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AMENDED PETITION

**IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR (C.G.)**

Writ Petition (S) No. 181 of 2013

PETITIONER

**Avinash Singh son of Shri Ramesh
Singh Thakur, aged about 23 years, resident of
behind Old Bus Stand, Ward No. 20, Janjgir, Police
Station-Janjgir, Civil & Revenue District-Janjgir-
Champa (C.G.)**

VERSUS

RESPONDENTS :1.

State of Chhattisgarh,

Through the Secretary, Department of Revenue &
Disaster Management, Mantralaya Mahanadi Bhawan,
New Raipur, P.S.-Rakhi, District-Raipur (C.G.)

2. The Collector, Janjgir, Police Station-Janjgir, Civil &
Revenue District-Janjgir-Champa (C.G.)
3. The Additional Collector, Janjgir, Police Station-Janjgir,
Civil & Revenue District-Janjgir-Champa (C.G.)
4. The Sub-Divisional Magistrate, Janjgir, Police Station-
Janjgir, Civil & Revenue District-Janjgir-Champa (C.G.)
5. Sushma Singh daughter of Anil Singh, aged about 27
years,
6. Mohan Kumar Kaushik son of Shankar Lal, aged about
24 years,
7. Hemchand son of Khageshwar Prasad Tiwari, aged
about 28 years,
8. Gopal Prasad Rathore son of Udayram Rathore, aged
about 41 years,
9. Suryakant Sahu son of Budhram Sahu, aged about 37
years,
10. Naval Kishore son of Vijay Kumar Chandra, aged about
34 years,
11. Kamalkant Mahto son of Shivkumar, aged about 31
years,
12. Amit Kumar Tripathi son of Avadhesh Prasad Tripathi,
aged about 31 years,
13. Bhanupratap Singh son of Rajaram Gabel, aged about
30 years,
14. Prateek A. Rathore son of Kamal Kishore Rathore, aged
about 27 years,
15. Maniram Kashyap son of Jogiram Kashyap, aged about
27 years,
16. Pramod Kumar son of Sukhram Kashyap, aged about 27
years,
17. Mehul Kumar son of Kumbh Prasad Vishwakarma, aged
about 27 years,
18. Ku. Varsha Singh daughter of Dhanatri Singh, aged
about 25 years,
19. Dharmendra Yadav son of Basant Kumar Yadav, aged
about 24 years,
20. Ajay Kumar Dewangan son of Late Om Prakash
Dewangan, aged about 24 years,
21. Jaykumar Dewangan son of Deepchand Dewangan,
aged about 35 years,

22. Satish Kumar Rathore son of Devi Kumar, aged about 34 years,
23. Arvind Kumar Rathore son of Surendra Singh Rathore, aged about 33 years,
24. Bhaskar Chand Dewangan son of Narayan Prasad Dewangan, aged about 33 years,
25. Sanjay Kumar Gabel son of Shantilal Gabel, aged about 31 years,
26. Harishankar Patel son of Lekhram Patel, aged about 31 years,
27. Ku. Preeti Pawar daughter of Bhagwati Pra. Pawar, aged about 24 years,
28. Preetibala Tiwari wife of Radhashankar Tiwari, aged about 33 years,
29. Ku. Toshiba Dewangan daughter of Ramkumar Dewangan, aged about 29 years,
30. Priyanka Dewangan wife of Sureshchand Dewangan, aged about 27 years,
31. Richa Saraf wife of Rajkumar Saraf, aged about 24 years,
32. Ku. Pushpanjali daughter of Gopal Prasad Tamboli, aged about 36 years,
33. Ku. Seema Rathore daughter of N.R. Rathore, aged about 38 years,
34. Sher Singh Rathiya son of Babulal, aged about 26 years,
35. Vinod Kumar Singh son of Laxman Singh, aged about 32 years,
36. Jayshankar Sidar son of Sammelal Sidar, aged about 21 years,
37. Nitesh Singh Thakur son of late Teej Ram Singh Thakur, aged about 28 years,
38. Ku. Ribha Thakur daughter of late Teejram Singh Thakur, aged about 26 years,
39. Kalpana Sidar wife of Beduram Sidar, aged about 25 years,
40. Suresh Kumar Kanwar son of Bholaram, aged about 27 years,
41. Shivrinarayan Porte son of Peelaram Porte, aged about 32 years,
42. Tikendra Kumar Diwan son of Purshottam Singh Diwan, aged about 28 years,
43. Yogesh Kumar Sidar son of Tarachand Sidar, aged about 22 years,
44. Sangeeta Kanwar daughter of Late Narottam aged about 24 years,
45. Sahni Ram Sidar son of Guharam, aged about 35 years,
46. Ankita Singh Kanwar daughter of Sharad Kumar Kanwar, aged about 26 years,
47. Jawahar Lal son of Balluram Gond, aged about 25 years,
48. Aktubar Singh Kanwar son of Dharam Singh Kanwar, aged about 31 years,
49. Mochan Singh son of S.R. Raj, aged about 24 years,
50. Balram Khairwar son of Heerasai Khairwar, aged about 38 years,
51. Shivraj Singh son of A.D. Singh, aged about 27 years,
52. Ajay Singh Sidar son of Firtu Ram Sidar, aged about 26 years,
53. Anita daughter of Mangal Singh, aged about 23 years,
54. Preeti Singh wife of Hardayal Singh, aged about 30 years,

