

(2020) 03 CHH CK 0016

In the Chhattisgarh High Court

Case No : Writ Appeal No. 605, 606, 617 Of 2019, 17, 18, 19, 20, 21, 22 Of 2020, Writ Petition Service No. 5465 Of 2019

Rituraj Burman And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2020) 03 CHH CK 0016

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Goutam Khetrapal, Vivek Singhal, Rajat Agrawal, Kapil Maini, Akhand Pratap Pandey, Ashish Shrivastava, Rajeev Shrivastava, Chandresh Shrivastava, Sudeep Agrawal, B.P. Sharma, Anmol Sharma, Vaibhav Shukla, Shakti Raj Sinha, Swajeet Singh Ubeja, Naveen Nirala, Anchal Kumar Matre, Shobhit Mishra, Dashrath Prajapati

Final Decision : Dismissed

Judgement

@JUDGMENT-JUDGMENT

P. R. Ramachandra Menon, CJ

1. These appeals arise from the common verdict passed by a learned Single Judge of this Court in WP(C) No.2403 of 2019 and connected cases,

whereby the result of the Civil Judge (Entry Level) Preliminary Examination 2019 came to be set aside because of various mistakes crept in the

question paper (English & Hindi). Grievance is against the direction given to the Public Service Commission (PSC) to conduct a fresh Preliminary

Examination on the basis of the advertisement dated 06.02.2019 for all those candidates who appeared in the examination and filled up the forms;

though no separate examination fee shall be charged for the said examination.

2. Writ Appeal No.617 of 2019 has been filed by the PSC; whereas the other appeals have been preferred by the candidates who have already been short listed by virtue of their higher ranks pursuant to the declaration of result of the Preliminary Examination 2019. They were never parties to the writ petitions and hence appeals have been filed with applications seeking for 'leave' of this Court to file the appeals. We have considered the said applications and allowed the same by a separate order. Writ Appeal No.617 of 2019 filed by the PSC is treated as the lead case, which arises from WPC No.2403 of 2019 and the parties and proceedings are referred to as given in the said appeal / writ petition, except where it is separately adverted to.

3. The sequence of events reveals that, on making a requisition as to the need to fill up 39 posts of Civil Judge (Entry Level) in the Sub-Ordinate

Judiciary, Annexure-P/2 Notification was issued by the PSC on 06.02.2019, inviting applications (online) from candidates who satisfied the

qualifications / requirements as notified. As per the Notification and the Scheme of Examination, a 'Preliminary Examination' was to be conducted on

07.05.2019 with 100 questions carrying 'one mark' each, to be answered by the candidates, identifying the correct answer from the multiple choice

answers given. There was to be 'no Minus marks' and the candidates were having two hours to answer the questions. The relatively more meritorious

candidates from those who appeared in the Online Preliminary Examination, in the ratio of 1:10, were to be declared as qualified for appearing in the

Main Examination and as notified, the candidates obtaining equal marks as obtained by the 'last candidate' shall also be declared as qualified. Same

procedure was to be followed for Viva-Voce as well, on completion of the Main Examination. It was also pointed out that no mark-sheet for the

Online Preliminary Examination will be issued, nor the marks obtained in that examination will be added while preparing merit list of the Main

Examination, as given in Appendix-'A'. The 15 different subjects / topics on which questions were to be set in the Online Preliminary

Examination have been given in Appendix-'B'; whereas in Appendix-'C', particulars of the Main Examination and Viva-Voce have been given. The

Main Examination was to consist of :

(i) Framing of issues and writing of (maximum marks - 40)

judgment in Civil Cases

(ii) Framing of charges and writing of (maximum marks 40)

judgment in Criminal Cases

(iii) Translation :-

(1) English to Hindi (maximum 10 marks)

(2) Hindi to English (maximum 10 marks)

In respect of Viva-Voce, the relatively more meritorious candidates from those who appeared in the Main Examination were to be called in the ratio

of 1:3 and the maximum mark provided was to be '15'.

4. Pursuant to the above Notification, 8588 Online applications were received, but only 4681 candidates turned up for the Preliminary Examination held

on 07.05.2019, while the remaining 3907 were absent. On the very next date i.e. 08.05.2019, Annexure-P/6 'Model Answers' were published by the

PSC, calling for objections, if any, to be submitted within '07' days i.e. from 14.05.2019 to 20.05.2019. Infact, only '157' candidates raised objections in

respect of '49' questions out of the total '100'. The objections were forwarded by the PSC to a duly constituted Committee (two Senior District Judges

and an Additional District Judge-retired). After considering the objections, the Committee found that '12' questions had to be deleted because of

serious mistakes. In respect of '04' questions, the answers given in Annexure-P/6 had to be corrected / changed and in respect of the remaining '33'

questions, no change was found necessary. It was accordingly, that the final answers were published on 22.06.2019 as borne by Annexure-P/8.

