

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

- 1.SWP No. 2804/2010, CMP Nos. 3950/2010 & 389/2011
- 2.SWP No. 2868/2010, CMP Nos. 232/2011 & 4037/2010
- 3.SWP No. 2872/2010, CMP No. 4041/2010
- 4.SWP No. 2994/2010, CMP Nos. 4227/2010 & 438/2011
- 5.SWP No. 2995/2010, CMP Nos. 4228/2010 & 437/2011
- 6.SWP No. 2996/2010, CMP Nos. 4230/2010 & 1800/2011
- 7.SWP No. 8/2011, CMP Nos. D-162/2011 & 11/2011
- 8.SWP No. 65/2011, CMP Nos. 65/2011 & D-163/2011

Date of decision: 27.09.2011

1. Syed Sehrish Asgar	v.	J&K Public Service Commission & Ors.
2. Sourabh Sharma & anr.	v.	State of J&K & anr.
3. Arshi Rasool	v.	J&K Public Service Commission & Ors.
4. Safura Bahar Wani	v.	State of J&K & Ors.
5. Mohd. Aqeel Mir	v.	State of J&K & Ors.
6. Sumit Nayyar & Ors.	v.	State of J&K & Ors.
7. Mohammad Abdul Basit Rizvi	v.	State of J&K & anr.
8. Imtiaz-Ul-Hassan Rashi	v.	State of J&K & Ors.

Coram:

Mr. Justice J. P. Singh.

Appearing counsel:

For petitioner(s) : Mr Z.A.Shah, Sr. Advocate with Vipan Gandotra, Advocate.
Mr. D.S.Thakur, Sr. Advocate with Ms. Aruna Thakur, Advocate.
Mr. Abhinav Sharma, Advocate.
Mr. M.K.Raina, Advocate.
Mr. Vaibhav Gupta, Advocate.
Mr. Sumit Nayyar, petitioner in person.

For respondent(s) : Mr. M.I.Qadri, AAG with Ms. Tabasum Mughal, Advocate.
Mr. D.C.Raina, Sr. Advocate with Mr. F.A.Natnoo & Pooja Raina, Advocates.

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| i) | Whether approved for reporting in Press/Journal/Media | : Yes |
| i) | Whether to be reported in Digest/Journal | : Yes |
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The Jammu & Kashmir Public Service Commission invited Applications from eligible permanent residents of the Jammu &

Kashmir State, on prescribed Forms, to appear in the Jammu and Kashmir Combined Competitive Examination, 2009, for short, the “First Examination”, for direct recruitment to the notified posts in the pay scale of Rs.7500-12000 in three Services, viz., (1) The Junior Scale of Jammu & Kashmir Administrative Service, (2) The Jammu & Kashmir Police (Gazetted) Service & (3) The Jammu & Kashmir Accounts (Gazetted) Service, vide Notification No. PSC/EXM-09/46 dated 30.12.2008, for short, the “First Notification”.

The conditions of eligibility including age limits etc., as provided in Notification SRO 387 of 01.12.2008 and SRO 337 dated 15.12.2008, were reiterated in the Notification as eligibility criterion.

The petitioners in all these Writ Petitions, barring those in Writ Petition SWP No. 2996/2010, responded to the First Notification, although they were neither Graduates nor had they appeared in any such University Examination, passing whereof would render them eligible to appear in the Preliminary Examination.

The petitioners, however, appear to have cleared the “First Examination, whereafter responding to the Jammu & Kashmir Public Service Commission’s Notification No. 46-PSC/EXM-09 dated 17.09.2009, for short, the “Second Notification”, issued inviting Applications for participation in the Jammu & Kashmir

Combined Competitive (Main) Examination, 2009, for short, the “Second Examination”, they appeared in the Second Examination and were waiting for Interview when the Jammu & Kashmir Public Service Commission, hereinafter to be referred as the “Commission” informed them that scrutiny of documents had revealed that neither were they graduates nor had they appeared in Degree Examination prior to March 20, 2009, the cut-off date for participation in the First Examination, and that they should furnish proof of having appeared in the Degree Examination prior to the cut-off date, within three days, failing which their candidature shall be deemed to have been revoked *ab initio*.