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55. Smt. Gayatri Shyam wife of Santosh Kumar Shyam, aged about 26 years,
56. Narendra Prakash Tandon son of Dilip Kumar Tandon, aged about 25 years,
57. Harmendra Kumar son of Nirmal Prasad, aged about 28 years,
58. Kumari Dev Anjali daughter of V.R. Lohani, aged about 23 years,
Respondents no. 5 to 58 all selected for the post of Patwari and going through Training at Patwari Training Centre, Sarkanda, Police Station-Sarkanda, Civil & Revenue District-Bilaspur (C.G.)
59. M.D. Diwan, Ex-Additional Collector, Janjgir, resident of Village-Afrid, Police Station-Saragaon, Civil & Revenue District-Janjgir-Champa (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

SB: HON'BLE SHRI PRITINKER DIWAKER, J

WRIT PETITION (S) No. 1815 of 2013

PETITIONER

Avinash Singh

VERSUS

RESPONDENTS

State of Chhattisgarh and others

Post for pronouncement of the order on 17.03.2015

**Sd/-
Pritinker Diwakar
Judge**

HIGH COURT OF CHHATTISGARH AT BILASPUR

SB: HON'BLE SHRI PRITINKER DIWAKER, J

WRIT PETITION (S) No. 1815 of 2013

PETITIONER

Avinash Singh

VERSUS

RESPONDENTS

State of Chhattisgarh and others

Shri Prateek Sharma counsel for the petitioner.

Shri Shashank Thakur GA for the State/respondents No. 1 to 4.

Shri Manoj Paranjape counsel for respondents
7,8,11,14,19,24,28,29 and 56.

None for other respondents.

ORDER

(17.03.2015)

On 9.8.2012 an advertisement (Annexure P-2) was issued from the office of respondent No.2 – Collector Janjgir Champa inviting applications from the suitable candidates for 54 vacant posts of Patwari and pursuant thereto the petitioner as well as the private respondents applied for the same. Thereafter, written examination was conducted on 11.11.2012 and the question paper contained 100 questions of 01 mark each and there was no provision of minus marking. The candidates were required to put tick mark (✓) against the correct answer out of the 04 options given in the answer sheet. After examination, on 15.11.2012 and 27.11.2012 vide Annexures P-4 and P-5 model answers were published. On 20.12.2012 the impugned select list as well as the waiting list (Annexure P-1) was published.

Being dissatisfied with the select list as many as 09 candidates including (the petitioners herein) filed the present writ petition challenging the selection process, however, during its pendency 08 candidates out of 09 withdrew their writ petition and now the same is only with respect to petitioner Avinash Singh.

2. Counsel for the petitioner submits as under:

(i) that the petitioner had also appeared in the examination but his name did not find place in the select list and this is merely because unfair examination process was adopted by the State authorities;

(ii) that the entire selection process was carried out under the leadership of respondent No. 59 namely M.D. Diwan, then Additional Collector, Janjgir against whom several cases of corruption were pending and his integrity was also doubtful;

(iii) that respondent No. 59 was due to retire on 28.2.2013 and till the last moment of his retirement he had the firm mindset that the petitioner should not get any document relating to examination including the answer sheets of the candidates which he ultimately could get after the retirement of the said person i.e. respondent No. 59;

(iv) that during examination and even thereafter a news was circulated that some money transaction was made for the selection of Patwari and the beneficiary thereof was respondent No. 59;

(v) that number of candidates who had bad academic record have been selected in the said examination;

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- (vi) that the candidates had left the place meant for answer blank and in fact it is the examiner who had checked the answer sheets of the candidates himself and put tick mark (✓) against the correct answer;
- (vii) that while citing examples of seven answer sheets in paragraph No. 8.12 of the writ petition it has been argued by the counsel for the petitioner that though number of questions were not answered by the candidates but tick marks (✓) have been put against the correct answer by the examiner himself just to facilitate the affluent and influential candidates;
- (viii) that in respect of respondent No. 28 namely Preetibala Tiwari it has been argued that though she did not answer number of questions but yet the examiner has awarded the marks to her, which is quite apparent from the answer sheets of the said candidate obtained by the petitioner under the Right to Information Act;
- (ix) that according to the petitioner, the tick mark (✓) put by the examiner and the one said to be put by the candidates are almost the same and this makes the stand of the petitioner further clear that the questions have been answered by the examiner and not by the individual candidates;
- (x) that while referring to the report of private handwriting expert (Annexure P-7) it has been argued by the counsel for the petitioner that the allegation levelled by the petitioner has been duly supported wherein it is clearly stated that at least in seven answer sheets the questions have been answered by the same

person who had checked the answer sheets;