5. On publishing the final answer score, the Petitioners rushed to this Court by filing the writ petitions; some of whom contending that their objections

were not properly considered, while some others contending that the deletion of the questions was bad. Some of the Petitioners contended that the

revised answers were not at all correct; whereas few candidates approached this Court even without filing any objections before the PSC, but for

raising the same for the first time in the writ petitions. Yet some others contended that selection had to be cancelled and in some of the writ petitions,

there was an alternative prayer, that the writ petitioners might be permitted to participate in the Main Examination to be conducted by the PSC.

6. The PSC sought to justify its stand contending that the writ petitions were not

maintainable, as the proceedings have been finalized by the PSC in accordance with law / rules / norms and that the objections preferred have been considered by the Expert Committee, based on which alone was the final score sheet prepared. Based on the relative higher marks, '427' candidates have been short-listed to be called for the Main written test. The deletion of the questions, alteration of the answers and overruling of the objections concerned were sought to be sustained with reference to the facts and figures. Pursuant to the orders passed / direction given by the learned Single Judge, the records were produced and the matters were heard elaborately. The learned Single Judge proceeded to conduct scrutiny in respect of '43' questions and after hearing both the sides, a finding was rendered to the effect that Eleven questions were rightly deleted by the PSC / Committee; one question was wrongly deleted; answers of the some questions were wrongly altered; some objections were rightly overruled by the Committee and that some more questions ought to have been deleted by the PSC / Committee. Considering the degree and extent of defects in the question papers (which according to the Court was of '43' wrong questions / answers out of '100'), it was held that the 'percentage' would dilute the module of selection process. It was accordingly, that the final result of the Preliminary Examination conducted by the PSC on 07.05.2019, pursuant to the advertisement dated 06.02.2019, was set aside and the PSC was directed to conduct a fresh Preliminary Examination on the basis of Annexure-P/2 advertisement without charging separate fee, as mentioned already. This is put to challenge by the PSC and some of the short-listed candidates in these appeals.

7. We heard Mr. Ashish Shrivastava, the learned Standing Counsel for the PSC, Mr. Goutam Khetrapal, the learned Counsel for the Appellants in the appeals (except WA No.617 of 2019) and all the learned Counsel appearing for the writ petitioners, who are respondents in these appeals; besides Mr. Rajeev Shrivastava, the learned Standing Counsel for the High Court and Mr. Chandresh Shrivastava, the learned Counsel representing the State.

We have also heard the 5th Respondent in WA No.17 of 2020 (the Petitioner in WPS No.5935 of 2019), who appeared in person.

8. Mr. Ashish Shrivastava, the learned Counsel for the PSC submits that setting aside the result of the Preliminary Examination held on 07.05.2019

and the direction to conduct a fresh Preliminary Examination based on Annexure-P/2 advertisement is not at all correct or sustainable. According to the learned Counsel, relief has been granted by the learned Single Judge beyond the prayers raised by the Petitioners. The learned Counsel submits that, out of the total of '4681' candidates who participated in the Online Preliminary Examination, only a meagre group of '157' candidates raised objections before the PSC. All the said objections in respect of '49' questions have been considered by the Expert Committee constituted in this regard and it was accordingly, that the final answer-sheet was published vide Annexure-P/8 dated 22.06.2019. While publishing Annexure-P/6 provisional answer-sheet on 08.05.2019, sufficient time was given to the candidates to submit objections. Since there was no violation of any rules / norms in this regard and since the PSC has acted as per the instruction of the Expert Committee, no interference ought to have been made by the learned Single Judge.

9. The learned counsel for the PSC pointed out that only '09' persons have approached this Court challenging Annexure-P/8, among whom, only '05' persons had raised objections before the PSC while the remaining '04' had not raised any objection at all. Despite this, more / new questions have been sought to be objected by the Petitioners before this Court and hence the same ought not to have been entertained by the learned Single Judge and the scrutiny ought to have been confined only to the questions objected before the PSC. Another grievance of the PSC is with regard to the course pursued before the learned Single Judge, whereby the process of scrutiny was taken over by the learned Single Judge himself, by considering '43' questions as dealt with in paragraphs 17 to 58 of the judgment. Findings have been rendered in respect of various questions, which were never objected by anybody either before the PSC or before this Court and hence, it is not correct. The PSC further contends that since new objections have been raised before this Court for the first time, the PSC did not get a chance to have it referred to the Expert Committee. Since no dispute was raised by such Petitioners as to obscurity / defects, if any, in respect of the questions concerned and had approached this Court only after declaration of final answer-score, it was not a matter for interference, in exercise of the power for judicial review. The learned Counsel for the PSC contends that the

exercise pursued by the learned Single Judge in re-evaluating the answers by the Court itself, instead of sending the matters for consideration by the Expert Committee, is not correct, in view of the law declared by the Apex Court in this regard. It is the last submission of the PSC, that the observation and finding of the learned Single Judge that more questions ought to have been deleted by the PSC is not correct and such finding / directions have been given in respect of the questions where some simple spelling mistakes / printing mistakes have occurred; whereas no difficulty was there in understanding the questions in the given context; more so, when both the English and Hindi versions were available on the screen.

