

(2015) 07 OHC CK 0054

In the Orissa High Court

Case No : Writ Petition (C) Nos. 10842 and 13086 of 2015

Madhumala Bisoyee and Others

APPELLANT

Vs

Odisha Public Service Commission and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 315, 335

Citation : (2015) LabIC 4611 : (2015) 2 OLR 413

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : Bibhu Prasad Tripathy, R. Acharya, T. Barik, S. Hidayatullah, N. Barik and A. Sethi, for the Appellant; P.K. Mohanty,, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. B.R. Sarangi, J—The petitioners, who have appeared at Preliminary Written Examination of the Odisha Judicial Service Examination, 2015 held on 31.5.2015, have filed these petitions challenging the said examination, inter alia on the ground that the setting up question was defective, inasmuch as there were spelling mistakes, printing errors, discrepancies in the questions having doubtful answers and even wrong answers etc.

2. The short fact of the case, in hand, is that in order to fill up 69 vacancies in Odisha Judicial Service, requisition was made by the Law Department on 19.2.2015, which was received by the Odisha Public Service Commission, in short "OPSC" on 12.3.2015 and accordingly, a tentative time schedule for completion of recruitment process of Civil Judges in Odisha Judicial Service, 2015 was prepared by OPSC. Accordingly, Advertisement No. 07 of 2014-15 was issued on 12.3.2015. Since it is a time bound programme, instruction was given to OCAC to develop online application form meant for Odisha Judicial Service Examination, 2015. Due to delay by one and half months of receipt of requisition, advertisement was issued by the OPSC on 12.3.2015 vide Annexure-1 inviting online applications from the eligible candidates fixing the last

date for submission of such form as 15.4.2015 by 11.59 P.M. and the last date of receipt of application fee at any Branch of State Bank of India by 17.4.2015. In the said advertisement it has been stated that the online proforma for application form is to be made available in the website, i.e. <http://opsc.gov.in> or <http://opsconline.gov.in> from 15.4.2015 by 11.59 P.M. for admission to the competitive examination consisting of three parts, i.e., preliminary written examination, main written examination and interview to be conducted by the OPSC under the provisions of the Odisha Superior Judicial Service & Odisha Judicial Service Rules, 2007 (as amended from time to time) for recruitment to 69 posts of Civil Judges in Odisha Judicial Service under the Law Department by direct recruitment in the Pay Scale of Rs. 27,700-770-33,090-920-40, 450-1080-44,770/- with usual Dearness Allowance and other allowances as sanctioned by the Government of Odisha from time to time and admissible to the employee. It is further stated that only online applications are invited from the candidates for admission to the OJS preliminary written examination. After declaration of result of the preliminary examination, the candidates who qualify, will be required to submit the printout/hard copy of online application form, along with the photocopies of the other documents as stated in paragraph 8 of the advertisement on or before the date to be notified later, for consideration of their eligibility. The vacancy position as per the requisition filed by the Law Department of Government of Odisha along with the reservation thereof is given below:

It is stated that in case of non-availability or availability of insufficient number of candidates of reserved category of S.C., S.T. & S.E.B.C., the vacancies shall be filled up by the candidates of un-reserved category as per Rule 17(3) of the O.S.J.S. & O.J.S. Rules, 2007. The total 69 Nos. of vacancies shall be filled up only on accrual of such vacancies during the year 2015. Clause-3 of the advertisement deals with plan of examination, to mean, direct recruitment to the cadre of Civil Judges shall be made by the Commission through a competitive examination, which shall consist of three parts; viz-Preliminary Written Examination, Main Written Examination and Interview in the manner provided in the Rules and in accordance with the Syllabus. Sub-clause (I) of Clause 3 of the advertisement states that the preliminary written examination shall be of one paper carrying 100 marks with duration of one and half hours with objective type questions of multiple choice (i.e. 100 questions of one mark each with negative marks of twenty-five percent of the marks allotted to a question for every wrong answer) on the following subjects and the OMR answer sheet will be scrutinized by Computer.

