IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VISHAL MISHRA

WRIT PETITION No. 15150 of 2023

BETWEEN:-

DEVANSH KAUSHIK [redacted]

.....PETITIONER

(BY SHRI UTKARSH KUMAR SONKAR - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR VINDHYACHAL BHAVAN JAIL RD ARERA HILLS BHOPAL (MADHYA PRADESH)**
2. **THE REGISTRAR GENERAL, HIGH COURT OF MADHYA PRADESH 53, DENNING ROAD, SOUTH CIVIL LINES, JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1 AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 17387 of 2023

BETWEEN:-

VARSHA PATEL [redacted]

.....PETITIONER

(BY SHRI RAMESHWAR SINGH THAKUR AND SHRI VINAYAK PRASAD SHAH - ADVOCATES)

AND

1. **STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND LEGISLATURE DEPARTMENT NEW DELHI**

2. **HIGH COURT OF MADHYHA PRADESH PRINCIPAL SEAT AT JABALPUR THROUGH ITS REGISTRAR (GENERAL) (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1 AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 29901 of 2023

BETWEEN:-

GARIMA KHARE [redacted]

.....PETITIONER

[redacted]

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR VINDHYACHAL BHAVAN JAIL ROAD ARERA HILLS BHOPAL (MADHYA PRADESH)**

2. **HIGH COURT OF MADHYA PRADESH, THROUGH ITS REGISTRAR GENERAL, PRINCIPAL SEAT, JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1 AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 30256 of 2023

BETWEEN:-

1. **SHIVANI SONKAR** [redacted]

2. **DIVYA SONKAR D** [redacted]

3. **VARSHA PATEL** [redacted]

.....PETITIONERS

(BY SHRI RAMESHWAR SINGH THAKUR AND SHRI VINAYAK PRASAD SHAH - ADVOCATES)

AND

1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND LEGISLATURE DEPARTMENT NEW DELHI

2. HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR THROUGH ITS REGISTRAR (GENERAL) (MADHYA PRADESH)

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1 AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 30431 of 2023

BETWEEN:-

ABHISHEK PANCHAL [redacted]

.....PETITIONER

(BY SHRI ARPIT KUMAR OSWAL – ADVOCATE THROUGH VC)

AND

1. THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR VINDHYACHAL BHAWAN JAIL ROAD ARERA HILLS BHOPAL (MADHYA PRADESH)

2. THE HIGH COURT OF MADHYA PRADESH THROUGH REGISTRAR GENERAL PRINCIPAL SEAT AT JABALPUR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1, AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 30454 of 2023

BETWEEN:-

SAKSHI PAWAR [redacted]

.....PETITIONER

(BY MS. SAKSHI PAWAR – ADVOCATE THROUGH VC)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR VINDHYACHAL BHAWAN BHOPAL (MADHYA PRADESH)**

2. **REGISTRAR GENERAL HIGH COURT OF MADHYA PRADESH JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1 AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 30465 of 2023

BETWEEN:-

AYUSH YARDI [redacted]

.....PETITIONER

(BY SHRI NISHANT DATT – ADVOCATE - ABSENT)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH DEPARTMENT OF LAW AND LEGISLATIVE AFFAIRS VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **HONBLE HIGH COURT OF MADHYA PRADESH THROUGH REGISTRAR GENERAL JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1 AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 30550 of 2023

BETWEEN:-

SUBHASNI DWIVEDI [redacted]

.....PETITIONER

(BY SHRI ANUJ SHRIVASTAVA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SERETARY LAW AND LEGISLATIVE AFFAIRS DEPARMENT FIRST FLOOR VINDHYACHAL BHAWAN BHOPAL (MADHYA PRADESH)**

2. **THE SECRETARY, LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR VINDHYACHAL BHAWAN BHOPAL (MADHYA PRADESH)**

3. **HIGH COURT OF MADHYA PRADESH THROUGH REGISTRAR GENERAL PRINCIPAL SEAT AT JABALPUR, JABALPUR (MADHYA**

PRADESH)

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENTS NO.1 & 2, AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.3)

WRIT PETITION No. 30653 of 2023

BETWEEN:-

1. **NEHA KOTHARI** [redacted]

2. **RAJNISH YADAD S/O OMPRAKASH YADAV, AGED ABOUT 31 YEARS, OCCUPATION: LAWYER R/O 475/1 BAKERY GALI PATNIPURA INDORE (MADHYA PRADESH)**

3. **RUDRESH SINGH BAIS S/O BHIM SINGH, AGED ABOUT 24 YEARS, OCCUPATION: LAWYER R/O 290 EMERALD CITY AUROBINDO HOSPITAL INDORE (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI SIDDHARTH R. GUPTA AND SHRI ARYAN URMALIYA - ADVOCATES)

AND

1. **THE HON HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR THROUGH ITS REGISTRAR GENERAL NEAR COLLECTORATE DISTRICT JABALPUR (MADHYA PRADESH)**

2. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY, LAW AND LEGISLATIVE DEPARTMENT, ADDRESS VINDHYACHAL BHAWAN BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI –

ADVOCATES FOR RESPONDENT NO.1, AND
SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.2)

WRIT PETITION No. 30727 of 2023

BETWEEN:-

1. **SAHIL KHAN BEHNA** [redacted]
2. **RAHUL RAJPUT** [redacted]
3. **ANKITA SINGH** [redacted]
4. **MONIKA YADAV** [redacted]
5. **PARMANSHU SAGAR KUNWAR** [redacted]
6. **ROSHNI DANGI** [redacted]
7. **MANALI AGRAWAL** [redacted]
8. **NAMRATA THAKUR** [redacted]

9. KIRTI MAHOR [redacted]

10. ANTU KANODIA [redacted]

11. JYOTI PRAJAPTI [redacted]

12. POOJA JAMRA [redacted]

13. VINAMRATA BATHAM [redacted]

14. SUMYA SONI [redacted]

15. SONALI SHAKYA [redacted]

.....PETITIONERS

(BY SHRI ARUN KUMAR PANDEY – ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR, VINDHYACHAL BHAWAN JAIL RAOD ARERA HILLS BHOPAL (MADHYA PRADESH)**

2. **THE REGISTRAR GENERAL, HIGH COURT OF MADHYA PRADESH, 53, DENNING ROAD SOUTH CIVIL LINE JABALPUR 482001**

(MADHYA PRADESH)

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1, AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 30740 of 2023

BETWEEN:-

1. **VANSHIKA JAIN** [redacted]
2. **ROHIT KUMAR JAIN** [redacted]
3. **AVISHA BUDHRAJA** [redacted]
4. **SHRUTI MALHOTRA** [redacted]
5. **GAURANG SARASWAT** [redacted]
6. **VAISHALI SIKARWAR** [redacted]
7. **SAMYAT JAIN** [redacted]

8. **RADHA PATEL** [redacted]

9. **ANSHUMAN DUBEY** [redacted]

10. **MANJEET SINGH** [redacted]

.....PETITIONERS

(BY SHRI ARUN KUMAR PANDEY - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR VIDHYACHAL BHAWAN JAIL ROAD ARERA HILLS BHOPAL (MADHYA PRADESH)**

2. **THE REGISTRAR GENERAL HIGH COURT OF MADHYA PRADESH 53 DENNING ROAD SOUTH CIVIL LINES JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1, AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 30787 of 2023

BETWEEN:-

1. **HARENDRA SINGH TOMAR** [redacted]

2. **PANKAJ KUMAR DUBEY** [redacted]

[redacted]

.....PETITIONERS

(BY SHRI ARUN KUMAR PANDEY - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR VIDHYACHAL BHAWAN JAIL ROAD ARERA HILLS BHOPAL (MADHYA PRADESH)**

2. **PRINCIPAL SECRETARY GENERAL ADMINISTRATION DEPARTMENT GOVT. OF M.P. MANTRALAYA VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

3. **THE HIGH COURT OF MADHYA PRADESH THROUGH ITS REGISTRAR GENERAL 53 DENNING ROAD SOUTH CIVIL LINE JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENTS NO.1 & 2, AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.3)

WRIT PETITION No. 30857 of 2023

BETWEEN:-

1. **AASHUTOSH SHRIVASTAVA** [redacted]

2. **KU. SANDHYA BHARADWAJ** [redacted]

(MADHYA PRADESH)

.....PETITIONERS

(BY SHRI RAMESHWAR SINGH THAKUR AND SHRI VINAYAK PRASAD SHAH - ADVOCATES)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND LEGISLATURE DEPARTMENT NEW DELHI (DELHI)**

2. **HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR THROUGH ITS REGISTRAR (GENERAL) (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1, AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 31087 of 2023

BETWEEN:-

1. **SAMPAT KUMAR KUSHWHA** [redacted]

2. **RAMKRISHNA RATHORE** [redacted]

3. **REENALANJEWAR** [redacted]

4. **KAMAL SINGH KUSHWAHA** [redacted]

[redacted]

5. **AYUSHI BAMANKA** [redacted]

6. **ROSITA KORI** [redacted]

7. **SHIVAM NIRANJAN** [redacted]

8. **ADITI CHOUHAN** [redacted]

9. **SHALINI MURWEJ** [redacted]

10. **VIVEKANAND DURVE** [redacted]

.....PETITIONERS

(BY SHRI VIJAY RAGHAV SINGH - ADVOCATE)

AND

1. **THE HON HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR THRUOGH ITS REGISTRAR GENERAL HIGH COURT OF MADHYA PRADESH JABALPUR 482001 (MADHYA PRADESH)**

2. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST**

FLOOR VINDHYACHAL BHAVAN BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1, AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

WRIT PETITION No. 31152 of 2023

BETWEEN:-

ROHIT SINGH [redacted]

.....PETITIONER

(BY SHRI NITYA NAND MISHRA – ADVOCATE - ABSENT)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY LAW AND LEGISLATIVE DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **PRINCIPAL SECRETARY GENERAL ADMINISTRATION DEPARTMENT GOVT. OF M.P. MANTRALAYA VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

3. **HIGH COURT OF MADHYA PRADESH THROUGH ITS REGISTRAR (GENERAL) PRINCIPAL SEAT AT JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENTS NO.1 & 2, AND

SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.3)

WRIT PETITION No. 31208 of 2023

BETWEEN:-

GULNISHA KHAN [redacted]

.....PETITIONER

(BY SHRI VIJAY RAGHAV SINGH - ADVOCATE)

AND

1. **THE HON HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR THROUGH ITS REGISTRAR GENERAL JABALPUR (MADHYA PRADESH)**

2. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY LAW AND LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR VINDHYACHAL BHAWAN BHOPAL 462023 PHONE 0755-25511230 FAX 0755-2551185 (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.1, AND

SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.2)

WRIT PETITION No. 781 of 2024

BETWEEN:-

TEJAS TRIPATHI [redacted]

.....PETITIONER

(BY SHRI UTKARSH KUMAR SONKAR - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY LAW AND**

LEGISLATIVE AFFAIRS DEPARTMENT FIRST FLOOR, VINDHYACHAL BHAWAN, JAIL ROAD, ARERA HILLS, BHOPAL (MADHYA PRADESH)

2. THE REGISTRAR GENERAL, HIGH COURT OF MADHYA PRADESH JABALPUR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI BRAMHADATT SINGH – DEPUTY ADVOCATE GENERAL FOR RESPONDENT NO.1, AND
SHRI ADITYA ADHIKARI – SENIOR ADVOCATE WITH SHRI SATISH CHATURVEDI AND SHRI EIJAZ NAZAR SIDDIQUI – ADVOCATES FOR RESPONDENT NO.2)

……

Reserved on : 20.02.2024
Pronounced on : 01.04.2024

……

These petitions having been heard and reserved for orders, ***Hon'ble Shri Justice Ravi Malimath, Chief Justice*** *pronounced the following:*

ORDER

Since similar questions of law have been raised in all these petitions, they are taken up for consideration together.

2. The first petition to be filed was Writ Petition No.15150 of 2023 (Devansh Kaushik vs. State of Madhya Pradesh and another). The prayer made therein is to set aside the amendment in Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 (hereinafter referred to as 'the Rules of 1994') as notified in the Madhya Pradesh Gazette dated 23.06.2023 and other consequential reliefs.

3. Thereafter, various other writ petitions were filed. In W.P. No.17387 of 2023 (Varsha Patel vs. State of Madhya Pradesh and others), an interim order was granted on 01.12.2023 directing that the OBC

category candidates should be extended the same relaxation of marks as provided to the Scheduled Castes and the Scheduled Tribes candidates with reference to Rule 5(3) and (4) as well as the proviso to Rule 7(g) of the Rules of 1994.

4. In Writ Petition No.30256 of 2023 (Shivani Sonkar and others vs. State of Madhya Pradesh and another) an interim order was granted on 12.12.2023. The interim order was restricted only so far as the third petitioner was concerned. It was her case that due to change of university, some subjects changed. Therefore, so far as the changed subjects are concerned, even though she did not write the exam, she was considered as failed. Therefore, an interim order was granted directing the authorities that in case she has passed the exam in the first attempt either in the earlier or in the subsequent university, the same should satisfy the impugned rule. The rule pertains to failure and not to a candidate who has not written the exam. Therefore, as long as the petitioner No.3 has passed all exams in the first attempt, the same should satisfy the provisions of the rule.

5. In Writ Petition No.30653 of 2023 (Neha Kothari and others vs. The Hon. High Court of Madhya Pradesh Principal Seat at Jabalpur and another) by the interim order dated 12.12.2023 it was ordered that the authorities shall not insist on production of six order sheets for one year as per the requirement of Note (4) of Clause (1) of Part C of the advertisement dated 17.11.2023. The said interim order was also granted to the petitioner in Writ Petition No.30454 of 2023 (Sakshi Pawar vs. State of Madhya Pradesh and another) by the order dated 13.12.2023.

6. In the interregnum, the writ petitioner in Writ Petition No.15150 of 2023 (Devansh Kaushik vs. State of Madhya Pradesh and another) filed SLP (C) No.27337 of 2023 before the Hon'ble Supreme Court. Similarly,

the writ petitioner in W.P. No.781 of 2024 (Tejas Tripathi vs. State of Madhya Pradesh and another) filed Writ Petition (Civil) No.1398 of 2023 and writ petitioner No.4 - Monika Yadav in Writ Petition No.30727 of 2023 (Sahil Khan Behna and others vs. State of Madhya Pradesh and another) filed Writ Petition (Civil) No.1380 of 2023 before the Hon'ble Supreme Court. Both these writ petitions were dismissed as withdrawn by the common order dated 15.12.2023. By the very same order, SLP (C) No.27337 of 2023 (Devansh Kaushik vs. State of Madhya Pradesh and another) was disposed off, wherein, it was directed that the High Court shall allow all the candidates to participate in the Civil Judge, Junior Division (Entry Level) Recruitment Examination – 2022 in furtherance to the advertisement dated 17.11.2023, who possess the eligibility as per the unamended Rules of 1994 i.e. as per the rule existing prior to the impugned amendment. A further direction was given for wide publication of the said order, which will also cover all those persons who had not approached the Hon'ble Supreme Court. Accordingly, the Hon'ble Supreme Court provisionally permitted all the candidates to fill up the application forms (including those who have not approached the court) and provisionally permitted them to participate in the preliminary and written examination subject to the outcome of the challenge to the vires of the Rules before the High Court of Madhya Pradesh. It was also ordered that the pending writ petition before the High Court be disposed off on the judicial side, as far as possible by the end of February, 2024. Consequently, the High Court accepted all applications in terms of the unamended rules.

7. Thereafter, the matters were heard finally and reserved for orders on 20.02.2024. Subsequently, by the order dated 07.03.2024 passed in Miscellaneous Application No.442 of 2024 in SLP (C) No.27337 of 2023

(Devansh Kaushik vs. State of Madhya Pradesh and another) time was extended by the Hon'ble Supreme Court till the end of March, 2024 for disposal of the pending writ petitions before the High Court.

8.(a) All these matters are being taken up together for final disposal. However, for the sake of convenience, the facts as narrated in Writ Petition No.15150 of 2023 (Devansh Kaushik vs. The State of Madhya Pradesh and another) are taken into consideration. The petitioner is a Law Graduate from the National Law School of India University, Bangalore. The petitioner intended to appear in the Madhya Pradesh Judicial Service Exam to be conducted by the High Court of Madhya Pradesh for recruitment to the post of Civil Judge, Junior Division (Entry Level). By virtue of the impugned amendment to the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994, an additional eligibility qualification for the post of Civil Judge, Junior Division (Entry Level) was introduced. In terms of the amendment, all those who had practised continuously as an advocate for not less than 3 years on the last date fixed for submission of applications were eligible to apply or in the alternate, an outstanding Law Graduate with a brilliant academic career having passed all exams in the first attempt by securing at least 70% marks in the aggregate in the case of General and OBC categories and at least 50% marks in the aggregate, in case of candidates from the reserved category. The petitioner had secured 66.2% in the law degree and since the minimum requirement was 70% in aggregate, he was not qualified to write the exam. Since the petitioner did not qualify the eligibility criterion, the instant petition was filed seeking to set aside the said amendment. The prayer made is as follows:-

> *"(i) That this Hon'ble Court be pleased to set aside the amendment in Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules,*

1994 notified in Madhya Pradesh Gazette dated 23.06.2023 in so far as it incorporates the stipulation under its proviso of having passed all the subjects with an aggregate of at least 70% marks and that too in first attempt as a dilution of requirement of practice as an advocate for not less than 3 years on the last date fixed for submission of the application.

(ii) To hold that the stipulation of obtaining at least 70% marks in aggregate without there being a uniform marking scheme pan India is arbitrary and violative of Article 14 of the Constitution of India.

(iii) Any other relief(s) that this Hon'ble Court deems just and proper in the case."

(b) Shri Utkarsh Kumar Sonkar, the learned counsel has also filed W.P. No.781 of 2024 (Tejas Tripathi vs. State of Madhya Pradesh and another). The prayer made therein is as follows:-

"(i) That this Hon'ble Court be pleased to issue a writ of certiorari and set aside the amendment in Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 notified in Madhya Pradesh Gazette dated 23.06.2023 and the consequent stipulations in Advertisement No.113/exam/C.J./2022 dated 17.11.2023 in so far as it incorporates the additional requirement of practice as an advocate for not less than 3 years on the last date fixed for submission of the application and its dilution in case of the brilliance threshold.

(ii) To issue a writ of certiorari and hold that the stipulation of obtaining at least 70% marks in aggregate without there being a uniform marking scheme pan-India is arbitrary and violative of Article 14 of the Constitution of India.

(iii) Any other relief(s) that this Hon'ble Court deems just and proper in the case."

9.(a) Shri Rameshwar Singh Thakur, learned counsel appears for the petitioners in Writ Petition Nos.17387 of 2023, 30256 of 2023 and 30857 of 2023. The prayer made in W.P.No.17387 of 2023 (Varsha Patel vs. State of Madhya Pradesh and another) is as follows:-

"*(i) That, this Hon'ble Court may kindly be pleased to issue a writ of mandamus to direct the respondents to produce entire record pertaining to the instant subject matter, in the interest of justice.*

(ii) That, this Hon'ble Court may kindly be pleased to issue a writ in the nature of Certiorari to quash the MP. Judicial Service (Recruitment & Condition) of Service) Rules, 1994 Amendment Published in M.P. Gazette Part-4(Ga) dated 23.6.2023 Annexure P/1. And declared ultra Vires to the Article 14, 16, 19, 21, 234, 315, 320, 338, 338-A, 338-B of the Constitution of India, in the interest of justice.

(iii) That, this Hon'ble Court may kindly be pleased to issue a writ of mandamus to direct the respondents authorities to conduct the examination for recruitment of Civil Judge Junior Division by MPPSC a Constitutional Institution established Under Article 215 of the Constitution of India, in the interest of justice.

(iv) That, this Hon'ble Court may kindly be pleased to 'issue a writ of prohibition to restrained to the examination cell of this Hon'ble High Court to conduct' examination for recruitment of Civil Judge Junior Division in the interest of justice.

(v) Any other relief which deems fit and proper looking to facts and circumstances of the case may also be awarded in favour of the petitioner with cost of the petition."

(b) By an interim order dated 01.12.2023, it was directed as follows:-

"……Therefore, it is directed that the OBC category candidates are required to secure at least 55% marks in the preliminary examination and 45% marks in each paper and 50% marks in aggregate in the main examination, which shall be similar to the relaxation of marks for the Scheduled Castes and Scheduled Tribes candidates. Furthermore, with regard to proviso to Rule 7(g) of the Rules of 1994, the requirement of securing 70% marks by the OBC category is modified for a requirement that they shall secure at least 50% marks in aggregate, which is similar to the relaxation being granted to the Scheduled Castes and Scheduled Tribes candidates. The rest of the conditions in terms of Rule 5(3) and (4) as well as the proviso to Rule 7(g) of the Rules of 1994 shall remain unaltered. The same shall be subject to further orders of this Court. The High Court shall issue a corrigendum to the said effect."

(c) The prayer made in W.P.No.30256 of 2023 (Shivani Sonkar and others vs. State of Madhya Pradesh and another) is as follows:-

> *(i) That, this Hon'ble Court may kindly be pleased to issue a writ of mandamus to direct respondents to produce entire record pertaining to the instant subject matter, in the interest of justice.*
>
> *(ii) That this Hon'ble Court may kindly be pleased to issue a writ in the nature of certiorari to declare Clause 7(G) of Proviso of M.P. Judicial Service (Recruitment & Condition) Rules, 1994 contained in Annexure P/1 with respect to 'Eligibility' criteria as well as Clause 1(Ga) of Advertisement dt. 17.11.23 contained in Annexure P/2 as ultra vires to Articles 14 & 16 of the Constitution of India.*
>
> *(iii) That this Hon'ble Court may kindly be pleased to issue a writ of mandamus directing the respondents to grant permission to the petitioner to appear in Civil Judge Junior Division (Entry Level) 2022 on the basis of marks secured by them in their B.A. LL.B. & LL.B. Final Year without influencing Clause 7(G) of Proviso of M.P. Judicial Service (Recruitment & Condition) Rules, 1994 in the interest of justice.*
>
> *(iv) Any other relief which deems fit and proper looking to facts and circumstances of the case may also be awarded in favour of the petitioner with cost of the petition."*

(d) An interim order dated 12.12.2023 was granted in favour of the petitioner, which reads as follows:-

> *"5. We have considered the rule. The rule indicates that the students should have cleared all the exams in the first attempt. According to the petitioner, she has already written those exams and has secured the minimum as required. Therefore, we are of the prima facie view that the apprehension of the third petitioner may not be appropriate. The requirement of the proviso is that she should have passed all exams in the first attempt. Her claim is that she has done so. It is in the peculiar facts of this case there is a change of University and as a result of which she has to take additional exams. She claims to have passed all exams in the first attempt. It is suffice if she has passed all the exams in the first attempt. Therefore, in case, she makes an application for the post of Civil Judge Junior Division (Entry Level), 2022, respondent No.2 to consider her case in accordance with the rules and while considering this order to the effect that if she has*

passed all the exams in the first attempt that should satisfy the requirement of passing the exams in the first attempt irrespective of the change of University and subject to other compliances."

(e) The prayer made in W.P. No.30857 of 2023 (Aashutosh Shrivastava and another vs. State of Madhya Pradesh and another) is as follows:-

"(i) That, this Hon'ble Court may kindly be pleased to issue a writ of mandamus to direct respondents to produce entire record pertaining to the instant subject matter, in the interest of justice.

(ii) That this Hon'ble Court may kindly be pleased to issue a writ in the nature of certiorari to declare Clause 7(G) of Proviso of M.P. Judicial Service (Recruitment & Condition) Rules, 1994 contained in Annexure P/1 with respect to 'Eligibility' criteria as ultra vires to Articles 14 & 16 of the Constitution of India.

(iii) That this Hon'ble Court may kindly be pleased to issue a writ in the nature of certiorari to quash the Khand "Ga Eligibility sub clause (Ga)" and-Note (4) of Advertisement dt. 17.11.2023 contained in Annexure P/2 with respect to submitting 18 Order-Sheets evidencing continuous 3 years practice as an Advocate, declaring it as inconstant with Clause 7(G) of Proviso of M.P. Judicial Service (Recruitment & Condition) Rules, 1994 contained in Annexure P/1, in the interest of justice.

(iv) That this Hon'ble Court may kindly be pleased to issue a writ of mandamus directing the respondents to grant permission to the petitioners to appear in Civil Judge Junior Division (Entry - Level) 2022 on the basis of marks secured by them in their B.A. LL.B. & LL.B. Final Year without influencing Khand "Ga Eligibility sub-clause (Ga)" and Note (4) of Advertisement dt.17.11.2023 contained in Annexure P/2 with respect to submitting 18 Order-Sheets evidencing continuous 3 years practice as an Advocate, as the same is inconstant with Clause 7(G) of Proviso of M.P. Judicial Service (Recruitment & Condition) Rules, 1994 contained in Annexure P/1, in the interest of justice.

(v) Any other relief which deems fit and proper looking to facts and circumstances of the case may also be awarded in favour of the petitioner with cost of the petition."

10. Shri Swapnil Khare, learned counsel appears for the petitioner in W.P. No.29901 of 2023 (Garima Khare vs. State of Madhya Pradesh and another) wherein the following prayer is made:

"1. That this Hon'ble Court be pleased to set aside the amendment in Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules 1994 notified in Madhya Pradesh Gazette Dated 23.06.2023 Annex. P/4 in so far as it incorporates the stipulation under its proviso of having pass all the subjects with an aggregate of at least 70% marks and that too in first attempt as dilution of requirement of practice as an advocate for not less than 3 years on the last date fixed for submission of the application.

2. To give direction to the respondents to amend again the clause 7(g) of the said with the words graduate and post graduate with the degree of LL.M.

3. That, this Hon'ble court may kindly be pleased to issue a writ in the nature of certiorari to quash the M.P. Judicial Service (Recruitment & condition of service) Rules, 1994 amendment published in M.P. Gazette Part 4(Ga) dated 23.06.2023 and declare ultra vires to the article 14, 16, 19, 21(A), 234 of the constitution of India in the interest of justice.

4. Any other relief(s) that this Hon'ble Court deems just and proper in the case."

11. Shri Arpit Kumar Oswal, learned counsel appears for petitioner in W.P.No.30431 of 2023 (Abhishek Panchal vs. State of Madhya Pradesh and another). The prayer made is as follows:-

"7.1 That a writ, direction or order in the nature of Mandamus or any other writ which this Hon'ble Court may deem fit be issued calling for the record pertaining to this matter from the respondent for the kind perusal of this Hon'ble Court.

7.2 That a writ, direction or order in the nature of certiorari or any other writ which this Hon'ble Court may deem fit be issued thereby quashing and setting aside Clause 1 (c) of

Part-C and Clause A-7(3) of Part-F of the Advertisement No.113/EXAM/CJ/2022 dated 17.11.2023 (Annexure P/1) and necessary directions may kindly be issued to the respondent no. 2 to permit the petitioner to appear in the examination of the Civil Judge (Entry Level).

7.3 That a writ, direction or order in the nature of certiorari or any other writ which this Hon'ble Court may deem fit be issued thereby striking down Sub-Rule 3 & 4 of Rule 5 and Proviso to Rule 7 (g) of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 which were inserted vide Amendment Act of No. 25 of 2023.

7.4 This petition be allowed with costs."

12. Ms. Sakshi Pawar appears as party-in-person in W.P.No.30454 of 2023 (Sakshi Pawar vs. State of Madhya Pradesh and another). The prayer made is as follows:-

"A. Issue a writ of Mandamus or any other appropriate writ, order, or direction to declare that Rule 7(g) of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 and more particularly the proviso of that Rule is ultra vires the Constitution of India;

B. Declare as invalid and ineffective the Gazette Notification (F.No.3106/XXI-B(One)/2023) to amend the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 insofar as it incorporates the proviso to Rule 7(g) of the aforesaid Rules;

C. Declare as invalid and ineffective advertisement No.113/Pariksha/CJ/2022 dated 17.11.2023 Annexure P/9 issued by the respondent No.2 to the extent that it mandates the qualification of having aggregate 70% marks without ATKT or three years of continuous practice as advocate with minimum six orders or judgments having candidate's name as an advocate.

D. To grant any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

13. None appears for the petitioner in W.P.No.30465 of 2023 (Ayush Yardi vs. State of Madhya Pradesh and another). However, since the

subject matter involved is similar, we have considered the same. The prayer made is as follows:-

> *"(i) Issue a writ in the nature of certiorari by quashing the proviso appended to Rule 7 of the Madhya Pradesh Judicial Services (Recruitment and Conditions of Service) Rules, 1994:*
>
> *(ii) That this Hon'ble Court may further be pleased to issue a writ in the nature of mandamus by directing the respondents to permit the respondents to give relaxation of proviso of Rule 7 to the petitioner.*
>
> *(iii) Issue any other writ/order/direction as this Hon'ble Court may deem it proper.*
>
> *(iv) Cost of the petition."*

14. Shri Anuj Shrivastava, learned counsel appears in W.P.No.30550 of 2023 (Subhasni Dwivedi vs. State of Madhya Pradesh and others). The prayer made is as follows:-

> "*(i) To either declare ultra vires or to read down Rule 7 of Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 to hold that the condition of "having passed all exams in one attempt" would only apply to subjects of law and not to ancillary subjects in 5 years law course for LL.B.;*
>
> *(ii) To issue a writ of mandamus and set aside part of Khand Ga of the advertisement dated 17.11.2023 (Annexure P6) which states as follows "विधि मे पांच/तीन वर्षीय पाठियक्रम में उत्कृष्ट शैक्षणिक कैरियर के साथ कोई असाधारण विधि स्नातक जिसने समस्त परीक्षओ में प्रथम प्रयास मे एवं किसी भी सेमेस्टर/वर्ष में बिना पूरक परीक्षा दिये अथवा बिना ATKT के",*
>
> *In alternative,*
>
> *(iii) To issue a writ of mandamus and direct the respondents to consider the petitioner as eligible under Rule 7 of Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994, as amended, and advertisement dated 17.11.2023 (Annexure P6) for appearing as a fresh law graduate in the Civil Judge, Junior Division (Entry Level) Exam-2022;*

(iv) Grant any other relief that this Honourable Court deems fit and just in the facts and circumstances of the case."

