
(2019) 10 JH CK 0020

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 399 Of 2018, I.A. No. 766, 869, 2378, 2414 Of 2019

Pankaj Kumar Pandey And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 141, 230(3), 315, 320, 320(1), 320(3), 320(3)(a), 335

Citation : (2019) 10 JH CK 0020

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Ajit Kumar, Vikesh Kumar, Venkatesh Shankar, Ajit Kumar, Prashant Pallav, Parth Jalan, Sanjay Piprawall, Prince Kumar, Rakesh Ranjan, Suchitra Pandey, Lukesh Kumar, Sadish Ujwal Beck, Praveen Chandra, Manish Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsels for the appellants, learned Advocate General for the State, learned counsel for the Jharkhand Public Service Commission (hereinafter referred to as the 'JPSC'), and learned counsels for the interveners, who have intervened through different interlocutory applications.

2. This matter relates to the challenge to the publication of the results of the Preliminary Examination of Combined Civil Services Competitive Examination, 2016, the 2nd revised results whereof, were published on 06.08.2018, declaring 34,634 candidates successful for appearing in the Main Examinations, pursuant to the impugned Resolution of the State Government, in its Department of Personnel, Administrative Reforms and Rajbhasha, as contained in Memo No. 1153 dated 12.2.2018, which as per the appellants, was taken by the State Government changing the 'rules of the game' in the midst of the selection process, which was not permissible.

3. When this appeal was taken up by a Co-ordinate Bench of this Court on

28.01.2019, the Court taking in view the fact that altogether 34,634 candidates have been allowed to take part in the Main Examinations, due to midway deviation from the rules prescribed for the examination, permitted the appellants to sue in representative capacity, as numerous persons might be having interest in the present appeal. Accordingly, the notices were directed to be published in the English daily, Times of India and Hindi daily, Prabhat Khabar, published from the State of Jharkhand, and the notices were also directed to be put on the websites of the Court, as well as that of the respondent JPSC. The notices were, accordingly, published and put on the websites.

4. In the meantime, one I.A. No. 766 of 2019 had been filed for intervening in the matter, and it was directed that the same shall also be guided by the said order.

5. After the publication of the notices, I.A. No. 869 of 2019 has been filed by one Shristy Pandit, who is a candidate declared successful in the 2nd revised results, praying for intervening in the matter as respondent. Two more interlocutory applications have been filed, viz., I.A. No. 2378 of 2019, which is filed by one Kuldeep Munda and I.A. No. 2414 of 2019, which is filed by one Hari Oraon. These are also the successful candidates in the subsequent results, published by the JPSC. However, applicant in I.A. No. 2378 of 2019 Kuldeep Munda and the applicant in earlier filed I.A. No. 766 of 2019, namely Raj Kumar Minz, though are selected candidates in the subsequent results, but they are supporting the appellants, challenging the impugned Resolution of the State Government dated 12.2.2018, contending that they, being law abiding citizens, have eagerness for a stronger Commission, i.e., JPSC, and by the issuance of the impugned resolution, many irregularities and illegalities in law have cropped up in the Main Examinations conducted by the JPSC.

6. The applicant of I.A. No. 2414 of 2019, Hari Oraon, who is also declared successful in the subsequent results, has also filed his intervention application, praying to intervene in the matter. His prayer, however, is different. This applicant has appeared in the Main Examinations, conducted by the JPSC, and his grievance is that the Main Examinations were not conducted as per the syllabus, particularly in Kurukh Language, which is a Tribal Language in the State of Jharkhand. According to this candidate, the entire process conducted was grossly arbitrary and illegal, and hence requires intervention by this Court. It is thus, apparent that this grievance gives a separate cause of action, which cannot be considered in the present appeal. Hence, I.A. No. 2414 of 2019 is dismissed at this stage itself.

7. This Letters Patent Appeal arises out of the impugned Judgment dated 18.5.2018, passed by the Hon'ble Single Judge, in W.P.(S) No. 1452 of 2018, dismissing the writ application filed by the present appellants, with the prayer for quashing the Resolution of the State Government, in its Department of Personnel, Administrative Reforms and Rajbhasha, as contained in memo No. 1153 dated 12.2.2018, whereby, it was decided that the candidates, who had

secured minimum cut-off marks in their respective category, shall be considered selected in the Preliminary Examination of the Combined Civil Services Competitive Examination, 2016. It was also made clear that this relaxation had been made only with respect to the Combined Civil Services Competitive Examination, 2016.

Pursuant to the said Resolution, the 2nd revised results were published on 06.08.2018, declaring 34,634 candidates successful for appearing in the Main Examinations.

8. Sans unnecessary details, the necessary facts of the case are that the Advertisement No. 23 / 2016 was published by the respondent JPSC, for conducting the Combined Civil Services Competitive Examination, 2016, for filling up in all 326 posts in different civil services under the State of Jharkhand, with the rider that the number of posts could be increased or decreased. In the said advertisement, it was mentioned that the selection shall be made, pursuant to the Preliminary Examination, followed by the Main Examinations and the Interview. The cut-off marks for Preliminary and Main Examinations were also mentioned in the advertisement, which are as follows:-

Unreserved candidates :- 40%

B.C.-I candidates :- 34%

B.C.-II candidates :- 36.5%

Candidates belonging to S.C./S.T. and Female category :- 32%

It was further stated in the advertisement that on the basis of the Preliminary Examination, the number of candidates to be selected for Main Examinations shall be approximately 15 times to the vacancies in different categories. This condition was prescribed by the State Government in its Resolution contained in memo No.3143 dated 13.04.2016, which appears to have been taken in view of the decision of the Hon'ble Apex Court in *Chattar Singh and Ors. Vs. State of Rajasthan and Ors.*, reported in (1996) 11 SCC 742.