Aggrieved by the Notices issued by the Commission, the petitioners have approached this Court by their Writ Petitions, *inter alia*, seeking quashing of first part of Proviso appended to Rule 5 (iii) of the Jammu & Kashmir Combined Competitive Examination Rules, 2008, hereinafter to be referred as “Combined Competitive Examination Rules of 2008”.

Pursuant to the interim orders passed by the Court in the above Writ Petitions, the petitioners were permitted to participate in the interview, however, at their own risk.

The Commission issued yet another Notification inviting Applications from eligible permanent residents of the State for participation in the Jammu & Kashmir Combined Competitive (Preliminary) Examination, 2010, for short, the “First Examination

of 2010”.

The petitioners in Writ Petition SWP No. 2996/2010, responded to the First Notification of 2010. They appear to have cleared the Preliminary Examination but were not permitted to take the Combined Competitive (Main) Examination, 2010 when the Commission found them ineligible having not cleared their Graduation before the cut-off date for taking the First Examination of 2010 i.e. June 10, 2010.

They have also approached this Court questioning Rule 5 of the Combined Competitive Examination Rules of 2008. They too were permitted by the Court, though provisionally, to appear in the Second Examination of 2010 at their own risk with a direction to the Commission to accept their Application Forms for the Jammu & Kashmir Combined Competitive (Main) Examination, 2010.

The State-respondents and the Jammu & Kashmir Public Service Commission have filed their separate Response to these Petitions.

The issues that arise in all these Petitions revolve around the interpretation and sustainability of Rule 5 (iii) of the Combined Competitive Examination Rules of 2008. These Petitions which were heard together, are, therefore, being disposed of by this Judgment which would govern all the Petitions.

Before proceeding ahead, reference needs to be made to the petitioners' educational status at the time they applied,

pursuant to Notification No. PSC/EXM-09/46 dated 30th December, 2008 to take the First Examination and of those who applied pursuant to the First Notification of 2010.

SWP Nos. 2868/2010, 2872/2010 and 8/ 2011 :

The petitioners in these Petitions had appeared in 9th Semester Examination of the Five Years Law Course of University of Jammu and were to appear in the 10th Semester Examination of the Course, when they applied, pursuant to the Commission's First Notification to take the First Examination.

According to them, having cleared LLB Course before the cut off date fixed in the Second Notification, they were entitled to compete for selection to the posts advertised vide First Notification.

They seek quashing of first part of the Proviso appended to Rule 5(iii) of the Combined Competitive Examination Rules of 2008 saying that it **was** *ultra vires* the Constitution of India being arbitrary, illegal and irrational.

SWP Nos. 2994/2010 & 2995/2010 & 65/2011 :

The petitioners in these Writ Petitions had cleared their Part II Examination of Three Years Bachelor Degree (General) Course and were to appear in Part III/Final year Examination of the said Degree Course when they applied seeking participation in the First Examination.

SWP No.2804/2010:

There is no necessity to refer to the educational status of the petitioner in this Writ Petition in view of the information which was supplied by the petitioner's learned counsel after the case was reserved for judgment that the petitioner would seek permission to withdraw the Petition in view of her selection in the Kashmir Administrative Service of the State Government in the subsequent selection.

SWP No.2996/2010:

The petitioners in this Petition were undergoing LLB Course and had to appear in the Final Examination when they applied to take the First Examination of 2010.

This is all about the educational status of the petitioners.

Responding to the Writ Petitions and the directions of the Court, the State has indicated its stand in respect of Proviso appended to Rule 5(iii) of the Jammu and Kashmir Combined Competitive Examination Rules of 2008, as follows:-

