Kamlesh Kumar Sharma and Others Vs State of Rajasthan and Another

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: May 31, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 172

Citation: (2013) 4 CDR 1775 : (2013) 3 WLN 61

Hon'ble Judges: Mohammad Rafiq, J

Bench: Single Bench

Advocate: Ashok Gaur, Mr. Ashwini Jaiman, Mr. D.P. Sharma, Mr. K.N. Sharma, Mr. Girraj P. Sharma, Mr. Ankur Srivastava, Mr. Gaurav Sharma, Mr. Saransh Saini, Mr. Tanveer Ahmed, Mr. Rajesh K. Bhardwaj, Mr. Sunil Kumar Singodiya, Mr. S.R. Choudhary, Mr. Brijesh Bhardwaj, Mr. Sunil Kumar Jain, Mr. Gaurav Sharma, Mr. Vikas Kabra, Mr. K.C. Sharma, Mr. Yunus Khan, Mr. B.M. Sharma, Mr. B.S. Shekhawat and Mr. Ankul Gupta, for the Appellant; G.S. Bapna, Advocate General and Mr. Sarvesh Jain for State, Mr. S.N. Kumawat, Additional Advocate General and Mr. Shantanu Kumawat for RPSC, Mr. A.K. Sharma and Mr. G.K. Garg s, Mr. V.K. Sharma, Smt. Anita Agarwal, S.C. Gupta, Kapil Prakash Mathur, Manoj Agarwal, Ms. Shikha Parnami and Mr. Mahesh Gupta, for the Respondent

Judgement

Mohammad Rafiq, J.
All these writ petitions have been filed by those who applied for appointment on the post of Assistant Public

Prosecutor Gr. II in response to advertisement No. 6/11-12, dt. 26.05.2011, issued by respondent Rajasthan Public Service Commission and

remained unsuccessful. Rajasthan Public Service Commission (for short, "RPSC") in the aforesaid advertisement invited application for

appointment against 159 posts of Assistant Public Prosecutor Gr. II (for short, "APP Gr. II"). RPSC received a total of 15776 applications. In the

scheme of the Rajasthan Public Subordinate Service Rules, 1978, appointment to the post of APP Gr. II is based entirely on interview. Discretion

has been given to RPSC to conduct screening test for the purpose of short listing the candidates. It was for that purpose that RPSC conducted a

written examination on 01.12.2011 for all 15776 candidates, who applied. Actually, however, only 9191 candidates appeared for this screening

test. All the candidates were subjected to written examinations on a question booklet covering relevant subjects to test their knowledge of law,

which consisted of 100 objective type questions. Four options were given against each question requiring the candidates to select one of them.

Question booklets were supplied in different series, namely. A, B, C and D, wherein though the questions were same but in the changed order. It

was notified in the instructions supplied therewith that 1/3rd part of the mark of each correct question will be deducted for each wrong answer and

that in the event of any ambiguity/mistake, the English version will be treated as standard.

2. Soon after examination, number of representations were received by RPSC disputing 19 questions. RPSC sent all such representations to an

expert committee which recommended for deletion of 9 questions; being Questions No. 6, 22, 23, 27, 25, 64, 73, 78 and 80 of A-series. RPSC

therefore deleted these nine questions and decided to spread 100 marks into 91 questions. Thus, value of each question was increased from 1

mark to 1.09 mark.

3. Result of the screening test was for the first time declared by RPSC on 03.02.2012 (for short, "the first result"). 502 candidates were declared

pass. Three writ petitions were filed before the Principal Seat of this Court at Jodhpur alleging irregularities in the examination and further alleging

that 40 questions out of total hundred, were picked up from the notes prepared by one Prof. J.K. Malik, Department of Law, University of

Rajasthan, Jaipur, who has been giving his services to a Commercial Coaching Institute i.e. Swami Vivekanand Coaching Centre, Bapu Nagar,

Jaipur. He used to teach subjects of IPC, Cr. P.C. and Evidence Act to aspirants for appointment in the services like Assistant Public Prosecutor

and Rajasthan Judicial Service etc. Stand of RPSC before the High Court was that number of paper setters were consulted including Prof. J.K.

Malik. However, only 25 questions were taken from the papers proposed by him. A written undertaking was obtained from him and all other

paper setters that they were not working with any coaching institute. An affidavit sworn in by Prof. J.K. Malik was also filed, who refuted such

allegations. The argument that the process of examination stood vitiated because of allegations against Prof. J.K. Malik was rejected and the writ

petition was dismissed. The learned Single Judge in the aforesaid writ petition, however, directed that if the petitioners submit any representation

disputing correctness of answer key or showing any question out of syllabus, RPSC may examine the same at its own level after taking opinion of

the experts. If any appointments are made in the meantime, the same would be open to review if any wrong is found with the question papers after

considering representation of the petitioners.