(xi) that when number of irregularities have been noticed, entire selection process including issuance of impugned select list is liable to be quashed and a fresh selection process is required to be initiated in a fair and impartial manner;

(xii) that after summoning the entire record a direction may be issued to register a criminal case and initiate departmental enquiry against the persons who are involved in the entire foul play. Reliance is placed by the counsel for the petitioner on the decisions of the Apex Court in the matter of **Kanpur University, Through Vice Chancellor and others v. Samir Gupta and others** reported in (1983) 4 SCC 309, in the matter of **Krishan Yadav and another v. State of Haryana and others** reported in AIR 1994 SC 2166, in the matter of **Inderpreet Singh Kahlon and others v. State of Punjab and others** reported in AIR 2006 SC 2571 and in the matter of **Joginder Pal and others v. State of Punjab and others** reported in (2014) 6 SCC 644.

3. Replying to the arguments of the counsel for the petitioner, it has been submitted by the counsel for the respondents/State as under:

(I) that the entire selection has been made in accordance with law and there is no illegality in the same;

(ii) that the petitioner has not prayed for any relief for himself and as such this petition is in the nature of PIL though in service law no such PIL can lie and thus on this ground alone the petition is liable to be dismissed;

(iii) that merely on the basis of answer sheets of seven

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candidates it cannot be said that all other candidates who have been declared successful are not meritorious and are the tainted ones;

(iv) that it is merely a presumption of the petitioner that the question paper of number of candidates have been answered by the examiner and not by the candidates;

(v) that the report of the private hand writing expert (Annexure P-7) is based on the xerox copy of the document supplied by the petitioner to her and therefore the said report has no evidentiary value in the eye of law;

(vi) that it is a settled position of law that the report of private hand writing expert is just an opinion and cannot be made basis to arrive at any final conclusion unless the person giving such report comes in the witness box;

(vii) that from the report of the private hand writing expert it is not clear as to what document was supplied by the petitioner to her. Merely the word written by the hand writing expert that she had seen seven answer sheets cannot lead to any conclusion that it is the answer sheets of these candidates which were produced before her;

(viii) that the hand writing expert could not have given the report unless specimen signature or tick mark (✓) of the examiner and the candidates were made available to her;

(ix) that if such allegations are allowed to stand and the report based on xerox copy of the documents is taken into consideration, in every examination such allegations would be

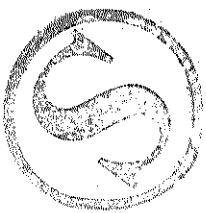
made by the unsuccessful candidates and thereby sanctity of the examination would be doubted;

(x) that the allegations made against respondent No. 59 are bald ones based on the newspaper clipping which has no value in the eye of law;

(xi) that even if respondent No. 59 was subjected to charge sheet in relation to other cases, same cannot be connected with the selection of Patwaris;

(xii) that the selected candidates have already undergone the training but on account of pendency of this petition posting orders could not be issued whereas the State Government is in dire need of Patwaris in Janjgir district as number of posts are lying vacant there.

4. Counsel for the private respondents submits that the relief prayed for by the petitioner cannot be granted as the pleadings taken in the present petition are vague and that too are in relation to seven candidates only and being so the other meritorious candidates cannot be made to suffer because of filing of instant petition. He submits that the bald allegation made by the petitioner is the self made statement on the basis of assumption. According to him, the opinion of the hand writing expert based on the xerox copy of some document has no evidentiary value. In support of his arguments, reliance is placed on the decisions of the Apex Court in the matter of *Joginder Pal and others v. State of Punjab and others* reported in (2014) 6 SCC 644, in the



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matter of ***Girjesh Shrivastava and others v. State of M.P. And others*** reported in ***AIR 2010 SCW 7001*** and in the matter of ***Inderpreet Singh Kahlon and others v. State of Punjab and others*** reported in ***(2006) 11 SCC 356***.

5. Main ground for challenge in this writ petition is that the petitioner after obtaining the answer sheets of seven candidates had sent the same to the hand writing expert who in turn gave her report stating that she had noticed fraudulent (✓) tick mark in the seven answers sheets said to be sent to her. Strengthening his case on the basis of opinion of the hand writing expert petitioner has elaborately pleaded that once in the answer sheets (✓) tick mark has been put by the examiner, the very examination of Patwari becomes doubtful and therefore the same is required to be cancelled. The petitioner has given reference of the answer sheets, seven in number obtained by him under the Right to Information Act. According to the petitioner, roll number of respondent No. 28 namely Preetibala Tiwari is 10625 and though this candidate has not answered questions No. 4,5 and 8 to 15, 19,21,22, 99 and 100 but yet the marks have been awarded to her. Further, question No. 2 has been answered incorrectly as per the model answer but even then the mark has been awarded to her for that question. According to the petitioner, at least 16 additional marks have been awarded to this candidate though she is not entitled for the same. He submits that if 16 marks are taken away from this candidate then her total marks would come to 66 and therefore she would be out of the select list. In relation to respondent No.7 namely Hemchand Tiwari whose roll number is 11602 it has been argued by the counsel



