation put forth by Mr. Jagdeep Dhankar, the cut-off marks in each category shall have to be revised and, therefore, such suggestion is impossible of performance at this stage. According to Mr. Joshi, the list of successful candidates has been prepared by the RPSC in terms of Rule 15 of the Rules of 1999 as interpreted by the Hon'ble Supreme Court of India and as per the directions given by the Supreme Court in the case of Chattar Singh and others Vs. State of Rajasthan and others, and, therefore, it is impossible for the RPSC to postpone the examination to be held on 6.8.2000. Since there was no consensus, the learned senior counsel appearing for the public interest litigant and others requested this Court to hear the main writ petitions themselves on 1.8.2000 so that the rival claims made by either party can be considered and resolved finally by this Court. Accordingly, all these cases were listed for hearing on 1.8.2000 before this Bench.

11. The principal argument was made by Mr. Jagdeep Dhankar on behalf of the petitioner in WP N.3346/2000 and counsel appearing for the other writ petitions have adopted the arguments of the learned senior counsel. Mr. Jagdeep Dhankar invited our attention to the relevant rule viz. Rules 15 and 17 of the Rules of 1999 and also the provisions of Articles 14, 15(4) and 16(4) of the Constitution of India. Mr. Jagdeep Dhankar formulated the following questions of law which

are required to be determined by this Bench:

- (i) Whether it is permissible for the RPSC to draw a list in terms of Rule 15 by excluding the entire reserved category from the general category notwithstanding the fact that reserved category candidates on their merit standing can find place in the general category?
- (ii) Whether it is permissible for the RPSC to have a high cut off standard for the OBC as compared to the general category for admission to the main examination?
- (iii) Whether it is constitutionally permissible for the RPSC to interpret Rule 15 in a manner whereby disadvantaged sections i.e. the reserved category is made to suffer handicaps on account of reservation as compared to general category?
- (iv) Whether Rule 15 as interpreted by RPSC is unconstitutional as the same offends Articles 14 & 16 by denying equality to the reserved category in relation to the general category?
- (v) Whether the interpretation of Rule 15 by the RPSC runs foul to Articles 15(4) and 16(4) of the Constitution?
- (vi) Whether general category in Rule 15 can be codified as consisting only of non-reserved category and excluding in all situations meritorious reserved category candidates who can find placement in the general category on account of their merit standing?
- (vii) Whether the massive affirmative action in favour of general category (un-reserved category) is permissible under the constitutional scheme of things?

12. Mr. Dhankar submitted that principle of equality enshrined under Articles 14 and 16 of the Constitution can be qualified by affirmative action in favour of SC, ST and other backward classes of citizens and for no category much less the unreserved category. According to him, the RPSC has operated Rule 15 in a manner that while general (unreserved category) candidates securing 203 marks are admitted to the main examination, the OBC candidates with 203 marks are denied the same. Thus, the equality enshrined in Articles 14 and 16(1) has been sacrificed by the RPSC. Such an action is *ex facie* illegal and contrary to the provisions of Article 14 and 16 of the Constitution. Further more, a classification in which less meritorious general category candidates unreserved category still march over OBC candidates cannot be reckoned as valid classification as it lacks rationality and reasonableness apart from having no nexus with the object to be achieved. He relied on the judgment of the Hon'ble Supreme Court in case of *Indra Sawhney v. Union of India* in which it was held that the reservation contemplated in Clause 4 of Article 16 should not exceed 50%. Learned Counsel invited our attention to para 94 of the said judgment. He again invited our attention to the observation made by the Hon'ble Supreme Court in *Indra Sawhney*'s case wherein a special bench of 9 Judges dealt with the issues so as "to finally settle the legal position relating to reservation." The meaning and conduct of the expression "reservation" has been examined by the Apex Court in

para 58 of the judgment. He also cited judgments in case of Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others, and in case of T. Devadasan Vs. The Union of India (UOI) and Another, . In Janki Prasad's case, it was observed that "it is implicit in the idea of reservation that a less meritorious person is preferred to another who is more meritorious". In Devadasan case (supra), it was observed that "it is inevitable in the nature of reservations that there will be lowering of standards to some extent". Our attention was also drawn to para 388 in Indra Sawhney's case to show that the various provisions in the Constitution relating to reservation, therefore, acknowledge that reservations are an integral part of the principle of equality where inequalities exist.

13. Placing strong reliance on the above observations, Mr. Dhankar submitted that the RPSC in interpreting Rule 15 and in evolving its mechanism has virtually redefined the very concept of reservations and in so doing ignored Apex Court judgment and provisions of the Constitution. Lowering of standards for un-reserved category in preference to the reserved category, the disadvantaged segments of society would contribute towards perpetuating the injustice sought to be undone under Articles 15(4) and 16(4) of the Constitution of India.

14. Our attention was invited to the reported decision of the Apex Court in case of Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, Learned Counsel drew our attention to the relevant reflection of the Apex Court in the above judgment. The passage is quoted hereunder:

The writ petition under Article 32 of the Constitution of India raises the question whether a candidate belonging to the Scheduled Caste or any other reserved category even if is entitled to be selected for selection for admission in the open competition on the basis of his own merit yet can he be counted against the quota meant for reserved category or he will be treated as an open competition candidate?

15. Learned Counsel invited our attention to Rules 13 and 17 of the Rules and submitted that under the Rules of 1999, the expression "category" has not been defined. However, according to the learned Counsel, its parameters can be gathered from Rule 17 proviso wherein it is given out that general category would not include SC/ST/OBC category who-get placement in the merit list as a result of special concessions and such candidate would be reckoned in the general category. According to Mr. Dhankar, the consequence of the aforesaid is unambiguous and as per this, SC, ST and OBC candidate who get placement in the merit list without securing special concessions would be reckoned in the general category. However, the RPSC has ignored the aforesaid while interpreting Rule 15 of the Rules of 1999. He has also cited some decisions in regard to the public interest litigation.

16. Mr. Ajay Rastogi submitted that there are three categories and not four as alleged namely; the general category. He invited our attention to the

advertisement released and the relaxations given to certain persons and the quota fixed for handicapped persons, Rajasthan Police etc. and age relaxation. He also invited our attention to the ambit and scope of Rules 15 and 17 and also advanced arguments on Articles 16(2) and 16(4). He has also invited our attention to certain datas collected and mentioned in para 14 of the writ petition No. 2825/2000 to show to this Court that the reservation which has been extended to the OBC does not commensurate to the total number of population of other backward classes residing in the State of Rajasthan. Para 14 is reproduced hereunder:

As per earlier Census which was made by the Government in the year 1991, there were 52 communities which were included in OBC as per Notification dated 6.8.1994 and by subsequent Notifications dated 15th March, 1997, 7 more communities were added in the other Backward Classes and thereafter a further Notification was issued on 3.11.1999 and thereafter on 12.11.1999, 1.1.2000, 2.1.2000 and 10.1.2000 and by including all these communities total communities as on today are members of OBC is 74. It is pertinent to mention that as per the satitcal analysis made by the Government for Scheduled Caste, 16% Reservation is provided to the total population which is 17.29% of the total population and for ST 12% reservation is provided which 12.44% of the total population and for OBC, 21% reservation is provided to the population which is more than 55 to 57% of the total population of the State. Meaning thereby, approximately 57% of the population of the state is now being member of OBC is claiming reservation in public employment at 21% quota. The reservation, in fact, was extended to the communities for their proper representation in the public employment with the object that this will be in addition to the general category merit which is available to all eligible candidates irrespective of their caste, creed or community and after due adjustment of all those who are members of reserved category, falling, in general category, will no benefit of reservation will be extended to them. Thus, the object behind providing reservation was that whose who are members of reserved category but could not compete in general merit, this additional benefit may be made available under Article 16(4) but by this indirect method all persons who are falling in general merit have been adjusted against reserved vacancies and reservation has been given complete go bye. Thus, the very interpretation made by the respondent Commission in preparing the list category wise 15 times of the number of approximate vacancies is totally misleading. Such interpretation made by the Commission Under Rule 6 of the Rules of 1999 is totally illegal, arbitrary and violative of the provisions of Article 16(4) of the Constitution of India.

17. He has adopted the arguments of Mr. Dhankar in other respects.

18. Mr. Rajendra Soni, after adopting the arguments of the learned Senior Advocate in support of his contentions raised in Writ Petition No.2785/2000 and Cited the judgments in S,B. Civil Writ Petition No. 2931/96. 1988(2) SLR 321 and 1995(2) SCT 65.

19. Mr. Ved Prakash, learned Counsel appearing in Writ Petition No.3457/2000 submitted that the interpretation of RPSC of Rule 15 is unconstitutional and is against Articles 14, 15(4) and 16(4) of the Constitution and that the said interpretation by RPSC is contrary to law Laid down by the Apex Court. He prayed that a direction be issued to the RPSC to prepare the list of candidates to the main examination by accommodating all reserved category candidates first in the general category if such candidates secured position in the general category on their merit standing and, thereafter, prepare a list for the reserved category candidates including the OBC category.

20. Mr. Joshi, learned Counsel appearing for the RPSC submitted that the decisions cited by learned senior counsel are not relevant for the purpose of determining the questions at issue and that those judgments are distinguishable on facts and law. He raised the preliminary objection to the maintainability of the writ petition and submitted that an Advocate practicing at Jaipur Bench has filed the writ petition without showing his locus stand and by seeking a relief as prayed for the writ petition. It is further submitted that the writ petition is belated and, therefore, it deserves to be dismissed on the ground of delay and laches. It is submitted that the result of the preliminary examination was declared on 27.5.2000 and the main examinations are scheduled to be held from 6.8.2000 and the writ petitions were filed only on 24.7.2000 by the public interest litigant. He invited our attention to Rules 15 and 17 of the Rules of 1999 and submitted that the RPSC has interpreted the rule on the basis of the authority to pronouncement of the law declared by this Court and the Hon''ble Supreme Court of India and has prepared the list category wise on the basis of number of vacancies available in each category and that, therefore, there is no scope for any different interpretation of Rule 15 of the Rules of 1999 and, therefore, no exception can be taken to the action of the Commission which is based on the interpretation of Rule 15 as given by the Hon''ble Supreme Court in Chattar Singh's case (supra). He would further submit that challenge to the validity of rule after declaration of the result and after the time-table for holding the main examination has been issued is thus not maintainable on the ground of delay and laches and that the petitioner in Writ Petition No. 3346/2000 has no locus standi to file such petition. On merits, Mr. Joshi submitted that the issues raised by the petitioner in this writ petition have been considered by this Court in the past and after considering the scheme of the examination envisaged by the relevant rules amended from time to time, this court in Mahesh Kumar Khandelwal v. State of Rajasthan 1995 (2) WLC 223 has held that the rule is quite consistent with reservation policy of the State and is further in consonance with the provisions of Article 335 of the Constitution of India and it does not take any SC/ST candidates. He invited our attention to the judgment of V.K. Gehlot v. State of Rajasthan, reported in 1996 (3) RLW (Raj.) 344 and the opinion expressed by the third Judge Under Rule 61-A of the Rajasthan High Court Rules to whom the reference was made. He drew our attention to the certain observations made by Hon''ble the Supreme Court in Chattar Singh's case

(supra) and submitted that in view of law laid down by the Supreme Court, the contention of the petitioner that the list of successful candidates in the preliminary examination should be prepared on the basis of the merit of the candidates secured by them in the preliminary examination and should not be prepared category wise is wholly untenable in law. According to Mr. Joshi, the final merit is prepared in accordance with the scheme of the examination and only after holding the main examination and interviews as per Rule 17 of the Rules of 1999. It is submitted by the counsel for the RPSC that the Commission has given effect to the rule of its correct interpretation by the rule making authority in the State of Rajasthan. It is also submitted that Rule 15 does not speak about merit and does not lay down any restriction as laid down in Rule 17 of Rules which speaks of preparation of merit list.

