
(2019) 05 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 12117 Of 2016, 30, 9447, 9837, 9910, 10373, 11801, 13060 Of 2017, Civil Application No. 14216, 14231, 14233, 14235 Of 2017, Contempt Petition No. 663 Of 2017

Prakash And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161
Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 55B
Punjab Civil Services (Punishment And Appeal) Rules, 1970 — Rule 17(a)(iii)
Constitution Of India, 1950 — Article 14, 16, 136, 311, 311(2)

Citation : (2019) 05 BOM CK 0030

Hon'ble Judges : S. V. Gangapurwala, J;A. M. Dhavale, J

Bench : Division Bench

Advocate : P. M. Shah, Swapnil D. Tawshikar, Anil Singh, Bhushan Kulkarni, Swapnil D. Tawshikar, Shrihari Aney, Surendra Pardhy, Kuldeepsing K. Kamare, Shaikh Mazhar A. Jahagirdar, V. J. Dixit

Judgement

A.M. Dhavale, J

1. The petitioners in these eight petitions assail the order of Assistant Director Postal Services (Recruitment) dated 25.11.2016 whereby examination for the post of Postman/Mail Guard held on 29.03.2015 and examination for the post of Multi Tasking Staff (MTS) held on 03.05.2015 were cancelled. The petitioners also seek directions to respondent No.2- The Chief Post Master General to restore the selection list declared earlier as successful candidates.

2. Following facts are not in dispute. By the notification dated 24.01.2015, the Chief Postmaster General invited on-line applications for 1701 posts of Postman/Mail Guard and 733 posts of M.T.S. to fill up vacancies created in 2009 to 2014. Large number of applications were received. Details of the applications received, admit cards uploaded and the candidates appeared for examination are as follows:

Particulars

Postman/ Mail Guard

M.T.S.

Total Applications received :

575383

213552

Total admit cards uploaded :

463949

173064

Total No. of candidates appeared for examination :

373979

119212

3. Work of recruitment process was assigned to M/s Manipal Technology Ltd., on end to end basis. After scrutiny, the examination for the post of Postman/Mail guard was conducted on 29.03.2015 and for the post of M.T.S. on 03.05.2015. The outsourcing agency communicated the result to the respondents on 07.01.2016. Then there was manual random evaluation of 1% papers. The discrepancies noted were brought to the notice of outsourcing agency on 16.02.2016. Those were rectified on 03.03.2016. The final result was declared on 21.03.2016 and those sheets of the selected candidates were handed over to all the divisions for completing pre- appointment formalities. 1680 candidates for Postman, 21 candidates for post of Mail Guards and 733 for MTS were selected. Results were declared by the outsourcing agency and were published by the respondents on 21.03.2016. Pursuant thereto the appointment orders were issued to 395 candidates (the department says 356) and they had undergone medical examinations, character and antecedents verifications, and training programme and had received appointment orders and had joined their duties. Two petitioners in Writ Petition No. 9910 of 2017 are such appointed candidates.

4. The remaining petitioners appeared before the respondents for pre-appointment formalities. Letters of medical examination were also issued, character and antecedents verification was undertaken and the notices for verification of documents were issued on 21.11.2016.

5. During the pre-appointment formalities, Amravati Division reported on 29.04.2016 the irregularities in the selection of one Hardip Singh. He had given his permanent address at Satara, but he was not found there. When He was contacted on his given mobile No., he appeared and disclosed that he was from Simla village in Haryana. His photograph and signature did not tally with the

same on the application form. He admitted that it was not his photograph and his signature. The second permanent address was correct. The admit card issued to him was also not having his photograph.

6. This was followed with another complaint from Superintendent, Mumbai North Division, Kandivali dated 03.06.2016. Till that stage there was no suspicion about malpractices and irregularities. The Superintendent informed that out of 140 candidates appeared for further process, 40 had not appeared for Marathi or Kokani examination in Class 10th exam. Their mother tongue was different. Still, they had secured more than 80 % marks in Marathi or Kokani i.e. 20 and above out of 25. They had secured very less marks in their mother tongue in Hindi in 10th examination. The marks of unsuccessful candidates having mother tongue Marathi were less than these candidates. Similar irregularities and suspicious circumstances were found in respect of marks in Maths and English. Those who had secured poor marks in math in 10th std. exam scored excellent marks in the recruitment process in maths. For example, one candidate had secured only one mark in 10th Std. in maths and he got 100 % marks in the recruitment process in Maths. Similarly, another candidate, who had secured 12 marks in maths in 10th Std. Examination secured 100 marks in maths in recruitment process. In respect of English, the candidates, who got very less marks around 10 % in 10th std. examination had secured around 68 % marks in recruitment process. The list of such candidates was given. The comparative study of the marks in SSC and marks in recruitment process revealed that 7 candidates who had scored very low marks in 10th Std. examination had secured very high marks in recruitment process more than those scored by clever students (who had secured around 85% marks in SSC) in recruitment exams. In the light of these complaints, the Department has decided to stay the process and communicated not to issue appointment orders.

7. On the basis of the report showing the malpractices in the examinations, the impugned decision to cancel the examinations and hold fresh examinations and to terminate the appointed candidates was taken on 25.11.2016.

8. Two petitioners in Writ Petition No.9910 of 2017, who received appointment letters and were working on the posts have challenged the decision of cancelling their appointments with necessary modification in the prayers. Other successful candidates who were waiting for appointment orders, filed all other petitions.

9. After filing of the petitions, it was represented before this Court that the facts in these cases were identical to the facts in the case of Monu Tomar Vs. Union of India (Civil Appeal No.10513/2016 decided on 13.07.2017), wherein the Apex Court had directed that the persons suspected of having indulged in malpractices in the examination could be identified and after following the procedure, action can be taken against them. Entire recruitment process should not be quashed. In Manu Tomar's case, the Apex Court had directed to reinstate the candidates/appointees who were not suspected of malpractices and to pay 50% back wages to those who were actually appointed. Same course was adopted by this Court in

all these Writ Petitions by order dated 02.08.2017. The same was challenged by the Union by filing Review petition. Review was allowed by this Court on 04.05.2018 and the order dated 02.08.2017 was recalled.

10. The respondents had taken a stand that the petitioners have alternate remedy as they can approach before the Central Administrative Tribunal like several other candidates. This Court, on 1st November, 2018, in the light of above background, held that it would not be appropriate now to relegate the petitioners to avail the alternate remedy.

11. Shri. P. M. Shah, Shri. V. J. Dixit, Shri. V. D. Salunke and Shri. S. D. Tawshikar, the learned Counsels for the petitioners submitted that there were no complaints whatsoever against the petitioners before us regarding the malpractices. They also submitted that there were no complaints of any serious nature in the examination centres in Marathwada Region about irregularities or malpractices. It is also argued that no malpractice or irregularities were noticed at the time of holding the examinations. The examinations were held under CCTV and Video Recording. At each Centre, responsible officers of the Postal Department were supervising and monitoring the examinations. The vigilance report indicating irregularities and malpractices did not show that the entire process of recruitment was tampered. These are individual cases of candidates indulging in malpractices. Those candidates can be identified, segregated and the chaff can be separated from the grains. In the light of settled law in various Apex Court decisions, it was not proper to cancel the entire examination and direct re-examination. The petitioners belong to poor class. Most of them belong to socially backward castes. Some of them had incurred loans. Some of them had given up earlier service. Some of the petitioners were having excellent academic record having secured more than 80 % marks at the time of SSC or HSC examination. Their good marks in the examination cannot be doubted. Eleven petitioners in Contempt Petition who are petitioners in Writ Petition No. 9837 of 2017 are differently abled including vision impaired and hearing impaired. The learned Counsel for the petitioners argued that the tainted candidates may be appropriately dealt with. When the petitioners were not at fault, it was improper to cancel their appointments or selections. They also argued that the decision of the respondents to cancel the examination has disastrous consequences. Huge money spent for conducting examination belonging to the Public Exchequer is squandered. Many vacancies in Postal Department are causing lot of administrative inconvenience to both, the Departments as well as to the police . The cancellation of the entire examination was not justified on any count. They relied on number of Rulings, which will be considered in due course. The petitioners in Writ Petition No.9910/2017 were given appointment letters and have undergone training and had received appointments while others were waiting for appointment letters. They were not given any opportunity before cancellation of the examination held. The principles of natural justice were not followed. They have been punished for no fault on their part.

12. Per contra, Mr. Anil Singh, the learned Additional Solicitor General of India challenged the maintainability of the writ on the ground that,

(i) the selected candidates had no vested right and the appointed candidates being probationers are not entitled to the protection. They cannot invoke the writ jurisdiction.

(ii) Considering the magnitude of recruitment process, the work was given to Manipal Technology Ltd. by outsourcing on end to end basis. It was specifically agreed that the work was not to be delegated to outsider by the Agent without the permission of the Department, but still the Manipal Technology had delegated the work to Chanakya Software. It was specifically agreed that OMR numbers will be given to the candidates and the same set of questions would be differently arranged in 4 different set of question papers. The type of set of question papers A, B, C, D was to be shown on the answer sheet and the papers were to be examined through computer without manual intervention but it was not done in many cases thereby automatic evaluation process by software by recognizing OMR sheet was not possible. The answer sheets provided contained boxes for numbers of 8 digits whereas many students were given numbers of 9 digits. The candidates were required to add one box to the number for writings, the 9th digit of their number. Thus, this addition could not have been accepted by the Software and human intervention or manual evaluation is the most probable result, which was to be prevented. This manual intervention is a serious irregularity in the recruitment process. Mr. Anil Singh also relied on the complaint of Kandivali Post Office and the vigilance report dated 10.11.2016 and pointed out the various discrepancies noted by the Vigilance Team. He pointed out that many candidates who were not having mother tongue Marathi or who did not appear for Marathi or Konkani in SSC examination have secured suspiciously high marks in Marathi subject in the recruitment process. Similar is the case with the marks obtained by the candidates in English and maths and overall marks as compared to their performance and academic record at the 10th examination as detailed in the vigilance report. He also argued that the Vigilance Team noted that many candidates had given common mobile numbers, common E-mail address and common permanent addresses. This was surprising as their places of residence were at different stations and it became more suspicious as they have given identical answers both right or wrong to most of the questions. Similarity in such right or wrong answers was above 70% in most of the cases and even up to 100 % in some cases. He also argued that many successful candidates were residents of the States other than Maharashtra and in spite of poor academic record, some of them have secured excellent marks. Besides, there were discrepancies in the identification of handwriting and signature of the candidates when their handwriting and photograph at the time of pre-appointment formalities were compared with the admit card or the other documents. He pointed out that as many as 56 candidates from Haryana were selected for the post of Postman/MTS. Besides, the report shows that there was high percentage of successful candidates from particular localities. He

strenuously argued that it was not a case where individuals indulging in irregularities could be identified and separated and action could be taken against them. He argued that the percentage of tainted candidates is extremely high. Out of 2434 candidates selected, $1699+622=2321$ candidates are tainted.

