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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. LPA-559-2015 [O&M]
Date of Decision : January , 2016

Dr. Deepak Bhatia Appellant

Versus

State of Punjab and others
.... Respondents

2. LPA-977-2015 [O&M]

Kusum Aggarwal Appellant

Versus

State of Punjab and others
.... Respondents

3. LPA-1405-2015 [O&M]

Kanwar Veer Partap Singh Appellant

Versus

State of Punjab and others
.... Respondents

CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Mr. D.S.Patwalia, Senior Advocate with
Mr. Bikramjit Singh Patwalia, Advocate,
for the appellant. (in LPA No.559 of 2015).

Mr. Chetan Mittal, Senior Advocate for
Mr. Kunal Mulwani and Mr. Mayank Aggarwal, Advocates,
for the appellant. (in LPA No.977 of 2015).

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Mr.H.S.Ahluwalia, Advocate, for the appellant.
(in LPA No.1405 of 2015).

Mr. Kamal Sehgal, Addl. AG, Punjab.

Mr. Gurminder Singh, Senior Advocate with,
Mr. R.P.S.Bara and Ms. Daman Preet Kaur, Advocates,
for respondents No.6, 15, 24 and 40.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. A.P.S.Bhinder, Advocate,
for respondents No.20 and 21.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. B.B.S.Randhawa, Advocate,
for respondents No.43 to 52. (in LPA No.559 of 2015).

Mr. Puneet Jindal, Senior Advocate with
Mr. Siddhant Kant, Advocates,
for respondents No.43 to 46.

Mr. Pankaj Jain, Advocate,
for respondents No.53 to 55.

Mr. A.K.Chopra, Senior Advocate with
Mr. Harminder Singh, Advocate,
for applicants-respondents No.56 to 61.

Mr. Ravi Kant Sharma, Advocate,
for applicant (in CM No.3559 in LPA 559 of 2015).

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SHEKHER DHAWAN, J.

The above titled three intra-court appeals, bearing LPA Nos. 599, 977 and 1405 of 2015 under Clause X of the Letters Patent have been filed by the appellant against the common order dated 8.1.2015 passed by learned Single Judge, whereby five writ petitions [bearing CWP Nos. 25960, 26310, 26370, 26780 of 2014 and CWP No. 17 of 2015] were allowed.

2. Relevant facts of the case are that respondents challenged the selection process initiated by Punjab Public Service Commission, Patiala

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[for short, “the Commission”] for appointment to 120 vacancies of Punjab Civil Services [Executive Branch] and Allied Services by prescribing minimum 33% marks for each paper. As per the petitioners, the same was against the mandate of circular dated 3.1.2014 [Annexure P/3] prescribing procedure and pattern. Advertisement No. 9 dated 6th December, 2013 [Annexure P/1] was issued by the Commission. The procedure and scheme for conduct of Preliminary and Mains examination was notified by the Commission on 3.1.2014 itself. The syllabus and procedure for conducting the competitive exam is as under:-

Sr.No.	Subject/Paper	Maximum Marks
1.	Punjabi (in Gurmukhi Script) Compulsory (of 10+2 standard)	100
2.	English Compulsory (of 10+2 standard)	100
3.	Essay	150
4.	General Studies Paper-I (History, Geography and Society)	250
5.	General Studies Paper-II (Indian Constitution & Polity, Governance and International Relations)	250
6.	General Studies Paper-III (Economy, Statistics and Security Issues)	250
7.	General Studies Paper-IV (Science & Technology, Environment, Problem Solving & Decision Making)	250
8.	Interview	150
	Grant Total :	1500

3. Pursuant to the advertisement, 24,000 candidates appeared for the Preliminary examination held on 23.03.2014. Out of them, 1414 candidates cleared the preliminary examination which included private respondents herein. Thereafter the main examination [written] was held and 213 candidates were called for interview. The respondents challenged the process of appointment by invoking the writ jurisdiction.