4. Those writ petitioners submitted representation disputing correctness of 27 questions and/or options and also alleging that some of them were

out of syllabus. All the representations with regard of those questions were referred to an expert committee, which consisted of Mrs. Vijay

Sharma, Professor (Retd.), Faculty of Law, J.N.U. University, Jodhpur, Shri Radheyshyam Agarwal, Assistant Principal (Retd.), Government

Law College, Ajmer, and Dr. M. Tariq, Lecturer (Selection Grade), N.M. Law P.G. College, Hanumangarh. This committee made following

recommendations:-

1. (Question No. 34 in A-series) There is a mistake in Hindi version of ''Abhivak'' for plea-bargaining, which word has been indicated as

''Abhibhavak''.

2. Hindi version of Choice 4 of Question 34 is incomplete.

3. Citations mentioned in the options against questions no. 23, 27, 29, 44, and 45 are incomplete.

5. All the members of RPSC in the ''full commission'' on 30.10.2012, did not accept the report of the said expert committee in respect of any of

the questions referred to above, though it is also significant that the expert committee also did not straightaway recommend deletion of any of those

questions. However, RPSC referred the matter to yet another committee comprising of two senior Professors viz., Prof. S.S. Suthar and Prof.

Satish Shastri and on their recommendation, decided to delete question no. 98 (A-series) on the premise that two options out of four given against

that question, namely, options no. 1 and 3, were out of syllabus. A revised result was thereafter declared with RPSC deciding not to exclude any

candidate declared pass earlier but declared 74 additional candidates pass, who secured equal or more marks than the last of 502 candidates

originally declared pass. This raised the total number of candidates to be called for interview to 576 (502+74), (this result shall hereinafter be

referred to as ''second result''). With the deletion of one more mark, value of each mark was increased and was now 1.10 mark.

6. Yet another writ petition was filed by one Kaushal Singh being S.B. Civil Writ Petition No. 18845/2012 before the Single Bench of this Court

at Jaipur. The said writ petition was decided vide judgment dt. 24.11.2012 with liberty to the petitioner to make representation to RPSC giving

details of the questions having wrong answers and also producing the material in support thereof. It was directed that RPSC shall consider the

same on its own and if need be, by constituting an independent expert committee to examine the matter. Kaushal Singh in his representation to

RPSC objecting to the correctness of options given to six questions viz. questions no. 4, 21, 26, 50, 69 and 70 of A-series. Matter was again

referred to an expert committee and its opinion was obtained. The committee recommended for deletion of questions no. 21 and 26, which was

accepted by RPSC. Thus, there remained only 89 questions. Result was once again revised without disturbing the candidates who were declared

pass earlier. Result of second revision was declared on 30.10.2012, thus taking total number of candidates to be called for interview to 672

(502+74+96), (for short, "third result").

7. In the meantime, number of writ petitions were filed before this Court, wherein interim orders were passed directing RPSC to provisionally

permit the petitioners therein to appear for interview. 96 candidates were in this manner permitted to appear for interview, who are petitioners in

different ten writ petitions, which was lastly conducted upto 16.01.2013. Thereafter also, 273 more candidates approached RPSC with interim

orders passed by this Court in various writ petitions, but they have not been interviewed. RPSC finally declared the result of selection by

publication of merit list in the newspapers on 03.02.2013, with however a note that this result was provisional and was subject to various writ

petitions pending before this Court and therefore revisable as per the judgment that may be passed therein. But, RPSC did not declare result of

those candidates, who were provisionally permitted for interview under the order of this Court as per stipulation in such orders.

8. It is against the backdrop of these facts that present writ petitions have been filed by petitioners on various grounds and also objecting to as

many as 21 more questions in the question booklet prepared by RPSC in written examination meant to shortlist the candidates, with the prayer that

entire process of selection and select list prepared pursuant thereto be quashed and set aside.

9. Number of Advocates appeared on behalf of petitioners but the arguments on their behalf were led by Shri Ashok Gaur, learned Senior

Advocate, Shri K.N. Sharma, Shri Girraj Prasad Sharma and Shri Tanveer Ahmed.

10. Shri Ashok Gaur, learned Senior Advocate, argued that there were number of defects in the setting of the question papers, as a result of which

examination conducted by RPSC for the purpose of shortlisting of the candidates stood vitiated. RPSC on its own in the first scrutiny deleted 9

questions on the basis of recommendations of the expert committee and declared 502 candidates pass. Following judgment of this Court at

Principal Seat, Jodhpur, in Giriraj Kumar Vyas & Others vs. State and others (S.B. Civil Writ Petition No. 711/2012), objections were received,

RPSC constituted a Committee of three experts, who opined that there were two errors in the Hindi version of the question no. 34 of A series and

citations given in the options 23, 27, 29, 44 and 45 of the same series were incomplete. RPSC did not take any decision on the said

recommendation of the committee, and rather decided to delete only question no. 98 (A-series) on recommendation of yet another expert

committee. Learned Senior Advocate submitted that once RPSC entrusted the matter to the expert committee, there was no escape for it except

to accept its recommendation. Therefore those six questions ought to have been deleted. Deletion of question no. 98 led to 74 additional

candidates being called for interview. Thereafter, when third exercise was undertaken by RPSC on consideration of representation by Kaushal

Singh following judgment of this Court, supra, RPSC decided to delete two more questions being questions no. 21 and 26 of A series, whereas

objections were raised by him with regard to questions no. 4, 50, 69 and 70 also. Deletion of two questions led to addition of 96 more candidates.