15.(a) Shri Arun Pandey, learned counsel appears in W.P. No.30727 of 2023 (Sahil Khan Behna and others vs. State of Madhya Pradesh and another), wherein the following prayer is made:-

"i. That, this Hon'ble Court may set aside the amendment in Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 vide F.No. 3106/XXI-B(one)/2023 published in the Madhya Pradesh Gazette dated 23.06.2023, so far it incorporates the stipulation under its proviso of having passed all the subject with an aggregate of at least 70% marks in the case of General Category and 50% in the case of SC/ST Category that too in first attempt as a dilution on requirement practice as an advocate for not less than 3 years on the last date fixed for submission of the application.

ii. Any other relief(s) that this Hon'ble Court deems just and proper in the case."

(b) He also appears for the petitioner in W.P. No.30740 of 2023 (Vanshika Jain and others vs. State of Madhya Pradesh and another) wherein the following prayer is made:-

"i. *That, this Hon'ble Court may set aside the amendment in Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 vide F.No. 3106/XXI-B(one)/2023 published in the Madhya Pradesh Gazette dated 23.06.2023, so far it incorporates the stipulation under its proviso of having passed all the subject with an aggregate of at least 70% marks in the case of general category and that too in first attempt as a dilution on requirement of practice as an advocate for not less than 3 years on the last date fixed for submission of the application.*

ii. Any other relief(s) that this Hon'ble Court deems just and proper in the case."

(c) He also appears for the petitioner in W.P.No.30787 of 2023 (Harendra Singh Tomar and another vs. State of Madhya Pradesh and others). The prayer made therein is as follows:-

> *"I. That, by issuance of writ in the nature of Certiorari, Hon'ble Court be pleased to quash the advertisement dated 17.11.2023 (Annexure P-1).*
>
> *II. That, by issuance a writ in the nature of Mandamus Hon'ble Court may be pleased to direct the respondents to give the benefit of EWS reservation to the candidates appearing pursuant to advertisement dated 17.11.2023 (Annexure P-1).*
>
> *III. That, any other relief, direction or order which this Hon'ble Court may deem fit and proper in the circumstances of the case."*

16.(a) Shri Vijay Raghav Singh, learned counsel appears for the petitioner in W.P.No.31087 of 2023 (Sampat Kumar Kushwaha and others vs. The Hon. High Court of Madhya Pradesh Principal Seat at Jabalpur and another) wherein the following prayer is made:-

> *"(i) Issue a Writ of Certiorari or any other writ and quash and set-aside the aforementioned impugned criteria as provided for in Rule 7[g] of the Rules of 1994 as introduced vide Gazette notification date 22 June 2023.*
>
> *(ii) Issue a Writ of Certiorari or any other writ and quash and set-aside the aforementioned Note [4] mentioned below Clause [1] (Eligibility) of the Advertisement date 17-Nov-23, as well as clause 1-ga (Khand ga) of the advt.*
>
> *(iii) Issue a writ of prohibition and restrain the Respondents from holding the examination in pursuance of the aforesaid Advertisement date 17-Nov-23, based on the impugned Rule 7[g] of the Rules of 1994 as introduced vide Gazette notification date 22 June 2023.*
>
> *(iv) Consequently, issue a Writ of Mandamus or any other Writ and direct the Respondents to consider the case of the Petitioners without being influenced by the said impugned Criteria and Rules".*

(b) He also appears for the petitioner in W.P.No.31208 of 2023 (Gulnisha Khan vs. The Hon. High Court of Madhya Pradesh Principal Seat at Jabalpur and another), wherein the following prayer is made:-

> *"i. Issue a Writ of Certiorari or any other writ and quash and set-aside the aforementioned impugned criteria as provided for in Rule 7[g] of the Rules of 1994 as introduced vide Gazette notification date 22 June 2023 Annexure P/1.*
>
> *ii. Issue a Writ of Certiorari or any other writ and quash and set-aside the aforementioned Note [4] mentioned below Clause [1] (Eligibility) of the Advertisement date 17-Nov-23, as well as clause 1-ga (Khand ga) of the advt.*
>
> *iii. Issue a writ of prohibition and restrain the Respondents from holding the examination in pursuance of the aforesaid Advertisement date 17-Nov-23, based on the impugned Rule 7 [g] of the Rules of 1994 as introduced vide Gazette notification date 22 June 2023.*
>
> *iv. Consequently, issue a Writ of Mandamus or any other Writ and direct the Respondents to consider the case of the Petitioners without being influenced by the said impugned Criteria and Rules"*

17. None appears for the petitioner in W.P.No.31152 of 2023 (Rohit Singh vs. State of Madhya Pradesh and others). However, since the subject matter involved is similar, we have considered the same. The prayer made therein is as follows:-

> *(i) This Hon'ble Court may kindly be pleased to declare the amended qualification/eligibility portion of M.P. Judicial Service (Recruitment & Condition) of Service Rules, 1994 (Annexure P-2) Notification Date 23.6.23 as ultra vires and as such portion be ordered to be deleted or be substituted.*
>
> *(ii) Issue a writ of mandamus and direct the respondents to produce entire record pertaining to the instant subject matter, in the interest of justice.*
>
> *(iii) Issue a writ of mandamus and direct the respondents to command the respondents to promptly modify the qualification/eligibility portion of M.P. Judicial Service (Recruitment & Condition) of Service Rules, 1994 (Annexure P-2).*

(iv) Any other relief which this Hon'ble Court and the petitioner entitled be also granted.

(v) Cost of the petition."

18.(a) Shri Siddharth Gupta, learned counsel appears for petitioners in W.P.No.30653 of 2023 (Neha Kothari and others vs. The Hon. High Court of Madhya Pradesh Principal Seat at Jabalpur and another) wherein the following prayer is made:-

"(i) Issue a Writ of Certiorari or any other writ and quash and set-aside the aforementioned impugned criteria as provided for in Rule 7[g] of the Rules of 1994 as introduced vide Gazette notification dt. 22 June 2023.

(ii) Issue a Writ of Certiorari or any other writ and quash and set-aside the aforementioned Note [4] mentioned below Clause [1] (Eligibility) of the Advertisement dt. 17-Nov-23, as well as clause 1-ga (Khand ga) of the advt.

(iii) Issue a writ of prohibition and restrain the Respondents from holding the examination in pursuance of the aforesaid Advertisement dt. 17-Nov-23, based on the impugned Rule 7 [g] of the Rules of 1994 as introduced vide Gazette notification dt. 22 June 2023.

(iv) Consequently, issue a Writ of Mandamus or any other Writ and direct the Respondents to consider the case of the Petitioners without being influenced by the said impugned Criteria and Rules."

(b) By an interim order dated 12.12.2023, it was ordered as follows:-

"5. Prima facie, we are of the view that the insistence of having six appearances as pointed out in the advertisement may not be insisted upon by the respondents while scrutinizing the applications of the candidates. The intention of the respondents would appear to be to find out if the candidate is in continuous practice or not. To this account, any material may be produced to establish the same and not necessarily six appearances. However, it is for the authorities to consider the same at an appropriate stage. The question of appearance or otherwise, is a matter to be considered by the respective authorities in order to find out whether the candidate has appeared in the court or not. Therefore, we direct that the application be considered even if

there is no material to indicate that he has not put in six appearances in the court subject to other compliances."

(c) Thereafter, the very petitioners filed SLP (Civil) Diary No.52322 of 2023 (Neha Kothari and another vs. The High Court of Madhya Pradesh and others), wherein the Hon'ble Supreme Court passed an order dated 15.12.2023 as follows:-

"Permission to file Special Leave is granted.

Heard Mr. Siddharth R. Gupta, learned counsel for the petitioners.

The counsel submits that the amendment to the Madhya Pradesh Judicial Services (Recruitment and Conditions of Services) Rules, 1994, putting in place the fresh eligibility criteria of continuous practice as an Advocate for not less than three years was the subject matter of the challenge in the Writ Petition No. 30653 of 2023.

He submits that the Writ Petition was deferred to January, 2024 but in the meantime, the last date for filling in forms expires on 18.12.2023. Accordingly, it is argued that the petitioners should be permitted to fill their forms and to offer their candidature in pursuant to the advertisement dated 17.11.2023.

Issue notice, limited to permitting the petitioners to apply and appear in the recruitment test, subject to the determination of the contention made by the High Court in the pending Writ Petition No.30653/2023. Notice is made returnable in three weeks.

In the meantime, both petitioners are permitted to offer their candidature in response to the advertisement dated 17.11.2023. But this interim order does not mean determination of their eligibility, in response to the advertisement.

As the first date of examination is scheduled on 14.01.2024, the results for the petitioners should be kept in a sealed cover."

19. Some of the candidates namely Monika Yadav and others filed W.P. (Civil) No.1380 of 2023 (Monika Yadav and others vs. High Court of Madhya Pradesh and another) before the Hon'ble Supreme Court

seeking to challenge the Rules etc. The Hon'ble Supreme Court on 15.12.2023 passed an order as follows:-

> *"Learned senior counsel appearing for the petitioners seeks permission to withdraw these Writ Petitions with liberty to approach the High Court to challenge the vires of Rule 7(g) of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994.*
>
> *The prayer made is not opposed by the other side and seems reasonable. Therefore, the Writ Petitions are disposed of as withdrawn with liberty as prayed for."*

20. Various contentions have been urged by the petitioners in their respective cases. Even though the ground of attack is similar in most cases, certain additional reliefs have been sought for in other writ petitions. Therefore, the contentions as raised by the petitioners would be considered in totality.

21.**(a)** The first contention urged is that the impugned amendment has been made without a clarification being sought, from the Hon'ble Supreme Court, as stated in para 40 of the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247. That without seeking a clarification from the Hon'ble Supreme Court, the impugned amendment is bad in law.

(b) Further, that the directions issued by the Hon'ble Supreme Court in the aforesaid judgment vide para 32, have not been followed. The Hon'ble Supreme Court directed that it shall not be mandatory for a candidate to have a three years practice as an advocate in order to compete for the exam. The same has been violated through the impugned amendment.

(c) That the impugned amendment requiring a candidate to secure 70% marks in aggregate in the first attempt is unconstitutional. It violates

Articles 14, 16 and 19(1)(g) of the Constitution of India. That different universities grant different marks to their students. That there are some universities which are liberal while others are not. Therefore, to consider the marks of the candidates without considering the background of the university from which they come from vis-à-vis other universities, is bad in law.

(d) That by virtue of the impugned amendment the same would have a retrospective/retroactive effect. That in case the students had known that they have to obtain 70% marks in aggregate, they would have studied better to obtain the said marks. However, since by the impugned rule, the marks obtained by the student throughout his law degree are taken into consideration, the same would act as a detriment.

(e) That the impugned amendment has no nexus with the object sought to be achieved. That the requirement of securing 70% marks in aggregate, in the first attempt, has no nexus with the object of selecting the best candidates. Even though the candidate may not have secured 70% marks in aggregate, he may be a brilliant candidate who would be denied an opportunity of competing in the exam, because of this requirement.

(f) That Note (4) of Clause (1) of Part C of the advertisement dated 17.11.2023 issued by the respondent is not capable of compliance and hence is bad in law. There are many cases where the candidate would have argued before the court, but, however their name would not be reflected in the order sheets for various reasons. Due to the requirement of six order sheets for one year, even though a candidate has put in a number of appearances, he would be denied an opportunity of participating in the exam.

(g) That Sub-rules (2), (3), (4), (5), (6) and (7) of Rule 5 of the Rules of 1994 are unconstitutional. That no procedure has been envisaged for

the conduct of the examination. That the relaxation in the marks have not been provided to the OBC candidates. That the requirement of obtaining 40% marks in the viva-voce/interview being mandatory, is opposed to law. That the impugned amendment infringes Clause (9) of Articles 338, 338A and 338B of the Constitution of India. That the respective National Commission for Scheduled Castes, National Commission for Scheduled Tribes and National Commission for Other Backward Classes having not been consulted, leads to vitiating the impugned amendment.

(h) That the examination to be conducted for the posts of Civil Judge, Junior Division (Entry Level) has to be done by the Madhya Pradesh Public Service Commission. However, in the instant case, the same is being done by the High Court, which is contrary to law and hence is liable to be set aside.

(i) That no reservation has been provided for candidates belonging to economically weaker section of the society, namely, EWS candidates.

(j) That the rule is silent with regard to candidates who possess a post graduation in law. The requirement of the rule is only a graduate in law, however a post graduate student, is not mentioned in the said rule.

(k) That reasons have to be assigned as to why the amendment has been brought about. In order to assign reasons, data would have to be produced to indicate the reasons for bringing about the impugned amendment. There is no data to satisfy the impugned amendment.

(l) That the impugned amendment fails to satisfy the balancing and necessity test and also that it is not proportionate.

(m) That one of the requirements is that a candidate should be a law graduate. There is no distinction made between a graduate who has undertaken the course of five years or three years. There is a difference

between these two graduates, which has not been considered in the impugned amendment.

(n) That no reservation has been provided for candidates belonging to OBC, SC and ST categories at the preliminary stage.

22. No reply has been filed by the State. They, however, submit that they adopt the objections and arguments of the learned counsel appearing for the High Court. Therefore, the objections submitted by the High Court are taken into consideration.

23.**(a)** The learned counsel for the High Court/respondent disputes the claim of the petitioners. He submits that the impugned amendment cannot be said to violate Articles 14, 16 and 19(1)(g) of the Constitution of India. That the contention of the petitioners that para 40 of the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247 has been violated, cannot be accepted. That the High Court need not have sought any clarification in view of the fact that, no deviation is sought to be made by the High Court. The contention that various universities grant different marks to the candidates cannot be accepted in view of the fact that, a candidate should be meritorious irrespective of the institution from which he graduates. The contention that the impugned amendment has a retrospective effect cannot be accepted. That the impugned amendment is only prospective in nature and in no way can be said to be retrospective. It is effective from the date of publication and not from an earlier date.

(b) The contention that the impugned amendment has no nexus with the object sought to be achieved cannot be accepted. The object sought to be achieved is to enhance the quality of justice for the litigants. That by virtue of the impugned amendment, the requirement of an outstanding

law graduate with a brilliant academic career has a direct nexus with the quality of judgments to be delivered. If quality judgments are delivered, quality justice will enure to the litigants. Therefore, the impugned amendment has a direct nexus with the object sought to be achieved. So far as Note (4) of Clause (1) of Part C of the advertisement dated 17.11.2023 is concerned, the same is intended only for the purpose to find out as to whether the candidate has practised for the particular years claimed by him or not. Therefore, it is valid.

(c) The contention that sub-rules (2), (3), (4), (5), (6) and (7) of Rule 5 of the Rules of 1994 are unconstitutional cannot be accepted. The procedure and curriculum for holding the examinations, viva voce and interview has been approved by the High Court and hence there is no violation, which can be complained of.

(d) That the relaxation of marks for OBC has not been provided for under the relevant Rules and therefore, the same cannot be considered as violation of any Rule or Act.

(e) With regard to sub-rule (5) of Rule 5 of the Rules of 1994 of obtaining 40% marks in the viva-voce/interview, is an issue that is no more *res integra* in view of the various judgments of the Hon'ble Supreme Court.

(f) The further contention that the amended Rule infringes Clause (9) of Articles 338, 338A and 338B of the Constitution of India cannot be accepted. The said provision is relatable only for policy decisions. There is no policy decision that has been taken by the High Court and therefore, there is no infraction of Clause (9) of Articles 338, 338A and 338B of the Constitution of India. The examinations are being conducted by the High Court in pursuance to the judgment of the Hon'ble Supreme

Court in the case of Malik Mazhar Sultan (3) and another vs. Uttar Pradesh Public Service Commission and others reported in (2008) 17 SCC 703. The same has since been approved and has become a regular practice in the High Court. Therefore, the plea that the examinations should be conducted by the Madhya Pradesh Public Service Commission runs contrary to the directions of the Hon'ble Supreme Court in the case of Malik Mazhar Sultan (supra).

(g) The contention that no reservation is provided to EWS candidates cannot be accepted. A reservation to any category is granted under the relevant rules. Under the Rules of 1994, no reservation has been provided to the EWS candidates. Therefore, since the rules do not provide for reservation, no reservation has been provided. A reservation cannot be provided beyond what the rules state. Therefore, the said contention cannot be accepted.

(h) With regard to the Rules being silent pertaining to the candidates who are post graduate students, cannot be accepted. The requirement of the rule is that one should be an outstanding law graduate with a brilliant academic career. It does not speak of any leverage being granted for candidates who have completed their post graduation. The Rules are very clear to the effect that one has to be a law graduate and has secured 70% marks in aggregate in the first attempt. Only because the candidate possesses a higher degree, does not entail any relaxation to him. It is ultimately for the employer to determine the manner in which the qualification has to be prescribed and the same cannot be interfered with by the Court.

(i) With regard to non-compliance of para 40 of the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247, it is

submitted that no clarification was required as stated in para 40 of the said judgment of the Hon'ble Supreme Court. In terms whereof, it was held that any clarification that may be required should be sought for, only from the Hon'ble Supreme Court, which is not applicable to the case on hand. There is no clarification that was required. In para 32 of the said judgment, it was directed that the High Court and the State Government shall amend the rules so as to enable a fresh law graduate, who may not even have put in three years of practice, to be eligible to compete and enter the judicial service. In terms of the impugned amendment, a fresh law graduate has not been debarred from competing in the exam. It was also directed therein that it shall no longer be mandatory for an applicant desirous of entering the judicial service to be an advocate with three years of practice. A reading of the impugned amendment would clearly indicate that being an advocate with three years practice is not mandatory. It is optional. Therefore, the candidates have an option to choose the source from which they are applying. It is no more mandatory to have an active practice of three years. Furthermore, a fresh law graduate has also been permitted. If there is any deviation in the same, only then para 40 of the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247 would come into operation. Since no clarification was required, the contention of the petitioners that the clarification has not been obtained, cannot be accepted.

(j) The further contention that the impugned amendment has been brought about without any data, cannot be accepted. The impugned amendment has not been brought about on the basis of any data. The impugned amendment has been brought about in order to enhance the quality dispensation of justice. The impugned amendment seeks to

enhance the quality of the candidates who would be eligible to be appointed. It is the intent of the High Court that outstanding graduates with a brilliant academic career would lead to the qualitative dispensation of justice. Therefore, for this purpose, the question of collection of any data, that would sustain the impugned amendment, cannot be accepted.

(k) The contention that the law graduates who have completed a five years course are different from those who have completed a three years course in law is misplaced. Neither in the Advocates Act nor in the Bar Council of India Rules is there any distinction between law graduates who have undergone a five years course or a three years course. Hence, the said contention cannot be accepted.

24. Various judgments have been relied upon by the learned counsels on both sides in support of their respective cases. They shall be considered at appropriate stages.

25. Heard learned counsels.

26. Based on the contentions urged, the following points arise for consideration in these petitions:

I. Validity of the proviso to Rule 7(g) of the amended Rules of 1994;

I.A Non-compliance of para 40 of the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247;

I.B The requirement of securing 70% marks in aggregate violates Articles 14, 16 and 19(1)(g) of the Constitution of India;

I.C That the candidate should have cleared all exams in the first attempt, is arbitrary, unfair and unreasonable;

I.D The impugned amendment has no nexus with the object sought to be achieved;

I.E The impugned amendment is retroactive/retrospective;

I.F The impugned amendment fails to satisfy the balancing and necessity test and also that it is not proportionate;

I.G That there is no data supporting the amendment;

I.H Distinction between a five year and a three year law graduate.

II. Note (4) of Clause (1) of Part C of the advertisement dated 17.11.2023 is arbitrary;

III. Sub-rules (2), (3), (4), (5), (6) and (7) of Rule 5 of the Rules of 1994 are unconstitutional;

IV. Rules do not provide for reservation for candidates belonging to OBC, SC and ST categories at the preliminary stage;

V. That the amended Rule infringes Clause (9) of Articles 338, 338A and 338B of the Constitution of India, since the statutory Commissions have not been consulted;

VI. Examination to be conducted by the Madhya Pradesh Public Service Commission;

VII. Reservation to EWS candidates;

VIII. Rule regarding postgraduate candidates;

27. Therefore, we shall consider each one of the grounds as follows:-

I. <u>Validity of the proviso to Rule 7(g) of the amended Rules of 1994</u>:

28.(a) Before adverting to the contentions raised, it would be relevant to notice the history of the legislation, with regard to the requirement of a practice period or a fresh law graduate to be eligible to apply for the post of Civil Judge Junior Division (Entry Level).

(b) When the Constitution of India was enacted on 26.11.1949, Madhya Pradesh was shown at Serial No.4 in Part-A of the First Schedule to the Constitution of India. Certain areas of the present States of Madhya Pradesh, were shown at Serial No.3 as Madhya Bharat and Serial No.9 as Vindhya Pradesh in Part-B and Bhopal at Serial No.2 in Part-C of the First Schedule to the Constitution of India.

(c) By virtue of the reorganization of the States under the States Reorganization Act, 1956, in terms of Section 9, a new Part-A State to be known as the State of Madhya Pradesh was constituted comprising of the territories mentioned therein. Some of the territories ceased to form part of the erstwhile State of Madhya Pradesh and some territories of Madhya Bharat, Vindhya Pradesh and Bhopal were included in the newly constituted State of Madhya Pradesh. Hence, the present State of Madhya Pradesh with its boundaries came into effect w.e.f. 01.11.1956.

(d) By the notification dated 22.02.1951, the Madhya Pradesh Judicial Service (Constitution, Recruitment and Conditions of Service) Rules, 1950 were promulgated. Rule 3 of Part-II of the said Rules reads as follows:-

P A R T. II.

Recruitment and Conditions of Service of Junior Branch.

3. The rules promulgated under Judicial Department Notification No.784-1303-XIX-40 and 945-1303-XIX of 40 dated the 7th May, 1941 and 7th June 1941, respectively regarding recruitment, etc., to the Madhya Pradesh Civil Service (Judicial) as in force from time to time shall apply to the Junior Branch.

Therefore, the Rules that were promulgated under the aforesaid Judicial Department Notifications dated 07.05.1941 and 07.06.1941 were made applicable so far as the Civil Judges is concerned.

29.(a) Prior to the reorganization of the States, by the notification dated 21.03.1956, the Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955 were promulgated. In terms of Rule 32 thereof, the Madhya Pradesh Judicial Service (Constitution, Recruitment and Conditions of Service) Rules, 1950 were superseded. Rule 19 of Part-III, Chapter-C of the said Rules of 1955 provided for the recruitment and conditions of service of Civil Judges, which reads as follows:-

"C.- Recruitment and Conditions of Service of Civil Judge

19. No person shall be eligible for appointment as a Civil Judge unless he-

(a) is a citizen of India;

(b) is graduate of Law of any University incorporated by a Central Act or an Act of the Legislature of any State in India or of any other University recognized by State Government or a Barrister-at-law or a Member of the

Faculty of Advocates in Scotland or an Attorney on the rolls of any High Court in India.

(c) ***he practiced at the Bar for not less than three years;***

(d) has a thorough knowledge of, and possesses ability to read and write with facility the written character of either Hindi or Marathi;

(e) is of good moral character;

(f) is not over 30 years of age or, if he is a member of any of the Castes or tribes specified in the Constitution (Schedule Castes) Order, 1950 or the Constitution (Scheduled Tribes) Order, is not over 32 years of age; and

(g) is of sound health, good physique and active habits, and has been successfully vaccinated against, or has had smallpox."

(b) Thereafter, the Madhya Pradesh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994 were promulgated and published in the official gazette on 24.12.1994. The eligibility for appointment by direct recruitment to the post of Civil Judges was provided in Rule 7, which reads as follows:-

"7. Eligibility- No person shall be eligible for appointment by direct recruitment to posts in category (i) of Rule 3(1) unless:

(a) he is a citizen of India;

(b) he has attained the age of 25 years and not completed the age of 35 years on the first day of January of the year in which applications for appointment are invited:

Provided that the upper age limit shall be relaxable upto a maximum of five years if a candidate belongs to Scheduled Castes, Scheduled Tribes or Other Backward Classes:

Provided further that the upper age limit of a candidate who is a Government Servant (whether permanent or temporary) shall be relaxable upto 38 years;

(c) he possesses a degree in law of any recognised University;

> ***(d) he has practised as an advocate for not less than 3 years on the first day of January of the year in which applications for appointment are invited;*** *and*
>
> *(e) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment."*
>
> ***(emphasis supplied)***

(c) In terms of Rule 20, all the previous rules corresponding to the said rules, orders and resolutions were repealed.

(d) Sub-rules (b) and (d) of Rule 7 were amended in 1997 vide Madhya Pradesh Gazette dated 19.12.1997, which reads as follows:-

> *"(b) he has attained the age of 25 years and not completed the age of 35 years on the first day of January of the next following year in which applications for appointment are invited;*
>
> *Provided that the upper age limit shall be relaxable up to a maximum of five years if a candidate belongs to Scheduled Castes, Scheduled Tribes or Other Backward classes;*
>
> *Provided further that the upper age limit of a candidate who is a Government Servant (whether permanent or temporary) shall be relaxable up to 38 years;*
>
> *** *** ***
>
> *(d)* ***he has practised as an Advocate for not less than 3 years on the last date fixed for submission of application for appointment, and"***
>
> ***(emphasis supplied)***

(e) Subsequent to the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247, an amendment was brought about to the Madhya Pradesh Judicial Service (Recruitment and Conditions of Services) Rules, 1994. The requirement of having practised as an advocate for not less than three years on the last date fixed for submission of application for appointment was deleted. It was substituted with the clause of possessing a degree of law from any recognized university. The

eligibility rule was amended vide notification dated 05.11.2005, which reads as follows:-

> *"7. Eligibility: No person shall be eligible for appointment by direct recruitment to posts in category (i) of Rule 3 (1) unless:-*
>
> *(a) he is a citizen of India;*
>
> *(b) he has attained the age of 21 years and not completed the age of 35 years on the first day of January of the next following year in which applications for appointment are invited;*
>
> *Provided that the upper age limit shall be relaxable up to a maximum of three years if a candidate belongs to Schedule Castes, Schedule Tribes or Other Backward classes;*
>
> *Provided further that the upper age limit of a candidate who is a Government Servant (whether temporary or permanent or temporary) shall be relaxable up to 38 years;*
>
> ***(c) he possesses, a degree in Law of any recognized University;***
>
> *(d) he has good character and is of sound health and free from any bodily defect, which renders him, unfit for such appointment."*

(f) The said rule was again amended vide notification dated 08.03.2006 published in the Gazette (Extraordinary) on 08.03.2006, which reads as follows:-

> *"7. Eligibility: No person shall be eligible for appointment by direct recruitment to posts in category (i) of Rule 3 (1) unless:-*
>
> *(a) he is a citizen of India;*
>
> *(b) he has attained the age of 21 years and not completed the age of 35 years on the first day of January of the next following year in which applications for appointment are invited;*
>
> *Provided that the upper age limit shall be relaxable up to a maximum of three years if a candidate belongs to Schedule Castes Schedule Tribes or Other Backward classes;*
>
> *Provided further that the upper age limit of a candidate who is a Government Servant (whether permanent or temporary) shall be relaxable up to 38 years;*
>
> *Provided further that upper age limit of a candidate shall be relaxable by appropriate number of years, if no recruitment*

takes place for one year or more, to the Madhya Pradesh Lower Judicial Service.

(c) he possesses, a degree in Law of any recognized University;

(d) he has good character and is of sound health and free from any bodily defect, which renders him, unfit for such appointment."

(g) Having realized that the judgment in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247 should be clearly and appropriately applied in letter and in spirit, it was felt necessary to amend the rule to bring it in consonance with para 32 of the said judgment. Therein while accepting the recommendations of the Shetty Commission, it was held that it is not mandatory for an applicant to have three years of practice and further a fresh law graduate who had not put in three years of practice was also entitled to compete in the exam. Consequently, each and every law graduate was entitled to compete for the exam. Law graduates, who had managed to just pass the law degree, were also appearing in the exam. However, that was neither the intent nor the purport of the directions issued by the Hon'ble Supreme Court in para 32 of the judgment. The recommendation of the Shetty Commission was that it is no longer mandatory to be an advocate with three years practice and that young and brilliant law graduates with a brilliant academic career should also be permitted to participate in the exam. The judgment of the Hon'ble Supreme Court was not being properly applied or one could also say that it was being misread to the advantage of certain candidates, since by virtue of the unamended provision, non-meritorious law graduates were entitled to apply. Therefore, the instant impugned rule was brought about, to effectively implement para 32 of the judgment of the Hon'ble Supreme Court. It is also relevant to notice that what was done away by the Shetty

Commission report and the judgment of the Hon'ble Supreme Court, is that it was no longer **mandatory** for a candidate to have a practice for three years. It did not deny the opportunity to a candidate who has practised for three years to compete in the exam. Therefore, the impugned rule was amended by giving an option to the candidates to the effect that they could apply, if they had put in three years of practice at the Bar, which was originally the rule, or in the alternative, could apply as an outstanding law graduate with brilliant academic career having secured 70% marks in aggregate in the first attempt in the case of General and OBC categories and 50% marks in aggregate in the case of Scheduled Castes and Scheduled Tribes category in the 5 or 3 years of law degree course. Therefore, the instant amendment was brought about, which was published in the Madhya Pradesh Gazette on 23.06.2023. The relevant rule reads as follows:-

> *"7. Eligibility.-*
>
> *No person shall be eligible for appointment by direct recruitment to the posts in category (i) of Rule 3(1) unless:-*
>
> *(a)* *** *** ***
>
> *(b)* *** *** ***
>
> *(c)* *** *** ***
>
> *(d)* *** *** ***
>
> *(e)* *** *** ***
>
> *(f)* *** *** ***
>
> ***(g) he possesses a Bachelor Degree in Law from a university recognized by the Bar Council of India:***
>
> ***Provided that he has practiced continuously as an advocate for not less than 3 years on the last date fixed for submission of the application.***
>
> ***Or***
>
> ***An Outstanding law graduate with a brilliant academic career having passed all exams in the first attempt by securing at least 70% marks in the aggregate, in the case of General and Other Backward Classes category and at least 50% marks in***

the aggregate in case of candidates from the reserved categories (Scheduled Castes and Scheduled Tribes) in the five/three years in Law."