4. The respondents had come with the plea that in the previous

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examinations held by the Commission, candidates were to appear in six subjects which included two optional subjects and two further papers in each optional subject. In those examinations, the candidates were required to obtain 45 per cent marks in aggregate and not less than 33 per cent marks in Punjabi only. The requirement of said minimum 33% marks was not for all subjects/papers. However, in the present selection, the scheme of the main examination was materially changed. Optional subjects were dropped. In all, there were seven papers, namely, Punjabi (one paper) for 100 marks, English (Compulsory) (One paper) for 100 marks, Essay (one paper) for 150 marks and General Studies divided into 4 papers each carrying 250 marks. That way, total seven papers were to be attempted in the Main examination. 150 marks were meant for the interview/viva-voce. As per conditions and procedure, a candidate was to be eligible for appearing for interview only if he obtains 45% marks in aggregate in all the subjects for the General category candidates and 40% marks in aggregate in all subjects for Scheduled Castes and Scheduled Tribes. The main controversy in these appeals is - whether 33% were required to be obtained by a candidate in each paper or each subject?

5. Learned Single Judge while accepting all the writ petitions observed that interpretation placed by the Commission while declaring the result of Main examination, taking 33% minimum marks in each paper was held to be impermissible and ultra vires the syllabus and the procedure published in the notification dated 3.1.2014. However, the Commission was directed to re-draw the result by applying 33% minimum marks cumulatively in all the four papers of the General Studies and to publish the

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same and to accordingly notify the fresh dates of Stage-3 for conduct of physical tests and interviews/viva-voce.

6. Being aggrieved of passing the said order dated 8.1.2015, the present Letters Patent Appeals are before this Court.

7. Mr. D.S.Patwalia, learned senior counsel for the appellants while un-folding the arguments submitted that unfortunate appellants are before the Court because learned Single Judge factually accepted the version of the present appellants and at the same time held that the Commission had adopted the correct criteria and there was no ground to interfere in the said process. But still set-aside the entire process while returning the findings that candidates appearing in the examination, however, were under the impression that 33% marks were required to be obtained in each subject and not in each paper and on the basis of those observations, allowed certain candidates who were otherwise ineligible to be called for viva-voce. This fact assumes much importance in such like competitive exams. According to him, it is a settled principle of law that Courts may interfere with the decision making process but not the decision itself. In support of this, he placed reliance on the decision of Hon`ble Supreme Court in **Dalpat Abasaheb Solunke Vs. Dr. B.S.Mahajan, 1990(1) SCC 305;** **Union of India Vs. Upendra Singh, 1994(3) SCC 357** and **State of U.P. Vs. Maharaja Dharmander Prasad Singh, 1989(2) SCC 505.** However, learned Single Judge in this case, upheld both and still set-aside the decision taken by the Commission.

8. While arguing further, learned senior counsel for the appellants submitted that once candidates have participated in the process with open

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eyes, they are estopped from challenging the said process when such candidates remain unsuccessful. In support of his arguments, reliance has been placed upon the decisions of Hon`ble Supreme Court in **Chandra Prakash Tiwari and others Vs. Shakuntala Shukla, 2002(6) SCC 127;** **Vijendra Kumar Verma and another Vs. Public Service Commission, Uttarakhand and others, 2011(1) SCC 150;** **HC Pradeep Kumar Rai and others Vs. Dinesh Kumar Pandey and others, CA No.6549 of 2014, SC** and decisions of this Court in **Yoginder Singh Yadav Vs. State of Haryana, 2002(2) S.C.T. 281 (D.B.) P&H** and **Vijayinder and others Vs. Punjab Public Service Commission, 2011(2) S.C.T. 512 (S.B.) P&H.** As per learned counsel for the appellants, there was no ambiguity in the rules/criteria and procedure and if at all, there was any such confusion in the mind of any candidate at the stage of preliminary examination or at the stage of Main examination or at any date thereafter, he could seek required clarification from the Commission itself or in the alternative challenge the same in any Court of law. However, nothing had happened in this case and that fact establishes that none of the candidates had any confusion in their mind at any stage that 33% marks were to be obtained in all the seven papers which are compulsory as per the procedure for conduct of the examination. To conclude, learned senior counsel submitted that law on the point is settled that if on any controversy or litigation, two views are possible, the Court will not opt one view or the other, but the same shall have to be left to the Expert and in the case in hand, the Commission was the expert body on the subject of appointment of such like candidates, but learned Single Judge decided to substitute its own view while setting