21. Mr. Mathur, learned Additional Advocate General after referring to Rules 13, 15 and 17 submitted that the petitioner has failed to make out any case whereby Rule 15 of the Rules of 1999 violates the provisions of Articles 14, 15 and 16 of the Constitution of India and that the petitioners have mis-interpreted Rule 6 Schedule-III of the Rules. He would also submit that the petitioner after getting benefit of reservation and got relaxation in the category of other backward classes (OBC) cannot be treated as member of the general category. Since the petitioners remained unsuccessful and did not find themselves within the zone of 15 times on the basis of marks so obtained by them in the preliminary examination. According to the learned Additional Advocate General, the preliminary examination had been held only for the purpose of short listing the candidates and to permit the candidates to the extent of 15 times of the total vacancies category wise for the main examination and that the marks obtained in the main examination will be the qualifying marks for appearing in the interview and the final select list has to be drawn on the basis of marks obtained in the main examination as well as in the interview. It is also submitted that Articles 15(4) and 16(4) have not been violated as alleged and that the petitioners have no right to challenge the various notifications by which other class were included in the category of OBC.

22. Mr. A.K. Sharma appeared for Naresh Shukla and other applications who appeared in the RAS (Pre.) Examination, 1999 and have been held successful candidates eligible to appear in RAS (Main) Examination, 1999 to be held from 6th August, 2000 and the call letters entitling all the applicants to appear in RAS (Main) Examination have been issued by the RPSC. It is submitted that the applicants are appearing in the main examination in the general category as per merit prepared in accordance with Rule 15 and the interest of the applicants vests in this examination and any order passed holding Rule 15 unconstitutional shall affect the applicants. They filed the application to implead them as necessary and proper parties to the petition. In our opinion, the interveners are the proper and necessary parties to the lis and they are, therefore, impleaded as respondent Nos. 3 to 6 in Writ Petition No.3346/2000 in order to effectively adjudicate the questions at issue and also to avoid multiplicity of proceedings.

23. Mr. Bharat Vyas, learned Counsel filed another application on behalf of one Chandra Shekhar Bohra who was declared successful by the RPSC and permitted to take-up the final examination to be held from 6.8.2000 as an intervener in Writ Petition No.3346/2000. The applicant in this application is also declared as a successful candidate and permitted to take-up the final examination and any decision taken behind his back, it will affect his Interest and, therefore, we implead him as party/respondent No.7 in Writ Petition No.3346/2000. Mr. Bharat Vyas submitted that there cannot be any direction to act contrary to Rule 15 of the Rules of 1999 and in support of the said contention, he cited the ruling reported in JT 1993(4) 78.

24. Mr. Jagdeep Dhankar, in reply to the arguments advanced by Mr. Joshi and Mr. R.N. Mathur, submitted that the judgments cited by the State and the RPSC are not apt for the proposition submitted by them and that the judgment of the Supreme Court in case of R.K. Sabharwal and others Vs. State of Punjab and others, support the case of the petitioners and in so far as locus standi question raised by the learned Counsel for the respondents are concerned, he submitted that this Court on many occasions entertained the writ petitions filed by the Advocates and very recently this Court has entertained a D.B. Civil Writ Petition No.436/2000 filed by the Advocates. Concluding his argument, Mr. Dhankar submitted that the interpretation of Rule 15 by the RPSC runs counter to Articles 15(4) and 16(4) of the Constitution of India and, therefore, the list drawn by the RPSC in terms of Rule 15 by excluding the entire reserved category from the general category notwithstanding the fact that reserved category candidates on their merit standing can find place in the general category is wholly incorrect and impermissible in law and, therefore, it is submitted that the entire selection process on the basis of the preliminary examination should be set aside and justice rendered to the petitioner and the persons similarly placed in other writ petitions.

25. We have given our, anxious consideration to the rival submissions made by the counsel appearing on either side. We have carefully gone through the entire materials very scrupulously and we are of the opinion that there are adequate and compelling circumstances placed on record to accept the interpretation made on Rule 15 by the RPSC which is on the basis of the rulings cited by the counsel for the RPSC rendered by this Court and also of the Apex Court.

26. We shall now consider the decision cited by the learned Counsel for the petitioners. In Parents Association and Another Vs. Union of India and Others, , the writ petition was filed by the Parents' Association of Ten Years Students, Andaman and Nicobar, Islands, against the Union of India and others to set aside the proceedings of Union of India, Ministry of Home Affairs dated, 14.2.1984, 4.9.1991 and 30.5.1996 as being violative of Articles 14, 15, 16, 19(1)(g) and 21 of the Constitution of India. Para-33 of the said judgment was relief on by the petitioner's counsel. The Supreme Court has observed that normally, it is expected the reserved categories cannot exceed 50% of the quota as decided in

various decisions of the same Court and rest must go to merit candidates. But, on the peculiar facts of the case, relating to Andaman and Nicobar Islands, the Supreme Court has observed that classification and quota cannot be said to be offending the said principle. The Supreme Court has also observed that having regard to the rather special facts obtaining in the Island, it cannot be said the adequate provision has not been made in favour of merit candidates.

27. The next case relied on by the learned Counsel for the petitioners is State of Uttar Pradesh Vs. Dr. Dina Nath Shukla and another, This case relates to direct recruitment to the post of Professors, Readers and Lecturers in Universities/Colleges established under the U.P. Act. In the said case, subsequent of the enactment of the Uttar Pradesh Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1994 (for short the "Act"), an advertisement was issued by the University of Allahabad inviting applications from all eligible persons for posts of Professors, Readers and Lecturers including the posts reserved for Scheduled, Castes, Scheduled Tribes and other Backward Classes. A clarification was issued by the Government stating that for recruitment to the posts of Professors, Readers and Lecturers, University or College is treated as a unit and the recruitment would be made applying the rule of reservation for the SCs, STs and OBCs. in respect of all the posts. The said notification was held to be bad in the High Court. The State/N appellant contended that for most of the subjects there were single posts of Professors, Readers and Lecturers in the University/College, if recruitment was made to each single post there would be total non-application of the rule of reservation. Dismissing the appeal, the Supreme Court held that from Sees 3(1) to (7) of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, it is clear that while issuing any advertisement for direct recruitment to fill up any post or service in any grade or cadre in the University/educational institution established under the U.P. Act, the University/educational institution should work out the posts beforehand and to make recruitment accordingly. Para-8 of the judgment was relied on by the petitioner's counsel. The Supreme Court has observed that Article 335 read with Article 46, 38 and 16 would give the socioeconomic empowerment to the Dalits and Tribes and rule of reservation in that matter of appointment to a service or post under the State is a part of the constitutional scheme as a positive facility and opportunity available to them and where it is extended to OBCs, they too get, opportunity to strive to improve excellence in a service or a post in which he or she gets appointment. In a democracy governed by rule of law, every segment of the society is entitled to a share in the governance of the country. The Supreme Court has observed that the Act gives practical content to implement the constitutional mandate of equality of opportunity and status to the Dalits, Tribes and OBCs in the matter of appointment to a public service or a post under the State of U.P. including an appointment in a University or educational institution.

28. In Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., were relied

on by the learned Counsel for the petitioners. Para 26 deals with issue for consideration. The Supreme Courts held that the reservation contemplated in Clause (4) of Article 16 should not exceed 50% and 50% shall be the rule. It is necessary not to put of consideration certain extra-ordinary situations inherent in the great diversity of this country and the people and therefore, some relaxation in this strict rule may become operative. The Supreme Court has also observed that in doing so, extra-ordinary caution has to be exercised and a special case is made out. It is held that the reservations under Article 16(4) do not operative like a communal reservation. It may well happen that some members belonging to the Scheduled Castes get selected in open competition filed on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates. According to Mr. Dhankhar, learned Counsel for the petitioner, RPSC has ignored the dictum of Indra Sawhney's case.

29. The next judgment relied on by the learned Counsel is Ritesh R. Sah v. Dr. Y.L. Yamul and Ors. 1993(3) SCC 253. In this case, the respondents 5 to 36 belonging to the reserved category were admitted as against reserved category and as a result, the petitioner also belonging to the reserved category was excluded from getting admission into the MBBS course. The Supreme Court held 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 the seats reserved for reserved category, but at the same time, the provision should be so made that it will not work out to the disadvantage of such candidate and he cannot be placed at a more disadvantageous position than the other less meritorious reserved category candidates. It is also observed that 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 in 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. Paragraphs 13, 14, 15 and 16 were relied on by the counsel for the petitioners.

30. The case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, was cited by the learned Counsel for the proposition that the High Court is bound to follow the principle of law Laid down by the Supreme Court.

31. In State of Bihar and Another Vs. Bal Mukund Sah and Others, relied on by the learned Counsel for the petitioner, a question arose as to whether the Legislature of the State of Bihar was competent to enact the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991. The Supreme Court held per majority that Section 4 of the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act is ultra vires of Articles 233 and 234 of the Constitution and the State Legislature cannot

enact a statutory provision introducing a scheme of reservation in the Judicial Service comprised of District Judges cadre as well as the cadre of Judges subordinate thereto.

32. The case of Secretary, Rajasthan Public Service Commission, Ajmer v. Om Dutt Sharma and Anr. RLR 1990(1) 182, was relied on for the proposition that if merit is the criteria, then it must be judged by taking into consideration the candidature of all persons who have passed examination conducted by the Commission and confining the relief only to petitioners and denial of consideration to the candidates who may be more meritorious but have not filed writ petitions would amount to discrimination.

33. The case of Indira Sawhney Vs. Union of India and Others, , was cited for proposition that rule of equality is a basic feature of the Constitution and that any legislation or executive action violating the basic features and basic structure of the Constitution would be unconstitutional. The anguish of the Court can be seen from Paras 87, 88 and 89 of the said judgment. The Supreme Court held the exclusion of creamy layer cannot be avoided even by legislative enactment, because, no enactment can violate the basic features of the Constitution.