As per the original decision of RPSC, candidates only three times the number of vacancies were to be called for interview, therefore in the first

instance, it declared only 502 candidates pass but eventually 672 candidates were called to appear in interview, as against 159 advertised

vacancies. RPSC selected 148 candidates out of those 672 (502+74+96) candidates. 19 of the selected candidates are such who were neither

included in the list declared dependent on the thance one by RPSC at the time of declaration of the first result on 03.02.2012 nor in second result

declared on 30.10.2012. They were those who were declared pass in third result, whereas 12 candidates were selected out of 74 candidates,

who were declared pass in the second result. It is argued that RPSC in this case from beginning to end referred the matter for evaluation of the

correctness of the answer-key to the experts on as many as six occasions. Even after so much of exercise undertaken by RPSC, 21 questions

were still such, which had multiple number of correct options or which were not properly framed, or were out of syllabus. This was besides six

questions, deletion of which was recommended by third expert committee following consideration of representations in compliance of the judgment

of this Court in Giriraj Kumar Vyas, supra.

11. Shri Ashok Gaur, learned Senior Advocate, referring to the provisions for direct recruitment contained in Part IV of the Rajasthan Prosecution

Subordinate Service Rules, 1978 (for short, "the Rules of 1978") argued that though Rule 21 of the said Rules empowers the Commission to

scrutinize the applications and requires as many candidates as seems to them desirable to appear for interview but that Rule has not been properly

followed by RPSC while conducting screening test. Only those candidates who were graduate and possessed the degree of L.L.B. with

experience of two years at the time were required to apply but no weightage was given for such eligibility qualification or the experience either.

Though no weightage has been given to the marks of the written examination, none-the-less selection for appointment is solely dependent on the

chance one might get to appear for interview. Weightage ought to be given to the marks in the written examination. When second result was

declared by including 74 candidates, 9 candidates were liable to be excluded but they were not excluded. Similarly when third result was declared

and 96 more candidates were called to face interview, 31 candidates were such who were liable to be excluded. Those who did not deserve to be

called for interview, were thus called for interview.

12. Learned Senior Advocate argued that the Rule 21 and 26 of the Rules of 1978 do not confer arbitrary and unbridled power upon RPSC. It

has acted in most unfair and arbitrary manner. The whole procedure adopted by RPSC was shrouded in doubts and there was total lack of

transparency. This Court in matters like these, in exercise of its power of judicial review, has wide jurisdiction to examine whether or not the

questions have been properly formulated, they are within the syllabus or carry multiple number of correct answers. Question paper being pertaining

to subject of law, there should be no impediment in doing so. Learned Senior Advocate relied on the judgment of Supreme Court in Manish Ujwal

and Others Vs. Maharishi Dayanand Saraswati University and Others, , and argued that the Supreme Court held therein that in the case of multiple

choice in objective test, the concerned authorities have to be very careful and keep in view the paramount consideration of the students. A wrong

key answer may result in merit being made a causality. Learned senior counsel also cited recent judgment of the Supreme Court in Rajesh Kumar

and Others vs. State of Bihar and Others in Civil Appeal Nos. 2525-2516 of 2013 arising out of SLP (Civil) Nos. 5752-53 of 2008, decided on

13.03.2013, upholding judgment of the Patna High Court in somewhat similar controversy. Learned senior counsel also cited the Supreme Court

judgment in Kanpur University and Others Vs. Samir Gupta and Others, , in which it was held that when the answer given by the students is

proved to be correct and key answer incorrect, the students are entitled to the relief asked for.

13. Shri Giriraj Prasad Sharma, also appearing for the petitioners, submitted that as per the normal procedure adopted by RPSC, the answer key

is published in the newspapers and/or displayed on its website on the very next day of the examination. In the present case, it was not done until

the declaration of the second result on 30.10.2012 on which date simultaneously the answer key was published. Representation was submitted on

05.11.2012 (Annexure-14 to the writ petition) by various candidates including Anjali Kumar Sharma in Writ Petition No. 2638/2012 raising

objections about number of questions of which only two questions were deleted and on that basis third result was declared. But no decision was

taken with regard to questions No. 1, 5, 7, 12, 13, 16, 25, 30, 38, 42, 43, 58, 66, 74, 75, 77, 78, 83, 90 and 93, all of C-series. Learned

counsel has addressed the Court with regard to all these objections, which shall be dealt with at the appropriate place hereinafter.