9. On the basis of said advertisement, the Preliminary Examination was conducted on 18.12.2016, and the results were published on 23.02.2017, declaring 5,138 candidates to be successful. A writ application was filed in this Court, being W.P.(S) No. 1864 of 2017, [*Deb Kumar Vs. State of Jharkhand & Ors.*], in which, the grievance of the petitioner, who was a reserved category candidate, was that he had obtained 232 marks in the said examination, whereas the candidates, having lesser marks than him were declared successful in unreserved category. The writ petitioner had given several instances of the candidates in unreserved category, securing much less marks than him, who were declared successful in the Preliminary Examination.

10. The matter was also brought to the cognizance of the State Government, and the opinion of the learned Advocate General was obtained. The learned Advocate

General, taking cue from an interim order of the Hon'ble Apex Court in the matter of Hanuman Jat & Anr. Vs. State of Rajasthan & Ors., in Civil Appeal Nos. 6084-6093 of 2016, opined that the candidates belonging to reserved categories, who had obtained more marks than the cut-off marks, prescribed for General candidates, may also be given the chance to participate in the Main Examinations. Accordingly, the State Government, in its Department of Personnel, Administrative Reforms and Rajbhasha, came out with the Resolution, as contained in memo No. 5562 dated 19.4.2017, resolving that such candidates of reserved category, who had secured equal to, or more marks than the last selected candidate in unreserved category, shall be considered to have cleared the Preliminary Examination for appearing in the Main Examinations. Accordingly, the condition that the number of candidates selected for Main Examinations would be 15 times of the vacancies, was relaxed to that extent. In view of the aforesaid resolution of the State Government, this Court disposed of W.P.(S) No. 1864 of 2017 [Deb Kumar Versus State of Jharkhand & Ors.] by order dated 25.7.2017, holding that the grievances of the petitioner had already been redressed, and directing the respondent JPSC to take steps for publication of the amended results in terms of the aforesaid resolution.

11. Pursuant thereto, the revised results were published by the JPSC on 11.08.2017, wherein 6,103 candidates were declared successful by the JPSC.

12. Thereafter, the impugned Resolution as contained in memo No. 1153 dated 12.2.2018, was issued by the State Government, in its Department of Personnel, Administrative Reforms and Rajbhasha, which resulted in the publication of second revised results of Preliminary Examination, on 6.8.2018, wherein 34,634 candidates were declared successful. Aggrieved thereby, the appellants herein challenged the said resolution and the subsequent publication of the results, in this Court in W.P.(S) No. 1452 of 2018, which has been dismissed by the Writ Court, by the impugned Judgment dated 18.5.2018. Aggrieved thereby, the present Letters Patent Appeal has been filed by the appellants.

13. It may be stated that during the pendency of the present Letters Patent Appeal, the Main Examinations have already been held and the results are awaited.

14. The impugned Judgment dated 18.5.2018 passed by the Writ Court, shows that the Writ Court had declined to interfere in the matter, holding that the State had acted in terms of the order dated 25.07.2017, passed by the Court in Deb Kumar Vs. State of Jharkhand & Ors., as also in conformity with the decisions of the Hon'ble Apex Court in Chattar Singh's case (supra), and A.P. Public Service Commission Vs. Balaji Badhavath & Ors., reported in (1996) 11 SCC 742. Holding that since the impugned resolution of the State Government was also to benefit the large population of Tribals and Scheduled Castes in the newly carved out State of Jharkhand, who have to be uplifted by framing out policies and also keeping into account the Constitutional mandates, under Article 335 of the Constitution of India, which should ordinarily not be allowed to be questioned,

the writ application was dismissed. The Writ Court has also relied upon the decisions of the Hon'ble Apex Court in *Dr. Krushna Chandra Sahu & Ors. Vs. State of Orissa and Ors.*, reported in (1995) 6 SCC 1, and in *Pitta Naveen Kumar and Ors. Vs. Raja Narasaiah Zangiti and Ors.*, reported in (2006) 10 SCC 261, while dismissing the writ application.

