

A

BARUN KUMAR & ORS.

v.

STATE OF JHARKHAND & ORS.

(Civil Appeal No. 5812 of 2022)

B

AUGUST 25, 2022

[AJAY RASTOGI AND C. T. RAVIKUMAR. JJ.]

- Service Law – Jharkhand Combined Civil Services Examination – Validity of appointments – Interpretation of r.16 and r.17 of Bihar Civil Services (Executive Branch) and Bihar Junior Civil Services (Recruitment) Rules, 1951 – High Court cancelled the appointment of appellants who had qualified the 6th combined Civil Service Examination, 2016 – Appellants-candidates in appeal before Supreme Court – Held: While reading clause (a) and (b) of r.16 conjointly, it states that clause (a) is general and precise for the candidates who are participating in the written examination whereas clause (b) refers to the candidates who belong to Scheduled Castes and Scheduled Tribes leaving the discretion of the Commission to fix qualifying marks for them but with restriction that shall not be higher than 35% - R.16 proviso relates to the stage for determining the suitability of the candidate, total marks obtained in the written examination has to be counted and not the marks obtained in any particular subject for preparing the list of candidates who qualify the written examination and this can be made further clear by taking note of r.17 – Clause 12(a) of advertisement in reference to the Preliminary Examination states that fifteen times candidates will be shortlisted for main examination and as per clause 12(b), the main examination will comprise of 06 papers, total marks of which would be 1050 and it would be mandatory for the candidate to appear in all the subjects/papers of Main Examination – However, for Paper-I, minimum 30 marks as qualifying marks has been prescribed and all the 6 papers are common and candidate has to appear in all the papers with the minimum qualifying marks for the respective category as per clause 13 of the advertisement but whether it is the total marks obtained at the written examination or qualifying marks obtained in all the papers separately is not clear under the terms of advertisement – Reading clauses 12 and 13 of advertisement with r.16 of indicates ambiguity in advertisement – Both the*

Commission and High Court have different views which are equally possible views and either of the one could not be ruled out or outrightly negated – When one possible view has been acted upon by the Commission and candidates have been appointed and are working for almost 2 years by this time, it will be unjust for this Court to now permit the Government to take a U-Turn – Hence, the appointments of the candidates could not be cancelled.

A

B

Allowing the appeals, the Court

HELD: 1. Reading clause (a) and (b) of Rule 16 conjointly, states that clause (a) is general and precise for the candidates who are participating in the written examination whereas clause (b) refers to the candidates who belong to Scheduled Castes and Scheduled Tribes leaving the discretion of the Commission to fix qualifying marks for Scheduled Castes/Scheduled Tribes but with restriction that shall not be higher than 35% in Bihar Civil Services (Executive Branch). [Para 37][33-G-H; 34-A]

C

D

2. The proviso added thereto relates to the stage for determining the suitability of the candidate, total marks obtained in the written examination has to be counted and not the marks obtained in any particular subject for preparing the list of candidates who qualify the written examination and this can be made further clear by taking note of Rule 17 of the Rules which casts an obligation upon the Commission to collate the marks obtained by the candidate in the written examination and the Commission shall arrange for vivavoce the candidates who have qualified the written examination according to Rule 16(a) or 16(b), as the case may be, and at this stage the Commission keeps a discretion and in exceptional circumstances may admit a member from the Scheduled Castes or Scheduled Tribes to the viva voce test, even if they have failed to qualify the minimum qualifying marks with the prior approval of the Government and this being the scheme of Rules, proviso to Rule 16 has to be read for both the clause (a) and (b) to Rule 16 and cannot be read in reference to clause (b) alone as held by the High Court under the impugned judgment. [Para 38][34-A-D]

E

F

G

3. If we examine clause 12(a) in reference to the preliminary examination, it may indicate that according to vacancies, fifteen

H

- A times candidates will be shortlisted for main examination and as per clause 12(b), the main examination will comprise of 06 papers, total marks of which would be 1050 and it would be mandatory for the candidate to appear in all the subjects/papers of Main Examination. But for Paper-I, minimum 30 marks as qualifying marks has been prescribed and all the 6 papers are common and candidate has to appear in all the papers with the minimum qualifying marks for the respective category as indicated in clause 13 of the advertisement but whether it is the total marks obtained at the written examination or qualifying marks obtained in all the papers separately is not clear under the terms of advertisement.
- B It is true that it can be construed in both ways. The main examination is comprising of 6 papers, total marks would be 1050 and candidate has to appear in all the papers of the main examination. This could be one construction that qualifying marks in paperI is 30% but in other subject papers, it may be 40% or as fixed for the respective category and whether it has to be aggregate or qualifying marks in each paper is indeed not clear and ambiguity is there in the conditions of advertisement, of which a detailed reference has been made. At this stage, we take assistance of Rule 16 of the scheme of Rules, 1951 read with the proviso which gives a different indication. [Para 40 and 41][34-F]
- C H; 35-A-C]
- D
- E
- F 4. In the instant case, the view which has been adopted by the Commission and that has been considered and held by the High Court in the impugned judgment may be better circumscribed but both are equally possible views and either of the one could not be ruled out or outrightly negated. In the given situation, when one possible view has been acted upon by the Commission and pursuant to which the recommendations were made and after approval of the State Government, candidates have been appointed and are working for almost 2 years by this time, it will be unjust for this Court to now permit the Government to take a U-Turn in compliance of the impugned judgment, and non-suit the candidates who are working for sufficiently long time. [Paras 43 and 44][36-B-E]
- G

Joy Guria v. State of Jharkhand and Others [W.P.(S) No. 4188 of 2018]; N. Suresh Nathan and Another v.