Sr. No.

Allotted Division

Committee

Vigilance

Total

Sign Variation noticed by the Committee members at the time of preappointment formalities

Photo Variation noticed by the Committee Members at the time of preappointment formalities

Variation in Signature noticed by Vigilance Section i.e. Registration Signature with OMR Signature

OMR

Attendance Sheet Not Found

Selected Candidate found Absent on Attendance Sheet

Attendance Sheet found without signature of candidates mentioned on it and without signature of the Invigilator

Candidates belonging to Other State (i.e. Other than Maharashtra & Goa) as per permanent address uploaded at the time of Registration

Those who have not studied Marathi in Academic but have scored more than 15 marks (60% marks) out of 25 marks in Marathi exam conducted by the Department (based on candidates attended for preappointment formalities)

Common Mobile No. given at the time of Registration

Common Email given at the time of Registration

Sibling

Common Communication Address (Other than siblings)

Common permanent Address (Other than siblings)

Poor Academic Background (Less than 50% in SSC exam)

Passed Both Exam-102 candidates have passed both the examinations i.e. Postman as well as MTS which were held on two different dates

Passed Both Exam but have poor academic background-102 candidates have passed both the examinations i.e. Postman as well as MTS which were held on two different dates Passed Both Exam

Passed Both Exam

Passed Both Exam but have poor academic background

1

AHMEDNAGAR

0

0

1

4

0

1

1

0

2

0

3

3

3

1

0

19

2

AKOLA

1

0

1

10

0

0

0

0

1

0

0

0

2

2

0

17

3

AMRAVATI

5

1

1

15

1

1

3

1

11

0

2

3

6

1

0

51

4

AURANGABAD

0

0

2

18

2

1

0

1

4

1

1

1

4

4

0

39

5

BEED

0

0

0

7

2

2

1

0

1

0

0

0

4

1

1

19

6

BHUSAWAL

0

0

0

7

3

2

2

0

0

0

0

0

1

1

0

16

7

BULDHANA

1

0

1

12

0

0

0

1

0

0

0

3

3

0

21

8

CHANDRAPUR

0

4

0

4

1

0

1

4

1

1

1

3

5

2

27

9

DHULE

1

0

0

5

1

3

2

0

2

0

0

0

5

0

0

19

10

GOA

8

9

0

17

2

6

2

0

2

0

1

1

8

4

2

62

11

JALGAON

2

0

1

9

1

0

1

0

2

0

0

0

2

1

0

19

12

KOLHAPUR

1

2

1

6

2

0

0

0

0

1

1

0

0

0

14

13

MALEGAON

0

0

0

10

1

1

1

1

3

2

3

3

3

0

0

28

14

MUMBAI EAST

1

2

2

17

1

5

15

0

6

0

0

0

13

1

0

83

15

MUMBAI GPO

4

0

1

4

0

1

10

8

0

4

0

0

0

2

3

1

38

16

MUMBAI NORTH

26

21

0

31

1

15

8

1

10

1

3

4

5

4

2

132

17

MUMBAI NORTH EAST

6

15

3

40

3

9

8

2

9

1

3

3

6

9

3

120

18

MUMBAI NORTH WEST

56

29

4

64

8

45

34

10

38

4

14

14

25

10

1

356

19

MUMBAI SOUTH

4

2

1

17

2

2

1

0

3

0

1

1

6

2

1

43

20

MUMBAI WEST

6

2

0

25

3

5

5

0

3

0

0

0

4

3

0

56

21

NAGPUR CITY

0

0

1

5

0

2

1

1

5

2

2

3

7

0

0

29

22

NAGPUR MOFFISIL

0

0

0

3

2

0

0

3

1

3

3

1

1

0

17

23

NANDED

0

0

0

6

1

0

0

0

0

0

0

3

1

0

11

24

NASHIK

0

0

0

19

2

1

3

3

0

2

1

1

1

2

2

0

37

25

NAVI MUMBAI

6

1

1

24

6

9

5

1

4

2

2

2

6

6

1

76

26

OSMANABAD

0

0

1

10

0

0

0

0

0

0

0

0

3

0

14

27

PANDHARPUR

0

0

0

2

0

0

0

0

0

0

0

0

2

0

4

28

PARBHANI

0

0

1

5

2

0

1

1

1

1

1

0

1

0

14

29

PUNE CITY EAST

0

0

0

12

1

3

3

1

3

0

2

2

4

4

0

35

30

PUNE CITY WEST

1

0

1

19

0

0

0

2

1

1

1

4

9

2

41

413/1

PUNE MFL

0
0
0
6
0
3
2
0
0
0
0
0
1
1
0
13
32
PUNE MOFFUSIL
0
0
0
4
0
1
0
0
0
0
0
0
0

0

0

5

33

RAIGAD

1

0

0

8

0

1

1

1

0

0

0

0

2

0

0

14

34

RATNAGIRI

1

2

0

5

0

1

0

0

0

0

0

0

2

0

11

35

RMS BM DIVISION MIRAJ

0

0

0

0

0

0

0

1

0

0

0

0

0

0

1

36

RMS F DIVISION NAGPUR

0

0

0

0

1

0

0

0

1

1

1

0

0

0

4

37

RMS L DIVISION BHUSAVAL

0

0

0

0

0

0

0

1

0

0

0

0

0

0

1

38

SANGLI

1

1

0

3

0

1

1

1

2

1

1

1

2

1

0

16

39

SATARA

0

0

0

8

0

0

0

0

0

0

0

1

2

0

11

40

SINDHUDURG

0

0

1

4

0

0

0

0

0

0

0

1

2

1

9

41

SOLAPUR

0

0

1

12

1

0

0

0

0

0

0

1

1

0

16

42

SRIRAMPUR

0

0

0

5

1

0

0

0

0

0

0

1

0

0

7

43

THANE CENTRAL

14

3

2

27

3

2

1

0

3

2

3

3

4

4

1

72

44

THANE WEST

5

1

1

10

0

1

1

0

1

0

0

0

4

2

0

26

45

WARDHA

0

0

3

9

1

0

0

1

0

1

1

6

1

0

23

46

YEOTMAL

0

0

0

6

0

0

1

2

0

0

0

2

2

0

13

TOTAL

151

95

32

534

55

1

1

155

110

24

137

22

51

54

157

102

18

1699

Sr. No.

Allotted Division

Committee

Vigilance

Total

Sign Variation noticed by the Committee members at the time of

preappointment formalities

Photo Variation noticed by the Committee Members at the time of preappointment formalities

Variation in Signature noticed by Vigilance Section i.e. Registration Signature with OMR Signature

OMR

Attendance Sheet Not Found

Selected Candidate found Absent on Attendance Sheet

Attendance Sheet found without signature of candidates mentioned on it and without signature of the Invigilator

Candidates belonging to Other State (i.e. Other than Maharashtra & Goa) as per permanent address uploaded at the time of Registration

Those who have not studied Marathi in Academic but have scored more than 15 marks (60% marks) out of 25 marks in Marathi exam conducted by the Department (based on candidates attended for preappointment formalities

Common Mobile No. given at the time of Registration

Common Email given at the time of Registration

Sibling

Common Communication Address (Other than siblings)

Common permanent Address (Other than siblings)

Poor Academic Background (Less than 50% in SSC exam

102 candidates have passed both the examinations i.e. Postman as well as MTS which were held on two different dates