15. Learned counsels appearing for the appellants and the intervener petitioners in I.A. Nos. 766 of 2019 and 2378 of 2019, have submitted that the impugned resolution dated 12.2.2018, and the consequent publication of the second revised results on 6.8.2018, wherein 34,634 candidates, were declared successful in the Preliminary Examination, cannot be sustained in the eyes of law, inasmuch as, by the said resolution, the condition given in the advertisement that the candidates up to 15 times of the vacancies shall be called for the Main Examinations, has been given a complete go-by. It is submitted by learned counsels that this clearly amounts to changing the rules in the midway of the game, which is not permissible in the eyes of law, and is against the settled principles of law. Learned counsels have submitted that once the selection process was initiated on the basis of terms and conditions, given in the advertisement, the selection process had to be completed in the same terms and conditions, which cannot be changed to the disadvantage of the candidates, declared successful in the original result and the first revised result, published on 11.8.2017, in which, 6,103 candidates were declared successful, accommodating all those candidates of the reserved category, who had secured equal or more marks than the last selected candidate in the unreserved category, but they were not declared successful in the original result. It is submitted by learned counsels that the appellants have no grievance, thus far, as the action of the State Government was very fair, but by the impugned resolution dated 12.02.2018, the condition that the number of candidates to be selected for Main Examinations shall be approximately 15 times to the vacancies in different categories, has been given a complete go-by, and all the candidates, securing the cut-off marks in all the categories, have been declared successful, swelling the number of candidates from 6,103 to 34,634, which could not be done. It is alleged by the appellants that this has been done by the State Government in mala fide exercise of power, only in order to accommodate the persons of their choice, who could not fall within 15 times criteria. Learned counsels have also pointed out that in Paragraph 2 of the impugned resolution, it is clearly stated that the grievances were raised only by those candidates belonging to the reserved category, who were not declared successful, in spite of securing equal or more marks than the candidates in unreserved category, and this grievance was fully met by issuing the first revised results on 11.8.2017. As such, there was no justification for issuing the impugned resolution dated 12.2.2018, which has no nexus with the objective said to be achieved. Learned counsels, accordingly, submitted that this clearly gives the impression that the impugned resolution has been issued only to accommodate and favour some candidates of the people in power, in arbitrary exercise of the power, which also clearly smacks of mala fides.

16. Learned counsels for the intervener petitioners in the aforesaid interlocutory applications, have also pointed out that the resolution has been issued by the State Government in complete violation of Article 230(3) of the Constitution of India, which cannot be sustained in the eyes of law, and the impugned resolution smacks of mala fide and arbitrary action, which is clearly violative of Articles 14 and 16 of the Constitution of India, due to change of the 'rules of the game' in the midst of the selection process. In support of their contention, learned counsels have placed reliance upon the decision of the Hon'ble Apex Court in E.P. Royappa Vs. State of T.N. & Anr., reported in (1974) 4 SCC 3, wherein the law has been laid down as under :-

"85. -----. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16." (Emphasis

supplied).

17. Learned counsels for the intervener petitioners have also submitted that the impugned action of the State Government is also hit by the doctrine of legitimate expectation, inasmuch as, the successful candidates were reasonably expecting that they shall have to face the competition amongst the limited number of candidates only, i.e., approximately 15 times the vacancy, but by the impugned action of the State Government, the number of candidates have been increased many fold, giving a complete go-by to the 15 times the vacancy rule. In support of their contention, learned counsels have placed reliance upon the decision of the Hon'ble Apex Court in *National Buildings Construction Corporation Vs. S. Raghunathan and Ors.*, reported in (1978) 7 SCC 66. Learned counsels have also placed reliance upon the decision of the Hon'ble Apex Court in *Chairman, All India Railway Rec. Board and Anr. Vs. K. Shyam Kumar and Ors.*, reported in (2010) 6 SCC 614, wherein the Hon'ble Apex Court has noted about *Wednesbury* unreasonableness, and has laid down the law as follows :-

"36. *Wednesbury* applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to "assess the balance or equation" struck by the decision-maker. -----.

37. Proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere."

(Emphasis supplied).

Placing reliance on these decisions, learned counsels have submitted that a clear case of interference by this Court is made out, due to the impugned action of the State Government, as the grievances of the candidates belonging to the reserved category, who were not declared successful, in spite of securing equal or more marks than the candidates in unreserved category, had been fully met by publishing the first revised results on 11.8.2017, and there was no requirement to issue any further direction, giving a complete go-by to the rule that candidates to be selected for Mains Examinations shall be approximately 15 times to the

vacancies in different categories, in garb of meeting the grievances of those unsuccessful candidates belonging to the reserved category.

18. Learned Advocate General, appearing for the respondent State as also learned counsel appearing for the respondent intervener petitioner in I.A. No. 869 of 2019, have opposed the prayer, and have submitted that the impugned resolution has been taken by the State Government in the larger interest of the candidates belonging to Scheduled Castes and Scheduled Tribes category in the State of Jharkhand, and this is in conformity with the directions passed by this Court. It is submitted by learned Advocate General that so far as the condition of confining the number of candidates approximately to 15 times of the notified vacancy, this condition had already been given a complete go-by, in the earlier resolution of the State Government, as contained in memo No. 5562 dated 19.4.2017, whereby, the revised results were published on 11.8.2017, declaring 6,103 candidates successful. It is submitted by learned Advocate General that the justification of this resolution also got the support from this Court in Deb Kumar's case, and only after the approval by this Court, the first revised results were published. Learned Advocate General submits that since the decision in Deb Kumar's case has not been challenged by the appellants and the said decision has attained its finality, it is no more open to the appellants to challenge the impugned Judgment of the Writ Court, passed in W.P.(S) No. 1452 of 2018, which has only followed the aforesaid decision in Deb Kumar's case. Learned Advocate General has further submitted that issuance of the impugned resolution dated 12.2.2018 and the second revised results, declaring 34,634 candidates successful for Main Examinations, have not resulted in any disadvantage to the candidates declared successful in the original and first revised results, as by the impugned action of the State Government, only the scope of competition has been increased, and this is also advantageous for the State Government, inasmuch as, the chances of getting better candidates for the posts advertised, have increased. Learned Advocate General submitted that simply because the scope of competition has been increased, the appellants are not entitled to challenge the said resolution on the ground that the rules of the game have been changed midway. It is also submitted by learned Advocate General that the issuance of resolution was necessary, in view of the unforeseen situation, in which, the candidates belonging to the reserved category were put under the disadvantageous position, as even though they had secured equal or more marks to the last candidate selected in the unreserved category, but they could not be declared successful, and in order to correct the said discrepancy, it was necessary to declare all the candidates successful, who had secured minimum cut-off marks, prescribed by the State Government in their respective categories. In support of his contention, learned Advocate General has placed reliance upon the decision of the Hon'ble Apex Court in Pitta Naveen Kumar's case (supra), wherein the law has been laid down as follows :-