.....“That it is submitted that a candidate who intends to appear in the Combined Competitive Examination must be a graduate from a recognized of the country as stated in the rule in clear terms. However, a candidate is also eligible to appear in the preliminary examination if he has appeared in the examination for obtaining Bachelor's Degree. It is submitted that in State of Jammu and Kashmir, there are two Divisions i.e. Kashmir Division and Jammu Division. Both divisions have number of Universities which are conducting examinations, among others for award of Bachelor's Degree in various fields. These Universities issue requisite degree certificates to the candidates who qualify such examination. It is submitted that in both the Divisions of J&K i.e. Kashmir Division and Jammu Division, the respective Universities are conducting examinations with different academic sessions. For example, the University of Kashmir and other Universities located in Kashmir Division conduct Annul Examinations for award of Bachelor's Degrees to the successful candidates which commence in the month of October/November while as the Jammu University and

other Universities located in Jammu Division conduct such academic examinations which commence in March/April. Similarly various other Universities in the country conduct such examinations at different sessions. It is in this back drop that rule 5 of Rules of 2008 provides that a candidate who intends to appear in Combined Competitive Examination must be holding a Bachelor's Degree from a recognized University in India or of a foreign University declared by the Government in consultation with the Commission to be equivalent to a recognized University. However, a proviso has also been added for those candidates who would appear in examination to be conducted by University for obtaining such a Bachelor's Degree from any such University the passing of which would render such a candidate eligible to appear in the Main Combined Competitive Examination. Thus it is incumbent and mandatory for a candidate to be Graduate but keeping above situation an exception has been provided in Preliminary Examination that he must have appeared in Graduation Examination as he has to appear in main Examination. As per this provision, such a candidate if declared successful by the Commission in the Preliminary Examination has to produce proof of passing requisite examination within his application form for making him eligible to appear in the Main Examination. This provision has been kept with sole purpose of enabling those candidates who have appeared in Graduation Examination through any University in the country but whose results are awaited. This proviso has been kept to facilitate the candidates to appear in the Preliminary Examination because of variance in the conduct of Annual Examinations by the respective Universities.".....

According to the Commission, petitioners' appearing in the examinations would not operate as estoppel against the Commission to cancel their candidature at any stage and even without prior intimation to the candidate, when acceptance of Forms and participation in selection process was purely provisional and subject to verification of the testimonials/ antecedents of the candidates.

With the above prelude on facts, reference now needs to be made to the submissions made by learned counsel for the parties.

According to the petitioners' learned counsel, Proviso to Rule 5(iii) of the Combined Competitive Examination Rules of 2008 demonstrates Rule Making Authority's intention to permit all such persons to compete for selection to the posts advertised vide

First and Second Notifications, besides the Notification of 2010, who would obtain Graduation Degree before the cut off dates indicated in the Second Notification. The first part of the Proviso which does not, fit in, to carry out the State's intention was, therefore, a surplusage and would not, accordingly, create any bar for the petitioners to participate in the Combined Competitive Examinations to seek consideration for selection against the notified posts.

According to them, first part of the Proviso, being arbitrary, irrational and unnecessary, needs to be read down permitting all those candidates to participate in the examination, who had completed their Graduation before the cut off date fixed in the Second Notification, regardless of their having not appeared in the Final Examination, which would entitle them to a Graduation Degree from a recognised University because according to the Rules only merit obtained in the Final Examination had to be taken into consideration for selection of candidates and in this view of the matter first part of the Proviso was unnecessary, in that, it would not be in line with the intention of the Rule Making Authority, which intended wider competition to secure best talent for filling up available posts in the three Administrative Services of the State.

Learned counsel, would, in the alternative, contend that as the Commission had permitted the petitioners to participate in the

First and Second Examinations, without objection, so they were estopped to question their eligibility when they had become entitled to participate in the interview having cleared the First and Second Examinations.

Learned counsel for the State and Commission, on the other hand, contended that the Proviso explicitly demonstrates the intention of the State to permit only those to participate in the selection process, who had either obtained a Graduation Degree before the cut off date or had appeared in any such University Examination, before the cut off date, indicated in the First Notification, passing whereof would make them eligible to appear in the Competitive Examination, but the result of such Examination had not been so declared before the cut off date.

In view of the submissions made by learned counsel for the parties at the Bar, the following questions arise for consideration:-

- i) Whether the first part of the Proviso appended to Rule 5(iii) of the Jammu and Kashmir Combined Competitive Examination Rules, 2008 is ultra vires the Constitution?
- ii) Whether the first part of the Proviso needs to be read down?
- iii) Whether the Jammu and Kashmir Public Service Commission was estopped from considering the eligibility of those, who were permitted by it to take the First and Second Examinations?