14. Learned counsel argued that Prof. J.K. Malik was one of the paper setters. He has sworn in a false affidavit before this Court in the writ

petition decided at Principal Seat. In that affidavit, he has merely stated that he has left teaching in the said Institute but admitted that he used to

teach in the concerned coaching center. He stopped coaching only after receipt of communication from RPSC on 10.09.2011 to accept the

assignment of paper setter. Most of the questions were picked up from the notes of Prof. J.K. Malik, which were circulated amongst the students

of private coaching centers. In this connection, reference is made to Annexure-8 and his hand written notes placed on record of the Writ Petition

No. 3638/2012. This has affected impartiality and fairness of the examination and credibility of RPSC. When this Court required RPSC to

produce the question paper drafted by Prof. J.K. Malik, instead of producing the same, an affidavit was filed on behalf of RPSC that it was made

available to the then Chairman Shri B.M. Sharma, who demitted office on 21.08.2012 and on enquiry from him, it transpired that relevant material

of question papers were destroyed after examination. In the affidavit, however, it was admitted that 25 questions were taken from the paper

drafted by him. But if the draft paper has been destroyed, how can RPSC claim that more questions were not picked up from his paper.

15. Learned counsel submitted that the Supreme Court has time and again held that interview should not be the only method of assessing merit of

the candidates though its significance cannot be denied. However, appointment based totally on interview raises the scope of manipulation and

arbitrariness. In support this argument, learned counsel has relied on the judgment of the Supreme Court in Praveen Singh Vs. State of Punjab and

Others, .

16. Shri K.N. Sharma, learned counsel for petitioners in Writ Petition No. 8725/2012, also submitted that interviews alone do not decide the fate

of the candidates because once a candidate is eliminated in the written examination, he will not be able to appear in interview, thus loosing chance

to get selected. It is argued that even in the absence of challenge to the validity of the Rules, this Court can mould the relief and direct for giving

appropriate weightage to the marks of written examination.

17. Shri S.R. Choudhary, learned counsel for petitioner in Writ Petition No. 617/2013, contended that cut-off marks for general category was 59

in the written examination. His client would have secured 60 marks if options to answers to questions no. 1, 4, 34 and 69 of A-series given by him

were accepted as correct. Wrong options were treated as correct answers. Despite interim order passed by this Court, the petitioner has not been

allowed to appear in interview.

18. Shri Tanveer Ahmed, learned counsel for petitioners in Writ Petition No. 19813/2012 and few others, argued that candidates not more than

three times the number of vacancies, should have been called for interview but in this case, RPSC has actually called 672 candidates thus taking

the total to almost four-and-a-half times. This has diminished the chances of selection of his clients. Petitioner has appeared in the waiting list

because 31 candidates were selected from 170 (74+96) candidates, who were declared pass later.

19. Per contra, Shri G.S. Bapna, learned Advocate General appearing on behalf of the State opposed the writ petition and relying on the judgment

of constitution bench of the Supreme Court in the The University of Mysore and Another Vs. C.D. Govinda Rao and Another, submitted that

selection can be questioned only on the limited ground of there being violation of a provision of law or proven allegations of mala fide against the

selection body. Whenever any dispute arises with regard to academic matters, this Court should be loath to interfere and matter should be referred

to the experts in the subject which exercise has already been undertaken by RPSC. Scope of jurisdiction that this Court has under Article 226 of

the Constitution of India is thus very limited and quite restricted.

20. Learned Advocate General argued that the Supreme Court has in umpteen number of cases held that such disputes ought to be best left to be

resolved by the academic bodies, rather than the Court interfering therewith. Reliance in this connection is placed on the judgments in Dr. J.P.

Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, , Osmania University represented by its Registrar, Hyderabad, A.P.

Vs. Abdul Rayees Khan and Another, , and N. Lokananandham Vs. Chairman, Tele-Com. Commission and Others,

21. Shri S.N. Kumawat, learned Additional Advocate General appearing for RPSC argued that immediately after the examination was held,

RPSC published a press note inviting objections from all concerned as to the correctness of the key answers. Number of representations were

received, all of which were sent to the expert committee. RPSC in fairness to all candidates decided to accept the recommendation of such expert

committee and deleted 9 questions. There thus remained only 91 questions as against 100 questions in the paper, thereby increasing the value of

each question. Candidates three times the number of vacancies were to be called to face interview but, 502 candidates in all were called by

applying bunching principle because of tie in the marks and the last candidate was found to secure 59.52%. The marks were rounded off to full to

60% and all those who could secure marks upto 60% were called to appear in the interview. Regarding inclusion of the questions suggested by

Prof. J.K. Malik, it was suggested that he was merely asked to contribute the questions and in the like manner, others were also called upon to

contribute the questions. The final paper was prepared at the level of the Chairman of RPSC with the help of moderators. This was done in

absolute secrecy and manuscripts of the questions contributed by different experts were destroyed as per the prevalent practice, of RPSC.

Learned Additional Advocate General submits that Prof. J.K. Malik denied all the allegations on oath before this Court in the writ petition of Girraj

Kumar Vyas, supra. He denied the allegations that after accepting the assignment of paper setter, he circulated notes to any student at any

coaching center or at his residence. This Court accepting the explanation of Prof. J.K. Malik rejected the objection and that issue has since

attained finality. In response to a query by the Court, Shri S.N. Kumawat, learned Additional Advocate General, has given written answer

contending that if RPSC, at the end of third result, were to apply the ratio of 1:3+bunching principle, then only 544 candidates would have been

called for interview instead of 672 candidates (502+74+96). This would have resulted in exclusion of 128 candidates (672-544) and in case three

candidates, who were ineligible, are excluded, then this number would come to 125, out of which only 23 candidates have been selected, which

has not materially affected the ultimate result of selection. In other words, what the learned Additional Advocate General seeks to convey is that

even if the entire result is revised on that formula, only 125 would stand excluded out of 672 candidates. It is submitted that the Commission in

exercise of its powers as per Rule 21 of the Rules of 1998 devised the method of holding written examination for the purpose of short listing. There

is a resolution by all members of the Commission in "Full Commission" to call candidates minimum three times the number of vacancies, for

interview, but no maximum limit is prescribed. Therefore, RPSC acted well within its jurisdiction even if it called candidates slightly more than four

times the number of vacancies.