"32. The legal position obtaining in this behalf is not in dispute. A candidate does not have any legal right to be appointed. He in terms of Article 16 of the

Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise. By reason of the amended notifications, no change in the qualification has been directed to be made. Only the area of consideration has been increased. Those who were not eligible due to age bar in 2003 became eligible if they were within the prescribed age-limit as on 1-7-1999. By reason thereof only the field of choice was enlarged. We would briefly consider the purport and effect thereof.

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

19. It is further pointed out by the learned Advocate General that the law that 'rules of the game' cannot be changed midway of the selection process is no more a good law, and this question has been referred by the Hon'ble Apex Court to the Larger Bench in *Tej Prakash Pathak and Ors. Vs. Rajasthan High Court and Ors.*, reported in (2013) 4 SCC 540, followed by *Sivnandan C.T. and Ors. Vs. High Court of Kerala and Ors.*, reported in (2018) 1 SCC 239. It is also submitted that no final decision has been taken by the Larger Bench in this respect as yet.

20. Learned counsel for the respondent JPSC has submitted that the role of JPSC is limited to the tune of conducting the examinations and publication of the results thereof. It is also submitted by learned counsel for the JPSC that the impugned resolution dated 12.02.2018 is the policy decision of the State Government, in which the JPSC has no role to play, which only followed the directions of the State Government by publishing the second revised results. It is also submitted that JPSC has no role in framing the guiding principles, to be followed in the examinations, which are framed by the State Government. Learned counsel has submitted that the JPSC is bound by the directions of the State Government and the directions of the Court, which have been followed by it.

21. Having heard learned counsels for the parties and upon going through the record, it is apparent that the appellants are challenging the impugned Resolution of the State Government, as contained in memo No. 1153 dated

12.2.2018. In order to appreciate the legality or otherwise of the said resolution, it would be appropriate to reproduce the resolution, which reads as follows :-

झारखण्ड सरकार

कार्मिक, प्रशासनिक सुधार तथा राजभाषा विभाग।

संकल्प

विषय - झारखण्ड लोक सेवा आयोग द्वारा प्रकाशित संयुक्त असैनिक सेवा प्रतियोगिता परीक्षा (प्रारंभिक), 2016 के परीक्षाफल में आवश्यक संशोधन के संबंध में।

झारखण्ड लोक सेवा आयोग द्वारा संयुक्त असैनिक सेवा प्रतियोगिता परीक्षा (प्रारंभिक), 2016 का परीक्षाफल दिनांक -23.02.2017 को प्रकाशित किया गया था। परीक्षाफल के प्रकाशनापे रान्त विभागीय संकल्प संख्या-5562 दिनांक -19.04.2017 के द्वारा उक्त परीक्षाफल में संशोधन करने संबंधी लिये गये निर्णय के आलाके में दिनांक-11.08.2017 को झारखण्ड लोक सेवा आयोग द्वारा संशोधित परीक्षाफल का प्रकाशन किया गया।

2. संशोधन परीक्षाफल के संदर्भ में कतिपय आरक्षित श्रेणी के अभ्याथियों द्वारा यह सूचित किया गया है कि उन्हें समान्य अनारक्षित श्रेणी के समकक्ष या उससे अधिक अंक प्राप्त करने के बावजूद उन्हें सामान्य श्रेणी में नहीं रखा गया है। उनके द्वारा प्रारंभिक परीक्षा में आरक्षण का लाभ प्रदान करते हुए नये सिरे से संशोधन परीक्षाफल प्रकाशित करने का अनुराधे किया गया है। इस संबंध में झारखण्ड विधान सभा के माननीय सदस्यों द्वारा भी सरकार का ध्यान आकृष्ट कराया गया है। साथ ही प्रारंभिक परीक्षा के परीक्षाफल में आरक्षण के प्रावधान लागू करने हेतु माननीय झारखण्ड उच्च न्यायालय में कतिपय याचिकाएँ भी दायर की गयी है, जो सम्प्रति माननीय न्यायालय के विचाराधीन हैं।