10. Mr. Goutam Khetrapal, the learned Counsel representing the Appellants in the other appeals, submits that setting aside the result of the Online Preliminary Examination without hearing the Appellants / affected parties is fundamentally wrong and liable to be interdicted. The said Appellants, by virtue of their merits, were figuring at the top of the merit list and it was on the basis of relatively more merit scored by the Appellants, that they came to be included in the group of '427' candidates identified to be called for the Main Examination. The said Appellants having been not impleaded in the writ petitions, the petitions were liable to be dismissed on the said score alone. The learned Counsel also submits that there is no case for the writ petitioners that they could not understand the questions because of the spelling mistakes or such other minor defects as pointed out by the learned Single Judge and no objection was raised in this regard either before the PSC or in the writ petitions filed before the Court. Insofar as no such difficulty was expressed in understanding the questions and answering the same, it was not correct or proper for the learned Single Judge to have ordered deletion of such questions as well, in turn leading to cancellation of the result of the Online Preliminary Examination. It is the further submission of the above Appellants, that much efforts have already been put in by the said candidates, who studied for hours everyday and performed well in the Preliminary Examination. This being the position, cancellation of the result of the Online Preliminary Examination, for no fault on their part, but for the mistakes on the part of the PSC / Experts, if any, is not correct and not liable to be sustained.

11. In the above factual background, the following questions are formulated to be answered one by one :

(i) Whether the scrutiny made by the learned Single Judge in respect of questions which were never objected by anybody including the Petitioners

either before the PSC or in the writ petitions and the direction given to have them deleted is correct or not ?

(ii) Whether the course of action pursued by the learned Single Judge subjecting the scrutiny of the disputed questions by the Court itself, instead of

sending them to the Expert Committee constituted by the PSC is correct or proper ?

(iii) Whether the direction to delete some questions for containing simple / spelling mistakes inspite of the fact that there was no difficulty in

understanding the meaning; more so when the questions are available both in 'English' and 'Hindi' is correct or not ?

(iv) Whether the result of the '4681' candidates, who participated in the 'Preliminary Examination' had to be cancelled because of the objections raised

by the '09' Petitioners before this Court ?

(v) What is the scheme and scope of the 'Preliminary Examination' ?

(vi) If the 'Preliminary Examination' is only a 'Screening Test' to consider eligibility of the candidate to participate in the 'Main Examination', will it be

prejudicial to anybody, if the eligible Petitioners are also permitted to participate in the 'Main Examination', based on the merit in the objections to the

questions concerned ?

(vii) Since it is not a case of any malpractice in the examination and there is no grievance for 99.81% (objections having been raised only by 9 persons

â?" 0.19%) can the 'Preliminary Examination' be saved, taking a pragmatic approach and moulding the relief to the deserving Petitioners, if any, by

appropriate means ?

12. The first question to be considered is with reference to the merit of the submissions made by the PSC that the scrutiny, if at all any, ought to have

been limited to the questions disputed by the Petitioners before the PSC. It is brought out from the pleadings, proceedings and the materials on record

that, after publication of the preliminary answers as per Annexure-P/6 on 08.05.2019 and on considering the objections (raised by '157' persons in

respect of '49' questions out of the total '100'), the matter was referred to the

Expert Committee constituted by the PSC, who found that '12' questions were to be deleted and that answers to '04' questions had to be corrected / changed, leaving the remaining '33' disputed questions intact, overruling the objections. This shows that the PSC / Expert Committee has conceded that '12' questions set forth by the PSC / Expert Committee and answers suggested in respect of other '04' questions were defective and hence corrective measures had to be taken. The PSC admits that the '12' defective questions have been deleted and that the marks allocable in respect of such '12' questions ('01' each) have been distributed on the remaining '88' questions. Each of the candidates, on answering such questions (of the remaining '88') will be getting more marks than '01' per question and the total has been added together while declaration of the final score.

13. There is a finding by the learned Single Judge to the effect that, because of the obscurity / mistake, some other questions were also to be dropped by the PSC and further that one question had been wrongly deleted by the PSC. It is possible that a candidate who had raised no objection before the PSC or objected to some questions may become aggrieved in respect of the change brought about by the PSC after considering the objections and declaration of the final answers vide Annexure-P/8; to be subjected to challenge in the writ petition. It may also be for the reason that the objections raised before the PSC might not have been considered properly or that the objections raised by somebody else might have persuaded the PSC to change the answers leading to the final answers as per Annexure-P/8; which according to such Petitioner was not correct and hence he had to challenge it in the writ petition. Insofar as there was no opportunity for such persons to raise any further objection in respect of the final answers, after effecting the changes based on the views expressed by the Expert Committee in respect of the questions concerned, they had to raise the same for the first time before this Court in the writ petitions. Similarly, there are some candidates who had not raised any objections before the PSC, but they have come up before this Court challenging some of the questions, pursuant to changes effected by the PSC on the basis of the Experts' opinion after considering the objections raised by others; which is quite justifiable. This being the position, this Court does not find much force in the contention raised by the PSC that the objections raised only before the PSC could have been

considered.

