

# **Zahoor Ahmad Rather vs Sheikh Imtiyaz Ahmad on 5 December, 2018**

**Equivalent citations: AIRONLINE 2018 SC 872**

**Author: Uday Umesh Lalit**

**Bench: Dhananjaya Y Chandrachud, Uu Lalit**

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.11853-11854 OF 2018  
(@ SPECIAL LEAVE PETITION (C) NOS 30797-30798 OF 2017)

ZAHOOR AHMAD RATHER AND ORS ETC

..APPELLANTS

VERSUS

SHEIKH IMTIYAZ AHMAD AND ORS ETC

..RESPONDENTS

WITH

CIVIL APPEAL NO.11855 OF 2018  
(@ SPECIAL LEAVE PETITION (C) NO 31196 OF 2017)

JAVID AHMAD DAR AND ORS

..APPELLANTS

VERSUS

NASEER AHMAD MIR AND ORS

..RESPONDENTS

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Reason:

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## JUDGMENT

Dr Dhananjaya Y Chandrachud, J Civil Appeals @ SLP (C)Nos 30797-30798/2017:

1. Leave granted.

2. These appeals arise from a judgment of a Division Bench of the High Court of Jammu and Kashmir dated 12 October 2017. While allowing the Letters Patent Appeal, the High Court set aside a judgment of a learned Single Judge and, in consequence, directed that the writ petitions shall stand dismissed.

3. By a Government Order dated 4 December 1996, 23,297 posts were created in various departments of the State of Jammu and Kashmir. 5,330 fresh posts were created in the Power Development Department, including among them 3,675 posts of Technician-III and 200 posts of Junior Engineer.

The qualification for the post of Technician-III was “Matric with ITI”. The qualification for the post of Junior Engineer, which ranks higher in the hierarchy of posts, was a B E (electrical) / diploma (electrical).

4. On 23 February 2013, an advertisement was issued by the J & K State Service Selection Board (SSSB) for filling up the posts of Technician- III in the Power Development Department for various districts including Budgam, Srinagar and Ganderbal. Note 3 of the advertisement contained the following stipulations, which every applicant was required to fulfil:

“(3) In possession of the prescribed academic/ professional/ technical qualifications and fulfil all other eligibility Conditions wherever required as shown against each post in the Annexures by or before last date of receipt / submission of application forms i.e. 31.3.2013” The advertisement also contained the following stipulation in Note 12:

“12. The prescribed qualifications reflect the bare minimum requirement of the job and mere possession thereof shall not entitle a candidate to be called for written test/ interview and also grant weightage to the higher qualification in relevant line / discipline as may be decided by the Board.” Annexure C 1 to the advertisement

specified the qualifications prescribed for each post which was advertised. For the post of Technician-III in the Power Development Department, the prescribed qualification was:

“Matric with ITI in relevant trade.”

5. The appellants applied for the post of Technician-III. The first appellant holds a Diploma in Electrical Engineering. Appellants 2, 3 and 4 hold a Diploma in Electronics and Communication. Appellants 5 and 6 hold a Diploma in Electrical Engineering. None of them possesses the ITI certification.

6. On 14 August 2014, a list of disqualified candidates was notified by the SSSB. The appellants were not part of that list and were called for a written test on 23 August 2014. On 20 November 2014, a notification was issued for the purpose of shortlisting candidates who had cleared the written test, for the interview. The notification reflected the category – open or reserved – under which each candidate was considered. Interviews were conducted for the districts of Budgam, Srinagar and Ganderbal at which the appellants appeared.

7. On 31 January 2015, the SSSB held its 116 th meeting at which, among the subjects on the agenda, was the following:

“Agenda No. 11. During the course of scrutiny of documents in the process of framing the selection lists for the post of Technician-III (Power Development Department), it has been observed that the Convener of the Interview committee (in some districts) has conducted the interview of candidates having Diploma in Electrical Engineering provisionally while as in some other districts, the candidates having Diploma in Electronics and communication Engineering, Electrical Engineering, B.E. (Electrical) have been declared as not eligible for the post in question. Furthermore, the candidates having ITI trade in general Electronic Mechanic, Weldar (Gas & Electric), Instrument Mechanic, Weldar (Gas & Arc), Information Technology and Electronic Systems Maintt. have also been interviewed for the post in question.”