34. Head note A and B of the judgment reported in State of Punjab and others Vs. G.S. Gill and another, was relied on by the learned Counsel. The issue before the Supreme Court was, whether the action of the State of Punjab applying reservation for SCs/STs to a single post was valid. According to roster point, the vacancy fell to the share of an SC candidate and therefore, the respondent No.2 was promoted. Respondent No. 1 who was a general category candidate, contended that reservation could not be applied because it was a solitary post. He prayed for a mandamus or direction to the Government to de reserve the carried forward post and to consider his case for promotion as a general candidate. The Supreme Court held that the carry forward rule is constitutionally permissible. It is an extension of the principle of providing facility and opportunity to secure adequacy of the representation to SCs and STs mandated by Article 335 and even in the post where the vacancy as per roster was available, but candidates were not available, same could be carried forward for three years. However, in each recruitment year, the carry-forward rule cannot exceed 50% of the vacancies. This question however, does not arise in a situation where there is a single post/cadre. The Supreme Court also held that a general category candidate has no right to seek de-reservation.

35. In Ajit Singh and Others Vs. The State of Punjab and Others, our attention was invited to Para-76 of the judgment and conclusions on points 1 and 2 by the Court. The Supreme Court held that the roster point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the, promoted post vis-a-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved

candidate-he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. 36. This point was further explained under Point No.3 by the Supreme Court.

37. The case of R.K. Sabharwal and others Vs. State of Punjab and others, was heavily relied on by the learned Counsel for the petitioner for the proposition that when a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand, the reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. The Court further observed as under:

Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above, the roster point which is reserved for a Backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Class are operative the same have to be followed. Despite any number of appointees/promotees belong to the Backward Classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned Counsel and reject the same.

38. We shall now advert to the decisions cited by Shri J.P. Joshi, learned Counsel for the R.P.S.C. Mr. Joshi submitted that Rule-13 of the Rajasthan Civil Services

(State and Subordinate Examination) Rules, 1962, has undergone some change in 1993. It was substituted by Act No.44 dated, 2.3.1999. The proviso to Rule-13 came up for interpretation of the High Court and later by the Hon'ble Supreme Court which deals with relaxation to SC/ST candidates. Rule 15, according to Mr. Joshi provides vital consideration and to short list candidates and the final order of merit will be prepared only after final examination. According to Mr. Joshi, Rule 15 is not a select list. Rule 13 came up for challenge before this Court. The judgment of the Division Bench is reported in Mahesh Kumar Khandelwal and 16 Ors. v. state of Rajasthan and Ors. 1995(2) WLC Raj 223. It has been pleaded before the Bench that the preliminary examination held by the RPSC is not a competitive examination, but it is only a screening test. It is also pleaded that till the main examination takes place, there is no Us between the SC/ST candidates and the general category candidates and that SC/ST candidates cannot be asked to compete with the general category candidates, inasmuch as, reservation as has been made available to SC/ST candidates by virtue of Article 16(4) of the Constitution and by issuance of a common list of SC/ST candidates and the general category candidates, the very purpose of protection has been frustrated. Upon such pleas, the petitioners prayed to quash and set aside Rule 13 of the Rules of 1962 as amended by Amendment Act No.44 dated 3.2.1993 and to declare a fresh result of 15 times of number of vacancies plus 5% in addition to the preliminary examination held in pursuance to the advertisement, so far as it relates to the category of SC/ST and to allow the petitioners and other similarly situated persons who are members of the SC/ST and who are found successful candidates in fresh list to appear in the main examination to take place in pursuance to the advertisement. The Division Bench, after careful consideration of the rival contentions and after carefully analysing the provisions relating to cut-off percentage of marks to be applied by the candidate at the preliminary examination so as to qualify the candidates for taking the main examination, held that a relaxation of 5% has already been made by proviso to Rule 13 in favour of SC/ST candidates and this, in their opinion, takes adequate care of the rights and interest of the SC/ST candidates and 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.

In para 32, the Court held as follows:

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 to 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.

39. In Para 33 the Division Bench has also followed the judgment of the Supreme Court reported in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , wherein the Apex Court made the following observations:

The legal position is now well-established that even a bye-law cannot be struck down by the Court on the ground of unreasonableness merely because the Court thinks that it goes further than "is necessary" or that it does not incorporate certain provisions which, in the opinion of the Court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because the Judges do not approve of it. Unless it can be said that a bye-law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the power to make bye-laws, must ordinarily be presumed to know what is necessary, reasonable, just and fair.

The Division Bench has further observed as under:

In our opinion, this dictum would squarely apply to rules framed under proviso to Article 309 of the Constitution and we would not be justified in striking down the scheme of reservation provided in the proviso to Rule 13 of the Rules merely because, as contended by the petitioners a better mode of reservation, could have been provided by making it incumbent upon the RPSC to prepare separate lists of General category and SC/ST candidates. The rule as obtaining in the present case is neither unreasonable, nor arbitrary nor capricious or for that matter, unjust or inequitable. To our mind, the Rule is quite consistent with the reservation policy of the State and is further in consonance with the provisions of Article 335 of the Constitution of India. It does not take away any vested substantive right of SC/ST candidates and pertains only to realm of procedure of the examination process with a view to achieve requisite screening. We, therefore, do not find that the provision in question suffers from any vice, so as to render it invalid or bad in law, in any manner.

In para 35, it is further observed:

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 stage, 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.

40. This Court, accordingly, disposed of the writ petitions by directing the Commission to publish the result of the preliminary examination held by it in two prominent daily newspapers of the State by showing formula of moderation adopted by it, as also the cut-off percentage and should also indicate raw marks in the bracket and scaled marks outside the bracket against roll number of each of the candidate. A direction to declare the result was also made.

41. In *Vijay Kumar Gehlot and Ors. v. State of Rajasthan and Ors.* RLW 1996 (3)344, a reference was made to the third judge (V.S. Kokje, J.), decided in S.B. Civil Writ Petitions No. 1579/96 and 427/96, Under Rule 61-A of the Rules on difference of opinion between B.R. Arora, J. and J.C. Verma, J., who heard the petition. When the matter came up before the learned Single Judge, he issued an interim writ directing the RPSC to publish the result of the preliminary examination of Raj as than State and Subordinate Service Direct Recruitment by Combined Competitive Examination, category-wise for the Scheduled Caste, Scheduled Tribe and other Backward classes candidates and rest of the candidates in general category separately. It was also directed that number of candidates permitted to take examination should be 15 times of the vacancies. It was further directed that the main examination be not held on the basis of the result of the preliminary examination already published which was under challenge. The learned Judge later dismissed the application under Article 226(3) of the Constitution filed by the State of Rajasthan and others and confirmed the earlier ad interim order with modification that if the RPSC decides to publish the result of preliminary examination category-wise, then the main examination may be held, but the result of the main examination so held should not be declared till pendency of the writ petition. The RPSC filed D.B. Civil Special Appeal No. 427/96 against the order of- the learned Single Judge. The petitioner, who belongs to OBC contended that the reservations have been provided by a general order in the Government employment to SC/ST and OBC. Reservation to the SC and ST candidates was available when initially the Rules were framed in 1962. Subsequently in the year 1994, reservations were also granted to OBCs. The petitioners contended that the results of the preliminary examination have to be declared separately category-wise for the SC, ST and OBC and the general or unreserved class. It was also contended that the concession of lowering the cut-off marks by five percent in case of shortfall of candidates has also to be made available to the candidates has also to be made available to the candidates belonging to OBCs as it is available to SC and ST candidates. However, the Division Bench turned down the contention that it was necessary for the Commission to publish the result of the preliminary examination category-wise. B.R. Arora, J. was of the view that since the Rules did not specifically provide for any such concession to be given to the OBC candidates, no such concession could be made available to them. J.C. Verma, J. was of the view that no distinction could be made in the treatment to be meted out to them. Because of this difference of opinion, the Division Bench directed the matter to be placed

before Hon''ble the Chief Justice, who nominated Kokje J. as a Judge to hear the reference. After considering rival submissions made by both the parties, the learned Judge in Para 34 of the judgment has held as follows:

It was vehemently argued by the learned Counsel for the petitioners injustice being done to the members of the OBC. It was contended that the, to the OBC is to see that they really get adequate representation in the service by occupying the posts reserved for them. By depriving them of an opportunity to appear at the main examination, the very purpose of the reservation was being defeated as per the learned Counsel for the petitioners. The answer to all these pleas is very simple. If the petitioners wanted to canvass that point, it was open to them to challenge the very basis of providing cut-off marks for the preliminary examination. A preliminary examination is short-listing candidates to a reasonable and practical extent so that in the main examination, the confusion and disorder likely to be created because of large number of candidates is avoided. In these days of ever increasing unemployment, hundreds of applications are received for one post. To allow all the candidates holding minimum qualifications for the posts to appear at the written test or the interviews is simply not only impracticable but almost and an impossible task. It also involves tremendous wastage of time, money and energy. The short-listing procedure has therefore, gained wide acceptability. Short listing can be made in two ways (i) by prescribing the maximum number of candidates in order of merit who could be allowed to take the main examination or (ii) or fixing minimum qualifying marks which may be called cut-off marks for deciding as to who can appear at the main examination. All this becomes necessary when the number of candidates is large as compared to the seats available. When the number of qualifying candidates available is less, problem of short-listing should not arise. In the present case, when the number of candidates available in the categories of SC and ST and OBC are not even fifteen times the number of posts available for them, there is indeed no rationale behind-prescribing cut-off marks at the preliminary examination. It is true that because of Article 335 of the Constitution of India, the power Under Article 16(4) is subject to the rider of maintenance of efficiency in the administration and therefore, it is necessary for the State to fix certain minimum standard even for the reserved categories. But this rider cannot apply to preliminary examination and could apply top the main examination because only because some one is allowed to complete at the main examination he does not get automatically inducted in the Government Service and giving a chance to appear in the main examination does not interfere with or lower down the standard of administrative efficiency.

42. In conclusion, the learned Judge was of the opinion that the OBC cannot be deemed to be included in the SC and ST for the purpose of lowering down the cut-off marks for the purpose of proviso to Rule 13 of the Rules and that the SC and ST are distinct and separate class as compared to the OBC and the classification for the purposes of lowering the cut off marks in favour of the SC and ST candidates only and not extending the benefit to OBC candidates is

therefore, reasonable and is not violative of Articles 14 and 15 or 16 of the Constitution. In the result, Kokje J. has agreed with the drawn by B.R. Arora, J. Consequently, the petition filed by the petitioners was dismissed per majority in terms of the opinion rendered by B.R. Arora, J. and V.S. Kokje, J.