Preliminary Written Examination

- (a) Constitution of India
- (b) Code of Civil Procedure
- (c) Code of Criminal Procedure
- (d) Evidence Act

- (e) Indian Penal Code
- (f) Limitation Act
- (g) Transfer of Property Act (h) Contract Act
- (i) Law of Succession (Indian Succession Act and Hindu Succession Act
- (j) Specific Relief Act.

The Commission shall call the eligible candidates, who have secured not less than 35 (thirty five) per-centum of marks in case of Scheduled Caste and Scheduled Tribe candidates and 40 (forty) per-centum of marks in case of others in the preliminary examination for main written examination.

3. The petitioners along with others appeared the Preliminary Written Examination of Odisha Judicial Service Examination, 2015 on the date fixed. It appears that several questions set in the examination paper were not only out of syllabus but contained grammatical and typographical errors and contained questions in which the answers were not there in the options. It is stated that out of 100 questions, 34 questions suffered from defects inasmuch as there were spelling mistakes, printing errors, defective questions having doubtful answers even wrong answers and even questions set out of course. Looking at the questions, the examinees became perturbed. In any case, to their understanding, they appeared at the examination and raised objection before the OPSC pointing out the errors committed in setting up of the questions. When the OPSC was in seisin over the matter and there was delay in resolving the dispute though the result of preliminary examination was scheduled to be published on 22.6.2015, finding no other way out, the petitioners have approached this Court in the present writ petitions claiming for reconsideration of each of the questions, which are wrong and erroneous and also seeking for a direction to opposite party No. 1 to award grace mark to each wrong and erroneous questions and further seeking for a direction to conduct fresh preliminary examination by postponing the main examination, which is scheduled to be held from 28th July to 31st July, 2015.

4. Mr. B.P. Tripathy, learned counsel appearing for the petitioners in W.P. (C) No. 10842 of 2015 strenuously urged that when large chunk of questions are demonstrably and palpably wrong for various reasons such as, glaring spelling mistakes, grammatical errors and out of syllabus questions, which attract negative markings, the result of preliminary examination should be cancelled and the petitioners should be allowed to sit in the fresh preliminary examination for determination of their merits and eligibility. It is further urged that though the advertisement prescribes a procedure to be followed in case of wrong questions that has been set or any wrong answer key that has been provided to any question, nothing has been indicated. It is also not indicated that in case of any wrong questions, prorata marking will be allotted. Therefore, it is stated that when the words of provisions are clear, plain and unambiguous and reasonably

susceptible to only one meaning, courts are bound to give effect to that meaning irrespective of the consequences. He further submitted that allotting pro rata marks to the remaining set of correct questions will be contrary to advertisement/prospectus and hence discriminatory in such competitive examination where there is provision for negative marking. According to the petitioners, 34 questions suffer from different defects as mentioned above, which is one third of the total questions set by the OPSC. If large chunk of questions are wrong and there is award of negative marking in that case awarding of pro rata marking will cause great prejudice to the examinees and it would be detrimental to their own interest. It is further urged that due to the indifferent attitude of the OPSC, the examinees suffer from casualty. It is stated by the learned counsel for the petitioners that more than 2000 applicants have applied for the said examination and out of them 1879 are valid applicants and therefore, the preliminary examination can be conducted confining to 1879 candidates. Learned counsel for Orissa Public Service Commission submitted that since the schedule of examination has already been prepared by the OPSC, it is not possible to conduct fresh examination, rather the result of preliminary written examination should be published applying pro rata marks excluding the 24 questions which have been found in error as per the report of the Expert Committee mentioned above.