To find answer to the above questions, a brief reference to what is contained in the rules governing the conduct of the Jammu and Kashmir Combined Competitive Examinations becomes necessary.

The Jammu and Kashmir Combined Competitive Examination Rules, 2008, notified vide SRO 387 dated December 1, 2008, contemplate conduct of Combined Competitive Examinations for direct recruitment to the following services:

- i) Junior Scale of Jammu & Kashmir Administrative Service.
- ii) Jammu & Kashmir Police (Gazetted) Service.
- iii) Jammu & Kashmir Accounts (Gazetted) Service.

Rule 5 of these Rules prescribes the conditions of eligibility which a candidate, desirous of competing for the Junior Scale of Jammu & Kashmir Administrative Service and Jammu & Kashmir Accounts (Gazetted) Service, must satisfy. These are reproduced hereunder for reference:-

“Rule. 5. Conditions of eligibility:- In order to be eligible to compete in the examination, a candidate must satisfy the following conditions, namely:-

- i) that he is a permanent resident of the State;
- ii) that he has attained the age of 21 years but not attained the age of 30 years on 1st January of the year in which Notification inviting applications is issued by the Commission:

Provided that in case of a candidate belonging to Scheduled Caste/Scheduled Tribes/Other Backward Classes or holding a civil post in the State in a substantive capacity or a temporary post continuously for at least three years, the upper age limit shall be 32 years;

Provided further that the upper age limit for physically challenged candidates shall be relaxable by three years over and above the prescribed limit;

Provided also that for good and sufficient reasons, to be recorded in writing, the Government may prescribe for any particular examination any other upper age limit for open

category and reserved category candidates.

iii) that he holds, notwithstanding anything to the contrary contained in the recruitment rules of various services and posts mentioned in Rule (1), a Bachelor's degree of a recognized University in India or of a foreign University declared by Government in consultation with the Commission to be equivalent to the degree of a recognized Indian University:

Provided that candidates who have appeared in any examination for such Degree from any such University the passing of which would render them eligible to appear in the examination but the results of their examination has not been declared, shall be allowed to appear in the preliminary examination. All such candidates who are declared qualified by the Commission for taking the Combined Competitive (Main Examination) will be required to produce proof of passing the requisite examination with their application for the Main Examination failing which such candidates shall not be admitted to the Main Examination;

Provided also the candidate(s) already holding a civil post in the State shall submit their application through Head of Office with an advance copy of the application directly to Commission and in case the Commission receives an intimation withholding permission from the employer in respect of a candidate who has applied for, or is appearing in the Combined Competitive Examination, his/her application shall be rejected and candidature cancelled. Such a candidate may, however, be allowed to appear in the examination as fresh candidate subject to the condition that the said candidate is otherwise eligible under rules.

Explanation:- The expression "Civil post in the State" mentioned above will include a post in the High Court of J&K, the State Legislature, the corporations, wholly or partly owned by the State Government and Autonomous Bodies in the State."

The Combined Competitive Examination contemplated by Rule (5) consists of two successive stages, viz.,;

- (a) Combined Services (Preliminary) Examination (Objective Type) for the selection of candidates for the Main Examination; and
- (b) Combined Services (Main) Examination (written and interview) for the selection of candidates for various services and posts.

The Preliminary Examination consists of two papers of Objective Type (Multiple Choice Questions) and carry maximum of 450 marks in the subjects appearing in Appendix-I to the Rules.

This Examination is meant to serve as a Screening Test only. The marks obtained in the Preliminary Examination by the candidates who are declared qualified for admission to the Main Examination are not to be counted for determining final order of merit of the candidates.

The Main Examination consists of a Written Test and Interview.

The Written Test consists of Question Papers of Descriptive Type, out of which one paper is of qualifying nature only, from the subjects set out in Appendix-I as per the detailed Syllabus appearing in Appendix-II to the Rules.

The candidates who obtained such minimum qualifying marks in written part of the Main Examination as may be fixed by the Commission in any or all the papers at their discretion are eligible for interview.