*Union of India and Others (1992) 1 Supp SCC 584 : A
[1991] 2 Suppl. SCR 423 – referred to.*

Case Law Reference

[1991] 2 Suppl. SCR 423 referred to Para 42

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5812 B
of 2022.

From the Judgment and Order dated 23.02.2022 of the High Court
of Jharkhand at Ranchi in Letters Patent Appeal No. 201 of 2021.

With C

Civil Appeal Nos. 5813, 5814-5817 and 5818 of 2022, Transfer
Petition (C) No. 1100 of 2022.

Ajit Kumar Sinha, Siddharth Bhatnagar, Ms. V. Mohana, Sr. Advs.,
Abhishek Ritabh Shukla, Rudrashish Bhardwaj, Md. Ali, Ms. Pracheta
Kar, Aditya Sidhra, Nadeem Afroz, Tushar Bakshi, Satyajeet Kumar,
Prashant Shukla, Suyash Srivastava, Shanker Singh, Ms. Shreya Mishra,
Ms. Aaina Walia, Madhumay Mishra, Brajesh Pandey, Saket Jain, Vijay
Laxmi, Anilendra Pandey, Advs. for the Appellants.

Kapil Sibal, Gopal Sankaranarayanan, Arunabh Chowdhury, Manoj
Swarup, Sr. Advs., Ms. Ranjeeta Rohatgi, Ms. Anusha Nagarajan,
Ms. Samten Doma, Sourabh Tandon, Ritansh Vats, Sahil Bhalaik, Tushar
Giri, Amritansh Vats, Ms. Tanya Srivastava, Shubhashis R. Soren, Bhakti
Vardhan Singh, Vaibhav Kumar Rana, Vatsalya Vigya, Puneet Jain,
Vigyan Shah, Ms. Christi Jain, Akshit Gupta, Yogit Kamat, Umang Mehta,
Ms. Pragya Baghel, Ms. Pallavi Langar, Abhishek Ray, Karma Dorjee,
Dechen W. Lachungpa, Himanshu Shekhar, Parth Shekhar, Neelmani
Pant, Ms. Kriti Dang, Ms. Akanksha Mehra, Amit Agrawal, Vigyan
Shah, Akshit Gupta, Ms. Radhika Yadav, Ms. Tanya Srivastava, Rajneesh
Bhaskar, S. R. Setia, Advs. for the Respondents.

The Judgment of the Court was delivered by

AJAY RASTOGI, J. G

Civil Appeal @ SLP (C) No(s).4310 OF 2022

Civil Appeal @ SLP (C) No(s).4443 OF 2022

Civil Appeals @ SLP (C) No(s).5338-5341 OF 2022

H

A Civil Appeal @ SLP (C) No(s). 5409 OF 2022

1. Leave granted.
2. The present batch of appeals has been preferred by the candidates who on qualifying the 6th Combined Civil Services Examination, 2016, conducted by respondent no.3, Jharkhand Public Service Commission (hereinafter referred to as “the Commission”) and having been appointed on the recommendations made by the Commission, completed their period of probation and got regular postings, their appointments have been cancelled initially by the learned Single Judge by its judgment dated 7th June, 2021, which came to be affirmed by the Division Bench of the High Court on dismissal of the Letters Patent Appeal filed at the instance of the present appellants by judgment and order impugned dated 23rd February, 2022.
3. The facts in brief which may be relevant for the purpose, with the consent of parties have been noticed from Civil Appeal @ Special Leave Petition (Civil) No.4310 of 2022 (Barun Kumar & Ors. Versus State of Jharkhand & Ors.).
4. That in terms of the Bihar Re-Organisation Act, 2000, Bihar Civil Services (Executive Branch) and Bihar Junior Civil Services (Recruitment) Rules, 1951(hereinafter referred to as the “Rules 1951”) was adopted by the State of Jharkhand vide notification no.6184 dated 9th November, 2002 and accordingly, the State of Jharkhand held its Combined Civil Service Examination in terms of the Rules 1951.
5. That prior to the present selection process which came to be initiated by the Commission pursuant to Advertisement no.1/2015, the respondents held 5th Combined Civil Services Examination conducted by the Commission pursuant to Advertisement no.6/2013 dated 7th July, 2013, there was a specific note in the advertisement that preliminary examination had two papers of 100 marks each and there shall be subject papers in the main examination and that the marks obtained in General Hindi will not be added in the marks obtained in the written examination and personality test, but the candidates who failed to secure 30 marks in compulsory General Hindi, will not be considered eligible for the written examination and accordingly Paper-I (General Hindi) was considered to be a qualifying test and before the 6th Combined Civil Services Examination, 2016 came to be notified, there was a series of meetings held by the Expert Committee for revision of the examination pattern for

Combined Civil Services Examination chaired by Mr. V.S. Dubey, IAS (Retd.) and the Expert Committee, after examining the Pattern of Examination, made the recommendations¹.

¹

“65. Briefly speaking, the Expert Committee has the following recommendations to make :-

(a) All the optional papers, both at the level of the preliminary and main examinations of the Civil Services, be done away and replaced by common, compulsory papers.