5. The petitioners have referred to 34 questions stated to have been wrong out of 100 questions set by the OPSC in the following manner:

In order to substantiate his case, Mr. B.P. Tripathy, learned counsel for the petitioners has relied upon *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, AIR 1965 SC 491 : (1964) 4 SCR 575 , *Pankaj Sharma Vs. State of Jammu and Kashmir and Others*, (2008) 2 CLT 529 : (2008) 4 JT 127 : (2008) 4 SCALE 322 : (2008) 4 SCC 273 : (2008) 1 SCC(L&S) 1020 , *Surinder Pal and Others Vs. State of Punjab and Another*, (2013) 4 SCT 408 , *Rajveer Shekawat and others v. State of Rajasthan & others*, 2014 (4) CDR 2001 (Raj) , *The Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E. and Others Vs. Khushboo Shrivastava and Others*, (2011) 9 SCALE 63 : (2011) 10 SCR 286 : (2011) 5 UJ 3390 , *Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others*, (2005) 8 JT 382 : (2005) 13 SCC 744 , *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, AIR 1984 SC 1543 : (1984) 2 SCALE 30 : (1984) 4 SCC 27 : (1985) 1 SCR 29 : (1984) 16 UJ 1107 , *J. Antony Clara vs. The State of Tamilnadu in W.P. (MD) No. 13267 of 2013 and batch decided on 1st Oct, 2013 by the Hon''ble High Court of Gourav Jain and Others Vs. Haryana Public Service Commission and Others*, (2009) 156 PLR 161 and *Tanvi Sarwal v. Central Board of Secondary Education and others*, Writ Petition (Civil) No. 298 of 2015 decided by the Apex Court on 15.6.2015.

6. Mr. Ashutosh Mishra, learned counsel for the petitioner in W.P.(C) No. 13086 of 2015 supports the stand taken by Mr. B.P. Tripathy, learned counsel in the other writ petition and states that in some questions though correct option is available,

but the OPSC has shown another option as correct option and he has cited the example of Question No. 30 wherein for the said question, out of the four options, Option-A would be the correct answer, but the OPSC has published Option-C as the correct answer. Though such objection has been raised before the OPSC, the same has not been taken into consideration and suggestion has been given for pro rata marking, which would cause great prejudice to the examinees when there is negative marking system. It is further urged that in a competitive examination, it is never expected that almost 30% of the total questions would be wrong and ambiguous and if large number of questions are wrong and ambiguous, in that case, the Court should set aside the entire process of examination and should direct the authorities to conduct fresh examination within a stipulated period without allowing the OPSC to award pro rata marking. To substantiate his case, he has relied upon the judgments in *Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc.*, AIR 2013 SC 2652 : (2013) 137 FLR 507 : (2013) 4 JT 1 : (2013) LabIC 3246 : (2013) 3 SCALE 393 : (2013) 4 SCC 690 : (2013) 2 SCC(L&S) 359 : (2013) 3 SCT 449 : (2013) AIRSCW 4309 and *Gunjan Sinha Jain v. Registrar General, High Court of Delhi*, W.P. (C) No. 449 of 2012 along with connected matters disposed of on 9th April, 2012.

7. Mr. P.K. Mohanty, learned Sr. Counsel appearing for the OPSC states that after the preliminary written examination was over, the model answer of the question paper (Text Booklet Series-A) was published in the website of the OPSC inviting objections/comments from the candidates online by 18.6.2015. The said publication was made on 9.6.2015. The answer key of "A" series has been filed as Annexure-4 to the writ petition in W.P. (C) No. 13086 of 2015. It is further urged that if the questions are wrong on different counts, this Court should not cancel the result, rather allow the OPSC to continue with the process of selection as scheduled awarding pro rata marking excluding the wrong questions so that the schedule of examination would remain intact. To substantiate his submission, he has placed reliance on *Pankaj Sharma (supra)* and *Andhra Pradesh Public Service Commission v. K. Prasad and another*, Special Leave to Appeal (Civil) No. 25157 of 2013 disposed of on 26.7.2013.