14. The next contention raised by the PSC / Appellants is that analysis of the disputed questions has been made by the learned Single Bench / Court

itself, instead of sending it to the Expert Committee, which is not proper. Reliance is sought to be placed on the verdict passed by the Apex Court in

Himachal Pradesh Public Service Commission Vs. Mukesh Thakur and Another (2010) 6 SCC 75.9 The sum and substance of the above verdict is to

the effect that, since the Courts are not 'Experts' in relation to the relevant subject / fields in which the examinations are conducted to test the

credentials of the candidates, such scrutiny has to be got performed by referring the matter to the Experts, who are having adequate subject

knowledge in this regard. But, the question is whether the said decision, examining the correctness of the direction given by the High Court of

Himachal Pradesh at Shimla causing the Written Papers to be revalued by another examiner (after scrutiny done by the Court formulating opinion)

and the direction given to interview the candidate; followed by the direction given to appoint him, as such, is applicable in the case in hand where

scrutiny was of w.r.t. the questions and the multiple choice answers given in respect of the 'Preliminary Examination' which was of a 'Screening Test'

to determine the eligibility to be called for the Main Examination and Viva Voce and further when the marks of the

Preliminary Examination were never to be counted for the selection and appointment, as notified.

15. In the given context, it will be worthwhile to go through the various 'subjects' for which the candidates are sought to be tested in the Preliminary

Examination with 'multiple choice' answers. This has been given in Appendix-'A' of Annexure-P/2 Notification dated 06.02.2019. The '100'

questions, carrying '01' mark each, had to be answered within 'two' hours, under the '15' different subjects as noted below :

1. Indian Penal Code

2. Code of Civil Procedure

3. Code of Criminal Procedure

4. Indian Evidence Act

5. Constitution of India

6. Transfer of Property Act
7. Contract Act
8. Limitation Act
9. The Chhattisgarh Rent Control Act, 2011
10. Court Fees Act
11. Specific Relief Act
12. Registration Act
13. Chhattisgarh Land Revenue Code
14. The Negotiable Instruments Act, 1881
15. The Chhattisgarh Excise Act, 1915

The above factual position makes it clear that the candidates were being tested as to the acquisition of their elementary knowledge in the above '15'

different fields, which is very much within the domain and knowledge / field of a learned Judge of this Court as well. Admittedly, the Expert

Committee constituted by the PSC is consisting of 'three' members - 'two' Senior District Judges and one Additional District Judge (retired). It is not

necessary to mention here that High Court is acting as Court of appeal in respect of the various orders passed on the above subjects by the Court

below or in exercise of the powers of revision or on invoking the supervisory jurisdiction under Article 227 of the Constitution of India. This being the

position, there is absolutely nothing wrong on the part of the learned Single Judge, who took pains to resolve the issue by conducting a direct

verification / scrutiny as to the nature of dispute raised in respect of different questions in the field of law, w.r.t. the multiple choice answers given. It

is more in relation to the 'defective questions', particularly, when different versions were given in 'English' and the same questions were repeated

in 'Hindi'. The consequence that may be resulted when option was given to the students either to opt English or Hindi, resulting in allocation of mark in

respect of one group where there is no mistake (who had opted for that particular language), while losing mark by the other (who opted for the other

language) where the mistake appears, can be easily understood. It will be beyond reach to think that the answer to be opted by a person contesting for

the post of Civil Judge (Junior Level) from the multiple choice answers given may not be within the knowledge / expertise of a High Court Judge, who

conducted the scrutiny as to the correctness of the questions / answers. The PSC ought not to have had the temerity to contend that the said exercise

had to be conducted by the Expert Committee consisting of the District Judges (Rtd.).¹ The judgment cited (supra) is not applicable to the case in hand.

We answer the question against the PSC and hold that there is nothing wrong in the exercise pursued by the learned Single Judge.

16. The next point is as to the number of questions identified by the learned Single Judge, which were subjected to scrutiny. As pointed out earlier, a

total of '43' questions were subjected to scrutiny by the learned Single Judge, as given in paragraphs 17 to 58 of the judgment. It is specifically pointed

out by the learned Counsel for the PSC that many of the questions ordered to be dropped by the learned Single Judge were never objected by

anybody. These questions were mostly having some 'simple/spelling/printing mistakes' and there was no difficulty in understanding the meaning.