I.A **<u>Non-compliance of para 40 of the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247:</u>**

30.(a) It is contended that the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247 held in para 40 as follows:-

> *"40. Any clarification that may be required in respect of any matter arising out of this decision will be sought only from this Court. The proceedings, if any, for implementation of the directions given in this judgment shall be filed only in this Court and no other court shall entertain them."*

(b) Therefore, it is contended that before any deviation is made, a clarification may be required in respect of any matter arising out of the said decision, only from the Hon'ble Supreme Court. The direction as contained in para 32 of the judgment of the Hon'ble Supreme Court in the second All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247, is as follows:-

> *"32. In All India Judges' Assn. case [(1993) 4 SCC 288 : 1994 SCC (L&S) 148 : (1993) 25 ATC 818] (SCC at p. 314) this Court has observed that in order to enter the judicial service, an applicant must be an advocate of at least three years' standing. Rules were amended accordingly. With the passage of time, experience has shown that the best talent which is available is not attracted to the judicial service. A bright young law graduate after 3 years of practice finds the judicial service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been an advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of*

> *the learned amicus curiae that it should be no longer mandatory for an applicant desirous of entering the judicial service to be an advocate of at least three years' standing. We, accordingly, in the light of experience gained after the judgment in All India Judges case direct to the High Courts and to the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in three years of practice, to be eligible to compete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted training of not less than one year, preferably two years."*

(c) The direction was issued to the High Court and to the State Government to amend their rules so as to enable a fresh law graduate who may not even have put in three years of practice, to be eligible to compete and enter the judicial service. Therefore, it is contended that this direction has been deviated, without seeking any clarification from the Hon'ble Supreme Court vide para 40 of the judgment.

31. The same is disputed by the learned counsel for the respondents.

32.(a) On considering the contentions, we are unable to accept the plea of the petitioners. The direction given therein was to the High Court and to the State Government to amend the rules so as to enable a fresh law graduate, who may not have even put in three years of practice to be eligible to compete and enter the judicial service. The further direction was that for such fresh recruits, there should preferably be two years of training. While issuing these directions it was stated in the said para itself, that with passage of time the experience has shown that the best talent is not attracted to the judicial service. Therefore, the condition of having a three years practice should no longer be mandatory. On considering the impugned amendment, it could be seen that the same is in complete consonance with para 32 of the judgment of the Hon'ble Supreme Court. The best talent available have been given an opportunity to compete in the exam. It is no longer mandatory that an applicant should possess a three years practice. Therefore, we do not find

that any clarification was required before the impugned amendment could be brought about. In our considered view, a clarification would have been required, if the High Court or the State Government were of the view that either it is mandatory to have a three years practice or/and it is not necessary to allow fresh graduates to practice. Fresh law graduates have not been prevented from competing in the exam. Furthermore, what was done away with in the aforesaid judgment was a mandatory condition of having a three years practice. It does not debar a candidate who has a three years practice at the Bar. The stress is on the word "mandatory". The impugned amendment does not make it mandatory for a candidate to have a three years practice. Furthermore, it does not prevent an advocate with a three years practice from competing. The order of the Hon'ble Supreme Court is based on the recommendation of the Shetty Commission, which suggested that brilliant law graduates with a brilliant academic career should be allowed to compete in the exam. However, so far as the impugned amendment is concerned, it has not debarred fresh law graduates from competing in the exam.

(b) That the clarification was only in case where the High Court intended to make it mandatory for an advocate to have a three years practice to compete in the exam as suggested in para 8.36 of the recommendation of the Shetty Commission. If at all the High Court wanted to make it mandatory for a candidate to have three years practice, it is only then that the clarification had to be sought for. In the instant case, the rule does not make it mandatory to have a three years practice. Therefore, it is in tune with para 32 of the judgment of the Hon'ble Supreme Court. Hence, the contention that a clarification is required, is wholly misplaced.

(c) Therefore, we do not find that the impugned amendment violates para 40 of the judgment of the Hon'ble Supreme Court in the case of second All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247.

I.B **<u>The requirement of securing 70% marks in aggregate violates Articles 14, 16 and 19(1)(g) of the Constitution of India:</u>**

33.(a) It is contended that the amendment does not satisfy the test of equality. It violates Articles 14, 16 and 19(1)(g) of the Constitution of India. That the score in an exam is not the sole criterion to determine excellence or capability. That it is not the only value that is considered as a social good. Merit should be assessed if it mitigates or entrenches inequalities. Therefore, it is contended that securing 70% marks in aggregate, in the first attempt, cannot form the only basis of merit. Since the object of the respondents is to ensure that meritorious candidates are selected, the impugned amendment does not satisfy the said requirement. It is therefore contended that, the requirement of securing 70% marks in aggregate, distinguishes those candidates who have not secured 70% marks in aggregate. That a class in a class is sought to be made by the impugned amendment. That all law students are alike as long as they have passed the exam and obtained a law degree. There cannot be a distinction between one who has secured 70% marks and above in aggregate and another who has secured less than 70% marks in aggregate. Therefore, it offends Articles 14, 16 and 19(1)(g) of the Constitution of India. The right of equality is being denied to the students who have secured less than 70% marks in aggregate.

(b) It is further contended that the requirement of securing 70% marks in aggregate in the law degree is neither just nor fair. That there are certain universities which are extremely liberal in granting marks whereas

there are other universities, which are extremely strict in granting marks. Therefore, the candidates who are studying in a strict university would secure less marks and a candidate studying in a liberal university would secure high marks, even though the merit of the two candidates may be similar. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Neil Aurelio Nunes and others vs. Union of India reported in (2022) 4 SCC 1 with reference to paras 37 and 39 to 43, which reads as follows:-

> *"37. At the best, an examination can only reflect the current competence of an individual but not the gamut of their potential, capabilities or excellence, [Satish Deshpande, "Pass, Fail, Distinction: The Examination as a Social Institution", Marjorie Sykes Memorial Lecture, Regional Institute of Education, Ajmer, 3-3-2010, published by the National Council for Educational Research and Training, New Delhi.] which are also shaped by lived experiences, subsequent training and individual character. The meaning of "merit" itself cannot be reduced to marks even if it is a convenient way of distributing educational resources. When examinations claim to be more than systems of resource allocation, they produce a warped system of ascertaining the worth of individuals as students or professionals. Additionally, since success in examinations results in the ascription of high social status as a "meritorious individual", they often perpetuate and reinforce the existing ascriptive identities of certain communities as "intellectual" and "competent" by rendering invisible the social, cultural and economic advantages that increase the probabilities of success. Thus, we need to reconceptualise the meaning of "merit". For instance, if a high-scoring candidate does not use their talents to perform good actions, it would be difficult to call them "meritorious" merely because they scored high marks. The propriety of actions and dedication to public service should also be seen as markers of merit, which cannot be assessed in a competitive examination. Equally, fortitude and resilience required to uplift oneself from conditions of deprivation is reflective of individual calibre.*
>
> *** *** ***
>
> *39. However, after contextualising the meaning of merit, in the next paragraph this Court reverted to equating the selection process adopted for admission to merit. However, irrespective of the true purport of merit, this Court notes that the selection*

process for admission must satisfy the test of equality. This Court observed thus : (Pradeep Jain case [Pradeep Jain v. Union of India, (1984) 3 SCC 654] , SCC pp. 676-77, para 13)

> *"13. We may now proceed to consider what are the circumstances in which departure may justifiably be made from the principle of selection based on merit. Obviously, such departure can be justified only on equality-oriented grounds, for whatever be the principle of selection followed for making admissions to medical colleges, it must satisfy the test of equality. Now the concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large masses of people. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would make the equality clause sterile and perpetuate existing inequalities. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inequality, in fact, legal equality always tends to accentuate it. What the famous poet William Blake said graphically is very true, namely, "One law for the Lion and the Ox is oppression". Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. It is, therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence. We may in this connection*

usefully quote what Mathew, J., said in Ahmedabad St. Xavier's College Society v. State of Gujarat [Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717]: (SCC p. 799, para 132)

> *'132. ... it is obvious that "equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of differential treatment in order to attain a result which establishes an equilibrium between different situations." [The Advisory opinion on Minority Schools in Albania, 6-4-1935 publications of the Court, Series A/B No. 64, p. 19.] '*

We cannot, therefore, have arid equality which does not take into account the social and economic disabilities and inequalities from which large masses of people suffer in the country. Equality in law must produce real equality; de jure equality must ultimately find its raison d'être in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. The State must, to use again the words of Krishna Iyer, J., in Jagadish Saran case [Jagadish Saran v. Union of India, (1980) 2 SCC 768]: (SCC p. 782, para 29)

> *'29. ... weave those special facilities into the web of equality which, in an equitable setting, provide for the weak and promote their levelling up so that, in the long run, the community at large may enjoy a general measure of real equal opportunity. ... equality is not negated or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit.'*

The scheme of admission to medical colleges may, therefore, depart from the principle of selection based on merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals."

(emphasis in original)

40. It is important to clarify here that after the decision in N.M. Thomas [State of Kerala v. N.M. Thomas, (1976) 2 SCC 310: 1976 SCC (L&S) 227] there is no constitutional basis to subscribe to the binary of merit and reservation. If open examinations present equality of opportunity to candidates to compete, reservations ensure that the opportunities are distributed in such a way that backward classes are equally able to benefit from such opportunities which typically evade them because of structural barriers. This is the only manner in which

merit can be a democratising force that equalises inherited disadvantages and privileges. Otherwise claims of individual merit are nothing but tools of obscuring inheritances that underlie achievements.

41. If merit is a social good that must be protected, we must first critically examine the content of merit. As noted above, scores in an exam are not the sole determinant of excellence or capability. Even if for the sake of argument, it is assumed that scores do reflect excellence, it is not the only value that is considered as a social good. We must look at the distributive consequences of merit. Accordingly, how we assess merit should also encapsulate if it mitigates or entrenches inequalities. As Amartya Sen argues:

> *"If, for example, the conceptualization of a good society includes the absence of serious economic inequalities, then in the characterization of instrumental goodness, including the assessment of what counts as merit, note would have to be taken of the propensity of putative merit to lessen—or generate—economic inequality. In this case, the rewarding of merit cannot be done independent of its distributive consequences.*
>
> * * *
>
> *In most versions of modern meritocracy, however, the selected objectives tend to be almost exclusively oriented towards aggregate achievements (without any preference against inequality), and sometimes the objectives chosen are even biased (often implicitly) towards the interests of more fortunate groups (favouring the outcomes that are more preferred by "talented" and "successful" sections of the population). This can reinforce and augment the tendency towards inequality that might be present even with an objective function that inter alia, attaches some weight to lower inequality levels." [Amartya Sen, "Merit and Justice" in Arrow K.J., et al (Eds.), Meritocracy and Economic Inequality (Princeton University Press, 2000).]*

42. A similar understanding of merit was advanced by this Court in B.K. Pavitra [B.K. Pavitra v. Union of India, (2019) 16 SCC 129], where this Court held: (SCC p. 218, para 131)

> *"131. Once we understand "merit" as instrumental in achieving goods that we as a society value, we see that the equation of "merit" with performance at a few narrowly defined criteria is incomplete. A meritocratic system is one that rewards actions that result in the outcomes that we as a society value."*

> *43. An oppositional paradigm of merit and reservation serves to entrench inequalities by relegating reserved candidates to the sphere of incompetence, and diminishing their capabilities. We have already stated that while examinations are a necessary and convenient method to allocate educational resources, they are not effective markers of merit. The way we understand merit should not be limited to individual agency or ability (which in any event is not solely of our own doing) but it should be envisioned as a social good that advances equality because that is the value that our Constitution espouses. It is important to note that equality here does not merely have a redistributive dimension but also includes recognising the worth and dignity of every individual. The content of merit cannot be devoid of what we value in society. Based on the above discussion, we find it difficult to accept the narrow definition of merit (that is, decontextualised individual achievement). We believe such a definition hinders the realisation of substantive equality."*

34. The respondents while objecting to the same have stated in their statement of objection, that the petitioners' claim that the requirement of 70% is arbitrary, is not acceptable. It is submitted that it is the prerogative of the recruitment agency to decide the benchmark and qualifications as per their requirements. Further, brilliant candidates have been granted an opportunity to appear without the requisite three years experience at the bar. All candidates are subject to uniform rules. The decision to amend the rules has been taken after due consideration so as to have only the best candidates as Judges. Judicial services cannot be equated with other services, as judicial officers are concerned with dispensation of justice. In the present case a criterion has been prescribed to attract an outstanding law graduate with a brilliant academic career.

35.(a) On considering the contentions, we are of the considered view that the aforesaid judgment is not applicable to the case on hand. In the aforesaid judgment of the Hon'ble Supreme Court, what was being considered was the permissibility of reservations in the All India Quota seats and the constitutionality of the OBC and EWS reservation in the All

India Quota seats. Therefore, the issue for consideration was whether reservation was permissible in the AIQ seats and whether the reservation for OBC and EWS in the AIQ seats is constitutionally valid. In the course of discussion, the Hon'ble Supreme Court noted that marks alone cannot form the criteria to assess the merit of the candidates. The social background and other factors have to be considered in order to offer a level playing field to all the candidates. There are candidates who, based on their education background etc. were able to obtain high marks. On the other hand, there were candidates who due to their social background, inadequacy etc. were not in a position to obtain high marks. Therefore if an equal opportunity is to be granted to all, then the marks alone cannot form the said criteria. In order that equals be treated alike, reservations were granted for the particular seats in question. In so holding the Hon'ble Supreme Court came to the view that an individual's potential, capability or excellence come from the background of experiences, training, character etc. Therefore, the underprivileged could not necessarily compete with others, if merit in terms of marks alone becomes the criteria. Therefore, in order to have a level playing field, the reservation granted to the said category was upheld. It is in this background, the Hon'ble Supreme Court made references to the fact that marks alone does not reflect the competence or otherwise of the candidate. Other factors also would have to be considered. However, that is not the case herein. The very requirement in terms of the judgment of the Hon'ble Supreme Court is that one should be an outstanding law graduate with a brilliant academic career. However, relaxation in the marks has been granted in the case of candidates belonging to the Scheduled Castes and the Scheduled Tribes to ensure equality and a level playing field. Similar is the situation in the aforesaid judgment of the

Hon'ble Supreme Court where reservations were provided for certain reserved categories.

(b) Furthermore, it could be seen that there has to be some criteria to assess a candidate. For example, for the candidates appearing in the exam in the police department or the army, one of the criteria is physical statistics. If a person does not have the requisite height or other requirements, he is disabled. This is so because the particular job requires the particular requirements. Therefore, one cannot say that the right to equality has been violated only because he does not have the requisite height but is otherwise meritorious. However, so far as the examination to the post of a Civil Judge is concerned, what is relevant is the merit of the candidate, who has the potential to become a good judge. Such potentiality can be measured based on his previous performances in the academic examinations, which are in turn reflected into marks. Therefore, what the candidate deserves or what he is capable of, is based on the marks that he obtains. Therefore, the assessment of the candidate, on the basis of marks is a criteria to determine the merit or otherwise of the candidate. On the other hand, if the contention of the petitioners is to be accepted, that marks cannot form a criteria to judge merit, then in such an event, every candidate would become eligible whether he has passed or failed. In furtherance to the contention of the petitioners, it could be said that if marks are not the criteria to assess the candidate, then, even though a candidate has failed, he has abundance potentiality and capability to be a good judge. Therefore, according to the petitioners, a candidate who secures 40% marks is equivalent to a candidate who secures 90% marks. Therefore, the contention of the petitioners appears to be fallacious. The marks of the candidate is certainly a criteria to assess his merit.

(c) Further, it could be seen that in terms of the judgment of the Hon'ble Supreme Court as aforesaid, outstanding law graduates with a brilliant academic career were permitted to compete in the exam. Who is brilliant and what is a brilliant academic career has not been defined. Therefore, in order to define what is brilliance and what is a brilliant academic career, the said criteria has been adopted. It is in furtherance to the direction issued by the Hon'ble Supreme Court. If the contention of the petitioners is to be accepted then each and every law graduate would be eligible to compete in the exam, which would go against the direction of the Hon'ble Supreme Court. When the direction of the Hon'ble Supreme Court is to allow brilliant law graduates with a brilliant academic career to compete, the same is achieved by defining it as 70% marks in aggregate. Therefore, we are of the view that the contention of the petitioners on this score, cannot be accepted.

36.(a) The judgment of the Hon'ble Supreme Court in para 32 in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247 is the acceptance of the recommendation made by the Shetty Commission. The recommendation of the Shetty Commission with regard to this issue at hand is as follows:-

> *"8.35 If intensive training is given to **young and brilliant law graduates**, it may be unnecessary to prescribe three years practice in the Bar as a condition for entering the judicial service. It is not the opinion of any High Court or State Government that induction to service of **fresh law graduates with brilliant academic career would be counter-productive**. We consider that it is proper and necessary to reserve liberty to High Court and State Governments, as the case may be, to select either Advocates with certain standing at the Bar or **outstanding law graduates** with aptitude for service. It is not correct to deny such discretion to High Authorities like, High Courts and State Governments."*
>
> *(**emphasis supplied**)*

> *8.36 Those High Courts and State Governments who are interested in selecting the fresh law graduates with a scheme of intensive induction training may move the Supreme Court for reconsidering the view taken in All India Judges' Association Case for deleting the condition of three years standing as Advocate for recruitment to the cadre of Civil Judges (Jr. Divn.). We trust and hope that the Supreme Court will reconsider that aspect."*

(b) The Hon'ble Supreme Court in para 32 of the judgment in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247 held as follows:-

> *"32. In All India Judges' Assn. case [(1993) 4 SCC 288 : 1994 SCC (L&S) 148 : (1993) 25 ATC 818] (SCC at p. 314) this Court has observed that in order to enter the judicial service, an applicant must be an advocate of at least three years' standing. Rules were amended accordingly. With the passage of time, experience has shown that the **best talent** which is available is not attracted to the judicial service. **A bright young law graduate** after 3 years of practice finds the judicial service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been an advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned amicus curiae **that it should be no longer mandatory** for an applicant desirous of entering the judicial service to be an advocate of at least three years' standing. We, accordingly, in the light of experience gained after the judgment in All India Judges case direct to the High Courts and to the State Governments to amend their rules **so as to enable a fresh law graduate who may not even have put in three years of practice, to be eligible to compete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted training of not less than one year, preferably two years.**."*
>
> *(**emphasis supplied**)*

(c) It was stated by the Hon'ble Supreme Court, that by taking all the circumstances into consideration, the recommendation made by the Shetty Commission was accepted and also the argument of the learned amicus curiae that it should be no longer mandatory for an applicant

desirous of entering the judicial service to be an advocate of at least three years standing. The language used in the recommendation of the Shetty Commission is to young and brilliant law graduates with a brilliant academic career. In the very same paragraph, it is narrated that a brilliant law graduate is also referred to as an outstanding law graduate. Therefore, it has to be presumed that a brilliant law graduate and an outstanding law graduate, constitute one and the same class of law graduates.

(d) The said para would also indicate that such brilliant law graduates would have to undergo a training preferably for two years in comparison with a lawyer with a three years practice who has been appointed as a judge. Therefore, the importance of training, experience etc. for fresh law graduates was an important consideration before the Hon'ble Supreme Court. The earlier position was that it was mandatory for a candidate to have a practice for three years before he seeks to compete in the exam. A window was created to allow outstanding law graduates with a brilliant academic career to participate in the exam, ostensibly on the ground that a brilliant law graduate with a brilliant academic career who undergoes a two years intensive training may substitute a three years experience of an advocate. Therefore, probably a three years experience was co-related to an outstanding law graduate with a brilliant academic career with the aforesaid training. It is for this reason that a candidate who is neither brilliant nor who has a brilliant academic career could never ever substitute a three years practice. Therefore, the intention of the recommendation by the Shetty Commission was probably to the effect that a three years practice can be equated only with such a law graduate who is an outstanding law graduate and who has a brilliant academic career with training. Therefore, one who does not possess the said

requirement, would necessarily have to practise for three years in order to compete in the exam. If not, it could be said that any law graduate who has passed in any manner whatsoever, even by failing in subjects, can always be compared to a candidate who has put in three years experience. Hence, a window is open only for an outstanding law graduate with a brilliant academic career who could be considered as an equivalent to an advocate who has put in three years experience.

(e) Who is a young and brilliant law graduate with a brilliant academic career, has neither been defined by the Shetty Commission, nor by the judgment of the Hon'ble Supreme Court. It is this, that is sought to be defined by virtue of the impugned amendment. According to the Oxford English Reference Dictionary *(Second Edition), the* word 'brilliant' means "***outstandingly talented or intelligent***". As per the Chambers Dictionary, the word 'brilliant' is defined as "***excellent; exceptionally good***" also "***outstanding intelligence or talent***". A brilliant law graduate by the very term used, is not an ordinary law graduate. One becomes a law graduate and is categorized based on the marks that he obtains. For example, in the grading of marks, the bottommost is the one who has failed, thereafter a pass class, followed by a second class, then a first class, then a distinction, then probably one who has maxed the papers, as follows:-

Less than 35 marks	=	Fail
35 to 45 marks	=	Pass class
45 to 60 marks	=	Second class
60 marks and above	=	First class
70 marks and above	=	Distinction

(f) The aforesaid is narrated only as an example, since the marks may vary slightly from university to university. However, the classification of

the students is generally done in the aforesaid categories. Therefore, while attempting to define, who is a brilliant law graduate, it can necessarily not be those who have secured less than a distinction. If a student has secured less than a distinction, then he would be called a first class law graduate or a second class law graduate or a pass class law graduate based on the marks that he secures. The definition of 'outstanding' is somebody who is par excellent. As per Collins Cobuild English Language Dictionary, the meaning of 'outstanding' is "***abilities and achievements are very remarkable and impressive***". The meaning of 'outstanding' as per Merriam-Webster dictionary is "***marked by eminence and distinction***". Therefore, in real terms an outstanding law graduate is one who has secured somewhere close to the maximum number of marks possible. However, keeping in mind various factors, the High Court has thought it fit and appropriate to define a brilliant law graduate as one who has secured 70% and above in the aggregate.

(g) The second requirement is that it is not sufficient to be a brilliant law graduate but one has also to possess a brilliant academic career. Having defined who is a brilliant law graduate, what constitutes a brilliant academic career needs to be considered. Therefore, the reference is not just being a brilliant or an outstanding law graduate, but he must also possess a brilliant academic career. When a brilliant law graduate has been defined as one who possesses 70% in aggregate, necessarily a brilliant academic career cannot include one who has failed in any subject. In case a candidate has failed in any subject, necessarily he cannot be considered to possess a brilliant academic career. We need not labour much on this point since it is quite clear that brilliance and failure are antonyms. The issue pertaining to a candidate who has failed has been dealt with in detail in **Chapter I Part I.C** and hence, the same may

be read herein also. Therefore, the contention that the impugned amendment is *ultra vires* the Constitution of India, in our considered view, cannot be accepted.

(h) The requirement is to be an outstanding law graduate who has secured 70% marks in aggregate in all subjects in the first attempt and who has a brilliant academic career. The requirement of having 70% marks in aggregate would act as an indicator of the brilliance of the candidate. This is in juxtaposition with a candidate obtaining high marks only in the final year exam. If a candidate obtains high marks only in the final year exam, he cannot be said to be possessing a brilliant academic career. Brilliant academic career therefore implies consistency throughout his academic career. On the other hand, obtaining high marks only in the final year exam is not proof of a brilliant academic career. The question of obtaining 70% marks in aggregate in the first attempt has already been discussed hereinabove. However, to constitute a brilliant academic career, a student must be consistent in his brilliance. Therefore, during the course of his career, he should secure appropriate marks and not just in the final year exam. Therefore, the effort and result of the student should be consistent throughout his law degree course. It is not sufficient that he ignores all the exams and concentrates only in the final year exam to obtain marks. Hence, the requirement of a brilliant academic career would mean obtaining appropriate marks throughout his law degree course and not just in the final year exam.

(i) Furthermore, equality before law as enunciated in Article 14 of the Constitution of India is that there shall not be a denial of any person equality before law or equal protection of the laws within the territory of India. The impugned amendment does not violate Article 14 of the Constitution of India since an equal opportunity has not been denied to

the petitioners. Furthermore, so far as Article 19(1)(g) of the Constitution of India is concerned, by the impugned amendment, the right to practise any profession, or to carry on any occupation, trade or business has not been affected. It is for the candidate to choose as to from what source, he would like to apply for the said post. The option given to him is twofold. He could either be an advocate who has practised for three years or an outstanding law graduate with a brilliant academic career.

(j) It is needless to mention that all restrictions imposed on fundamental rights cannot be said to be invalid. The restriction imposed herein necessarily flows from the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247. The Hon'ble Supreme Court deleted the mandatory condition of a three years practice. What was done away with was a mandatory condition. However by the impugned amendment, it is no longer a mandatory condition but an optional condition. Therefore, the contention that Article 19(1)(g) of the Constitution of India is violated, in our considered view, cannot be accepted.

(k) The requirement is that a brilliant law graduate with a brilliant academic career can compete for the exam. This is intended to ensure that the finest of law graduates would turn out to be the finest of judges which in turn would lead to qualitative judgments being rendered. This is in comparison with law graduates who are not outstanding and cannot be compared with the outstanding law graduates. The requirement of obtaining 70% marks in aggregate is to ensure the desired object of enhancing the quality in the justice delivery system. By enhancing the quality of the judgments, the ultimate benefit directly goes to the litigants, namely the citizens of this country. It is in order to ensure that they

receive the highest quality of judgments that such a requirement has been introduced. The requirement is to achieve excellence in the justice delivery system in order that the litigants receive a corresponding excellent result. This would be the object of the legislation. Therefore, in order to achieve this object, the instant amendment has been brought about.

(l) So far as the classification is concerned, the same is directly relatable to the object sought to be achieved. The impugned amendment has a direct nexus with the object sought to be achieved. The said issue is being considered by this Court under **Chapter I Part I.D** relatable to the impugned amendment having a nexus with the object sought to be achieved. Therefore, it may not be necessary to repeat the same herein. For the reasons assigned in **Chapter I Part I.D**, the classification of law graduates between those who have secured 70% in aggregate and those who have not, is a just and fair classification which promotes the object sought to be achieved of ensuring excellence and quality in the justice delivery system.

(m) It is further contended that due to various reasons, the petitioners were not in a position to obtain 70% marks in aggregate. For instance, during the period of Covid, they could not secure appropriate marks. In some cases a student was unwell or for various other reasons, he could not write the exam effectively and as a result of which he has secured lesser marks than 70% in aggregate and in some cases he may have also failed. Therefore, the impugned rule requires to be set aside since it causes harm and hardship to the petitioners. The same is disputed by the learned counsel for the respondents.

(n) We are unable to accept such a contention of the petitioners. The plea that they could not secure enough marks either because of Covid or

because of they being unwell or for other reasons and as a consequence of which, they have obtained less marks which has caused hardship to them, cannot be accepted. The question of hardship or otherwise would only arise when on a plain reading of the rule the only interpretation that could be made is that it leads to hardship. The grievance of hardship to the petitioners, cannot constitute a ground to read the impugned rule as being unconstitutional or ultra vires the Constitution. The impugned rule should be read for what it is intended and nothing beyond that. On the other hand, scores of students fall within the requirements of the rule. Therefore, the contention of the petitioners is personal and not universal.

(o) With regard to hardship and construing a statute, the Hon'ble Supreme Court in the case of Dr. Ajay Pradhan vs State Madhya Pradesh reported in (1988) 4 SCC 514 held in para 7 as follows:-

> *"7.....**If the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense and give them full effect. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament, and not for the courts, to consider**."*
>
> ***(emphasis supplied)***

(p) Therefore, no other interpretation could be made as sought to be made by the petitioners. The question of hardship and other reasons that are assigned by the petitioners as to why they have obtained less marks cannot be considered by the court. In the aforesaid judgment of the Hon'ble Supreme Court, it was held that the argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of constructions. It was further held that consequences of the

amendment are not the concern of the court but that of the Parliament or the authority which has made the legislation.

(q) In the case of Philips India Ltd. v. Labour Court, Madras and others reported in (1985) 3 SCC 103, the Hon'ble Supreme Court held in para 15 as follows:-

> "*15. No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus…….*"

(r) In the case of Lt. Col. Prithi Pal Singh Bedi v. Union of India and others reported in (1982) 3 SCC 140, the Hon'ble Supreme Court in para 8 held as follows:-

> *"8. The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used in Rule 40. If there is none, it would mean the language used, speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act."*

(s) The language used in the instant amendment is neither ambiguous nor calls for any interpretation. The expression used in the amendment is clear and cogent.