(b) The Preliminary Examination should be conducted in two papers only, each of 200 marks, compulsory for all candidates. The broad syllabus of these two papers could be the same as that of the Civil Services Aptitude Test (CSAT) of the Union Public Service Commission, with minor modifications to accommodate local interests. These two papers could be called: (i) the Civil Services Aptitude Test (CSAT) Paper I, and (ii) the Civil Services Aptitude Test (CSAT) Paper II. Questions to be asked in these two papers must be multiple choice, objective type, with no negative marking. Based on the result of the Preliminary Examination, the number of the candidates to be called for the written (Main) Examination should be around ten times of the vacancies to be filled. The cut off marks of the Main Examination should be decided accordingly by the Commission.

(c) **The Main Examination should be conducted for a maximum of 1000 marks, divided into six papers, compulsory for all candidates. Of the six papers, two should be drawn from the languages group and remaining four should be subject papers, as per details given below :-**

- (i) Paper I should be a composite paper of General Hindi and General English of Matric standard of 100 marks. This paper should have two separate segments, one on Hindi and the other one on English, each of equal weightage or 50 marks.
- (ii) Paper II should be a paper on Language & Literature of 100 marks of graduate standard. This paper will be set separately for each one of the following 15 languages, namely, (i) Hindi, (ii) Urdu, (iii) Bengali, (iv) Oriya, (v) English, (vi) Sanskrit, (vii) Santhali, (viii) Mundari, (ix) Khadia, (x) Ho, (xi) Kuruk, (xii) Nagpuria, (xiii) Kurumali, (xiv) Khorta, and (xv) Panch Pargania, of which every candidate will have to opt for one.
- (iii) Paper III should be a paper on Social Sciences of 200 marks, comprising of two distinct sections, each of equal weightage, one on History and the other one on Geography.
- (iv) Paper IV should be a paper on Indian Constitution & Polity, Public Administration & Good Governance.

(d) **Marks obtained in all the six compulsory papers of the written Main Examination should be counted and clubbed together to prepare the gradation-list. The candidates should be called for the Personality Test based on their position in the gradation list of the Main Examination. The number of candidates to be called for the Personality Test could be around two to three times of the vacancies to be filled. The cut-off marks**

A

B

C

D

E

F

G

H

A 6. The report of the Dubey Committee was considered by the Commission in the first instance and recommended the same to Respondent No.1 for acceptance, *inter alia*, with the stipulations²

for the candidates to be called for the Personality Test (Interview) should be determined accordingly by the Commission.

B (e) Marks to be kept earmarked for the Personality Test (Interview) should not exceed 10% of the total marks of the written (Main) Examination. This will, thus, work out to 100 marks, which, in the opinion of the Commission, is more than enough for this segment of the examination. It is to be remembered that maximum complaints of favouritism and arbitrariness are received only in this section of the examination. Hence, it is necessary to keep a cap on the marks allotted for the Personality Test.

C (f) The trainee-officers should be evaluated at the end of the institutional-cum-field training through a formal system of examination and the marks obtained in this examination be added to the marks obtained by the candidates in the Civil Services (Main) Examination to determine their final inter-se service seniority. A maximum of 100 marks could be kept earmarked for this purpose. The details of the areas in which the institutional examination is to be conducted should be left to the concerned parent departments to work out in consultation with their training institutions and the Jharkhand Public Service Commission.”

D 2 (1) 100 marks Language paper of mains be of qualifying nature only in which a candidate shall secure minimum 30 marks out of the Combined Hindi & English (10th standard paper of 100 marks).

E (2) The Revised Examination Pattern Syllabus shall be effective from the 6th Combined Civil Services Examination only so that candidates get clear 15 months to prepare as per the revised pattern and syllabus. The next 5th Combined Civil Services Examination will be on the existing (Mains) syllabus.

F (3) Before issuing the notification of revised syllabus Jharkhand Public Service Commission shall get the syllabus of 9 Regional Languages and Hindi, Urdu, Sanskrit, Oriya, Bangla and English Language & Literature finalized by Expert Committee in its final meeting in which the Expert Committee Report was adopted.

G The Committee thus resolves this day i.e. 2nd April, 2013 to forward the V.S. Dubey Expert Committee Report to the Chief Secretary, Government of Jharkhand along with the Commission’s above recommendations for acceptance as early as possible with a view to ensure that the Revised Pattern can be enforced from the 6th Combined Civil Services Examination to be held in 2014 giving candidates at least 15 months to prepare on the basis of revised pattern.”

H ““12. Formation of exam: Preliminary test and main exam (written & interview) will be organized for selection.
 (A) Preliminary test: Candidates 15 times of the number of category-wise vacancies will be shortlisted for main exam on the basis of preliminary test. Preliminary test will comprise two papers having total marks of 200-200 (total Four Hundred). Their marks obtained

7. Respondent No.1 approved the methodology and course of the Combined Civil Services Examination as advised by the Dubey Committee A

will not be added with marks of main exam or interview. Exam of both papers will be O.M.R. based. It will be necessary to fill OMR in Preliminary Test properly otherwise, candidature will be cancelled. It will be compulsory to include candidates in all subjects/papers of Preliminary Test. Course of Preliminary Test is as under:-

SYLLABUS FOR THE PRELIMINARY TEST OF COMBINED CIVIL SERVICES EXAMINATION- 2016

The Preliminary Examination shall consist of two compulsory papers, each of 200 marks namely,

(i) General Studies Paper - I

(ii) General Studies Paper – II

Both the question papers shall be of multiple choices, objective type. The question papers will be set both in Hindi and English. However, questions set to test the comprehensive skill and knowledge of language and grammar shall be only in the concerned language, without providing Hindi or English translation thereof.