22. Shri S.N. Kumawat, learned Additional Advocate submits that validity of Rules of 1978 has not been challenged in any of the writ petitions,

therefore, it is not open for the petitioners to contend that selection cannot be based entirely on interview. In fact, in one writ petition bearing no.

8725/2012, Dilip Singh Yadav & Ors., petitioners challenged the validity of Rule, but challenge to the validity of the Rule was not pressed.

23. Learned Additional Advocate General cited the Supreme Court judgment in H.P. Public Service Commission Vs. Mukesh Thakur and

Another, wherein it was held that the Courts cannot take upon itself the task of Examiner or Selection Board and examine discrepancies and

inconsistencies in question paper and evaluation thereof. Reliance is placed on the judgment of Supreme Court in Subhash Chandra Verma and

others, etc. Vs. State of Bihar and others, etc., and it is argued that Supreme Court in that case held that when there are objections regarding

questions in the examination held by PSC, intervention of the High Court on the ground of confusion or controversial nature of questions, without

appointing any expert body and obtaining its opinion thereabout, is unjustified. Learned counsel also relied on the Full Bench decision of this Court

in Lalit Mohan Sharma & Ors. vs. RPSC & Ors., CW No. 1042/05 and connected writ petitions decided vide judgment dt. 18.11.2005 and

submitted that decision of RPSC based on expert committee constituted for the purpose to get the authenticity of key answers evaluated and

declare the result on that basis, is not open to challenge.

24. Shri A.K. Sharma, learned Senior Advocate appearing for the selected candidates argued that the written examination was held by RPSC only

for the purpose of short listing and already RPSC has undertaken exercise thrice to weed out questions, which are having multiple number of

correct options or are incorrectly framed or are out of syllabus. This only reflects fairness of its working. This Court can interfere with the process

of selection, only if it is found to be arbitrary or mala fide. There is no allegation of mala fide and the grounds of writ petitions do not even make out

a case of arbitrary exercise of power by RPSC. It is argued that result was twice revised by RPSC following acceptance of the recommendations

of expert committees in compliance of the judgment of this Court, therefore, the decision of RPSC to include additional 170 (74+96) candidates

cannot be said to be arbitrary or mala fide and even otherwise, is not open to challenge.

25. Shri A.K. Sharma, learned Senior Advocate submitted that mere increase in the number of candidates to four-and-a-half times the number of

vacancies, does not violate the selection. Reliance in support of this argument is placed on the Supreme Court judgment in Ashok Kumar Yadav

and Others Vs. State of Haryana and Others, . It is further argued that the petitioners having appeared in the written examination without any

murmur or protest, cannot now be permitted to challenge its correctness and also cannot be allowed to contend that the selection was unfair

because, it was based on interview alone. Some of the candidates are such, who have joined as petitioners in this batch of matters. In this

connection, reference is made to the case of Kamlesh Kumar & others, CW No. 2142/2013, Anjani Kumar Sharma and others, CW No.

2638/12 and Harphool Singh Devenda & Ors., CW No. 2025/2013. In para 9 of the case of Harphool Singh Devenda and in para 8 of the case

of Kamlesh Kumar, the petitioners have pleaded that even though they appeared in the interview, but were not selected. Having failed to qualify,

the writ petitioners are estopped from challenging the same. Learned counsel in support of this argument relied on the judgment of Supreme Court

in Ramesh Chandra Shah and Others Vs. Anil Joshi and Others, decided on 3.4.2013, Vijendra Kumar Verma Vs. Public Service Commission,

Uttarakhand and Others, and Pratap Singh vs. High Court of Judicature for Rajasthan through its Registrar, Pratap Singh Vs. High Court of

Judicature of Rajasthan, .

26. Shri A.K. Sharma, learned Senior Advocate extensively referred to each of the objections in respect of 21 questions in the affidavit of

petitioner-Anjani Kumar Sharma and explained how the option chosen as correct by KPSC in the key answer, was correct. The arguments made

in that behalf shall be considered simultaneously with the objections of the petitioners at the appropriate place hereinafter.