3. उल्लेखनीय है कि कार्मिक, प्रशासनिक सुधार तथा राजभाषा विभाग के अधिसूचना संख्या-6525 दिनांक-30.11.2002 के द्वारा अधिसूचित परीक्षा प्रक्रिया (Plan of Examination) के आलोक में झारखण्ड लोक सेवा आयोग के पत्रांक-2312 दिनांक -19.06.2014 के द्वारा यह स्पष्ट किया गया है कि प्रारंभिक परीक्षा मात्र एक Screening परीक्षा है तथा इस परीक्षा में प्राप्त अंकों को उम्मीदवारों के मेधासूची निर्धारण करने में गणना नहीं की जाती है। साथ ही आयागे द्वारा बताया गया है कि माननीय उच्चतम न्यायालय द्वारा AP Public Service Commission Vs Baloji Badhavath & Ors. (SLP Civil No. 18308 / 2009) एवं Chhatar Singh Vs State of Rajasthan (Civil Appeal No. 13118 / 1996) में पारित आदेश के आलोक में कुल रिक्तियों के 13 गुणा (सम्प्रति 15 गुणा) अभ्यर्थियों का चयन मुख्य परीक्षा के लिए किया जाता है। साथ ही आयागे के द्वारा उक्त पत्र में यह भी स्पष्ट किया गया है कि आयोग द्वारा आयोजित परीक्षाओं के प्रारंभिक परीक्षाओं में आरक्षण का लाभ देय नहीं है। माननीय झारखण्ड उच्च न्यायालय के द्वारा भी याचिका संख्या-एल0पी0ए0 न0 647 / 2015 लक्ष्मण टोप्पो व अन्य बनाम झारखण्ड राज्य एवं अन्य में दिनांक -23.09.2015 को पारित न्यायादेश में प्रारंभिक परीक्षा में आरक्षण का लाभ नहीं दिये जाने को सम्यक् बताया गया है क्योंकि प्रारंभिक परीक्षा के परीक्षाफल के आधार पर मेधासूची का निर्धारण नहीं किया जाता है।

4. संयुक्त असैनिक सेवा प्रतियोगिता परीक्षा, 2016 की प्रारंभिक परीक्षा के संबंध में विभिन्न स्रोतों से प्राप्त आवेदन एवं निर्वाचित प्रतिनिधियों से प्राप्त अनुरोध को दृष्टिपथ में रखते हुए कार्मिक विभागीय पत्र संख्या-731 दिनांक -24.01.2018 के द्वारा दिनांक-29.01.2018 से प्रारंभ होनेवाली मुख्य परीक्षा को अगले आदेश तक स्थगित रखने का झारखण्ड लोक सेवा आयोग से किये गये अनुरोध के आलोक में आयोग के द्वारा दिनांक -29.01.2018 से प्रारंभ होनेवाली मुख्य परीक्षा को अगले आदेश तक के लिए स्थगित रखा गया है।

5. झारखण्ड लोक सेवा आयोग द्वारा आयोजित परीक्षाओं के संचालन और अनुशंसा के प्रयोजनार्थ विभागीय संकल्प संख्या-13026 दिनांक-27.11.2012 द्वारा विभिन्न परीक्षाओं के लिए को ट्वार न्यूनतम अर्हतांक निम्न प्रकार निर्धारित है :-

समान्य वर्ग

40 प्रतिशत

पिछड़ा वर्ग

36.5 प्रतिशत

पिछड़ा वर्ग एनेक्चर-1

34 प्रतिशत

अनुसूचित जाति/ जनजाति एवं महिला वर्ग

32 प्रतिशत

6. वर्णित परिपेक्ष्य में सरकार द्वारा सम्यक् विचार करते हुए एवं विद्वान महाधिवक्ता, झारखण्ड का मन्तव्य प्राप्त कर झारखण्ड लोक सेवा आयोग द्वारा आयोजित संयुक्त असैनिक सेवा प्रतियोगिता परीक्षा (प्रारंभिक), 2016 के परीक्षाफल में तथाकथित विसंगतियों के निराकरण हेतु निम्न प्रकार निर्णय लिया गया है-

i) झारखण्ड लोक सेवा आयोग द्वारा आयोजित संयुक्त असैनिक सेवा प्रतियोगिता परीक्षा (प्रारंभिक), 2016 में सम्मिलित वैसे अभ्यर्थी, जिनके द्वारा संकल्प संख्या-13026 दिनांक- 27.11.2012 के अनुसार अपनी श्रेणी में निर्धारित न्यूनतम अर्हतांक से अन्यून अंक प्राप्त किया गया है, को संयुक्त असैनिक सेवा प्रतियोगिता परीक्षा, 2016 की मुख्य परीक्षा के लिए चयनित ;ैमसमबजमकद्ध समझा जायेगा।

ii) उपर्युक्त व्यवस्था मात्र झारखण्ड लाके सेवा आयोग द्वारा आयोजत संयुक्त असैनिक सेवा प्रतियोगिता परीक्षा, 2016 के लिये प्रभावी हागे।

इस सम्बन्ध में पूर्व से निर्गत सभी संकल्पों/अधिसूचनाओं/आदेशों को इस हद तक संशोधन समझा जायगो।