43. In *Chattar Singh and others Vs. State of Rajasthan and others*, , which was filed against the judgment dated, 30.8.1996 of the Rajasthan High Court in S.B. Civil Writ Petition No. 1579/96, the Government of Rajasthan issued a Notification declaring reservation to the extent of 21% of the posts in various services of State of Rajasthan reserved for the OBCs. Which was given statutory force by Rule 8-A of the Rules of 1962 w.e.f. 28.9.1993. Notification was issued calling applications for recruitment to 275 posts in administrative and subordinate services; of them 137 were for general candidates; 52 for OBCs; 50 for Scheduled Castes and 36 for Scheduled Tribes. On 9.4.1996, Preliminary Examinations were conducted and results of the candidates for final examination were declared. Candidates, belonging to OBCs challenged the vires of the proviso to Rule 13 which prescribes the mode of conducting preliminary as well as main examination. Three contentions were raised before the Supreme Court; (a) the main part of Rule 13 does not speak of any minimum marks so as to enable the candidates to appear in the main elimination; (b) Article 16(4) of the Constitution does not specify whether they should belong to Scheduled Castes, Scheduled Tribes or OBCs and OBCs. have now been declared eligible for selection under the reserved quota, having been fused for the purpose of Article 16(4) and that their elimination under proviso to Rule 13 is arbitrary, violating their fundamental right to equally enshrined in Articles 14, 16(1) and 16(4)(c) Once the reservation was prescribed to various categories, namely. Scheduled Castes, Scheduled Tribes and OBCs under Article 16(4), the Public Services commission, is required to prepared a separate list of the candidates while declaring the result of the Preliminary Examination and to call candidates numbering 15 times the total posts earmarked for them and the candidates securing minimum of the marks should be called to appear in the main examinations.

44. On behalf of the RPSC it was contended that under the main part of Rule 13 the Public Service Commission could prescribe minimum cut-off marks out of the aggregate marks secured by the general candidates in the Preliminary Examination conducted and from amongst the candidates who obtain such minimum qualifying marks as may be fixed by the Commission in their discretion and candidates numbering 15 times the posts shall be summoned by them for Main Examination. It is also contended that though OBCs were declared eligible for the selection to the said services and had 21% of the vacancies reserved for them, the OBCs and Scheduled Castes and Scheduled Tribes are distinct classes. It is further contended that there is no need to prepare a separate list of various categories for which the recruitment was called for, which became necessary only as per the amended rule under the notification dated, 2.4.1996, which is only prospective. Therefore, it does not apply to the recruitment for the year 1991.

The Supreme Court held that the object of screening test is to eliminate unduly long number of persons to appear for Main Examinations and if more candidates are called by declaring result in preliminary examinations, the object of Rule 13 would be frustrated. As regards treatment of OBCs, SC/ST candidates in regard to 5% cut-off marks in the Preliminary Examination under proviso to Rule 13 (the Supreme Court held that the proviso to Rule 13) confines 5% further cut-off marks in the preliminary examination from the lowest range fixed for general candidates and it is confined only to the Scheduled Castes and Scheduled Tribes who could not secure the total aggregate marks on a par with the general candidates; the rule expressly confines the benefit of the proviso to Scheduled Castes and Scheduled Tribes and by process of interpretation the OBCs cannot be declared alike the SC/ST candidates. The Supreme Court held that it would be illogical and unrealistic to think that omission to provide same benefits to OBCs, as was provided to scheduled Castes and Scheduled Tribes was void under Article 16(1) and 14 of the Constitution. Accordingly, the Supreme Court held that the OBCs are not entitled to 5% cut-off marks in preliminary examination as provided under proviso to Rule 13. In the concluding part of the judgment the Supreme Court was 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.

45. Mr. Rajendra Soni, learned Counsel appearing for one of the writ petitioner, cited two decisions of the Punjab and Haryana High Court reported in *Jaskaran Singh v. State of Punjab* 1995(2) SCT 65 and *Major Phalit Sharma v. State of Haryana* 1998(2) SLR 321, In the case of *Jaskaran Singh v. State* (supra), the Division Bench of the said Court held that the candidates belonging to reserve categories are entitled to the seats from general category if they get higher merit entitling them to the seat in general category and reserved categories cannot be restricted to only the reserved seats and the instructions imposing such restrictions are violative of Article 14 and go against the interest of the reserved categories.

46. In the second case of *Major Phalit Sharma*, the Division Bench of the said Court held that the candidates who come in over-all merit should be treated as selected against general category posts and the reserved posts should be offered to the less meritorious candidates of the reserved categories. The Bench has further observed that more meritorious candidates belonging to reserved categories should be given appointment as per their over-all merit and the reserved vacancies should be utilised by giving appointment to the less meritorious candidates. It will, therefore, be imperative for the Commission to make recommendations against the reserved vacancies ignoring those candidates of reserved categories who may have become entitled to be appointed against the General Category posts on the basis of their over all merit. In the result, the Division Bench allowed the writ petition and directed Public

Service Commission to prepare the merit list in addition to the list already sent to the Government by including the names of the candidates who have secured marks in the written examination and viva-voce as well as aggregate marks in terms of the amended Rules 7 and 8 and make recommendation to the Government and the High Court for the purpose of appointment to the unfilled vacancies.

47. Another unreported judgment of the learned Single Judge of this Court in Pawan Kumar and Ors. v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 2931/96, was also cited by Shri Soni. The grievance of the petitioner in that case was that selection for direct recruitment to the post of Junior Compounder/Nurse in pursuance to an advertisement had not been properly made as per Government notification dated, 29th September, 1993 and the circular dated, 17th June, 1996, which provide filling up of posts of reserved categories. It was argued before the learned Judge that once the State Government makes reservation and provides extent of percentage of posts to be reserved for the Backward Classes, then the said percentage has to be followed strictly and the prescribed percentage cannot be varied or changed simply because some of the members of the Backward Classes, who have succeeded to compete for the un-reserved posts as per their merit, cannot be counted and taken into consideration for working out the percentage of reservation prescribed for Backward Classes or making appointment to the posts reserved for that category. The learned Single Judge directed the respondent No.2 to prepare fresh select list and make appointment as per the above decision.

48. In our opinion, the judgments of the Punjab and Haryana High Court and that of the learned Single Judge in the case of Pawan Kumar and Ors. (supra), cited by Mr. Soni are distinguishable on facts and law and the field is occupied by the judgments of our own High Court interpreting the scope and ambit of the very rule and reported in 1995(2) WLC 223, RLW1996 (3) 344 and Chattar Singh and others Vs. State of Rajasthan and others, . Rule 15 of the Rules of 1999 was similar to Rule 13 of the Rules of 1962, which came up for interpretation before this Court as well as the Hon'ble Supreme Court. The Supreme Court held that the RPSC is required to prepare a list category-wise to the extent of 15 times the number of vacancies in each category. In view of the interpretation of the Supreme Court, there is absolutely no scope for any different interpretation of the said rule as suggested by the learned Counsel for the petitioners. The Service Commission has acted only on the basis of the interpretation of Rule 15 as given by the Supreme Court in the case of Chattar Singh (supra). As already noticed, the first Writ Petition No. 3346/2000, was filed by a practicing Advocate of this Court. Though, the writ petition is maintainable at his instance, which exposes a case of public importance, no personal injury is being caused to the Lawyer by giving effect to Rule 15 which was approved by the Apex Court in the above case. In view of the verdict by the Apex Court, we are of the opinion that the petitioner is not entitled to challenge the validity of Rule 15 of the Rules of 1999. It is stated by the Service Commission that the rule is in existence and its

validity has been upheld by the Supreme Court in 1996. The Commission has held examinations in the past and declared result on the basis of interpretation given by the Hon"ble Supreme Court to this rule. The preliminary examinations results were declared on 27.5.2000 and the main examinations are scheduled to be held from 6.8.2000 onwards. However, public interest litigation filed only on 24.7.2000 to challenge the validity of the rule after declaration of the result and after the time table for holding the main examination had been issued is not entertainable at this belated stage. As already seen, the issues raised by the petitioners have already been considered by this Court in the past and this Court in the case of Mahesh Kumar Khandelwal (supra) held that the rule is quite consistent with the reservation policy of the State and further in consonance with the provisions of Article 335 of the Constitution and it does not take away any vested right of SC/ST candidates and pertains only to realm and procedure of the examination process with a view to achieve the screening. The said rule again came up for interpretation after amendment before a Division Bench of this Court in Vijay Kumar Gehlot v. State of Rajasthan RLW1996 (3) 333 and since there was a difference of opinion expressed by the learned Judges, the matter was referred to the third Judge who agreed with the findings and conclusions of Justice B.R. Arora and recorded his findings as extracted above. It is seen from the above pronouncement of law that the preliminary examination is essentially a screening test to short list the candidates and the rider of Article 335 cannot be applied at the stage of preliminary examination, but could be applied to the main examination. We cannot presume that by allowing some candidates to appear in the main examination does not automatically induct them in Government Service. As rightly pointed out by Mr. Joshi, a person declared successful in preliminary examination only has a right to appear in the main examination and as has been held by the Supreme Court in Chattar Singh's case (supra). The arguments of the learned Senior Counsel that the list of successful candidates in the preliminary examination should be prepared on the basis of the merits of the candidates secured by them in the preliminary examination and should not be prepared category-wise, has no merit and force. As per the scheme of the examination, final merit is prepared only after holding the main examination and interview a per Rule 17 of the Rule of 1999 and the marks obtained by the candidates in the main examination and the interviews are taken into account and on the basis of the aggregate marks final merit list is prepared. Such a situation, in our view, is not envisaged at the time of holding the screening test for short-listing the candidates as no merit list is prepared by the Commission at the stage of holding the preliminary test and marks obtained by the candidates in the preliminary examination are not taken into account while preparing the final list of the candidates. The interpretation given by the learned Counsel for the petitioner, will in our opinion, result in denying the reserved category candidate a right of consideration in the main examination as reserved category which will run against the scheme of reservation provided under the Rules and various notifications issued by the State Government.

49. Rule 15 of the Rules of 1999 provides the procedure to prepare the list of candidates for appearing in the main examination, therefore, the result of the preliminary examination cannot be considered to be a final result. In regard to the submission made by the Senior Counsel for the petitioner about the reservation policy provided under Article 16 (4) of the Constitution as well as the judgments cited are not in dispute but the same in our view, will not be of any help or assistance to the petitioners at this stage of short listing. The judgment of the Hon'ble Supreme Court relied on by the petitioner in Sabharwal's case (supra) pertains to the promotion policy and also of the vacancies based on roster system which in our opinion, will be applicable only at the time of preparing the final select list. As per Rule 15, the RPSC shall permit the candidates 15 times the total approximate number of vacancies in each category in the main examination and this Rule has been upheld by the Supreme Court in Chattar Singh's case (supra). The reservation policy is meant for recruitment only and there is no other reservation policy for short listing in examination. As such, the actions of the RPSC are within the mandate of Article 16(4) of the Constitution of India as well as the Rules of 1999. If the contention of the learned Counsel for the petitioners is accepted, the thousands of meritorious candidates who have been selected as per the preliminary examination will be affected and their interest will be jeopardized.