Before examining Proviso to Rule 5 (iii) of the Combined Competitive Examination Rules of 2008 and the challenge thereto, relevant text of Rule 5(iii) along with its Proviso needs to be noticed. It reads thus:-

“Rule. 5. Conditions of eligibility:- In order to be eligible to compete in the examination, a candidate must satisfy the following conditions, namely;-

- i) that he is a permanent resident of the State;
- ii) that he has attained the age of 21 years but not attained the age of 30 years on 1st January of the year in which Notification inviting applications is issued by the Commission:

Provided that in case of a candidate belonging to Scheduled Caste/Scheduled Tribes/Other Backward Classes or holding a civil post in the State in a substantive capacity or a temporary post continuously for at least three years, the upper age limit shall be 32 years;

Provided further that the upper age limit for physically challenged candidates shall be relaxable by three years over and above the prescribed limit;

Provided also that for good and sufficient reasons, to be recorded in writing, the Government may prescribe for any particular examination any other upper age limit for open category and reserved category candidates.

iii) *that he holds, notwithstanding anything to the contrary contained in the recruitment rules of various services and posts mentioned in Rule (1), a Bachelor's degree of a recognized University in India or of a foreign University declared by Government in consultation with the Commission to be equivalent to the degree of a recognized Indian University:*

Provided that candidates who have appeared in any examination for such Degree from any such University the passing of which would render them eligible to appear in the examination but the results of their examination has not been declared, shall be allowed to appear in the preliminary examination. All such candidates who are declared qualified by the Commission for taking the Combined Competitive (Main Examination) will be required to produce proof of passing the requisite examination with their application for the Main Examination failing which such candidates shall not be admitted to the Main Examination;

Provided further that in respect of candidates for J&K Police (Gazetted) Service, the candidate should possess the following standards also namely:

- I. For Males:
 - (a) Height : 5'-6"
 - (b) Chest girth unexpanded : 32"
 - (c) Chest girth expanded : 33 ½"
- II. For Females:
 - (a) Height : 5'-2"
- III. For candidates from Leh/Kargil:
 - (a) For Males:
 - (i) Height : 5'-4"
 - (ii) Chest girth unexpanded : 32"
 - (iii) Chest girth expanded : 33 ½"
 - (b) For Females:
 - (i) Height : 5'

Provided also the candidate(s) already holding a civil post in the State shall submit their application through Head of Office with an advance copy of the application directly to Commission and in case the Commission receives an intimation withholding permission from the employer in respect of a candidate who has applied for, or is appearing in the Combined Competitive Examination, his/her application shall be rejected and candidature cancelled. Such a candidate may, however, be allowed to appear in the examination as fresh candidate subject to the condition that the said candidate is otherwise eligible under rules.

Explanation:- The expression "Civil post in the State" mentioned above will include a post in the High Court of J&K, the State Legislature, the corporations, wholly or partly owned by the State Government and Autonomous Bodies in the State."

A plain reading of Rule 5 indicates that a permanent resident of the State, who seeks participation in the Jammu and Kashmir Combined Competitive Examination, must, inter alia, hold **a Bachelor's Degree of a recognized University in India or of a foreign University declared by the Government in consultation with the Commission equivalent to the Degree of an Indian University.** *This Rule, however, creates an exception permitting even those to participate in the selection process, who had appeared in any such examination for such Degree. This shall, however, be subject to the condition that they would not be permitted to take the Main Examination, unless they would produce proof of having passed the Graduation Examination before the cut off date indicated for filing Applications to appear in the Second Examination (Main).*

The petitioners' plea that first part of the Proviso requiring a candidate to have appeared in the examination which, if cleared, would entitle him/her to a Graduation Degree, was an unnecessary condition having no nexus with the object sought to be achieved by creation of exception to the rule, if accepted, would result in anomalous situation permitting all and sundry to participate in the Preliminary Examination, even if there was no possibility of their clearing the Final Examination that would entitle them to a Graduation Degree before the cut off date fixed for taking the Main Examination. Their plea that first part of the

Proviso was irrational, arbitrary and unnecessary does not appear to have any merit, in that, what is provided in the first part of the Proviso indicates a definite purpose. The object, sought to be achieved, appears to be that all those who had appeared in the Final Examination and were expecting to clear it, on declaration of result, alone were intended to be permitted to compete in the Preliminary Examination because non-declaration or for that matter late declaration of the results of such examination, before the cut off date, should not operate as disadvantage for them to compete for selection against notified posts in the three services.