That apart, the questions were available both in 'English' and 'Hindi'. This Court is given to understand that knowledge of both 'Hindi' and 'English' is

essential for identifying the suitable candidate as the candidates are being tested in this regard in the Main Examination, particularly, providing a paper

for 'translation' from 'English to Hindi' carrying 10 marks and 'Hindi to English' carrying another 10 marks. If there was any doubt or obscurity in the

question, it was quite possible for the candidate to click the relevant button on the screen to see the question given in the other language and

understand it correctly and answer the same, though he had to answer in the very same language which he had opted. This exercise may not be

necessary in the case (other language) where there is no doubt or obscurity and the time, if at all any, taken will be minimal. That apart, all the '100'

questions, being of multiple choice answers, the time taken to answer each question will relatively be little. For a person who is having adequate

subject knowledge, no much time would be required to think about or formulate the views and to have it recorded. To cite a few examples of such

instances, it is pointed out that the questions discussed by the learned Single Judge in paragraphs 31, 32, 33, 34, 35, 36, 37 and 46 were not objected by

anybody. If nobody had any objections in this regard and nobody had any difficulty in understanding the question and answering them accordingly, no

further scrutiny was warranted from the part of the Court in this regard. As such, we are of the view that the exercise pursued by the learned Single

Judge in conducting scrutiny of the questions which were never objected by anybody either before the PSC or before the Court is not correct or

sustainable. This point is answered in favour of the Appellants.

17. The next question to be considered is whether the result of the whole candidates, who participated in the examination had to be cancelled because

of the objections raised by a few Petitioners before this Court ? As pointed out earlier, among the 8588 applicants, only 4681 candidates appeared for

the preliminary examination held on 07.05.019. After publication of the final answers as per Annexure-P/8 (considering the objections raised by '157'

candidates in respect of the '49' questions by the Expert Committee), only '09' persons have come up before this Court, raising objections. This means

'4672' candidates were having absolutely no objection at all and the percentage of challenge raised is only by a quite few i.e. $9/4672 \times 100 = 0.19\%$.

Whether the cancellation of the examination will be justified in the said context, is to be considered and if not, what is the appropriate solution is the

remaining question to be answered.

18. It is relevant to note that Annexure-P/2 was issued on 06.02.2019 and the Preliminary Examination was conducted on 07.05.019 i.e. after a period

of 'three' months. It does not require any detailed probe to infer that all the 'three' months, the aspiring candidates would have burnt midnight oil to

have an in-depth study on all the '15' subjects shown in Appendix-'A' to prove their mettle. After participating in the examination and on publication of

the final answers, the 'merit rating' was done by the PSC to identify the candidates who are to be tested in the next level. Based on the relative scores,

'427' persons (following the prescribed ratio) were identified as the front runners and they have been short-listed to be called for the Main

Examination. Whether there is any mistake or fault on the part of the candidates and why should they be penalised to undergo the ordeal by

participating in the 'Preliminary Examination' again and prove their mettle for the mistake stated as committed by the PSC / Experts in framing the

questions / identifying the answers, deletion / correction of the answers in respect of some disputed questions, is the pertinent question. If '4672'

candidates (99.81%) did not have any case or objection that they had any

difficulty in understanding the questions or identifying the correct answers, should such a drastic step by way of cancellation of the process is to be pursued, merely on the basis of the dispute raised by a handful of persons

(just '09' in number); is a question which cannot be answered in the 'Positive'; for the reasons noted below.

19. There is no case for the Writ Petitioners that they did not understand the questions. The persons who have not come up before this Court (4672)

do not have a case that they had any problem / difficulty in answering the questions. Admittedly, since both the 'English' and 'Hindi' versions were

available on the screen (on pressing the relevant button provided in this regard, if found necessary), it was quite possible for them to have resolved the

doubt, if any, and answered the question; which infact might have been done by them. When such a prudent exercise was presumably done by '4672'

candidates and have answered the questions accordingly, should it be set aside at the instance of '09' persons who had approached this Court, which

can only be answered in the 'Negative'. This is more so, since the posts in question (for which the 'Preliminary Examination' is being conducted) are

not of any ordinary / common employment but stand a different pedestal, because of the Job Specification and the Job Requirements. Insofar as the

post of a Judge is concerned, apart from good knowledge in the subject, reasonable level of understanding, analytical skills and sense of reasoning are

essential. If the Petitioners contend that they could not understand the questions because of the 'spelling mistake' or such other simple/printing

mistakes, insofar as the mistakenly spelt / printed word does not have a different meaning, no interference ought to have been made with regard to

such questions, to be taken out from the lot and set aside the Examination.

20. It is true that the Rules of Procedure of the PSC (as amended); particularly, sub-Rule 13 of Rule 56 of the Chhattisgarh Public Service

Commission Rules of Procedure-2014 says that, if '20' or more questions are to be deleted, the PSC 'may' conduct a re-test. The above rule / norm

does not make it obligatory for the PSC to cancel the test, for which different aspects are to be considered. As mentioned already, after completing

the process and procedure by notifying the model answers vide Annexure-P/6 (inviting objections) and on finalizing the same after getting the version

of the Expert Committee, vide Annexure-P/8, the scope and extent of dispute

came down and only '09' out of the '4681' candidates who participated in the Preliminary Examination found it necessary to approach this Court. This being the position, the proper course of action was only to see whether the grievance projected by the Petitioners with reference to the particular questions raised before this Court was 'genuine' or not and to find whether they should be given a chance to participate in the Main Examination. This is more so, since it was on the shoulders of the writ petitioners to have the genuineness demonstrated before the Court and no interference can be made as a matter of course, as held by the Apex Court in *Uttar Pradesh Public Service Commission and Another v. Rahul Singh and Another* (2018) 7 SCC 254.