50. It is seen from the additional affidavit filed by the Service Commission that the Commission has declared the result of the preliminary examination on 27th May, 2000- and the list of successful candidates coming within the range of 15 times the number of vacancies set apart for that category was also published and the list of candidates who were not able to come within that range was also published. It is useful to reproduce the details furnished in Paragraphs 3, 4, 5 and 6 of the additional affidavit:

3. That in general category, there are in all 252 vacancies meant for male candidates and 105 vacancies are meant for female candidates. Thus, combined vacancies in general category comes to 357 and the Commission has admitted 5412 candidates for the main examination in terms of Rule 15 of the Rules.

4. That similarly, the combined vacancies reserved in OBC category are 140 and the Commission has admitted 2109 candidates for the main examination, which constitute 15 times the number of vacancies/posts reserved in the OBC category.

5. That similarly, there are 102 combined vacancies reserved in the SC category for male and female both and the Commission has admitted 1538 candidates for the main examination, which also constitute 15 times the number of vacancies reserved in that category.

6. That in ST category, 78 combined vacancies meant for both male and female have been reserved and the Commission has admitted 1190 candidates for the main examination, which constitutes 15 times the number of vacancies reserved in that category.

51. As held by the Supreme Court, the list of candidates belonging to one category cannot be shifted to another category on the basis of their merit as the list of successful candidates in the preliminary examination is meant only for short-listing the candidates for the main examination and it does not constitute merit of the candidates which is done at the time of preparation of final merit Under Rule 17 of the Rules. If the contention of the petitioners is accepted that instead of preparing separate list for each category, a list should be prepared on the basis of over-all merit attained by the candidates appearing in the preliminary examination, it would result in exclusion of 1498 candidates from the general category and in their place 1051 candidates from OBC category will be shifted to the general category; 137 candidates from SC category will also be shifted to the general category and similarly, 175 from the ST category shall have to be shifted to the general category. In addition to that, in general category, the female candidates who have secured higher cut-off marks fixed for the general category (male) shall also be shifted to the general category (male) in the number of 157. It is also seen from Para 9 that if the revision is to take place in accordance with the interpretation put forward by the petitioners, the cut-off marks in each category shall have to be revised in the following manner:

CUT-OFF MARKS Revised: Male Female 1. General 216 139 2. SCs. 158 90 3. STs. 166 72 4. OBCs 185 132 Existing: 1. General 203 144 2. SCs 163 91 3. STs 174 72 4. OBCs 204 136

52. We are of the opinion that such an exercise is not warranted in view of the Supreme Court decision in Chattar Singh's case (supra).

53. The order passed by the Hon'ble Supreme Court dated 24.7.2000 in IA No. 1-3 in petition for Special Leave to Appeal (Civil). CC 4432/2000, was placed before us. The said SLP was filed against the judgment and order dated 22.5.2000 in DB Civil Writ Petition No.436/2000 of this Court at Jodhpur. Upon hearing the learned Counsel, the Hon'ble Supreme Court passed the following order:

Permission to file the SLP is granted.

Issue notice. Pending further orders, the declaration of the result of the RAS Main Examination, 1999 to be conducted on 6th August, 2000 shall not be published.

54. In view of the above order, the prayer of the petitioners to stay the RAS Main Examination, 1999 to be conducted on 6th August, 2000 cannot be countenanced.

55. Consequently, the writ petitions filed by the petitioners are dismissed. However, there will be no order as to costs.

(Per: Hon'ble Mr. Justice ARUN MADAN CWP 3346(2000))

56. I have minutely perused the well reasoned, lucid and knowledgeable judgment of learned Brother Dr. Lakshmanan, Chief Justice. I entirely agree with

the Conclusions arrived at by him. However, in view of the importance of the questions involved in the writ petitions which all stand disposed of by this judgment, I would like to give separate though concurring judgment.

57. The position as it was invogue prior to the amendment of the Raj as than State & Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1999 (for short "the Rules of 1999"); as per the Scheme of Rule 13 of Rajasthan State and Subordinate Service (Direct Recruitment by Combined Competitive Examination) Rules, 1962 (for short "the Rules of 1962") was that the written examination for Rajasthan Administrative Service (for short "RAS") was to be conducted by the Rajasthan Public Service Commission (for short "the Commission") in two stages i.e. (1) Preliminary Examination and (ii) Main Examination as per the Scheme of Examination as specified in Schedule-III of Rule 13 of the Rules of 1962, thus:

The preliminary examination comprises of two papers i.e. one compulsory and other optional having objective type of questions carrying maximum of 400 marks in the subjects mentioned in section "A" & "B". The examination is meant to serve as a screening test only. On the basis of 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 various services and posts provided they are otherwise eligible, but in the said range all those candidates, who secured the same percentage of marks as may be fixed by the Commission for any lowest range, will be admitted to the Main Examination.

58. Rule 13 of the Rules of 1962 stipulates Scheme of Examination, personality and viva-voce Test and the Marks obtained in the preliminary examination by the candidates who were declared qualified for admission to the main examination were not to be counted for determining their final order of merit. Further more, number of candidates to be admitted to the main examination was to be 15 times the total approximate number of vacancies to be filled in the various services and posts; provided they are eligible, but in the said range all those candidates who secured the same percentage of marks as may be fixed by the Commission for any lowest range were to be admitted to the main examination. First proviso to Rule 13 of the Rule of 1962 stipulates that if adequate number of candidates belonging to SCs/STs are not available amongst the candidates to be declared qualified for admission to the Main Examination, the Commission may at its discretion keep the cut-off marks upto 5% less than the general candidates.

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.

59. Rule 13 of the Rules of 1962 was substituted by Rule 15 of the Rules of 1999 which was promulgated by the Governor of Rajasthan in exercise of powers conferred by proviso to Article 309 of the Constitution of India vide Notification dt.20.4.1999. Rule 15 of the Rules of 1999 stipulates thus?

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 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 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.

60. The main thrust of the arguments advanced by Mr. Jagdeep Dhankar, learned Counsel appearing for the petitioner was confined to Rule 15 of the Rules of 1999 which deals with Scheme of Examination, Personality and Viva-voce Test in respect of candidates who were held eligible for RAS Examination which was scheduled to be held on 6th August, 2000. His contention was that the respondent Commission while preparing the final list of candidates, who are held eligible for appearing in the Main Examination, should not be oblivious of the fact that number of candidates who are to be admitted to the Main Examination

should be 15 times the total approximate number of vacancies (Category wise) of: - a) General, b) Scheduled Caste, c) Scheduled Tribe and d) OBC, and the number of candidates to be admitted to the said examination should be as 15 times the total number of vacancies to be filled in the aforesaid categories in the RAS Examination.

61. Shri Dhankar has thus challenged the action of the respondent Commission conducting the Main Examination of the RAS scheduled for 6th August, 2000 on the grounds inter-alia that the list of Main Examination has been prepared by the Commission by Incorporating Rule 15 of the Rules of 1999 in a highly oppressive manner to the interest of the reserved category candidates i.e. SCs, STs and OBCs and by the said action of the respondent-Commission grave injustice has been done to the candidates of said categories, which can be appreciated from the fact that while a candidate from General Category securing 203 marks has been admitted to the Main Examination, an OBC candidate securing less than 300 marks have been denied admission to the Main Examination.

62. His next contention was that the Commission has prepared the list category wise in a manner so as to obliterate the purpose and import of Rule 15 of the Rules of 1999 as a consequence of which, the candidates belonging to the entire reserved categories stands excluded notwithstanding their merit position vis-a-vis a General Category candidates. A direct consequence of this is that Commission has made 51 percent reservation in favour of unreserved category which amounts to massive affirmative action in favour of the General Category candidate which is constitutionally impermissible as it also violates the mandate of Articles 14 & 16 of the Constitution of India. Furthermore, reservation in favour of the General Category is constitutionally not envisaged and on that count also the action of the Commission cannot be sustained.

63. Since Rules of 1999 have come into force in exercise of powers conferred on the State Legislature under Article 309 of the Constitution hence, these rules are required to conform to the provisions of Articles 14 & 16 of the Constitution of India.

64. Shri Dhankar has further contended that following substantial questions of law of general importance are required to be determined by this Court:

(i) whether it is permissible for the Commission to prepare a list in terms of Rule 15 of the Rules of 1999 by excluding the entire reserved category from the general category notwithstanding the fact that reserved category candidates on their merit standing can find place in the general category?

(ii) Whether it is permissible for the Commission to have a high cut off standard for the OBC as compared to the general category for admission to the main examination?

(iii) whether it is constitutionally permissible for the Commission to interpret Rule 15 in a manner whereby disadvantaged sections, i.e., the reserved category is

made to suffer handicaps of account of reservation as compared to general category?

(iv) whether Rule 15 as interpreted by the Commission is unconstitutional as the same violates Articles 14 & 16 of the Constitution of India by denying equality to the reserved category qua the general category-?

(v) whether the interpretation of Rule 15 made by the Commission is violative to Articles 15(4) & 16(4) of the Constitution of India?

(vi) whether general category in Rule 15 can be codified as consisting only of non-reserved category and excluding in all situations meritorious reserved category candidates who can find placement in the general category on account of their merit standing?

(vii) whether the massive affirmative action in favour of general category (unreserved category) is permissible under the Constitution?

65. In support of his contentions, Shri Dhankar placed reliance upon the following decisions:

(1) In Re: Balwan Singh, (2) State of Punjab and others Vs. G.S. Gill and another, (3) P. Murugesan and Others Vs. State of Tamil Nadu and Others, (4) Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, (5) Ma). Phalit Sharma v. State of Haryana and Ors. (1998) 2 SLR 321) (6) St. John's Teacher Training Institute (for women), St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., (7) State of Bihar and Another Vs. Bal Mukund Sah and Others, (8) Ajit Singh and Others Vs. The State of Punjab and Others, (9) Indra Sawhney v. Union of India AIR 1993 SC. 447.