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for the petitioner that questions No. 4, 5, 49, 56, 63, 64, 65, 85, 87, 90 and 92 have been tick marked by the examiner himself. Likewise, in the case of respondent No.6 Mohan Kumar Kaushik whose roll No. is 11216, questions No.1, 3, 4, 5, 7, 8, 9, 10 to 20, 23, 24, 25, 28, 34, 36, 37, 38, 39, 40, 42, 43, 46, 47, 48, 49, 51, 53, 54, 55, 56, 59, 60, 62, 63, 64, 65, 66, 67, 71, 74, 76 have been tick marked by the examiner himself and questions No. 80 and 84 have been tick marked twice. In respect of respondent No. 12 Amit Kumar Tripathi having roll No. 10774, according to the counsel for the petitioner, questions No. 3, 8, 11 to 15, 17 to 24, 26, 28, 30 to 38, 40 to 49 have been tick marked by the examiner himself. As regards respondent No. 14 Prateek A. Rathore whose roll No. is 11419, questions No. 9, 43, 94 and 97 have been tempered with razor whereas question No. 24 has been tick marked by the examiner himself. Similar is the allegation against respondent No.5 Sushma Singh having roll No. 10290 that questions No. 1, 3, 4, 5, 10, 11 and 19 have been tick marked by the examiner. In respect of respondent No. 8 Gopal Prasad Rathore having roll No. 10255 it has been submitted by the counsel for the petitioner that questions No. 30, 42, 43, 45 and 63 had been encircled which was not permissible in the said exam but even then the marks have been awarded treating the same as correct. In respect of respondent No. 19 Dharmendra Yadav having roll No. 10474 it is argued by the counsel for the petitioner that questions No. 40 and 78 were tick marked twice but even then the marks have been awarded to him and this apart 94 questions were tick marked by the examiner himself.

6. Before looking at the further case of the petitioner, it appears



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appropriate for this Court to reproduce the reliefs sought for in the petition which are as under:

"10.1 That this Hon'ble Court may kindly be pleased to set-aside the entire selection process along with impugned order/selection list dated 20.12.2012 with all consequential orders & actions in pursuance to advertisement dated 09.08.2012 and further be pleased to direct the respondent State to conduct fresh selection process for selection in the post of Patwari, through statutory selection agency in fair and transparent manner.

10.2 That, this Hon'ble Court may kindly be pleased to direct for both criminal and departmental inquiry with regard to the criminal conduct and misuse of authority by the responsible authorities as well as the candidates, by a fair investigating agency, preferably by the Central Bureau of Investigation and submit the action report before this Hon'ble Court within specified period.

10.3 That, any other relief/order which may deem fit and just in the facts and circumstances of the case, including cost of the petition may kindly be awarded to the petitioners."

A bare reading of the relief clause makes it clear that the petitioner has not sought for any relief for himself and merely seeking relief of quashment of examination thinking that the answers have been given by the examiner and not by the candidate.

7. The first question which arises for consideration before this Court is whether on the basis of report of the hand writing expert (Annexure P-7) which is the only basis of averment and pleading made by the petitioner, this Court can hold that the questions have been answered by the examiner or by the candidate. It is settled position of law that the hand writing expert's report is merely an opinion and is not a conclusive piece of evidence. With respect to the admissibility of report of the hand writing expert, it has been held by the Apex Court in the matter of **Ramesh Chandra Agrawal v. Regency Hospital Limited and others** reported in (2009) 9 SCC 709 as under:

"16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

- i) that the expert must be within a recognized field of expertise
- ii) that the evidence must be based on reliable principles, and
- iii) that the expert must be qualified in that discipline.

[See Errors, Medicine and the Law, Alan Merry and Alexander McCall Smith, 2001 ed., Cambridge University Press, p.178]

17. Section 45 of the Indian Evidence Act speaks of expert evidence. It reads as under:

"45. Opinions of experts - When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. Such person called experts. Illustrations

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness

of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant."

18. The importance of the provision has been explained in the case of *State of H.P. v. Jai Lal and Ors.*, [(1999) 7 SCC 280]. It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

19. It is not the province of the expert to act as Judge or Jury. It is stated in *Titli v. Jones* (AIR 1934 All 237) that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness

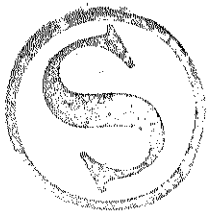
depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See *Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee and Others*) SCC p.249, 34

21. In the case of *State of Maharashtra v. Damu s/o Gopinath Shinde and others.*, [AIR 2000 SC 1691 at page 1700], it has been laid down that without examining the expert as a witness in Court, no reliance can be placed on an opinion alone. In this regard, it has been observed in *The State (Delhi Administration) v. Pali Ram*, [AIR 1979 SC 14] that "no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of questions put to him.