Passed Both Exam

Passed Both Exam but have poor academic background

1

AIRMAIL SORTING DIVISION

5

2

1

6

2

2

0

0

0

0

4

11

3

36

2

AKOLA

1

0

0

4

0

0

1

1

1

1

1

0

0

0

10

3

AMRAVATI

1

0

0

1

0

0

0

0

1

1

0

0

0

4

4

BULDHANA

0

0

0

2

0

0

0

2

1

2

2

0

1

0

10

5

CENTRAL SORTING DIVISION

0

0

0

0

0

0

1

2

2

4

4

0

8

1

22

6

CHANDRAPUR

0

1

0

6

0

0

0

0

0

0

3

0

0

10

7

DAP NAGPUR

0

0

0

0

1

0

1

0

1

1

2

2

0

2

0

10

8

DHULE

0

0

0

0

0

0

1

1

1

1

0

1

0

5

9

FOREIGN POST MUMBAI

6

3

1

0

1

1

1

2

3

3

3

6

7

0

37

10

GOA

0

0

0

7

0

0

0

0

0

0

0

1

0

8

11

JALGAON

0

0

0

0

0

0

0

1

1

1

1

0

0

0

4

12

KOLHAPUR

0

0

0

0

0

0

0

0

0

0

1

0

0

1

13

MMS MUMBAI

0

0

0

2

0

0

0

0

0

0

0

1

0

3

14

MMS NAGPUR

1
1
0
2
0
0
0
2
1
1
2
1
1
12
15
MUMBAI CO
0
0
1
3
1
1
0
0
0
0
0
0
1
0
7

16

MUMBAI EAST

0

0

0

2

0

0

2

1

1

2

2

1

0

0

11

17

MUMBAI GPO

2

0

0

0

4

2

2

6

1

1

14

6

1

39

18

MUMBAI NORTH

5

3

0

13

4

3

0

0

1

1

1

1

4

1

37

19

MUMBAI NORTH EAST

1

2

2

1

4

3

0

1

0

0

1

4

0

19

20

MUMBAI NORTH WEST

5

2

0

2

1

1

0

3

2

2

0

1

0

19

21

MUMBAI SORTING DIVISION

0

0

2

4

3

1

0

5

2

2

4

7

2

32

22

MUMBAI SOUTH

1

0

1

15

3

2

1

2

1

1

1

3

6

3

40

23

MUMBAI WEST

2

0

2

0

1

1

1

1

1

1

0

4

1

15

24

NAGPUR CITY

0

0

0

7

0

0

0

0

0

0

1

0

0

8

25

NAVI MUMBAI

0

0

0

0

0

0

0

1

1

1

1

0

1

0

5

26

PANDHARPUR

0

0

0

1

0

0

0

0

0

0

0

0

0

1

27

PARBHANI

0

0

0

1

0

0

0

0

0

0

0

0

0

1

28

PSD KOLHAPUR

0

3

1

1

0

0

0

1

1

1

2

2

1

13

29

PSD MUMBAI

0

0

0

1

0

0

1

1

1

1

0

0

0

5

30

PSD NASHIK

0

0

0

3

0

0

0

0

0

0

1

1

0

5

31

PSD NASIK

0

0

0

1

0

0

0

0

0

0

0

0

0

1

32

PUNE CITY EAST

0

0

0

0

0

0

2

1

2

2

2

0

0

0

9

33

PUNE CITY WEST

0

0

0

1

0

0

0

0

0

0

1

2

0

4

34

PUNE MFL

0

0

0

2

0

0

2

1

1

2

2

1

0

0

11

35

RAIGAD

1

0

0

1

0

0

0

0

0

0

0

1

0

3

36

RATNAGIRI

2

0

0

4

0

0

0

0

0

0

0

0

0

+

37

RMS B DIVISION PUNE

0

0

0

0

1

0

2

4

3

6

6

2

12

2

38

38

RMS BM DIVISION MIRAJ

0

1

0

4

1

0

0

1

1

1

0

2

1

12

39

RMS F DIVISION NAGPUR

1

0

3

1

1

0

2

6

2

3

3

9

2

0

33

40

RMS L. DIVISION BHUSAVAL

1

0

2

13

0

0

1

3

0

0

4

3

0

27

41

RO GOA

0

0

0

8

0

0

0

0

0

0

0

1

0

9

42

RO MUMBAI

0

0

0

0

0

0

0

0

0

0

0

2

0

2

43

RO NAGPUR

0

0

0

0

0

0

0

4

1

1

2

0

0

8

44

RO PUNE

0

0

1

1

0

0

0

0

0

0

0

1

0

3

45

SANGLI

0

0

0

0

0

0

0

0

0

0

0

1

0

1

46

SATARA

0

0

0

0

0

0

1

1

1

1

1

1

1

0

7

47

SHRIRAMPUR

0

0

0

1

0

0

0

0

0

0

0

1

0

2

48

SINDHUDURG

0

1

0

0

0

0

0

0

0

0

0

0

0

1

49

THANE CENTRAL

0

0

0

0

0

0

0

1

1

1

2

1

0

6

50

THANE WEST

0

0

0

0

0

0

0

0

0

0

0

1

0

1

51

WARDHA

0

0

0

0

0

0

0

1

0

0

0

1

1

3

52

YEOTMAL

0

0

1

2

0

0

0

0

0

0

3

0

0

6

TOTAL

35

19

18

123

1

0

0

27

18

21

57

22

46

46

69

102

18

622

Including 10 Siblings

Including 12 Siblings

Including 22 Siblings

Including 22 Siblings

Out of 102 in the adjoining column 18 have poor academic background

The purity of recruitment process must be maintained. The vigilance report indicates that the outsourcing agency itself was involved in the crime of malpractice and F.I.R. has been lodged against the Directors of Manipal Technologies. The Hon'ble High Court has declined to grant anticipatory bail to them. The entire recruitment process was tampered. It is also argued that the in case of candidates having common address, common mobile No., common Email I.D., 99% of them were having similar answers, both right or wrong, though they

were sitting in different centers or rooms. It was noticed that all the papers of Postman/Mail Guard were manually evaluated when it was agreed that there would be Zero human interference. Thus, the software programme has not evaluated the answer-sheet. Many candidates had passed SSC examinations without Maths and English but they have secured extremely good marks in Maths and English. Thus there is compromising of the entire process. Some candidates were shown as absent in the attendance sheet but their answer sheets have been evaluated. The results indicated possibility of leakage of question papers. Suspicious candidates are spread across most of the divisions and it is not possible to identify the tainted one as it would be never ending exercise. He relied on number of rulings and argued that even when there is minute leak of question paper, the entire examination needs to be quashed. The facts indicate that there was possibility of leakage of the papers and of E-cheating. When it is impossible to segregate the tainted candidate, i.e. to separate the chaff from the grains, the respondents have no alternative but to cancel the examination. The inconvenience caused to the selected candidates can be minimized by allowing age relaxation to the candidates who had filled in forms to appear for the examinations without filing fresh application.

13. In reply, the learned Counsel for the petitioners argued that the vigilance report was not reliable in respect of the tainted candidates though they are not appearing for them. They submitted that the signature difference noted was on account of shortage of space. They also pleaded and argued that the candidates poor in 10th Std. or 12th standard might have prepared themselves. Most of them have graduated and thereafter, had appeared for examination. The comparison of marks obtained at 10th Std. or 12th Std. with the marks obtained in the recruitment process, examination was unwarranted. They also pointed out that the respondents took long time to take decision as they themselves were not certain about the irregularities. They also argued that there was nothing suspicious if some candidates have given common mobile numbers and common E-mail addresses or common permanent addresses as many of them are siblings and due to poverty, they may not have separate mobile numbers or E-mail addresses. In any case, according to them, the entire recruitment process was not tampered and individual cases can be identified and separated and the petitioners can be appointed without re-examination.

14. We have carefully considered the arguments advanced and the documents referred. We have also carefully considered the various Rulings cited before us.

15. In the light of the arguments advanced, the points for our consideration are as follows:

(i) Whether the petitioners have a right to invoke the writ jurisdiction of this Court?

.....In the affirmative.

(ii) Whether the order of cancellation stands vitiated on the ground of not

following the principles of natural justice?

... In the negative.

(iii) Whether the material collected by the respondents through vigilance discloses that the entire recruitment process was tampered and it would not be possible to segregate the tainted candidates with untainted candidates and the entire process was required to be cancelled?

... In the negative.

(iv) What order? As per final order.

16. Right to invoke the jurisdiction:- The learned advocate for the respondents relied on the judgment in Chairman, All India Railway Recruitment Board and another Vs. K. Shyam Kumar and others reported in 2010(6) SCC 614, wherein it is observed;

49. The Writ Petitioners, in our view, have also no legal right to insist that they should be appointed to Group 'D' posts. Final merit list was never published. No appointment orders were issued to the candidates. Even if a number of vacancies were notified for appointment and adequate number of candidates were found successful, they would not acquire any indefeasible right to be appointed against the existing vacancies. This legal position has been settled by a catena of decisions of this Court. Reference can be made to the judgment of this Court in Shankarsan Dash v. Union of India, (1991) 3 SCC 47; B. Ramanjini and Others v. State of A.P. and Others, (2002) 5 SCC 533.

17. Per contra, learned advocates for the petitioners relied on Anil Barmu Patil v State of Goa reported in [2014(6) Mh.L.J. 148], wherein reliance was placed on following two rulings.

(i) Asha Kaul (Mrs.) Vs. State of Jammu and Kashmir reported in (1993) 2 SCC 573

"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment State of Haryana v. Subhash Chandra Marwaha ; IMS. Jain v. State of Haryana State of Kerala v A Lakshmikutty but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, -in pursuance of which the commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government - the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today.

(ii) R. S. Mittal vs. Union of India reported in (1995) Supp. 2 SCC 230.

12. It is no doubt correct that a person on the select- panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law.

18. Relying on these judgments, this Court in case of Anil Barmu Patil Vs. State of Goa and another reported in [2014(6) Mh.L.J. 148], observed in para 12 as follows:

12. The petitioner has been selected after following the due procedure and the petitioner having being given the appointment order, it cannot be said that the petitioner has no right to seek indulgence of this Court in the extraordinary writ jurisdiction for enforcing his legal right pursuant to the memorandum dated 4-11-2011 which admittedly stands and has not been cancelled or revoked.

19. In case of appointed candidates, it was argued that, they are probationers and they are not entitled for protection. Reliance was placed on Chandra Prakash Shahi Vs. State of U.P. and others reported in 2000 SCC (L&S) 613. Following passage from State of Punjab v. Sukh Raj Bahadur reported in AIR 1968 SC 1089 was quoted with approval.

15.

1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

20. Similarly, in para 13 & 14 of the judgment in Chandraprakash Shahi's case (supra), it is held that, if the termination is simpliciter without putting any stigma, no regular departmental enquiry is to be held as no punitive action was taken and there was no question of applicability of Article 311(2) of the Constitution. In Para 19 & 20, it is further held that, it is necessary to consider whether the enquiry held for removal of probationer was the foundation or not. If

it is for determining misconduct which is foundation for the removal, it is punitive in nature and in such case the probationer will be entitled for protection under Article 311(2) of the Constitution. But if it is for determining suitability for continuation then no protection to probationer. It was observed in para 20 that, termination simpliciter of a temporary government servant on the ground of unsuitability does not attract the provisions of Article 16, nor is the protection under Article 311(2) of the Constitution available to a temporary government servant unless the termination involved "stigma", was the dictum laid down by this Court in *Commodore Commanding, Southern Naval Area, Cochin vs. V.N. Rajan* reported in AIR 1981 SC 965.

21. In *Kazia Mohammed Muzzammil Vs. State of Karnataka and another* reported in (2010) 8 SCC 155, it was held that, unless the rules provide, on completion of period of probation, there is no deemed confirmation. A specific order in writing is necessary for confirming the employee. In the facts of the case the Apex Court decided not to exercise powers u/s Article 136 (Para 55).

22. The respondents placed reliance on;

Inderpreet Singh Kahlon and others Vs. State of Punjab and others reported in (2007) 1 SCC (L&S) 444

57. It is one thing to say that having regard to the nature of selection process, no person is appointed from the select list as no person has right to be appointed only because his name appears in the select list, but, in our opinion, a different standard must be adopted for terminating the services of the officers who had completed about three years of service. Some of them, as noticed hereinbefore, passed departmental tests. Some have been given higher responsibilities. They had completed the period of probation and some were nearing the completion thereof. They presumably had been working to the satisfaction of the authorities concerned.

. In the facts and circumstances, impugned orders of the Government were set aside.

23. In the present case, two appointed petitioners were probationers and were removed within short time after their joining. Whereas; most of the others are selected candidates. Their termination is on the ground of cancellation of examination and not on the ground of personal misconduct. In such situation, the petitioners can challenge their termination or cancellation of the examination on the ground of arbitrariness or inequality on treating them at par with tainted candidates which is unreasonable, violative of Article 14 of the Constitution of India. In this regard, reliance can be placed on *Gohil Vishvaraj Hanubhai & others Versus State of Gujarat & Others* (Civil Appeal Nos. 5680-83 of 2017, decided on 28th April, 2017), wherein it is observed thus:

27. It is nobody's case before us that the impugned action is violative of any of the fundamental freedoms of the appellants. We are called upon to examine the

proportionality of the administrative action only on the ground of violation of Article 14. It is therefore necessary to examine the principles laid down by this Court in this regard.