यह आदेश तत्कालीक प्रभाव से लागू माना जायेगा।

22. A perusal of the said resolution, clearly shows that there were only two grounds for changing the 'rules of the game', midway the selection process, whereby the condition that the number of candidates to be selected for Mains Examinations shall be approximately 15 times to the vacancies in different categories, was given a complete go-by, and publishing the second revised results:-

(a) the first ground was that the State Government was informed by several unsuccessful candidates, belonging to reserved categories, that though they had secured equal or more marks than the candidates in the unreserved category, they were not declared successful, treating them to be general category candidates, and

(b) the second ground was that several Members of the State Legislature had also drawn the attention of the State Government towards this discrepancy, and taking into consideration the representations of those unsuccessful candidates and the requests of the Members of the State Legislature, the impugned resolution was taken by the State Government to declare all the candidates,

securing minimum cut-off marks in all the categories to be successful for appearing in the Main Examinations. It was also made clear by the State Government that this resolution has been taken only with respect to the Combined Civil Services Competitive Examination, 2016. Thus, it is clear that this decision of the State Government has been taken only with respect to the present examinations, and this resolution shall not be followed in other successive examinations, to be conducted by the State Government through JPSC. In other words, for this examination only, the condition, prescribed in the advertisement that the number of candidates to be selected for Main Examinations shall be approximately 15 times to the vacancies in different categories, has been done away with, but this condition shall not continue to be applied to the other such examinations, to be followed in future.

23. So far as the first ground for taking this resolution, i.e., the representation of the unsuccessful candidates in the reserved categories, is concerned, their grievances are fully met by the earlier resolution issued by the State Government, as contained in memo No. 5562 dated 19.4.2017, after obtaining the opinion of the learned Advocate General, pursuant to which, the first revised results were published on 11.8.2017, wherein 6,103 candidates were declared successful. Admittedly, all the candidates in the reserved categories, securing equal or more marks than the marks secured by the last selected candidate in the unreserved category have been declared successful in the aforesaid results, and as such, this ground cannot be an excuse for issuing the impugned resolution, as contained in memo No. 1153 dated 12.2.2018.

24. The only other ground that remains for issuance of this resolution is the requests made by the political leaders, and this gives support to the apprehension of the appellants, that the impugned resolution might have been issued only in order to accommodate and favour some persons of their choice. It is a well settled principle of law that the action of the State Government should not only be fair, but it should also appear to be fair, and it should not give any reasonable apprehension of any unfair play.

25. As such, the submission of learned Advocate General that the instant policy decision has been taken only in order to benefit the candidates, belonging to Scheduled Castes and Scheduled Tribes in the State of Jharkhand is not at all convincing, as their grievances had already been met by the earlier resolution dated 19.04.2017, which was based on his own opinion. Even otherwise, the policy decision had already been taken by the State Government, also keeping in view the population of the candidates belonging to the reserved categories in this State, that for selection to the Civil Services in the State of Jharkhand, the examinations shall be taken in three parts, i.e., the Preliminary Examination, followed by Main Examinations and the Interview. It was only in order to screen the candidates, the Preliminary Examination was prescribed so that unnecessarily large number of candidates may not be allowed to appear in the Main Examinations, and for screening out the undeserving candidates, it was

prescribed that the number of candidates to be selected for Main Examinations shall be approximately 15 times to the vacancies in different categories. This was an important decision of the State Government, which was taken, in its resolution contained in memo No.3143 dated 13.04.2016, pursuant to the decision of the Apex Court in Chattar Singh's case (supra), wherein, such policy was upheld by the Supreme Court in the following terms:-

"16. In working out this procedure, if the minimum of 15 times of the candidates are identified and results declared, it would not be necessary to pick up more General/Reserved candidates. It would not be necessary to declare the result of more than 15 times the total notified vacancies/posts so as to enable them to compete in the Main Examination. The object of screening test is to eliminate unduly long number of persons to appear for Main Examination. If more candidates are called by declaring their result in Preliminary Examination, the object of Rule 13 would be frustrated."

26. It is, thus, apparent that by the impugned decision of the State Government to do away with the condition of restricting the number of candidates for Main Examinations to 15 times of the notified vacancies, clearly frustrates the very object of holding the Preliminary Examination for screening the candidates. Though at one hand it is said that the decision has been taken in the larger interest of the candidates belonging to reserved categories in the State, but at the same time, this policy decision has been confined only to the Combined Civil Services Competitive Examination, 2016, making it clear that this shall not be followed in the subsequent examinations. This clearly puts a big question mark to the fair intention of the State Government in taking this resolution, as, if according to the State Government, it is in the larger interest of the candidates to do away with the condition of restricting the number of candidates for Main Examinations to 15 times of the notified vacancies, the State ought to have taken such decision for all the subsequent examinations as well. In that view of the matter, even if, the action of the State Government may be fair and unbiased, but it leaves a reasonable scope for apprehension of mala fide exercise of power in order to accommodate some favourable candidates, at the behest of political leaders, thereby rendering the action of the State Government violative of Articles 14 and 16 of the Constitution of India, as held by the Hon'ble Apex Court in E.P. Royappa's case (supra).

