

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT SRINAGAR**

OWP No. 1332/2017  
MP No. 01/2017  
MP No. 02/2017 c/w  
OWP No. 1413/2017

Date of Order: 30<sup>th</sup> of December, 2017.

Hidayat Ahmad Mir & Ors.

Vs.

State of JK & Ors.

**Coram:**

**Hon'ble Mr Justice M. K. Hanjura, Judge.**

**Appearance:**

<i>For the Petitioner(s):</i>	<i>Mr Arif Sikander, Advocate in OWP No. 1332/2017.</i>
	<i>Mr Shafqat Nazir, Advocate in OWP No. 1413/2017.</i>
<i>For the Respondent(s):</i>	<i>Mr M. A. Beigh, AAG for R-1.</i>
	<i>Mr Azhar-ul-Amin, Advocate for R-2&amp;3.</i>

i) Whether approved for reporting in Law Journals etc.:	Yes/No
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ii) Whether approved for publication in Press:	Yes/No
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**01.** The J&K Public Service Commission issued the Notification No. PSC/EXM/2016/52 dated 18<sup>th</sup> June 2016, inviting online applications from the permanent residents of the Jammu and Kashmir State, for admission to the J&K Combined Competitive (Preliminary) Examination, 2016, in accordance with SRO 387 dated 01.12.2008 read with SRO 190 of 2016 dated 17.06.2016 and the J&K Public Service Commission (Conduct of Examination) Rules, 2005, to fill up 277 posts in the pay scale of Rs.9300-34800 with the grade pay of Rs.4800, in the various Services, viz. Junior Scale of J&K Administrative

Service, J&K Police (Gazetted) Service and J&K Accounts (Gazetted) Service, referred by the General Administration Department, vide No. GAD (Ser) Genl/87/ 2014 dated 17.06.2016. The respondent Commission received 47122 applications. On 19<sup>th</sup> of March, 2017, the Preliminary Examination was conducted at 85 notified Sub-Centres, i.e. Anantnag, Baramulla, Doda, Jammu, Kargil, Leh, Rajouri and Srinagar. 36,681 candidates appeared in the Preliminary Examination. The result qua the J&K Combined Competitive (Preliminary) Examination, 2016, held by the respondent Commission on 19.03.2016, was made public vide Notification No. PSC/Exam/2017/22 dated 23<sup>rd</sup> of April, 2017. 6925 candidates, including the present petitioners, were declared as qualified for admission to the J&K Combined Competitive (Main) Examination, 2016. The number of the candidates admitted to the Main Examination was in the proportion of 25 times of the total number of vacancies, which came to 6925 candidates in roll order, thereby making the last cut-off point as 270.477 marks out of aggregate of 450 marks. The aforesaid Notification also provided that the candidature of the candidates, who were declared to have qualified for the admission to the Main Examination was purely provisional and subject to the determination of the final eligibility at the time of submission of the application forms for the Main Examination, which was asked to be submitted through online mode, for which a separate notification was to be issued. To receive the online applications from the qualified candidates, including the petitioners, respondent Commission issued Notification No. PSC/ EXAM/2017/26 dated 9<sup>th</sup> May, 2017. However, respondent Board vide Notice dated 14<sup>th</sup> of June, 2017, kept the result notified for the J&K Combined Competitive (Preliminary) Examination, 2016, in abeyance and Notification No. PSC/EXAM/2017/26 dated 9<sup>th</sup> of May, 2017 along with Notice dated 6<sup>th</sup> of June, 2017 for inviting applications for J&K

Combined Competitive (Main) Examination, 2016, was withdrawn. The respondent Commission revised the cut-off merit at 277.275 points and issued a revised result vide Notification No. PSC/Exam/2017/44 dated 9<sup>th</sup> of August, 2017, and the application form, if any, filed by 429 candidates, who could not make it to the revised cut-off merit of 277.275 for appearing in the Combined Services Competitive (Main) Examination 2016, have been deemed to have been rejected being ineligible and their examination fee refunded. It is this Notification, of which petitioners are aggrieved and beseech following relief in OWP bearing No. 1332/2017:

- (i) *Writ of certiorari, quashing impugned Notification No. PSC/Exam/2017/44 dated 09.08.2017 and Notification No. PSC/Exam/2017/49 dated 25.08.2017;*
- (ii) *Writ of mandamus, commanding respondents to allow petitioners to appear in J&K Combined Competitive (Mains) Examination 2016, deeming that they have qualified the preliminary examination in terms of Notification No. PSC/Exam/2017/22 dated 23.04.2017 and select and appoint them on the basis of their merit obtained in the selection process."*

In addition to the above reliefs, the petitioners in OWP No. 1413/2017 have prayed that the respondent commission be directed to issue the fresh result of J&K Combined Competitive Preliminary Examination, 2016 in the light of each reserved category.

**02.** The respondent Nos. 2 to 5 (J&K Public Service Commission), in its reply, do not dispute the facts vis-à-vis issuance of the Notification for appearing in the Preliminary Examination and the revised result notified vide impugned Notification. The respondents maintain that the question papers had been set by the subject matter experts and enrooted through the independent moderators in each subject to the Commission by the Coordinator and that the

answer keys provided by the examiners cannot be accessed by any officer/official of the Commission before its use for generation/preparation of the result by the Controller of Examination. It is averred that Rule 12A of the J&K Public Service Commission (Conduct of Examination) Rules, 2005, envisages a three days' time, from conclusion of the examination, to the candidates to make/file a representation to the Controller of Examination about any issue related to the question papers viz. ambiguity in questions, typing error, more than one option being correct etc., but there is no constraint of time on the Commission to rectify the errors in the questions or answers keys and if it appears at any stage that there is error in any question, including the answer keys, the Commission has power to rectify this error and to hold it other way round would be infraction of the rule of law and would defy even common sense. It is averred that respondent Commission received various representations pertaining to ten subjects regarding the discrepancies in some question and these representations mainly pertained to incorrect options/ vagueness/ wrong options/more than one option being correct/ wrong keys and that all these representations were carefully examined and the gist was referred to a team of the subject experts. It is stated that on the basis of expert opinion total 26 questions in 08 subjects were deleted, but marks were redistributed equally among the rest of the question on pro-rata basis to ensure that over all marks allotted to the question papers remain unchanged and accordingly the result of the Preliminary Examination was declared vide Notification No. PSC/Exam/2017/22 dated 23<sup>rd</sup> of April, 2017, in which 6925 candidates (i.e. 25 times the number of vacancies) with the cut off merit at 270.477 Marks (out of 450 Marks) were declared to have qualified for admission to the J&K Combined Competitive Examination (Main) Examination 2016. The respondents maintain that the number of candidates to be allowed to appear in the main examination