This Court posed the question in Omkar's Case;

61. When does the court apply, under Article 14, the proportionality test as a primary reviewing authority and when does the court apply the Wednesbury rule as a secondary reviewing authority? From the earlier review of basic principles, the answer becomes simple. In fact, we have further guidance in this behalf.

and concluded;

"66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.

67. But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of *E.P. Royappa v. State of T.N.*, (1974) 4 SCC 3, (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In *G.B. Mahajan v. Jalgaon Municipal Council*, (1991) 3 SCC 91, Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In *Tata Cellular v. Union of India*, (1994) 6 SCC 651, *Indian Express Newspapers Bombay (P) Ltd. v. Union of India*, (1985) 1 SCC 641, *Supreme Court Employees' Welfare Assn. v. Union of India*, (1989) 4 SCC 187, and *U.P. Financial Corpn. V. Gem Cap (India) (P) Ltd.*, (1993) 2 SCC 299, while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always.

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as "arbitrary" under Article 14, the principle of secondary review based on Wednesbury principles applies."

. Further reliance was placed on para 34 of the judgment in *Inderjeet Kahlon's*

case (supra).

34. Yet again in *Onkar Lal Bajaj and Others v. Union of India* and another [(2003) 2 SCC 673], this Court while dealing with a case of en masse cancellation of the licences granted to the LPG Distributors as a result whereof unequals were said to have been clubbed by reason of arbitrary exercise of executive power, the same was held to be impermissible stating:

"The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories tainted and the rest on a par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution".

.....

.....

The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision-making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.

Rajnikant Ojha vs. Union of India reported in (2014) 4 PLJR 511, wherein Patna High Court held in para 36 thus:

36. This court is mindful of the fact that in a populous country like India, where job opportunities are few and sparse, public employment is much coveted for the youth. Denial of opportunity to compete for such posts and to be considered for appointment without any valid, justifiable reason is bound to generate a sense of discontentment among them. An arbitrary and whimsical decision by respondents to cancel a selection process held at a particular centre succeeded by denial to hold a fresh selection process in violation of their own promise made by them through public notice can be genesis of reasonable suspicion in minds of youth over the bone fide of administrative action/inaction. The men entrusted with the task of recruitment/selection for public employment are not only called upon to ensure that best persons are selected most suited for requirement of the post. Equally important is their duty to be sensitive to the legitimate expectation of the aspirants vying for such posts on the basis of their merit through open

competition/selection process, that they are treated fairly. Such fairness in action should not only be practised but it should be manifest from their conduct.

24. In the light of these rulings, we hold that, the petitions are maintainable and the petitioners can succeed only if they can show that the Government has exercised their discretion arbitrarily or unfairly or unreasonably and have treated them at par with tainted candidates and the decision cannot stand in the face of doctrine of unreasonableness and proportionality.

25. Principles of Natural Justice: The petitioners argued that, before cancellation of the exams, they should have been provided with the vigilance report and should have been given opportunity of hearing and the reasons should have been disclosed in the order itself. If the reasons are not given, those cannot be supplanted later- on. In this regard, they placed reliance on Harbhajan Singh and others Vs. Nawanshahar Central Co-operative Bank Ltd. & Ors. reported in (2004) SCC (L&S) 1031.

7. The Bank should have conducted a proper enquiry to find out the irregularities, if any, committed in the process of selection of candidates and based on that report alone the candidates who were already appointed could have been removed from service. The candidates should have been given reasonable opportunity of being heard before their removal from service. The appellants removal from service is without following proper procedure and it amounted to violation of the principles of natural justice.

26. In Chandra Prakash Shahi Vs. State of U.P. and others reported in 2000 SCC (L&S) 613, In this case the petitioner/constable was terminated after three years of service without notice and opportunity of hearing. It is held in para 27 & 33 as follows:

27. The whole case law is thus based on the peculiar facts of each individual case and it is wrong to say that decisions have been swinging like a pendulum; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi's case (supra) that there was a conflict of decisions on the question of order being a simple termination order or a punitive order, but every time the Court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this Court in various decisions to be applied to a different situation. But the concept of "motive" and "foundation" was always kept in view.

33. Where, therefore, the services of a probationer are proposed to be terminated and a particular procedure is prescribed by the Regulations for that purpose, then the termination has to be brought about in that manner. The probationer-constable has to be informed of the grounds on which his services are proposed to be terminated and he is required to explain his position. The reply is to be considered by the Superintendent of Police so that if the reply is found to be convincing, he may not be deprived of his services.

27. Per contra, learned advocate for the respondents relied on number of rulings wherein consistent view is taken that, where the entire recruitment has been tampered and no individual is charged with adoption of unfair practice, the principles of natural justice are not required to be followed. The reliance was placed on the following judgments.

(a) Chairman, All India Railway Recruitment Board and another Vs. K. Shyam Kumar and others 2010(6) SCC 614

46. We also find it difficult to accept the reasoning of the High Court that the copy of the Vigilance report should have been made available to the candidates at least when the matters came up for hearing. Copy of the report, if at all to be served, need be served only if any action is proposed against the individual candidates in connection with the malpractices alleged. Question here lies on a larger canvas as to whether the written test conducted was vitiated by serious irregularities like mass copying, impersonation and leakage of question paper, etc not against the conduct of a few candidates.

(b) Om Prakash Mann Vs. Director of Education (Basic) & Ors. reported in AIR 2006 SC 3096, wherein it is held that, there is no necessity to supply the vigilance report in such matters. Besides, if the report is not submitted, the petitioner should show the prejudice for not furnishing the vigilance report.

(c) In Radhey Shyam Gupta Vs. U. P. State Agro Industrial Corporation Ltd. & Anr. reported in 1999 SCC (L&S) 439, in para 20 it is held thus:

20. However Shah, J. (as he then was) in State of Orissa vs. Ram Narayan Das [1961 (1) SCR 606] gave a new dimension to the legal principles. That case also related to a probationer but was governed by Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules which was a special provision and which stated :

"where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity for show cause against it, before orders are passed by the authority competent to terminate the employment."

If the test of 'inquiry' laid down by Sinha, CJ was to be applied, every termination of a probationer made by following the rule and conducting an inquiry would become punitive. The ' inquiry test' (as pointed out by Krishna Iyer, J. in Samsher Singh's case broken down. A new test had to be invented. Therefore Shah, J. (as he then was) laid down a new test which required that one should look into "object or purpose of the inquiry" and not merely held the termination to be punitive merely because of an antecedent inquiry. J.C. Shah, J (as he then was) said:

"Whether it amounts to an order of dismissal depends upon the nature of the

inquiry, if any, the proceedings taken therein and the substance of the final orders passed on such inquiry."

(d) In Om Prakash Mann's case (supra), it is observed in para 9 which reads thus:

9. By now it is well settled principle of law that doctrines of principle of natural justice are not embodied Rule. It cannot be applied in the straight jacket formula. To sustain the complaint of violation of the principle of natural justice one must establish that he has been prejudiced by non-observance of principle of natural justice. As held by the High Court the appellant has not been able to show as to how he has been prejudiced by non-furnishing of the copy of the enquiry report. The appellant has filed a detail appeal before Appellate Authority which was dismissed as noticed above. It is not his case that he has been deprived of making effective appeal for non- furnishing of copy of enquiry report. He has participated in the enquiry proceedings without any demur. It is undisputed that the appellant has been afforded enough opportunity and he has participated throughout the enquiry proceedings, he has been heard and allowed to make submission before the enquiry Committee.

(e) In Nidhi Kaim Vs. State of Madhya Pradesh and others reported in (2016) 7 SCC 615, there was prima facie material of mass copying and mass leakage of paper and handing over and taking money for favouritism in the entrance examination of the Medical College. Some officers of the Board were also involved and were arrested along with the students and others. Such malpractices were noticed for a period of more than five years. The Apex Court relied on judgment in The Bihar School Examination vs. Subhas Chandra Sinha reported in (1970) 1 SCC 648 wherein it is held:

26. This Court in Sinha case laid down the principle that the rule of audi alteram partem need not be complied with in connection with the cancellation of examinations where it would be impracticable to apply the said principle. Adoption of unfair means on a large scale is one of them. This Court did not go by the percentage of the students who were alleged to have had resorted to the practice of unfair means. When this Court characterized the situation as practice of unfair means on a 'large scale', it used the expression only to distinguish the situation from cases of practice of unfair means by one or two students. This Court has also held that there are other circumstances justifying the departure from complying with the audi alteram partem rule. They are leakage of question papers and destruction of a large number of answer papers. In my opinion, the examples given therein are not exhaustive of all the categories constituting exceptions to the application of the rule of audi alteram partem.

28. This view is again summed up in para 39(4), 39(5) and 39(6) and it was held that, in para 42(1) and 42(2) that, principles of natural justice need not be followed. His Lordship Justice Abhay Sapre writing separate judgment and differing on the point of reliefs took the same view with regard to non applicability of principles of natural justice. It is observed in para 128:

128. This Court has laid down in these cases that the applicability of rules of natural justice is not static but it has different facets and, therefore, its applicability vary from case to case. I find that none of these cases has dealt with the cases of "copying" or "mass copying". In my view, when the question as regard the applicability of rules of natural justice has already been decided by this Court in several cases relating to "copying" and "mass copying" then the law laid down in such cases must be applied to the cases at hand and not the one which lays down the law which explains the principle in general.

(f) In K. Shyam Kumar's case (supra), in para 44 it is held that, absence of reasons in the order is not a ground to quash the order and in such matters the subsequent material collected can be also considered.

29. In the light of these facts, we find that it is very material to consider the ground of cancellation of the entire examination. If the cancellation of entire examination is justified on the ground of mass copying, leakage of papers or tampering of the recruitment process itself, then neither the selected candidates nor appointed candidates are entitled for any protection. However, if the rules provide for opportunity of hearing then in that case the persons appointed must be given an opportunity of hearing and thereafter their services can be terminated. However, if the cancellation of the entire examination is not justified and there is a scope for segregating the tainted candidates from the untainted candidates, an opportunity of hearing should be given to tainted candidates whether selected or appointed and thereafter the decision should be taken. In the present case, all the candidates before us are untainted candidates and therefore the material issue is, whether the segregation of tainted candidates from untainted candidate is possible or not? If it is possible then termination of two petitioners from Writ Petition No. 9910 of 2017 without opportunity of hearing is not justified and if the segregation is not possible their termination cannot be challenged on the ground of not following the principles of natural justice.