(t) Therefore, a reading of the impugned rule does not suggest that there is any ambiguity in the language or that it leads to absurdity. The intention of making the rule has to be seen. It is only when the reading of

the rule would lead to absurdity, that external aids of construction can be resorted to. The Court has to ascertain whether the literal meaning of the rule calls for any interpretation or not. Whether the rule causes inconvenience or hardship is not the consideration of the Court. It is suffice for the Court to ascertain as to whether the impugned rule has any nexus with the object sought to be achieved. If that is established, the question of hardship would take a back seat.

(u) The Hon'ble Supreme Court in the case of Mohd. Hanif Quareshi and others vs. State of Bihar reported in 1957 SCC Online SC 17 has observed in para 21 as follows:-

> *"21. Clause (6) of Article 19 protects a law which imposes in the interest of the general public reasonable restrictions on the exercise of the right conferred by sub-clause (g) of clause (1) of Article 19. Quite obviously it is left to the court, in case of dispute, to determine the reasonableness of the restrictions imposed by the law. In determining that question the court, we conceive, cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The right conferred by sub-clause (g) is expressed in general language and if there had been no qualifying provision like clause (6), the right so conferred would have been an absolute one. To the person who has this right any restriction will be irksome and may well be regarded by him as unreasonable. But the question cannot be decided on that basis. What the court has to do is to consider whether the restrictions imposed are reasonable in the interests of the general public. In the State of Madras v. V.G. Row [(1952) 1 SCC 410 : (1952) SCR 597, 607] this Court has laid down the test of reasonableness in the following terms:*
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> > *"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the*

> *prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."*
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> *These observations have been adopted by this Court in later cases, e.g. The State of West Bengal v. Subodh Gopal Bose [(1954) SCR 587, 627] and Ebrahim Vazir Mavat v. The State of Bombay [(1954) SCR 933, 949-950] . In this connection it will also be well to remember the observation of Mahajan, J., in The State of Bihar v. Maharajadhiraj Sir Kameshwar Singh of Dharbangha [(1952) 1 SCC 528: (1952) SCR 889, 941] , namely, that "the legislature is the best judge of what is good for the community, by whose suffrage it comes into existence……". This should be the proper approach for the court but the ultimate responsibility for determining the validity of the law must rest with the court and the court must not shirk that solemn duty cast on it by the Constitution. We have, therefore, to approach the problem now before us in the light of the principles laid down by this Court".*

(v) Therefore, the reasonableness of the restriction has to be determined in an objective manner keeping in mind the interest of the general public and not the interest of the petitioners or a restricted class of society. In the instant case that is exactly what is being contended by the petitioners in support of their individual cases. Moreover, the hardship pleaded is by some of the petitioners. It is not a hardship for each and every law graduate in the country. The personal reasons of some of the petitioners cannot be a ground to consider the rule to be bad. In the larger interest of the society, namely the interest of the litigants, the attempt is to have outstanding law graduates with a brilliant academic

career to be eligible to compete for the exam. Therefore, the quality of the judge is extremely important to the object sought to be achieved of having quality dispensation of justice. That is the requirement of the society namely the litigants and even if it runs contrary to the interest of certain individuals like the petitioners, the cause of the litigants would far outweigh the personal requirements of the petitioners.

(w) The contention that students in different universities secure different marks, which therefore leads to disparity in assessing the merit of the candidates, in our considered view, cannot be accepted. Whether a student obtains high marks or low marks, is not only dependent on the university. It may be dependent on the lecturer or professor correcting the examination papers. It cannot be said that one university is strict and another is liberal. For example, a strict lecturer in a liberal university will continue to be a strict lecturer and will not become a liberal lecturer only because of the university. So also a liberal lecturer in a strict university will continue to be liberal and will not become a strict lecturer only because of the university. Even if they change their university, the marks that they award, will continue on the same principle and logic as they have been doing in the past. It does not change only because of the change of the university. The grant of marks is therefore professor centric and not university centric. Furthermore, if one has to consider the said contention, it could also be said that a student has failed to obtain high marks. The result of obtaining a lower mark cannot necessarily be attributed to the professor or university but there is every possibility that the student does not deserve higher marks. If a student works hard and is deserving, necessarily he will get high marks. If he does not work hard, he will not get high marks. Therefore, the contention of the petitioners that they belong to a very strict university and even though they are

meritorious, hardworking and deserving, such universities do not grant marks, cannot be accepted. There is absolutely no data in support of such a contention. It is an assumption without any basis. The contention is being advanced in the self interest of the candidate and nothing else. Therefore, the question of comparing professors or universities on the issue of grant of marks may not be appropriate. Therefore, to contend that the student in one university is far superior to a student from another university may not be fair to the candidates. Marks is an indication of the merit of the student. Therefore, the contention of differential marks from different universities which would lead to unfairness in identifying brilliant candidates, cannot be accepted. The methodology used in order to assess the merit of the candidate is just and appropriate. Therefore, we are of the view that such a contention cannot be accepted.

(x) A similar situation arose before the Hon'ble Supreme Court in the case of State of Haryana vs. Subash Chander Marwaha and others reported in (1974) 3 SCC 220. Therein, an advertisement was published by the Government that the Haryana Public Service Commission would hold an examination for recruitment of candidates for 15 vacancies in the Haryana Civil Service (Judicial Branch). A number of candidates appeared for the examination. A list of 40 successful candidates who had obtained 45% or more marks in the examination was declared. The State Government which was the appointing authority, made seven appointments in the serial order of the list according to merit, wherein respondents ranked 8, 9 and 13 did not get an order of appointment although there were vacancies. The reason for not making the appointment was that in view of the State Government, which was the same view as that of the High Court previously intimated to the State Government, the candidates obtaining less than 55% of the marks in the

examination should not be appointed as judges in the interest of maintaining high standards and competence in the judicial service. Therein the Hon'ble Supreme Court held in paras 8 and 12 as follows:-

> *"8. This will clearly go to show that the High Court itself had recommended earlier to the Punjab Government that only candidates securing 55% marks or more should be appointed as Subordinate Judges and the Haryana Government in the interest of maintaining high standards in the service had agreed with that opinion. This was entirely in the interest of judicial administration.*
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> *** *** ***
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> *12. It was, however, contended by Dr Singhvi on behalf of the respondents that since Rule 8 of Part C makes candidates who obtained 45% or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55% as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit.* ***The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for more eligibility.*** *As shown in the letter of the Chief Secretary already referred to, they fixed a minimum of 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. That the Punjab*

Government later on fixed a lower score is no reason for the Haryana Government to change their mind. ***This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who got less than 55% have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking that the State Government had somehow contravened Rule 8 of Part C.****"*

(emphasis supplied)

(y) The Hon'ble Supreme Court held that there is no constraint to fix a higher score of marks with a view to maintain high standards of competency in the judicial services. Furthermore, the stand of the High Court to have a minimum of 55% marks for appointment was held to be a matter of administrative policy. The impugned amendment is purely in terms of the aforesaid judgment of the Hon'ble Supreme Court where standards have been fixed of 70% marks in aggregate in order to ensure high standards of competence.

(z) It is also relevant to notice that in similar circumstances, an amendment was brought about to Rule 5 of the Maharashtra Judicial Services Rules, 2008, with regard to recruitment of Civil Judges. Clause 4 of the advertisement relates to conditions of eligibility which reads as follows:-

"4) Conditions of Eligibility —

(i) Age and Qualification-(Any one of the following A, B, C, D, E or F)

A) ***For Advocate, Attorney or Pleader****:—*

Age Limit - As on 1st April, 2009 - not less than 21 and not more than 35 years.

Qualification - ***Candidate must hold a degree in law and must have practiced as an Advocate, Attorney or Pleader in the***

High Court or Courts Subordinate thereto, for not less than 3 years on 17th December, 2008

Note:- In case of Public Prosecutors, their service in that capacity will be taken as practice at the Bar.

B) ***For Fresh Law Graduates*** *—*

Age - As on 1st April, 2009, not less than 21 and not more than 25 years.

Qualification —

(i) ***Candidates must have secured the degree in law by passing all the examinations leading to the degree in the first attempt and***

(ii) ***has secured in the final year examination of the degree in law, not less than 55% marks*** *OR*

(iii) In case of candidates holding Masters Degree in Law not less than fifty five percent marks; OR

C) Members of ministerial staff to the High Court; OR

D) Members of ministerial staff to the Courts subordinate to High Court; OR

E) Members of staff working as Legal Assistant and above in the legal section of the Law and Judiciary Department in Mantralaya, OR

F) Members of ministerial staff of the office of the Government Pleaders attached to those Court.

Age - For C, D, E and F - As on 1st April, 2009, not less than 21 and not more than 45 years, provided such employee has put in minimum three years of service after obtaining degree in law".

*(****emphasis supplied****)*

(za) Therein it was mandated that a candidate should have secured not less than 55% marks in the final year examination of the degree in law and should have passed all the exams leading to the degree in the first attempt. When the same was challenged, it same was affirmed by the High Court of Maharashtra in the case of Bar Council of Maharashtra and

Goa, Mumbai vs. State of Maharashtra and another, reported in 2009 SCC OnLine Bom 424 wherein it was held in para 4 as follows:-

> *"4. These Rules are statutory rules and the advertisement issued by the Commission on 17th December, 2008, impugned in the present Writ Petition, is in consonance with the Rules. In fact, in the Writ Petition and even during the course of the argument, there was no contention raised before us that the impugned advertisement is violative or ultra vires of the Rules. The advertisement being in consonance with the Rules, in law the impugned advertisement can hardly be faulted.* ***The argument that the eligibility conditions are arbitrary and/or discriminatory is also without any merit. In consonance with the recommendations of the Shetty Commission, clear objective is sought to be achieved by the advertisement for such classification. The purpose is to capture talent from amongst fresh Law Graduates for induction into the service at the very threshold. Other classes specified under the Rules and in the advertisement is intended to let Law Graduates optionally acquire some experience at the Bar and then take up the entrance examination.*** *To provide some age difference between these two classes thus is essential. This can neither be termed arbitrary nor discriminatory. These are classes of different persons belonging to a different class and persons of the same classes are not being treated differently. The option lies with the applicant as to which class he desires to come in, whether at the threshold or after gaining experience at the Bar. It is not only a laudable object but also squarely takes care of the practical objective and problems which may arise in appointment of Judges of the Junior Division."*
>
> ***(emphasis supplied)***

(zb) The impugned amendment is similar to the aforesaid rule in the State of Maharashtra. There also the requirement of passing all the examinations leading to the degree in law in the first attempt was a condition. In the impugned amendment also, it is a condition. The second condition is that he should have secured 55% marks in the final year. In the impugned amendment, the requirement is 70% marks in aggregate in the first attempt. Therefore, the principle and object on which both the amendments have been brought about are identical. It is also narrated in

the aforesaid judgment that the impugned rule therein, is in consonance with the recommendation of the Shetty Commission. Furthermore, the classification is relatable to the object sought to be achieved namely to capture talent from fresh law graduates. There also, there were two options to compete, namely, by advocates who have put in three years of practice and fresh law graduates who have passed all the exams in the first attempt by securing 55% marks. Here too, is a similar amendment. Therefore, we find that the underlying objective and principle being one and the same and being founded on the recommendation of the Shetty Commission, the impugned amendment is purely in accordance with law and no interference is called for. The requirement of securing 70% marks in aggregate in all subjects has a direct nexus with the object sought to be achieved. So far as nexus between the amendment and the object sought to be achieved is concerned, the same has been considered in **Chapter I Part I.D**.

37.(a) The further contention of the petitioners is that there is no material to show as to how and in what manner the figure of 70% has been arrived at. That it is without any basis. The same is disputed by the learned counsel for the respondent. He contends that 70% is not a random figure. It has been arrived at after a great deal of thought and deliberations. Notwithstanding the same, he contends that it is the recruiting agency, who has the right to prescribe the minimum eligibility qualification since it is they, who determine the quality of persons who can apply. He relies on the judgment of the Hon'ble Supreme Court in the case of Maharashtra Public Service Commission vs. Sandeep Shriram Warade reported in (2019) 6 SCC 362, wherein, it was held in para 9 as follows:-

> *"9. **The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of***

> ***preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.****"*
>
> ***(emphasis supplied)***

(b) The Hon'ble Supreme Court in the case of Punjab National Bank vs. Anit Kumar Das reported in (2021) 12 SCC 80 has observed in para 17.3 as follows:-

> *"17.3.* ***Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the courts to consider and assess. A greater latitude is permitted by the courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an institution or an industry or an establishment as the case may be. The courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications.*** *However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement."*
>
> ***(emphasis supplied)***

(c) Therefore, firstly the contention that the fixation of the requirements by the employer is arbitrary, cannot be accepted. It is for the employer to decide what should be the requisite qualification for the particular job. The High Court has arrived at 70% after applying its mind. While discussing the issue as to who is a brilliant law graduate with a brilliant academic career, substantial reasons have been assigned hereinabove. Hence, for the reasons assigned therein, the contention of the petitioners on this score is answered. Furthermore, in the aforesaid judgment of the Hon'ble Supreme Court it has been held that it is for the employer to choose what is the requirement of a particular job and to decide what are the requirements thereof. The Court cannot sit in judgment and determine what is the right qualification or not. For instance, in Writ Petition Nos.30727 of 2023 and 30740 of 2023, the contention of the petitioners is that 70% marks in aggregate are too high and it should be reduced to 60%. Some of the learned counsels had also made a submission to the effect that even though the employer may have a right to choose the eligibility qualification, 70% marks in aggregate may be too high and it should be appropriately reduced. We are of the view that this contention is against the rule that the employer is the right person to decide the eligibility criteria. It is not for the Court to determine whether 70% is appropriate or 60% or 50% or 40%. The eligibility criteria cannot be thrust upon by the Court on the employer and to direct him to accept a lower eligibility criteria. Therefore, we are of the considered view that the eligibility criteria of 70% marks in aggregate is just and reasonable and no grievance can be made against the same.

(d) Furthermore, it is also relevant to notice the present consideration by the Hon'ble Supreme Court in the case of All India Judges'

Association. An order dated 25.04.2023 was passed by the Hon'ble Supreme Court as follows:-

> "*I.A. Nos. 201893/2022, 93974/2019 & 72900/2021, 73015/2021, 40695/2021 & 50269/2022 (Item Nos.5, 6 & 7)*
>
> ***1. We find that seven important issues arise for consideration, which are**:-*
>
> *(i) As to whether the 10% quota reserved for Limited Departmental Competitive Examination (for short, 'LDCE') for promotion to Higher Judicial Service i.e. cadre of District Judge, needs to be restored to 25% as determined by this Court in the case of All India Judges' Association and others v. Union of India and others, reported in (2002) 4 SCC 247?*
>
> *(ii) As to whether the minimum qualifying experience for appearing in the aforesaid examination needs to be reduced, and if so, by how many years?*
>
> *(iii) As to whether a quota needs to be reserved for meritorious candidate from the Civil Judge (Junior Division) to Civil Judge (Senior Division) so that there is an incentive for merit in the cadre of Civil Judge (Junior Division)?*
>
> *(iv) If yes, then what should be the percentage thereof and what should be the minimum experience as a Civil Judge (Junior Division)?*
>
> *(v) As to whether the quota to be reserved for the aforementioned departmental examinations in a particular year should be calculated on the cadre strength or on the number of vacancies occurring in the particular recruitment year?*
>
> *(vi) As to whether some suitability test should also be introduced while promoting the Civil Judge (Senior Division) to the Cadre of District Judges against the existing 65% quota for promotion to Higher Judicial Services on the basis of merit-cum-seniority.*
>
> ***(vii) As to whether the requirement of having minimum three years practice for appearing in the examination of Civil Judge (Junior Division), which was done away by this Court in the case of All India Judges Association and Ors. (supra), needs to be restored? And if so, by how many years?**"*
>
> *(**emphasis supplied**)*

(e) Therefore, the requirement of having a three years practice in order to compete for the exam is presently under reconsideration by the

Hon'ble Supreme Court. Hence, this is also an important factor to be considered with regard to the validity of the impugned amendment.

38. Hence, for all these reasons, we are of the considered view that the impugned amendment does not offend Articles 14, 16 and 19(1)(g) of the Constitution of India and hence the contentions on this ground cannot be accepted.

I.C <u>That the candidate should have cleared all exams in the first attempt, is arbitrary, unfair and unreasonable</u>:

39.(a) The contention regarding the requirement of securing 70% marks in aggregate has already been considered in **Chapter I Part I.B**, as aforesaid. This present point has been argued on the ground that the requirement of having passed all the exams in the first attempt is arbitrary, unreasonable and unfair. While considering the issue regarding a brilliant law graduate with an outstanding academic career, the said issue was also considered in **Chapter I Part I.B**. Notwithstanding the same, we are broadly considering the said issue once again. The requirement of the amendment is that one should be an outstanding law graduate with a brilliant academic career, who has secured 70% marks in aggregate in the first attempt. The same is based on the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247 by accepting the recommendation of the Shetty Commission. When one is to consider as to who is a brilliant law graduate with a brilliant academic career, necessarily the same would not be applicable to a candidate who has failed. Brilliance and failure are antonyms. Therefore, it cannot be said that one is a brilliant law graduate with a brilliant academic career but who has failed during the course of his academics. Various examples have been narrated by the learned counsels in support of their case. They

state that during their academic career in law, the Covid-19 set in and hence, they could not put up a good performance and failed. However, the plea regarding hardship has already been considered by us in **Chapter I Part I.B.** and therefore, the answer to the said contention can be found therein. The further contention is that in case the students were aware that they have to obtain 70% in the aggregate in the first attempt, they would have achieved the same. Since the rules, as they then prevailed, required only a pass class, they were not aware of the requirement of passing in the first attempt. This particular issue of the amendment having a retroactive/retrospective effect is discussed in **Chapter I Part I.E** and hence, we do not find it necessary to repeat the same. The same may be read as an answer to the petitioners' contention on this point.

(b) A further contention is that there are a number of non-law subjects which the student has to study in order to complete the five year course. In a given case if a student has failed in a non-law course, the same should not act to his detriment. However, we are unable to accept such an argument. A graduate in any field has necessarily to pass all the required subjects for the particular course. So far as the degree in law is concerned, the curriculum is that which is fixed by the Bar Council of India. The said curriculum would have to be followed by each and every university. Therefore, it is unacceptable for a candidate to say that he is a successful law graduate even though he may have failed in non-law subjects. The very fact that non-law subjects have been included in the curriculum for a degree in law by the Bar Council of India, would clearly establish the fact that such subjects are necessary components for a law graduate to study before he graduates. If the contention of the petitioners were to be accepted, in that event, there has to be a bifurcation by the court with regard to the various subjects and the curriculum stipulated by

the Bar Council of India. In effect, the courts would have to hold that certain subjects are relevant and certain subjects are irrelevant. However, we do not find that such can be done by the courts. Each and every subject that a candidate has to undergo is an essential component of his law degree. Necessarily he has to pass every such subject in order to pass the degree in law. Therefore, the contention that the failure in non-law subjects does not affect the brilliance of a candidate, cannot be accepted.

(c) It is further contended, as in W.P. No. 30256 of 2023 (Shivani Sonkar and others vs. State of Madhya Pradesh and another), that the candidate changed the university as a result of which there was a change in the subjects. Therefore, for certain subjects which were not part of the earlier university, the mark-sheet indicated that the student had failed. Therefore, it is contended that in fact the student had not failed but that such a paper was not part of the university curriculum at all. By an interim order dated 12.12.2023, it was held in respect of the third petitioner, as follows:-

> *"5. We have considered the rule. The rule indicates that the students should have cleared all the exams in the first attempt. According to the petitioner, she has already written those exams and has secured the minimum as required. Therefore, we are of the prima facie view that the apprehension of the third petitioner may not be appropriate. The requirement of the proviso is that she should have passed all exams in the first attempt. Her claim is that she has done so. It is in the peculiar facts of this case there is a change of University and as a result of which she has to take additional exams. She claims to have passed all exams in the first attempt. It is suffice if she has passed all the exams in the first attempt. Therefore, in case, she makes an application for the post of Civil Judge Junior Division (Entry Level), 2022, respondent No.2 to consider her case in accordance with the rules and while considering this order to the effect that if she has passed all the exams in the first attempt that should satisfy the requirement of passing the exams in the first attempt irrespective of the change of University and subject to other compliances."*

(d) The requirement of the rule is that one should have passed in the first attempt. The requirement is not whether the candidate appeared in the main exam or in the supplementary exam. To this extent, the rule has been kind to the students. In case, the student does not write an exam for reasons as pleaded by the petitioners, then necessarily he cannot be considered as a candidate who has failed. However, once he takes up the exam, then it is necessary that he should have passed the same in the first attempt. Therefore, the requirement is of passing the exam in the first attempt. Therefore, in cases where they were affected by Covid or for reasons of sickness or otherwise and were unable to take the exam, then the rule will not apply as long as they pass the particular subject in the first attempt in the subsequent exams. However, once the candidate appears for the exam then the result becomes important. In case, he could not prepare for the exam or he is not ready for the exam, then necessarily he should not take the exam being an unprepared candidate. An underprepared candidate should never attempt an exam. However, if he chooses not to write the exam, but, takes it up as a supplementary exam or thereafter, and passes the said exam in the first attempt, the requirement of the rule would be satisfied. Therefore, we find that the contention that it is erroneous, unreasonable and unfair, cannot be accepted.

I.D <u>The impugned amendment has no nexus with the object sought to be achieved:</u>

40.**(a)** It is further contended that the proposed amendment has no nexus with the object sought to be achieved. That if the authorities were interested in securing the best available talent, the same could still be

achieved without having a requirement of securing 70% marks in the aggregate in the first attempt. In support of the contention, the learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of The State of Andhra Pradesh and others vs. U.S.V. Balram, etc. reported in (1972) 1 SCC 660, with reference to paras 23, 24, 46, 51 and 82 thereof. The same reads as follows:-

> *"23. We have already referred to the fact that there is a proviso that the candidates excepting those belonging to the Scheduled Castes and Scheduled Tribes should have obtained in their qualifying examination not less than 50 per cent of marks in Physical and Biological Sciences put together in their qualifying examination. There is no distinction made between a P.U.C. or Multipurpose candidate. Both of them in order to become eligible to appear in the entrance test must have secured not less than 50 per cent marks in their qualifying examinations in the two Physical and Biological Sciences put together. The only relaxation, or exception, if it may be so called, is regarding the candidates belonging to the Scheduled Castes and Scheduled Tribes. These candidates should have secured not less than 40 per cent of the marks in those subjects in their qualifying examination.*
>
> *24. Rule 4 emphasises that all eligible candidates who have applied for admission are bound to take the entrance test conducted by the Director of Medical and Health Services. All the candidates, who take the entrance test, must take all the four papers, referred to therein. Here again, it will be seen that there is no distinction made between a P.U.C. and a Multipurpose candidate. Both of them must have obtained not less than 50 per cent marks under Rule 3 in Physical and Biological Sciences in their qualifying examinations, and both of them will have to appear for those subjects in the entrance test, which is common to all the candidates.*
>
> *** *** ***
>
> *46. We have referred to the averments contained in the counter-affidavit of the two officers above as they form part of the present record and they have also been relied on for one purpose or other by both the State and the respondents. The above averments clearly establish that even according to the State the marks obtained in the entrance test, according to the rules, is the decisive test for the purpose of considering the merits of the*

candidates, who seek admission to the Medical College. These averments clearly show that there is absolutely no justification for making of special reservation of 40 per cent in favour of H.S.C. candidates, when once a common entrance test is held for all the candidates and selection is made on an assessment of merit of marks obtained at the said examination.

*** *** ***

51. It is no doubt open to the State to prescribe the sources from which the candidates are declared eligible for applying for admission to the Medical Colleges; but when once a common entrance test has been prescribed for all the candidates on the basis of which selection is to be made, the rule providing further that 40 per cent of the seats will have to be reserved for the H.S.C. candidates is arbitrary. In the first place, after a common test has been prescribed, there cannot be a valid classification of the P.U.C. and H.S.C. candidates. ***Even assuming that such a classification is valid, the said classification has no reasonable relation to the object sought to be achieved, namely, selecting the best candidates for admission to the Medical Colleges. The reservation of 40 per cent to the H.S.C. candidates has no reasonable relation or nexus to the said object. Hence we agree with the High Court when it struck down this reservation under Rule 9 contained in GO No. 1648 of 1970 as violative of Article 14.***

(emphasis supplied)

*** *** ***

82. This clause contained a special provision for the advancement of any socially or educationally backward classes of citizens or for the Scheduled Castes or Scheduled Tribes. The reservation has to be adopted to advance the interest of weaker sections of Society, but in doing so it is necessary also to see that deserving and qualified candidates are not excluded from admission to higher educational institutions. In the determination of a class to be grouped as backward, a test solely based upon caste or community cannot be accepted as valid. But, in our opinion, though Directive Principles contained in Article 46 cannot be enforced by courts. Article 15(4) will have to be given effect to in order to assist the weaker sections of the citizens, as the State has been charged with such a duty. No doubt, we are aware that any provision made under this clause must be within the well defined limits and should not be on the basis of caste alone. But it should not also be missed that a caste is also a class of citizens and that a caste as such may be socially and educationally backward. If after collecting the necessary data, it

> *is found that the caste as a whole is socially and educationally backward, in our opinion, the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average. There is no gainsaying the fact that there are numerous castes in the country, which are socially and educationally backward and therefore a suitable provision will have to be made by the State, as charged in Article 15(4) to safeguard their interest."*

(b) The Hon'ble Supreme Court therein were concerned with the GO No.1648 of 1970 issued by the State of Andhra Pradesh pertaining to the rules for the selection and admission of students to the Integrated MBBS course in the Government Medical Colleges in the Andhra area. The rules provided a pattern of allotment of seats by reference to certain qualifying examinations. The candidates eligible for admission to the Integrated MBBS course, being largely taken from the students who had passed the qualifying examination for the Pre-University course and those who had passed the Higher Secondary Course (Multipurpose). The rules provided for a pattern of earmarked seats for the students based on the qualifying examination taken by them. The challenge to the same before the High Court of Andhra Pradesh succeeded and the GO was held to be illegal as being discriminatory and offending Article 14 of the Constitution of India. The said rule was struck down. While doing so, the Hon'ble High Court came to the view that the selection of candidates from these categories must only be of those who have obtained the highest number of marks in the said list, irrespective of the fact as to which category they belonged. Since the selection is sought to be made by an earmarked 40% of seats to the HSC (MP), the latter have an unfair advantage over the PUC candidates, who will be denied admission, even though they have obtained higher marks. Therefore, the Hon'ble Supreme Court while affirming the said view of the High Court held in para-46 that even according to the State, the marks obtained in the entrance test, according

to the rules, is the decisive test for the purpose of considering the merit of the candidates. Therefore, there is no justification for making a reservation of 40% in favour of HSC candidates when once a common entrance test is held for all the candidates and selection is made on the basis of marks obtained in the examination. The Hon'ble Supreme Court further held in para-51 that even though it is open for the State to prescribe the source from which candidates are declared eligible for applying for admission, however, when once a common entrance test is prescribed for all the candidates, the impugned rule providing further that 40% of the seats would have to be reserved for HSC candidates is arbitrary. After a common test has been prescribed, there cannot be a valid classification between the PUC and the HSC candidates. That the classification has no reasonable relation to the object sought to be achieved of that of selecting the best candidates for selection to the Medical College. Therefore, the reservation of 40% to the HSC candidates has no reasonable relation or nexus to the said object.

(c) On considering the aforesaid judgment, we do not find that the same would help the petitioners. The Hon'ble Supreme Court therein came to the conclusion that the reservation of 40% to the HSC candidates has no relation or nexus with the object sought to be achieved. Therefore, when a common test has been prescribed, thereafter there cannot be a valid classification between the PUC and the HSC candidates. However, herein, the facts and application of law are different. There is no distinction sought to be made with regard to the source of the candidate. The source of the candidate is to the extent of being a law graduate. Those law graduates, who have secured 70% in the aggregate in the first attempt, are eligible. The classification is between an outstanding law graduate and others. The rule speaks of an outstanding law graduate with

a brilliant academic career. Therefore, based on the judgment of the Hon'ble Supreme Court, among law graduates, it is only the outstanding law graduates who will be able to compete in the exam. Even in the aforesaid judgment, the selection of the candidates who had obtained the highest marks irrespective of any category was not disturbed by the Hon'ble Supreme Court. Herein also, what is intended is an outstanding law graduate with a brilliant academic career. In terms of the judgment in the second All India Judges' Association's case (supra), it was an outstanding candidate with a brilliant academic career, who could attempt the exam. Therefore, that has been followed in the impugned amendment. Therefore, the reliance placed on the aforesaid judgment being misconceived, cannot be accepted.

41.(a) Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of Kailash Chand Sharma vs. State of Rajasthan and others reported in (2002) 6 SCC 562 wherein it was held in paras 17 and 33 as follows:-

> *"17. We may, however, advert to one recent decision wherein the view taken in Rajendran case [Minor P. Rajendran v. State of Madras, AIR 1968 SC 1012] was reiterated. In Govind A. Mane v. State of Maharashtra [(2000) 4 SCC 200] it was laid down: (SCC p. 202, para 6)*
>
> > *"Since it is not disputed by the respondents that for the purpose of admission to BEd course, seats were distributed districtwise without indicating any material to show the nexus between such distribution and the object sought to be achieved, it would be violative of Article 14 of the Constitution.*
>
> *The lack of material to establish nexus between the geographical classification and the object sought to be achieved thereby was thus held to be violative of Article 14.*
>
> *** *** ***
>
> *33. The above discussion leads us to the conclusion that the award of bonus marks to the residents of the district and the residents of the rural areas of the district amounts to*

> *impermissible discrimination. There is no rational basis for such preferential treatment on the material available before us. The ostensible reasons put forward to distinguish the citizens residing in the State are either non-existent or irrelevant and they have no nexus with the object sought to be achieved, namely, spread of education at primary level. The offending part of the circular has the effect of diluting merit, without in any way promoting the objective. The impugned circular dated 10-6-1998 insofar as the award of bonus marks is concerned, has been rightly declared to be illegal and unconstitutional by the High Court."*

(b) The Hon'ble Supreme Court therein were concerned with an issue wherein bonus marks were awarded under the category of domicile. The proviso therein was with regard to award of 10 marks for residents in the district concerned and 5 marks for the residents in the rural area of the district concerned. There was no written examination. Interview was of a formal nature and there was no assessment of comparative merit. The same was struck down by the Hon'ble Supreme Court on the ground that there is no rational basis for such preferential treatment on the material available before the Court. That there was no nexus between the geographical classification and the object sought to be achieved. That the reasons put forward to substantiate the same are either non-existent or irrelevant and they have no nexus with the object sought to be achieved.