27. This apart, the submission of the learned counsel for the JPSC that the JPSC has no role to play in the impugned decision of the State Government, and it has only its limited role of taking examinations and publishing the results, as per the guidelines given by the State Government, is not at all acceptable to this Court. Admittedly, the JPSC is a Constitutional body and its functions are guided by Article 320 of the Constitution of India. Article 320 (1) and (3)(a) clearly lay down as follows:-

"320. Functions of Public Service Commissions.- (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for

appointments to the services of the Union and the services of the State respectively.

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(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted-

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

*** **."

28. This Article clearly gives a Constitutional mandate that in all matters, relating to the methods of recruitment to the civil services and for civil posts, the State Public Service Commission shall be consulted. Admittedly, this has not been done in the present case. This is a mandatory Constitutional requirement, as has been held by the Hon'ble Apex Court in State of Bihar Vs. Upendra Narayan Singh and Ors., reported in (2009) 5 SCC 65, wherein the law has been laid down as follows :-

"40. The provisions contained in Chapter II of Part XIV relate to Public Service Commissions. Article 315 mandates that there shall be a Public Service Commission for the Union and a Public Service Commission for each State. Article 320(1) casts a duty on the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the State respectively.

41. Clause (3) of Article 320 makes consultation with the Union Public Service Commission or the State Public Service Commission, as the case may be, mandatory on all matters relating to methods of recruitment to civil services and for civil posts, on the principles to be followed in making appointments to civil services ----- . This clause also casts a duty on the Public Service Commissions to advise on any matter referred to them by the President or the Governor.

42. However, the hope and expectation of the framers of the Constitution that after independence every citizen will get equal opportunity in the matter of employment or appointment to any office under the State and members of civil services would remain committed to the Constitution and honestly serve the people of this country have been belied by what has actually happened in last four decades. The Public Service Commissions which have been given the status of constitutional authorities and which are supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoils system."

(Emphasis supplied).

29. Spoils system, as referred to in the above decision, by the Hon'ble Supreme Court of India, relates to the undue interference in the matter of appointments to

the public posts, which has been deprecated in no uncertain terms, equating it with the spoil systems, which prevailed in America in the 17th and 18th centuries. [See paragraphs 32 to 38 in the aforesaid decision].

30. Even in Pitta Naveen Kumar's case (supra), The Apex Court has held that lowering the cut-off marks, is not permissible, as is apparent from the following paragraphs :-

"12. The State of Andhra Pradesh, however, issued a Government Order bearing GOMs No. 200 dated 30-4-2005 purported to be in terms of the directions of the Andhra Pradesh Administrative Tribunal, the relevant portion whereof reads as under:

"In the circumstances, after careful consideration the Government directed the Andhra Pradesh Public Service Commission to reduce the qualifying marks from 66 to 61 to allow more candidates for the main examination for recruitment to Group 1 services with reference to Notification No. 21/2003 and Supplemental Notification No. 6/2004 in relaxation of the orders issued in the G.O. first read above."

*** **

56. The standard was fixed as 1:50. The Commission came to the conclusion, having regard to the results published on written examination, that 66% should be the cut-off mark. It need not have been 66%. If the candidature of more candidates was to be taken into consideration, the same would mean that the State shall give a go-by to the principle of selection fixed by it viz. 1:50. If the submission of the Commission and consequently the State is to be accepted that the ratio should be 1:50, the same could not have been reduced to 10:90. A violation of that rule would, in our opinion, be arbitrary.

57. In total 558 vacancies were notified. Thus, only 27,900 candidates could have been called for main written examination on the basis of the norms fixed by the State itself. However, the actual number of candidates who passed the examination are said to have been 50,726. Although, actually it is stated that 32,056 candidates appeared. Thus, indisputably, a large number of candidates who had been allowed to appear at the examination were evidently permitted to do so in violation of norm of 1:50, as was specified by the State. The aforementioned rule could not have been relaxed. It did not have any rational basis. 66% cut-off mark was not fixed by the Commission. It was arrived at by the Commission in view of the marks secured by the respective candidates on applying the ratio of 1:50. Once a person falls beyond the said ratio, he was not qualified. He was not to be considered any further. The State and the Commission had themselves fixed three different stages of selection process which were required to be adhered to.

60. For the foregoing reasons, we are of the opinion that while GOMs Nos. 164 and 133 are not invalid, GOMs No. 200 is. The Commission was, thus, statutorily

enjoined to interview only such candidates who had passed the written examination in 1:50 ratio. Only upon shortlisting the said candidates, the interview can be held at the ratio of 1:2." (Emphasis supplied).

31. Again in *P. Mohanan Pillai Vs. State of Kerala and Ors.*, reported in (2007) 9 SCC 497, wherein where, after holding the written examination and declaring the results, the cut-off marks was further reduced, whereby 11 more persons were permitted to appear at the interview, the law has been laid down by the Hon'ble Apex Court as follows :-

"9. Why such a decision had been taken after the publication of the result of the written examination and after calling 36 candidates for interview is not known. Why the Company intended to enlarge the zone of consideration from 1:3 to 1:4 has also not been disclosed. Why the cut-off mark was also lowered remained a mystery.

10. It may be that in a given situation, a decision of the State may be changed, but therefor good and sufficient reasons must be assigned. The Company failed to do so. The decision taken in this behalf smacks of arbitrariness. It prejudiced the candidates like the appellant.