Segregation of tainted and untainted candidates:-

30. This is the main issue for consideration. It has following three facets.

(i) Whether the order passed by the respondents is subject to judicial review and what is the scope thereof?

(ii) Whether the order suffers from unreasonableness or dis-proportionality?

(iii) Whether on facts it was a prima facie case of mass tampering or mass leakage of question paper or the whole recruitment process was tampered and the intermixing was such that there was no scope for segregation of tainted candidates with untainted candidates?

31. The scope of judicial review is well settled.

(a) In K. Shyam Kumar (supra), it is held that,

22. Judicial review conventionally is concerned with the question of jurisdiction and natural justice and the Court is not much concerned with the merits of the decision but how the decision was reached. In *Council of Civil Service Unions Vs. Minister of State for Civil Service* (1984) 3 All ER 935 the (GCHQ Case) the House of Lords rationalized the grounds of judicial review and ruled that the basis of judicial review could be highlighted under three principal heads, namely, illegality, procedural impropriety and irrationality. Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc.

"By 'irrationality' I mean what can by now be succinctly referred to as "Wednesbury's unreasonableness", It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

(b) In *Nidhi Kaim* (supra), it is held:

42.4 The scope of judicial review of the decision of an examining body is very limited. If there is some reasonable material before the body to come to the conclusion that unfair means were adopted by the students on a large scale, neither such conclusion nor the evidence forming the basis thereof could be subjected to scrutiny on the principles governing the assessment of evidence in a criminal court.

106. *Rajendra Babu, J.* (as His Lordship then was) speaking for the Bench took note of the law laid down in the case of *Bihar School Examination* (supra) and while upholding the decision of cancellation of the result of the candidates held as under:

"8. Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was

some material for the Government to act one way or the other.

(d) In *Gohil Vishwaraj (supra)*, it is held that, this Court has on numerous occasions approved the action of the State or its instrumentalities to cancel examinations whenever such action is believed to be necessary on the basis of some reasonable material to indicate that the examination process is vitiated.

Wednesbury's principle of unreasonableness and doctrine of proportionality :-

(a) *Chairman, All India Railway Recruitment Board and another Vs. K. Shyam Kumar and others* reported in 2010(6) SCC 614, there was prima facie material showing mass leakage of question paper, impersonation, malpractice and irregularities in the recruitment examination of Group 'D' posts in Railway Board, there were complaints even against the petitioners therein. Retest of only successful candidates was directed and thereafter the qualified persons were appointed and were serving. In this situation, the principles of wednesbury unreasonableness and doctrine of proportionality are explained as follows:

23. The ground of irrationality takes in Wednesbury unreasonableness propounded in *Associated Provincial Picture Houses Limited v. Wednesbury Corporation* (1947)2 All ER 680, Lord Greene MR alluded to the grounds of attack which could be made against the decision, citing unreasonableness as an 'umbrella concept' which covers the major heads of review and pointed out that the court can interfere with a decision if it is so absurd that no reasonable decision maker would in law come to it. In *GCHQ Case (supra)* Lord Diplock fashioned the principle of unreasonableness and preferred to use the term irrationality as follows:

"By 'irrationality' I mean what can now be succinctly referred to as "Wednesbury's unreasonableness", It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

25. The House of Lords in *R (Daly) v. Secretary of State for the Home Department* (2001) 2 AC 532 demonstrated how the traditional test of Wednesbury unreasonableness has moved towards the doctrine of necessity and proportionality. Lord Steyn noted that the criteria of proportionality are more precise and more sophisticated than traditional grounds of review and went on to outline three concrete differences between the two:-

(1) Proportionality may require the reviewing Court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions.

(2) Proportionality test may go further than the traditional grounds of review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations.

(3) Even the heightened scrutiny test is not necessarily appropriate to the protection of human rights. Lord Steyn also felt most cases would be decided in the same way whatever approach is adopted, though conceded for human right cases proportionality is the appropriate test.

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. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that *Wednesbury* has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but *Wednesbury* has not met with its judicial burial and a state burial, with full honours is surely not to happen in the near future.

39. The courts have to develop an infeasible and principled approach to proportionality till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would continue to be decided in the same manner whichever principle is adopted. Proportionality as the word indicates has reference to variables or comparison, it enables the Court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision-maker.

32. In *Gohil Vishvaraj Hanubhai's case* (supra),

In this case, the examination was conducted for 1800 posts of Talathi in Gujarat. On the earlier day the FIR was lodged, still the examination was held. There were several complaints of payment of money to the persons assuring selection in the process. There were special markings on OMR sheets. Initially merit list was declared by eliminating tainted marksheets but subsequently, the entire examination was cancelled. It was a case of large scale tampering. In these facts it was held:

"23. Coming to the case on hand, there were allegations of large scale tampering with the examination process. Scrutiny of the answer sheets (OMR) revealed that there were glaring aberrations which provide prima facie proof of the occurrence of a large scale tampering of the examination process. Denying power to the State from taking appropriate remedial actions in such circumstances on the ground that the State did not establish the truth of those allegations in

accordance with the rules of evidence relevant for the proof of facts in a Court of law (either in a criminal or a civil proceeding), would neither be consistent with the demands of larger public interest nor would be conducive to the efficiency of administration. No binding precedent is brought to our notice which compels us to hold otherwise. Therefore, the 1st submission is rejected.

24. Having regard to the nature of the allegations and the prima facie proof indicating the possibility of occurrence of large scale tampering with the examination process which led to the impugned action, it cannot be said that the impugned action of the respondent is "so outrageous in its defiance of logic" or "moral standards". Therefore, the 2nd submission of the appellant is also required to be rejected."

33. As to the main issue of getting cancellation of examination in its entirety or against only tainted candidates, the parties have placed reliance on following judgments.

Cancellation of entire examination justified.

[a] In K. Shyam Kumar's case (supra), the examination was held in April-2003 by Railway Board for 2609 seats. It was a case of prima facie leakage of question paper, malpractices on large scale, the permission to retest was done and qualified persons were also appointed. In these facts it was held:

37. We, therefore hold, applying the test of Wednesbury unreasonableness as well as the proportionality test, the decision taken by the Board in the facts and circumstances of this case was fair, reasonable, well balanced and harmonious. By accepting the third alternative, the High Court was perpetuating the illegality since there were serious allegations of leakage of question papers, large scale impersonation by candidates, mass copying in the first written test.

43. We are also of the view that the High Court was in error in holding that the materials available relating to leakage of question papers was limited and had no reasonable nexus to the alleged large scale irregularity. Even a minute leakage of question paper would be sufficient to besmirch the written test and to go for a re-test so as to achieve the ultimate object of fair selection.

[b] In Union of India and others Vs. O. Chakradhar reported in (2002) 3 SCC 146, Railway Board held examination on 28.06.1996. The persons were appointed and were serving for more than three years. Thereafter show-cause notice was issued to them in April 1999 and on 18.08.1999, their appointments were cancelled on the ground that no typing test was held. In these facts it was held:

8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully

benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.

12. As per the report of the CBI whole selection smacks of mala fide and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing final result. In such circumstances it may not be possible to pick out or choose any few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so inter-mixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large scale widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishna Yadav (supra) applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserve to be allowed.

[c] In Nidhi Kaim Vs. State of Madhya Pradesh and others (supra), at the time of medical entrance examination in July- 2013, some malpractices and irregularities were noticed immediately.

FIR was lodged. There was arrest of students and employees of the Board. The crime was registered. The illegalities were noticed for a period of five years. The Board came to the conclusion that, the entire examinations were to be cancelled. It was held that the conclusion is not inherently irrational or perverse and challenge to the same was futile. It was a case of mass copying. However their Lordship of Division Bench differed in the matter of grant of reliefs.

It was held:

106. Rajendra Babu, J. (as His Lordship then was) speaking for the Bench took note of the law laid down in the case of Bihar School Examination (supra) and while upholding the decision of cancellation of the result of the candidates held

as under:

"8. Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other.

111. After examining the facts and the law laid down in abovementioned seven cases, in my opinion, the ratio laid down in these cases can be summarized thus:

111.1 First, in a case where several candidates are found involved in "mass copying" or in other words, where vast majority of candidates were found to have resorted to use of unfair means in any examination then it is not necessary for the concerned Institute to give any show cause notice to any individual candidate before cancellation of his result;

111.2 Second, when it is difficult to prove by direct evidence that the "copying" was done by the candidates then the same can be proved by drawing inference based on probabilities and circumstantial evidence;

111.3 Third, there are several ways in which unfair means can be resorted to by the candidates for doing copying individually or in the large scale by vast majority of candidates;

111.4 Fourth, where few candidates are found involved in doing copying then it is necessary to give to individual candidate a show cause notice by following rules of natural justice before taking any action against him;

111.5 Fifth, there must be some material (whether direct or based on probabilities and circumstances) to prove that a candidate resorted to unfair means for doing copying in answering his question paper;

111.6 Sixth, if there is adequate material to prove that the copying was done by individual candidate or by the candidates on a large scale then even if no report was submitted by any invigilator of any such incident yet it would be of no significance;

111.7 Seventh, the Court should not act as an appellate Court over the decision of Expert Committee to examine the issue of "copying" or/and "mass copying", i.e., copying done on a large scale by vast majority of candidates and more so when the Expert Committee has found the candidate guilty of resorting to unfair means;

111.8 Eighth, the Court should be slow to interfere in the decision taken by the Expert Committee in such cases;

111.9 Ninth, if wrong answers of two candidates sitting in close proximity tallies with each other then it would be a strong circumstance of copying done by these two candidates;

111.10 Tenth, this Court has consistently maintained a distinction between a case of "copying" and "mass copying", i.e. copying done on a large scale by vast majority of candidates for applying the rules of natural justice to the case. In the case of former, rules of natural justice would be applicable and hence show cause notice to individual candidate who is accused of doing copying will have to be given to such candidate whereas in the case of later, the rules of natural justice are not applicable and hence it is not necessary to give any show cause notice to any candidate involved in mass copying;

111.11 And Eleventh, the use of unfair means by any candidate is a serious matter because it affects the credibility of the examination and, therefore, once such charge is held proved against any such candidate, the matter needs to be dealt with sternly in relation to erring candidates.