8. On the above mentioned factual backdrop of the case in hand, considering the contentions raised by the learned counsel for the petitioners, immediate steps have been taken directing the learned counsel for the OPSC to file counter affidavit indicating the factum of commission of mistakes in the questions supplied, which have been notified in the website of the Commission and objection have been invited from the candidates, who have appeared the Preliminary Written Examination of Odisha Judicial Service Examination, 2015. The expert committee has been constituted to verify the correctness of such objection and the questions so framed, but no decision has been taken as the process of receiving objection is under progress. Therefore, this Court passed an interim order on 23.6.2015 that the result of Preliminary Written Examination of Odisha Judicial Service Examination, 2015 shall not be published till 13th July, 2015. On 13.7.2015, Mr. P.K. Mohanty, learned Senior counsel appearing for the

OPSC produced the proceedings of the expert committee constituted by the OPSC to examine the correctness of the answer key to the questions of Preliminary Written Examination for recruitment to the post of Civil Judges of Odisha Judicial Service Examination, 2015 and also the extract of the note-sheet of the OPSC wherein it has been admitted that there are errors in 24 questions prepared by the OPSC and suggestion has been made by the OPSC that marks should be awarded on the basis of 76 questions and the marks secured by the candidate will be prorated to arrive at a total mark to be awarded out of 100 marks to the candidates. The report of the Expert Committee constituted by the OPSC headed by Prof (Dr.) Prabir Kumar Pattnaik, SNIL, SOA University, Bhubaneswar, Dr. M.S. Dash, Dean, HOD, P.G. Department of Law, Utkal University and Dr. S.A.K. Azad, Principal, University Law College, Bhubaneswar, examined the questions, answer keys and the objections/suggestion/comments of the applicants in respect of Question (Test) Booklet Series-A, in respect of each questions is as follows:

9. Taking into account the report furnished by the Expert Committee constituted by the OPSC, decision has been taken by the OPSC suggesting award of marks in pro rata basis. The note-sheet of the OPSC reveals as follows:

"The Commissioner perused the Expert Committee Report on the allegations received both online and offline against the question papers of Odisha Judicial Service Preliminary question papers, 2015.

It was found that there were minor typographical errors in 14 questions (Question Nos. 1, 4, 6, 15, 21, 24, 35, 38, 39, 42, 63, 69, 86, and 90) and 6 questions (question Nos. 20, 27, 29, 30, 91 and 92) were found to be ambiguous. Apart from this, another 4 questions (Question Nos. 25, 34, 36, and 87) did not have the correct option. Therefore, 24 number of questions were found to be defective. The Expert Committee had found two options correct in respect of Question No. 60, 95 and 98. Candidates indicating option for any of the two correct options would get credit. The major cause of the defect was the typographical errors in the manuscript of questions prepared by the question setters. Since there was no provision for moderation and proof correction, these errors in the manuscript could not be detected to be corrected. However, the Expert Committee found 76 questions in order and Commission felt that performance of candidates in these 76 questions would reflect their true merit.

It is, therefore, decided that the 76 questions would be evaluated and the marks secured by the candidates will be prorated to arrive at the total marks to be awarded out of 100 marks to the candidates.

On the basis of such suggestion given by the OPSC, opportunity was given to the petitioners to suggest whether the selection process would continue by awarding marks on pro rata basis or the entire Preliminary Written Examination would be cancelled allowing the OPSC to go for fresh examination and also direction was given to the OPSC to obtain instruction on that score.