xxxx

xxxx

xxxx

(A) **Main Exam:** According to vacancies three times candidates will be invited for interview on the basis of main exam. Main exam will comprise 06 papers, total marks of which would be 1050. It would be mandatory for candidates to appear in all the subjects/papers of Main Exam. Course of Main Exam is as follows:-

MAIN EXAMINATION

[No optional subjects. All are common compulsory papers)

Subject	Duration	Full Marks	Remarks
Paper-I: General Hindi & General English, having two separate sections on (i) General Hindi and (ii) General English, each of 50 marks	3 hours	100	Descriptive Type This paper is qualifying in which minimum 30 marks is mandatory
Paper-II: Language and Literature: Under this paper, every candidate will have to opt for one language and literature out of fifteen listed by the commission	3 hours	150	Descriptive Type
Paper-III: Social Science, having two distinct sections of (i) History (ii) Geography, each of equal weightage.	3 hours	200	Descriptive Type
Paper-IV: Indian Constitution & Policy, Public Administration & Good Governance.	3 hours	200	Descriptive Type
Paper-V: Indian Economy, Globalization and Sustainable Development.	3 hours	200	Descriptive Type
Paper-VI: General Sciences, Environment & Technology Development.	3 hours	200	Descriptive Type

These papers are common to all candidates.

(c) xxxx

xxxx

xxxx

“13. Minimum qualifying marks of Preliminary & Main Exam:-

Unreserved	40 percent
Backward Class-I	34 percent
Backward Class-II	36.5 percent
Scheduled Castes/Tribes & female category	32 per cent

B

C

D

E

F

G

H

- A with modifications as suggested by the Commission and made it applicable to the 6th Combined Civil Services Examination by its notification dated 25th September, 2013. However, later pursuant to the recommendations of the High-Level Committee headed by the Minister in-charge, respondent no.1 further amended the curriculum and methodology of the Combined Civil Services Examination being conducted by respondent no.3 (Commission) with change of pattern of examination vide notification dated 21st April 2016.

- B 8. Accordingly, the Commission published Advertisement No.23/ 2016 holding 6th Combined Civil Services Examination, 2016 dated 6th October, 2016. Clause 12 and 13 of the advertisement which are the cause of dispute, with which we are concerned in the present batch of appeals, are reproduced as under:

- C 9. Pursuant to the advertisement of 6th Combined Civil Services Examination, all the applicants, including the appellants and the private respondents, appeared in the first instance in preliminary examination and the result of the preliminary examination was published on 23rd February 2017, which was further updated on 2nd March, 2017 by declaring the candidates 15 times of the number of vacancies to appear in the main examination. On 13th April 2017, the result of the preliminary examination was further declared and thereafter there was a series of E litigation questioning the pattern or result of the preliminary examination declared by the Commission and one of the issues of preliminary examination travelled to this Court which came to be decided in Civil Appeal no.9217 of 2018 by this Court by order dated 10th September, 2018³

-
- F The minimum qualifying marks determined as above will be applicable equally on all the written tests (Objective/Subjective) for various reserved categories for competitive exams of all the services/cadres. It would be mandatory for candidates of all the categories to obtain 30 marks in Paper-I of Main Exam. (General Hindi & General English).
Note: In the light of Resolution No.8315 dated 16.09.2015 of the Department of Personnel Administrative Reforms & Official Language, compulsion of obtaining minimum qualifying marks for interview in Civil Service competitive Test has been discontinued.”

³

O R D E R

Leave granted.

The controversy in the present appeal arose because certain answers that were given to questions were considered to be incorrect in the preliminary

H

10. This Court has expressed that there appears to be an ambiguity in the terms of advertisement disclosed to the candidates who had intended to participate in the selection process and that stipulation of 40% marks in the preliminary examination as opposed to two separate papers in the examination, this Court expressed its opinion that the candidate has to get 40% marks in the aggregate insofar as the two papers are concerned. Although it was later indicated that what is being expressed by this Court may not be treated as a precedent.

A

11. So far as the preliminary examination is concerned, even what was expressed by this Court was not taken to be a final conclusion on the issue, the learned Single Judge of the High Court revisited the scheme of the selection process of preliminary examination decided the controversy in the case of *Joy Guria Vs. State of Jharkhand and others* [W.P.(S) No. 4188 of 2018] under its judgment dated 20th December, 2018 holding that in the preliminary examination, the candidate has to obtain qualifying marks in both the papers and after the list of successful candidates was published, the main written examination was conducted from 28th January, 2019 to 1st February, 2019 and the result of the main

B

C

D

examination that was taken up by the candidates, which consisted of two general papers.

E

The minimum marks, as stated in the advertisement, were said to be 40 per cent for the unreserved category to be eligible, once the preliminary examination had been taken, thereafter to proceed with the main examination.

Since it is clear on a reading of the advertisement dated October, 2016 that 40 per cent is the marks of the preliminary examination as opposed to marks of two separate papers in that examination, we are of the opinion that this candidate was told that she has to get 40 percent in the aggregate insofar as the two papers are concerned.

F

We have also been informed by the State Government that owing to the supposed ambiguity in the advertisement, a Committee has gone into the same and has since opined what was meant by "preliminary examination" is that 40 per cent minimum marks should be obtained in each paper.

We are of the view that the ambiguity, if any, in the advertisement must fall in favour of the candidate who goes by the advertisement as it originally stood.