is fixed under Rule 8 of SRO 387 of 2008 i.e. 1/3 of total number of applicants or 25 times the number of the posts, whichever is less, and immediately after declaration of the result vide aforesaid notification the respondent Commission on various inputs like deputations/representations, the application under the J&K RTI Act 2009 and even some writ petitions filed by some candidates were informed of some incorrectness in Key Answers of some questions. Taking note of the public discourse and keeping the interest of candidates paramount, the respondent Commission states that, vide Notice dated 14.06.2017, it kept the result notified on 23<sup>rd</sup> of April, 2016 in abeyance and also withdrew the notification dated 9<sup>th</sup> of May, 2017 along with Notice dated 6<sup>th</sup> of June, 2017, for inviting applications for the Main Examination, 2016 and, simultaneously, the process for reverification of 23 answer keys was started. It is stated that the respondent Commission approached the Vice Chancellors and the Heads of the reputed Universities and institutions within and outside the State for relooking/revisiting the answer keys by subject matter experts in order to find out the discrepancies in the question papers and after examining the reports from the experts of the reputed universities and institutes, third party reports were also sought to the extent of difference amongst the reports of these experts. As a result of the exercise conducted by the respondent Commission and the reports of the two committees of the respondent Commission each headed by Mr Lal Chand and Mr J.P. Singh, answer key of Series-A was revised and consequent upon rectification of key in Series-A, the rectification of the Keys in Series-B, C and D, was also rectified through computer process. The rectification of answer keys through such processes, according to respondent Commission, forced changes in the result and consequently on the application of the revised key 429 number of candidates earlier declared qualified vide Notification dated 23<sup>rd</sup> of April, 2017 could not make their grade to the revised

cut off merit i.e. 277.275 marks out of the aggregate of 450 marks and an equal number of fresh candidates, made it to the above revised cut off merit and vide Rule 8(2) of SRO 387 of 12008 dated 01.12.2008 only 6925 candidates (25 times the total number of vacancies) were to be declared as qualified in the J&K Combined Competitive (Preliminary) Examination, 2016, for admission to the J&K Combined Competitive (Mains) Examination, 2016, and, therefore, the number is statutorily fixed and cannot be tinkered with and, accordingly, the revised list of candidates was declared vide impugned Notification dated 9<sup>th</sup> of August, 2017, inviting applications from eligible candidates for mains examination. In sequel to correction of keys and revision of result, the applications of 429 candidates, who could not make it to the revised cut-off merit of 277.275, got rejected being ineligible to be called for Main Examination in terms of Rule 8 of SRO 387 of 2008 read with SRO 190 of 2016. The respondents also aver that initially, vide interim order dated 16<sup>th</sup> of August, 2017, this Court stayed the impugned notification dated 0<sup>th</sup> of August, 2017 and, later on, after receiving reply from respondents, disposed of the matter vide order dated 24<sup>th</sup> of August, 2017, directing respondent Commission to treat writ petitions of writ petitioners as representations and consider the same in accordance with law. As a result of disposal of the writ petition, Notification dated 9<sup>th</sup> of August, 2017 was restored and, in order to inform the appearing candidates of such revival of Notification dated 9<sup>th</sup> of August, 2017, a fresh Notification was issued and since 429 candidates included afresh were to be given opportunity to file their applications and respondent Commission vide notice dated 14<sup>th</sup> of June, 2017 had kept the result notified on 23<sup>rd</sup> of April, 2017 for Preliminary Examination, 2016, in abeyance and had also withdrawn the Notification dated 9<sup>th</sup> of May, 2017, alongwith Notice dated 6<sup>th</sup> of June, 2017 for inviting the applications for Main Examination, 2016, fresh Notification for

clearing decks and notifying the fresh dates for the applications for the Main Examination became imperative, therefore, Notification dated 25<sup>th</sup> of August, 2017 was issued, which has again been challenged by the very same candidates through the instant writ petition, claiming a fresh cause of action on the plea that the Notification dated 25<sup>th</sup> of August, 2017 contains a clause viz. rejection of candidature of petitioners by respondent Commission. Respondents maintain that the premise of the plea of the petitioners that respondent Commission has re-evaluated the answer scripts without there being any such power vested in them is absolutely wrong and that the rectification of the answer keys was made on the basis of opinion of and in consultation with the subject experts. It is claimed that it is absolutely absurd to equate the two processes and that the re-evaluation of answer scripts is altogether a different process than rectification of key answers inasmuch as the two operate in two different circumstances. The conducting of the examination is stated to be governed by SRO 387 of 2008 dated 01.12.2008 read with J&K PSC (Conduct of Examination) Rules, 2005 and in terms of Rule 8 of SRO 387 only 1/3<sup>rd</sup> of total number of candidates, who appeared in the preliminary examination or twenty five times the total number of vacancies to be filled in the various services and the posts, whichever be lower, are eligible to be called for Mains Examination, and therefore, in terms of the said Rule 6925 candidates only i.e. 25 times the total number of vacancies, are eligible to be called for Mains Examination. The impugned notification, according to respondents, comports and is in tandem with the Statute and no deviation from the State, therefore, can be countenanced by law. It is further insisted that by allowing the petitioners to appear in the Combined Competitive (Main) Examination, 2016, over and above statutorily fixed number of the candidates to be shortlisted in terms of Rule 8, would amount to infraction of the said Statute.

**03. Heard** and considered.

**04.** The learned counsel representing the petitioners have argued that the respondents are estopped under law to make any rectification into the incorrectness in questions and/ or answer keys on the face of the rule position governing the selection process. They have also contended that the correctness of keys or the rectification of errors in questions amounts to changing the rules of the game midstream and/ or re-evaluation of answer scripts which, according to them, is not in consonance with the rules. Thirdly, it has been contended that the grouse of the petitioners is that by issuance of impugned notifications bearing Nos. PSC/Exam/2017/44 dated 9<sup>th</sup> of August, 2017 and PSC/Exam/2017/49 dated 25<sup>th</sup> of August, 2017, the respondents have deprived the petitioners of the right to appear in the Combined Competitive (Main) Examination, 2016, without any authority of law. Fourthly, it has been urged that the number of questions deleted accounted for more than 10 percent and, therefore, the entire examination of the paper(s), where the deletion accounted for more than 10 percent, has to be cancelled. The other line of the argument of the learned counsel representing the petitioners is that the process of the rectification of the keys is activated by malafides.

**05.** Per contra, the learned counsel representing the respondents has argued that the briefs are big and the arguments are long, but the basic question is whether wrong answer keys should be persisted and a benefit of wrong answers be extended to a candidate while denying the benefit of correct answer to a candidate. He has further argued that the question that stares at the face is whether the examination body would be constrained in law to persist with wrong key answers, even if on a bird's eye view, the answer keys of some of the questions and some questions are found wrong. He has further argued that while applying the corrected key to OMR sheets of all the candidates across the board,



the cut off merit jumped from 270.477 to 277.275, as a corollary to which, 429 candidates including the petitioners who were declared qualified vide Notification No. PSC/Exam/2017/22 dated 23<sup>rd</sup> of April, 2017, had to give way to equal number of candidates who obtained merit equal to or higher than the cut off merit so fixed, i.e. 277.275 marks by reason of rectification of answer keys. The learned counsel has further argued that Rule 12A of the J&K Public Service Commission (Conduct of Examination) Rules, 2005, envisages a situation where a candidate can make/ file a representation to the Controller of Examination about any issue related to question papers viz. ambiguity in questions, typing error, more than one option being correct, etc., within a period of three days from the date of the conclusion of the examination. He has argued that there is no constraint of time on the Commission to rectify the errors in questions. If it appears, at any stage, that there is an error in any question, the Commission has the power and authority to rectify such error and to hold it other way round would be an infraction of the rule of law and would defy even common sense. The Commission, immediately, after conduct of examination received various representations pertaining to ten subjects regarding the discrepancies in some questions. These representations mainly pertained to vagueness in questions/ wrong options/ more than one option being correct, etc. After careful examination of these representations, the gist was referred to a team of subject experts and, on the basis of expert opinion, twenty-six questions in eight subjects were deleted, but the marks were redistributed equally among the rest of the questions on pro-rata basis to ensure that overall marks allotted to the question papers remain unchanged. This was done in accordance with the Rule 12A supra. He has further stated that the proviso to 12A supra provides for cancellation of examination in case more than ten percent of the questions are deleted. The distinction between wrong questions and wrong keys has to be