22. In the Article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rests on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on basis of which opinion is formed. The same is clear from following inference: "Mere assertion without mentioning the data or basis is not evidence, even if it comes from expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value."

The aforesaid view has also been reiterated by the Apex Court in the matter of *Malay Kumar Ganguli v. Dr. Sukumar Mukherjee and others* reported in (2009) 9 SCC 221.

Further, while dealing with the credibility and the evidentiary value of the expert's opinion, it has been held by the Apex Court in the matter of *Magan Bihari Lal v. The State of Punjab* (1977) 2 SCC 210



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as under:

8. In the first place, it may be noted that the appellant was at the material time a Guard in the employment of the Railway Administration with his headquarters at Agra and he had nothing to do with the train by which wagon No. SEKG 40765 was despatched from Munda to Bikaner nor with the train which carried that wagon from Agra to Ludhiana. He was not a Guard on either of these two trains. There was also no evidence to connect the appellant with the theft of the blank Railway Receipt at Banmore Station. It is indeed difficult to see how the appellant, who was a small employee in the Railway Administration, could have possibly come into possession of the blank Railway Receipt from Banmore Station which was not within his jurisdiction at any time. It is true that B. Lal, the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex. PW 10/A was that of the same person who wrote the specimen handwritings Ex. PW 27/37 to 27/57, that is the appellant, but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra v. State of U.P.* that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad Mishra v. Md. Is* that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar Banerjee v. Subodh Kumar Banerjee*³ where it was pointed out by this Court that experts evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin v. State of M.P.* and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the same view is also echoed in the judgments of English and American courts. Vide *Gurney v. Langlands* and



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*Matter of Alfred Foster's Will*⁶. The Supreme Court of Michigan pointed out in the last-mentioned case:

"Every one knows how very unsafe it is to rely upon any one's opinion concerning the niceties of penmanship — Opinions are necessarily received, and may be valuable, but at best this kind of evidence is a necessary evil."

We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence, being opinion evidence is by its very nature, weak and infirm and cannot of itself form the basis for a conviction. We must, therefore, try to see whether, in the present case, there is, apart from the evidence of the handwriting expert B. Lal, any other evidence connecting the appellant with the offence.

8. Opinion given by the hand writing expert reads as under:

"(B) Examination – I have carefully examined available document of comparative and questioned signatures. I have examined document using minor scientific instrument as well as Photoshop in computer, photographs were taken using digital camera and enlargement were obtained in its true reproduction.

(C) Opinion – In my opinion that the Answer sheet of Patwari Chayan Examination 2012 are having **fraudulent Right tick mark** in Roll No. 10024 (Q1) with **94%**, Roll No. 10278 (Q2) with **83%**, Roll No. 10774 (Q3) with **70%**, Roll No. 11196 (Q4) with **99%**, Roll No. 11216 (Q5) with **83%**, Roll No. 11267 (Q6) with **93%**, and Roll No. 11414 (Q7) with **82%** and the writer of fraudulent right tick mark **is the same person**, who is examiner of the respective Answer Sheet.

This is opinion is based on examination of certified Xerox copies obtained through right to information and treated as they are true **reproduction** of their respective originals."

9. Once the hand writing expert herself has stated that she has given the opinion on the basis of xerox copy of the answer sheets, her opinion becomes doubtful. Moreover, unless the hand writing expert comes in the witness box and proves the said document and opportunity is given to the candidates for cross examination of the hand writing expert, this Court finds it difficult to accept the report of



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the hand writing expert. Dealing with the question of evidentiary value of a handwriting expert, it has been conclusively held by the Apex Court in the matter of *Keshav Dutt* (supra) as under:

15. In the instant case, the report of the handwriting expert who had not been examined indicates that a specimen writing had been given by the appellant and on a comparison of the same with the writings in Ext. PR, the handwriting expert had come to the conclusion that they had been written by the same person. The trial court skirted the issue by holding that the defence counsel could have examined in their defence to rebut the findings of the Assistant Director, Forensic Science Laboratory, Haryana. The High Court also skirted the issue by observing that the science of handwriting being imperfect and inaccurate, it is very difficult, if not impossible, to give the opinion that the writings were in the hand of one and the same person. The High Court went on to observe that the appellant did not have the courage to examine any counter expert in rebuttal of the report. The High Court recorded that the report having gone unrebutted could be relied upon without any demur.

16. We are afraid that we cannot concur with the views either of the trial court or of the High Court in the above regard. When the trial court chose to rely on the report of the handwriting expert (Ext. PR), it ought to have examined the handwriting expert in order to give an opportunity to the appellant and the other accused to cross-examine the said expert. There is nothing on record to show that the appellant and the other respondents had admitted to the report of the handwriting expert.