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aside the view taken by the expert. In support of his arguments, reliance has been placed upon the Hon`ble Supreme Court judgments in Lila Dhar Vs. State of Rajasthan and others, 1981(4) SCC 159; Secy. (Health), Deptt. Of Health Vs. Dr. Anita Puri, 1996(6) SCC 282. That fact has certainly caused injustice to the appellants because the appellants had put-in hard labour for appearing in the competitive exam and by way of order dated 8.1.2015, the candidates, who otherwise remained unsuccessful were allowed to be interviewed by the Commission which certainly affects the rights of the appellants adversely and has jeopardized the entire selection process.

9. Mr. Kamal Sehgal, learned Additional Advocate General, Punjab submitted that the present LPAs are not maintainable because after the writ petitions were allowed by the Court on 8.1.2015, revised result was declared by the Commission and pursuant to the Court orders, interviews were held and continued. More so, the appellants appeared in the interview/viva-voce and final result was declared on 27.2.2015 whereas, the present appeals were filed on 1.4.2015. However, learned State counsel fairly conceded that the present appellants were not even party to the earlier litigation and the fact regarding delay, if any, in filing the appeals has already been condoned by entertaining the present Letters Patent Appeals.

10. While arguing on behalf of the respondents, S/Shri Rajiv Atma Ram, A.K.Chopra, Kanwaljit Singh, Gurminder Singh and Shri Puneet Jindal, learned Senior Advocates took the plea that the entire controversy revolves around the words "subject" and "paper". However, both these

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words are not synonymous. More so, as a basic principle of law and rules of interpretation, no word in the statute can be considered to be superficial. This fact makes the point ample clear that each candidate was required to obtain minimum 33% marks in each subject and not in all the 7 papers. If we read Notes [8] and [9] appended to clause [B] of the "Procedure and Scheme for the Main Examination" which deals with this point and those clauses clearly lay-down the word "subject" only and not the "paper".

11. While arguing on the point regarding Note No. 2 of the Procedure and Scheme for the Main Examination, as notified by the Commission, "compulsory papers" means that each candidate is required to appear in the examination compulsorily but the candidate is to obtain 33% marks in aggregate while taking all the four papers of General Studies as a subject. This fact is relevant because in all the earlier competitive exams held by the Commission, the minimum marks were to be taken in each subject and not as a paper. The candidates were having clear impression on this point that 33% marks were to be obtained in all the four papers taking cumulatively as a subject and not in the four papers of General Studies individually. They were taken aback when result of written examination [Main] was declared by the Commission and the respondents remained unsuccessful, who could not obtain 33% marks in each paper [4 papers of General Studies].

12. Learned senior counsels for the respondents also submitted that each word in the statute is to be given meaning and not to be made redundant at the time of interpretation. In support of his arguments, reliance has been placed on the decisions of Hon`ble Supreme Court in

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Padma Ben Banushall and another Vs. Yogendra Rathore and others, 2006(3) R.C.R. (Civil) 375, SC; Union of India and others Vs. Braj Nandan Singh, 2005(8) SCC 325; Chief Information Commr. and another Vs. State of Manipur and another, 2012(1) R.C.R. (Civil) 374, SC. The term 'subject' is generic term and 'paper' is specific term. In support of his arguments, he has placed reliance upon judgment from Hon`ble Supreme Court of India in **Nirma Industries Ltd. and another Vs. Securities and Exchange Board of India, 2013 AIR (SC) 2360.**

13. The next contention raised by learned senior counsel appearing on behalf of the respondents that even this fact was appreciated by the Commission and in May, 2015, the Commission amended the rules and the word 'subject' has been substituted by the word 'paper'. That means that there was doubt in the mind of one and all and the respondents as candidates while appearing in the exam were under the genuine impression that they were required to obtain 33% marks in each subject and not in all the seven compulsory papers.