appreciated. The word “Key” is not mentioned in 12A and, therefore, is not applicable where keys have to be corrected. Answer keys can be corrected at any time as it does not affect the performance of a candidate, however, wrong questions do. If a question is wrongly formulated, the purpose of an examination can be prejudiced, hence, such wrong questions alone are required to be deleted. The deleted questions in the present case do not cross 10 percent marks and, hence, the question of the cancellation of the examination does not arise. He has also argued that the cut off merit is determined by the number of candidates to be called for main examination as envisaged under Rule 8(2) of the J&K Combined Competitive Examination Rules, 2008 (SRO 387 of 2008 dated 1<sup>st</sup> of December, 2008). 6,925 candidates, i.e. 25 times the total number of vacancies have to be declared qualified in the J&K Combined Competitive (Preliminary) Examination, 2016, for admission to the J&K Combined Competitive (Mains) Examination, 2016 in accordance with Rule 8(2) of the J&K Combined Competitive Examination Rules, 2008 (SRO 387 of 2008 dated 1<sup>st</sup> of December, 2008). This number is statutorily fixed and, therefore, the cut off (in merit) has to be determined by the number of candidates to be called for main examination. The expression “As far as practicable” is not to be interpreted in a manner as would empower the Public Service Commission to call the ineligible candidates. He has proceeded to argue that Section 31 and/or 33 of the J&K Public Service Commission (Conduct of Examination Rules, 2005, deals with the right of candidate to apply for rechecking or scrutiny of result. It is, therefore, no application in the fact situation of the case. No rechecking or re-evaluation has been conducted in the case on hand in terms of Section 31 and/or 33. To the contrary, what has been done is that the corrected key has been applied across the board to all the candidates and the rectification of answer keys does not amount to re-evaluation. He has also argued that in

case the petitioners are allowed to appear in the examination on the premise projected by them in the writ petition, it will open a flood gate which, in turn, may have prejudicial and deleterious effect on the rights of other eligible candidates whose number is statutorily fixed. The last candidate among 429, who get excluded by revision of result has obtained 260.892 marks and his inclusion by judicial intervention would pave way for 2,356 more candidates to appear in the main examination.

**06.** Testing the arguments of the learned counsel appearing on behalf of the respective parties on the touchstone of law, facts and the circumstances of the case, it needs to be reiterated that the result of the Combined Competitive (Preliminary) Examination, 2016, was notified by the Public Service Commission vide notification No. PSC/Exam/2017/22 dated 23<sup>rd</sup> of April, 2017. The notification stated that in terms of Sub-Rule (2) of Rule 8 of the Jammu and Kashmir Combined Competitive Examination Rules, 2008, as amended from time to time, and the laws laid down on the subject including the judgment of the Apex Court of the country rendered in the case titled **“Andhra Pradesh Public Service Commission v. Balaji Badhavath & Ors (Civil Appeal No. 2244 of 2009)”**, for the purpose of admitting the candidates for appearing in the Main Examination, the number of candidates to be admitted to the Main Examination is in the proportion of 25 times of the total number of vacancies which comes to 6,925 candidates in Roll order, thereby making the last cut off point as 270.477 marks out of the aggregate of 450 marks. The said notification also provided that the Main Examination will be held w.e.f. 17<sup>th</sup> of July, 2017, for which a detailed date sheet shall be notified separately. By another notification No. PSC/Exam/2017/26 dated 9<sup>th</sup> of May, 2017, online applications were invited from the candidates declared to have qualified for the admission to the J&K Combined Competitive (Main) Examination, 2016 vide Notification No.

PSC/Exam/2017/22 dated 23<sup>rd</sup> of April, 2017, in accordance with SRO 387 of 2008 dated 1<sup>st</sup> of December, 2008, read with SRO 190 of 2016 dated 17<sup>th</sup> of June, 2016 and the J&K Public Service Commission (Conduct of Examination) Rules, 2005, as amended from time to time, to fill up the 277 number of vacancies under the heads detailed hereinbefore. By the same notification, the last date for receipt/ submission of online applications, complete in all respects, was fixed as 10<sup>th</sup> of June, 2017 and the last date for submission of the fee/ Bank Challan was put as 18<sup>th</sup> of June, 2017. Thereafter, by a notice dated 6<sup>th</sup> of June, 2017, issued by the Commission, the last date for filing the online application forms for admission to J&K Combined Competitive (Main) Examination was extended upto 28<sup>th</sup> of June, 2017 and the last date for deposition of fee through Challan was put at 30<sup>th</sup> of June, 2017, with a further stipulation that the cut of date for determining the eligibility shall remain unchanged. By notice dated 14<sup>th</sup> of June, 2017, which is required to be understood in its entirety, the Public Service Commission, while referring to an extra-ordinary meeting dated 12<sup>th</sup> of June, 2017, on the subject 'Jammu & Kashmir Combined Competitive Services Examination- 2016', notified as under:

*1) Whereas, after conducting J&K Combined Competitive (Preliminary) Examination, 2016, on 19<sup>th</sup> of March, 2017, under J&K Combined Competitive (Preliminary) Examination, Rules 2008, a no. of representations were received from candidates in various subjects with regard to perception/ understanding of the candidates about inaccuracies/ ambiguity/ wrong options/ mistakes/ printing errors in the questions and therefore, in pursuance of rule 12(A) of J&K Public Service Commission (Conduct of examination), Rules, 2005, these ambiguities etc. were referred to a team of experts comprising of not less than two Experts in each subject and based on their final findings, the result of J&K Combined Competitive (Preliminary) Examination, 2016 was declared on 23<sup>rd</sup> of April, 2017; and*

*2) Whereas, after the announcement of the result the Commission against received various deputations/ representations and applications under the J&K RTI Act of 2009, from KAS aspirants with regard to the*

*discrepancies in Question papers/ Answer keys of J&K Combined Competitive (Preliminary) Examination, 2016; and*

*3) Whereas, the question papers and Answer Keys have been set by the subject Experts and enrooted through the independent moderator to the Commission by the Coordinator; and*

*4) Whereas, the Answer keys cannot be accessed by any officer/ official of the Commission before the declaration of the result; and*

*5) Whereas, the Commission in its 4<sup>th</sup> extra ordinary meeting held on 12.06.2017, has decided to refer the Question Papers and Answer Keys thereto to the independent/ 3<sup>rd</sup> party subject Experts for relooking/ revisiting them in order to find out discrepancy, if any; and*

*6) Whereas, the consequential action, if any, warranted will be taken by the Commission after the receipt of findings from the subject Experts.*

*Now, in view of the above, the result notified for J&K Combined Competitive (Preliminary) Examination, 2016 on 23.04.2017 has been kept in abeyance and the Notification No. PSC/EXAM/2017/26 dated 09.05.2017 alongwith Notice dated: 06.06.2017 for inviting applications for the J&K Combined Competitive (Main) Examination, 2016 is hereby withdrawn and next date for (Main) Examination shall be notified after receipt of report from the team of subject experts as detailed in para 5 & 6 of this Notice.*