G

Since it is clear that even without looking into the correctness of the answers, so far as six questions are concerned, that the petitioner has in fact obtained 40 per cent in both the papers taken together, the appellant shall be allowed to appear for the main examination.

The appeal is disposed of accordingly.

Since the appellant alone is before us, we make it clear that anything said in the order will not be treated as a precedent."

H

- A examination was declared on 15th February, 2020 and all the successful candidates in the written examination who fell in the zone of consideration were called for viva voce and the result of the candidates who qualified and successfully cleared all the stages, the final merit list was published of the selected candidates by the Commission on 21st April, 2020 and
- B after the recommendations were approved by the Government of Jharkhand, the successful candidates of the 6th Combined Civil Services Examination, 2016 against 326 posts were appointed on various dates from June, 2020 to July, 2020 and so far as the appellants in the instant batch of appeals are concerned, including other selected candidates, were appointed by the Government vide notification dated 29th July 2020.
- C 12. Several writ petitions later on came to be filed before the learned Single Judge of the High Court assailing the result of the main examination dated 21st April, 2020 of the 6th Combined Civil Services Examination, 2016 and since there are contentious issues, as alleged, came to be raised in the batch of writ petitions, the learned Single Judge of the High Court bifurcated the issues into four groups.
- D 13. Insofar as the present appellants are concerned, they belong to the fourth group. The learned Single Judge of the High Court, after interpreting clause 12 and 13 of the advertisement read with Rule 16 of the scheme of Rules 1951, arrived to a conclusion that so far as the main
- E examination is concerned, Paper-I of General Hindi/General English, was a qualifying paper for which the candidate has to secure 30 marks, and the merit of the candidate is to be assessed on the basis of remaining 5 papers in which the candidate has to secure minimum qualifying marks in each of the paper and since this procedure has not been followed by the respondents, accordingly, by a common judgment dated 7th June,
- F 2021, set aside the merit list prepared by the Commission with a direction to prepare a fresh merit list with reference to the marks obtained in the written test (5 papers) and viva-voce, without adding the marks of Paper-I and thereafter the final select list may be drawn in accordance with law.
- G 14. It may be relevant to note that during the course of pendency of the LPAs, interim applications were disposed of by the Division Bench by an order dated 10th August 2021, wherein it was directed that the parties shall maintain status-quo and it was further recorded that the appellants have undertaken that they will not plead equity in case any adverse decision is passed by the High Court on the ground that the
- H

appeal remained pending and during that period they remained in A employment.

15. The issues which were framed for consideration by the Division Bench of the High Court and held as under:

Issue no.(i)

Whether the marks obtained in Paper-I were to be added in total marks?

B

Issue no.(i) is answered by the High Court as under:-

that the marks obtained in Paper-I (Mains Examination) were not to be added in total marks while preparing merit list for declaration C of the candidature of one or the other candidate.

Issue no.(ii)

Whether the merit list prepared by the JPSC based upon the ‘aggregate qualifying marks’ of all subjects or ‘minimum qualifying marks’ in each of the subjects, is considered to be correct?

D

Issue no.(iii)

Whether the stand which has been taken by the JPSC as also the State before the Court of law based upon which the order has been passed in *Joy Guria (supra)* or the contrary view taken while preparing the merit list of the successful candidate in 6th Combined Civil Service Competitive Examination conducted by JPSC is considered to be correct?

E

Issue nos.(ii) and (iii) are answered by the High Court as under:-

F

(ii) ‘Minimum qualifying marks’ in each subject (Main Examination) is correct interpretation; and

(iii) the stand which has been taken by the JPSC as also the State before the Court of law based upon which the order has been passed in *Joy Guria (supra)* is correct approach.

G

16. The Division Bench of the High Court held that the marks obtained in Paper I of Written Examination were not to be added in the total marks and in terms of clause 13 of the advertisement, qualifying marks have to be secured by the candidates in each subject paper (5 papers) which, according to the Division Bench, was in conformity with H

- A Rule 16 of the Rules, 1951 under the judgment and order impugned dated 23rd February 2022, which is the subject matter of challenge in appeals before us.
17. Learned counsel for the appellants jointly submits that there is no ambiguity or any later amendment in Rule 16 of the Rules, 1951 and
- B so far as the proviso appended to Rule 16 is concerned, it has to be read with clause (a) and (b) to Rule 16. Clause (a) gives discretion to the Commission to fix the qualifying marks in any or all the subjects at the written examination. At the same time, clause (b) provides for qualifying marks which can be fixed by the Commission in its discretion for the candidates of Scheduled Castes/Scheduled Tribes but shall not be higher
- C than 35% for the Bihar Civil Service (Executive Branch). If clause (a) and (b) are read in conjunction, it makes it explicitly clear that clause (a) is general in nature and emphasizes on the discretion of the Commission to fix the qualifying marks in any or all subjects in reference to the candidate appearing in the examination. However, clause (b) carves out
- D an exception and only emphasizes for the Scheduled Castes and Scheduled Tribes candidates. So far as the proviso added to Rule 16 is concerned, it postulates that only after crossing the threshold, the total marks secured by the candidate would be taken into consideration for determining the suitability of the candidate for appointment.
- E 18. That apart, proviso to Rule 17 categorically empowers to relax the norms for Scheduled Castes and Scheduled Tribes despite not having secured the minimum qualifying marks as fixed by the Commission under Rule 16(a) and (b) with the prior approval of the Government. Thus, what is being observed by the Division Bench in interpreting proviso to Rule 16 being confined to clause (b) alone and not to clause(a) and clause (b) is a complete misreading of the Rule 16 of the Rules 1951.
19. So far as the qualifying Paper I and determination of merit based on the other 5 subject papers in the written examination is concerned, learned counsel submits that clause 12(b) of the advertisement clearly postulates that total number of marks would be 1050 and it will
- G be mandatory for the candidates to appear in all the subjects/papers of the main examination. Although the remarks-column in Paper-I indicates that it is a qualifying paper in which minimum 30 marks are mandatory and in the remaining subject papers, one has to secure 40% marks but there is no indication whether it has to be in individual paper or the total
- H marks obtained in the written examination for adjudging the suitability for appointment.