14. Learned counsel for the respondents further submitted that it is settled proposition of law that there cannot be any change of rules in the mid-way of the selection process regarding interpretation. However, in the present case, there was change of procedure in the mid-way.

15. Learned counsel for the respondents also submitted that no prejudice has been caused by enlarging the zone of consideration and learned Single Judge has just enlarged the zone of consideration so as to make the competitive examination to be more competitive for one and all, who may be victim of mis-interpretation of word 'subject' and 'paper'. To

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support this argument, learned counsel for the respondents have placed reliance upon judgment from Hon`ble Supreme Court of India in **Rajendra Kumar Agrawal Vs. State of U.P. and others, 2015 AIR [SCW] 1503** and **Pitta Naveen Kumar and others Vs. Raja Narasaiah Zangiti and others, (2006) 10, SCC 261.**

16. While arguing further, Mr. Gurminder Singh, learned senior counsel, took a little further view on this point and maintained that candidates were having clear impression that 33% marks were to be obtained in each 'subject' and not in each 'paper', but the Commission interpreted it otherwise.

17. We have heard learned counsel for the parties and with their assistance have gone through the material available on the files.

18. Before proceeding further, to decide the present controversy, we are of the view that the main controversy involves following main points:-

1.	Whether a candidate was required to obtain minimum 33% marks in each paper i.e. 7 compulsory papers or 33% marks in each subject?
2.	Whether there was any confusion in the minds of the candidates in this regard?
3.	Whether any rules or procedure of recruitment were changed midway adversely affecting the rights of either party?
4.	Whether the impugned order passed by learned Single Judge, thereby allowing the private respondents to appear in the interview and enlarging the scope of successful candidates on the basis of written examination adversely affected the rights of present appellants?

Points No.1 and 2

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We would like to take above formulated points No.1 and 2 together first for discussion.

19. Similar examinations were being held by the Commission earlier as well according to relevant rules at different times. With the passage of time, there was necessity to consider the requirement of having minimum marks for a candidate to qualify for such competitive examination because the appointment to the Punjab Civil Services [Executive Branch] and Allied Services is premier service of the State of Punjab who are to be at the top of the executive hierarchy as regards to State Services are concerned. The Commission continues to make endeavor to select the best available candidates and for that purpose different yard-sticks were being adopted at different terms on the basis of the feed-back being given by different categories of people. The recommendations made by the Kothari Committee with regard to recruitment and procedure and selection methods for holding competitive examinations are most relevant. The relevant text from the report of Kothari Committee is reproduced hereunder:-

“A system of recruitment almost totally dependent on assessment of a person's academic knowledge and skills, as distinct from ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrow....We venture to suggest that our recruitment procedures should be such that we can select candidates who can not only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems.”

20. The object of any selection process for entry into a public service is to secure the best and the most suitable person for the job. By allowing candidates to appear for the interview though they have not obtained even

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minimum marks in all the compulsory papers, certainly adversely effects upon the rights of the successful candidates who were declared successful on the basis of marks having been obtained in the written examination. Thus, the appellants have certainly legal and justified reason to challenge the same by way of present appeals.

21. As regards to the present recruitment process by the Commission, the relevant rules governing appointment of the Punjab Civil Services [Executive Branch] and Allied Services were amended. Earlier scheme of written examination and minimum requirement to qualify the examination was that a candidate was required to obtain minimum marks in each subject and not paper. However, vide notification dated 3.1.2014 [Annexure P/3] "General Studies" subject was bifurcated into four papers carrying 250 marks each. It was made clear in the notification itself that the examination was to include seven compulsory papers and those seven papers included the four papers of General Studies. It was also made clear in the said notification that a candidate was required to obtain 33% marks in each subject. The said notification was issued pursuant to the notification issued for recruitment to the Punjab Civil Services [Executive Branch] and Allied Services which was published on 6.12.2013 [Annexure P/1] wherein, it was specifically mentioned that the detailed procedure and scheme shall be available on the website of the Commission and that was made known to the candidates well in advance. In the notification dated 3.1.2014 [Annexure P/3], the words "subject/Paper" was mentioned leaving no scope for any confusion for any candidate that all the seven papers are compulsory and the name of the subjects shall be Punjabi,

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English and General Studies.