27. Shri S.C. Gupta, learned counsel appearing for the intervenor submitted that examination was held only for the purpose of short listing the

candidates in the nature of screening test. Result of written examination did not form basis for preparation of the merit list. Petitioners and for that

matter, all other candidates only had a right of consideration for appointment and they were granted such right the moment they were permitted to

appear in the examination. But mere appearance in the examination does not guarantee their selection. The writ petitions have been filed on the

basis of remote possibility of selection of the petitioners, whereas, in fact, most of them were not even able to qualify the cut off marks set by

RPSC for the purpose of short listing. Many of them having cleared the written examination faced interviews and then failed. It was argued that

minor inaccuracies in the question papers would not lead to affecting fairness of entire process of selection. Whole selection cannot be set aside on

that basis. It is therefore prayed that the writ petitions be dismissed.

28. I have given my anxious consideration to rival submissions, perused the material on record and respectfully studied the cited case law.

29. Before adverting to objections raised with regard to different questions on variety of grounds, it would be appropriate to deal with the

arguments on the scope of interference by this Court in the realm of judicial review in matters like the present one. Earliest judgment cited at the

Bar regarding this is that of the Supreme Court in Kanpur University & Ors. vs. Samit Gupta & Others, supra. Their Lordships held therein that if

a paper-setter commits an error while indicating the correct answer to a question set by him, the students, who answer that question correctly

cannot be failed for that reason. It is true that the key answer should be assumed to be correct unless it is proved to be wrong and it should not be

held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to

say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. Where it is proved that the

answer given by the students is correct and the key answer is incorrect, the students are entitled to relief asked for. In case of doubt,

unquestionably the key answer has to be preferred. But if the matter is beyond the realm of doubt, it would be unfair to penalize the students for

not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.

30. In Himachal Pradesh Public Service Commission, supra, dispute was raised with regard to framing of two questions and in evaluation of

answers thereof. The Supreme Court held that the Court cannot take upon itself task of statutory authority. If there was a discrepancy in framing of

questions and evaluation of answers, it would be so for all the candidates appearing in the examination and not for the respondents alone.

31. In Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others, the matter was pertaining to admission to medical and

dental course. The candidates appearing for the common entrance test, approached the Court with the allegation that answers to six questions

given in the answer key are erroneous and incorrect and thus a wrong and erroneous ranking was prepared. The High Court refused to interfere.

The Supreme Court reversed the judgment of the High Court observing as under:-

10. The High Court has committed a serious illegality in coming to the conclusion that ""it cannot be said with certainty that answers to the six

questions given in the key answers were erroneous and incorrect"". As already noticed, the key answers are palpably and demonstrably erroneous.

In that view of the matter, the student community, whether the appellants or interveners or even those who did not approach the High Court or this

Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on

record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note

that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more

than one reason. We mention few of those; first and paramount reason being the welfare of the student as a wrong key answer can result in the

merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if despite giving

correct answer, the student suffers as a result of wrong and demonstrably erroneous key answer; the second reason is that the Courts are slow in

interfering in educational matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases

of doubt, benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answers is

adopted by the persons concerned, directions may have to be issued for taking appropriate action, including disciplinary action, against those

responsible for wrong and demonstrably erroneous key answers, but we refrain from issuing such directions in the present case.

32. A Full Bench of this Court in Lalit Mohan Sharma, supra while holding that if the expert committee is constituted for the purpose has given its

report based on recognized text books and there is no allegation that the member constituted the Committee did not know or have specialization in

the subject, nor there is any allegation of bias against them, no occasion arises for the Court to interfere further in the matter.

33. Similar view has been expressed in Division Bench judgments of this Court at Principal Seat, Jodhpur in Joga Ram Choudhary & Ors. vs.

State of Rajasthan & Ors., D.B. Civil Special Appeal No. 38/2013 decided on 10.01.2013 and those delivered at Jaipur Bench in Praveen Singh

& Ors. vs. State & Ors., D.B. Civil Special Appeal No. 1032/2012 on 4.1.2013 and in the case of Keshan Singh & Ors. vs. RPSC & Ors., D.B.

Civil Special Appeal (Writ) No. 1685/2012 delivered on 22.04.2013. It is informed at the Bar that operation of last of these judgments has been

stayed in the Special Leave to Petition filed by the affected parties.

34. Division Bench of Delhi High Court in a judgment recently delivered on 09.04.2012 in Gunjan Sinha Jain vs. Registrar General, High Court of

Delhi, W.P. (C) No. 449/2012 has dealt with a similar issue. That was a dispute pertaining to the preliminary examination conducted for

recruitment to Delhi Judicial Service. The High Court on examination of the disputed questions directed that 12 such questions should be removed

from the purview of examination and 7 questions would require corrections in the answer keys whereas objections relating to answer key to 7

other questions was rejected.

35. In a recent judgment in Rajesh Kumar & Ors. Etc. vs. State of Bihar & Ors. Etc., Civil Appeal Nos. 2525-2516/2013 decided on 13.3.2013,

the Supreme Court upheld judgment of Patna High Court observing that ""given the nature of the defect in the answer key, the most natural and

logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof."" The

Single Bench of the High Court based on the report of two experts held that 41 model answers out of 100 were wrong. While 2 questions were

wrong, 2 other questions were repeated. The single bench thus held that the entire examination stood vitiated, therefore, directed that the same be

cancelled and so also the appointment made on that basis. The division bench of the High Court, however, while partly allowing the appeal held

that the entire examination need not be cancelled because there was no allegation of any corrupt motive or malpractice in regard to the other

question papers. A fresh examination in Civil Engineering Paper only was, according to the division bench, sufficient to rectify the defect and

prevent injustice to any candidate. The division bench further held that while those appointed on the basis of the impugned selection shall be

allowed to continue until publication of the fresh result, anyone of them who failed to make the grade on the basis of the fresh examination shall be

given a chance to appear in another examination to be conducted by the Staff Selection Commission. In those facts, their Lordships of the

Supreme Court observed as under:

16. The submissions made by Mr. Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of

correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the

circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about

any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process

of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process

would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one

that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts

and circumstances of the case.