8. The Minutes of the Meeting record that the following decision was arrived at by the Board:

“ After threadbare discussion, it was decided that only ITI in relevant trade viz Electrician has to considered as prescribed in the advertisement Notification.”

9. A select list was published on 23 April 2015. The appellants were not included in the select list. The reason for the omission is that none of them possessed an ITI qualification. Aggrieved by their non-inclusion, the appellants instituted writ proceedings seeking consideration of their candidature for selection to the post of Technician-III on the basis of their position in the merit list. The appellants sought the quashing of the select list framed for the three districts without considering their position in merit and desired the reframing of the select list.

10. The learned Single Judge by a judgment dated 1 August 2017 allowed the writ petitions on the ground that it was not open to the SSSB to exclude the appellants after the process of selection was set in motion and they had been subjected to a written test as well as an interview. In the view of the learned Single Judge, the rules could not have been changed after the selection process had been initiated, particularly since the list of disqualified candidates did not include them. The learned Single Judge noted that a candidate possessing a Diploma – electrical is entitled to appointment to the post of Junior Engineer which ranks higher than the post of Technician – III. Hence, in this line of reasoning, if the appellants were eligible to hold a higher post, their qualification was adequate for the post of Technician-III and a Diploma in Electrical Engineering pre-supposes the acquisition of the lower qualification of Matric with ITI. In this view of the matter, the select list was quashed and the SSSB was directed to reframe it according to the merit secured by the appellants and other candidates. Directions were issued for making appointments on the basis of the select list as reframed.

11. In the Letters Patent Appeals which were filed before the High Court, the Division Bench reversed the judgment of the learned Single Judge. The Division Bench held that the advertisement mandated an ITI in the relevant trade as a condition of eligibility and the SSSB had not granted any weightage to a higher qualification, in terms of Note 12. Moreover, the SSSB had categorically taken a decision on 31 January 2015 that it was only an ITI in the relevant trade with a Matric qualification that meets the prescribed qualifications. In arriving at this conclusion, the Division Bench has inter alia relied on a judgment of this Court in *P M Latha v State of Kerala*<sup>1</sup>.

12. Ms Kaveeta Wadia, learned counsel appearing on behalf of the appellants has underlined the significance of the provisions contained in Note 12 to the advertisement dated 23 February 2013. The submission is that the prescribed qualification of a Matric with ITI is “the bare minimum 1 (2003) 3 SCC 541 requirement of job” and the Note contemplates that weightage can be granted to a higher qualification in the relevant line or discipline as may be decided by the Board. Learned counsel has buttressed her submissions by urging that:

(i) a diploma is in fact a higher qualification than an ITI; and

(ii) ITI holders are entitled to a lateral entry to a diploma course in Electrical Engineering.

Ms Wadia Placed reliance on a series of advertisements issued by the Board and on the mark-sheets of ITI with a lateral entry to the diploma course. Devoting a considerable amount of industry to her research, Ms Wadia has painstakingly placed on the record these documents in the form of a compilation on the record. Ms Wadia urged that there is no prohibition on the holder of a diploma in seeking appointment as Technician-III. Besides the fact that there is an absence of a prohibition, learned counsel submitted that Note 12 clearly indicates that the prescribed qualifications constitute the bare minimum requirement of the job and that a candidate with a higher qualification cannot be disqualified. This, in her view, is also the position which has been adopted by the Board in an affidavit filed in April 2001 before the High Court in *Ravinder Singh v State*<sup>2</sup>. Learned counsel relied on the orders passed in those proceedings by the High Court. Finally it was urged, placing

reliance on a judgment of this Court in 2 SWP 1706/2000 CMP No 2727/2000 Jyoti KK v Kerala Public Service Commission<sup>3</sup> that where a person has acquired a higher qualification, it can be stated to presuppose the acquisition of the lower qualification prescribed for the post. In the absence of any exclusion of a person holding higher qualifications, it was urged, a diploma holder cannot be disqualified from applying for the post of Technician-III.