The incorporation of first part of the Proviso, therefore, appears to have been a compelling necessity for the Rule making Authority to ensure that there was no unnecessary and free for all participation in the Preliminary Examination. The purpose, sought to be achieved by introduction of the Proviso to Rule 5(iii) apparently appears to facilitate participation of only those in the Preliminary Examination, who had taken the Final Examination which, if cleared, would entitle them to a Graduation Degree. The Rule Making Authority, it is apparent, did not intend to permit those who had not taken the Final Examination or might take the Final Examination in between the cut off date for the First Examination and Second Examination, to participate in selection process.

The petitioners' learned counsel's submission that the

Proviso creates discrimination in permitting only those, who had taken the Final Examination for getting a Graduation Degree and not others, who were in the process of appearing in the Final Examination, is untenable, in that, a candidate who had appeared in the Final Examination before the cut off date fixed for receipt of Applications for participation in the Preliminary Examination, formed a separate class and therefore treatment allowed to it as a separate class, cannot be claimed by a class separate and distinct from it. Those who had not yet taken the Final Examination which would entitle them to a Graduation Degree, formed a different and separate class and cannot seek similar treatment as is intended to be allowed by the Proviso to those, who had appeared in the Examination which, if passed, would entitle them to a Graduation Degree.

The petitioners' plea to declare first part of the Proviso *ultra vires* the Constitution or read it down, for the above reasons, is, therefore, found without merit, hence rejected.

Petitioners' learned counsel's yet another plea that as Union Government, vide its Notification of January 02, 2010 had permitted even those candidates, who intended to appear in the Examination, which if passed, would entitle them to a Graduation Degree so Rule 5(iii) needs to be interpreted on similar lines, too is found without merit, in that, the object that weighed with the Rule Making Authority of the Union Government in issuing

Notification of 2010 to permit even those who intended to appear in the Examination, which would entitle them participation in the Preliminary Examination, cannot be imported to interpret the Rule in question, object whereof is explicitly demonstrated by the language used therein.

Coming to the second plea of the petitioners that having been permitted to take the First and Second Examinations, the petitioners cannot be denied permission to appear in the interview, suffice would it be to say that petitioners' admission being provisional, it could be withdrawn any time by the Commission on discovery of facts indicating that the petitioners were ineligible under rules to participate in the selection process.

The petitioners having taken the examinations knowing full well about their ineligibility, cannot derive benefit of their own wrong and the plea of estoppel pressed into service by them, may not, thus, be attracted to their case where admission to the examinations was purely provisional and subject to its withdrawal on finding that the admission was allowed erroneously and against specific rules which debarred admission of candidates to the examinations who suffered from ineligibility.

Petitioners' learned counsel's third submission that first part of the Proviso was unnecessary and even if it were to stay in the statute, it needs to be construed directory and not mandatory, too is found untenable, in that, the Rule making Authority uses words

and expressions in its subordinate legislation to achieve some or the other purpose conveyed by the use of such words and expressions.

A provision of law or rule needs to be interpreted on the basis of the meaning which a plain reading thereof may so convey, unless, however, such interpretation was likely to lead to anomalous or absurd results or such plain interpretation may not reading the Statute or the Rules as a whole demonstrate the avowed intention of the Rule making Authority. Perusal of the Combined Competitive Examination Rules of 2008 indicates that though the merit obtained by a candidate in the Preliminary Examination does not count for reckoning his/her merit in the Main Examination, yet in terms of the Rules, the Preliminary Examination is indicated to be an integral part of the Competitive Examination and serves as a screening test for permitting participation in the Main Examination of only those who clear the Preliminary Examination. The Preliminary Examination, which is a stepping stone for taking the Main Examination, cannot, therefore, be construed unnecessary, as projected by the learned counsel for the petitioners.