11. It is now well settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as were prevailing on the date of vacancy should ordinarily be followed." (Emphasis supplied).

32. Though, it is pointed out by the learned Advocate General that in *Tej Prakash Pathak's case* (supra), followed by *Sivanandan C.T.'s case* (supra), the question whether the 'rules of the game' can be changed in the midst of the selection process, has been referred to the Larger Bench, this Court is not in a position to accept the submission of learned Advocate General that this law is no more in force. Unless the law is settled otherwise by the Larger Bench, the law that the 'rules of the game' cannot be changed in the midst of the selection process, is still in force under Article 141 of the Constitution of India, and it requires to be followed by all the statutory and Constitutional bodies, including the Courts. In that view of the matter, it cannot be said that since the question has been referred to the Larger Bench, the State authorities shall be free to change the 'rules of the game' in the midst of the selection process, as per their choice. It cannot be done, until and unless settled proposition of law is overruled by the Larger Bench, which, admittedly, has not yet been done.

33. In view of the aforementioned discussion, we are of the considered view that the law, laid down by the Hon'ble Apex Court in *Pitta Naveen Kumar's case* (supra), followed by *P. Mohanan Pillai's case* (supra), and the other decisions of the Hon'ble Apex Court referred to in *Tej Prakash Pathak's case* (supra), still hold the field and it was not open to the State Government to give a complete go-by to the condition prescribed in the advertisement, that the number of candidates to be selected for Main Examinations shall be approximately 15 times to the

vacancies in different categories, by allowing all the candidates, securing the minimum cut-off marks in all the categories to appear in the Main Examinations. Indeed the first reason, assigned by the State Government in its resolution dated 12.2.2018, does not exist anymore, after its previous resolution, contained in memo No. 5562 dated 19.4.2017, after obtaining the opinion of the learned Advocate General, pursuant whereunto, all such reserved category candidates, who had secured equal or more marks than the last selected candidates in the unreserved category, were declared successful for participating in the Main Examinations. The second ground, i.e., the requests of the political leaders, indeed smacks of unreasonableness and arbitrariness, which vitiate the impugned resolution of the State Government, being violative of Articles-14 and 16 of the Constitution of India. This resolution is also in the teeth of Article 320(3)(a) of the Constitution of India, and the same cannot be sustained in the eyes of law. This is a clear case where the 'rules of the game' have been changed by the State Government in the midst of the selection process, without following the due process of law, and which the State could not have done without assigning good and sufficient reasons, but in the present case, it is not only that the reasons assigned by the State Government, are not good and sufficient reasons, rather, one of the reasons is now, non-existent.

34. So far as the earlier resolution of the State Government, as contained in memo No. 5562 dated 19.4.2017 is concerned, the same was approved by the High Court in *Deb Kumar Vs. State of Jharkhand & Ors.*, decided on 25.7.2017, which was followed by the JPSC, by publishing the revised results on 11.8.2017, declaring 6,103 candidates successful for appearing in the Main Examinations. There is no merit in the submission of the learned Advocate General that since the decision in *Deb Kumar's* case has not been challenged by the appellants and the said decision has attained its finality, it is no more open to the appellants to challenge the impugned Judgment of the Writ Court, passed in W.P.(S) No. 1452 of 2018, which has only followed the aforesaid decision in *Deb Kumar's* case.

35. For the foregoing reasons, the impugned Resolution as contained in memo No. 1153 dated 12.2.2018, issued by the State Government, in its department of Personnel, Administrative Reforms and Rajbhasha, as also the consequent revised results, published by the JPSC on 6.8.2018, declaring 34,634 candidates successful are, hereby, quashed.

36. Since the written examinations have already been held by the respondent JPSC, the respondent JPSC is directed to publish the results of the Main Examinations, confined to the candidates, declared successful in its first revised results published on 11.8.2017.

37. Consequently, the impugned Judgment dated 18.5.2018, passed by the Writ Court, in W.P.(S) No. 1452 of 2018, is hereby, set aside.

38. This Letters Patent Appeal is, accordingly, allowed in the aforesaid terms. The pending interlocutory applications also stand disposed of accordingly.

(H.C. Mishra, A.C.J.)

Deepak Roshan, J.:— I have gone through the Judgment authored by Brother Mr. H.C. Mishra, A.C.J. Though I am in full agreement with the Judgment, I would like to add a few words of my own.

It is true that the preliminary test serves only as a scrutiny test, in order to give the serious candidates a chance to qualify for the Mains Examination, coupled with the fact that the marks of the Preliminary Examination do not add to the Mains Examination or the Interview, but at the same time, it is also true that the impugned action of the State Government is hit by the doctrine of legitimate expectation, inasmuch as, the successful candidates were reasonably expecting that they shall have to face the competition amongst limited number of candidates only, i.e., approximately 15 times the vacancy, but due to the action of the State Government and publication of the revised results, published by the JPSC, on 6.8.2018, declaring 34,634 candidates successful, the number of candidates have been increased many fold. As such, the contention of the respondent-State that the revised result does not prejudice the successful candidates is totally misplaced.

In view of the reasons stated hereinabove, I fully agree with the Judgment authored by my Senior Brother and, accordingly, the Letters Patent Appeal is allowed, in the terms as directed hereinabove.