17. In our view, the trial court ought to have allowed the appellant an opportunity to cross-examine the expert and both the trial court and the High Court erred in denying him such opportunity and shifting the onus on the accused to disprove Ext. PR which had not been formally proved by the prosecution. The decision cited on behalf of the appellant regarding reliance on the opinion of an expert who had not been examined as a witness, however, includes an Assistant Director of the State Forensic Science Laboratory in clause (e) of sub-section (4) of Section 293 CrPC.

18. Section 293(4)(e), which is relevant for our purpose is extracted below:

"293. Reports of certain government scientific experts.—(1) Any document purporting to be a report under the hand of a government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for

examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2)-(3) * * *

(4) This section applies to the following Government scientific experts, namely—

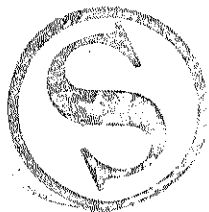
(a)-(d) * * *

(e) The Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) * * *

19. In the instant case, it is only the report of the handwriting expert, Ext. PY, which connects the appellant with the offence On account of Ext. PR which is said to be in his handwriting. Since the appellant had neither received the money nor was he present at the spot from where the other accused were apprehended, his case has to be treated on a different footing and since his complicity has not been established beyond doubt on the basis of Ext. PR and Ext. PY, he must be given the benefit of doubt. Without, therefore, going into other questions which have been raised in this appeal, we are of the view that the same should be allowed on the aforesaid ground alone.

10. Pursuant to the order passed by this Court the State counsel has produced the answer sheets of all the selected candidates including those seven candidates whose reference has been given by the petitioner in the pleadings and whose copies have also been filed by the petitioner obtained under the Right to Information Act. State counsel has also produced the answer sheet of the petitioner. This Court has carefully gone through the original answer sheets of all the candidates of which reference has been given in the above paragraphs but except respondent No. 28 namely Preetibala Tiwari whose roll number is 10625 it did not find anything objectionable on their face value to the extent which may require to doubt the credibility of the entire examination and to reach the final conclusion that there is some foul play in the examination. There may be few mistakes while checking the answer sheets of one or two candidates but merely on



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that basis interference with the result would not be proper specially when this Court is not the subject expert or the hand writing expert. In relation to respondent No. 28 Preetibala Tiwari from her original answer sheet of which photocopy has been filed by the petitioner and the State, it is apparent that she has been awarded marks against questions No. 4,5 and 8 to 15, 19,21,22, 99 and 100 though she has not answered the same. Likewise she may also not be entitled for answering question No. 2 as the same did not tally with the model answer. Considering this aspect of the case this Court deems it proper to direct the State for revaluation of the answer sheet of respondent No. 28 and then refix her placement on the basis of calculation of marks obtained by her afresh and then see whether she is selected or not. This Court however does not find any illegality in the answer sheets of the other candidates referred to above.

11. Another point required for consideration is that the petitioner has not prayed for any relief for himself and has sought the relief as if it is a PIL and on this ground alone the petition is liable to be dismissed. While dealing with the similar point in the matter of *Girjesh Shrivastava and others v. State of M.P. & others* (supra) it has been held by the Apex Court as under:

"14. However, the main argument by the appellants against entertaining WP (C) 1520/2001 and WP (C) 63/2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention.

15. It is common ground that dispute in this case is over selection and appointment which is a service matter.

16. In the case of *Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and others* (1998) 7 SCC 273 : (AIR 1999 SC 114 : 1998 AIR SCW 3467), a three Judge Bench



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of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of disposal of service matters would get defeated" (para 18). Same reasoning applies here as a Public Interest Litigation has been filed when the entire dispute relates to selection and appointment.

17. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and others*, reported in (2006) 11 SCC 731 (II) : (AIR 2006 SC 3106 : 2006 AIR SCW 4515), this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See para 51, page 755 (of SCC) : (Para 49 of AIR, AIR SCW) of the report).

18. This view was very strongly expressed by this Court in *Dattaraj Nathuji Thaware v. State of Maharashtra and others*, reported in (2005) 1 SCC 590 : (AIR 2005 SC 540 : 2005 AIR SCW 46), by pointing out that despite the decision in *Duryodhan Sahu* (AIR 1999 SC 114 : 1998 AIR SCW 3467) (supra), PILs in service matters 'continue unabated'. This Court opined that High Courts should 'throw out' such petitions in view of the decision in *Duryodhan Sahu* (supra) (Para 16, page 596) (of SCC) : (Para 13 of AIR, AIR SCW).

19. Same principles have been reiterated in *Ashok Kumar Pandey v. State of W.B.*, reported in (2004) 3 SCC 349, at page 358 : (AIR 2004 SC 280 : 2003 AIR SCW 6105) (Para 16).

20. In a recent decision of this Court delivered on 30.8.2010 (reported in AIR 2010 SC 3515 : 2010 AIR SCW 5567, In *Hari Bansh Lal v. Sahodar Prasad Mahto and others*, (MANU/SC/9654/2010), it has been held that except in a case for a writ of 'Quo Warranto', PIL in a service matter is not maintainable (See paras 6 and 7).