13. On the other hand, it has been urged on behalf of the SSSB by Mr Riyaz Ahmad Jaan, learned senior counsel, that:

(i) While creating the post of Technician-III, the qualification which was prescribed by government was that of a 'Matric with ITI';

(ii) The SSSB is a creature of a statute and has a restricted mandate, governed by its provisions;

(iii) The Board at its 116th Meeting resolved that in terms of the advertisement, only holders of an ITI with Matric would be eligible for the post;

(iv) The purpose of the above resolution was to bring about a uniformity in the selection process;

(v) Note 12 of the advertisement is only an enabling provision which permits the Board to assign a weightage to a higher qualification for the purpose of shortlisting;

3 (2010) 15 SCC 596

(vi) The Board decided against the grant of any such weightage;

(vii) No right of the appellants has been infringed and the process which has been followed is fair; and

(viii) The Board has plainly acted in pursuance of the position that the prescribed qualification for the post of Technician-III is Matric with ITI. A diploma holder does not fulfil that requirement. Adopting these submissions, Mr Shoeb Alam, learned counsel for the State of Jammu & Kashmir urged that the SSSB did not change the 'rules of the game' mid-stream, as the learned Single Judge seemed to suggest. On the contrary, the SSSB had affirmed the prescribed qualifications.

14. On 4 December 1996, the Government of Jammu and Kashmir through its Planning and Development Department notified its sanction to the creation of 23,297 posts. Among them was the post of Technician-III. The qualification prescribed for the post of Technician-III is "Matric with ITI".

15. The Jammu and Kashmir Civil Services Decentralisation and Recruitment Act, 2010 provides in Section 5 that appointment to district, divisional and state cadre posts shall be made by the

competent authority on the basis of a selection made by the Public Service Commission or the State Service Selection Board, as the case may be. Section 6 provides thus:

“Section 6. Appointment to District Cadre posts – A person shall be eligible to the appointment to a District Cadre post only if he,-

- (i) is a permanent resident of the State;
- (ii) is a resident of the concerned district; and

(iii) possesses the prescribed qualification, eligibility and experience for the post as specified under the rules/orders regulating recruitment to such posts.” (emphasis supplied)

16. Rules of 2010 have been framed under the provisions of the Act 4. Rule 6 provides for the constitution of the Services Selection Board. The Board has a three-tier set up comprising of selection committees at the state level, divisional level and district level. Rule 13 sets out the procedure for inviting applications and eligibility for different cadres. Sub- rules (1) and (3) of Rule 13 provide as follows:

“13. Procedure for inviting applications by the Board and eligibility for applying to different cadres, -

(1) The Board shall advertise all State cadre vacancies referred to it by the requisitioning authority and invite applications for selection to the said posts from the permanent residents of the State and possessing the prescribed qualification, ability and experience for such posts.

... (3) The district offices of the Board shall advertise the District cadre vacancies of the concerned district referred to it by the requisitioning authority and invite applications for selection to the said posts from such permanent residents of the State who are residents of that District and possess the prescribed qualification, eligibility and experience for such posts.” (emphasis supplied) Rule 14(1) provides for the preparation of a select list:

4 Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010  
“14. Procedure for preparation of select lists by the Board,

- (1) The Services Selection Board shall hold a written test for all the eligible candidates who apply for the advertised post (s). The viva-voce of the eligible candidates shall be conducted by the designated Selection Committee of the Board. The number of candidates to be called for viva-

voce shall not be less than three times and more than five times the number of vacancies to be filled up. The final selection shall be made by the Board on the basis of marks / points obtained in viva-voce added to the marks / points obtained in the written test plus the weightage that may be provided for any higher / additional / special qualification (on pro-rata basis).” The select list which

is finalised by the respective committees has to be recommended to the requisitioning authority with the prior approval of the Board, under Rule 14(4). The said rule reads thus:

“(4) The select list so finalized by the respective Committees shall be equal to the number of vacancies for which requisition was made and recommend it to the requisitioning authority with prior approval of the Board.”