22. Learned counsel for the private respondents have taken a plea that as earlier rules were not having such a condition that each candidate was required to obtain minimum marks in all the papers, but they were required to obtain minimum marks in each subject. However, that controversy is not relevant in the present case for more than one reasons. Firstly, the earlier scheme for recruitment to the Punjab Civil Services [Executive Branch] and Allied Services were having different procedure and that decision was duly amended after seeking approval from the State Government. At that time, General Studies as a subject was not having different papers. Needless to mention that all the papers of General Studies are covering different subjects altogether. Paper-I deals with History, Geography and Society; Paper-II deals with Indian Constitution and Polity, Governance and International Relations; Paper-III deals with Economy, Statistics and Security Issues and paper-IV deals with Science & Technology, Environment, Problem Solving and Decision Making.

23. The Commission in its wisdom in consultation with the State Government modified the rules that a candidate holding the post of the Punjab Civil Services [Executive Branch] and Allied Services must have at least some knowledge of all these subjects. No body can challenge that such an elementary knowledge is must for a candidate, who is to occupy the premier posting in the State Administration. He must be having a fair idea of these topics so as to deal and handle those problems. More so, only minimum marks were to be obtained by a candidate. The condition was applicable for one and all and duly notified to the candidates and

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cannot be said to be unreasonable to any particular class of candidates. No body can deny the fact that the subjects and papers are not synonymous words and no word in the Statute can be considered to be superfluous. However, in the case in hand, it has been made clear at more than one place that a candidate is required to obtain minimum marks in all seven compulsory papers and for further clarification, while describing the words subject and paper, it has been mentioned as “Subject/Paper” in Part B of notification dated 3.1.2014 [Annexure P/3]. For ready reference, the relevant portion regarding “Procedure and Scheme for the Main Examination” is being reproduced hereunder:-

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B). Procedure and scheme for the Main Examination:

Sr.No.	Subject/Paper	Maximum Marks
1.	Punjabi (in Gurmukhi Script) Compulsory (of 10+2 standard)	100
2.	English Compulsory (of 10+2 standard)	100
3.	Essay	150
4.	General Studies Paper-I (History, Geography and Society)	250
5.	General Studies Paper-II (Indian Constitution & Polity, Governance and International Relations)	250
6.	General Studies Paper-III (Economy, Statistics and Security Issues)	250
7.	General Studies Paper-IV (Science & Technology, Environment, Problem Solving & Decision Making)	250
8.	Interview	150
	Grant Total :	1500

Note:-

1. All papers shall be descriptive in nature and duration of each paper will be three hours. Visually impaired candidates will, however, be allowed an extra time of thirty minutes in each paper.
2. The main competitive examination shall include seven compulsory

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papers.

3. Candidates will have the option to attempt all the papers, except the language papers in Punjabi or English medium.
4. Candidates exercising the option to answer Papers in Punjabi language may, if they so desire, give English version within brackets of only the description of the technical terms, if any, in addition to the version in Punjabi language.
5. The question papers other than language papers will be set in English. However, when any candidate opts for attempting any paper (s) in Punjabi medium, the question papers shall be printed in Punjabi accordingly.
6. Details of syllabi are indicated in Appendix-II.
7. Interview shall be conducted for only those candidates who qualify on the basis of their performance in the main competitive examination and who fulfill the criteria of eligibility.
8. No candidate shall be eligible to appear in the interview unless he/she obtains 45% marks in the aggregate of all the subjects (read 40 % for the candidates belonging to Scheduled Castes and Scheduled Tribes) including at least 33% marks in each subject: provided that if in any main competitive examination, a sufficient number of candidates do not obtain 45% marks in the aggregate (read 40 % for the candidates belonging to Scheduled Castes and Scheduled Tribes), the Commission may at their discretion lower this percentage to not below 40% (read 35 % for the candidates belonging to Scheduled Castes and Scheduled Tribes), however, the minimum percentage for each subject shall remain unchanged.
9. No candidate shall be considered to have qualified the competitive examination unless he obtains at least 45% marks in the aggregate in all subjects of main examination including interview marks (read 40 % for the candidates belonging to Scheduled Castes and Scheduled Tribes) except in the case of any main competitive examination for which this percentage has been lowered to not less than 40% (read 35 % for the candidates belonging to Scheduled Castes and Scheduled Tribes) by the Commission in which case the qualifying percentage shall be as determined by the Commission.
10. From amongst the candidates who have appeared for the Main written examination, candidates not more than three times the number of vacancies advertised in each category shall be called for the interview, provided that, such number of candidates are available and, are otherwise eligible for the Interview.
11. Names of qualified candidates shall be arranged in order of merit according to the aggregate marks obtained in the main written