(c) Therefore, it is contended that every amendment should have an object sought to be achieved. By requiring 70% marks in aggregate in the first attempt, no object is sought to be achieved. Therefore, it is contended that the impugned amendment is bad in law.

(d) The Hon'ble Supreme Court hereinabove held that the impugned circular is illegal and unconstitutional on the ground that the impugned circular has the effect of diluting merit without in any way promoting the objective. The distinction made between residents of the districts and the residents of the rural areas has no rational basis for such preferential

treatment. However, the impugned amendment is quite the opposite. It is not a case of diluting merit, but a clear case of recognising merit. By virtue of the impugned amendment, merit has been given precedence, which was not the case in the aforesaid judgment of the Hon'ble Supreme Court where merit was sought to be diluted.

(e) The further finding of the Hon'ble Supreme Court was that there was no material to indicate the rational basis for preferential treatment being given to the residents of the district on the one hand and residents of the rural areas on the other hand. Therefore, in view of the non-existent or irrelevant reasons put forth, there was no nexus with the object sought to be achieved. However, in the instant case, the object sought to be achieved and the impugned amendment have a direct nexus. The object of the amendment is to ensure that outstanding law graduates with a brilliant academic career are entitled to appear in the exam with the object of ensuring that the best of the best are allowed to compete. The distinction is between meritorious and the non-meritorious. The distinction is based on the marks that the candidates have secured. Therefore, by virtue of the impugned amendment, the object sought to be achieved of qualitative dispensation of justice has a direct nexus with the impugned amendment. Therefore, it cannot be said that no nexus exists. Hence, the contention of the petitioners based on the aforesaid judgment cannot be accepted.

42.(a) Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of Nidamarti Maheshkumar vs. State of Maharashtra and others reported in (1986) 2 SCC 534 with reference to para 6, which reads as follows:-

> *"6. Here, in the present case, regionwise classification for admission to medical colleges was sought to be defended on the ground that Vidharbha and Marathwada regions are backward as compared to Pune and Bombay regions which are far more*

advanced and it was contended on behalf of the State Government that, in the circumstances, the provision in Rule B(2) that a student from a school or college situate within the jurisdiction of a particular university would not be eligible for admission to medical college or colleges situate in the jurisdiction of another university but would be confined only to medical college or colleges within the jurisdiction of the same university, was intended to give protection to students in Vidharbha Marathwada and other predominantly rural areas the population of which is socially, economically and educationally backward for otherwise they would have no opportunity for medical education since they would not be able to compete with students from Pune and Bombay regions and consequently the classification made by this provision was constitutionally permissible. We are afraid this contention is not well founded and must be rejected. In the first place there is no material to show that the entire region within the jurisdiction of the university in Vidharbha is backward or that the entire region within the jurisdiction of Pune University is advanced. There are quite possibly even in the region within the jurisdiction of Pune University predominantly rural areas which are backward and equally there may be in the region within the jurisdiction of the university in Vidharbha, areas which are not backward. We do not think it is possible to categorise the regions within the jurisdiction of the various universities as backward or advanced as if they were exclusive categories and in any event there is no material placed before us which would persuade us to reach that conclusion. But even if the regions within the jurisdiction of the universities in Vidharbha and Marathwada can be said to be backward and regions within the jurisdiction of the universities in Bombay and Pune can be said to be advanced, we do not think that regionwise classification for admission to medical colleges can be sustained. There is no reason why a brilliant student from a region which is within the jurisdiction of a university in Vidharhha or Marathwada area should be denied the opportunity of medical education in Bombay or Pune. Why should he remain confined to the so-called backward region from which he comes? Should an equal opportunity for medical education not be made available to him as is available to students from regions within the jurisdiction of Bombay and Pune Universities? Why should mobility for educational advancement be impeded by geographical limitations within the State? Would this clearly not be a denial of equal opportunity violative of Article 14 of the Constitution? The answer must clearly be in the affirmative. It would plainly be violative of the mandate of the equality clause to compartmentalize the State into different regions and provide

that a student from one region should not be allowed to migrate to another region for medical education and thus be denied equal opportunity with others in the State for medical education. This is precisely the reason why this Court struck down unitwise scheme for admission to medical colleges in the State of Tamil Nadu in A. Peeriakaruppan case [(1971) 1 SCC 38 : AIR 1971 SC 2303 : (1971) 2 SCR 430]. The unitwise scheme which was held to be constitutionally invalid in that case was a scheme under which the medical colleges in the city of Madras were constituted as one unit and each of the other medical colleges in the mofussil was constituted as a unit and a separate Selection Committee was set up for each of these units. The intending applicants were asked to apply to any one of the committees but were advised to apply to the committee nearest to their place of residence and if they applied to more than one committee, their applications were to be forwarded by the Government to only one of the committees. The petitioners challenged the validity of this unitwise scheme and contended that the unitwise scheme was violative of Article 14 of the Constitution inter alia because the applicants of some of the units were in a better position than those who applied in other units, since the ratio between the applicants and the number of seats in each unit varied and several applicants who secured lesser marks than the petitioners were selected merely because their applications came to be considered in other units. This contention was upheld by the court holding that the scheme in question was invalid as it was discriminatory against some of the applicants. The ratio of this decision applies fully and completely to the present case. Here also as a result of the regionwise classification a student from one region who has secured lesser marks than another from a different region may be selected for admission to the medical college or colleges within his region while the student who has secured higher marks may not succeed in getting selected for admission to the medical college or colleges within his region. And moreover, a student from one region would have no opportunity for securing admission in the medical college or colleges in another region, though he may have done much better than the student in that other region. The regionwise scheme adopted by the State Government in Rule B(2) clearly results in denial of equal opportunity violative of Article 14 of the Constitution. We may at this stage refer to the decision of this Court in D.N. Chanchala case [(1971) 2 SCC 293 : AIR 1971 SC 1762 : 1971 Supp SCR 608] on which considerable reliance was placed on behalf of the State Government. The reservation impugned in this case was universitywise reservation under which preference for admission to a medical college run by a university was given to students who had passed the PUC

examination of that university and only 20% of the seats were available to those passing the PUC examination of other universities. The petitioner who had passed PUC examination held by the Bangalore University applied for admission to any one of the medical colleges affiliated to the Karnataka University. She did not come within the merit list on the basis of 20% open seats which were filled up and since she had not passed the PUC examination held by the Karnataka University, her application for admission was rejected. She therefore filed writ petition under Article 32 of the Constitution contending inter alia that the universitywise distribution of seats was discriminatory and hence violative of Article 14 of the Constitution. This contention was rejected by the court. Shelat, J. speaking on behalf of the court gave the following reasons in support of its conclusion: (SCC p. 301, para 22)

> *"In our view, there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of districtwise or unitwise selection as any student from any part of the State can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders up to 20% of the total available seats in any one of these colleges i.e. those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is, therefore, impossible to say that the basis of selection adopted in these rules would defeat, the object of the rules as was said in Rajendran case [AIR 1968 SC 1012 : (1968) 2 SCR 786] or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that a candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As is well known, different universities have different standards in the examinations held by them."*

It will be obvious on a little scrutiny of these reasons that they cannot possibly have any application to the regionwise classification adopted in the present case. There are two basic differences between the regionwise classification in the present case and the universitywise reservation in D.N. Chanchala

case [(1971) 2 SCC 293: AIR 1971 SC 1762 : 1971 Supp SCR 608] . Firstly, there was no common examination or uniform standard of evaluation in the different universities in D.N. Chanchala case [(1971) 2 SCC 293: AIR 1971 SC 1762: 1971 Supp SCR 608] so that it could not be said that a candidate obtaining lesser marks in the PUC examination held by one university was necessarily less meritorious than another student getting more marks in the PUC examination held by another university. But here in the present case there is only one common examination for the 12th standard held in the entire State with the same syllabus and the same set of questions and uniform standard of evaluation with the result that it can be safely predicated that a student who gets less marks in the 12th standard examination may ordinarily be regarded as less meritorious than another student getting higher marks. If there were different examinations held by the three Divisional Boards with different sets of questions and different standards of evaluation the ratio of the decision in D. N. Chanchala case [(1971) 2 SCC 293 : AIR 1971 SC 1762 : 1971 Supp SCR 608] would have inevitably and irresistibly applied. But the standard of comparison between students throughout the State being clear and well defined on account of a common 12th standard examination with same set of questions and uniform standard of evaluation the decision in D. N. Chanchala case [(1971) 2 SCC 293 : AIR 1971 SC 1762 : 1971 Supp SCR 608] can have no application. Moreover in D.N. Chanchala case [(1971) 2 SCC 293 : AIR 1971 SC 1762 : 1971 Supp SCR 608] the reservation in favour of students passing PUC examination of a particular university was not total but 20% of the seats were made available to those passing the PUC examination of other universities. Here in the present case, however, the reservation in favour of students who have studied in schools or colleges situate in the region within the jurisdiction of a particular university is 100% and no student who has studied in a school or college within the region of another university can possibly get admission in the medical college or colleges situate within the region of that the first mentioned university. We must therefore hold that the ratio of the decision in D.N. Chanchala case [(1971) 2 SCC 293 : AIR 1971 SC 1762: 1971 Supp SCR 608] does not compel us to take a view different from the one we are inclined to take on first principle."

(b) Therein, the Hon'ble Supreme Court were concerned with the region-wise classification for admission to medical colleges on the ground that the Vidharbha and Marathwada regions are backward, as

compared to Pune and Bombay regions, which are far more advanced. Therefore, the rule that the students from a school or a college situated within the jurisdiction of a particular university, would not be eligible for admission to a medical college situated in the jurisdiction of another university, but would be confined to a medical college or college within the jurisdiction of the same university, was intended to give protection to students in Vidharbha, Marathwada and other predominantly rural areas, which were sought to be socially, economically and educationally backward. The contention was not accepted by the Hon'ble Supreme Court, on the ground that the classification made, has no nexus with the object sough to be achieved. The distinction made between the students of Vidharbha and Marathwada regions, which were said to be in a predominantly rural area, as compared to students in Pune and Bombay, was struck down on the ground that there is no material in support of such a presumption. Therefore, the distinction made by the State between two areas was not supported by any material on record. Therefore, the impugned circular clearly denied equal opportunity for students hailing from different areas.

(c) The Hon'ble Supreme Court came to the view that a distinction cannot be made between two regions without there being any material in support of such a presumption. That all areas and also regions, were deemed to be similar, unless there was material to indicate to the contrary. However, in the instant case, there is no such distinction made so far as the geographical regions are concerned. A law graduate from any university throughout India, recognized by the Bar Council of India, is eligible to compete provided he satisfies the requirement of the rule. The basis of the classification between an outstanding law graduate and others emanates from the judgment of the Hon'ble Supreme Court. The

classification is made by the Hon'ble Supreme Court between outstanding law graduates and those who are not. Apparently such a classification is made on the basis of the marks that have been obtained. Therefore, it cannot be said that all law graduates are one and the same. The distinction as mentioned by the Hon'ble Supreme Court is between an outstanding law graduate and one who is not. Therefore, we are of the view that the aforesaid judgment is not applicable to the case on hand.

43.(a) Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of State of Maharashtra and another vs. Indian Hotel and Restaurants Association and others reported in (2013) 8 SCC 519 with reference to para 121, which reads as follows:

> *"121. We are of the opinion that the State has failed to justify the classification between the exempted establishments and prohibited establishments on the basis of surrounding circumstances, or vulnerability. Undoubtedly, the legislature is the best judge to measure the degree of harm and make reasonable classification but when such a classification is challenged the State is duty-bound to disclose the reasons for the ostensible conclusions. In our opinion, in the present case, the legislation is based on an unacceptable presumption that the so-called elite i.e. rich and the famous would have higher standards of decency, morality or strength of character than their counterparts who have to content themselves with lesser facilities of inferior quality in the dance bars. Such a presumption is abhorrent to the resolve in the Preamble of the Constitution to secure the citizens of India "equality of status and opportunity and dignity of the individual". The State Government presumed that the performance of an identical dance item in the establishments having facilities less than three stars would be derogative to the dignity of women and would be likely to deprave, corrupt or injure public morality or morals; but would not be so in the exempted establishments. These are misconceived notions of a bygone era which ought not to be resurrected."*

(b) The Hon'ble Supreme Court therein were concerned with the validity of the classification made by the State. That when such a

classification is challenged, the State is duty bound to disclose the reasons for the classification. The legislation was based on an unacceptable presumption that the so-called elite i.e. the rich and the famous would have higher standard of decency, morality or strength of character than their counterparts, who have to content themselves with lesser facilities of inferior quality in the dance bars. Such a presumption was held to be abhorrent to the resolve in the Preamble of the Constitution to secure to all the citizens "equality of status and opportunity and dignity of the individual". The classification made by the State was not accepted by the Hon'ble Supreme Court on the ground that the so-called alike i.e. the rich and famous would have higher standards of decency, morality or strength of character as compared to their counterparts who have lesser facilities of inferior quality in the dance bars. That the presumption made by the State is opposed to the Preamble of the Constitution to secure to all the citizens of India equality of status, opportunity and dignity of the individual. Therefore, it is pleaded that the demand for having 70% marks in the aggregate in the first attempt, has no nexus with the object sought to be achieved. However, in the instant amendment, no such presumption has been drawn. The requirement is one of being an outstanding law graduate with a brilliant academic career. The basis for the same is the judgment of the Hon'ble Supreme Court in the second All India Judges' Association's case (supra) vide para 32, by relying on the Shetty Commission report. No such presumption has been made in the impugned rule. The classification is between meritorious and non-meritorious students. The object sought to be achieved is for quality dispensation of justice. In the aforesaid judgment, the Hon'ble Supreme Court came to the view that no reasons have been assigned for the classification. However, the reason assigned herein is imminent. The reason is to ensure quality dispensation of justice. Therefore, we are of

the view that the aforesaid judgment has no application to the case on hand.

(c) Similar is the view expressed by the Hon'ble Supreme Court in the case of Mohan Kumar Singhania and others Vs. Union of India and others reported in 1992 Supp (1) SCC 594, wherein it was held in paras 81, 130, 132 and 139 as follows:-

> *"81. An enactment is never to be held invalid unless it be, beyond question, plainly and palpably in excess of legislative power or it is ultra vires or inconsistent with the statutory or constitutional provisions or it does not conform to the statutory or constitutional requirements or is made arbitrarily with bad faith or oblique motives or opposed to public policy. In our considered opinion, the second proviso to Rule 4 of CSE Rules cannot be held to be invalid on any of the grounds mentioned above.*
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> *** *** ***
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> *130. Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The cherished principle underlying the above article is that there should be no discrimination between one person and another if as regards the subject matter of the legislation, their position is the same. (vide Chiranjit Lal Chowdhuri v. Union of India [1950 SCC 833: 1950 SCR 869 : AIR 1951 SC 41] or in other words its action must not be arbitrary, but must be based on some valid principle, which in itself must not be irrational or discriminatory (vide Kasturi Lal Lakshmi Reddy v. State of J&K [(1980) 4 SCC 1] . As ruled by this Court in Ameerunissa Begum v. Mahboob Begum [(1952) 2 SCC 697: 1953 SCR 404: AIR 1953 SC 91] and Gopi Chand v. Delhi Administration [AIR 1959 SC 609: 1959 Supp 2 SCR 87] that differential treatment does not per se constitute violation of Article 14 and it denies equal protection only when there is no rational or reasonable basis for the differentiation. Thus Article 14 condemns discrimination and forbids class legislation but permits classification founded on intelligible differentia having a rational relationship with the object sought to be achieved by the Act/Rule/Regulation in question. The government is legitimately empowered to frame rules of classification for*

securing the requisite standard of efficiency in services and the classification need not scientifically be perfect or logically complete. As observed by this Court more than once, every classification is likely in some degree to produce some inequality.

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132. In T. Devadasan v. Union of India [(1964) 4 SCR 680 : AIR 1964 SC 179 : (1965) 2 LLJ 560] wherein Subba Rao, J. as he then was, has dissented from the majority and pointed out that the expression "equality before the law or the equal protection of the laws" means equality among equals and that Article 14 does not provide for an absolute equality of treatment to all persons in utter disregard in every conceivable circumstance of the differences.

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139. The impugned second proviso to Rule 4 of the CSE Rules introduced by Notification No.13016/4/86-AIS(1) dated December 13, 1986 is legally and constitutionally valid and sustainable in law and the said proviso neither travels beyond the intent of the main rule, namely, Rule 4 of the CSE Rules nor it is ultra vires Regulation 4(iii-a) of Regulations, 1955, that it is neither arbitrary nor unreasonable and that there is a dynamic and rational nexus between the impugned second proviso and the object to be achieved. There is no discrimination whatsoever involved on account of the introduction of the second proviso in question and the said proviso is not ultra vires Article 14 or Article 16 of the Constitution of India."

(d) The Hon'ble Supreme Court therein were concerned with Rule 4 of the Civil Services Examination Rules issued by the notification dated 13.12.1986. It was indicated therein that the petitioner had filed an application in December, 1986 to sit for the preliminary examination in 1987. Subsequent to the examination and interview, he was selected for appointment to Central Service Group 'A' post. Thereafter a communication was sent to him with regard to Rule 4 of the Civil Services Examination Rules, 1987, that in case he intended to appear in the subsequent Civil Services (Main) examination in 1988, he would not be allowed to join the probationary training along with the candidates of

1987 group, but would only be allowed to join the probationary training along with the candidates appointed on the basis of the 1988 exam. That in the matter of seniority, he would be placed below all the candidates who would join training without postponement. This was challenged before the Central Administrative Tribunal, Delhi wherein the validity of the rule was upheld. Questioning the same, the instant civil appeals were filed before the Hon'ble Supreme Court.

(e) The Hon'ble Supreme Court came to the view that the impugned rule is legally and constitutionally valid since it neither travelled beyond the intent of the main rule nor is it ultra vires the regulation. That there is a nexus between the impugned rule and the object sought to be achieved. That an enactment can never be said to be invalid unless it is beyond question, plainly and palpably in excess of legislative power or it is ultra vires or inconsistent with the statutory or constitutional provisions or it does not conform to the statutory or constitutional requirements or is made arbitrarily with bad faith or oblique motives or opposed to public policy. In so holding the Hon'ble Supreme Court also came to the view that the training sought to be provided is in the nature of providing young probationers an opportunity to counteract their weak points and at the same time develop their social abilities. However, in order to appear for the next competitive exam, they were completely neglecting their training and were also going on leave enmasse for preparing for the ensuing Civil Services Main Examination, thereby creating a vacuum in the training institute. It is for this reason that probationers who were sent for training were debarred from appearing in the ensuing civil services examination so that they could fully devote themselves to the training and take it more seriously. Therefore, there was a nexus between the rules and the object sought to be achieved. In the instant case also, the impugned amendment

has a direct nexus with the object sought to be achieved. The object sought to be achieved is the quality dispensation of justice. The impugned amendment requires that a candidate should have 70% marks in aggregate in the first attempt. The requirement is to the effect of achieving the object. That a brilliant law graduate would be able to deliver quality judgments, is the object of the enactment. Therefore, there is a nexus with the object sought to be achieved. The detailed reasoning of the impugned amendment having a nexus with the object sought to be achieved, has already been discussed hereinabove.

(f) The claim of the petitioners is based on the violation of their constitutional and statutory rights. However, in our considered view, the duty of the State remains in darkness. It is only when there is a failure to perform duty, that a right would arise. Probably that is why Shri Mahatma Gandhi in the book titled as "Our Constitution" 2008 Edition by Shri Subhash C. Kashyap at page 157 has said as follows:-

> *"The source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like will or the wisp, the more we pursue them, the further they will fly."*

(g) This would clearly imply that if duties are performed well, rights do not take birth. Therefore, one has to perform duties completely which would not give rise to a right. However, if a duty is not performed or not performed well enough, then a right accrues. Therefore, the source of all rights, is a duty which has not been performed well. No doubt, it is the fundamental duty of the State to ensure that the rights of the citizens should not be curtailed, however, performance of duties by the State is primary and important. The fundamental duties enshrined in Part IV A of the Constitution of India enjoins upon every citizen the primary duty to constantly endeavour to achieve excellence, individually and collectively

as a member of the group. That the right of the citizen to have a quality judgment is imminent as he is the litigant. To this extent, reference can also be made to Article 51A(j) of the Constitution of India relating to fundamental duties as contained in Part IVA thereof, which reads as follows:-

> *"**51A. Fundamental duties**. – It shall be the duty of every citizen of India –*
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> *** *** ***
>
> *(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."*

(h) The aforesaid Article contemplates that one should strive towards excellence in all spheres of individual and collective activity so that the nation rises to higher levels of endeavour and achievement.

(i) While considering the provision of Article 51A(j) and its applicability to the State, the Hon'ble Supreme Court in the case of AIIMS Students' Union vs. AIIMS reported in (2002) 1 SCC 428 held in para 58 as follows:-

> *"58. ……. Fundamental duties, as defined in Article 51-A, are not made enforceable by a writ of court just as the fundamental rights are, but it cannot be lost sight of that "duties" in Part IV-A Article 51-A are prefixed by the same word "fundamental" which was prefixed by the founding fathers of the Constitution to "rights" in Part III. **Every citizen of India is fundamentally obligated to develop a scientific temper and humanism. He is fundamentally duty-bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. State is, all the citizens placed together and hence though Article 51-A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State.** Any reservation, apart from being sustainable on the constitutional anvil, must also be reasonable to be permissible. In assessing the reasonability, one of the factors to be taken into consideration would be — whether the character and quantum of reservation would stall or accelerate achieving*

> *the ultimate goal of excellence enabling the nation constantly rising to higher levels.* ***In the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go-by and certainly not compromised in its entirety****. Fundamental duties, though not enforceable by a writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice, people's wish as manifested through Article 51-A, can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. Constitutional enactment of fundamental duties, if it has to have any meaning, must be used by courts as a tool to tab, even a taboo, on State action drifting away from constitutional values.*"
>
> ***(emphasis supplied)***

(j) In the aforesaid judgment, it was held that the State would constitute all citizens put together and even though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is collectively speaking the duty of the State. Therefore, it is the duty of the State to ensure excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavour and achievements. The Hon'ble Supreme Court has also noted hereinabove that where the nation as a whole has to compete with the other nations of the world so as to survive, excellence cannot be given an unreasonable go-bye and certainly not compromised in its entirety. In order to achieve higher levels of endeavour and achievements, the requirement of securing 70% marks in aggregate in the first attempt is in tune with Article 51A(j) of the Constitution of India. In terms of Article 51A(j) of the Constitution of India, one should always endeavour to achieve higher levels of excellence. In fact it is the duty of everyone, including the State, to ensure that higher levels of excellence are achieved as against maintenance of status-quo. The contention of the petitioners on this issue, if accepted, would result in nothing more than accepting a status-quo with regard to

qualification and also that higher levels of achievements should not be attempted.

(k) Where there is overall development in all spheres of life, where standards of excellence are increasing by the day, the judiciary also needs to cope up with the same. In terms of the earlier rule, each and every law graduate was entitled to compete in the exam. By the impugned amendment, in terms of the directions of the Hon'ble Supreme Court, outstanding law graduates with a brilliant academic career could compete, provided they have secured 70% marks in the aggregate in the first attempt. This is intended to ensure excellence in the quality dispensation of justice. This is intended to achieve higher levels of excellence in order to achieve the goal of quality dispensation of justice. Therefore, an endeavour is required to be made to this extent. The respondent has attempted to make an endeavour to enhance the quality of the justice delivery system. It is ultimately the litigant who receives the judgment. Such a judgment should be of the topmost quality. Quality and excellence can only be achieved if the judge is of outstanding quality. In order to ensure that a judge is outstanding or possesses a high degree of excellence, the previous record of his academics becomes an important issue. If one is an outstanding graduate with a brilliant academic career, it can be safely presumed that he may turn out to be an outstanding judge. There may be a one in a million chance that an ordinary graduate may turn out to be an outstanding judge, but, however, the odds against him would be very high and too risky for the judiciary to accept. As an institutional preference, reliance would have to be placed on some material that would act as a basis to determine the excellence or otherwise of a candidate. Once such criteria is the marks that he obtains. Therefore, we find that the impugned rule has a direct and strong nexus with the object sought to be achieved.

I.E The impugned amendment is retroactive/retrospective:

44.(a) It is further contended that the impugned amendment could not be made in a retrospective/retroactive manner so as to hamper the rights vested in the candidates. That the rights had accrued and vested in them by virtue of the earlier rules. It is submitted that the right vested in the candidates to have a particular eligibility criteria. That as per the earlier rules, there was no requirement of obtaining 70% marks in aggregate in the first attempt. Therefore, aspiring candidates undertook the examination of the judicial services under that assumption. By virtue of the impugned notification, the same has changed. Their vested right has been affected. In support of their case, the petitioners rely on the following judgment:-

(b) In the case of Anushka Rengunthwar and others vs. Union of India and others reported in 2023 SCC OnLine SC 102 with reference to paras 20, 21, 50 to 54 and 59 and 60. The same reads as under:-

> *"20. Through the said notification dated 05.01.2009 the OCI Cardholders were given the right to pursue the professions indicated therein, in India and also to appear for the All-Indian Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts. Since NRIs had parity with the Indian Citizens in that regard, the same benefit became extended to the OCI Cardholders including the petitioners herein.*
>
> *21. A cumulative perusal of the three notifications of 2005, 2007 and 2009 heavily relied on by the learned senior counsel for the petitioners would certainly indicate that from the stage of amendment to Citizenship Act,1955 through Section 7A to 7D thereof and the notifications issued pursuant thereto, conferring rights under Section 7B(1) and such right being expanded from stage to stage, it would indicate that based on the need, progression was made in conferring better right to the Overseas Citizens of India who, except for the incident of their birth in a foreign country were in all other respects similarly placed as that of Indian citizens and the limited foreign affiliation of NRI and OCI Cardholders made them to be compared with each other for*

parity. In fact, for the purpose of air fares and entry fee to places of interest, they were given parity with Indian nationals. It is in that view contended that taking away such a right that was available in the changing social scenario would amount to retrogression when in fact better right should have been conferred.

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50. To put the matter in its context for better appreciation of the mischief caused by the impugned notification and the manner in which it would irreversibly alter the situation, to which aspect there is non-application of mind by respondent No. 1, it would be appropriate to refer to the existing facts of an individual petitioner. To demonstrate this aspect we shall take the details of the first petitioner in W.P.(C) No. 891 of 2021 as an instance to demonstrate the case in point. From the tabular statement supra, it is noted,

(a) She was born on 31.12.2003 in California, USA.

(b) Both her parents are Indian Nationals.

(c) She has come to India in the year 2006

(d) Has lived thereafter in India for 15 years.

(e) Presently she is at Pune, Maharashtra,

(f) pursued her entire educational career in India

(g) Passed the 12th standard which is the qualifying examination to appear for the Medical Entrance also in India.

51. As on the year of birth in 2003 the Citizenship Amendment Act, 2003 was brought in to introduce Section 7A of Act, 1955 w.e.f. 06.12.2004. The said amendment was based on the recommendations of a High-Level Committee on Indian diaspora. The Government of India decided to register the Persons of Indian Origin (PIO) of a certain category as specified in Section 7A of Act, 1955 as Overseas Citizens of India. The OCI scheme was introduced with the issue of notification of 2005 which is in the background of the demands for dual citizenship by the Indian diaspora and the concept of dual citizenship is not recognized.

52. Therefore it is evident that the object of providing the right in the year 2005 for issue of OCI cards was in response to the demand for dual citizenship and as such, as an alternative to dual citizenship which was not recognised, the OCI card benefit was extended. If in that light, the details of the first petitioner taken note hereinabove is analysed in that context, though the option of getting the petitioner No.1 registered as a citizen under

Section 4 of Act, 1955 by seeking citizenship by descent soon after her birth or even by registration of the citizenship as provided under Section 5 of Act, 1955, was available in the instant facts to her parents, when immediately after the birth of petitioner No.1 the provision for issue of OCI cards was statutorily recognised and under the notification the right to education was also provided, the need for parents of petitioner No. 1 to make a choice to acquire the citizenship by descent or to renounce the citizenship of the foreign country and seek registration of the Citizenship of India did not arise to be made, since as an alternative to dual citizenship the benefit had been granted and was available to petitioner No. 1 and the entire future was planned on that basis and that situation continued till the year 2021.

53. Further, as on the year 2021 when the impugned notification was issued the petitioner No. 1 was just about 18 years i.e., full age and even if at that stage, the petitioner was to renounce and seek for citizenship of India as provided under Section 5(1)(f)(g), the duration for such process would disentitle her the benefit of the entire education course from pre-school stage pursued by her in India and the benefit for appearing for the Pre-Medical Test which was available to her will be erased in one stroke. Neither would she get any special benefit in the country where she was born. Therefore in that circumstance when there was an assurance from a sovereign State to persons like that of the petitioner No. 1 in view of the right provided through the notification issued under Section 7B(1) of Act, 1955 and all 'things were done' by such Overseas Citizens of India to take benefit of it and when it was the stage of maturing into the benefit of competing for the seat, all 'such things done' should not have been undone and nullified with the issue of the impugned notification by superseding the earlier notifications so as to take away even the benefit that was held out to them.