*Sd/-  
Secretary  
J&K Public Service Commission”*

**07.** Subsequently, vide Notification No. PSC/Exam/2017/44 dated 9<sup>th</sup> of August, 2017, the Commission decided as under:

*“Whereas General Administration Department (GAD) vide communication No: GAD(Ser)Genl/2014 dated 17.06.2016 referred 277 (Two Hundred and seventy seven) posts under different categories to the Commission for being filled up in accordance with J&K Combined Competitive Examination Rules, 2008; and*

*Whereas, online applications were invited from the candidates possessing the eligibility vide Advertisement/ Notification No:*

*PSC/Exam/2016/52 dated: 18.06.2016 and in response to the above advertisement 47, 122 application forms were received; and*

*Whereas 36,681 candidates appeared in both the papers in the preliminary Examination held on 19.03.2017 and result, after due process and following the steps stipulated under rules was declared vide Notification No: PSC/Exam/2017/22 dated: 23.04.2017 where under 6925 candidates stand declared to have qualified for main examination in "Roll order" thereby making the last cut off point as 270.477 marks out of aggregate of 450 marks; and*

*Whereas immediately after declaration/ announcement of results vide aforesaid Notification the commission against received various deputations/ representations and applications under the J&K RTI Act 2009 and Rules made thereunder from KAS aspirants with regard to the discrepancies in question paper/ Answer Keys of J&K Combined Competitive Examination (Preliminary) Examination 2016; and*

*Whereas question papers and answer keys had been set by the subject matter experts and enrooted through independent Moderators in each subject to the commission by the coordinator and the Answer keys cannot be accessed by any officer/ official of the commission before use for the declaration of the result by the Controller of Examinations; and*

*Whereas it was alleged in the media and other public foras that during inspection of OMR Sheets by some candidates at Srinagar the answer keys of General Studies and Political Science were exhibited even without authority and against rule. Display of Answer Key is not permissible under rule 12(B) of J&K PSC (conduct of Examination) Rules 2005 and this contention of PSC has been upheld by Hon'ble High Court in Writ Petition No: SWP No: 838/2017 MP No: 01/2017 titled Jahan Ara and Others Vs State of J&K and Others; and*

*Whereas taking note of public discourse and interests of candidates the Commission in its extra-ordinary meeting held on 12.06.2017 decided to refer the "Question Papers" and "Answer Keys" thereof to the independent/ third party subject matter experts for re-looking/ revisiting them in order to find out the discrepancies, if any; and*

*Whereas consequent upon above, the result of J&K Combined Competitive Examination (Preliminary) Examination 2016 notified vide Notification No. PSC/Exam/2017/22 Dated: 23.04.2017 was kept in abeyance vide Notice Dated: 14.06.2017 and also Notification NO: PSC/Exam/2017/26 Dated: 09.05.2017 alongwith Notification dated: 06.06.2017 for inviting application for the J&K Combined Competitive*

*(Mains), Examination 2016 withdrawn. Simultaneously the process for reverification of all the 23 Answer Keys was started. The commission approached the Vice Chancellors and Heads of reputed universities and institutes within and outside the state for relooking/ re-visiting the "Answer Keys" viz Question Papers by the subject matter experts in order to find out the discrepancies, if any, and after examining the reports from the experts of reputed Universities and Institutes third party reports were sought to the extent of discrepancies amongst the Reports of the Universities and based on third party reports viz. discrepancies series "A" of initial PSC "Answer Keys" of all the 23 subjects was revised by the Commission; and*

*Whereas the re-verification of Answer Keys viz. the Question papers initially prepared by two experts one each at the stage of preparation of Answer key and another moderation thereof, has undergone checks in each case by 2 to 3 subject matter experts of institutes/ universities in all subjects; and*

*Whereas consequent upon the above the computer professionals have generated the revised series B, C & D on the basis of Revised Answer Keys of Series "A" through computer software; and*

*Whereas applying the revised Answer Keys 429 number of candidates earlier declared qualified vide Notification Dated: 23.04.2017 could not make to the revised cutoff merit of 277.275 marks out of aggregate of 450 marks and an equal number of fresh candidates make it to the above revised cutoff merit; and*

*Whereas rule 8(2) of J&K Combined Competitive Examination Rules, 2008 (SRO 387 of 2008 Dated: 01.12.2008) provides that the number of candidates to be admitted in the Mains Examination shall be, as far as practicable  $\frac{1}{3}^{\text{rd}}$  of the total number of candidates who appeared in the preliminary examination or 25 times the total number of vacancies to be filled in various services and posts, whichever is lower; and*

*Whereas as per above rule position only 6925 candidates (25 times the total number of vacancies) are to be declared as qualified in the J&K Combined Competitive (Preliminary) Examination-2016 for admission in the J&K Combined (Competitive) Mains Examination-2016.*

*Now, therefore in supersession of Notification No. PSC/Exam/2017/22 dated: 23.04.2017, Notification No. PSC/Exam/2017/26 dated: 09.05.2017, Notice dated: 06.06.2017 and in terms of Rule 8(2) of Jammu and Kashmir Combined Competitive*

*Examination Rules 2008 as amended from time to time and also the law laid down on the subject including the judgment of Hon'ble Supreme Court in the case titled Andhra Pradesh Public Service Commission Versus Baloji Badhvath & Others (Civil Appeal No: 2244 of 2009), the candidates as per **Annexure-A** to this notification are declared to have qualified for admission to the Jammu and Kashmir Combined Competitive (main) Examination 2016 on the basis of their performance in Jammu and Kashmir Combined Competitive (Preliminary) Examination-2016 held on 19.03.2017.*

*However, the candidature of the candidates who are declared to have qualified for admission to the Main examination is purely provisional and subject to determination of final eligibility at the time of submission/ scrutiny of **Application Forms For Main Examination** which shall be received through **Online Mode** for which a separate notification shall be issued shortly. The candidates figuring in **Annexure-A** to this Notification who have already applied in response to the Notification dated: 09.05.2017 read with notice dated: 06.06.2017 need not to apply again. The main Examination shall be held w.e.f. 1<sup>st</sup> week of November, 2017 for which a detailed date sheet shall be notified separately.*

*The application form, if any, filed by 429 candidates who could not make it to the revised cutoff merit of **277.275**, for appearing in Combined Services Competitive (Main) Examination 2016 shall deemed to have been rejected being ineligible and their examination fee shall be refunded.*

*This is subject to outcome of Writ Petition(s), if any, pending disposal before any competent court of law.*

*The revised result is also available on the official website of the commission viz. [www.jkpsc.nic.in](http://www.jkpsc.nic.in).*

*Sd/-*

*Adl Secy/ Controller of Examinations  
J&K Public Service Commission "*

**08.** By another notification No. PSC/Exam/2017/49 dated 25<sup>th</sup> of August, 2017, the Commission, in supersession of earlier Notice No. PSC/Exam/KAS/2017 dated 14<sup>th</sup> of June, 2017, notified as under:



**“IMPORTANT**

- *The Commission has developed an outline Application Form for the Combined Competitive (Main) Examination. The Application Form together with instructions for filing up the Application Forms will be available at the website of the Commission from 28.08.2017.*
- *Syllabus for the (Main) Examination as contained in SRO 387 of 2008 dated 01.12.2008 as amended from time to time is available on the website of the Commission.*
- *Candidates are advised to go through the instructions and all the eligibility conditions prescribed for the examination before filing the online Application Form.*
- *Last date for filing of online Application complete in all respects is 15.09.2017.*
- *Last date for submission of fee (through bank challan) is 18.09.2017.*
- *Candidates will also be required to submit by hand/ in person or through speed post a hard copy of the downloaded outline application form along with the bank challan duly stamped by the bank authorities and the other requisite documents within two days after depositing fee, in the Office of the PSC either at Solina, Srinagar or Reshamgarh Colony, Jammu as the case may be.*
- *The Commission will not be responsible for any postal/ courier delays after the above prescribed last date.*
- ***Those candidates who have already submitted their online application form in response to the Notification dated: 09.05.2017 read with notice dated 06.06.2017 and have been declared qualified for J&K Combined Competitive (Main) Examination, 2016 vide Notification No. PSC/Exam/2017/44 dated 09-08-2017 need not to apply again.***
- ***Those 429 candidates who have been declared by the Commission to have qualified the Preliminary Examination vide Notification No. PSC/Exam/2017/44 dated: 09.08.2017 are eligible for admission to the Main Examination subject to their eligibility in accordance with SRO 387 dated 01.12.2008, read with SRO 190 of 2016 dated 17.06.2016 and J&K Public Service Commission***

***(Conduct of Examination) Rules, 2005 as amended from time to time. However, application forms, if any, of those 429 candidates, who could not make it to the revised cutoff merit of 277.275 for appearing in Combined Competitive Services (Main) Examination-2016 shall be deemed to have rejected being ineligible and their (main) Examination fee to be refunded.”***

**09.** These notifications bearing No. PSC/Exam/2017/14 dated 9<sup>th</sup> of August, 2017 and No. PSC/Exam/2017/49 dated 25<sup>th</sup> of August, 2017, have been called in question in the instant petition and the petitioners have urged that these be quashed by issuance of a writ of Certiorari. The petitioners also seek the issuance of a writ of mandamus commanding the respondents to allow the petitioners to appear in the J&K Combined Competitive (Mains) Examination, 2016, deeming that they have qualified the preliminary examination in terms of Notification No. PSC/Exam/2017/22 dated 23<sup>rd</sup> of April, 2017.

**10.** It needs must be said that a writ petition bearing SWP No. 1138/2017 was filed against the State of Jammu and Kashmir and J&K Public Service Commission in the Jammu wing of the High Court, in which, the Respondent Nos. 2 and 3, i.e. the J&K Public Service commission, filed their objections, a copy whereof has been attached to the petition on hand. The stand taken by the respondent Commission therein before the Court was that the petitioners in the petition had the right of consideration in the process of selection which stood according to them by allowing them to participate in the preliminary examination, where they have failed to make the grade for appearing in the main examination because of their merit position in the examination. After giving the details of the number of candidates intercepting the petitioners and the last candidate shortlisted for the main examination, the respondent Commission stated that the petition of the petitioners deserves to be dismissed outrightly. The definite stand of the respondents in their objections buttressed

with an affidavit before the Jammu wing of the High Court was that Rule 12(B) of the Jammu and Kashmir Public Service Commission (Conduct of Examination) Rules, 2005, to which the petitioners have made a reference, has been deleted from the statute book, much before the initiation of the process of the selection in question as there being already a provision in the shape of Rule 12(A) in the aforesaid Examination Rules, which allows due opportunity to the candidates to represent the Commission in respect of any ambiguity in the question papers and also provides complete mechanism for dealing with such representations and which, in light of the factual background, has been adhered to by the answering respondent/ Commission in the case. Their stand also was that as far as the assertion of petitioners regarding alleged discrepancies in the official key with reference to the answer keys published by some private institutions is concerned, the official key has been prepared by the eminent subject experts and, thereafter, moderated by another eminent subject expert other than the one who set the papers and prepared the answer key, as such, no reliance can be placed to the answer keys published by these private institutions. They have further contended that as per Rule 12-(A) (b) of the J&K Public Service Commission (Conduct of Examination) Rules, 2005, 20 questions as per the expert opinion in General Studies, Law, Zoology, Political Science, Sociology, Public Administration, Physics and Electrical Engineering, were deleted and marks were redistributed equally among the rest of the questions on pro-rata basis to ensure that the marks allocated for the question papers as a whole remain unchanged. Thereafter, the result of the preliminary examination was declared vide Notification No. PSC/Exam/2017/22 dated 23<sup>rd</sup> of April, 2017 in which 6925 candidates were declared to have qualified as per the criteria fixed by the respondent Commission for admission to the J&K Combined Competitive (Main) Examination, 2016. It has also been asserted that

the contention of the petitioners in the petition regarding the process of the conduct of examination and the allegations regarding authenticity of the official key and the ultimate result notification allegedly being illegal, unconstitutional and meant to select the blue-eyed persons/ candidates is devoid of any merit and is, therefore, denied vehemently. The respondent Commission, it is stated, has at all the stages of the process of the conduct of the said preliminary examination, ensured the conduct and conclusion of the process strictly in accordance with the mandate of rules, norms and the procedure, and, therefore, the allegations of the petitioners being misconceived, untenable and unsustainable, are denied vehemently.

**11.** Taking into consideration the objections filed by the respondent Commission in the aforesaid petition, what can be gathered is that the earlier notification dated 23<sup>rd</sup> of April, 2017, notifying 6925 candidates to have qualified the test as per the criteria fixed by the respondent Commission was the outcome of not only due application of mind on their part, but also the rules, norms and the criteria laid down for the said examination. The respondents have, in clear and unequivocal terms, stated in the objections that, in holding of the preliminary examination, they ensured the conduct and the conclusion of the process strictly in accordance with the mandate of the rules, norms and the procedure. Therefore, what motivated the respondents to revise the entire process, after taking a definite stand that the process initiated by them had no moles and holes in it, is a mystery. The respondents have tried to unravel it by arguing that it was on the basis of the information received by them through some deputations, etc. that the answer key was incorrect which persuaded them to revise the whole process. Paragraph Nos. 10 to 14 of the counter affidavit filed by the respondent Commission assume significance in the context of what

the respondents have stated on that count and these are reproduced hereinbelow, *verbatim et literatim*:

*“10. Immediately after declaration of the result vide aforesaid notification the Answering Respondents on various inputs like deputations/ representations, applications under the J&K RTI Act 2009 and even some writ petitions filed by some candidates were informed of some correctness in Key Answers of some questions.*

*11. Taking note of the public discourse and keeping the interest of candidates paramount, the Answering Respondents vide notice dated 14-06-2017 kept the result notified on 23-04-2017 for the J&K Combined Competitive (Preliminary) Examination, 2016 in abeyance and also withdrew the Notification No. PSC/EXAM/2017/26 dated 09-05-2017 along with Notice dated 06-06-2017 for inviting applications for the J&K Combined Competitive (Main) Examination, 2016 and simultaneously, the process of re-verification of 23 answer keys was started. The Commission approached the Vice Chancellors and Heads of reputed universities and institutions within and outside the State for relooking/ re-visiting the “Answer Keys” by subject matter experts in order to find out the discrepancies in the Question Papers and after examining the reports from the experts of reputed Universities and Institutes, third party reports were also sought to the extent of difference amongst the reports of these experts.*

*12. As a result of exercise conducted by Answering Respondents and explained in the above paragraph and reports of the two committees of the commission each headed by Mr. Lal Chand and Mr. JP Singh, Answer Key of Series A was revised; subject wise details, thereof, are given hereunder:*