(1) In Chattar Singh and Ors. v. State and Ors. (supra), the Apex Court while holding the validity of Rule 13 of the Rules of 1962 observed that preparation of separate list of General, OBCs, SCs, STs and physically handicapped, keeping in view the fact that the latest amendment has made explicit what was implicit in Rule 13, a separate list is also 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, which stands substituted by Rule 15 of the Rules of 1999 wherein it is stipulated that number of candidates to be admitted in the Main Examination will be 15 times the total approximate number of vacancies (category wise) to be filled in the various services and posts; is an amendment which is prospective in operation. The Apex Court has further observed in this regard that the said amendment does not detract from the efficacy of Rule 13 originally made. In this view of the matter, the Public Service Commission was 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. The main object of Rules 15 (as amended) is to eliminate unduly long list of

candidates who apply for admission/and that the marks obtained by a candidate in the Preliminary Examination would not be counted for the purpose of Main Examination to determine final order of merit and the ultimate object is to give opportunity to those candidates who were found eligible to appear in the Main Examination that constitute 15 times the number of notified posts/vacancies in various services; in other words for every post/vacancy there should be atleast 15 candidates available. This would widen the scope to attract best talent by way of competitive examination. The Apex Court in the above matter has further observed thus:

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 complete in the Main Examination.

The Apex Court in *Chattar Singh's case* (supra) was accordingly of the view that OBCs, SCs, STs are not entitled to relaxation of 5% cut-off marks in the Preliminary Examination as provided Under Rule 13 of the Rules of 1962 and also keeping in view the fact that the latest amendment as made explicit what was implicit in Rule 13, the separate list (category wise) is also 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.

Thus, the validity of Rule 15 of Rules of 1999 having been upheld by the Apex Court in the matter of *Chattar Singh and Ors. v. State and Ors.* (supra), the contentions as advanced by the learned Counsel for the petitioner in this regard are wholly untenable being devoid of merit. (2) In the matter of *State of Punjab and Ors. v. G.S. Gilland and Anr.* (supra), the issue before the Apex Court was as to whether the action of the appellant-State of applying roster system of reservation for SCs/STs to a single post was valid? According to roster point, the vacancy fell to the share of an SC candidate and, therefore, respondent No.2 was promoted. Respondent No. 1, who was a general category candidate contended that reservation could not be applied because it was a solitary post. He prayed for a mandamus or direction to the Government to de-reserve the carried-forward post and to consider his case for promotion as a general candidate. The Apex Court while dealing with this issue, held thus:

Carry-forward rule is constitutionally permissible. It is an exercise of the principle of providing facility and opportunity to secure adequacy of the representation to SCs and STs mandated by Article 335. It should be carried forward for three years. Even in the post when the vacancy as per roster was available, but candidates were not available, same could be carried forward for three years.

However, in each recruitment year, the carry-forward rule cannot exceed 50% of the vacancies. That question however does not arise in a situation where there is a single post/cadre.

The ratio of the aforesaid decision is not attracted to the instant case being distinguishable both on law and facts.

(3) In the matter of P. Murugesan and Ors. v. State of Tamil Nadu and Ors. (supra), the petitioner before the Apex Court had challenged the amending rules introducing ratio of 3:1 between graduate Assistant Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Executive Engineer as per Madras Corporation Engineering Service Rules, 1969 (as amended). The Apex Court while upholding the constitutional validity of the said rule quo Articles 14 & 16 of the Constitution of India held that the rule making authority was fully competent to impose a complete bar as well as partial restriction on a category of promotees on the basis of a educational qualification which incorporated vide amended rules.

In my opinion, the ratio of the said decision is also not attracted to the instant case being distinguishable both on facts and law as well as controversy between the parties in the present matter is altogether different.

(4) In the matter of Ritesh R. Son v. Dr. Y.L. Yamul and Ors. (supra), the issue before the Apex Court was with regard to the admission to the medical colleges. The candidates belonging to the reserved category, who could not be admitted on the basis of open merit, agitated the issue by way of writ petition before the Apex Court. The question which arose for consideration of the Apex Court was; whether such candidates should be given an option for admission to graduate or postgraduate course in colleges where seats kept reserved for reserved category candidates and thereafter less meritorious reserved category candidates should be considered for admission in whichever colleges reserved seats are available? Since the petitioner who had been wrongly denied admission on the basis of the rule, being the single applicant before the Court, direction was issued for his admission in any college where reserved seats were still available and if no seat is available then by increasing one seat in any such college since the State itself had given such admission to a candidate in another case. The Apex Court held that it was inclined to issue directions in favour of the petitioner since during the course of hearing in another writ petition the State itself had opted to give admission to the petitioner therein.

In my view, the ratio of the said decision is also not attracted to the instant case being distinguishable both on facts and law.

(5) In the matter of Maj. Phalit Sharma v. State of Haryana and Ors. (supra), the question which arose before the Division Bench of the Punjab and Haryana High Court in a writ petition under Article 226 of the Constitution related to interpretation of Punjab Civil Services (Judicial Branch) Rules of 1951 (Rule 7 & 8 (as amended vide Notification No.30th October, 1996)). The Haryana Public

Service Commission (for short "commission") advertised 21 posts for recruitment to Haryana Civil Services (Judicial Branch). Subsequently the number of posts was increased from 21 to 36 vide corrigendum published on a subsequent date in news paper. Out of these, 9 posts were reserved for Scheduled Caste candidates of Haryana, one for ex-service man of Haryana and three for physically handicapped candidates. One of the conditions incorporated in the advertisement and the corrigendum was that in the event of non-availability of physically handicapped candidates, the second and third vacancy will be filled from the category of ex-service men. The petitioner, who was an ex-service man being one of the applicants for recruitment to the service applied for the post, since he was having the eligibility on the basis of written test and viva voce. Since on the basis of the unamended rules, the Commission had not recommended the name of the petitioner for appointment to the service, he raised two fold grievance; (i) the failure of the Commission to recommended his name in the light of the amendment made in the Rules and (ii) the posts of physically handicapped candidates which remained unfilled, should have been offered to the candidates belonging to the category of ex-service and if that was done, his name was bound to be recommended for appointment to the service. The learned Division Bench of the High Court after hearing the counsel for the parties as well as the issues raised in other connected writ petition gave certain directions to the HPSC to prepare a merit-list in addition to the list already sent to the Government by including the names of the candidates, who had secured minimum marks as fixed by the Commission for qualifying in the written examination and viva voce as well as the aggregate marks in terms of the amended Rules, made recommendations to the Government and the High Court for the purpose of appointment to the unfilled vacancies/posts to the Haryana Civil Service (Judicial Branch).

The ratio of the above observations, in my view, is also not attracted to the instant petitions since it is not the petitioner's case where unfilled vacancies have to be filled up from the reserved categories, as discussed herein above. It is the petitioners case that they have claimed appointment against the vacancies belonging to reserved category i.e. SCs/STs and OBCs on the basis of reservation category wise. Hence, the above judgment is also distinguishable and not applicable to the instant case.

(6) In *St John's Teacher Training Institute (for Women), Madurai etc. etc. v. The State of Tamil Nadu* (supra), certain writ petitions had filed before the Apex Court by Unrecognised as well as temporarily recognised institutions for recognition of the institutions along with a prayer for interim orders to allow the students of such institutions to appear in the examination pending disposal of their case. While deprecating the practice by giving admission to the students in the respective educational institutions on the strength of interim orders, the Apex Court observed as under:

We consider it necessary to strike a note of caution in respect of passing interim

orders by Courts directing the students of unrecognised institutions, to appear at the examinations concerned. In view of the series of judgments of this Court, the Court should not issue fiat to allow the students of unrecognised institutions to appear at the different examinations pending the disposal of the writ applications. Such interim orders affect the careers of several students and cause unnecessary embarrassment and harassment to the authorities, who have to comply with such directions of the Court. It is a matter of common knowledge that as a part of strategy, such writ applications for directions to recognise the institutions in question and in the meantime to allow the students to appear at the examinations are notified. Many of such institutions are not only "marked phantoms" but are established as business ventures for admitting sub-standard students, without any competitive tests, on basis of considerations which cannot serve even the interest of the minority. There is no occasion for the Courts to be liberal or generous, while passing interim orders, when the main writ applications have been filed only when the dates for the examinations have been announced. In the process, students without knowing the design of the organizers of such institutions, become victim of their manipulations.

Relying on the strength of the said decision *Shri Dhankar*, the learned Counsel vehemently contended that this Court may, if deem appropriate, give necessary directions to the respondents to permit the petitioners to appear in the main examination scheduled for 6th August 2000, by passing interim orders though their admission may abide by the final result of the writ petitions. This argument of the learned Counsel is wholly untenable and devoid of merit. We are of the view that the respondent Commission having followed proper, valid and legal procedure as stipulated in the Rajasthan State and Subordinate Services (Recruitment Through Combined Competitive Examination) Rules, 1999, in respect of the competitive examination for RAS scheduled for 6th August, 2000 and onwards and having Issued not only the advertisement but also having adhered to the procedure contemplated under the Rules by preparing the list of those candidates who come within the range of 15 times the total number of vacancies set forth for the category, which has also been duly published by the Commission, and the list of candidates, who were not at all to come within that range having also been published, and which were made available for perusal of the candidates in the office of the Commission well in advance before the scheduled date of commencement of test and examination and the list of candidates have also been prepared in conformity to terms of Rule 15 of the Rules of 1999 as per the ratio of the decision of the Apex Court in *Chattar Singh's* case (*supra*), we are consequently of the view that no fault can be attributed on the part of the respondent-Commission in having prepared a separate list of candidates on the basis of their comparative merit and eligibility for appearing in the final examination for RAS and moreover, the entire exercise has already been completed and lot of expenditure has also been incurred by the respondents in this regard, hence there is absolutely no justification either to postpone or to re-notify the dates for the main examination.

(7) In the matter of State of Bihar and Anr. v. Bed Mukund Sah (supra), a challenge was posed to the recruitment of District Judges and other judicial officers by the appellants in an appeal preferred before I the Apex Court against the judgment (impugned) in appeals of the Patna High Court. The question which arose for consideration was as to whether there was any violation on the part of the appellant-State of Articles 233, 234, 235, 236(b), 309 and 245 read with Schedule VII list-41, Entry-11-A of the Constitution? The Constitution Bench of the Apex Court per majority held that the judicial services do not come within the ambit of Article 309 of the Constitution so as to clothe the Legislature with such power. While Article 309 deals with recruitment and conditions of service of persons serving the Union or the State, recruitment to a particular category of service viz. judicial service of the State has been excluded from the purview of Article 309 by over-riding provisions of Articles 233 to 235. It was further held that reservation of available vacancies is not a stage anterior to recruitment or appointment to such vacancies on the already-sanctioned posts in the cadre and therefore, it falls within the scope of Articles 233 and 234. Hence, neither the Legislature has power to legislate Under Article 309 nor Governor has power to make rules under proviso to Article 309 in that regard by passing the of High Court Under Article 233(2) and consultation with High Court Under Article 234 are sine qua non for direct recruitment of District; Judges at the Apex level and other judicial officers at the base level respectively of the State Judicial Service. It was further observed that the High Court's role Under Article 233 and 234 is pivotal and meaningful and not merely formal. Article 309 as also Article 245 are subject to other provisions of the Constitution and hence have to be read subject to Article 233 and 234 which constitute a complete code. Article 16(4) regarding reservation of appointments or posts is an enabling provision which has also to be read subject to Articles 233 and 234 and Governor is required to make rules laying down scheme of reservation for direct recruitment at the base level as well as apex level of District Judiciary in consultation with High Court under Articles 234 and 233 to give effect to Article 16(4). This position is not affected by the second part of Article 235 which has a limited field of operation of enabling the governor to make rule Under Article 309 regarding conditions of service of judicial officers already recruited. The above interpretation is in consonance with the concept of Judicial Independence which forms part of basic structure of the Constitution, also in implementing Articles 16(1) and 16 (4), Article 335 must be kept in view.