24. From these facts it can be concluded that the alleged participation of near relatives in the selection process was not such a factor to vitiate the entire selection process. Even if there were some illegal beneficiaries from the selection process, they should have been weeded out instead of striking down the entire selection process. In *Charanjit Singh and others v. Harinder Sharma and others* [(2002) 9 SCC 732 : (AIR 2002 SC 2397 : 2002 AIR SCW 2610)] a similar situation had arisen. In that case, while not approving the interference of the High Court in the selection process, this Court held that merely because some of the candidates in the selection process happened to be the



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relatives of the members of the selection committee, it did not mean that all the candidates were relatives of the members of the selection committee and had been illegally selected. It was also held that since the petition was not made by any of the candidates who had appeared in the selection process and was in stead filed as a Public Interest Litigation, it was improper for the High Court to interfere in the matter.

25. On a more detailed analysis of this issue, in *Union of India and others v. Rajesh P.U. Puthuvalnikathu and another*, [(2003) 7 SCC 285 at p. 290 : (AIR 2003 SC 4222 : 2003 AIR SCW 3916), paragraph 6) this Court held that "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 an 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 bye 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 misdirected itself in taking such an extreme and unreasonable decision of cancelling 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."

Here also the matter relates to selection and appointment on the post of Patwari and the disputes of like nature are redressable by taking recourse to service law jurisprudence. If the tenor of this petition is seen in its entirety, it appears to be nothing more than a Public Interest Litigation as the entire selection process has been asked to be cancelled. Even if there are some illegal beneficiaries from the



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selection process, they at best, can be weeded out in stead of striking down the entire selection process which unfortunately has been sought for by the petitioner in this petition. It is a settled legal position as referred to above that if the PIL at the instance of strangers is allowed to be entertained by the Court, very object of disposal of service matters would be defeated.

12. So far as the allegation levelled against respondent No. 59 namely M.D. Diwan is concerned, no material has been brought on record to show that it is on account of respondent No. 59 the entire examination was bad and some money transaction was also there. Merely on the basis of bald allegation of the petitioner it cannot be held that the entire examination was managed by respondent No. 59 and considering his past record the entire examination is required to be cancelled. If any complaint is made against respondent No. 59 – M.D. Diwan, it is for the State authorities to act in accordance with law.

13. State counsel has produced the original document pertaining to the examination from which it is apparent that though respondent No. 59 was the Head of the Selection Committee but there were four other members in the said committee also and all these four persons were of different departments holding higher responsibility. Thus merely on the basis of allegation against respondent No. 59 it cannot be said that the entire examination was faulty. Furthermore, for evaluation purpose of answer sheets 12 responsible officers from various departments were deputed excluding respondent No. 59 and it is these officers who had done the evaluation and not respondent No. 59. Considering all these



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aspects of the case merely on the basis of allegation of the petitioner it cannot be held that the examination was not conducted fairly by the State.

14. Another important aspect of the case is that during hearing of the case the State counsel has produced the merit list of the candidates and out of 29 unreserved candidates (20 male 9 female) the last candidate who is at serial No. 20 has secured 89 marks whereas the petitioner has secured 85 marks. In between the last candidate who had secured 89 marks and the petitioner, there are 16 candidates also who are above the petitioner. Thus even if the appointment of seven persons referred to in the petition is cancelled, then also the petitioner would not be entitled for appointment and merely for the sake of the petitioner the entire examination cannot be cancelled. It is a settled legal position that in case of allegation of mass irregularity in the examination process this Court has to see as to who is the meritorious candidate and who is a tainted one. Even if there are some tainted candidates but for them the meritorious candidates cannot be made to suffer. While laying down the guidelines in a matter of similitude, it has been elaborately expounded by the Apex Court in the matter of *Inderpreet Singh Kahlon* (supra) as under:

41. If the services of the appointees who had put in few years of service were terminated, compliance with three principles at the hands of the State was imperative viz. (1) to establish satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) to determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a

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thorough investigation in a fair and transparent manner; (3) whether the sufficient material present enabled the State to arrive at a satisfaction that the officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt.

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.

44. It is also not a case where all the relevant records have been destroyed. The Vigilance Bureau does not say so. Question papers, answer sheets and other documents are available. Reports made by the Bureau were prepared upon examination of the materials collected by it. The High Court itself has noticed that what is not available is the records relating to the procedure adopted in regard to the appointment of paper-setters. It may be true that such records could be destroyed only after a period of five years but it has not been pointed out by the State as to how by reason of the non-availability thereof, it became difficult for the authorities to arrive at the correct facts. We have not been informed that connecting materials were also destroyed. It has been noticed by the High Court that all relevant information was available and submitted to the court. It cannot, therefore, be said that a fair investigation into the whole affair was an impossible task or despite availability of all such records a thorough investigation had been made so as to arrive at a satisfaction that the entire selection process suffered from a large-scale fraud. It has also not been found that all appointments were made on extraneous considerations including monetary consideration.