54. Therefore, on the face of it the impugned notification not saving such accrued rights would indicate non application of mind and arbitrariness in the action. Further in such circumstance when the stated object was to make available more seats for the Indian Citizens and it is demonstrated that seats have remained vacant, the object for which such notification was issued even without saving the rights and excluding the petitioners and similarly placed OCI Cardholders with the other students is to be classified as one without nexus to the object. As taken note earlier during the course this order, the right which was granted to the OCI cardholders in parity with the NRIs was to appear for the Pre-Medical Entrance Test along with all other

similar candidates i.e. the Indian citizens. In a situation where it has been demonstrated that the petitioner No. 1 being born in the year 2003, has been residing in India since 2006 and has received her education in India, such student who has pursued her education by having the same 'advantages' and 'disadvantages' like that of any other students who is a citizen of India, the participation in the Pre-Medical Entrance Test or such other Entrance Examination would be on an even keel and there is no greater advantage to the petitioner No. 1 merely because she was born in California, USA. Therefore, the right which had been conferred and existed had not affected Indian citizens so as to abruptly deny all such rights. The right was only to compete. It could have been regulated for the future, if it is the policy of the Sovereign State. No thought having gone into all these aspects is crystal clear from the manner in which it has been done.

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59. Hence, the notification being sustainable prospectively, we hereby declare that the impugned portion of the notification which provides for supersession of the notifications dated 11.04.2005, 05.01.2007 and 05.01.2009 and the clause 4(ii), its proviso and Explanation (1) thereto shall operate prospectively in respect of OCI cardholders who have secured the same subsequent to 04.03.2021.

60. We further hold that the petitioners in all these cases and all other similarly placed OCI cardholders will be entitled to the rights and privileges which had been conferred on them earlier to the notification dated 04.03.2021 and could be availed by them notwithstanding the exclusion carved out in the notification dated 04.03.2021. The participation of the petitioners and similarly placed OCI cardholders in the selection process and the subsequent action based on the interim orders passed herein or elsewhere shall stand regularised."

(c) The Hon'ble Supreme Court therein were concerned with the impugned notification issued by the Union of India in exercise of the powers conferred by subsection (1) of Section 7B of the Citizenship Act, 1955. In terms whereof, the existing right of appearing in the entrance exams to compete with Indian citizens for the seat, was taken away and admission was restricted only as against seats reserved for non-resident Indians or for supernumerary seats. The impugned notification also indicated that the OCIs card holders shall not be eligible for admission

against the seats reserved exclusively for Indian citizens. An explanation was also provided that an OCI card holder is a foreign national holding a passport from a foreign country and is not a citizen of India.

(d) The petitioner challenged the impugned notification on the ground that it falls foul of the doctrine of non-retrogression since the right which was being bestowed from the year 2005 instead of progressing and maturing to a better right, was curtailed and reversed by the impugned notification. That by virtue of the impugned notification, an existing right had been taken away. That the petitioners are not only OCI card holders but are resident OCI card holders and therefore, should be treated like any other citizen of India since they were disentitled by virtue of the impugned notification from the process of admission to the seats to which Indian citizens were entitled.

(e) The Hon'ble Supreme Court came to the view that by virtue of the notification issued in the year 2005 apart from granting multiple entry lifelong Visa to visit India for any purpose, parity with non-resident Indian was provided. By virtue of the notification dated 11th April, 2005, rights were created in favour of the overseas citizens of India on various issues including parity with non-resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to acquisition of agricultural or plantation properties. By a subsequent notification dated 5th of January, 2009, parity with non-resident Indians was granted for pursuing a profession in India namely; doctor, dentist, nurses, pharmacist, advocate, architect and chartered accountant and to appear for the all India Pre-Medical Test or such other tests to make them eligible for admission in pursuance to the provisions contained in the relevant Act. However, by the impugned notification dated 4th of March, 2021, the rights bestowed thereunder on the OCI card

holders limited the right of the OCI card holders to be on par with regard to NRI seats and supernumerary seats. Their eligibility for admission was only against non-resident Indian seats or any supernumerary seats. Therefore, the OCI card holders were not eligible for admission against any seat reserved exclusively for Indian citizen. Therefore, the same would amount to denial of an opportunity of education which was hitherto available to the OCI card holders. Therefore, the legitimate expectation of the petitioners was defeated which also violates Article 14 of the Constitution of India.

(f) Therefore, the need for the petitioners or their parents to make a choice to apply for citizenship by descent or to renounce the citizenship of the foreign country and seek registration of the citizenship of India did not arise, in view of the fact that as an alternative to dual citizenship, the benefits had been granted and was available. As a consequence whereof, the entire future of the petitioners and the parents of the petitioners was planned on the basis of the notification, which continued till the issuance of the impugned notification in the year 2021. By virtue of the impugned notification, the petitioners would be disentitled for the benefit of the entire education course from pre-school stage pursued in India as well as the benefit to appear in the Pre-Medical Test, which was available under the old notification.

(g) Therefore, in view of the right provided to the petitioners in the earlier notifications and acts were done by such petitioners namely, the overseas citizens of India to take benefit of it and when it was at the stage of maturing into a benefit of competing for the seats, all the acts done by the petitioners cannot be undone and nullified by virtue of the impugned notification.

(h) On these grounds the said impugned notification was quashed. The same is being relied upon by the petitioners to contend that by virtue of impugned amendment, the rights which accrued to them earlier, of seeking admission has now been curtailed in view of the fact that they have to obtain 70% marks in the aggregate in the first attempt. Therefore, even if the amendment is held to be valid it should be considered valid prospectively from date onwards and not retrospectively.

(i) On the other hand, the respondents have placed reliance on the judgment of the Hon'ble Supreme Court in the case of Subodh Kumar and others vs. Commissioner of Police and others reported in (2020) 13 SCC 201 with reference to para 16, to contend that the candidate has a right to be considered under existing rules, which implies "rule in force" on the date the consideration of the candidature of the candidate takes place. There is no rule of universal or absolute application that the vacancies must be filled invariably by law existing on the date the vacancy arises. The Hon'ble Supreme Court in para-16 of the said judgment has held as follows:

> *"16. It is equally a settled proposition of law that a candidate has a right to be considered under the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up earlier year vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion."*

(j) We are unable to accept the contention of the petitioners. The facts narrated in the aforesaid judgment of the Hon'ble Supreme Court in the case of Anushka Rengunthwar hereinabove, would indicate that in pursuance to the notification issued in 2005 by the Union of India, an option was given to the petitioners which they exercised. Further rights

were created in their favour by the notifications issued in the years 2007 and 2009. When the time came for the fruit of the exercise of the action to take place, the impugned notification was issued. The effect of the notification would be to erase all the rights that had accrued to the petitioners as a consequence to the notifications issued in the years 2005, 2007 and 2009. Therefore, the legitimate expectation of the petitioners based on the notification issued by the Union of India was withdrawn by the impugned notification. Therefore, the right of the petitioners existed and continued to exist even as on date of the impugned notification. Therefore, the object of providing the right by virtue of the notification issued in the year 2005 for issuance of an OCI cards was in response to the demand for dual citizenship. As an alternative to dual citizenship, which was not recognised, the OCI card benefit was extended. Under the said Notification, the right to education was also provided. The need for parents to make a choice to acquire citizenship by descent or to renounce the citizenship of the foreign country and seek registration of the Citizenship of India did not arise to be made, since as an alternative to dual citizenship the benefit had been granted and was available to the petitioner. On that basis, the entire future was planned, which continued till the issuance of the impugned Notification till the year 2021. When the impugned Notification was issued in the year 2021, the petitioner was entitled to renounce and seek for citizenship of India, wherein the duration for such process would disentitle the petitioner the benefit of the entire education course from pre-school stage pursued by her in India and the benefit of appearing for the Pre-Medical Test which was available to her will be erased by one stroke by the impugned Notification. When there was an assurance from a sovereign State and all things were done by such overseas citizens of India to take benefit of it and when the stage of maturing into the benefit of competing for the seat occurred, all things

done could not have been undone and nullified by the impugned Notification. Therefore, it was held that there was non-application of mind and arbitrariness in action.

(k) However, so far as the petitioners are concerned, the same analogy cannot be adopted herein. No earlier right or choice was granted by the respondents. Consequently, no act or things could have been done by the petitioners earlier. Such a situation was non-existent. The reference being made to the earlier notification issued by the High Court is out of context. The earlier notification would not have had any bearing on the petitioners, since they were not even eligible to apply for the post due to want of a law degree. Therefore, the contention that rights have accrued to them by the earlier Notification, is wholly misplaced. The right of the petitioners to appear for the examination is a right that accrued to them on the publication of the instant notification. Unlike the aforesaid judgment of the Hon'ble Supreme Court wherein a promise was ostensibly made, there is no such event that has taken place herein. On the date the earlier notification was issued by the Union of India, the petitioners and their family had a choice to make. On a choice being exercised, the same was relatable to the fulfillment of that choice by the State. It is on the assurance made by the Union of India by virtue of the earlier notification in 2005 that the petitioners and their family made a particular choice. More assurances were made by the Union of India in the notifications of the years 2007 and 2009. Years later in pursuance to the choice made by the petitioners, when the consequences of such a choice had to be effected, the impugned notification was issued, which took away the right of the petitioners which was granted to them by the earlier notifications. In fact, the persons who took benefit of the notification in the year 2005, were the very same persons, who were affected by the impugned

notification in the year 2021. It is not that different sets of people were affected by the impugned notification vis-à-vis those persons who were concerned with the earlier notifications. It was the same set of persons. This was frowned upon by the Hon'ble Supreme Court, since it offended Article 14 of the Constitution of India. However, that is not the case herein. There was no promise made by the State or the High Court to any one of the candidates at any point of time. No choice existed that could have been exercised. There was no course of action or any act committed by the petitioners in furtherance to the alleged promise made by the State or the High Court. A right vests in the candidate only on the issuance of a notification and not before that. The right ceases on the expiry of the notification, namely, on the publication of the select list or otherwise. The right of the petitioners takes birth only when a notification calling for applications is made. No right exists prior to that. Therefore, to contend that they had a pre-existing right, is ill-founded. Furthermore, no right at all continues after the notification had run its course and ceased to exist. Once a notification is issued, the right of the petitioner takes birth and ceases when the final select list or appointment orders are issued. The right does not continue beyond that at all. A new right takes place as and when a new notification is issued. Therefore, the right of the petitioners herein is only so far as the instant amendment and the consequential notification is concerned. There is no pre-existing right that has continued which the petitioners could claim. The judgment has been misread and misplaced. Hence, we are of the view that the said judgment is not applicable to the case at hand. Therefore, the contention of the petitioners that the impugned amendment has a retroactive/retrospective effect cannot be accepted.

I.F <u>The impugned amendment fails to satisfy the balancing and necessity test and also that it is not proportionate</u>:

45.(a) The contention of the petitioners is that by virtue of the amended rule, since the vested right of the petitioners has been taken away, the impugned rule should satisfy the test of reasonableness, fairness and should have a nexus with the object sought to be achieved. In support of his case, he relies on the judgment of the Hon'ble Supreme Court in the case of Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others reported in (2016) 7 SCC 353 with reference to paras 60 and 62, which reads as follows:-

> *"60. Another significant feature which can be noticed from the reading of the aforesaid clause is that the State is empowered to make any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation or trade or business. Thus, while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is what is known as "doctrine of proportionality". Jurisprudentially, "proportionality" can be defined as the set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four sub-components of proportionality which need to be satisfied [Aharon Barak, Proportionality: Constitutional Rights and Their Limitation (Cambridge University Press 2012).], a limitation of a constitutional right will be constitutionally permissible if:*
>
> *(i) it is designated for a proper purpose;*
>
> *(ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose;*
>
> *(iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally*

(iv) there needs to be a proper relation ("proportionality stricto sensu" or "balancing") between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right."

*** *** ***

62. It is now almost accepted that there are no absolute constitutional rights [Though, debate on this vexed issue still continues and some constitutional experts claim that there are certain rights, albeit very few, which can still be treated as "absolute". Examples given are:(a) Right to human dignity which is inviolable,(b) Right not to be subjected to torture or to inhuman or degrading treatment or punishment. Even in respect of such rights, there is a thinking that in larger public interest, the extent of their protection can be diminished. However, so far such attempts of the States have been thwarted by the judiciary.] and all such rights are related. As per the analysis of Aharon Barak [Aharon Barak, Proportionality: Constitutional Rights and Their Limitation (Cambridge University Press 2012).] , two key elements in developing the modern constitutional theory of recognising positive constitutional rights along with its limitations are the notions of democracy and the rule of law. Thus, the requirement of proportional limitations of constitutional rights by a sub-constitutional law i.e. the statute, is derived from an interpretation of the notion of democracy itself. Insofar as the Indian Constitution is concerned, democracy is treated as the basic feature of the Constitution and is specifically accorded a constitutional status that is recognised in the Preamble of the Constitution itself. It is also unerringly accepted that this notion of democracy includes human rights which is the cornerstone of Indian democracy. Once we accept the aforesaid theory (and there cannot be any denial thereof), as a fortiori, it has also to be accepted that democracy is based on a balance between constitutional rights and the public interests. In fact, such a provision in Article 19 itself on the one hand guarantees some certain freedoms in clause (1) of Article 19 and at the same time empowers the State to impose reasonable restrictions on those freedoms in public interest. This notion accepts the modern constitutional theory that the constitutional rights are related. This relativity means that a constitutional licence to limit those rights is granted where such a limitation will be justified to protect public interest or the rights of others. This phenomenon—of both the right and its limitation in the Constitution—exemplifies the inherent tension between democracy's two fundamental elements. On the one hand is the right's element, which constitutes a fundamental component of substantive

> *democracy; on the other hand is the people element, limiting those very rights through their representatives. These two constitute a fundamental component of the notion of democracy, though this time in its formal aspect. How can this tension be resolved? The answer is that this tension is not resolved by eliminating the "losing" facet from the Constitution. Rather, the tension is resolved by way of a proper balancing of the competing principles. This is one of the expressions of the multi-faceted nature of democracy. Indeed, the inherent tension between democracy's different facets is a "constructive tension". It enables each facet to develop while harmoniously coexisting with the others. The best way to achieve this peaceful coexistence is through balancing between the competing interests. Such balancing enables each facet to develop alongside the other facets, not in their place. This tension between the two fundamental aspects—rights on the one hand and its limitation on the other hand—is to be resolved by balancing the two so that they harmoniously coexist with each other. This balancing is to be done keeping in mind the relative social values of each competitive aspects when considered in proper context."*

(b) The first requirement is that the impugned rule should be designated for a particular purpose and the second is that the measures undertaken to effectuate such a limitation, are rationally connected to the fulfillment of that purpose. So far as both these issues are concerned, the same have been considered in **Chapter I Part I.D** with reference to the impugned amendment having a nexus with the object sought to be achieved. Hence, for the reasons assigned therein, the same may be read herein also, with regard to points 1 and 2.

(c) The third component is that the measures undertaken are necessary and that there is no alternative measure which could achieve the same purpose but with a lesser degree of limitation. The measure undertaken through the impugned rule is to the effect of securing 70% marks in aggregate in the first attempt. This is based on the direction of the Hon'ble Supreme Court while relying on the recommendations made by the Shetty Commission. In terms whereof, it was intended that an

outstanding law graduate with a brilliant academic career should also be permitted to write the exam. Since this was the direction of the Hon'ble Supreme Court, we do not find that there could be any other alternate measure to achieve the said object. The object was to ensure qualitative judgments by the concerned judge. In order to ensure that quality is achieved, the quality of the judge becomes important. The quality of the judge, is in turn, based on his merit. Therefore, marks become an important factor to determine whether a candidate is outstanding or not. Under these circumstances, we do not find any alternate to an outstanding law graduate. It is not a case where the marks are too high and could be reduced. The question of reduction in the marks would not arise for consideration in view of the fact that what is required is an outstanding law graduate with a brilliant academic career. There can be no alternate to being an outstanding law graduate. Therefore, there does not appear to be any alternate measure in order to achieve the said object. The object of an enactment can be ensured through outstanding law graduates with a brilliant academic career.

(d) Furthermore, the Hon'ble Supreme Court in the case of M.R.F. Ltd. vs. Inspector Kerala Govt. and others reported in (1998) 8 SCC 227 held in para 13 as follows:-

> *"13. On a conspectus of various decisions of this Court, the following principles are clearly discernible:*
>
> *(1) While considering the reasonableness of the restrictions, the court has to keep in mind the Directive Principles of State Policy.*
>
> *(2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.*
>
> *(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of*

human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by clause (6) of Article 19.

(5) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind. (See: State of U.P. v. Kaushailiya [AIR 1964 SC 416 : (1964) 4 SCR 1002] .)

(6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise. (See: Kavalappara Kottarathil Kochuni v. States of Madras and Kerala [AIR 1960 SC 1080 : (1960) 3 SCR 887] ; O.K. Ghosh v. E.X. Joseph [AIR 1963 SC 812 : 1963 Supp (1) SCR 789 : (1962) 2 LLJ 615] .)"

(e) On considering the contentions as well as the impugned amendment, we have no hesitation to hold that the impugned amendment falls within the principles as enunciated by the Hon'ble Supreme Court in the aforesaid judgment. That the interest of the general public, namely, the litigants vis-à-vis the writ petitioners and the like, is neither arbitrary nor an excessive limitation. That no abstract or a general pattern or a fixed principle can be laid down to judge reasonableness of the restrictions. The ultimate interest of the public at large has to be seen. A balance has to be struck between the restrictions imposed and the social control envisaged by clause (6) of Article 19 of the Constitution of India. Prevailing social values and social needs are required to be borne in mind. There has to be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. In the instant case, the object sought to be achieved is quality justice to the litigants. In order to achieve this object, outstanding law

graduates are enabled to compete. It is an object intended to enhance the quality of the justice dispensation in the State of Madhya Pradesh.

(f) Lastly, the requirement is that there should be a proportionality or balancing between the importance of achieving the object and the social importance of preventing the limitation on the Constitutional right. This too has been discussed hereinabove to the effect that the purpose of the amendment is to ensure that the best amongst the best are eligible to compete for the exam. The interest of the society, namely, the litigants and the interest of the individual petitioners and the like are required to be balanced. In so balancing these two factors it is needless to state that the interest of the society and the litigants far outweighs the interest of the petitioners or the like. The interest of the petitioners is their personal interest. It is they who seek to compete. All the contentions of the petitioners are in self interest. Their only interest is to be able to compete in the examination. The impugned rule has been enacted in order to ensure quality dispensation of justice through outstanding law graduates. Therefore, in case the petitioners intend to appear they would first have to deserve the same. The interest of the amendment is to ensure that quality justice is delivered by a quality judge. Weighed from this angle, the balance necessarily tilts in favour of the legislation since it is the interest of the litigants and the society as compared to the interest of the petitioners and the like. Therefore, when the object is the interest of the society, the same cannot be said to be bad in law only because it affects the prospects of the petitioners or others. Therefore, there is a strong relation between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right. It cannot be said that it is not proportionate.

(g) Therefore, all the principles as enunciated by the Hon'ble Supreme Court being fulfilled by the impugned amendment, we do not find that the contentions of the petitioners could be accepted on this front.

I.G <u>That there is no data supporting the amendment:</u>

46. The petitioners contend that there is no data in pursuance to which the impugned amendment has been brought about. That whenever an amendment is challenged, the authority would have to show the basis on which the impugned amendment has been brought about. In the instant case, no data is available in pursuance to which the impugned amendment has been brought about.

47.**(a)** We are unable to accept the said contention. Firstly is the fact that what was suggested by the Shetty Commission and accepted by the Hon'ble Supreme Court is with regard to outstanding law graduates. The High Court is very well entitled to ensure that the best of candidates should be considered for the post of Civil Judge. It is not that each and every candidate would be suitable. The recommendation of the Shetty Commission was that a candidate should be outstanding and secondly should have a brilliant academic career. Therefore, the attempt is to find an outstanding law graduate with a brilliant academic career.

(b) The High Court is not satisfied with each and every candidate applying for the said post. The intention of the High Court is to secure the best among the best. The intention of the High Court is to raise the bar in order to ensure that the finest of law graduates would become judges. The intention of the High Court is quality-centric. The intention of the High Court is the interest of the litigants. It is only when one is an outstanding law graduate with a brilliant academic career that he may turn out to be an excellent judge. The interest of the petitioners is personal. They have

nothing to lose. Having passed the law degree, their desire is to compete in the exam. It is a matter of public knowledge that the students focus more on clearing the Civil Judges' exam rather than concentrating on their academics. Their object is to pass the Civil Judges' exam rather than to do well in college. At the expense of college studies, they even join tutorials who coach them towards the Civil Judge exam. The same was a fact situation in the case of Mohan Kumar Singhania and others vs. Union of India and others reported in 1992 Supp (1) SCC 594 (supra), wherein the training was not being considered seriously whereas time and attention was being paid to attempt the next exam, even though they had cleared the earlier exam. On the contrary, the intention of the High Court being to obtain the best among the best, would lead to the quality dispensation of justice. It is only the best among the best, who could deliver the finest judgments. It is for this reason that merit always has precedence over mediocrity. Therefore, a mediocre student cannot be forced into the judicial service in comparison with an outstanding law graduate with a brilliant academic career.

(c) The further requirement is that he is not just an outstanding law graduate but also that he must have a brilliant academic career. This is the quality of persons that the High Court intends to have as judges. Therefore, the standard as envisaged through the impugned amendment is purely and simply in the direction of the quality dispensation of justice. On the other hand, the intention of the petitioners may be only to secure a job or otherwise. The contention of the petitioners that any law graduate would suffice to become a good judge is unacceptable. The requirement of the High Court is the best among the best. Therefore, the question of seeking any data to support the amendment is misplaced. It is not a requirement of data, but a hope to enhance the quality dispensation of

justice. Therefore, the contention of the petitioners on this issue cannot be accepted.

I.H Distinction between a five year and a three year law graduate:

48.(a) The petitioners contend that there is a difference between a law graduate who has completed a three year course and one who has completed a five year course; that the subjects and curriculum are different. However, the impugned rule specifies a law graduate either in a three year or a five year course. It draws no distinction between these two class of graduates, therefore, it is erroneous. In support of their case, the petitioners rely on the judgment of the Hon'ble Supreme Court in the case of Binoy Viswam vs. Union of India and others reported in (2017) 7 SCC 59 with reference to para 101, which reads as follows:

> *"101. The varying needs of different classes or sections of people require differential and separate treatment. The legislature is required to deal with diverse problems arising out of an infinite variety of human relations. It must, therefore, necessarily have the power of making laws to attain particular objects and, for that purpose, of distinguishing, selecting and classifying persons and things upon which its laws are to operate. The principle of equality of law, thus, means not that the same law should apply to everyone but that a law should deal alike with all in one class; that there should be an equality of treatment under equal circumstances. It means that equals should not be treated unlike and unlikes should not be treated alike. Likes should be treated alike."*

(b) Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of Prem Chand Somchand Shah and another vs. Union of India and another reported in (1991) 2 SCC 48 with reference to para 8 wherein a similar view was expressed. The same reads as follows:

> *"8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may*

> *result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."*

(c) In the aforesaid judgment of the Hon'ble Supreme Court, it was held that the same law should apply to everyone and that likes should be treated as likes and unlikes should be treated as unlikes. That even among persons similarly situated, differential treatment would be permissible between one class and the other. That such a differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that such a differentia must have a rational relation to the object sought to be achieved. On considering the said judgment, we are of the considered view that the same is not applicable to the case on hand. The difference sought to be made between law graduates is between the meritorious and the non-meritorious, even though, all of them are law graduates. The reason for the classification is to achieve the object of the enactment. So far as the nexus between the impugned amendment and the object sought to be achieved is concerned, the same has been considered in detail in **Chapter I Part I.D**. Hence, for the reasons assigned therein, the same may be read as the answer to the aforesaid contention.

(d) Furthermore, the Advocates Act, 1961 defines a law graduate in terms of Section 2(h), which reads as follows:-

> *"2. Definitions. – (1) In this Act, unless the context otherwise requires, -*
>
> *** *** ***
>
> *(h) "law graduate" means a person who has obtained a bachelor's degree in law from any University established by law in India;"*

(e) Therefore, the definition does not make a distinction between a law graduate who has completed a three year or five year degree course. It defines a law graduate as a person who has obtained a bachelor's degree in law from any University established by law in India.

(f) Section 24 postulates the persons, who may be admitted as advocates on a State roll. That a person shall be qualified to be admitted as an advocate on a State roll if he fulfills the conditions as mentioned therein. One of the conditions is that he should have obtained a degree in law on various terms as mentioned therein. Furthermore, reference can also be had to Rule 2(vi) pertaining to Rules of Legal Education as contained in Part IV of the Bar Council of India Rules, which reads as follows:-

> *"(vi) "Bachelor degree in law" means and includes a degree in law conferred by the University recognized by the Bar Council of India for the purpose of the Act and includes a bachelor degree in law after any bachelor degree in science, arts, commerce, engineering, medicine, or any other discipline of a University for a period of study not less than three years or an integrated bachelor degree combining the course of a first bachelor degree in any subject and also the law running together in concert and compression for not less than a period of five years after 10+2 or 11+1 courses as the case may be."*

(g) Rule 4 of the Bar Council of India Rules in Part IV under Chapter II Standards of Professional Legal Education also defines law courses as follows:-

> *"**4. Law courses**.—There shall be two courses of law leading to Bachelors Degree in Law as hereunder:*
>
> *(a) A three year degree course in law undertaken after obtaining a Bachelors' Degree in any discipline of studies from a University or any other qualification considered equivalent by the Bar Council of India:*
>
> *Provided that admission to such a course of study for a degree in law is obtained from a University whose*

degree in law is recognized by the Bar Council of India for the purpose of enrolment.

(b) A double degree integrated course combining Bachelors' Degree course as designed by the University concerned in any discipline of study together with the Bachelors' degree course in law, which shall be of not less than five years' duration leading to the integrated degree in the respective discipline of knowledge and Law together:

Provided that such an integrated degree program in law of the University is recognized by the Bar Council of India for the purpose of enrolment.

*** *** ***"

(h) Therefore, in terms of the Advocates Act as well as the Bar Council of India Rules, there is no distinction made between a law graduate who has undergone a five year course and a law graduate who has undergone a three years course after obtaining a graduation degree in arts, science, commerce etc. Therefore, in terms whereof, the requirement has been specified as a law graduate with a five year or a three year course.

(i) It is also further relevant to notice that ever since the Rules of 1994 were promulgated, the requirement of possessing a degree in law of any recognized University has always been in the rules. There has never been a distinction made between a five year course in law and a three year course in law. The same is the position even so far as the impugned rule is concerned. There is no distinction made between a three year law course and a five year law course. Therefore, keeping in mind the definitions of who is a law graduate in terms of the Advocates Act and the Bar Council of India Rules it cannot be said that any distinction can be made between a graduate with a five year law degree or a three year law degree.

(j) For the reasons assigned hereinabove, the reliance placed by the learned counsels for the petitioners on the aforesaid two judgments would

have no relevance. In view of the definition and the requirements made in the Advocates Act and the Bar Council of India Rules, the contention of the petitioners that a law graduate with a five year course and a law graduate with a three year course are not likes but unlikes, cannot be accepted. In terms of the Advocates Act and the Bar Council of India Rules, a law graduate is one who is graduate in law from any recognized university be it a five year law course or a three year law course. Hence, the said judgments have no relevance to the case on hand.

(k) The equivalence of a degree is a matter to be decided only by the concerned authorities and not by a Court of law. Therefore, whether degrees are equivalent or different is a matter for the experts to decide and not for this Court. The question of equivalence of degree has been considered by us in **Chapter VIII**, with regard to post graduate candidates, by relying on the judgment of the Hon'ble Supreme Court in the case of Zahoor Ahmad Rather and others vs. Sheikh Imtiyaz Ahmad and others reported in (2019) 2 SCC 404. Hence, the same may be read as the answer to this point. Therefore, the contention that there is a difference between graduates who have completed a five year course and a three year course in law cannot be accepted.

II. Note (4) of Clause (1) of Part C of the advertisement dated 17.11.2023 is arbitrary:

49. Note (4) of Clause (1) of Part C of the advertisement dated 17.11.2023 reads as follows:-

> "4) निरंतर विधि व्यवसाय के प्रमाणपत्र के समर्थन में अभ्यर्थी को प्रत्येक वर्ष की 06 (छः) ऐसे मामलों की आदेशपत्रिकायें/आदेशों/निर्णयों की प्रमाणित प्रतिलिपियाँ, जिनमें अभ्यर्थी का नाम अधिवक्ता के रूप में दर्शित हो रहा हो, प्रस्तुत करनी होंगी। मामलों की आदेशपत्रिकायें प्रस्तुत किये जाने की दशा में ऐसी आदेशपत्रिकाओं से

यह अवश्य दर्शित होना चाहिए कि उक्त दिनांक को मामले में कुछ सारवान कार्यवाही हुई है।".

The translation reads as follows:-

"(4) In support of the Certificate of Continuous Legal Practice, certified copies of the Orders sheets/orders/Judgments of 06 such cases of every year which clearly reflect the name of candidate as an advocate, are required to be submitted. In case of submission of Order Sheets, it should necessarily show that on the said date some substantial proceedings had taken place."