The ratio of the above decision, in my view is also not attracted to the instant case since the question at issue is altogether deferent.

(8) In the matter of Ajit Singh and Ors. v. The State of Punjab and Ors. (supra), the question which arose in appeal before the Apex Court from the judgment and order (impugned) of Punjab and Haryana High Court related to determination of seniority of the respective candidates vis-a-vis the promotees on the question of 21 roster point. Whether on the basis of the roster point, the promotees were entitled to claim seniority over direct recruits in promoted category from the date

of continuous officiation vis-a-vis the general candidate, who was senior to them though placed in lower category on the basis of reservation policy?

Another aspect of the matter related to appellant's fundamental rights and the rights of reserved candidates. The Apex Court held that though the right to be considered for promotion is fundamental under Article 16(1), 16(4) and 16(4-A) (considering it to be valid) do not confer any fundamental right for appointment on the promoted post as they are only enabling provisions.

The Apex Court however propounded the ratio of the earlier decisions in the matters of Virpal Singh and Ajit Singh Januja as a correct law. Hence the roster point promotees are not entitled to claim any seniority over general candidates in promoted category unless they were further promoted before the promotion of general candidates. In my view, the ratio of this decision is again not applicable to the instant case since it is distinguishable and the question at issue in the present writ petitions is altogether different.

(9) In *Indra Sawhney v. Union of India* (supra) (1st case), the learned Counsel for the petitioners placed reliance upon the observations of the Apex Court as made in para-26 of its judgment at page 517 to 518, where the questions at issue were re-framed by the Apex Court as under:

1(a) Whether the "provision" contemplated by Article 16(4) must necessarily be made by the legislative wing of the State?

(b) If the answer to clause (a) is in the negative, whether an executive order making such a provision is enforceable without incorporating it into a rule made under the proviso to Article 309?

2(a) Whether Clause (4) of Article 16 is an exception to Clause (1) of Article 16?

(b) Whether Clause (4) of Article 16 is exhaustive of the special provisions that can be made in favour of backward class of citizens? Whether it is exhaustive of the special provisions that can be made in favour of all sections, classes or groups?

(c) Whether reservations can be made Under Clause (1) of Article 16 or whether it permits only extending of preferences/concessions?

3(a) What does the expression "backward class of citizens" in Article 16(4) means?

(b) Whether a class, to be designated as a backward class, should be situated similarly to the SCs/STs?

(d) Whether the "means" test can be applied in the course of identification of backward classes? And if the answer is yes, whether providing such a test is obligatory?

4(a) Whether the backward classes can be identified only and exclusively with reference to economic criteria? (b) Whether a criteria like occupation-cum-

income without reference to caste altogether, can be evolved for identifying the backward classes?

5. Whether the backward classes can be further categorised into backward and more backward categories?

6. To what extent can the reservation be made?

(a) whether the 50% rule enunciated in Balaji AIR 1963 SC 649 a binding rule or only a rule of caution or rule of prudence?

(b) Whether the 50% rule, if any, is confined to reservations made under Clause(4) of Article 16 or whether it takes in all types of reservation that can be provided under Article 16?

(c) Further while applying 50% rule, if any, whether an year should be taken as a unit or whether the total strength of the cadre should be looked into?

(d) T. Devadasan Vs. The Union of India (UOI) and Another, was correctly decided?

7. Whether Article 16 permits reservations being provided in the matter of promotions?

8. Whether reservations are anti-martian? To what extent are Articles 335, 38(2) and 46 of the Constitution relevant in the matter of construing Article 16?

9. Whether the extent of judicial review is restricted with regard to the identification of Backward Classes and the percentage of reservations made for such classes to a demonstrably perverse identification or a demonstrably unreasonable percentage?

10. Whether the distinction made in the second Memorandum between "poorer sections" of the backward classes and others permissible under Article 16?

11. Whether the reservation of 10% of the posts in favour of other economically backward sections of the people who are covered by any of the existing schemes of the reservations" made by the Office Memorandum dated 25.9.1991 permissible Under Article 15?

Since a Special Bench of nine Hon'ble Judges of Apex Court in the Indra Sawhney's case (supra) was dealing with complex social constitutional and legal questions upon which there has been sharp division of opinion in the society, the issues having been delegated to the Judiciary for authoritative pronouncement, the Apex Court by very elaborate Judgment answered the reference. Thus as per its observations in para 94-A, "We must, however, point out that Clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These Articles speak of reservation of seats in Lok Sabha and the State Legislature in favour of

Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore, not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits and what is more reasonable than to say that reservation Under Clause (4) shall not exceed 50% of the appointments or posts, bearing certain extraordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of SCs and STs, it comes to a total of 49.5%. From the above discussion, the irresistible conclusion which follows is that the reservations contemplated in Clause (4) of Article 16 should not exceed 50%.

66. In the above scenario it will be worthwhile to mention that the founding Father of the Constitution never contemplated the reservations under Article-16(4) to operate like a communal reservation. It may well happen that some members belonging to say Scheduled Castes get selected by reason of their participation on the basis of their respective merit positions as secured by them. Such candidates as and when appointed on particular posts cannot be said to have been appointed against a quota reserved for Scheduled Castes since they will be treated as open general candidates on their merits and quota. In our view, there is no quarrel with the aforesaid propositions as enunciated by the Apex Court while settling the above Judgment. But at the same time, the facts in controversy are altogether different. As already observed, we do not find any fault with the category wise reservation as made by the respondent-Commission while preparing the list of the candidates who have to appear in the main examination to be conducted by the Commission for recruitment to RAS of the State.

67. After the decision of the above matter the Indra Sawhney's case again came up for discussion in certain writ petitions, which were 13.12.1999 reported in *Indira Sawhney Vs. Union of India and Others*, . The Bench comprising of three Hon'ble Judges of the Apex Court while deciding the said writ petitions by a common Judgment held that the Creamy Layer as propounded in *Indra Sawhney's* case (Mandal Commission case) and *Ashok Kumar Thakur* case, is not backward and- therefore, not entitled to avail the benefit of reservation under Article 16(4). Since the conferring benefit to it under the said provision without excluding creamy layer from backward classes amounts to treating unequals as equals and equals as unequals, thus violating the principle of equality enshrined under Articles 14 and 16(1), which is the basic features of the Constitution.

It was further observed that "exclusion of creamy layer cannot be avoided even by a Legislative enactment because no enactment can violate basic features of

the Constitution".

68. Learned Counsel for the writ petitioners in SB Civil Writ Petition No. 2785/2000, which was also heard along with DB Civil Writ Petition No. 3346/2000 (PIL) and other connected petitions, placed reliance upon the Division Bench's judgment of Punjab and Haryana High Court in the matter of Jaskaran Singh v. State of Punjab reported in 1995(2) SCT 65, Maj. Phalit Sharma v. State of Haryana (1998(2) SLR 321 and the Judgment of this Court in SB Civil Writ Petition No. 2931/96 [Pawan Kumar and Ors. v. State of Rajasthan) and other connected writ petitions.

In Jaskaran case (supra), the question which arose before the learned Division Bench of the High Court was whether the candidates, who belong to reserved category were entitled to claim the benefits of seats from general category in the event of seats belonging to latter category not being filled up from general category candidates.

The learned Division Bench held that the candidates from the reserved categories, such as Scheduled Castes, Scheduled Tribes and OBCs are entitled to claim the said benefit only if they got higher merit position as entitling them to the seats from the general category. The scope of reserved candidates cannot be restricted only to the reserved seats. The ratio of the said decision as well as the other connected decisions, which have been advanced in this case, is not at all attracted since the controversy at issue raised in this writ petition and the connected matters are altogether different.

69. Shri Jagdeep Dhankar, while advancing arguments in rebuttal to the arguments advanced by Shri J.P. Joshi, the learned Counsel for the Commission, has placed reliance upon the judgments in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, C.C. Padmanabhan v. The Director of Public Instructions and Ors. 1980 UJ(SC) 833 and R.L. Bansal and others Vs. Union of India and others,

70. We have examined the ratio of the aforesaid decisions as well. In our view, they are neither attracted nor applicable to the instant case being distinguishable.

71. Shri J.P. Joshi, the learned Counsel for RPSC, per contra, has placed reliance upon the following decisions:

(1) Mahesh Kumar Khandelwal and 16 Others v. State of Rajasthan and Ors. (1995(2) WLC (Raj.) 223) In this case, this Court has held that there is no constitutional right in any person to say that examinations would be conducted only in accordance with a particular scheme and not in accordance with any other scheme. Determination of vacancies and notification of such vacancies, would confer only a right to appear at the competitive examination, as and when held, and no more. The scheme of examination or details of examination are at best procedural matters, which the executive Government in exercise of its legislative functions, conferred by proviso to Article 309 of the Constitution of India, may

change and modify, rechange and remodel from time to time. Ofcourse, the action of the executive Government may not suffer from the vices of the arbitrariness and malafides. If such vices exist, then alone the court may intervene.

A subsequent change of optional paper at the main examination by a candidate could hardly be said to have introduced an element of arbitrariness in the Scheme of the preliminary examination. It may be mentioned that in the scheme of examination under the Rules, marks obtained at the preliminary examination are not counted for determining the final order of merit. This makes the position all the more clear that preliminary examination was intended to serve only as a screening test and not the final merit test. Freedom of a candidate to choose another optional subject at the main examination is only with a view not to fetter the ultimate choice of the candidate of the subjects in which he may like to be examined for determination of his merit. I am thus of the considered opinion that there is no vested right in the petitioners to appear at the main examination if they have failed to achieve the cut-off percentage of marks as fixed by the Commission in its discretion. This is only a matter pertaining to procedural aspects of conducting the examination in fair exercise of discretion which the respondent RPSC has the prerogative to determine in accordance with law & no fault can be attributed to fair exercise of such discretion in fixing the modalities for conducting either the preliminary or main examination. Any other interpretation to the contrary would prevent public bodies like RPSC from discharging their functions for the welfare of the general public which would otherwise be to its detriment and hence neither permissible nor desirable. A relaxation of 5% has already been made by proviso to Rule 13 in favour of SC/ST candidates. 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. If failures have to impel a person to strive towards excellence in his spheres of individual and collective activity, furnishing of marks, cut-off percentage and the moderation thereof to the candidates takings competitive examination will goad them to strive towards better performance.