10. In Pankaj Sharma (supra) the selection process was initiated by Jammu & Kashmir Public Service Commission for filling up 132 posts of eighteen Gazetted Services as notified on April 1, 2005 by Jammu & Kashmir Combined Competitive Examination. The examination was held on July 3, 2005 in which the writ petitioners appeared for the Preliminary Examination, but could not become successful for being considered eligible and qualified in the process of "short listing" and were not appear at the Main Examination as also at Oral Interview. The selection process at the Preliminary Examination was challenged, inter alia, on the ground that it was defective inasmuch as there were spelling mistakes, printing errors, discrepancies, questions having doubtful answers and even wrong answers; etc., the course adopted by the Commission of deleting certain questions and adding those marks pro-rata to the remaining questions was not proper; the decision was also illegal and invalid as it was not taken by majority of Members of Commission. The learned Single Judge considering the controversy in its proper perspective and in the light of the mistakes, errors and inaccuracy, issued certain directions which benefited the students' community. The said order of the learned Single Judge was confirmed by the Division Bench. Challenging such order of the learned Single Judge of Jammu & Kashmir High Court and confirmed by the Division Bench, Civil Appeal No. 1997 of 2008 was filed wherein the Apex Court has held that the learned Single Judge was right in not setting aside the preliminary examination and directing main examination to be conducted by the Commission and further held that the directions issued by the learned Single Judge were in the interest of the candidates as also in the larger interest of the administration, thereby dismissed the Civil Appeal. It is stated that since the process of pro-rata awarding of marks for the remaining questions has been approved by the Apex Court and if the same principle is applied to the present context, the petitioners will not be prejudiced, rather it will be beneficial for them and this Court should allow for awarding pro-rata marks in the preliminary examination conducted by the OPSC. Further reference has been made to Andhra Pradesh Public Service Commission (supra), wherein the original petitioners raised the dispute regarding examination conducted by Andhra Pradesh Public Service Commission for selection of Grade-I Services in Andhra Pradesh. The examination was to be conducted in two parts, first the preliminary examination, which was to be for 150 marks and the preliminary examination was of objective type wherein four choices were given and the candidates were to chose one of them and answer the same in OMR sheet. Those who qualified in the first examination, i.e., the preliminary examination were to be eligible to appear in the main examination. After considering the reports of a couple of committees, the High Court arrived at a decision wherein according to it the Andhra Pradesh Public Service Commission will have to revise the selection process in accordance with the answer arrived at by the Expert Committee and issue proper orders. The High Court directed Andhra Pradesh Public Service Commission to examine the whole issue and consult the U.P.S.C. Being aggrieved by the order, the Andhra Pradesh Public Service Commission approached the Apex Court. It was the specific case of the candidates that the key answers given

by Andhra Pradesh Public Service Commission for six questions at Sl. Nos. 4, 43, 61, 62, 107 and 130 in "D" series are confusing. The Apex Court held that the marks secured have to be recounted from the answer books written by all the candidates on the basis of 144 questions after deleting these six questions and their answers, thereby accepted the pro-rata marking.

Relying on the above mentioned judgments of the Apex Court, Mr. P.K. Mohanty, learned Sr. Counsel for the OPSC states that since the Expert Committee found that there are 24 wrong questions on various counts, excluding the said 24 questions, the OPSC should be allowed to award pro-rata marking in rest 76 questions out of 100 and to proceed with the selection process.

11. In the above mentioned cases, which are referred to on behalf of the OPSC, the Apex Court has taken into consideration that there is marginal error, which is confined to the examinees within 10 out of 100-150 questions, but here is a case where out of 100 questions, the petitioners have alleged that 34 questions are wrong as mentioned supra and admittedly as per the report of the Expert Committee constituted by the OPSC, 24 questions are wrong. If the contention of the petitioners would be accepted that 34 questions are wrong, then it exceeds 1/3rd of the total questions. Even accepting the report of the Expert Committee, such errors are also nearly 1/4th of the total questions. Therefore, in the cases referred to on behalf of the OPSC, such a contingency had not arisen to be considered by the Apex Court.

12. In Maharashtra State Board of Secondary and Higher Secondary Education (supra) the Apex Court has held as follows:

"the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them", it is humbly submitted that the factual matrix of the present case is completely different and this Hon"ble Court, besides the expert committee, also possesses technical expertise in the subjects of the present examination being law subjects, and thus can sit as an expert of the experts. It is therefore submitted that in the larger interest of justice, the court may sit as an expert to decide the exact number of questions that are wrong."

The ratio of the said case may not have application to the present context and it is stated that allowing pro-rata marking to the examinees to any wrong question would be contrary to the advertisement/prospectus and discriminatory in such competitive examination.

13. Learned counsel for the petitioners further submits that the Commission being a constitutional authority has an onerous responsibility to conduct the examination in a fair manner. There is nothing in the statute which confers a jurisdiction on the OPSC to suggest for a pro rata marking. Moreover, if pro rata marking system is applied then it will not create a common platform with equal

advantages and disadvantages to all to prove their merit. If pro rata marks for 24 questions according to OPSC and 34 questions according to the petitioners are distributed, many candidates who have answered those deleted 24/34 questions in large numbers and the remaining 76/66 questions in lesser numbers will be materially affected than those candidates who have answered the deleted 24/34 questions in lesser numbers and the remaining 76/66 questions in larger numbers. Consequently, less meritorious candidates may also defeat the meritorious candidates if such pro rata marking system is adopted. Therefore, it may not be an equitable measure to alleviate hardships to the candidates.