20. Thus, in the given circumstances, what is being construed by the Commission in preparing the merit list of the candidates based on the marks secured by the candidate out of 1050 marks for determining merit in the written examination to be called for interview is a reasonable interpretation which ordinarily was not open for the High Court to interfere with within the limited scope of judicial review under Article 226 of the Constitution.

A

B

21. Learned counsel further submits that the interpretation which has been afforded by the High Court after deliberation may also be one of the plausible interpretations in reference to clause 12 and 13 of the advertisement but what is being interpreted by the Commission while preparing the merit list of the written examination cannot be completely ruled out. In this state of affairs, the selection process which once has attained finality and the appellants have been appointed after the recommendations were approved by the State Government and have completed the period of probation, merely because there was an interim order passed by the High Court where an equity may not be claimed but for all practical purposes, they are working for almost two years by this time, this fact cannot be ruled out and submits that in the given facts and circumstances, the judgment passed by the High Court is not sustainable in law.

C

D

22. Learned counsel further submits that if the respondents have consistently followed the practice in the past of preparing the merit list on the basis of total marks secured by the candidate in the main examination held earlier and that can be reasonably construed from clause 12 and 13 of the advertisement and there is no amendment to Rule 16 of the scheme of Rules, 1951 and that being so, it was an apparent error committed by the High Court in overruling the settled practice which was being followed consistently by the Commission for sufficiently long time, in the given circumstances, there was no justification for the High Court to unsettle the settled past practice followed by the Commission in exercise of its limited power of judicial review under Article 226 of the Constitution.

E

F

G

23. Per contra, learned counsel for the respondents submits that the procedure for selection for preliminary and main examination is to be regulated in terms of clause 12 and 13 of the advertisement and it only refers to the qualifying marks to be secured by the candidates, and if Clause 12 and 13 are to be read in conjunction, the only irresistible

H

- A conclusion and the interpretation coming forward would be that Paper-I of the written examination although is a part of the scheme of the examination but one has to secure only 30% marks to qualify and the merit list has to be determined on the basis of the written examination of remaining subject papers (5 papers) in which the candidate has to secure qualifying marks in each paper and that being the manifest error which the Commission has committed in preparing the merit list and that has been rectified by the High Court in the impugned judgment and the respondents are equally qualified and they would have been placed in the order of merit provided the Commission would have published the list of selected candidates in conformity with clause 12 and 13 of the advertisement read with Rule 16 of the Rules 1951.

24. Learned counsel further submits that there is no delay on the part of the respondents in approaching the Court for redressal of their grievances and at least latches, in no manner, be attributed to them. Once their right has been safeguarded by the interim order of which a reference has been made, at least their right of fair consideration in revising the merit list of the written examination in terms of the order of the Division Bench may not be interfered with by this Court.

25. Learned counsel further submits that so far as Rule 16 of the scheme of the Rules, 1951 is concerned, if the punctuation mark is noticed after Rule 16(a), the Legislature in its wisdom has put a little full stop(.) and after clause (b), there is colon(:), and thereafter, the proviso has been added which clearly indicates that proviso is only related to clause (b) to Rule 16 and this being the only irresistible interpretation of the scheme of Rule 16 of Rules, 1951 which has been confirmed by the High Court after a detailed discussion in the impugned judgment, binds the authority to take further action in publishing the merit list of the main written examination in terms of the conditions of advertisement needs no further interference of this Court.

26. We have heard learned counsel for the parties and with their assistance perused the material available on record.

G 27. Before we proceed to examine the questions raised in the instant appeals, let us take the bird's eye view of the scheme of Rules 1951. Rules 15, 16 and 17 of the Rules 1951 relevant for the purpose are reproduced hereinbelow:

H

“15. The examination shall be held according to the syllabus specified in Appendix D to these rules which are liable to alteration from time to time by the Commission with the prior approval of the State Government. A

16. (a) The Commission shall have discretion to fix the qualifying marks in any or all the subjects at the written examination. B

(b) The minimum qualifying marks for candidates belonging to the Scheduled Castes and the Scheduled Tribes shall not be higher than 35% for the Bihar Civil Service (Executive Branch), and 30% for the Bihar Junior Civil Service unless the number of such candidates qualifying at the written test according to the standards applied for other candidates is considerably in excess of the number of candidates required to fill all the vacancies reserved for the Scheduled Castes and Scheduled Tribes: C

Provided that in determining the suitability of a particular candidate for appointment, the total marks obtained at the written examination and not the marks obtained in any particular subject shall be taken into consideration. D

(c) There shall be no qualifying marks for the viva voce test.