(ii) Vijay Kumar Gehlot and Ors. v. State of Rajasthan and Ors. RLW 1996 (3) Raj. 344

In this case, the question which arose for consideration of this Court was adding the word "OBC" to the words SC and ST which would enlarge the scope of reservation for such candidates for appointment to public office? It was held that it can certainly be said that SC and ST are but a category of backward classes quite distinct and separate from OBC. They cannot be deemed to include "OBC and the benefit under the proviso cannot be extended to OBCs without reading the words OBC after the words SC and ST in the proviso to Rule 13 referred to above. Such addition of the words in the circumstances of the case is neither permissible nor desirable as it would amount to legislation rather than

interpretation. This contention raised by the petitioners therefore, has no force and merits no acceptance. The conclusion therefore, is that SC and ST are distinct and separate from OBC and provision could be made separately for SC/ST without violating the principle of equality as enshrined in Articles 14 & 16 of the Constitution of India.

In fact in many respects SC and ST have been differently treated from OBCs in the Scheme of the recruitment procedure itself. They differ in percentage of seats reserved, in the eligibility criteria and so there cannot be any objection to their being treated differently in the matter of grant of the concession of cut-off marks.

If the petitioners wanted to canvass the above point, it was open to them to challenge the very basis of providing cut-off marks fixed for the preliminary examination. A preliminary examination is essentially a screening test for short-listing candidates to a reasonable and practical extent so that in the main examination, the confusion and disorder likely to be created because of large number of candidates appearing is avoided. In these days of ever increasing unemployment, hundreds of applications are received for one post. To allow all the candidates holding minimum qualifications for the post to appear at the written test or the interviews is simply not only impracticable but almost an impossible task. Besides it would also involve tremendous wastage of time, money and energy. The short-listing procedure has therefore, gained wide acceptability. Short listing can be made in two ways (i) by prescribing the maximum number of candidates in order of merit who could be allowed to take the main examination or (ii) or fixing minimum qualifying marks which may be called cut-off marks for deciding as to who can appear at the main examination. All this becomes necessary when the number of candidates is large as compared to the seats available. When the number of qualifying candidates available is less, problem of short-listing should not arise. In the present case, when the number of candidates available in the categories of SC and ST and OBC are not even fifteen times the number of posts available for them, there is indeed no rationale behind prescribing cut-off marks at the preliminary examination. It is true that because of Article 335 of the Constitution of India, the power Under Article 16(4) is subject to the rider of maintenance of efficiency in the administration and therefore, it is necessary for the State to fix certain minimum standard even for the reserved categories. But this rider cannot apply to preliminary examination and could apply to the main examination because only because some one is allowed to compete at the main examination he does not get automatically inducted in the Government Service and\* giving a change to appear in the main examination does not interfere with or lower down the standard of administrative efficiency.

In Vijay Kumar Gehlot's case (supra), it was held by this Court that the OBC cannot be deemed to be included in the SC and ST for the purpose of lowering down the cut-off marks for the purpose of proviso to Rule 13 of the Rules and

that the SC and ST are distinct and separate class as compared to OBC. The classification for the purposes of lowering the cut-off marks in favour of the SC and ST candidates only and not extending the benefit to OBC candidate is therefore, reasonable and is not violative of Articles 14 and 15 or 16 of the Constitution of India.

(iii) *Punesh Bohra v. M.L. Sukhadia University and Another* 1999 WLC Raj. 447 . In this case, this Court while following the principles Laid down by the Supreme Court in the matter of *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, wherein the Apex Court applied the rule of contemporanea exposition as the Apex Court found it a well established rule of interpretation of a statute by reference to the exposition it has received from contemporary authority. It was further observed that one may reach inescapable conclusion that the rule of administrative interpretation, even if is not of binding nature has great persuasive value.

72. Shri R.N. Mathur, the learned Additional Advocate General appearing for the State of Raj as than has placed reliance upon the following two decisions:

(1) *R.K. Sabharwal and others Vs. State of Punjab and others*, (2) *Ajit Singh Januja and others Vs. State of Punjab and others*,

In *Sabharwal's* case (supra), it was held by the Supreme Court that "when a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shows at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. For making any provision for reservation of appointments or posts in favour of any Backward Class of citizens, it is incumbent on the State Government under Article 16(4) of the Constitution of India to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the Instruction/rules providing certain percentage of reservations for the backward classes are operative the same have to be followed.

In Ajit Singh Januja's case (supra), while dealing with Article 16(4) and 335 of the Constitution the Supreme Court held that reservation policy cannot be implemented in a manner to block merit channel and to make it dry. Care has to be taken that efficiency of administration of the country is not harmed and there is no reverse discrimination. It was further observed that as has been pointed out by this Court that at the same time Article 335 of the Constitution enjoins to take into consideration the claims of the members of the Scheduled Castes and Scheduled Tribes "consistently with the maintenance of efficiency of the administration" while the making of appointments to services and posts in connection with the affairs of the Union or of a State. Thus, it has been conceived by our Constitution that a process should be adopted while making appointments through direct recruitment or promotion in which the merit is not ignored. For attracting meritorious and talented persons to the public services, a balance has to be struck while making provisions for reservation in respect of a section of the society. Promotion is an important incident of service. It covers<sup>1</sup> both advancement between grades within the same class and between different classes.

73. From the Additional Affidavit filed by the Commission and also from the contention advanced by Shri J.P. Joshi, learned Counsel appearing for the Commission, we find that the list of candidates which have been prepared by the Commission for the Main Examination is strictly in consonance with the import of Rule 15 of the Rules of 1999 as also interpreted by the Apex Court in Chattar Singh's case (supra). It is pertinent to mention herein that the Commission has contended in its affidavit that in General Category, there are in all 252 vacancies meant for male candidates and 105 vacancies are meant for female candidates. Thus, combined vacancies in general category comes to 357 and the Commission has admitted 5412 candidates for the Main Examination in terms of Rule 15 of the Rules of 1999.

74. Likewise, the combined vacancies reserved in OBC category are 140 and the Commission has admitted 2109 candidates for the Main Examination, which constitute 15 times the number of vacancies/posts reserved in the OBC category.

75. Similarly, there are 102 combined vacancies reserved in the SC category for male and female both and the Commission has admitted 1538 candidates for the Main Examination, which also constitute 15 times the number of vacancies reserved in that category.

76. The Commission has accordingly prepared a separate list for each of the categories and the candidates belonging to one category cannot be re-shifted to another category on the basis of their merit as the list of successful candidates in the Preliminary Examination is meant only for short-listing candidates for the Main Examination and it does not determine merit of the candidates which is assessed only at the time of preparation of final merit list Under Rule 17 of the Rules of 1999.

77. From the above discussion, it will be pertinent to mention herein that distinguish feature as regards Rule 13 of the Rules of 1962 and Rule 15 of the Rules of 1999 is that while Under Rules of 1962 if adequate number of candidates belonging to SCs/STs/OBCs were not available from amongst the candidates to be declared qualified for admission to the Main Examination on the basis of their performance in the Preliminary Examination, the commission was empowered at its discretion to keep the cut-off marks upto 5 percent less than the general category by giving the benefit of relaxation to candidates belonging to reserved category such as SCs/STs/OBCs and the candidates who obtained such minimum qualifying marks as may be fixed by the Commission in the Main Examination at its discretion were to be summoned for interview. The Commission was further empowered to award marks to each of the candidates interviewed by them, having regard to their character, personality, address, physique and knowledge of Rajasthani Culture. While, Under Rule 15 of the Rules of 1999, relaxation by 5 percent of the marks in favour of the candidates belonging to the reserved category stands obliterated since the only qualifying criteria which has been fixed for all the candidates irrespective of the classes to which they belong are:

(i) the marks obtained in the Preliminary Examination by the candidates who are declared qualified for admission to the Main Examination are not to be counted for determining their final order of merit since their performance/selection will be dependent upon their relaxation in the Main Examination since that will be the sole criteria for determining their final order of merit in order of their respective posts; and

(ii) the number of candidates to be admitted to -the Main Examination shall be 15 times the total approximate number of vacancies (category wise) to be filled in by the Commission in a particular year for various services and posts but, with a rider that in the said range of those candidates who secured same percentage of marks as fixed by the Commission for any lower range will be admitted to the Main Examination.

78. Second proviso to Rule 13 of the Rules of 1962 and the Rule 15 of the Rules of 1999 depicts the same criteria i.e. only such candidates who obtained minimum qualifying marks in the Main Examination as may be fixed by the Commission at its discretion shall be summoned for interview.

79. Thus, the over-all position as it emerges from the discussion of Rule 13 & Rule 15 of the Rules of 1962 & Rules of 1999, respectively is that the contention of the learned Counsel for the petitioner that the candidates belonging to the reserved category i.e. SCs, STs and OBCs will not be deprived of for participation in the Main Examination to be conducted by the Commission on 6/8/2000 on the ground that it is highly oppressive to the interest of reserve category candidates as above, is wholly untenable and unfounded being an imaginary apprehension of the petitioner since on the basis of the logical and fair interpretation of Rule 15 of the Rules of 1999 the Commission has rightly taken the stand that it declared

the result of the Preliminary Examination of RAS on 27.5.2000 and the list of successful candidates coming within the range of 15 times the total number of vacancies set apart for that category was also published and those candidates who were not able to come within the zone of consideration, was also published and was made available for perusal of the candidates in the office of the respondent-Commission. This fact is borne out from para 1 of the Additional Affidavit filed by the Commission. The respondent-Commission has further taken an unequivocal stand that list of successful candidates has already been prepared by the Commission in terms of Rule 15 of the Rules of 1999, as is borne out from para 2 of the said affidavit and the Main Examination is scheduled to commence w.e.f. 6th of August 2000 which if not permitted to be conducted would cause irreparable loss and damage to the career and academic pursuits of a large number of candidates who are not before this Court and who have not been heard except the writ petitioners and hence cannot be countenanced. I am consequently of the view that no fault can be attributed either to the scheme of main examination of the RAS as prepared by the Commission nor there will be any rationale basis to stay the main examination of the RAS scheduled to be held shortly.

80. Since all other aspects of the matter have been dealt with elaborately by my Brother Chief Justice, as such, I do not wish to record any further reasons therefore but to adopt the same and hereby record my concurrence therewith. In that view of the matter, the writ petitions are held not maintainable for the reasons recorded hereinabove and consequently stand dismissed. There will be no order as to costs.

81. All the aforesaid matters stand dismissed as per the majority view subject to the observations contained hereinabove.