36. In the just cited case, though the Supreme Court, while finally deciding the matter, moulded the relief by saving the appointments already made,

but at the same time directed evaluation on the basis of correct key prepared by an expert committee and further directed appointment of those

qualifying the merit from the date when the appellants were first appointed with continuity of service for the purpose of seniority but without any

back wages.

37. A reference at this juncture may be made to the Supreme Court in Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and

Others, cited by learned Advocate General, which is also a case relating to recruitment based entirely on interview. The Supreme Court speaking

through Justice V.R. Krishna Ayer held therein that ""while there is no absolute ban, it is a rule of prudence that Courts should hesitate to dislodge

decisions of academic bodies. But university organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law

unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the Court keeps its hands

off, but where a provision of law has to be read and understood, it is not fair to keep the Court out.

(emphasis supplied).

38. What is disturbing to note is that despite involvement of several so-called experts in one after another committees on as many as six occasions,

RPSC has not being able to completely weed out the doubtful questions having multiple wrong answers. In the facts peculiar to this case, therefore,

sending the matter again to a seventh committee is not considered appropriate. Questions being pertaining to subject of law, this Court deems it

appropriate to evaluate the correctness of options and also examine whether some of the questions are out of syllabus and not being properly

framed.

39. Being, therefore, fully conscious of the limitations of its jurisdiction, this Court with the assistance of learned counsel appearing on both the

sides, deem it appropriate to evaluate the correctness of questions primarily with a view to finding out whether there are plural number of correct

options given by PSC against any question, though at the same time keeping in mind the dicta laid down by the Supreme Court in Subhash

Chandra Verma, supra that ""candidates are required to tick mark the answers which is most appropriate out of plurality of answers"" and that even

if the answers could be more than one, ""the candidates will have to select the one, which is more correct than the alternative answers.

40. I shall now proceed to examine the objections with regard to 21 questions detailed in the affidavit of Anjani Kumar Sharma, which covers the

disputes raised in all the writ petitions.

Question No. 1 of C-series (Question No. 28 of A-series):-

Q. The foundation of Investigation under Code of Criminal Procedure 1973 is:

(1) Complaint

(2) Report or information by a third person for commission of offence

(3) First Information Report

(4) News paper''s report

41. Objection about this question is that there is no provision in the Code of Criminal Procedure describing foundation of investigation. Options no.

2 and 3 are correct answers and paper setter has wrongly treated option no. 3 as correct answer. The first information report is a sine qua non for

commencement of any investigation, whether on report of information by a third person for commission of offence directly given to Officer-in-

charge of Police Station or otherwise received by him on the basis of complaint through the Court under Sec. 156(3). In every situation, this is

required to be registered as a first information report. In plurality of the answers, therefore the option no. 3 is ""most appropriate"" and ""more correct

out of the alternative answers"". Therefore, option no. 3 has rightly been taken as correct answer by RPSC.

Question No. 5 of C-series (Question No. 32 of A-series):-

Q. The police-diary under Sec. 172 of the Code of Criminal Procedure 1973 is used for which of the following things?

(1) for collection of evidences

(2) for recording of statements of witnesses

(3) For aid in enquiry or trial to the Court

(4) For aid in investigation to the police.

42. Objection about this question is that it carries multiple number of correct options because case-diary can be used for collecting evidence as

also for recording statement of witnesses and also for helping the police investigation. This objection is without any substance in view of the

provisions contained in sub-Section (2) of Section 172 of the Cr. P.C., which inter-alia provides that any Criminal Court may send for the police

diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

Therefore, option no. 3 has rightly been taken as correct answer by RPSC.

Question No. 7 of C-series (Question No. 34 of A-series):-

Q. For application of the provision of plea-bargaining, under Code of Criminal Procedure, 1973 the most important thing which is required is that

it should relate with the offences:

(1) Punishable with less than 7 years imprisonment and accused should not be previously convicted.

(2) Punishable with death but not against women.

(3) Punishable with life imprisonment but not against child below the age of 14 years.

(4) Punishable with death, life imprisonment, more than 7 years imprisonment, against women, socioeconomics conditions of the country, or child

below 14 years.