21. Another important aspect to be noted in this context is that the scheme of the Preliminary Examination is of limited scope and applicability in relation to the selection to the posts in question, as given in Annexure-P/2 Notification itself. The Preliminary Examination for testing the knowledge of the candidates in the different subjects as given in Appendix-'A', by causing them to answer '100' questions carrying '01' mark each in '120' minutes, is only to serve as a 'Screening Test' to identify the relatively more meritorious persons to be called for the Main Written Examination and Viva-Voce. Annexure-P/2 Notification itself makes it clear, that no marks of the Preliminary Examination would be counted for the purpose of selection, which will exclusively be on the basis of the marks secured in the Main Examination and Interview. It is also an admitted fact that, there is no 'minus mark' for answering any question wrongly in the Preliminary Examination and hence there is no chance to suffer any prejudice because of any wrong marking of answers or wrongly attempting the questions by anybody. Insofar as it is only a 'screening examination', intended only to give an entry to the candidate to participate in the Main Examination and further since only '09' Petitioners have turned up before this Court, with no grievance for the remaining '4672' candidates who participated in the said examination, the approach, according to this Court, ought to have been whether the objections raised by the writ petitioners were genuine and if so, whether they could be permitted to participate in the Main Examination, instead of cancelling the entire result, pushing down all the remaining '4672' candidates to square one, compelling them to undergo the ordeal once again, for no fault on their

part. Giving a chance to a meritorious candidate / Writ Petitioner, if the objection / challenge raised is genuine and acceptable, will not cause any prejudice to anybody, as it is only a 'Screening Test' to identify the candidates who can be called for the Main Test and Interview. In other words, as clearly notified in Annexure-P/2 Notification and also as mentioned already, the marks in the Preliminary Examination will have no bearing or consequence with regard to the Main Examination and the marks to be reckoned for selecting the proper candidates will only be the marks obtained in the Main Examination and the Viva-Voce.Â Viewed in the said background, we find that the verdict passed by the learned Single Judge, setting aside the result of the Preliminary Examination declared as per Annexure-P/8 dated 22.06.2019 is not correct and that the grievance of the writ petitioners can be considered on 'individual basis' (case to case basis), to ascertain whether they also should be given a chance to participate in the Main Examination.

22. Considering the scope of challenge raised in these matters in the above background, it may be necessary to ascertain the factual position in relation to the objections raised by the writ petitioners, with reference to Annexure-P/6 model answers notified on 08.05.2019 or the situation after Annexure-P/8 final answers were published on 22.06.2019. As per the relevant rule / norms, the PSC is not bound to effect any 'merit rating' at the time of publication of the model answers and the rating is to be effected only after the publication of the final answers. But since the matter requires to be dealt with on individual basis, instead of cancelling the entire result and making the other 99.81% candidates to suffer unnecessarily and also to save the exercise so far done by the PSC / Expert Committee to the permissible / legally sustainable extent, we thought it fit to direct the PSC to produce the score-sheets in respect of the '427' candidates short-listed based on their relative merit and that of the Petitioners, as they stand on the basis of the model answers (Annexure-P/6) as well as the position reflected after the finalization of the answers (Annexure-P/8). The said data was required to be furnished in a sealed cover and on 17.01.2020, the inputs were given in sealed covers. In view of the submission that it did not contain the exact position with reference to Annexure-P/6 model answer-sheet, which was to take some more time, we ordered the matters to be listed for further

consideration on 21.01.2020. On that day, the requisite particulars were submitted by the PSC in sealed covers. We have opened the covers and perused the contents with reference to the objections raised by the Writ Petitioners and their relative chance to get included as one among the candidates to be called for the Main Examination and Viva Voce.

23. In the course of working up the position, it came to the notice of this Court that apart from the '08' petitioners in the writ petitions from which the present appeals have been filed, one more writ petition i.e. WP(S) No.5465/2019 filed by another writ petitioner by name 'Prabhjot Kaur' was still pending before the learned Single Judge. Considering the necessity to have a uniform standard, we caused the above matter also to be listed before this Court, besides the object to get clarifications on some specific aspects. All the matters were listed on 19.02.2020 and the parties were heard accordingly. In the course of hearing, a 'comparative chart' prepared by the PSC in (tabulated form) dealing with the individual cases, the objections raised before the PSC, the decision taken by the Expert Committee, the objections raised in the writ petitions and the outcome before the learned Single Bench have been separately given. Copy of the said chart was stated as given to the learned counsel for the writ petitioners as well and there is no dispute with regard to the factual aspects noted therein.

24. We have already held that it was not necessary to have cancelled the result of the 'Preliminary Examination'; which is more so in view of law declared by the Apex Court in Chandra Prakash Tiwari & Others v. Shakuntala Shukla & Others (2002) 6 SCC 12 7 (paragraphs 39&41) pointing out the need to take a pragmatic view. There is no dispute that the selection of suitable candidates for appointment to the post of Civil Judges Grade-II is only on the basis of 'Main Examination and the Viva Voce' and the marks obtained in the Preliminary Examination are not to be reckoned. Preliminary Examination is only a screening process and as held already, no prejudice will be caused to anybody, if any of the Petitioners, based on the genuineness of their objections, is/are permitted to participate in the 'Main Examination and the Viva Voce'. Outcome of the scrutiny, with reference to the individual grievance, is discussed as given below.