14. In *Manish Ujjwal and others* (supra) the Apex Court has held that the University and those who prepare the key answers have to be careful and abundant caution is necessary in these matters for the reasons stated below:

(i) paramount reason being the welfare of the student as a wrong key answer can result in the merit being made a casualty.

(ii) Reluctance by courts in interfering in educational matters which in turn casts a higher responsibility on the University while preparing the key answers;

(iii) In case of doubt the benefit goes in favour of the University and not in favour of the students.

15. In *J. Antony Clara* (supra) the Madras High Court has also expressed the same view that pro-rata marking should not be encouraged and consequently, the written competitive examination held for recruitment of Post Graduate Assistants in Tamil subject on 21.7.2013 was set aside and the official respondents were directed to conduct fresh examination as early as possible.

16. *Gourav Jain and others* (supra), the Punjab and Haryana High Court observed as follows:

"Before parting with this judgment I am constrained to observe that even though the allegation that the paper is vitiated because questions have been prescribed from outside the syllabus has been repelled yet it cannot be gainsaid that the reason for that was not so much that the questions were strictly within the syllabus but that special prejudice has not been said to have been caused to the petitioners. However, it cannot be denied that prejudice was caused to all the examinees across the board. The prescription of a syllabus obviously intends to bind the examiner. Not only this, the four questions extracted above also reveal the cavalier attitude with which the paper has been set. It is indeed regrettable that a premier constitutional authority like the Public Service Commission would let such a carelessly drafted question paper be inflicted on the examinees for a premier service of the State. In the circumstances the Commission is directed to devise some in house mechanism to ensure that wherever a syllabus is prescribed the questions should be prescribed strictly from within its four corners. It is also the duty of the Commission to make certain that there are no questions which are either demonstrably wrong or "tricky"."

17. In *Tanvi Sarwal v. Central Board of Secondary Education and others* (supra), the Apex Court has held as follows:

"We are aware, that the abrogation of the examination, would result in some inconvenience to all concerned and that same extra time would be consumed for holding a fresh examination with renewed efforts therefor. This however, according to us, is the price, the stakeholders would have to suffer in order to maintain the impeccable and irrefutable sanctity and credibility of a process of examination, to assess the innate worth and capability of the participating candidates for being assigned inter se merit positions commensurate to their performance based on genuine and sincere endeavours."

18. In these backdrop of the questions, the role of Public Service Commission has to be considered in the light of the provisions under Article 315 of the Constitution of India. The Commission constituted under Article 315 is bound to conduct the examination for appointment to service of the State in terms of the Rules framed by the State. It is however, free to evolve the procedure for the conduct of the examination. While conducting the examination in a fair and transparent manner as also following the principles of fair play, it cannot completely shut its eyes to the Constitutional requirements of Article 335 of the Constitution of India. However, Commission would judge the merit of a candidate in its function, and unless the procedure adopted by the Commission is held to be arbitrary or against the known principles of fair play, the Court will not ordinarily interfere. The absolute transparency is required to be maintained and demonstrated in its function. The Public Service Commission occupies a pivotal place of importance in the State and the integrity and efficiency of its administrative apparatus depends considerably on the quality of the selection made by the Public Service Commission. It is absolutely essential that the best and the finest talent should be drawn in the judiciary and the judicial services must be composed of men who are honest, upright, independent and are not succumbed to any type of external pressure. The selection of candidates for the judicial services must, therefore, be made strictly on merits keeping in view various factors, which go to make up a strong, efficient and honest Judicial Officer. The credibility of the institution of a Public Service Commission is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the members of the Commission act subjectively and not objectively or that their actions are suspicious. The society expects honesty, integrity and complete objectivity from the Chairman and Members of the Commission. The Commission must act fairly without any pressure or influence from any quarter, unbiased and impartially so that the society does not lose confidence in the Commission.