S. No.	Subject	Max Marks	Total Questions	No. of questions already deleted in the earlier result dated: 23.04.2017	No. of questions whose answer/ option revised in the revised result dated: 09.08.2017	No. of questions deleted in the revised result dated: 09.08.2017	Remaining Questions
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>
01	Agriculture	300	120	0	1	4	116

02	A.H. & V.S.	300	120	0	1	4	116
03	Botany	300	120	0	0	2	118
04	Chemistry	300	120	0	4	4	116
05	Civil Engineering	300	120	0	1	1	119
06	Commerce	300	120	0	2	0	120
07	Economics	300	120	0	7	1	119
08	Electrical Engg.	300	120	7	5	4	109
09	Geography	300	120	0	8	1	119
10	Geology	300	120	0	5	0	120
11	Indian History	300	120	0	7	4	116
12	Law	300	120	6	4	0	114
13	Mathematics	300	100	0	1	4	96
14	Mechanical Engg.	300	120	0	7	9	111
15	Philosophy	300	120	0	6	4	116
16	Physics	300	120	2	4	5	113
17	Political Science	300	120	5	17	3	112
18	Psychology	300	120	0	2	3	117
19	Public Administration	300	120	1	2	1	118
20	Sociology	300	120	1	0	1	118
21	Statistics	300	100	0	3	5	95
22	Zoology	300	120	3	8	3	114
23	General Studies	150	120	1	5	0	119
Total			2720	26	100	63	2631

*13. Consequent upon the rectification of Key in series A, rectification of Keys in Series B, C and D was also rectified through computer process.*

*14. The rectification of Answer Keys through such processes forced change in the result and consequently on application of the revised key 429 number of candidates earlier declared qualified vide Notification dated 23-04-2017 could not make to the revised cut off*

*merit i.e. 277.275 marks out of aggregate of 450 marks and an equal number of fresh candidates made it to the above revised cut off merit.”*

**12.** Rule 12(B), inserted in the J&K Public Service Commission (Conduct of Examination) Rules, 2005, vide notification No. PSC/Exam/2015/12 dated 13<sup>th</sup> of August, 2015, reads as under:

**“12 (B)**

- i. The Controller of Examinations will release the key of question paper preferably immediately after the conclusion of the Examination/ Test or on the working day following the day of the test. The keys will be uploaded on the website of the Commission.*
- ii. The candidates can represent to the Controller of Examination if they feel that the official key to any of the question(s) is/ are working within three days from the day of notification of key.*
- iii. The Controller of Examinations after scrutiny of all such representations shall refer them to a Committee of two Experts in the relevant subject. This Committee shall be formed with the approval of the Chairman. In case of General Studies Paper the questions will be referred to the subject experts of the field relevant to the question (e.g. a question in History will be referred to an expert in the History). The opinion of the expert committee shall be final. The Controller of Examinations shall accordingly finalize the key(s) of relevant question(s) and notify the same for evaluation as well as the information of the examinees.*

*Note:*

*This shall come into force with immediate effect.*

*By order of the Commission.*

*Sd/-*

*Secretary & Controller of Examinations  
J&K Public Service Commission”*

**13.** This Rule has, subsequently, been deleted from the text of the J&K Public Service Commission (Conduct of Examination) Rules, 2005, vide notification No. 07-PSC (DR-P) of 2016 dated 14<sup>th</sup> of March, 2016, which reads as under:

*“It is hereby notified for the information of the general public that the existing Rule 12(B) of the Jammu and Kashmir Public Service Commission (Conduct of Examination) Rules, 2005 is hereby deleted with immediate effect.*

*By order.*

*Sd/-  
Secretary & Controller of Examinations  
J&K Public Service Commission*

**14.** Rule 12B, as is brought to the fore from the above, has been deleted before the issuance of notification No. PSC/Exam/2016/52 dated 18<sup>th</sup> of June, 2016, by which online applications were invited for filing up 277 vacancies for the posts detailed therein. The fallout and after effect of the deletion of the rule would be firstly, that it was not in existence/ force at a time when the process of the conduct of the examination was initiated by the Public Service Commission by inviting online applications from the desirous candidates. Before its deletion, the scope and object of the Rule was that the Controller of Examinations shall release the key of question paper preferably immediately after the conclusion of the Examination/ Test or on the working day following the day of the test and the same had to be uploaded on the website of the Commission. This rule gave the candidates the liberty to represent the Controller of Examinations if they found that the official key to any of the question(s) is/ are wrong, within a time frame of three days from the date of the notification of the key and the Controller of Examinations, on his part, had to scrutinize all such representations and refer them to a Committee of two Experts in the relevant subject to be formed with the approval of the Chairman. The opinion of the Expert Committee would be final and could not be altered or tinkered with. The exclusion of the rule would tantamount to mean that the key of the question paper could not be leaked by the Commission. How and in what manner, the deputations, representations and the applicants under RTI Act laid their hands on the answer keys, which made the respondent Commission to revise the result, has not been answered on the face of the deletion of the Rule 12(B), meaning thereby that all that has been shown to glitter by the Commission is not



gold particularly, when this contention is tested on the touchstone of the earlier stand taken by the respondents in their objections filed in SWP No. 1138/2017 before the Jammu wing of the High Court, where they emphatically stated that the process initiated by them was not colorable, but was completely in accordance with the rules, norms and the law governing the field. The respondents cannot be allowed to change colors like a chameleon. They cannot turn around or change horses midstream and state that the earlier stand taken by them was incorrect or that it was not binding on them and, on the analogy of such a stand taken by them in their objections, the respondent Commission cannot have the cheeks to state that they were motivated to do so on the basis of representations, deputations and RTI applications, when the representations had to be filed within a period of three days only as provided under Rule 12(A) running under the caption 'Detection of wrong question/ Answers/ Keys procedure for Rectification and Evaluation', which lays down as under:

***“12 A: Detention of wrong Question/ Answer/ Keys procedure for Rectification and Evaluation.***

*a) During the course of examination, if it is revealed on scrutiny or in consequences of an representation made by the examinee(s) that:-*

- i. The question paper has printing errors, misprint or that the material printed is not legible;*
- ii. The question(s) have been repeated; and*
- iii. The question(s)/ answer(s)/ part thereof have escaped printing and the serial numbers have in consequence been disturbed.*

*The matter shall immediately be reported to the Controller of Examinations who on verification of the report shall authorize the rectification of the error through an on spot announcement in all the examination centers for which a certificate of rectification shall be recorded by the Supervisor concerned and forwarded to the Controller of Examinations for record;*

*b) If the scrutiny of the question paper by the Invigilation staff, officials/ officers of the Examination wing of the Commission or on a*

*representation received from the candidates within three days commencing from the day following the day of conduct of examination in that paper, it is prima-facie found that:*

- i. The formulation/ text of the question is admissible to different interpretations because of vagueness;*
- ii. The question(s) recorded in the paper is incomplete;*
- iii. The question(s) is out of syllabus notified for the purpose;*
- iv. That all the options recorded vis-à-vis a question are wrong;*
- v. That more than one options recorded are correct; and*

*The Controller of Examinations shall in that eventuality refer all these representations to a team of experts constituted with the approval of the Chairman for the purpose. The team shall comprise not less than two experts of eminence in the subject and their findings shall be final.*