17. On the basis of the marks obtained at the written examination, the Commission shall arrange for a viva voce test of the candidates who have qualified at the written examination according to Rule 16 (a) or (b): E

Provided that in exceptional circumstances and with the prior approval of Government, the Commission may, at their discretion, admit candidates of the Scheduled Castes and Scheduled Tribes to the viva voce test even though they may not have obtained the minimum qualifying marks at the written test prescribed in Clause (a) or (b) of Rule 16.” F

28. The undisputed facts which may be noticed for completion of facts referred to supra clearly manifest that the 6th Combined Civil Services Examination was notified by the Commission on 6th October, 2016 for filling up of 326 posts of different services under the State of Jharkhand and recruitment is to be made in terms of the Bihar Civil Service (Executive Branch) and Rules, 1951 which were adopted by the State of Jharkhand by notification dated 9th November 2002. G

H

- A 29. Before the 6th Combined Civil Services Examination came to be initiated, there was lot of discussion prior thereto, and after the acceptance of Dubey Committee's report with certain modifications by the Commission, finally came to be approved by the State Government vide its notification dated 25th September, 2013 and after going through the process of selection followed with the recommendations made by the Commission, appointments are made by order dated 29th July, 2020 and after completing field training, they have been posted to their respective places of posting.

30. It may be apposite to note that the State of Jharkhand has now notified the rules framed in exercise of power conferred under proviso to the Article 309 of the Constitution, namely, the Jharkhand Combined Civil Services Examination Rules, 2021(hereinafter being referred to as the "Rules 2021") and apart from the other provisions of the scheme of Rules, Rule 17 lays down the criteria of prescribing the minimum qualifying/aggregate marks to be obtained by the candidate in

C D the main examination for preparing the merit list for the purpose of interview and in furtherance to the Rules 2021, selection process has been initiated by respondent no. 3 holding 7th Combined Civil Services Examination, 2016 vide advertisement no. 1/2021 dated 8th February 2021.

E 31. Thus, what is being decided by the Division Bench of the High Court under the impugned judgment may remain confined to the 6th Combined Civil Services Examination alone since all future selections shall be held by the State of Jharkhand under the scheme of Rules 2021.

32. If we look into the element of the examination pattern, the

F candidates who entered into participation of the selection process have to first qualify the preliminary examination and marks obtained in the examination shall not be added in the main examination as being referred to in clause 12(a) but there were series of litigations before the preliminary examination could be finalized and the result, in the first instance, was published on 23rd February, 2017 which came to be further revised on

G 13th April, 2017 and thereafter, because of litigation, it was again revised on 11th August, 2017 followed by 6th August, 2018 and finally, the second revised result of preliminary examination was published on 6th August, 2018 declaring 34,634 candidates successful for appearing in the mains examination.

H

33. One of the candidates who was not satisfied by the orders passed by the High Court came to this Court in Civil Appeal no.9217 of 2018 and this Court by Order dated 10th September, 2018 disposed of the same with the observation that there is an ambiguity in the conditions of advertisement and minimum qualifying marks of 40% are for the aggregate and not for each subject.

A

34. This was not rested at this stage. The High Court, in the case of *Joy Guria and others(supra)*, which relates to Preliminary Examination, again examined the result of the preliminary examination and by judgment dated 20th December, 2018 held that such of the persons who did not secure minimum qualifying marks in both the papers of preliminary examination are not qualified to participate in the main examination as Clause 13 of the advertisement applies to each subject separately.

B

C

35. After a long battle, the Commission proceeded further and conducted the main examination during the period 28th January, 2019 and 1st February, 2019 and the result was finally declared on 15th February, 2020 and the recommendations were made by the Commission to the State Government including allocation of service on 29th June, 2020 and after approval of the recommendations made, the appointments were made by the State Government by Order dated 29th July 2020. At this stage, all the candidates had completed their full training and have been given their respective postings.

D

E

36. We have examined the submissions and the counter submissions made by learned counsel for the parties.

37. So far as Rule 16 of Rules, 1951 is concerned, it is true that if we go through the bare punctuation marks which have been highlighted by the counsel for the respondents, it certainly makes a distinction between clause (a) and clause (b) but for proper interpretation and to make the scheme of rules workable, sometimes punctuation marks may give a different impression and that cannot be taken in isolation for the interpretation of the scheme of rules. If we read clause (a) and (b) of Rule 16 conjointly, it clearly manifests that clause (a) is general and precise for the candidates who are participating in the written examination whereas clause (b) refers to the candidates who belong to Scheduled Castes and Scheduled Tribes leaving the discretion of the Commission to fix qualifying marks for Scheduled Castes/Scheduled Tribes but with

F

G

H

- A restriction that shall not be higher than 35% in Bihar Civil Services (Executive Branch).

38. The proviso added thereto relates to the stage for determining the suitability of the candidate, total marks obtained in the written examination has to be counted and not the marks obtained in any particular subject for preparing the list of candidates who qualify the written examination and this can be made further clear by taking note of Rule 17 of the Rules which casts an obligation upon the Commission to collate the marks obtained by the candidate in the written examination and the Commission shall arrange for viva-voce the candidates who have qualified the written examination according to Rule 16(a) or 16(b), as the case may be, and at this stage the Commission keeps a discretion and in exceptional circumstances may admit a member from the Scheduled Castes or Scheduled Tribes to the viva voce test, even if they have failed to qualify the minimum qualifying marks with the prior approval of the Government and this being the scheme of Rules, proviso to Rule 16 has to be read for both the clause (a) and (b) to Rule 16 and cannot be read in reference to clause (b) alone as held by the High Court under the impugned judgment.