50.(a) The contention of the petitioners is that a candidate may have appeared in 06 cases but his name may not have appeared in the order sheets. There may be a number of reasons for the same. A young lawyer would not have a client and therefore would be arguing the cases of his senior. Hence, his name may not appear in the Vakalat. It is not necessary that his name should appear in the order sheets as a counsel who has appeared. What has to be seen is whether he has practised for three years or not. The same is disputed by the respondents.

(b) On considering the contentions, we are of the considered view that appropriate interference is called for. Firstly is the fact that what has been sought for in terms of Note (4) of Clause (1) of the advertisement is proof of practice. It cannot be said to be mandatory. The reasons assigned by the learned counsels for the petitioners with regard to the absence of the name of the candidate in the order sheets prima facie requires to be accepted. The purpose of the advertisement is to ascertain as to whether a candidate has put in a practice of three years or not. In arriving at such a conclusion there has to be some material in proof of the same. One such material may constitute six order sheets etc. for a year for the particular candidate. However, it does not mean that it should be the sole criteria to determine the practice of a candidate for three years. Therefore, so far as

Note (4) of Clause (1) of the advertisement is concerned, it cannot be said to be mandatory. However, we add that in the absence of providing six order sheets etc. per year as a proof of practice for three years, the candidate must produce some material to justify his claim that he has been in continuous practice for three years. Such material that would be produced before the authority at the relevant point of time, would be considered by the authority as material in support of practice for three years. Therefore, we hold that the said requirement is not mandatory but only directory. Even otherwise, in writ petition W.P.No.30653 of 2023 (Neha Kothari and others vs. The Hon. High Court of Madhya Pradesh Principal Seat at Jabalpur and another), by an interim order dated 12.12.2023, it was held as follows:-

> *"5. Prima facie, we are of the view that the insistence of having six appearances as pointed out in the advertisement may not be insisted upon by the respondents while scrutinizing the applications of the candidates. The intention of the respondents would appear to be to find out if the candidate is in continuous practice or not. To this account, any material may be produced to establish the same and not necessarily six appearances. However, it is for the authorities to consider the same at an appropriate stage. The question of appearance or otherwise, is a matter to be considered by the respective authorities in order to find out whether the candidate has appeared in the court or not. Therefore, we direct that the application be considered even if there is no material to indicate that he has not put in six appearances in the court subject to other compliances."*

(c) Therefore, we confirm the said interim order in the aforesaid terms.

III. <u>Sub-rules (2), (3), (4), (5), (6) and (7) of Rule 5 of the Rules of 1994 are unconstitutional:</u>

51.(a) It is the contention of the petitioners that Rule 5(2) is erroneous since it does not speak of any procedure for the conduct of the exam. Rule 5(2) reads as follows:-

> *"5. Method of Appointment and the Appointing Authority.-*
> **** *** ****
> *(2) The candidates shall be considered on the basis of the preliminary examination, main examination and viva-voce/interview conducted by the High Court. The procedure and curriculum for holding examinations/ viva-voce/interview for the selection of the candidates shall be as prescribed by the High Court."*

(b) Therefore sub-rule (2) of Rule 5 would indicate that the candidates shall be considered on the basis of the preliminary examination, main examination and viva-voce/interview conducted by the High Court, which shall be based on the procedure and curriculum as prescribed by the High Court. That there is no such procedure or curriculum. Hence, there is violation of this sub-rule. The same is disputed by the respondents.

(c) The procedure and curriculum for holding examinations/viva-voce/ interview has been prescribed by the High Court. It pertains to the method of appointment and the appointing authority, the determination of vacancies, reservation roster, advertisement, eligibility and disqualification of candidate, selection/recruitment process, the syllabus for preliminary exam, the syllabus for the main exam and their respective cut-off marks, procedure for interview/viva voce, the publication of the final list etc. The same was placed for consideration before the Full Court and in terms of the resolution dated 05.10.2021 of the Full Court, the procedure and curriculum for holding the examination for selecting the candidates to the post of Civil Judge Class-II (Entry Level) was approved. Therefore the contention of the petitioners that the procedure and curriculum for holding the examination is absent, cannot be accepted. The procedure and curriculum for holding the examination has been approved by the Full Court and hence would satisfy the requirement of Rule 5(2).

52.(a) The further contention is that in terms of sub-rule (3) and (4) of Rule 5, no relaxation has been provided to the Other Backward Class candidates, which has been provided to reserved categories namely the scheduled castes and scheduled tribes. Sub-rule (3) and (4) of Rule 5 of the Rules of 1994 read as follows:-

> *"5. Method of Appointment and the Appointing Authority.-*
>
> *** *** ***
>
> *(3) The candidates belonging to the General and Other Backward Classes category must secure at least 60% marks and the candidates from the reserved category (Scheduled Castes and Scheduled Tribes) must secure at least 55% marks in the preliminary examination.*
>
> *4) The candidates belonging to the General and Other Backward Classes category must secure at least 50% marks and the candidates from the reserved category (Scheduled Castes and Scheduled Tribes) must secure at least 45% marks in each paper and at least 50% in aggregate in the main examination.*
>
> *** *** ***"

(b) Sub-rule (3) pertains to the preliminary examination and sub-rule (4) pertains to the main examination while maintaining the similar requirements. It is narrated therein that the candidates belonging to the General and OBC category must secure at least 60% marks in the preliminary examination and 50% marks in each paper and 50% marks in aggregate in the main examination whereas the candidates belonging to the Scheduled Castes and Scheduled Tribes must secure at least 55% marks in the preliminary examination and 45% marks in each paper and 50% marks in aggregate in the main examination. Sub-rules (3) and (4) clearly indicate that the relaxation in the marks is not available to the candidates belonging to the General and OBC categories. The same is disputed by the respondents on the grounds as mentioned in the statement of objection, which are as follows:-

> *"B. It is not the case of the Petitioner that the amendments in any way curtails or infringes the limit of reservations provided for the reserved categories in the MPJS Rules, 1994. The only grievance is that cut-off marks for the candidates belonging to OBC category could not be same as that for the General category and that cut-off marks for the OBC category candidates should have been lower than that for General Category candidates. The Petitioner has relied upon provisions of Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Janjatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 and M.P. State Service Examination Rules 2015 in support of her contention.*
>
> *C. Perusal of provisions of M.P. State Service Examination Rules 2015 reveals that Rules are silent on the point canvassed by the Petitioner, whereas Section 4(4-A) of Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Janjatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 provides of relaxation in qualifying marks for Scheduled Castes and Scheduled Tribes candidates only. The aforesaid Rule is silent on relaxing the qualifying marks for candidates belonging to OBC Category. Therefore, the stand of the Petitioner is not legally sustainable."*

53.**(a)** We have considered the contentions.

(b) The relaxation as provided to the scheduled castes and scheduled tribes candidates arises out of the provisions of the Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994. The said Act was promulgated to provide for reservation in the vacancies in public services and posts in favour of persons belonging to Scheduled Castes and Scheduled Tribes and Other Backward Classes. In terms of Section 4(4-A) of the said Act, relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters of recruitment and promotion was provided. Section 4(4-A) of the said Act provides that the State Government may by general or special order make any provision in favour of the members of the scheduled castes and scheduled tribes for relaxing the qualifying marks in any examination or

lowering the standards of evaluation for reservation in matters of recruitment and promotion to any class or classes of services or posts in connection with the affairs of the State. The same reads as follows:-

> *"(4-A) The State Government may by general or special order make any provisions in favour of the members of the Scheduled Castes and the Scheduled Tribes, for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of recruitment and promotion to any class or classes of services or posts in connection with the affairs of the State."*

(c) The aforesaid sub-section provides for relaxation in qualifying marks in the examination only to the members of the Scheduled Castes and Scheduled Tribes. It is not made applicable so far as OBC candidates are concerned. Therefore, when sub-section (4-A) does not provide for relaxation of qualifying marks to the OBC candidates, there is no infirmity in the impugned Rule. Furthermore, in pursuance to Section 13 of the Act which grants power to the State Government to make rules for carrying out the purposes of the Act, the State Government framed the Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Rules, 1998. Rule 4-A of the said Rules reads as follows:-

> *"4-A. Relaxation to the candidates of Scheduled Caste/ Scheduled Tribes in the minimum qualifying marks.-The candidates of Scheduled Castes and Scheduled Tribes shall get relaxation of 10% marks in minimum qualifying marks but their selection shall be made on the basis of merit of the selection list of the Scheduled Castes/Scheduled Tribes candidates."*

(d) Therefore, not only in the Act but even in the Rules, the relaxation in qualifying marks has been provided only to Scheduled Castes and Scheduled Tribes and not to the OBC candidates. That such relaxation in the minimum qualifying marks would be 10% as provided in the aforesaid Rules. Therefore, even in terms of the Act as

well as the Rules framed thereunder, the same does not provide for any relaxation of marks to the OBC category.

54.(a) The further contention is based on sub-rule (5) of Rule 5 of the Rules of 1994 which reads as follows:-

> *"5. Method of Appointment and the Appointing Authority.-*
>
> *** *** ***
>
> *(5) The candidates must secure at least 40% marks in the viva-voce/interview."*

(b) It is therefore contended by the petitioners that there cannot be cut-off marks so far as viva voce or interview is concerned. That the same is unconstitutional. In this regard, it is submitted that such a rule is completely unscientific and is a colorable exercise of power, as absolute power has been delegated to the interview committee of the High Court.

55.(a) The same is disputed by the respondents. They contend that the requirement of having to secure a minimum of marks in viva voce/ interview is no more *res integra*. The said issue has attained finality. He relies on the following judgments of the Hon'ble Supreme Court to support his case:-

(b) The Hon'ble Supreme Court in the case of K.H. Siraj vs. High Court of Kerala and others reported in (2006) 6 SCC 395 in paras 54, 57 and 62 held as follows:-

> *"54. In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidate's academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership, etc. which are also essential for a judicial officer.*
>
> *** *** ***

57. The qualities which a judicial officer would possess are delineated by this Court in Delhi Bar Assn. v. Union of India [(2002) 10 SCC 159 : 2003 SCC (L&S) 85] . A judicial officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations, to control the examination of witnesses and also lengthy irrelevant arguments and the like. Existence of such capacities can be brought out only in an oral interview. It is imperative that only persons with a minimum of such capacities should be selected for the judiciary as otherwise the standards would get diluted and substandard stuff may be getting into the judiciary. Acceptance of the contention of the appellant-petitioners can even lead to a postulate that a candidate who scores high in the written examination but is totally inadequate for the job as evident from the oral interview and gets zero marks may still find a place in the judiciary. It will spell disaster to the standards to be maintained by the subordinate judiciary. It is, therefore, the High Court has set a benchmark for the oral interview, a benchmark which is actually low as it requires 30% for a pass. The total marks for the interview are only 50 out of a total of 450. The prescription is, therefore, kept to the bare minimum and if a candidate fails to secure even this bare minimum, it cannot be postulated that he is suitable for the job of Munsif Magistrate, as assessed by five experienced Judges of the High Court.

*** *** ***

*62. **Thus it is seen that apart from the amplitude of the power under Rule 7 it is clearly open for the High Court to prescribe benchmarks for the written test and oral test in order to achieve the purpose of getting the best available talent.** There is nothing in the Rules barring such a procedure from being adopted. It may also be mentioned that executive instructions can always supplement the Rules which may not deal with every aspect of a matter. Even assuming that Rule 7 did not prescribe any particular minimum, it was open to the High Court to supplement the rule with a view to implement them by prescribing relevant standards in the advertisement for selection. Reference may be made to the decision of this Court in State of Gujarat v. Akhilesh C. Bhargav [(1987) 4 SCC 482: 1987 SCC (L&S) 460: (1987) 5 ATC 167].”*

(emphasis supplied)

(c) In the case of Lila Dhar vs. State of Rajasthan and others reported in (1981) 4 SCC 159, the Hon'ble Supreme Court has held in para 6 as follows:-

> *"**6. Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection.** If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal……"*
>
> ***(emphasis supplied)***

(d) In a recent judgment of a three-Judge Bench of the Hon'ble Supreme Court in the case of Dr. Kavita Kamboj vs. High Court of Punjab and Haryana and others reported in 2024 SCC OnLine SC 254 in para 65 it was held as follows:-

> *"65. ……..The wisdom of the prescription is clear. A candidate should not just demonstrate the ability to reproduce their knowledge by answering questions in the suitability test, but must also demonstrate both practical knowledge and the application of the substantive law in the course of the interview. The Rules being silent, it was clearly open to the High Court to prescribe such a criterion as it did in 2013, when the 50% cutoff was prescribed on aggregate scores and also, in 2021, when the 50% cutoff was prescribed on the written test scores and the viva voce separately."*

(e) Therefore, it can be seen that sub-rule (5) of Rule 5 indicates that the candidates must secure at least 40% marks in the viva voce/interview. The Hon'ble Supreme Court have held that even when there is absence of the rule providing for marks for interview/viva voce, the same can always be provided by the High Court. However, that is not the case herein. The rule itself provides for minimum marks to be obtained in the viva

voce/interview. The contention of the petitioners is covered by the aforesaid judgments of the Hon'ble Supreme Court.

(f) Therefore the contention of the petitioners that sub-rule (5) of Rule 5 is unconstitutional cannot be accepted. The said issue is since covered by the judgments of the Hon'ble Supreme Court in the aforesaid cases.

56. The further contention is that sub-rule (6) of Rule 5 is also bad in law on the ground that no procedure has been prescribed. The said contention regarding absence of procedure has been considered by us while considering the contention with regard to sub-rule (2) of Rule 5. Hence on the same analogy the contention that there is an absence of procedure when the order of merit is being prepared is also without any basis and liable to be rejected.

IV. Rules do not provide for reservation for candidates belonging to OBC, SC and ST categories at the preliminary stage:

57.(a) It is further contended that the Rules do not provide for reservation for candidates belonging to OBC, SC and ST categories at the preliminary stage. It is contended that the reservation has to be provided at all stages of the examination. That non-providing for reservation at the preliminary stage is unconstitutional and liable to be set aside. Various judgments have been relied upon by the learned counsels in respect of their respective cases as follows:

(b) Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Andhra Pradesh Public Service Commission vs. Baloji Badhavath and others reported in (2009) 5 SCC 1 with reference to para 43, which reads as follows:

> *"43. One other aspect of the matter must be kept in mind. If category wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the*

meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the reserved categories. This is now a well-settled principle of law as has been laid down by this Court in several decisions. (See for example, Union of India v. Satya Prakash [(2006) 4 SCC 550 : 2006 SCC (L&S) 832], SCC paras 18 to 20; Ritesh R. Shah v. Dr. Y.L. Yamul [(1996) 3 SCC 253 : (1996) 2 SCR 695], SCR at pp. 700-701 and Rajesh Kumar Daria v. Rajasthan Public Service Commission [(2007) 8 SCC 785], SCC para 9.)"

(c) Reliance is further placed upon the judgment of the Hon'ble Supreme Court in the case of Ritesh R. Sah vs. Dr. Y.L. Yamul and others reported in (1996) 3 SCC 253 with reference to paras 14, 15 and 16, which reads as follows:

"14. In a case Indra Sawhney v. Union of India [1992 Supp (3) SCC 217: 1992 SCC (L&S) Supp 1: (1992) 22 ATC 385] commonly known as Mandal case [1992 Supp (3) SCC 217: 1992 SCC (L&S) Supp 1: (1992) 22 ATC 385], this Court held thus: (SCC p. 735, para 811)

> *"In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."*

15. In R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745: 1995 SCC (L&S) 548: (1995) 29 ATC 481] the Constitution Bench of this Court considered the question of appointment and promotion and roster points vis-à-vis reservation and held thus: (SCC p. 750, para 4)

> *"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other*

hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State if not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition."

16. In Union of India v. Virpal Singh Chauhan [(1995) 6 SCC 684: 1996 SCC (L&S) 1: (1995) 31 ATC 813] (SCC at p. 705) it has been held that while determining the number of posts reserved for Scheduled Castes and Scheduled Tribes, the candidates belonging to reserved category but selected/promoted

on the rule of merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates."

(d) Learned counsels have further relied upon the judgment of the Hon'ble Supreme Court in the case of Sadhana Singh Dangi and others vs. Pinki Asati and others reported in (2022) 12 SCC 401 with reference to para 12.2, which reads as follows:

"12.2. The concurring judgment authored by S. Ravindra Bhat, J. made following observations: (Saurav Yadav case [Saurav Yadav v. State of U.P., (2021) 4 SCC 542: (2021) 1 SCC (L&S) 752], SCC pp. 598-99, paras 61-62)

"61. The open category is not a "quota", but rather available to all women and men alike. Similarly, as held in Rajesh Kumar Daria [Rajesh Kumar Daria v. Rajasthan Public Service Commission, (2007) 8 SCC 785: (2009) 1 SCC (L&S) 1055], there is no quota for men. If we are to accept the second view [as held by the Allahabad High Court in Ajay Kumar v. State of U.P. [Ajay Kumar v. State of U.P., 2019 SCC OnLine All 2674] and the Madhya Pradesh High Court in State of M.P. v. Uday Sisode [State of M.P. v. Uday Sisode, 2019 SCC OnLine MP 5750] , referred to in paras 24 and 25 of Lalit, J.'s judgment], the result would be confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit. The second view, therefore — perhaps unconsciously supports—but definitely results in confining the number of women in the select list to the overall numerical quota assured by the rule.

62. In my opinion, the second view collapses completely, when more than the stipulated percentage 20% (say, 40% or 50%) of women candidates figure in the most meritorious category. The said second view in Ajay Kumar [Ajay Kumar v. State of U.P., 2019 SCC OnLine All 2674] and Uday Sisode [State of M.P. v. Uday Sisode, 2019 SCC OnLine MP 5750] thus penalises merit. The principle of mobility or migration, upheld by this Court in Union of India v. Ramesh Ram [Union of India v. Ramesh Ram, (2010) 7 SCC 234: (2010) 2 SCC (L&S) 412] and other cases, would then have discriminatory application, as it would apply for mobility

> *of special category men, but would not apply to the case of women in such special categories (as glaringly evident from the facts of this case) to women who score equal to or more than their counterparts in the open/general category."*

(e) In support of their case, the petitioners have also relied upon the judgment of the Hon'ble Supreme Court in the case of Kishor Choudhary vs. State of M.P. and another reported in 2022 SCC OnLine MP 5442, with reference to paras 32, 37, 38, 44, 45 and 46, which reads as follows:

> *"32. The judgment of the Courts should not be read as Euclid's Theorum. [See: (2003)11 SCC 584 (Ashwani Kumar Singh v. UP. Public Service Commission), 2015 MPLJ OnLine (S.C.) 76: (2015) 10 SCC 161'. (Indian Performing Rights Society Ltd. v. Sanjay Dalia), 2016 MPLJ OnLine (S.C.) 7: (2016) 3 SCC 762 (Vishal N. Kalsaria v. Bank of India)]. In this view of the matter, in our view, the judgment of Hemraj Rana (supra) was delivered in the peculiar factual backdrop of that case by taking into account the statutory provisions/Rules prevailing at that point of time. The introduction of Examination Rules of 2015 has changed the scenario and a conjoint reading of para-7 of Hemraj Rana's judgment and unamended Examination Rules of 2015 permits us to uphold the constitutionality of sub-section (4) of section 4 of Adhiniyam and clarify that combined reading of sub-section (4) of section 4 with unamended Rules of 2015 makes it obligatory for the respondents to apply the principle desired by the petitioner i.e. in all stages of selection, the reserve category candidate received more or equal marks qua UR candidate are entitled to secure a berth in UR category. Thus, we are unable to persuade ourselves that impugned provision of Adhiniyam should be struck down being unconstitutional.*
>
> *** *** ***
>
> *37. **Validity of the impugned amendment dated 17-2-2020 after commencement of selection process**:—*
>
> *In catena of judgments, the Courts made it clear that selection process begins with issuance of advertisement. See [(1990) 2 SCC 669 (A.P. Public Service Commission Hyderabad v. B. Sarat Chandra), 2020 SCC OnLine MP 2975 (Ramkhiladi Sharma v. National Health Mission) and 2012 MPLJ Online 76: 2012 SCC OnLine MP 10635 (Rachna Dixit v. State of M.P.)]. Indisputably, the advertisement was*

issued by the Public Service Commission on 14-11-2019 and selection/recruitment process set on motion from that date itself. The impugned amendment was issued on 17-2-2020 in the midst of the selection process.

38. Pausing here for a moment, it is apposite to remember that as per Unamended Examination Rules, the reserved category candidates were entitled to secure a berth in U.R. category, if they have received same or more marks than a U.R. candidate. This norm/rule of game was admittedly changed to the detriment of petitioners by bringing the impugned amendment.

*** *** ***

44. A Constitution Bench of Supreme Court in AIR 1955 SC 191 (Budhan Choudhary v. State of Bihar) held that when constitutionality of a provision is called in question what is necessary to examine is that whether there exists a nexus between the basis of classification and the object of the impugned provision under consideration. Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. This judgment is consistently followed by the Supreme Court in Hiralal P. Harsora v. Kusum Narottamdas Harora, 2016 MPLJ Online (SC.) 106: (2016) 10 SCC 165, Karnataka Live Band Restaurants Assn. v. State of Karnataka, 2018 MPLJ OnLine (S.C.) 122: (2018) 4 SCC 372, Lok Prahari v. State of U.P.,2018 MPLJ OnLine (S.C.) 91: (2018) 6 SCC 1, CRPF v. Janardan Singh, 2018 MPLJ OnLine (S.C.) 130 : (2018) 7 SCC 656, Navtej Singh Johar v. Union of India, 2018 MPLJ OnLine (S.C.) 84: (2018) 10 SCC 1 and Rana Nahid v. Sahidul Haq Chisti, 2020 MPLJ OnLine (S.C.) 48: (2020) 7 SCC 657.

45. The respondents could not assign any justifiable reason or establish any rationale object/purpose for bringing impugned amendment dated 17-2-2020. Similarly, they could not establish the nexus between the object sought to be achieved and the impugned amendment. Thus, the impugned amendment dated 17-2-2020 cannot be given a stamp of approval. Since, it runs contrary to the binding precedent of Indra Sawhney (supra) consistently followed till Saurav Yadav (supra), the impugned amendment cannot sustain judicial scrutiny. By no stretch of imagination, withstanding a Nine Judges Bench judgment of Supreme Court in Indra Sawhney (supra), it was open to the Government to amend the Examination Rules contrary to the principles laid down in Indra Sawhney (supra) under the garb of order of Division Bench of this Court in Vishal Jain (supra).

Moreso when in Vishal Jain (supra), the Examination Rules of 2015 were not brought to the notice of this Court.

46. We will be failing in our duty if argument of Shri Vibhore Khandelwal and Shri Akshat Pahariya is not considered based on the use of word 'substituted' in the latest amendment dated 20-12-2021. The argument is based on a Full Bench decision of this Court in Viva Highways (supra). We are only inclined to observe that once we have formed an opinion that impugned amendment dated 17-2-2020 is ultra vires, this argument relating to 'substitution' pales into insignificance. Thus, we need not to go into this aspect any further. Shri Anshul Tiwari, learned counsel for the proposed intervener opposed the petition on the strength of Public Service Commission Uttaranchal v. Mamta Bisht, 2010 MPLJ OnLine (S.C.) 67: (2010) 12 SCC 204. This judgment has no application in the instant case for the simple reason that these writ petitions are filed when selection process was not over and pertinently, same is still not over. No candidate has been finally selected and no right accrued in favour of any candidate. Thus, it was not necessary to implead the candidates who are going to be adversely affected by the outcome of this judgment."

(f) The same is disputed by the respondents. They rely on various judgments to contend that the reservation could be provided at the final stage and not at preliminary stage. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of (See: Andhra Pradesh Public Service Commission vs. Baloji Badhavath and others reported in (2009) 5 SCC 1 and Hemraj Rana vs. State of Madhya Pradesh and another 2006 (3) MPHT 477.

(g) So far as providing reservation at the preliminary stage is concerned, we are of the considered view that the same is no more *res integra*. The said issue has already been decided by the Hon'ble Supreme Court in the case of Andhra Pradesh Public Service Commission vs. Baloji Badhavath and others reported in (2009) 5 SCC 1. The Hon'ble Supreme Court in the said judgment in para 29 held as follows:-

*"29. **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****."*
>
> ***(emphasis supplied)***

(h) A Division Bench of this Court in the case of Hemraj Rana vs. State of Madhya Pradesh and another reported in 2006 (3) MPHT 477 while dealing with reservation at preliminary stage has held in para 7 as follows:-

> *"7. In absence of any specific provision either in the Adhiniyam of 1994 or the Rules of 2001 made thereunder, providing that the principle in Sub-section (4) of Section 4 of the Adhiniyam of 1994 will equally apply to preliminary examinations conducted for the purpose of screening candidates for the main examination, the MP PSC would be well within its discretion to decide as to what would be the procedure which should be followed in the preliminary examination for screening candidates for the main examination. So long as such procedure followed by the MP PSC is not contrary to Article 16(4) of the Constitution, this Court cannot hold that the procedure followed by the MP PSC is ultra vires."*

(i) A Division Bench of this Court in the case of Pushpendra Kumar Patel and others vs. High Court of M.P. through Registrar General and others in Writ Petition No.8750 of 2022 decided on 02.01.2023 has held in para 15 as follows:-

> *"15. The tenability of the right of reserved category candidate to migrate at the stage of Preliminary Examination where merit is not assessed, needs to be looked at from a different angle in the following terms.*
>
> *15.1 The concept of migration or mobility of a reserved category candidate to unreserved category list is exclusively founded on the concept of merit. It is an undeniable fact that Preliminary Examination in question are meant to shortlist larger number of candidates down to a manageable number to be*

then subjected to Main Examination. Thus, the object and purpose of Preliminary Examination is not to assess the comparative merit of the candidates, but merely to shortlist/screen them to be subjected to Main Examination where alone comparative merit is assessed. The clauses of the advertisement in question, as reproduced supra, expressly reveal this intention of the Examining body. In none of these petitions said clauses have been challenged. The Main Examination is the one where comparative merit of candidates is assessed and the select list prepared thereafter is the one where right to migrate can be claimed by reserved category candidates securing equal or more marks than the last unreserved category qualified candidate.

15.2 The concept of migration which is purely merit centric cannot be made available to be availed by reserved category candidates at the stage of Preliminary Examination in which comparative merit of the candidates is not assessed. The migration therefore can be applied in the examination where comparative merit is assessed which herein is not the Preliminary Examination.

15.3. If right to migrate is permitted to be availed by reserved category candidate at the stage of result of Preliminary Examination then that would violate the very foundation on which the concept of migration stands. If the argument of learned counsel for the petitioners is accepted, then an anomalous situation would arise where candidates who have not been subjected to any comparative assessment on merit are allowed to invoke the principle of migration which is founded solely on merit."

(j) A reading of the aforesaid judgments would clearly indicate that what is being done at the preliminary stage of any examination is only a qualifying examination. Therefore, there can be no reservation that could be provided at the qualifying stage. It is not an examination for merit but only to ascertain with regard to the minimum eligibility of the candidates. Therefore, not providing reservation at that stage in our considered view cannot be said to be unconstitutional in view of the aforesaid judgments of the Hon'ble Supreme Court. It is further to be noticed that there is no denial of reservation to the reserved category. So far as the preliminary examination is concerned, every eligible candidate is entitled to take the

examination. After the results of the preliminary examination are declared only then those who achieve the cut-off marks would be eligible for the main examination. Those who can appear for the main examination are strictly governed by reservation. For example, if 10 seats are reserved for unreserved category then in that event on a ratio of 1:10, the top 100 candidates belonging to the unreserved category would be entitled to appear in the main examination. So also for example if 8 seats are reserved for Scheduled Caste candidates then in that event on a ratio of 1:10, the 80 highest scoring Scheduled Caste candidates would be entitled to appear in the main examination. This aspect has already been explained by the Hon'ble Supreme Court in the aforesaid judgments. Therefore, the contention that no reservation has been provided at the initial stage cannot be accepted. The requirement of providing reservation in order to write the preliminary examination cannot be granted but however after the result in the preliminary examination is announced then by applying the percentage of reservation on a ratio of 1:10 for each category, the top most candidates in each category are entitled for the main examination. Therefore, on this ground also, the contention of the petitioners cannot be accepted.

V. <u>That the amended Rule infringes Clause (9) of Articles 338, 338A and 338B of the Constitution of India, since the statutory Commissions have not been consulted</u>:

58.(a) The three Articles of the Constitution of India pertain to the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes and the National Commission for Backward Class respectively. The duties as assigned in Article 338(5) of the Constitution of India are as follows:-

"338. National Commission for Scheduled Castes.-

*** *** ***

(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes.

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by the rule specify."

(b) Article 338(9) of the Constitution of India would indicate that Union and every State Government shall consult the Commission on all major policy matters affecting the Scheduled Castes, which reads as follows:-

"338. National Commission for Scheduled Castes.

*** *** ***

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes."

(c) Similar is the provision in Articles 338A and 338B. Therefore, it is only on major policy matters affecting Scheduled Castes, Scheduled

Tribes and Other Backward Classes that the respective Commission should be consulted. So far as the reservation provided to the OBC, SC and ST is concerned, the same is not affected by the impugned amendments nor is it the case of the petitioners that the reservation has been interfered with by the amendment. The reservations as granted to the Other Backward Classes, Scheduled Castes and Scheduled Tribes have been maintained. Moreover, the duties of the respective Commissions have also been enumerated which do not fall within the purview of the aforesaid amendments. Therefore, the contention that Clause (9) of Articles 338, 338A and 338B of the Constitution of India have been violated, in our considered view, cannot be accepted.