*c) In case the team of the experts confirm the incorrectness of the questions/ answers/ options, the concerned questions shall be deleted from the paper and the marks allocated therefore shall be redistributed equally amongst the rest of the questions on prorata basis to ensure that the marks allocated for the question paper as a whole remain unchanged.”*

**15.** A mess appears to have been created in the conduct of the examination by the Commission and public interest has been put at jeopardy. The Public Service Commission is the premier recruiting Agency of the State and it cannot tamper with the carrier of thousands of aspirants who burn mid night oil for making a livelihood. The Public Service Commission has an onerous responsibility to exert and exercise the highest degree of care and caution in handling the examinations and to maintain transparency so that the candidates repose trust and confidence in the institution. It is not understood why Rule 12(B) was deleted when it was certainly in the public interest. If the OMR sheets and Answer Keys are disclosed after the examination, it will be in the public interest and not in the so called protected interest of the Commission. Had the respondents not deleted Rule 12(B) from the text of the provisions of the J&K Public Service Commission (Conduct of Examination) Rules, 2005, the

position, as it emerges today, would not have surfaced. On the basis of the said rule, they could have done the exercise earlier also. No semblance of fairness can be attached to the statement of the Commission that the revised list was drawn after adhering to the norms and the rules which on the basis of the plea submitted by them before the Jammu wing of the High Court in SWP No. 1138/2017 runs into complete contradiction. It does not portray the correct position as the Commission took a definite stand before the Court that they have adhered to all the norms, rules and the law governing the subject and have vehemently denied that there is any error in the list so prepared and published vide notification 23<sup>rd</sup> of April, 2017.

**16.** The other question that arises for consideration is whether the Commission has the powers, under Rule 8 of SRO 387, to change the cut-off marks retrospectively or, to put it in other words, does the Commission have the power and the authority under Rule 8 of SRO 387 to exercise its discretion in fixing the cut-off marks with retrospective effect? Recruitment rules can either be prospective or retrospective in nature subject, of course, to the rule of non-arbitrariness. However, in the context of the employment under the instrumentalities of the State, which is normally regulated by subordinate legislation, such rules cannot have a retrospective application unless specifically authorized by some constitutionally valid Statute. It is a settled position of law that the provisions of Constitution of India and the provisions of Constitution of Jammu and Kashmir have a prospective application/ effect. The Rules envisaged and enshrined in SRO 387 are made in exercise of the powers conferred by the proviso to Section 124 of the Constitution of Jammu and Kashmir in his Excellency the Governor of the State of Jammu and Kashmir. As such, SRO 387 having been issued under Section 124 of the Constitution of Jammu and Kashmir is prospective in nature. The Jammu and Kashmir Public

Service Commission exercises its discretion to fix the cut-off marks in accordance with Rule 8 of the SRO 387 which is prospective in nature. No retrospective effect can be given to any statutory provision so as to impair an existing right, unless the Statute, either expressly or by necessary implication, directs that it shall have such an effect. On an application of this principle of law to the facts and circumstances of the instant case, it is clear from a bare reading of Section 124 of the Constitution of Jammu and Kashmir and SRO 387 including Rule 8, that SRO 387 has a prospective application and no provision or proviso empowers the Commission, either expressly or by necessary implication, to do an act which has a retrospective effect, as a corollary to which, it can take away an existing right. The position of law being so, on the face of the result declared by the Commission on 23<sup>rd</sup> of April, 2017, the cut-off point having been fixed at 270.477 marks, which had a prospective application, the after effect of it would be that it merged with and under Rule 8 of SRO 387. By the declaration of the revised list, the Commission changed the cut-off marks and fixed it at 277.275 marks which resulted in the ouster of the petitioners who had earlier qualified the examination, but could not make it to the revised cut-off merit of 277.275. In taking umbrage under this process, the existing right of the petitioners which accrued to them on 23<sup>rd</sup> of April, 2017, when the first result notification was issued, perished and vanished. Since Rule 8 of SRO 387 does not expressly or by necessary implication direct that the Commission has powers to do any act with retrospective effect, as such, it was not within the domain and power of the Commission to fix the revised cut-off marks with retrospective effect from the first cut-off point, i.e. 270.477 marks to a new cut-off point, i.e. 277.275. This also amounts to changing the rules of the game in the middle of the selection process. It is settled under law that rules of the selection cannot be changed once selection process has started. It is also

settled that selection process starts from the date of issuance of the advertisement notice. A cue can be had, in this behalf, from the law laid down by a Bench of three Judges of the Hon'ble Supreme Court in the case of **“Tej Prakash Pathak & Ors. vs. Rajasthan High Court & Ors.”**, reported in **“(2013) 4 SCC 540**, the relevant excerpts of which are detailed below, word for word and letter for letter:

*“7. The question whether the ‘rules of the game’ could be changed was considered by this Court on a number of occasions in different circumstances. Such question arose in the context of employment under State which under the scheme of our Constitution is required to be regulated by “law” made under [Article 309](#) or employment under the instrumentalities of the State which could be regulated either by statute or subordinate legislation. In either case the ‘law’ dealing with the recruitment is subject to the discipline of [Article 14](#).*

*8. Legal relationship between employer and employee is essentially contractual. Though in the context of employment under State the contract of employment is generally regulated by statutory provisions or subordinate legislation which restricts the freedom of the employer i.e. the ‘State’ in certain respects.*

*9. In the context of the employment covered by the regime of [Article 309](#), the ‘law’ – the recruitment rules in theory could be either prospective or retrospective subject of course to the rule of non- arbitrariness. However, in the context of employment under the instrumentalities of the State which is normally regulated by subordinate legislation, such rules cannot be made retrospectively unless specifically authorized by some constitutionally valid statute.*

*10. Under the Scheme of our Constitution an absolute and non-negotiable prohibition against retrospective law making is made only with reference to the creation of crimes. Any other legal right or obligation could be created, altered, extinguished retrospectively by the sovereign law making bodies. However such drastic power is required to be exercised in a manner that it does not conflict with any other constitutionally guaranteed rights, such as, Articles 14 and 16 etc. Changing the ‘rules of game’ either midstream or after the game is played is an aspect of retrospective law making power.*

*11. Those various cases deal with situations where the State sought to alter (1) the eligibility criteria of the candidates seeking employment or (2) the method and manner of making the selection of the suitable candidates. The latter could be termed as the procedure adopted for the selection, such as, prescribing minimum cut off marks to be secured by the candidates either in the written examination or viva-voce as was done in the case of Manjusree or the present case or calling upon the candidates to undergo some test relevant to the nature of the employment (such as driving test as was the case in Maharashtra SRTC)."*

**17.** The three Judge Bench has referred the matter to a larger Bench to determine whether the aforesaid principles should be applied in the context of the "Rules of the Game", stipulating the procedure for selection, more particularly, when the change sought is to impose a more rigorous scrutiny for selection. The matter is pending adjudication before the Constitutional Bench of the Hon'ble Supreme Court of India, as such, the law laid down in the above titled judgment will rule the roost. To subscribe to such a view, a cue can also be had from the law laid by the Hon'ble Supreme Court in case titled **"A. A. Calton vs. Director of Education & Anr."**, reported as **"(1983) 3 SCC 33"**, wherein it has been held as under:

*5. It is not doubt true that the Act was amended by U.P. act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under Section 16-F (4) of the Act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under Section 16-F of the Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under Section 16-F of the Act commencing from the stage of calling for applications for a post upto the date on which the Director becomes entitled to make a selection under Section 16-F(4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16-F of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the Legislature may pass laws with retrospective effect subject to the recognized constitutional limitations. But it is equally well settled that no retrospective effect*