39. So far as the two questions which have been answered by the High Court in reference to whether the marks obtained in Paper-I would be added in total marks or whether the merit list is to be prepared based on the total marks at the written examination or minimum qualifying marks in each of the subject papers of written examination are concerned, after examining clause 12 and 13 of the advertisement in particular, read with Rule 16 of Rules 1951, we are of the view that there is certainly an ambiguity in the advertisement itself.

- F 40. If we examine clause 12(a) in reference to the preliminary examination, it may indicate that according to vacancies, fifteen times candidates will be shortlisted for main examination and as per clause 12(b), the main examination will comprise of 06 papers, total marks of which would be 1050 and it would be mandatory for the candidate to appear in all the subjects/papers of Main Examination. But for Paper-I, minimum 30 marks as qualifying marks has been prescribed and all the 6 papers are common and candidate has to appear in all the papers with the minimum qualifying marks for the respective category as indicated in clause 13 of the advertisement but whether it is the total marks obtained

H

at the written examination or qualifying marks obtained in all the papers A separately is not clear under the terms of advertisement.

41. It is true that it can be construed in both ways. The main examination is comprising of 6 papers, total marks would be 1050 and candidate has to appear in all the papers of the main examination. This could be one construction that qualifying marks in paper-I is 30% but in other subject papers, it may be 40% or as fixed for the respective category and whether it has to be aggregate or qualifying marks in each paper is indeed not clear and ambiguity is there in the conditions of advertisement, of which a detailed reference has been made. At this stage, we take assistance of Rule 16 of the scheme of Rules, 1951 read with the proviso which gives a different indication. C

42. This Court in *N. Suresh Nathan and Another vs. Union of India and Others*⁴ while examining the recruitment rules for Assistant Engineers in the Public Works Department and taking into consideration the procedure which has been followed by the department for sufficiently long time observed that the construction of the scheme of rules which is in consonance with long standing practice prevailing in the concerned department is untenable to require upsetting it and if the past practice is based on one of the possible constructions which can be made of the rules upsetting the same could not be appropriate and in para 4 this Court held as under:- D

“4. In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents diploma-holders that the practice followed in the department for a long time was that in the case of diploma-holder Junior Engineers who obtained the degree during service, the period of three years’ service in the grade for eligibility for promotion as degree-holders commenced from the date of obtaining the degree and the earlier period of service as diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents diploma-holders in para 5 of their application made to the Tribunal at page 115 of the paper book. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pages 99-100 of the paper book in the counter-affidavit of respondents 1 to 3. **The real question, therefore, is whether the construction made of this provision** F G

⁴ 1992 Supp (1) SCC 584 H

- A **in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate.** It is in this perspective that the question raised has to be determined”.

- B **(emphasis supplied)**

43. In the instant case, the view which has been adopted by the Commission and that has been considered and held by the High Court in the impugned judgment may be better circumscribed but both are equally C possible views and either of the one could not be ruled out or outrightly negated.

44. In the given situation, when one possible view has been acted upon by the Commission and pursuant to which the recommendations were made and after approval of the State Government, candidates have D been appointed and are working for almost 2 years by this time, it will be unjust for this Court to now permit the Government to take a U-Turn in compliance of the impugned judgment, and non-suit the candidates who are working for sufficiently long time.

45. Though it has been observed by the High Court that equity E may not be claimed by the candidates but this Court cannot be oblivious of the fact that such of the candidates who are working for sufficiently two years by this time and have completed their period of probation were not at fault at any point of time but because the interpretation acted upon by the Commission was not acceptable to the High Court, they became a victim and that apart, we are also of the view that what F is being observed by the High Court may only be confined to 6th Combined Civil Services Examination, 2016 for the reason that the State has now introduced the scheme of Rules, 2021 and fresh process has been initiated under 7th Combined Civil Services Examination 2016. In the given circumstances, what has been observed by the High Court may be one G of the propositions in interpreting clause 12 and 13 of the advertisement but what is being considered by the Commission in its right earnest also cannot be ruled out.

46. It is well known that punctuation marks by themselves do not control the meaning of the statute when its meaning is otherwise obvious. H The ordinary rule is that punctuation mark is a minor element in the

interpretation of statute, more so, when it is a case of subordinate legislation. If we go through the scheme of the Rules 1951, we are clear that proviso to Rule 16 has to be read in conjunction to both Clause (a) and (b) and not to clause (b) in particular as being observed by the High Court in the impugned judgment. A

47. It may be noticed that the judgment in *Joy Guria and others*(supra) referred to by the High Court is in reference to the preliminary examination and the Division Bench under the impugned judgment was influenced by those observations while examining the scheme of the main examination held by the Commission pursuant to 6th Combined Civil Services Examination, 2016. To the contrary, it was to be interpreted independently on the basis of the scheme of Rules 1951 read with Clause 12 and 13 of the advertisement. B

48. Consequently, the appeals deserve to succeed and accordingly allowed. The impugned judgment of the High Court dated 23rd February, 2022 is hereby quashed and set aside. No costs. C

49. Pending application(s), if any, shall stand disposed of. D

TRANSFER PETITION (C) NO(S).1100 OF 2022

50. Having heard learned counsel for the petitioner, we find no reason to entertain the transfer petition and the same is accordingly dismissed. E

51. Pending application(s), if any, shall stand disposed of.

Ankit Gyan
(Assisted by : Shevali Monga, LCRA)

Appeals allowed.