112. When I examine the facts of the case at hand in the light of ratio laid down in the aforementioned cases, then I find that the facts of the case at hand are identical partly to the facts of the case of Bihar School Examination Board (supra) and partly to the facts of Bagleshwar Prasad and Prem Prakash (supra). This I say for the following reasons.

112.1 First, this is a case where large number of candidates (more than two hundred) in the examinations held from 2008 to 2012 were found involved in copying like what was noticed in the case of Bihar School Examination (supra) where 36 candidates were found involved in copying.

112.2 Second, there was uniform pattern adopted by the candidates for doing copy in the examinations. This circumstance lends support to the fact that "mass copying" was done by the candidates in a planned manner;

112.3 Third, candidates who managed to sit in pair in close proximity (described as "scorer" and "beneficiary"), their wrong answers consistently matched with each other. This circumstance was relied on in the cases of Bagleshwar Prasad and Prem Prakash Kalunia (supra) for forming an opinion that both the candidates copied from each other;

112.4 Fourth, the material seized in investigation prima facie established that "mass copying" was done in a planned manner by the several candidates (appellants herein) to enable them to answer the questions;

112.5 Fifth, interpolations were found in sitting plan originally made by Vyapam for some years to accommodate the candidates (appellants) and others like the appellants to sit in a particular examination center in close proximity with each

other so that they are able to copy from each other;

112.6 Sixth, many candidates despite clearing the examination did not take admission in any medical college.

There was no satisfactory answer given by them barring very few;

112.7 Seventh, material seized in investigation was found sufficient by the Expert Committee to form an opinion that it was a case of "mass copying". In addition it was also established on probabilities and circumstantial evidence that the candidates in large scale which included the appellants did mass copying;

112.8 Eighth, the Expert Committee examined the issues from all angles and analyzed the material seized for coming to a conclusion that it was a case of "mass copying" done by the candidates in large scale as a part of a planned strategy and that they used unfair means;

112.9 Ninth, allegations of mala fides were not alleged in the writ petitions by any candidate against any member of Expert Committee or/and officials of the State/Vyapam;

112.10 Tenth, the writ court rightly did not act as an appellate court to reverse the decision of Expert Committee;

112.11 Eleventh, the formula evolved by the Expert Committee was usually applied in such type of cases by various institutions and no perversity or/and arbitrariness was shown by the appellants in the formula except to contend that it was not a proper formula;

112.12 And lastly, the expression "mass copying" not being defined in any Act/Regulation/Rules, its meaning in ordinary parlance can be summed up as "sizable or large number of candidates found copying or discovered to have copied while answering their question paper by using unfair means in examination". In my view, this fully applies to the facts of the case at hand.

. In Gohil Vishvaraj's case (supra), it is held;

Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time consuming process. If it were to be the requirement of law that such identification of the wrong doers is a must and only the identified wrongdoers be eliminated from the selection process, and until such identification is completed the process cannot be carried on, it would not only result in a great inconvenience to the administration, but also result in a loss of time even to the innocent candidates.

In following cases, cancellation of examination was held not justified:

(i) Union of India and others vs. Rajesh P.U., Puthuvalnikathu and another (2003) 7 SCC 255. In this case, CBI had held examination for 134 posts of constables in April 2000. The petitioner was selected and appointed and was asked to undergo medical examination. The unsuccessful candidates made complaint challenging

the selections alleging favouritism and nepotism. Though the allegations were found baseless, it was noticed that, incorrect answers were awarded marks in certain cases and correct answers were assessed to be wrong and denied marks. A Committee was constituted which meticulously and thoroughly identified all such cases individually. In this context, the Apex Court held that, cancellation of entire examination was not justified. It was held:

4. It appears that the stand on behalf of CBI before the High Court was that though the allegations of nepotism and favouritism were found to be baseless, in some cases of evaluation of answer sheets incorrect answers were found to have been awarded marks and in certain other cases even correct answers were assessed to be wrong and denied marks. In some cases, one or more of the answers seem to have been not evaluated for awarding marks and overlooked, while excess marks than allowed seemed to have been awarded in certain cases for one or other questions.....

6. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or other reasons. Applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go by to contextual considerations throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

[ii] In *Vikas Pratap Singh and others vs. State of Chhattisgarh and others* reported in (2013) 14 SCC 494, it is held:

25. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer sheets could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

26. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

[iii] Joginder Pal and others etc. Vs. State of Punjab and others reported in (2014) 6 SCC 644.

During regime of Mr. Sidhu as a Chairman of Punjab Public Service Commission in 1996 to 2002, several appointments of Class-I posts were made including of Judicial Officers. On receiving information of Mr. Sidhu receiving bribe, raids were conducted and huge sum of Rs. 16.00 crores was recovered from him. This led to FIR and lodging of prosecution against him and other officers of Executive Branch and allied services. Some wards of Sitting Judges of the High Court were allegedly favoured during 1998-2002. The report was accepted by Full Court. Consequently the service of judicial officers was cancelled. It was held:

"43. Apart from inferences drawn on certain facts and in particular the circumstances enumerated by the High Court which have been repeated by the learned counsel for the State before us, it is difficult to accept that it was demonstrated by the State that it was absolutely impossible for it to separate the innocent people from the tainted ones.

xx xx xx

45. If fraud in the selection process was established, the State should not have offered to hold a reselection. Seniority of those who were reselected ordinarily could not have been restored in their favour. Such an offer was evidently made as the State was not sure about the involvement of a large number of employees.

46. A distinction moreover exists between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved.

xx xx xx

50. In those cases also tainted cases were separated from the non-tainted cases. Only, thus, in the event it is found to be impossible or highly improbable, could en masse orders of termination have been issued.

51. Both the State Government as also the High Court in that view of the matter should have made all endeavours to segregate the tainted from the non-tainted candidates.

30. In this case, Mr. Sidhu and his accomplices had taken money/bribes from

some of the candidates or had given undue favour to some other candidates because of other influences. The material discussed is the allegations in various FIRs and statements of Mr. Jagman Singh, a confident and tout of Mr. Sidhu (who had become approver in the criminal case), and others recorded under Section 161 of the Code of Criminal Procedure, 1973 and the cases in the criminal trial. However, even after noticing these very reasons, this Court had held that those who are innocent cannot be punished because of the misdeeds of Mr. Sidhu in showing favour to other tainted candidates.

31. There is yet another reason to hold that these persons who have come up clean, meaning thereby, who have entered the service by passing the examination on their own merits, should be allowed to continue in the Government service. We have already mentioned in the earlier part of the judgment, while discussing the case of Inderpreet Singh Kahlon (*supra*), that the Court had not approved the recommendation of the High Court, on the basis of which the Government had acted, in respect of the judicial officers whose services were also terminated. It is not necessary to state in detail the reasons given by the Court while condemning the action of terminating the services of the judicial officers, which was taken in undue haste. The Court had also remarked that all these judicial officers were subjected to viva voce/interview test as well, which was conducted as per Rule 17(a)

(iii) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, and no breach of the aid Rule had been pointed out. The Committee which interviewed these judicial officers included a Judge of the High Court as well. The Court categorically observed that there may be some cases where marks had been given for extraneous considerations, but only because there was such a possibility, the same by itself, without analysing more, may not be a ground for arriving at a conclusion that the entire selection process was vitiated. The direction was, accordingly, given to consider the entire matter afresh.

[v] In *Onkar Lal Bajaj and others Vs. Union of India* and another reported in AIR 2003 SC 2562.

56. In our view, the Government should not have exercised the power in a manner so as to enable it to escape the scrutiny of allotments exposed by the media. No arbitrary exercise of power should intervene to prevent the attainment of justice. Instead of passing the impugned order, in the context of the facts of the present case, the Government should have ordered an independent probe of alleged tainted allotments. The impugned order had the twin effect of (1) scuttling the probe and (2) depriving a large number of others of their livelihood that had been ensured for them after their due selections pursuant to a welfare policy of the Government as contained in the guidelines dated 9th October, 2000. The public in general has a right to know the circumstances under which their elected representatives got the outlets and/or dealerships/distributorships.

34. In the light of these guiding principles, we proceed to consider the facts of

the present case.

(a) The first defect argued is that, though the contract was given to Manipal Technology and though the sub-delegation was not permissible, Manipal Technology assigned the work to Chanakya Softwares. Chanakya Softwares had participated in the tender process & was L-2. The Vigilance is silent about subcontract to Chanakya and its participation. There are specific contentions of the petitioners that, at the time of examination the officers of the respondents were monitoring and supervising the recruitment process. There was video recording and CCTV footage. There is no denial to this fact. In the light of these facts, we find that, the respondents must be certainly aware that the outsourcing agency Manipal Technology had given sub-contract to Chanakya Softwares. No objection was raised in this regard. In fact, the outsourcing agency submitted results in January-2016 when the examinations were held in March and May-2015. There was further scrutiny and some suggestions were made by the respondents on the basis of reevaluation and thereafter in March-16, the result was declared. It is therefore certain that, the participation by Chanakya Softwares with the consent of Manipal Technology was never objected nor taken as a serious discrepancy or irregularity. The Vigilance Report does not disclose how the participation by Chanakya Softwares affected recruitment process. We find that the respondents had even declared the results and appointed 395 persons (the department admits appointments of 356) on the basis of the results submitted by Manipal Technology. Therefore, participation by Chanakya Softwares was not treated as a serious irregularity so as to vitiate the entire examination.

(b) Another defect noticed was that, the answer sheets provided were having eight boxes for recording the serial number of the candidate whereas many candidates were given registration number of nine digits. The candidates were required to add one more box to write down the entire number. The respondents claimed that this irregularity was such that the software could not have accepted the change and manual intervention was a certainty. Minute and deep inquiry by vigilance of the papers has not disclosed that it resulted into any favoritism or giving of more marks or less marks to the candidates. It can be assumed that each candidate must have recorded the answers at the time of examination, and thereafter, in multiple choice questions where the answers are to be recorded by darkening the bubbles, there was no scope for subsequent intervention and change in the answers. It is to be noted that this defect must have been discovered at the time of examinations in March and May-2015. After the complaints from Amravati and Bombay, the Vigilance Team has closely scrutinized all the answer sheets of the successful candidates. There is no report of Vigilance Team that the marks allotted to successful candidates were not as per the answers given by them. It is not the case of the respondents that the discrepancy in the boxes meant for writing the number or manual intervention has affected the results and the results were not as per the answers given by the candidates. This discrepancy or irregularity was not found by the respondents

very serious and in spite of these discrepancies, the results were declared after due deliberation. The results were declared in May 2016 almost one year after the examination. Even the appointments orders were issued to 395 candidates. The stand taken by the respondents that these discrepancies and defects vitiate the entire examination is clearly afterthought. If no complaint would have been received, the respondents were ready to rely on the recruitment process and to ignore the irregularities pointed herein above. It is not shown how these discrepancies tampered the recruitment process.