17. Under the above provisions as well as in the advertisement which was issued by the Board, every candidate must possess the prescribed academic/professional/technical qualification and must fulfil all other eligibility conditions. The prescribed qualifications for the post of Technician-III in the Power Development Department is a Matric with ITI in the relevant trade. The Board at its 116th meeting took notice of the fact that in some districts, the interviews had been conducted for candidates with a diploma in Electrical Engineering while in other districts candidates with a diploma had not been considered to be eligible for the post of Technician-III. Moreover, candidates with an ITI in diverse trades had also been interviewed for the post. The Board resolved at its meeting that only an ITI in the relevant trade namely the Electrical trade is the prescribed qualification specified in the advertisement.

18. The learned Single Judge was persuaded to accept the submissions of the petitioners who had moved the Writ Petition primarily on two grounds. The first was that the Board had changed the rules in the midst of the selection process. In holding thus, the learned Single Judge was clearly in error. The Board did not bring about any change in the rules or the norms governing the selection mid-stream. There was no deviation from prescribed requirement for the post, of ITI with Matric. In fact the Board resolved to adhere to the qualification which was prescribed in the advertisement. An anomalous situation had arisen as a consequence of which, despite the prescribed qualifications, interviews of diploma holders had been conducted in some districts. This was plainly in breach of the conditions of the advertisement and was rectified by the Board. The second ground which weighed with the learned Single Judge was that the holder of a diploma is eligible for the higher post of Junior Engineer and hence a candidate who holds a diploma must be “pre-supposed” to hold the lower qualification of an ITI. This line of reasoning appears to be based on the judgment of a two Judge bench of this Court in *Jyoti KK* (supra). Before advert to the decision in *Jyoti KK*, it would be necessary to advert to some of the decisions of this Court on the subject.

19. In *PM Latha* (supra), a two judge Bench of this Court rejected the contention that the B.Ed. qualification is a higher qualification than the Trained Teachers Certificate (TTC) and that a B.Ed. candidate should be held to be eligible to compete for the post of a primary school teacher. This Court held:

“10. We find absolutely no force in the argument advanced by the respondents that BEd qualification is a higher qualification than TTC and therefore, the BEd candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for BEd degree, the training imparted is to teach students of classes above primary. BEd

degree-holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or BEd qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not BEd. Whether BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates, for the present vacancies advertised, as eligible.” 5 [See also *Yogesh Kumar v Government (NCT of Delhi)*]<sup>6</sup>.

20. The decision in *Jyoti KK* arises from a case where the Public Service Commission had invited applications to the post of a Sub-Engineer 5 id at page 546 6(2003) 3 SCC 548 (Electrical) in the Kerala State Electricity Board. The qualifications prescribed for the post were:

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1. SSLC or its equivalent.

2. Technical qualifications—

(a) Diploma in Electrical Engineering of a recognised institution after 3 years' course of study, OR

(b) a certificate in Electrical Engineering from any one of the recognised technical schools shown below with five years' service under the Kerala State Electricity Board, ... OR

(c) MGTE/KGTE in electrical light and power (higher) with five years' experience as IInd Grade Overseer (Electrical) under the Board.” The appellants were holders of a B.Tech. degree in Electrical Engineering or a Bachelors degree in Electrical Engineering. The Public Service Commission held that they were not eligible for selection. Rule 10(a)(ii) of the Kerala State and Subordinate Services Rules 1956 contained the following stipulation:

“10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.” (emphasis supplied) A two judge Bench of this Court, while construing Rule 10 (a) held thus:

“7. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in



stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far.”<sup>7</sup> “8. Under the relevant Rules, for the post of Assistant Engineer, degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.”<sup>8</sup> The Court also noted that there was no exclusion of candidates who possessed a higher qualification.