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examination and the interview.

Note: In the event that the aggregate marks obtained in the Written and Interview parts of the Main Examination taken together of two or more candidates are equal, the candidate securing higher marks in the written part of the Main Examination shall be ranked higher. Should the marks in the written part of the Main Examination of such candidates are still equal, the candidate securing higher marks in the aggregate of the General Studies papers in the written part of the Main Examination shall rank higher. Should those also be equal, the candidate older in age shall rank higher.

24. Learned counsel for the respondents had also taken the plea that Notes 8 and 9 underneath heading "Procedure and Scheme for the Main Examination" as contained in the notification, Annexure P/3, makes it clear that 33% marks were to be obtained in each subject and notes 8 and 9 should alone be taken into consideration while deciding the controversy whether minimum marks were required to be obtained in each subject or paper. However, this plea of learned counsel for the respondents cannot be taken to be correct because there is nothing in the notification or in the Rules that Notes 8 and 9 have over-riding effect upon Note 2, which clearly prescribes as under :-

"2. The main competitive examination shall include seven compulsory papers."

25. The notes were appended just to make every thing clear to the candidates and if all these notes contained in the notification [Annexure P/3] are taken into consideration as a whole, that leads to no confusion in the mind of any candidate. More so, the candidates appearing for the premier services of the State are expected to know that the minimum marks were required to be obtained in each paper which forms part of a particular subject. It is most relevant to consider that none of the parties to

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the litigation ever raised any doubt in this regard till the present litigation. Had there been any confusion in the mind of any candidate, he could seek clarification from the Commission or from the Government as to whether minimum marks were to be obtained in a subject or in each paper individually. However, learned counsel for the private respondents have fairly conceded that even no such query was ever raised by any candidate at any stage. That fact establishes that the candidates were not having any confusion regard this controversy that General Studies is a subject consisting of four papers and all the four papers are compulsory and minimum marks were to be obtained in each and every paper. Probably, this plea has been raised only after certain candidates could not obtain the bare minimum marks in a particular paper and thus, could not qualify. Legally, that cannot be allowed in such a competitive examination especially in view of the fact that the preliminary examination was held on 23.3.2014 and the main [written] examination was held on in the month of July, 2014 and the result of the main examination was declared on 8.12.2014 whereas the present appeals were filed in March, 2015. The respondents merely cannot challenge the selection process after having participated in the same when they remained unsuccessful. Such a view as taken by Hon`ble Supreme Court of India in **Chandra Prakash Tiwari's case and Vijendra Kumar's case [supra]**.

26. Taking the case from another angle, if for a moment, this Court assumes that there was any confusion in the minds of the candidates at any stage [though, there was none] as to whether the Commission intended and expected from candidates to obtain minimum 33% marks in

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each subject or paper, in that case, certainly two views were possible. The Courts while interpreting such a case shall not go with one view or the other but the same shall have to be left to the Expert body. In the present case, admittedly the Commission is the expert body for making appointment of such candidates and the view taken by the Commission cannot be set-aside. On this point, we find support from the judgment of Hon`ble Supreme Court of India in **Lila Dhar's case [supra]** wherein, the Hon`ble Apex Court observed as under:-

“..... Ordinarily recruitment to public services is regulated by rules made under the proviso to Article 309 of the Constitution and we would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be rewriting the rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious oblique motive. There is none in the present case. The Writ Petition is therefore dismissed but in the circumstances there will be no order regarding costs.”