VI. Examination to be conducted by the Madhya Pradesh Public Service Commission:

59.(a) Sub-rule (7) of Rule 5 of the Rules of 1994 reads as follows:-

> *"5. Method of Appointment and the Appointing Authority.-*
>
> *** *** ***
>
> *"(7) Examinations shall be conducted by the High Court each year as far as possible on the basis of availability of vacancies for selection of candidates."*

(b) Therefore, it is contended that the examinations are being conducted by the High Court, which is unconstitutional. That it is the Public Service Commission alone that they should conduct the examinations. The same is disputed by the respondents.

(c) The examination to the post of Civil Judges is conducted by the High Court. It is the High Court that selects the suitable candidates to be appointed as Civil Judges. The same is done on the basis of the order dated 04.01.2007 passed by the Hon'ble Supreme Court in the case of

Malik Mazhar Sultan (3) and another vs. Uttar Pradesh Public Service Commission and others reported in (2008) 17 SCC 703, in which, with reference to para 5, it was observed as follows:-

> *"5. Before we issue general directions and the time schedule to be adhered to for filling vacancies that may arise in subordinate courts and District Courts, it is necessary to note that selections are required to be conducted by the authorities concerned as per the existing Judicial Service Rules in the respective States/Union Territories. We may, however, note that, progressively, the authorities concerned would consider, discuss and eventually may arrive at a consensus that the selection process be conducted by the High Court itself or by the Public Service Commission under the control and supervision of the High Court. In this regard, considerable progress has already been made. Reference can be made to the decision taken in a conference held between the Chief Justices and Chief Ministers, minutes whereof show that in some of the States, selection of subordinate judicial officers at all levels of Civil Judges is already being made by the High Courts. Some States, where selection is still being made by the Public Service Commission, were agreeable to entrust the selection to the High Courts whereas Chief Ministers/Ministers of Himachal Pradesh, West Bengal, Punjab and Kerala were of the view that the present system may continue but the decision taken jointly was that in the said States (Himachal Pradesh, West Bengal, Punjab and Kerala) setting up of question papers and evaluation of answer sheets be entrusted to the High Court. Further decision taken was that in other States where selection of subordinate judicial officers is not being done by the High Courts, such selection be entrusted to the High Courts by amending the relevant rules. In this connection, with the affidavit filed on behalf of the Calcutta High Court, a copy of the letter dated 15-9-2006, addressed by the Registrar General of the said Court to the Secretary, Judicial Department, Government of West Bengal, has also been annexed. That letter refers to the aforesaid decision taken in the conference of Chief Ministers and Chief Justices held on 11-3-2006 requesting the State Government for effecting suitable amendment in the recruitment rules in terms of the decision in the conference abovereferred. At this stage, however, these are not the issues for our consideration. As already indicated, the selection is to be conducted by authorities empowered to do so as per the existing rules."*

(d) In pursuance of the said order of the Hon'ble Supreme Court, the State or the State Public Service Commission have not objected to the recruitment being done by the High Court and a no-objection has also been issued by the State Government. It is only thereafter that the High Court has been conducting the examinations. Therefore, the contention that it is the Public Service Commission alone that they should conduct the examinations cannot be accepted.

VII. **Reservation to EWS candidates**:

60. The petitioners are also aggrieved by non-inclusion of 10% reservation for EWS (Economically Weaker Sections) candidates appearing for recruitment to the post of Civil Judge (Junior Division) Entry Level pursuant to advertisement dated 17.11.2023 issued by the High Court of Madhya Pradesh. They have also prayed for quashment of the said advertisement and for direction to the respondents for inclusion of 10% reservation for EWS (Economically Weaker Sections).

61.**(a)** The respondents have refuted the aforesaid contentions of the petitioners. They contend that in the advertisement issued by the High Court there is no provision for reservation for Economically Weaker Sections and the same is in conformity with the Madhya Pradesh Judicial Services (Recruitment and Conditions of Service) Rules, 1994. The rules do not provide for reservations for Economically Weaker Sections.

(b) The district judiciary is under the control of the High Court in terms of Articles 233 and 234 of the Constitution of the India, which reads as follows:

> ***"233. Appointment of district judges****.—(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.*

> *(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.*
>
> *** *** ***
>
> ***234. Recruitment of persons other than district judges to the judicial service**.—Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."*

(c) So far as the authority to provide reservation and the extent thereof for the district judiciary is concerned, the same vests with the High Court. The Hon'ble Supreme Court in the case of Nawal Kishore Mishra and others vs. High Court of Judicature of Allahabad through its Registrar General and others reported in (2015) 5 SCC 479, in paras 19 and 20 held as follows:-

> *"19. Since the Constitution Bench [State of Bihar v. Bal Mukund Sah, (2000) 4 SCC 640 : 2000 SCC (L&S) 489] of this Court has dealt with the larger question as to how the constitutional mandate as provided under Articles 16(1) and (4) qua Article 335 on the one hand and Articles 233 to 235 on the other is to be reconciled made it clear that while the scheme of Article 16(1) read with Article 16(4) may be treated to be forming part of the basic feature of the Constitution, by Articles 233 to 235 of the Constitution, full control of the judiciary having been entrusted with the High Court is also equally a basic feature of the Constitution and both can be reconciled only by way of a consultation of the Governor with the High Court and by making appropriate rules to provide for a scheme of reservation and unless such a provision is made by following the constitutional scheme under Articles 233 to 235, it would be well-neigh possible to thrust upon the rule of reservation by the State Legislature even by way of a legislation. Inasmuch as the Constitution Bench has dealt with this vital issue in an elaborate manner and laid down the principles relating to application of reservation in the matter of appointments to be made to the post of direct recruit District Judges, in fitness of things, it will be profitable for us to note the salient principles laid down therein as that would throw much light for us to resolve the question raised in these appeals.*

20. Such principles can be culled out and stated as under:

20.1. Neither Article 233 nor Article 234 contain any provision of being subject to any enactment by the appropriate legislature as is provided in certain other articles of the Constitution.

20.2. Articles 233 and 234 of the Constitution are not subject to the provisions of law made by Parliament or the legislature as no such provision is found in Articles 233 and 234 of the Constitution.

20.3. Articles 233 to 235 provide a complete code for regulating recruitment and appointment to the District Judiciary and the Subordinate Judiciary and thereby it gets insulated from interference of any other outside agency.

20.4. The general sweep of Article 309 has to be read subject to the complete code regarding appointment of District Judges and Judges in the Subordinate Judiciary governed by Articles 233 and 234.

20.5. Even under Article 245, it is specifically provided that the same would be subject to other provisions of the Constitution which would include Articles 233 and 234.

20.6. As the twin articles cover entire field regarding recruitment and appointment of District Judges and Judges in the Subordinate Judiciary at base level pro tanto the otherwise paramount legislative power of the State Legislature to operate in this field clearly gets excluded by the constitutional scheme itself.

20.7. Both Articles 309 and 245 will have to be read subject to Articles 233 and 234 as provided in the former articles themselves.

20.8. Though under Article 16(4), the State is enabled to provide for reservations in services, insofar as judicial service is concerned such reservation can be made by the Government in exercise of its rule-making power only after consultation with the High Court.

20.9. The enactment of any statutory provision dehors consultation with the High Court for regulating the recruitment to the District Judiciary and the Subordinate Judiciary will clearly fly in the face of complete scheme of recruitment and appointment to the Subordinate Judiciary and the exclusive field earmarked in connection with such appointments under Articles 233 and 234.

20.10. Realising the need for a scheme of reservation in appropriate cases by resorting to the enabling provision under Article 16(4), the High Court can be consulted by the

Government for framing appropriate rules regarding reservation for governing recruitment under Articles 233 and 234. But so long as it is not done, the legislature cannot by an indirect method completely bypass the High Court and by exercising its legislative power circumvent and cut across the very scheme of recruitment and appointment to the District Judiciary as envisaged by the makers of the Constitution.

20.11. Any such attempt by the legislature would be forbidden by the constitutional scheme as that was found on the concept relating to separation of powers between the legislature, the executive and the judiciary as well as the fundamental concept of an independent judiciary as both the concepts having been elevated to the level of basic structure of the Constitution and are the very heart of the constitutional scheme.

20.12. Having regard to Article 16(4), the High Court being a high constitutional functionary would also be alive to its social obligations and the constitutional guideline for having a scheme of reservation to ameliorate the lot of deprived reserved categories like SC, ST and OBC. But for that the Governor in consultation with the High Court should make appropriate rules and provide for a scheme of reservation for appointments at grassroots level and even at the highest level of District Judiciary. If that was not done, the State Legislature cannot upset the entire apple cart and by bypassing the constitutional mandate of Articles 233 and 234 lay down a statutory scheme of reservation governing all State services including judiciary.

20.13. Even in that respect it is obvious that maintenance of efficiency of judicial administration is entirely within the control and jurisdiction of the High Court as laid down by Article 235.

20.14. If the proper course of formulating the scheme in the form of a rule by the High Court to provide for reservation is not made, that would deprive of the right to suggest the consultative process by way of its own expertise that for maintenance of the efficiency of administration of judicial service controlled by it 50% reservation may not be required and/or and even lesser reservation may be required or even may not be required at all.

20.15. To give Article 335 its full play for enacting a scheme of reservation, the High Court entrusted with the full control of the Subordinate Judiciary as per Article 235 of the Constitution has got to be consulted and cannot be treated to be a stranger to the said service by trying to apply the whole of the Reservation Act."

(emphasis supplied)

(d) Thus, in view of the law laid down by Hon'ble the Supreme Court, the power and authority to provide for reservation and the extent thereof, in the District Judiciary, vests in the High Court.

(e) The Hon'ble Supreme Court in the case of State of Bihar and another vs. Bal Mukund Sah and others reported in (2000) 4 SCC 640 held in para 38 as follows:-

> *"38. Shri Dwivedi, learned Senior Counsel for the appellant State was right when he contended that Article 16(4) is an enabling provision permitting the State to lay down a scheme of reservation in State services. It may also be true that Judicial Service can also be considered to be a part of such service as laid down by this Court in the case of B.S. Yadav [1980 Supp SCC 524 : 1981 SCC (L&S) 343 : (1981) 1 SCR 1024]. However, so far as the question of exercising that enabling power under Article 16(4) for laying down an appropriate scheme of reservation goes, as seen earlier, we cannot be oblivious of the fact that the High Court, being the high constitutional functionary, would also be alive to its social obligations and the constitutional guideline for having a scheme of reservation to ameliorate the lot of deprived reserved categories like SC, ST and Other Backward Classes. But for that purpose, the Governor can, in consultation with the High Court, make appropriate rules and provide for a scheme of reservation for appointments at grass-root level or even at the highest level of the District Judiciary, but so long as this is not done, the State Legislature cannot, by upsetting the entire apple cart and totally bypassing the constitutional mandate of Articles 233 and 234 and without being required to consult the High Court, lay down a statutory scheme of reservation as a roadroller straitjacket formula uniformly governing all State services, including the Judiciary. It is easy to visualise that the High Court may, on being properly and effectively consulted, endorse the Governor's view to enact a provision of reservation and lay down the percentage of reservation in the Judicial Service, for which it will be the appropriate authority to suggest appropriate measures and the required percentage of reservation, keeping in view the thrust of Article 335 which requires the consideration of the claim of members of SC, ST and OBC for reservation in services to be consistent with the maintenance of efficiency of administration. It is obvious that maintenance of efficiency of judicial administration is entirely within the control and jurisdiction of the High Court as laid down by Article 235. The State*

Legislature, on its own, would obviously lack the expertise and the knowledge based on experience of judicial administration which is possessed by the High Court. Consequently, bypassing the High Court, it cannot, in exercise of its supposed paramount legislative power enact any rule of thumb and provide a fixed percentage of reservation for SC, ST and Other Backward Classes in Judicial Services and also lay down detailed procedure to be followed as laid down by sub-sections (3) to (6) of Section 4 for effecting such statutorily fixed 50% reservation. It is easy to visualise that if the High Court is not consulted and obviously cannot be consulted while enacting any law by the State Legislature and en bloc 50% reservation is provided in the Judicial Service as is sought to be done by Section 4 of the Act and which would automatically operate and would present the High Court with a fait accompli, it would be deprived of the right to suggest during the constitutionally guaranteed consultative process, by way of its own expertise that for maintenance of efficiency of administration in the Judicial Service controlled by it, 50% reservation may not be required, and/or an even lesser percentage may be required or even may not be required at all. Even that opportunity will not be available to the High Court if it is held that the State Legislature can enact the law of reservation and make it automatically applicable to the Judicial Service bypassing the High Court completely. Such an exercise vehemently canvassed for our approval by learned Senior Counsel for the appellant State cannot be countenanced on the express scheme of the Constitution, as discussed by us earlier. Even proceeding on the basis that the scheme of Article 16(1) read with Article 16(4) may be treated to be forming a part of the basic feature of the Constitution, it has to be appreciated that for fructifying such a constitutional scheme Article 335 has to be kept in view by the authority concerned before such a scheme of reservation can be promulgated. Once Article 335 has to be given its full play while enacting such a scheme of reservation, the High Court, entrusted with the full control of the Subordinate Judiciary as per Article 235 by the Constitution, has got to be consulted and cannot be treated to be a stranger to the said exercise as envisaged by the impugned statutory provision."

(f) The same view was expressed by the Hon'ble Supreme Court in the case of Nawal Kishore Mishra and others vs. High Court of Judicature of Allahabad through its Registrar General and others reported in (2015) 5 SCC 479. It is undisputed that there is already a 50% vertical

reservation provided for Other Backward Classes and Scheduled Casts and Scheduled Tribes.

(g) That the Administrative Committee of the Higher Judicial Service of the High Court of Madhya Pradesh in its meeting held on 02.08.2019 was of the opinion that providing 10% reservation for EWS should not be granted. Thereafter the matter was placed before the Full Court which accepted the said view in terms of the resolution dated 20.08.2019.

(h) Therefore, the rules do not provide for reservation to EWS. In the absence of rules providing a reservation for EWS, the notification has been issued. Therefore, it cannot be said that the amended rules run contrary to the Rules of 1994. The Rules of 1994 do not provide for reservation to the EWS. Hence, the same has not been provided for in the instant advertisement.

VIII. **Rule regarding postgraduate candidates**:

62. One of the grievances of the learned counsel appearing for the petitioner in W.P. No.29901 of 2023 (Garima Khare vs. State of M.P. and another) is that the rule is silent with regard to those candidates who have secured 70% marks in the post-graduation. Although she has secured 70% marks in post-graduation but in the graduate exam, she has obtained only 58.19%, which disqualifies her to apply for the post in question. That LL.M. is a masters degree, therefore, if a person who is eligible with a higher qualification is not eligible for the said exam, it is the violation of Article 14 of the Constitution of India. Therefore, there ought to have been a similar provision for post-graduate candidates also who have secured 70% marks in their post-graduation. Therefore, a prayer is made to direct the respondents to again amend the Clause 7(g) of the Rules of 1995 with the words “graduate and post-graduate with the degree of LL.M.”.

63.(a) The respondents contend that the enactment of the recruitment rules is a policy matter. There is no rule that mandates that if a person has a higher qualification, he is exempt from meeting the basic eligibility qualification. The petitioner cannot claim to be a brilliant student for the simple reason that the rule itself specifies that an outstanding law graduate is a person who has passed all exams in the first attempt with at least 70% marks in the aggregate in the first attempt in the 5/3 years course in law. LL.M is a PG course and is not the basic eligibility for the post.

(b) The requirement for a candidate appearing for recruitment to the post of Civil Judge Junior Division (Entry Level) is a Bachelor's Degree in Law, either in a three or in a five year course from a university recognized by the Bar Council of India by securing at least 70% marks in the aggregate in the case of General and Other Backward Class category and at least 50% marks in the aggregate in case of candidates from the reserved categories (Scheduled Castes and Scheduled Tribes). Thus, where the rules are unambiguous, then they cannot be stretched to include even those candidates who may have secured more than 70% marks in LL.M. but have failed to secure at least 70% marks in the aggregate in graduation. It will be substituting the rule with something which is non-existent. The requirement of a minimum qualification cannot be substituted with over-qualifications. Hence, the claim of the petitioner claiming eligibility on the basis of LL.M marks is untenable. Even otherwise, the enactment of the recruitment rules is a policy matter and therefore, no interference is called for.

64.(a) The Hon'ble Supreme Court in the case of Zahoor Ahmad Rather and others vs. Sheikh Imtiyaz Ahmad and others, (2019) 2 SCC 404 held in para 26 as follows:-

> *"26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 :*

(2013) 3 SCC (L&S) 664] in the subsequent decision in Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] . The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench."

(b) Therein also the Hon'ble Supreme Court held that the State is entitled to prescribe the qualification as a condition of eligibility and judicial review is not permissible to expand the ambit of the prescribed qualification. Similarly, equivalence or non-equivalence of a qualification is not a matter which can be decided in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent, is a matter for the State to determine and not for the court. The absence of a requirement of a higher qualification being

absent, cannot presuppose acquisition of a lower qualification. Therefore, in view of the aforesaid judgment of the Hon'ble Supreme Court, the contention of the petitioners cannot be accepted.

65.(a) Before we part with the case, there are certain disturbing issues, which we would like to state.

(b) In para 8.13 and 8.14 of the Writ Petition No.17387 of 2023 (Varsha Patel vs. State of Madhya Pradesh and another) it is stated as follows:

> *"8.13 That due to the not issuing the Trade Licence and so also due to not recovering the Trade Licence Fee from the Liquor Contractors within Cantt. Board, Jabalpur, the Government has been put to a huge revenue loss which is also detrimental to the interest of public at large, but even though the respondent authorities have full knowledge of the said illegalities and irregularities, they did not take any action in this regard uptill date.*
>
> *8.14 That the reasonable representations made by the petitioner have been fallen into deaf ears of the respondent authorities concerned."*

We fail to understand as to how the issuance of a trade licence and not recovering the trade licence fee from liquor contractors within the Cantonment Board of Jabalpur has any relation at all with the petition at hand. This clearly indicates that a very casual or if not the reckless manner in which the writ petition has been drafted by learned counsel Shri Rameshwar Singh Thakur. The advocates are expected to at least read their petitions before they file the same. We do not appreciate the same. 'Cut and paste' attitude must stop.

(c) A rejoinder has been filed by the petitioners in W.P. No.30653 of 2023 (Neha Kothari and others vs. The Hon High Court of Madhya Pradesh and another) on 13.02.2024. At the end of para 43 it is stated as follows:

> *"43. ……. Therefore without examining the width of impact of the Rule, on the candidates, it has been framed, which makes it anomalous and atrocious."*

The meaning of atrocious in the Oxford Dictionary is being extremely wicked, brutal or cruel. We do not think that the legislation could be challenged by such terminology. Only because the petitioners are entitled to challenge the notification, does not mean that such kind of language could be used in a court of law. We do not appreciate the language used by Shri Siddharth R. Gupta, learned counsel for the petitioners in using such intemperate language while challenging the notification. Appropriate language has to be used in the pleadings. Therefore, we advise Shri Siddharth R. Gupta, learned counsel for the petitioners to refrain himself from using such language in the pleadings or in the open Court.

66. Therefore, for all the aforesaid reasons, we do not find any ground to entertain the petitions except to the extent of **Chapter II** with regard to Note (4) of Clause (1) of Part C of the advertisement dated 17.11.2023.

67. To sum up our conclusions, it could be seen that para 32 of the judgment of the Hon'ble Supreme Court in the case of All India Judges' Association and others vs. Union of India and others reported in (2002) 4 SCC 247 was to the effect of accepting the recommendations of the Shetty Commission with regard to permitting outstanding law graduates with a brilliant academic career to appear in the exam. There was no order to the effect of deleting the clause regarding the eligibility of having a three years practice for advocates. Therefore, both options are available in the impugned amendment, namely of advocates who have put in three years of practice or in the alternate outstanding law graduates with a brilliant academic career. The words "outstanding law graduate" or a "brilliant academic career" were not defined either in the Shetty

Commission report or in the judgment of the Supreme Court as aforesaid. The same were sought to be defined by virtue of the impugned amendment. The language used in the impugned amendment is clear and cogent and does not call for any interpretation.

68. A statute cannot be interpreted until and unless it is vague and ambiguous or has no nexus with the object sought to be achieved. In the instant case, the language used is to the extent that one should have obtained 70% marks in the aggregate in the first attempt. The plea of the some of the petitioners with regard to hardship cannot be considered by this Court in view of the various judgments of the Hon'ble Supreme Court referred to hereinabove to the effect that the question of hardship or otherwise is not a matter for the courts to consider. As long as a nexus is shown between the impugned amendment and the object sought to be achieved, no interference can be made by the court. The object of introducing the impugned amendment was to ensure qualitative dispensation of justice from the best of the best available. The impugned amendment is in tune with Article 51A(j) of the Constitution of India which entails that one should strive towards excellence to rise to higher levels to achieve.

69. The object is to ensure the finest students are entitled to compete for the examination so that they turn out to be outstanding judges delivering quality judgments. The requirement of being an outstanding law graduate is not sufficient since the recommendation is one of providing intensive training to fresh law graduates. Therefore, the question of training has received adequate attention by the Hon'ble Supreme Court. In fact, since fresh law graduates have no exposure at the bar it has been recommended in para 32 of the judgment that intensive training should be imparted preferably for a period of two years for such

fresh law graduates. Training is necessary in order to ensure that it counteracts the weak points of the candidate. The weak point of the candidate is the factum of he being a fresh law graduate without any kind of exposure. Since non-exposure would act as a weakness for the candidate in the performance of his duties, the training period which is one year for other candidates has been directed to be doubled for two years for fresh law graduates. That is why, while directing a two years training for fresh law graduates, the inadequacy of fresh law graduates of an absence of practice has been kept in mind by the Hon'ble Supreme Court.

70.(a) It is for this reason that in para 32 of the judgment of the Hon'ble Supreme Court, it was recommended that a fresh recruit into the judicial service should be imparted training of not less than one year, preferably two years. This was based on the recommendation of the Shetty Commission, wherein it was stated in para 8.35 as follows:-

> "**If intensive training is given to young and brilliant law graduates, it may be unnecessary to prescribe three years practice in the Bar as a condition for entering the judicial service. It is not the opinion of any High Court or State Government that induction to service of fresh law graduates with brilliant academic career would be counter-productive. We consider that it is proper and necessary to reserve liberty to High Courts and State Governments, as the case may be, to select either advocates with certain standing at the Bar or outstanding law graduates with aptitude for service. It is not correct to deny such discretion to high authorities like, High Courts and State Governments."**

(b) Further, in para 8.36 it was stated as follows:-

> "**Those High Courts and State Governments who are interested in selecting the fresh law graduates with a scheme of intensive induction training may move the Supreme Court for reconsidering the view taken in All India Judges'**

> **Association case for deleting the condition of three years standing as Advocate for recruitment to the cadre of Civil Judges (Jr. Divn.). We trust and hope that the Supreme Court will reconsider that aspect**."

71. Therefore, the element of training received absolute importance by the Shetty Commission as well as by the Hon'ble Supreme Court. This was due to the fact of the inadequacy faced by a fresh law graduate due to his absence of court practice. Therefore, the court practice, which a fresh recruit does not possess, was sought to be remedied by offering intensive training preferably for a period of two years. Therefore, the issue of training, namely, exposure and practice at the Bar was always in the back of the mind when such a recommendation was made.

72. It would appear that what is sought to be pleaded is nothing but a personal desire of the petitioners to compete in the exam. That there is no infraction of any constitutional provisions. There is no denial of equal opportunity to any of the petitioners. That the classification of an outstanding law graduate is well within the permissible restrictions. That the restrictions of being an outstanding law graduate are within the four parameters of the Constitution of India and cannot be faulted. The contention that the requirement of 70% marks is too high cannot be accepted. It is as a consequence to the order of the Hon'ble Supreme Court which has given a window to the outstanding law graduates with a brilliant academic career to participate in the exam. If the percentage is reduced, then one cannot be said to be an outstanding law graduate. The reduction in marks would, in our considered view, be a direct violation of the order of the Hon'ble Supreme Court. Hence the question of reducing the marks does not arise for consideration.

73. The requirement of securing 70% marks in aggregate in the first attempt in the case of General and OBC candidates and 50% marks in the case of Scheduled Castes and the Scheduled Tribes candidates is not violative of Articles 14, 16 and 19(1)(g) of the Constitution of India. The impugned amendment has a direct nexus with the object sought to be achieved of having quality dispensation of justice. The impugned amendment cannot to be said to have a retroactive or a retrospective effect. That the impugned amendment is clear and cogent and does not call for any intervention or interpretation. The same would arise only when the impugned rule is vague, ambiguous or unconstitutional. None of them can be found in the impugned amendment.

74. Pursuant to the various provisions in the Advocates Act and the Bar Council of India Rules, there cannot be a distinction between a graduate who has completed a five year course and a three year course. There is no violation of Clause (9) of Articles 338, 338A and 338B of the Constitution of India. Ever since the year 2009 the recruitment to the post of Civil Judges as well as District Judges is being conducted by the High Court and therefore, the Madhya Pradesh Public Service Commission has no role to play in the same. The reservation for EWS candidates has not been provided in view of the fact that the Rules of 1994 do not contemplate such a reservation.

75.**(a)** The amendment is to ensure that outstanding law graduates with a brilliant academic career are eligible to compete for the exam in comparison with those law graduates who are not. The object is to ensure that such outstanding law graduates with a brilliant academic career would result in the qualitative dispensation of justice. It is an endeavour to achieve excellence. Excellence should always have precedence over mediocrity. Only because some of the petitioners do not qualify to

compete in the exam will not render the impugned amendment as either unconstitutional or ultra vires the Constitution. The object to render quality justice to the litigants far outweighs the individual need of the petitioners to secure an employment. Even otherwise, the option to the candidate is twofold, either to apply as an advocate with three years practice or as an outstanding law graduate with a brilliant academic career, who has secured 70% marks in aggregate in the first attempt. Therefore, there is no denial of an opportunity as claimed by the petitioners.

(b) The material on record would also indicate that there were 55 petitioners in all. Pursuant to the order dated 15.12.2023 passed by the Hon'ble Supreme Court in SLP (C) No.27337 of 2023 (Devansh Kaushik vs. The State of Madhya Pradesh), all the candidates were permitted to appear in the exam on the basis of the rule that prevailed prior to amendment. Even, under such a relaxation, out of the 55 petitioners herein, only 6 petitioners have passed the preliminary examination, entitling them to appear in the main examination. Even among the 49 petitioners who did not qualify, three of them did not even appear in the preliminary examination and two of the petitioners did not even apply for the said exam. It is indeed a very sorry state of affairs to notice that in the lead case in W.P. No.15150 of 2023 the petitioner therein did not even appear for the preliminary exam.

76. Article 51A(j) of the Constitution of India postulates that an endeavor should be made to strive towards excellence. That is exactly what the High Court proposes to achieve through the impugned amendment. If the High Court has chosen to enhance the standards, it is in tune with the constitutional obligations. In all spheres of life, it is noticed that there is always a hesitancy to enhance quality and there is a

greater satisfaction in maintaining status quo or even at times reducing standards. If brilliant law graduates with an outstanding academic career join the judiciary, the same not only satisfies the recommendations of the Shetty Commission, the judgment passed by the Hon'ble Supreme Court but more importantly the litigant is assured of a quality judgment. Doing nothing to improve the status-quo is a gross dereliction of the constitutional obligations. Status-quo must only be maintained when the system is perfect with no further scope of improvement. However, that is not the situation today. Standards have remained stagnant for decades, without any improvement. In all professions the standards are increased at regular intervals except for the judiciary. The judiciary has remained content with the levels of standards fixed decades ago. This may not be appropriate. It is a high time that the judiciary also competes on excellence in order to ensure that excellent results are achieved. It is only when a brilliant law graduate with a brilliant academic career is selected as a judge, that one can be sure that the judgments will be qualitative. All this goes to enhance the quality of the judgments which, in turn, affects the litigants at large. The object of the High Court to achieve these results, in our considered view, does not call for any interference whatsoever. It cannot be just a dream of a candidate to become a judge. One has to possess the highest of standards to join the judiciary. A mere desire to compete in the exam to become a judge is not sufficient. One has to deserve and then desire.

77. The intent of the amended rule is quality centric. The hope and desire of the High Court is to ensure that the best among the best are selected as judges. It is so required in order to ensure that the litigants receive the finest of services from the judges. A qualitative judgment can be delivered, only if the judge is well equipped with such qualities. Such

a competent judge would necessarily be outstanding and have a brilliant academic career. Therefore, the intention of the rule is quality centric. Under these circumstances, the interest of the litigants is far more important than the interest of the individual petitioner. The interest of providing quality justice to the litigants is paramount and imminent. In the process of achieving a social good, the interest of the writ petitioners and a few others cannot take precedence. The interest of the society and litigants at large would far outweigh the personal desire of the petitioners. In case the contentions of the petitioners are accepted, then, it only ensures maintenance of status-quo of a low standard that has been existing for decades. For decades a minimum qualification was sufficient. There has been no attempt in order to ensure the enhancement of quality. It is for the first time that the High Court has attempted to do so. It is being done in the larger interest of the litigants and the society at large.

78. In view of the foregoing reasons, none of the contentions as advanced by the learned counsels for the petitioners stand any merit except to Note (4) of Clause (1) of Part C of the advertisement dated 17.11.2023 with regard to furnishing of six order sheets or judgments per year. Except to the said extent, we do not find that any of the contentions urged by the petitioners deserves to be accepted.

79. Hence, for all the aforesaid reasons, we pass the following order:

(1) The writ petitions are dismissed except to the following extent:

(i) Note (4) of Clause (1) of Part C of the advertisement dated 17.11.2023 is held to be directory and not mandatory;

(ii) The respondents-authorities are directed not to insist production of six order sheets/judgments per year of the candidate. However, the candidate shall produce such material in support of his/her plea with regard to active practice.

(2) Pending interlocutory applications stand disposed off.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

C,SC,MSP,
PSM,SM