25. Out of the '09' writ petitioners, only '05' candidates had raised objections before the PSC, who have approached this Court, either being dissatisfied

with the way their objections have been handled by the PSC / Expert Committee or in respect of the consequence resulted because of the objections

raised by the other objectors, against various other questions (with regard to which the said Petitioners did not have any objection). The remaining '04'

writ petitioners, who did not raise any objection before the PSC, are stated as aggrieved because of the changes made by the PSC based on the

objections raised by others and hence they have also moved this Court raising objections in respect of the questions concerned.

26. As per the materials made available by the PSC in sealed covers (verified in Open Court), it is seen that the candidates in the zone of

consideration to be called for the Main Examination and Viva Voce, if it is to be based on as per Annexure-P/6 model answer-scores, (without

considering any objections) will be of the level with a maximum of '94' marks and bottom score of '86' marks, as cut off. If it is to be based on

Annexure-P/8 answers finalized after considering the objections, the candidates to be invited will be within the range of '92.0484' marks at the top and

'86.3664' marks at the bottom. This Court finds that the prudent exercise will be to consider the eligibility of the Petitioners to have an entry to

participate in the Main Examination with reference to their performance and objections raised, if any, as it existed on the date of publication of

Annexure-P/6 model answers. It is more so, since Annexure-P/8 level scores are after deleting 12 questions and re-distributing the marks of the said

questions to the remaining 88 questions, resulting in addition of 'fraction of marks' to the said 88 questions and hence it will not be safe to reckon it as

the base figure.

27. Applying the factual aspects gathered from the comparative chart given by the PSC, the fate of the Petitioners in the different writ petitions will be

as follows :

(i) Mr. Kumar Saurav (The Petitioner in WP(C) No.2403/2019, connected to WA No. 617/2019) :

The said Petitioner (General candidate) has scored '65' marks and objections were only in respect of the '03' questions (key questions 8, 38 & 40).

The objections were overruled by the PSC, but the learned Single Judge observed that the stand of the PSC was wrong and all the '03' questions were

ordered to be deleted. As such, it may be possible to contend that the said

Petitioner was entitled to get '03' more marks for the '03' questions objected before the PSC. Even if '03' more marks are added on to the original score of '65' marks bagged by him, it will only take his total marks to '68', whereas the cut off mark is '86' and hence no relief can be granted to the said writ petitioner.

(ii) Mr. Sabyasachi Choubey (The Petitioner in WP(S) No. 4950/2019, connected to WA No. 20/2020) :

The said writ petitioner (General candidate) objected to the '04' questions (key questions 9, 22, 93 & 99). Answers to questions 22 & 99 were

corrected by the PSC, while questions 93 was deleted and objection in respect of question No. 9 was overruled. The learned Single Judge held that

question No.22 was rightly corrected and question No. 93 was rightly deleted by the PSC, whereas question No.99 was wrongly corrected and hence

deleted. Similarly, question No.9 was also held to be deleted, contrary to the stand taken by the PSC. By virtue of this, it is possible to award '04' more

marks to the writ petitioner, than the marks he scored at Annexure-P6 level. Since the said petitioner has already scored '86' marks, even without

considering any objections and further since it is stated that, '86' is the cut off mark at the Annexure-P/6 round, we are of the view that the said

Petitioner is entitled to have a chance to participate in the Main Examination.

(iii) Shishir Shrivastava (The Petitioner in WP(C) No. 2570/2019, connected to WA No. 19/2020) :

The said Petitioner (General candidate) had objections only in respect of 02 questions (key questions No. 22 and 93) before the PSC. The above

questions were corrected / deleted by the PSC as per the opinion of the Expert Committee and the correction / deletion was sustained by the learned

Single Judge as well. By virtue of this, it is possible to add '02' marks to the score obtained by the Petitioner at Annexure-P/6 round (without

considering objections). Since the said Petitioner has already scored '87' marks even prior to the objections and since the cut off mark is only '86', he is

also declared as eligible to get an entry to the Main Examination.

(iv) Varsha Rathore (The Petitioner in WP(C) No. 2646/2019, connected to WA No. 21/2020) :

The said Petitioner (General candidate) had objections only in respect of 02 questions (key questions No. 22 & 96) before the PSC and the PSC, after

considering the objections, corrected the answer in respect of question No.22 and deleted the question No.96. The correction in respect of question

No. 22 was sustained by the learned Single Judge as well, whereas the deletion in respect of question No.96 was held as wrongly made. As it stands

so, the objection in respect of question No.96 raised before the PSC is not liable to be sustained and there is possibility to add only 'one' more mark to

the credit of the Petitioner in respect of question No.22. As such, her initial score being 83 marks at Annexure-P/6 round, it will only get enhanced to

'84'. Even if '02' more marks are added in respect of the 02 questions objected by her, it can still be only '85, which is below '86' the cut off mark at

Annexure-P6 level and hence she is not eligible to have any relief.