27. As regards to the plea taken by learned counsel for the respondents that even the Commission accepted that there was some confusion whether a candidate was required to obtain minimum marks in a subject or in a paper and for that purpose, the Commission issued a notification dated 13.6.2015. However, this aspect does not make out a case that at the time of main written examination or at any stage till the filing of the present writ petition, there was any confusion in the mind of the candidates, but as an abundant caution, the Commission has issued the

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notification dated 13.6.2015 so as to avoid even such type of litigation on flimsy grounds.

28. As regards to the plea taken by learned counsel for the respondents that the candidates were of the opinion that compulsory papers means that a candidate was required to appear compulsorily in all the seven papers and not to obtain minimum marks in each paper, whereas to obtain obtain minimum marks in subject only, we are of the opinion that such an interpretation cannot be expected from the candidates appearing for examinations for recruitment to the premier services of the State. Even any reasonable man can well understand the concept of compulsory papers and at the same time, he cannot construe that compulsory means compulsory for appearance in the examination and ignoring the other part [Note No.2] of the Notes that minimum marks were required to be obtained in all the compulsory papers.

29. In view of our above detailed discussion on questions posed at Sr.No.1 and 2 in Para No.18, we are of the considered view that the candidates were required to obtain 33% marks in each paper i.e. 7 compulsory papers and there was absolutely no confusion in the minds of the candidates in this regard and both these points are answered in favour of the appellants and against the respondents.

Point No.3

30. Now, coming to point No.3 as to whether there was any change of rules and procedure midway adversely affecting the rights of either of the candidates. The entire process adopted by the Commission does not make out such a case. The Commission came with a public notice inviting

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all the eligible and willing candidates to appear in the examination. It was made clear to all the candidates that the procedure for appointment was to be as per procedure duly notified. Thereafter the Commission notified the said procedure on 3.1.2014 [Annexure P/3] giving details of the scheme of the examination and the conditions for appearing in the examination. Subsequently, there was absolutely no change in the rule or procedure which could have adversely affected the rights of the parties and this point is decided in favour of the appellants.

Point No.4.

31. Learned counsel for the parties have raised a plea before us that learned Single Judge by extending the scope of successful candidates by accepting the present writ petition had made the competition to be more competitive and has not adversely effected the rights of the parties. However, we are unable to be convinced on this point. This controversy is to be seen in the light of the background that recruitment was to be done for the premier service of the State.

32. In a competitive examination, the candidates put in their best efforts and if a candidate even does not qualify by obtaining minimum required marks, he cannot be allowed to appear in the examination. Even number of candidates to be called for interview remain the maximum permissible. In **Ashok Kumar Yadav Vs. State of Haryana and others,** (1985) 4 SCC 417, Hon`ble Supreme Court of India had laid-down the guidelines that maximum three times candidates be called for the interview

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on the basis of written examination. The relevant observations of Hon`ble Apex Court are reproduced hereunder :-

“ Where there is a composite test consisting of a written examination followed by a viva voce test, the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest, thrice the number of vacancies to be filled.”

33. However, that does not mean that any recruitment agency or the Commission shall or forced to call candidates equivalent to minimum three times of the posts for the interview. That way, the plea taken by learned counsel for the respondents that even by extending the scope of successful candidates in this case by learned Single Judge, the total number of candidates to be called for interview remained less than three times of the posts, is not tenable. The order passed by learned Single Judge has certainly adversely effected the rights of the parties. Hence, point No. 4 is also decided in favour of the appellants.

34. In view of our foregoing discussion, LPA Nos. 599, 977 and 1405 of 2015 are allowed and the impugned order dated 8.1.2015 passed by learned Single Judge in above mentioned writ petitions is set-aside.

35. A copy of this order be placed on the files of connected appeals.

(SATISH KUMAR MITTAL)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 15th, 2016
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