49. Yet again in *S.P. Biswas v. State Bank of India* the Court refused to interfere with the result of the examination as it was shown that there had been neither any mass copying nor was the final result shown to have been influenced by unfair means by any candidate.

53. It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well settled that a ratio of case must be understood having regard to the fact situation obtaining therein. (See *P.S. Sathappan v. Andhra Bank Ltd.*, *M.P. Gopalakrishnan Nair v. State of Kerala* and *Haryana State Coop. Land Development Bank v. Neelam*).



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59. In a case of this nature, thus, the question which requires serious consideration is as to whether due to the misdeed of some candidates, honest and meritorious candidates should also suffer.

124. The High Court has not considered the case in the proper perspective. The consequences of en masse cancellation would carry a big stigma particularly on cancellation of the selections which took place because of serious charges of corruption. The question arises whether for the misdeeds of some candidates, honest and good candidates should also suffer on en masse cancellation leading to termination of their services? Should those honest candidates be compelled to suffer without there being any fault on their part just because the respondents find it difficult to segregate the cases of tainted candidates from the other candidates? The task may be difficult for the respondents, but in my considered view, in the interest of all concerned and particularly in the interest of honest candidates, the State must undertake this task. The unscrupulous candidates should not be allowed to damage the entire system in such a manner where innocent people also suffer great ignominy and stigma.

127. In somewhat similar circumstances, in which initially it looked that it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, from the others, even then in *Union of India v. Rajesh P.U.* this Court observed that the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections.

The legal position in the matter of *Inderpreet Singh* (supra) has further been approbated by the Apex Court in the matter of *Joginder Pal and others* (supra), relevant portion of which reads as under:

42. 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*, 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



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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 said 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.

43. After remand the writ petitions of these judicial officers were decided by the High Court in the case titled as *Sirandip Singh Panag v. State of Punjab*. The High Court had allowed those petitions. The said judgment of the High Court was challenged before this Court in *High Court of Punjab and Haryana v. State of Punjab*. This Court, by means of the aforesaid judgment, upheld the decision of the High Court. The Court specifically noted that after the directions in *Inderpreet Singh Kahlon*, a Committee of three Judges was constituted which undertook this exercise and submitted its report. It was a fractured report where two learned Judges of the Committee were of the view that entire selection process was vitiated and one Judge had appended his dissent thereto on the ground that only those who were found to be tainted and were segregated by the Committee should be dismissed from service and not the non-tainted officers. No doubt, while upholding the directions of the High Court, this Court made it clear that it was not to be construed as giving seal of approval to the judgment of the High Court. At the same time, the Court also stated, in so many words, that in order to work out the equities and to do complete justice, that it was proper to allow those judicial officers to continue in service who were found to be untainted.

44. It would be apposite to quote the following portion of the said judgment in this behalf: (*High Court of Punjab and Haryana case*, SCC pp. 692-93, paras 26-27)

"26. It is not in dispute any more that the candidates were given fresh opportunity to appear for selection for the aforesaid post in the exams exclusively held for them in the year 2004. Out of 57 such candidates, 20 candidates were reselected and they were given benefit of original appointment. As many of these candidates are the respondents and have worked as judicial officers for some period and it has also not been proved or established completely against them that they had indulged in malpractice in

examinations, we are of the view that they should also be given reappointment and posting orders to the existing vacancies in the State of Punjab and if no vacancy exists, Mr Sharan has assured the court that the State will create supernumerary posts for them but they would not be entitled to get all the benefits as have been granted to them vide the impugned judgment.

27. However, it should not be construed that our judgment is giving seal of approval to the judgment of the Full Bench of the Punjab and Haryana High Court but with an intention to work out the equities and to do complete justice between the parties and in view of the earlier judgment of this Court in *Kahlon* case that tainted candidates be separated from untainted, meaning thereby that this Court did not accept the submission that it was not practically possible to do so; and further this Court had taken note of reselection held in 2004 in para 92 of the judgment, but held that the effect thereof would be subject to this case, this is the only via media, through which the respondents could also be granted relief as it could not be established that even otherwise, they would have been declared as unsuccessful candidates. Precisely, that is the reason we have moulded the reliefs granted to the respondents by the High Court as our order is not likely to affect seniority of any of the judicial officers, who had already been working prior to the respondents. We are conscious of the fact that by this procedure, there is no likelihood of any offshoots of the said order and hopefully the whole controversy triggered in the year 1998, would stand settled for all times to come."

15. The decisions cited by the petitioner in support of his case are of no help to him because the facts of those cases are distinguishable with the case in hand. As already stated, entire case of the petitioner is based on the report of the hand writing expert given on the basis of xerox copy of certain documents supplied to her by the petitioner and being so the same cannot be said to be a conclusive piece of evidence.

16. In view of above, this Court doesn't find any merit in the present



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petition and the same is accordingly dismissed except in relation to respondent No. 28 for whom direction has already been given in paragraph No. 10 of this judgment.

Sd/-
Pritinker Diwakar
Judge

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