(v) Prabhjot Kaur (The Petitioner in WP(S) No. 5465/2019).

The objections raised by the above writ petitioner (General candidate) before the PSC were in respect of '04 questions (key questions No. 22, 40, 98

& 99). Answers in respect of questions No. 22 and 99 were corrected by the PSC, based on the opinion given by the Expert Committee, whereas the

objections in respect of questions No. 40 & 98 were overruled. Correction in respect of question No.22 was sustained by the learned Single Judge,

whereas the stand of the PSC in respect of questions No. 40 & 98 was held as not correct and hence those questions were deleted. In respect of

question No.99, it was held as wrongly corrected by the PSC and therefore, it was deleted. Here, it is to be noted that the discussion made by the

learned Single Judge in paragraphs 15 and 16 refers to the mistake in the 'Hindi' version of the question paper, while holding it as proper; insofar as

'English' version is concerned. Since the Petitioner had opted for answering the questions in 'English', by virtue of the finding of the learned Single

Judge that there was no problem in the 'English' version, the objection raised by the Petitioner in respect of question No.99 is not sustainable. As it

stands so, it is possible to add '03' more marks (for the questions No. 22, 48 & 98) to the marks scored by the Petitioner at Annexure-P/6 level, which

is 82, it will take the total to (82+3=85). Since the cut off mark is 86, the Petitioner cannot legitimately expect to have an entry to participate in the

Main Examination and hence the prayer is turned down.

(vi) Chhabi Lal Sahu (The Petitioner in WP(S) No. 5407/2019, connected to WA No.22/2020) :

The Petitioner belongs to 'OBC' segment, who had no objection in respect of Annexure-P/6 model answers given by the PSC. The total marks scored by him at Annexure-P6 round was '80'. Since, the cut off mark at the said round for an 'OBC' candidate is only '78', it would only be proper to permit the said writ petitioner to participate in the 'Main Examination. It is ordered accordingly.

(vii) Nushrat Tahsin Quadri (The Petitioner in WP(C) No. 2755/2019, connected to WA No.18/2020) :

No objection was raised by the above writ petitioner (General candidate) before the PSC. The total marks scored by the Petitioner at Annexure-P/6 round was only '85' whereas, the cut off mark to be reckoned is '86'. By virtue of this, no relief can be aspired or given for permission to participate in the Main Examination. It is turned down.

(viii) Priyamvada Singh (The Petitioner in WP(S) No. 5935/2019, connected to WA No. 17/2020) :

There was no objection for the writ petitioner (General candidate) before the PSC in respect of any question. Since the total marks bagged by the said Petitioner at Annexure-P/6 round is only '82', which is much below the cut off level of '86', no relief can be granted to the said writ petitioner.

(ix) Sarika Nande (The Petitioner in WP(C) No. 2428/2019, connected to WA 606 of 2019) :

The said Petitioner (General candidate) had filed no objection before the PSC and was virtually satisfied with the position as it was notified vide Annexure-P/6 model answers. The total mark scored by the above Petitioner is '87' and since the cut off mark at Annexure-P6 level is only '86', she is entitled to have an entry to participate in the Main Examination. It is ordered accordingly.

28. The above discussions clearly show that among the '09' writ petitioners, only '04' persons can be considered as eligible to have a chance to participate in the Main Examination with reference to their objections raised before the PSC in respect of the Annexure-P/6 model answers or for the reason that they did not have any objection to said model answers, but for the objections against Annexure-P/8 (final answers).

29. In view of our finding that the 'Preliminary Examination' undergone by '4672' candidates need not be set aside with reference to the objections

raised by the just '09' candidates and that it can be saved by moulding the relief on 'case to case basis', we set aside the judgment passed by the

learned Single Judge. We hold that the Petitioners by name Mr. Sabyasachi Choubey (WPS No.4950/2019), Mr. Shishir Shrivastava (WPC

No.2570/2019), Mr. Chabbi Lal Sahu (WPS No.5407/2019) and Ms. Sarika Nande (WPC No.2428/2019) are to be permitted to participate in the

Main Examination. Respondent-PSC is directed to take further steps in this regard. The said writ petitions stand allowed to the said extent.

30. In view of our finding that the Petitioners by name Mr. Kumar Saurav (WPC No.2403/2019), Ms. Varsha Rathore (WPC No.2646/2019), Ms.

Prabhjot Kaur (WPS 5465/2019), Ms. Nushrat Tahsin Quadri (WPC No.2755/2019) and Ms. Priyamvada Singh (WPS No.5935/2019) have failed to

establish their right, their writ petitions stand dismissed.

31. The appeals preferred by the PSC and the other appellants stand allowed in part as above. However, we cannot but record our extreme

displeasure in respect of the mistakes occurred at the hands of the PSC, which shall be taken as an eye-opener for the future. No costs.