(c) It is rightly argued by the learned counsel for the petitioners that, if the outsourcing agency has left irregularity in the answer sheet, the candidates had no option but to add one box to record their nine digit number. This cannot be treated as making marks for identification. There was no fault on the part of the candidates. Learned counsel for the respondents failed to point out how this irregularity has resulted into miscarriage of justice. Therefore, the entire examination cannot be cancelled on the ground of these discrepancies.

(d) There is also no substance in the contention that the manual intervention was to be totally avoided. In fact, the rules itself disclosed that there should be random manual reevaluation of 10 % papers by the outsourcing agency. Thereafter even the respondents were supposed to reevaluate 1% papers by random checking. Thus the outsourcing agency had every access to the answer sheets and the entire examination cannot be cancelled only on the ground that there was manual intervention in the examination papers.

35. There are certain admitted facts which are not considered by the Vigilance Team as well as by the respondents. Before discussing the suspicious circumstances, it is necessary to mention these facts.

a). Though several successful candidates have challenged the cancellation of examination, pertinently, no complaint is received from the unsuccessful candidate. No judicial proceeding has been initiated by any unsuccessful candidates. This is significant in the light of the fact that, the answer key was uploaded on the website after the results were over. No unsuccessful candidate came forward with a plea that though his answers were correct the marks given to him were on lower side and not according to his answers. Even the Vigilance Team has conducted search only in respect of successful candidates.

b). There was no complaint that the marks allotted to the successful candidates were not as per the answers given by them. There was deep inquiry by vigilance team. There was also inquiry by EOW Police but, no material has been brought on record to show that the marks allotted to the successful candidates were not as per their answers.

c). There was no suspicion for the department for a period of one year and three months after the exams and the results submitted by the outsourcing agency were accepted and even appointment orders were issued to 395 candidates. They had undergone training and had joined the duties. It indicates that if there

would not have been any complaint from Kandivali Post Office, the respondents would have proceeded as per the results submitted by the outsourcing agency.

(d). The Vigilance Report shows that, there was no case of impersonation even in case of Hardeep Singh and the possibility of successful candidates sitting near each other is ruled out assuming that they must be sitting as per their serial number.

(e). In vigilance report it was observed that, no pattern of question sets was noticed and there was possibility that candidates might be getting good marks by intelligent guessing or wild guessing.

36. The respondents have given a chart showing malpractices in 1699 cases of Postman and 622 cases of MTS, total 2321 out of 2334 candidates selected. In oral arguments, it was argued that the malpractices and irregularities were found upto 46%. It was also argued that, the malpractices were widely spread and were found at majority of the centres (52 divisions in case of MTS and 46 divisions in respect of Postman/Mail Guard out of 56 divisions). After carefully considering the record, we find that this is not only highly exaggerated version but it is not in conformity with the report of vigilance. The vigilance report at Pg. 8 & 9 discloses tainted candidates 159 in case of Postman and 74 in case of MTS, total 233 only. The chart produced by the Vigilance Committee indicates that, these tainted candidates are also localized as follows: -

Sr. No.

Region

Postman

M.T.S.

Total

1.

Haryana

53

3

56

2.

Akola

7

13

20

3.

Amravati

28

16

44

4.

Nagpur M.

9

8

17

5.

Beed

4

8

12

6.

Parbhani

9

2

11

Total

159

74

233

37. The above figures disclose that tainted candidates were only 10%. The same chart shows the figures of Marathwada region and adjoining districts, (from where the petitioners must have appeared for the examinations) as follows;

Sr. No.

Region

Postman

M.T.S.

Total

1.

Aurangabad

1

0

1

2.

Beed

4

8

12

3.

Parbhani

9

2

11

4.

Nanded

1

4

5

5.

Osmanabad

2

5

7

6.

Dhule

2

2

4

7.

Jalgaon

2

0

2

8.

Nashik

1

0

1

9.

Malegaon

6

2

8

Total

28

23

51

38. The charts produced at Pg.38 by the respondents showing 1699+622 irregularities noticed shows the factual position with regard to Marathwada and adjoining districts as follows:-

Sr. No.

Station

Sign difference

Photo difference

Vigilance noted variations

No Attendance Sheet Problem

Suspicious marks in Marathi

Successful candidates poor in Academic

Passed in both the exams with poor in Std. X

1

Aurangabad

0

0

2

2

0

4

1

2

Beed

0

0

0

2

1

0

1

3

Parbhani

0

0

1

2

0

3

0

4

Osmanabad

0

0

1

0

0

4

0

5

Nanded

0

0

0

1

0

2

0

6

Nashik

0

0

0

2

3

1

0

7

Malegaon

0

0

0

1

1

0

0

8

Jalgaon

2

0

1

1

1

1

0

9

Dhule

1

0

0

1

2

0

0

10

Bhusawal

0

0

0

3

2

1

0

Total

3

0

5

15

10

16

2

Total

51

39. This chart shows that, there was hardly any malpractice or irregularities noticed in Marathwada region and in the adjoining districts from where the petitioners appeared for the exams. This figures do not support the stand taken by the respondents that there was wide spread pervasive irregularities at all centres. It is not a case of leakage of paper or mass copying in these centres.

40. The Vigilance Team noticed problems which can be clubbed subject-wise as follows:

(i) Identity problem : -

Sr.No.

Particulars of malpractices

Postman

MTS

1

Signature variation in pre appointment formalities.

:

151

35

2

Photo variation in pre-appointment formalities.

:

95

19

3

Signature variation noticed by Vigilance with OMR Signatures.

:

32

18

4

OMR Registration

:

534

123

5

Attendance Sheet not found.

:

55

1

6

Name of selected candidates not found in attendance Sheet

:

1

0

7

Attendance sheet found without signature of candidates and without signature of Invigilator.

:

1

0

. These figures are exaggerated figures in view of defective printing of answer-sheets providing only eight bubbles for nine digit number. Such irregularities are 355 in OMR sheets which are not irregularities. We find that, if a student is shown absent at the time of examination and his answer sheet is on record and if he is successful, it is case of suspicious result which requires inquiry. Similarly, if a candidate has not signed attendance sheet or the invigilator has not signed the answer sheet, the issue may arise about the presence of the candidate at the time of examination. Similarly in cases of answer sheets showing overwriting on roll number of name are also cases which require inquiry. By very nature, they can be identified and can be segregated. They should be individually dealt with.

(ii) Suspicion of Collusion and Conspiracy :-

Sr.No.

Particulars of malpractices

Postman

MTS

1

Candidates of other State as per permanent address appeared

:

155

27

2

Common Mobile No.

:

24 Including 12 Siblings

21 Inclu-ding 10 Sib -lings

3

Common Email ID.

:

137 Including 16 Siblings

57 Inclu-ding 12 Siblings

4

Common Communication Address.

:

51 Including 22 Siblings

46 Inclu-ding 22 Siblings

5

Common Permanent Address.

:

54 Including 22 Siblings

46 Inclu-ding 22 Siblings

41. We find no suspicious circumstances in siblings having common mobile number, common email Ids and common permanent address. It may be due to poverty or the siblings might be from rural area. It was argued that, there was not only common mobile number, email id's or common permanent addresses but the answers given by the candidates having such common mobile numbers were identical both right as well as wrong answers. As held by the Apex Court in Nidhi Kaim's case (para 49), the similarity of right answers is not much relevant. The identity of wrong answers is certainly relevant. The following chart prepared from the vigilance report discloses the similarity in wrong answers is negligible.

Sr. No.

Particulars

Postman

MTS

Selected

Similarity in wrong answers above 70%

Selected

Similarity in wrong answers above

1

Similar mobile nos.

24

2

21

8

2

Similar email Ids

137

15

57

16

3

Selection of siblings

22

4

22

8

4

Same communication address

51

10

46

16

5

Same permanent address

54

10

46

16

Total

288

41

192

64

42. The siblings reside together, use same books and guide and study together. Some similarity in their answers is quite natural. Hence these candidates can't be

called as tainted candidates. We therefore do not agree that there was high percentage of similarity in wrong answers and therefore we find that these facts are not suspicious in nature. In spite of vigilance inquiry and police investigation, no proper link could be collected to show that giving of common mobile number, email ID or common addresses was intended for conspiracy and thereby candidates have been benefited.

(iii) Suspicious results and suspicious high marks :-

Sr.No.

Particulars of malpractices

Post man

MTS

1

Candidates of other State securing goods marks in Marathi i.e. above 60%.

:

110

18

2

Candidates passed with poor academic background (Less than 50% in SCC)

:

157

69

3

Passed both examinations.

:

102

102

4

Passed Both examinations but have poor academic background.

:

18

18

43. It is a material circumstance that, candidates having no Marathi, English or Math subject at SSC level have scored very high marks in these subjects. Similarly is the case with candidates having failed in SSC and have secured high marks in these subjects or over all. We agree that these facts indicated leakage of paper or copying. Question is, whether it is a case of mass copying or mass leakage spread over whole state.

44. The Vigilance Report shows following candidates have scored over 60% marks in the subjects referred.

Sr. No.

Particulars

Number of candidates

(i)

Candidates having no Marathi in SSC scored well in Marathi

111 - 18

(ii)

Candidates failed in SSC scored well in Marathi.

0 - 1

(iii)

Candidates having no Maths in SSC, scored well in Maths.

5 - 0

(iv)

Candidates failed in SSC, scored well in Maths.

8 - 2

(v)

Candidates having no English in SSC, scored well in English.

2 - 0

(vi)

Candidates having failed in SSC, scored well in English.