19. This being the position of law governing the field, considering the difficulties faced by the candidates in the Preliminary Written Examination of Odisha Judicial Service Examination, 2015, in which large chunk of questions are found to be erroneous on different counts, awarding of pro-rata marks will cause prejudice to

them inasmuch as when there is negative marking that will affect the entire selection process adversely. Contention is raised that the tenure of time schedule for completion of the recruitment process has been done in consonance with the judgment of the Apex Court in Malik Mazhar Sultan and another v. U.P. Public Service Commission and others, Civil Appeal No. 1867 of 2006 disposed of on 4.1.2007 wherein the Apex Court has fixed the guideline to fill up the vacancies in judicial service. As it appears, the contingency which has arisen in the present case was not there before the Apex Court while scheduling the programme in the said case. For the year 2015, requisition from the State Government has been made after lapse of more than one and half months to the OPSC and the OPSC has shown undue haste by committing errors in setting up of the questions for the preliminary written examination causing hardship to the petitioners, for which they have approached this Court by filing the present writ petitions. No doubt the guideline of the Apex Court should be adhered to if the things progressed in a normal way. But in exceptional circumstances like the present one, adhering to the guidelines framed in Malik Mazhar Sultan (supra), steps should be taken as expeditiously as possible for re-scheduling the programme in a free and fair manner without any error.

20. In view of the foregoing discussions, considering the fact that large chunk of questions being erroneous and number of candidates being less confining to 1879, though it would cause some hardship to conduct re-examination, but in the interest of justice, equity and fair play, the Court cannot allow injustice to be caused to the candidates by allowing the OPSC to award marks on pro-rata basis, rather it would be equitable if fresh preliminary written examination to Odisha Judicial Service, 2015 is conducted. No doubt the candidates have burnt their night oil to prepare for the examination and re-examination though it may cause financial burden considerably on the OPSC on that score, but considering the situation, this Court is of the considered view that instead of awarding marks on pro-rata basis, fresh preliminary written examination to Odisha Judicial Service, 2015 should be conducted to eradicate all the lapses at the threshold. This Court is able to perceive the hardship and sufferings that the candidates are going to experience. But such kind of hardship the candidates could have to suffer, in order to maintain the sanctity and credibility of the process of examination and to assess the relative merit of the participating candidates for being assigned the inter se merit positions commensurate with their performance based on genuine and sincere efforts. All these hardships are, in my considered view, because of the indifferent attitude of the OPSC, who has not discharged its duty assigned to it satisfying the constitutional mandate. This Court being the institution, which has been established under the Constitution to enforce equality and to protect the other rights of the citizens, cannot show any reluctance to take a hard line to order for re-examination.

21. In the result, the writ petitions are disposed of with the following terms:

(i) The preliminary written examination of Odisha Judicial Service, 2015 for

recruitment to the post of Civil Judges under the Odisha Judicial Service held on 31.5.2015 is hereby set aside.

(ii) The OPSC is directed to conduct fresh preliminary written examination of Odisha Judicial Service, 2015 as early as possible preferably within a period of six weeks from the date of receipt of a copy of the judgment;

(iii) In the fresh examination, no fresh admit card shall be issued and the examination should be confined to 1879 eligible candidates, who have appeared at the said examination;

(iv) All possible steps should be taken by the OPSC to see that the question papers are set flawlessly and with all accuracy with positive answer and without any ambiguity and confusion;

(v) The result of such preliminary examination should be published as expeditiously as possible after the said examination is over and after publication of such result, atleast four weeks gap be given to conduct the main written examination of Odisha Judicial Service, 2015 to allow the students to prepare for such examination;

(vi) The programme for completion of the recruitment to Odisha Judicial Service, 2015 pursuant to the Advertisement No. 7 of 2014-15 should be re-scheduled in consonance with the direction of the Apex Court in Malik Mazhar Sultan and another (supra).

No costs. Connected miscellaneous petitions are disposed of.