It would be advantageous to refer, at this stage, to what was held by Hon'ble Supreme Court of India on interpretation of statutes and the powers of the Court in this respect in *Union of India and another v. Deoki Nandan Aggrawal* reported as AIR

1992 SC 96, referring to earlier decisions of the Court. The Hon'ble Court observed as follows:-

.....“ It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.”.....

While dealing with a similar question in *Ashok Kumar Sharma and others versus Chander Shaker and another*, a three Judge Bench of Hon'ble Supreme Court of India, held as follows:

.....“The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan*, 1993 Supp (3) SCC 168: 1993 SCC (L&S) 951: (1993) 25 ATC 234.”

Dealing with the efficacy of the Preliminary Examination, it was observed by the Supreme Court in *Andra Pradesh Public*

Service Commission versus Baloji Badhavath and another,
reported as (2009) 5 SCC, 1, as follows:-

.....“Indisputably, the Preliminary Examination is not a part of the main examination. The merit of the candidate is not judged thereby. Only an eligibility criterion is fixed. The papers for holding the examination comprise of General Studies and mental ability. Such a test must be held to be necessary for the purpose of judging the basic eligibility of the candidates to hold the tests. How and in what manner the State as also the Commission would comply with the Constitutional requirements of Article 335 of the Constitution of India should ordinarily not be allowed to be questioned.....

Judging of merit may be at several tiers. It may undergo several filtrations. Ultimately, the Constitutional Scheme is to have the candidates who would be able to serve the Society and discharge the functions attached to the Office. Vacancies are not filled up by way of Charity. Emphasis has all along been made, times without number, to select candidates and/or students based upon their merit in each category. The disadvantaged group or the socially backward people may not be able to compete with the open category people but that would not mean that they would not be able to pass the basic minimum criteria laid down therefor.”

In view of the settled legal position on interpretation of Statutes and the efficacy of Preliminary Examination and eligibility therefor, to judge the suitability of candidates at every prescribed stage, And for all what has been said above, no merit is found in the petitioners' learned counsel's submission that first part of the Proviso to Rule 5 (iii) of the Combined Competitive Examination, 2008 is directory, And regardless of a candidate's having not cleared the Final Examination, that would entitle him to a Graduation Degree, the condition prescribed for appearing in the Preliminary Examination, he was entitled to participate in the Main Examination on clearing the Final Examination before the cut off date fixed for the Main Examination.

The petitioners in Writ Petitions SWP Nos. 2868/2010,

2872/2010, 2994/2010, 2995/2010, 2996/2010, 8/2011 & 65/2011 are, therefore, found ineligible to participate in the Combined Competitive Examinations. The Examinations taken by them at their own risk, are, therefore, cancelled declining them permission to appear in the Interview.

All these Writ Petitions are, therefore, found without merit, hence dismissed along with SWP No. 2804/2010 which was not pressed by the petitioner's learned counsel in view of petitioner's success in the subsequent selection.

Interim orders issued in these Petitions shall stand lifted.

(J.P. Singh)
Judge

Jammu:
27.09.2011
Tilak, Secy.

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

- 1.SWP No. 2804/2010, CMP Nos. 3950/2010 & 389/2011
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Date of order: 08.08.2011

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Coram:

Mr. Justice J. P. Singh.

Appearing counsel:

- | | | |
|-------------------|---|--|
| For petitioner(s) | : | Mr Z.A.Shah, Sr. Advocate with Vipan Gandotra, Advocate.
Mr. D.S.Thakur, Sr. Advocate with Ms. Aruna Thakur, Advocate.
Mr. Abhinav Sharma, Advocate.
Mr. M.K.Raina, Advocate.
Mr. Vaibhav Gupta, Advocate.
Mr. Sumit Nayyar, petitioner in person |
| For respondent(s) | : | Mr. M.I.Qadri, AAG with Ms. Tabasum Mughal, Advocate.
Mr. D.C.Raina, Sr. Advocate with Mr. F.A.Natnoo & Pooja Raina, Advocates. |
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Heard. Reserved.

(J.P.Singh)
Judge

Jammu :
8.8.2011:
Tilak, Secy.