*should be given to any provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect.”*

**18.** It will not be impertinent to note here that some candidates filed representations stating therein that the answers/ options to some questions in the Preliminary Examination are incorrect which are required to be corrected. The Commission did not entertain/ accept those representations on the ground that the same have been filed beyond the statutory period of 3 days commencing from the day following the day of the conduct of examination in a particular paper. The Commission contended that if the representations after the statutory period of three days are entertained/ accepted, then there will be no end to the examination process and since the Rule does not allow them to accept the representations after three days from the conclusion of examination, as such, accepting those representations would amount to violation of Rule 12A(B) cited above. The candidates who had filed representations three days after the conclusion of examination and whose representations were not accepted by the Commission, as is reiterated have filed a writ petition before the High Court of J&K at Jammu wing, being SWP No.1138/2017, in which the Commission stated on oath that the allegations regarding authenticity of the official keys are totally incorrect and denied it vehemently. The Commission has also pleaded that representations not received within three days from the conclusion of examination shall not be entertained/ accepted at all. The respondent Commission in blatant violation of Rule 12A (supra) and, in contradiction to the admitted position by them in the aforesaid affidavit, entertained/ accepted the representations from some other candidates after 83 days from conclusion of examination. These representations were received after the declaration of result of the Jammu & Kashmir Combined Competitive (Preliminary) Examination, 2016. Based on these representations the revised result was issued, as such, the

revised result appears to be a product of complete abuse of the rules mentioned hereinabove. The procedure for rectification and evaluation is laid down in Rule 12A of the J&K Public Service (Conduct of Examinations) Rules, 2005. Rule 12A envisages a procedure for rectification and evaluation before the result of Combined Competitive (Preliminary) Examination, 2016 was declared, not after the results are declared. In other words, the Rule does not provide for rectification and evaluation after the result has been declared. Rule 12(A) provides that if there is any printing error, misprint or material printed is not legible or questions have been repeated, then, in that case, said errors have to be rectified through an on-spot announcement in all the examination centers. So, Rule 12(A) provides for a situation resort to which can be taken during the course of examination, i.e. on the dates when the examination is held and not thereafter. In view of the aforesaid rule position, it is clear that the procedure for rectification and evaluation had to be completed before the result for Combined Competitive (Prelims) Examination, 2016, was declared and there was no power in the Commission to rectify the questions/ answers/ options after the results have been declared.

**19.** The petitioners before this Court in OWP No. 1322/ 2017 filed a petition in the Srinagar Wing of the High Court against the commission which was decided by this Court on a joint consensus of the learned counsel for the parties by an order dated 24.08.2017 which is reproduced herein below verbatim:-

*“Mr. Azhar-ul-Amin, learned advocate, representing the respondent-Public Service Commission, has stated that the KAS examination is scheduled to be held in the month of November, 2017. He has proceeded to state that the petitions of the petitioners shall be considered by the respondent-Public Service Commission and speaking orders will be passed in them with utmost dispatch.*



*In this view of the matter, the writ petitions are disposed of along with connected IAs with the direction that the respondents shall treat the writ petitions of the petitioners as representations and consider the same in accordance with the law within a period of four weeks and the result thereof shall be communicated to the petitioners”.*

**20.** The respondent-commission flouted this order with impunity. Respondent-commission did not pay any regard to this order. The Commission instead of deciding the petitions of the petitioners issued a notification bearing No. PSC/Exam/2017/49 dated 25.08.2017 post haste declaring 429 candidates, who qualified the preliminary examination, eligible for the main examination. The notification also provided that the candidature of those 429 candidates who could not make it to the revised cutoff merit for appearing in the main examination shall be deemed to have been rejected being ineligible and their main examination fee shall be refunded.

**21.** The issuance of such a notification on the face of the order cited above smells foul and does not augur well particularly when the respondent-commission admitted before this Court that they will accord consideration to the petition of the petitioners by passing speaking orders in them. The acts of the omission and commission attributed to the commission in such an eventuality appear to be wrapped with malafides and cannot in any manner be termed as fair. Chief Justice, Earl Warren, in the case of “United States V. Mississippi Valley”, said that a Democracy is effective only if the people have faith in those who govern, and the faith is bound to be shattered when high officials and their appointees engage in activities which cause suspicions of malfeasance.

**22.** Viewed thus, the respondents could not have revised the list issued earlier in point of time and the petitioners cannot be deprived of their right to participate in the main examination in view of preceding analysis. The question

that falls under consideration, therefore, is how and in what manner should the matter be dealt with taking into consideration the above.

23. Dealing with an almost identical situation the High Court of Delhi in the case of **“Gunjan Sinha Jain Vs. Registrar General High Court of Delhi”** in **“WP(C) No. 449/12 and connected matters”**, the Court after taking a view of the entire range of the facts and circumstances directed as under:-

*81. We must harmonize the requirement of the second condition with the requirement of not disturbing the candidates who have been declared as qualified as also with the requirement of justice, fairness and equity insofar as the other candidates are concerned. We feel that this would be possible:*

- (1) by re-evaluating the OMR answer sheets of all the general category candidates on the lines summarized in the table set out above;*
- (2) by selecting the top 230 candidates in order of merit subject to the minimum qualifying marks of 112.8; and*
- (3) by adding the names of those candidates, if any, who were earlier declared as qualified but do not find a place in the top 230 candidates after re-evaluation.*

*In this manner, all persons who could legitimately claim to be in the top 230 would be included and all those who were earlier declared as having qualified would also retain their declared status. Although, the final number of qualified candidates may exceed the figure of 230, this is the only way, according to us, to harmonize the rules with the competing claims of the candidates in a just and fair manner. A similar exercise would also have to be conducted in respect of each of the reserved categories. The entire exercise be completed by the respondents within a period of two weeks. Consequently, the Main Examination (Written) would also have to be re-scheduled and, to give enough time for preparation, we feel that it would not be earlier than the 26.05.2012.”*

24. Applying the ratio of the law laid down above to the facts of the instant case, the expression ‘as far as practicable’, as it exists in Rule 8 cited

hereinbefore, has to be construed and interpreted liberally in view of the facts and circumstances of the case analyzed hereinabove. Therefore, confronted with the situation, as it emerges from the petitions on hand, there are two possible, lawful and feasible ways to determine the controversy, that is the exercise of discretion by directing that the candidates figuring in the first list issued by the Commission vide notification No. PSC/Exam/2017/22 dated 23<sup>rd</sup> of April, 2017, as also the candidates figuring in the revised list issued vide notification No. PSC/Exam/2017/44 dated 9<sup>th</sup> of August, 2017, shall be entitled and allowed to sit and participate in the main examination and they are permitted to apply on line for the vacancies detailed above within the time to be fixed by the respondent Commission.

**25.** As regards the contention of the petitioners in the petition bearing OWP No. 1413/2017, that fresh result of the J&K Combined Competitive Preliminary Examination, 2016, should be prepared in respect of each reserved category, the same is neither permissible nor tenable under the rules as the preliminary test has been conducted merely for screening the candidates eligible to be called in the main examination. Therefore, the grant of this relief is rejected.

**(M. K. Hanjura)**  
**Judge**

**SRINAGAR**

December 30<sup>th</sup>, 2017

*"TAHIR"*