21. The decision in *Jyoti KK* has been considered in a judgment of two learned Judges in *State of Punjab v Anita*<sup>9</sup>. In that case, applications were invited for JBT/ETT qualified teachers. Under the rules, the prescribed qualification for a JBT teacher included a Matric with a two years’ course in JBT training and knowledge of Punjabi and Hindi of the Matriculation <sup>7</sup> Id at page 598 <sup>8</sup> Id at page 599 <sup>9</sup> (2015) 2 SCC 170 standard or its equivalent. This Court held that none of the respondents held the prescribed qualification and an MA, MSc or MCom could not be treated as a ‘higher qualification’. Adverting to the decision in *Jyoti KK*, this Court noted that Rule 10(a)(ii) in that case clearly stipulated that the possession of a higher qualification can pre-suppose the acquisition of a lower qualification prescribed for the post. In the absence of such a stipulation, it was held that such a hypothesis could not be deduced:

“15. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT Teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in *Jyoti K.K.* case [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596] , permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder: (SCC p. 598, para 6) “6. Rule 10(a)(ii) reads as follows:

‘10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or Standing Orders of Government

as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post..” (emphasis supplied) A perusal of the Rule clearly reveals that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorising the appointment of persons with higher qualifications.”<sup>10</sup> (emphasis supplied)

22. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti KK in the subsequent decision in Anita (supra). The decision in Jyoti KK turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti KK turned on a specific statutory rule under which the holding of a higher qualification could pre-

suppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the 10 id at page 177 conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

23. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti KK must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti KK turned.

24. Ms Wadia sought to draw sustenance from the fact that the holder of an ITI certification can obtain lateral entry to the diploma course. The point of the matter, however, is that none of the appellants fit the description of candidates who had secured an ITI certification before seeking a

lateral entry to a diploma course. Plainly, when an ITI with matric is required, a person who does not hold that qualification is not eligible.

25. The submission based on Note 12, urged by Ms Wadia, cannot be accepted. The stipulation that the qualification prescribed is the bare minimum requirement of the job emphasises that it is an essential requirement, a threshold which cannot be dispensed with. Under Note 12, the Board is entitled to assign additional weightage for a higher qualification. Whether such a weightage should be assigned is a matter for the Board to determine. The SSSB did not assign an additional weightage for a higher qualification. In not exercising an enabling power, no fault can be found with the SSSB. An enabling provision postulates a discretion which may or may not be exercised. A candidate has no vested right to assert that the Board must as a mandate assign an additional weightage to a higher qualification. Whether to do so or not is a matter for the Board to determine. All that Note 12 postulates is that the mere possession of the prescribed qualification will not entitle a candidate to be called for the written test or interview. The Board may shortlist among eligible candidates by granting a weightage to a higher qualification in the relevant line or discipline. But the words “as may be decided by the Board” in Note 12 indicate that the Board is vested with a discretion in pursuance of an enabling power which it may or may not exercise.

26. Ms Wadia, learned counsel appearing on behalf of the appellants, however, urged that a peculiar situation arises in the present case because the appellants were permitted initially to appear for the written test and the interview. Their names were not contained in the disqualification list. Ms Wadia submitted that the appellants would have become age barred by now to pursue any future application. Recourse to our jurisdiction under Article 142 is warranted particularly since the appellants have spent nearly four years in pursuing their quest for the job of Technician III. They had even succeeded before the learned Single Judge. Hence, the rigors of the hardship, which the appellants confront, can be met by a suitable direction for age relaxation in their case. As we have noted in the earlier part of this judgment, the appellants applied in 2013 in pursuance of the advertisement that was issued by the SSSB. They were pursuing their remedies in the writ proceedings which ultimately culminated in the order of the learned Single Judge dated 1 August 2017. The Letters Patent Appeal was allowed on 12 October 2017. Having regard to these circumstances, we are of the view that the appellants should be granted an age relaxation to the extent of four years should they apply for any other post that may be advertised by the State of Jammu and Kashmir in the next two years. The age relaxation of four years shall be available to the appellants for any post advertised upto 30 November 2020. Save and except for the above direction in regard to age relaxation, we have not interfered with the judgment and order of the Division Bench of the High Court. The appeals shall, accordingly, stand disposed of. There shall be no order as to costs. Civil Appeal No.11855 of 2018 @ SLP (C) No 31196 of 2017:

27. Leave granted.

28. This appeal is also disposed of in the same terms, conditions, observations and directions as in Civil Appeal Nos.11853-11854 of 2018 @ SLP (C) Nos 30797-30798 of 2017.

.....J [UU Lalit] .....J [Dr Dhananjaya Y  
Chandrachud] New Delhi;

December 05, 2018