28 - 2

Total

154 - 23

45. We find that, the Vigilance Team wrongly shown the candidates securing

above 60% marks in recruitment exam in Maths, English and Marathi as tainted candidates if their marks in SSC were below 50%. In SSC, the candidates are immature. Thereafter they might have graduated, realized the importance of jobs and might have taken coaching and after long gap they must have appeared for recruitment exam. We feel that, the increase in marks below 25% cannot be treated as suspicious. The marks of candidates cannot be as per the marks in SSC, otherwise there was no purpose in holding the recruitment examination. The candidates could have selected on the basis of marks in SSC. In Ahmednagar District Central Cooperative Bank Ltd., Vs. The State of Maharashtra, (Writ Petition No. 8811 of 2018, to which one of us S. V. Gangapurwala, J. was party), decided on 08.04.2019, this Court has held that the persons not scoring good marks in academics can secure good marks in recruitment. We feel that, the Vigilance Team instead of trying to identify and segregate the tainted candidates included the above referred candidates as tainted to increase the tainted candidates and justify the cancellation of the whole examination.

46. We find that, the figures given by the Vigilance Team as referred in the chart are very low as compared to the number of candidates appearing and number of candidates successful. The Vigilance Team has shown higher figure of 111-18 of candidates securing high marks in Marathi when the Marathi was not the subject in SSC but this figure includes the candidates having mother-tongue Marathi and appearing for SSC from other State. These figures should have been excluded. The candidate having mother tongue Marathi can score well even if it is not a subject for him at SSC level.

47. It is no doubt true that this high percentage of marks in Marathi, English and Maths as compared to the marks obtained by the candidates in the same subjects in SSC level is highly suspicious circumstances indicating the possibility of leakage or copying. However, we find that, these are very small figures and these instances have occurred at few centres probably at Mumbai. Most of these candidates are from other States particularly Haryana and Bihar. Complaint by Kandivali Post Office discloses the names indulging in these irregularities and it is apparent that, around 40 candidates from other States were involved in it. Thus, leakage or copying is not wide spread and it is restricted to certain localized centres. Therefore, these candidates can be and must be identified, segregated and separately dealt with.

48. The Vigilance Report shows that, large number of candidates from Bihar, Haryana have been successful. The figures are as follows:

Sr. No.

State

Postman

MTS

Total

1

Bihar

45

7

52

2

Haryana

81

9

90

3

Maharashtra

1546

706

2252

Total

1701

733

2434

49. Again, figures of successful candidates from some centres in Maharashtra are significant as follows:

Sr. No.

Centre

Postman

MTS

Total

1

Akola

28

16

44

2

Amravati

9

8

17

3

Akola

7

13

20

4

Beed

4

8

12

5

Parbhani

9

2

11

Total

57

47

104

50. These are shown to be tainted candidates. The tainted candidates at Amravati and to some extent at Akola and Nagpur are high. Same is not the case with other centres. The vigilance should have checked the papers of successful candidates from particular centres to find out some link between them. No such record is produced. We find that, this leakage or copying if any, must have been

localized and it is necessary to identify them and segregate them. The figures are not high and segregation is possible.

51. The Vigilance Team has also reported that the candidates scoring below 50% in SSC have scored above 60% over all in the recruitment process as follows.

Postman - 157

MTS - 069

52. We find that, the approach should have been to find out the tainted candidates and marginal difference of 10 to 15% marks in SSC examination and recruitment exam should not have been given undue importance.

53. Similarly, the vigilance committee reported that 102 candidates from other States have been successful. We find that, it is not a suspicious circumstances. Large number of people from the other states get attracted to this State for employment and business and they settle here. If the candidates are from other States this fact by itself cannot be a ground of suspicion. It is reported that, 18 candidates have secured more than 60% marks in recruitment, when their record was poor in SSC. These candidates can be identified and segregated and existence of such small number of candidates cannot be considered as a sample of mass copying and mass leakage.

54. As laid down in *Joginder Pal and others etc. Vs. State of Punjab and others* reported in (2014) 6 SCC 644 and *Union of India and others vs. Rajesh P.U., Puthuvalnikathu and another* and the judgments relied upon by the respondents, the department must have made every effort to segregate the tainted candidates from untainted candidates and only when it was impossible, the entire examination could have been cancelled. It was irrational, unreasonable and unfair on the part of the respondents in considering the cases which cannot be said to be tainted cases and increasing the figure of tainted cases so as to justify the cancellation of entire examination.

55. We find that the respondents have not made serious efforts to segregate the tainted candidates from untainted candidates. As held in *Union of India and others vs. Rajesh P.U., Puthuvalnikathu and another* (2003) 7 SCC 255, it was obligatory on the respondents to do so. The principles for selecting "least injurious means" or "minimal impairment" propounded in *K. Shyam Kumar's case* (supra) (para 36) and the infeasible and principled approach to proportionality as laid down in para 39 of *K. Shyam Kumar* (supra) are to be followed. Within the limited scope to judicial review, we don't dispute the data/facts collected by the respondents but consider the inferences drawn therefrom.

56. On considering the entire facts and circumstances, we do not find that the percentage of malpractices, leakage of paper or irregularities is very high and widely spread. The really tainted candidates may be very few and most of them are from other States. Those can be identified and segregated and can be separately dealt with. The petitioners who are not at fault and who are not at all

tainted should not suffer on account of the dis-proportionate and unreasonable decision taken of cancellation of the entire examination. Applying the test of Doctrine of Proportionality with emphasis on selection of least injurious means or minimal impairment, we find that the cancellation of entire examination is not sustainable. The decision is irrational and unreasonable as the tainted candidates are small in number and can be segregated. It is not a case of mass leakage of paper or mass copying spread all over the State. Probably the petitioners have appeared in the examination from the centres where no mass copying or mass leakage of papers seems to be noted. We make these observations on the basis of material produced before us. The result of investigation of criminal case was not produced before us nor relied by the respondents and these observations should be restricted for deciding these petitions only. In the light of the judgments of the Apex Court, we find that the cancellation of the entire examination was unjustified and not sustainable. We, however, wish to allow the respondents to consider cases of the petitioners again with a minute scrutiny and thereafter allow them to join the duties or to issue appointment orders.

57. The Apex Court in Nidhi Kaim's case (supra) in para 133, 134 and 135 has explained the importance of such exams to assess the skill and knowledge. It is also discussed how the malpractices, academic fraud or cheating in the exam is existing since beginning and how it is on the rise and how it is a threat to the public trust in reliability and credibility to the system as a whole. The Apex Court reminded of the collective responsibility of the Government and educational institutions to evolve a uniformed policy in comprehensive manner to deal with such activities in the larger public interest.

58. We also feel that, the mass copying, leakage of paper are curse to the system of assessment of the competency and merits. The persons indulging in such activities, within short time, on the basis of acquired manipulated intelligence, take away the fruits from hardworking meritorious students. We feel that, malpractices and irregularities occur at following levels:

- (i) Leakage from the paper setter himself.
- (ii) Leakage when the paper is sent for printing.
- (iii) Lack of control over the examination process by supervisors and permitting the candidates to indulge in copying either by asking questions to other or by using copying material.
- (iv) Tampering of answer-sheets while in custody of examiner or awarding higher marks for extraneous considerations.

59. We feel that, when there is examination involving lakhs of candidates, there should be a first screening test to bring down the candidates to five times or ten times of the vacant posts. Thereafter the departments can focus on short number of candidates in a better manner.

60. We feel that, the highest authorities of the department should call question

papers from three or five paper-setters just one or two hours before examination and ask the paper setters to set the paper just hour before the exam. The highest authority may choose anyone of them or may set up his own paper by taking the questions from all the papers. This will prevent leakage of paper from the paper setters.

61. We feel that, if the printing of the paper is avoided and the paper set up is forwarded to the concerned centres just one hour before the examination by hack-free email, the leakage of papers during the printing process can be avoided. A care can be taken that the superior officers of the department should receive the emails and take out the necessary numbers of copies and personally provide the papers at the centres in sealed envelope.

62. Before finalizing the paper set up, care should be taken to see that there are no defects in the questions like question out of syllabus, repetition of the same questions, the question having more than one answers or a vague question.

63. There should be strict vigilance to avoid identification problem. The admission cards should be issued on the basis of reliable documents of identity and photographs, signatures and if necessary by taking thumb impression. The care should be taken to see that the person applying is the person appearing for the examination. There should be prohibition from carrying mobiles or any other electronic devices at the exam and there should be frisking so that no copying material or electronic devices are carried by the candidates. Besides, there should be video recording, CCTV and mobile jammers at the time of examination.

64. We feel that when the candidates are busy in writing the first paper, another paper should be set up in the above referred manner and the candidate should appear for the same with a break of half an hour. Meanwhile they should not be allowed to go outside and there shall not be permission to use the mobiles. This will ensure that the candidates do not get any access to the second paper.

65. The department may take the help of outsourcing agency but there should be thorough inquiry about the integrity and competency of the outsourcing agency.

66. The department should employ their officers along with the representatives of the outsourcing agency at every level to prevent impersonation, mass copying or leakage of papers or alterations in the answer-sheets and at no stage representatives of outsourcing agency should be given free hand.

67. A system should be evolved to examine the papers immediately after the exams are over and as early as possible. It should be ensured that the candidates will not have any scope to approach the paper examiners. Top secrecy should be maintained about the names of examiner.

68. The department should simultaneously maintain a computerized record of the marks obtained by the candidates at SSC and graduation levels and also in the screening test and in both the exams. If anything suspicious is found, the answer-sheets of those suspicious candidates should be immediately checked

before declaration of the results.

69. These preventive measures may consume some more time and raise the expenses but considering the consequences of failure of the examination, it is necessary to improve the system. When lakhs of candidates are appearing increase in exam fees can take care of additional expenses. The performance should be assessed of the candidates on the basis of marks obtained in both the tests. With these suggestions, we proceed to pass the following order.

ORDER

1. All the Writ Petitions are allowed. The order of cancellation of the entire examination is set aside to the extent of the petitioners herein.
2. The respondents are directed to verify again, whether there are any suspicious circumstances and irregularities in case of the petitioners herein and if no such suspicious circumstances, irregularities or malpractices are found as discussed in the judgment, the selection of the petitioners be restored and further process shall be completed within a period of two months.
3. As far as the petitioners in Writ Petition No. 9910 of 2017 are concerned, the respondents shall verify their record as well and if no suspicions circumstances or malpractices as discussed in the judgment are noted in their individual cases, their appointments shall be restored within a period of two months with 50% backwages.
4. In the facts and circumstances, we do not want to take any cognizance of the contempt. Hence, the Contempt Petition No. 663 of 2017 is dismissed.
5. We anticipate the request for stay of this order. Since we are granting time of two months for verification and giving effect to this order, no separate time is required to be given for obtaining stay order from the superior Court.
6. Rule is made absolute in the above terms with no order as to costs.
7. Pending civil applications, if any, stand disposed of.