43. Objection about this question is that there is variance between English and Hindi version and Hindi version carries incorrect translation of the

word ""plea-bargaining"". Further objection is that framing of the question was itself incorrect as none of the four options are incorrect. As regards

the first objection, reference be made to instruction No. 10 mentioned in the beginning of the question question-booklet, which provides that ""if

there is any sort of ambiguity/mistake either of printing or factual nature then out of Hindi and English Version of the question, the English Version

will be treated as standard."" As it is, ""plea-bargaining"", is a legal terminology. Whoever appears in a competitive examination for appointment on

the post of APP Gr. II, should be aware of the same. Second objection also is not sustainable because reading of Section 265-A of Chapter

XXIA of the Cr. P.C., relating to plea-bargaining, makes it clear that ""plea-bargaining"" shall apply in respect of an accused against whom charge-

sheet has been filed under Sec. 173 Cr. P.C. alleging that an offence has been committed by him other than an offence for which the punishment of

death or of imprisonment for life or of imprisonment for a term exceeding seven years. In other words, if the punishment exceeds 7 years, the

provisions relating to plea-bargaining would not be applicable. Option no. 1 has thus rightly been taken as correct by RPSC, which becomes

further clear from the later part of the objection that the accused should not be previously convicted, which is what has also been provided by sub-

Section (2) of Section 265B of the Cr. P.C.

Question No. 12 of C-series (Question No. 39 of A-series):-

Q. Death sentence of an accused may be commuted to fine also by the appropriate government under which provision of law

(1) u/s 54 of the Indian Penal Code, 1860.

(2) Under Article 72 and 161 of the Constitution.

(3) According to Section 53 of the Indian Penal Code 1860 and Section 433(A) of the Code of Criminal Procedure 1973.

(4) u/s 432 of the Code of Criminal Procedure 1973.

44. There are two objections about this question. Firstly, that option no. 3 should be correct answer as per Section 433A of the Cr. P.C., and

secondly that option no. 2 is beyond the nature of question as well as outside the syllabus. Question refers to power of the appropriate

Government to commute the death sentence. Section 433A of the Cr. P.C. places restriction on release of a convict sentenced to life imprisonment

for offence for which death is also a penalty, before he completes at least fourteen years of imprisonment. Option (1) has rightly been chosen as

correct option because Section 54 of the IPC refers to power of the appropriate Government to commute a death sentence. This question pertains

to commutation of death sentence, which power also vests with the President of India by virtue of Article 72 of the Constitution of India and the

Governor of a State vide Article 161 of the Constitution of India. Therefore, it cannot be said that the option (2) is beyond the nature of question.

As regards the syllabus, even if the Constitution of India was not notified as part of the syllabus and RPSC has deleted one of the questions being

the outside the syllabus, a candidate is required to give the correct answer in the examination and tick mark the correct option. There is no

compulsion for the paper setters or for that matter, RPSC that even though one of the options given amongst four, is correct, incorrect option

should also necessarily be falling within the syllabus. If a candidate is unable to locate the correct answer amongst multiple options, that really is a

test of his ability to figure out the correct one from many options.

45. At this juncture, it would be necessary to deal with the argument advanced on behalf of the petitioners that since RPSC has deleted question

no. 98 of A-series on the basis of expert opinion that options no. 1 and 3 are out of syllabus, therefore, whichever question has one or more

options from outside the syllabus, should be deleted. This argument is noted to be rejected only, because if RPSC has for the reason best known

to it, taken erroneous decision, that would not bind this Court. When the matter is before the Court, it has to decide the same as per the law

applicable on the subject. There is no law that requires that even the wrong options/incorrect answers, which are joined with correct

answer/option, should necessarily be from within the syllabus, although one would be justified in complaining so if the question itself is outside the

syllabus. That argument of the petitioners in this behalf is therefore rejected.

Question No. 13 of C-series (Question No. 40 of A-series):-

Q. While exercising inherent powers under Sec. 482 of the Code of Criminal Procedure 1973, even the High Court cannot do which of the

following things:

(1) To give police-custody from judicial custody.

(2) To convert itself into a Court of appeal when legislature has not authorized it expressly or indirectly.

(3) To review its own judgment or order

(4) All the above things.

46. Objection about this question is that the very framing of question is contrary to the provisions of Section 482 Cr. P.C., and the options given

are also incorrect. Similar question given in the competitive examination conducted for Rajasthan Judicial Services, 2011 was deleted by this

Court. According to RPSC, this question was though similarly worded as question no. 56 in A-series of the preliminary examination of RJS but

option no. 4 of this question was given as option no. 2 in that examination paper, option no. 1 was mentioned as option no. 4 and option no. 2 as

also option no. 3 and option no. 3 as option no. 1. Thus, the options in RJS preliminary examination were arranged in entirely different order.

Fourth option of the question herein was mentioned as option no. 2 in that examination. Therefore, RPSC on its own deleted it and Division Bench

of this Court upheld. This Court has to analyze the question in the light of the provisions of Cr. P.C. Section 362 of the Cr. P.C. provides that no

Court shall alter or review its judgment or final order disposing of a case except to correct a clerical or arithmetical error. Though this Section in its

saving clause provides that ""Save as otherwise provide by this Code or by any other law for the time being in force,..."", the Supreme Court in Smt.

Sooraj Devi Vs. Pyare Lal and Another, held that the inherent power of the Court is not contemplated by the saving provision contained in Section

362. The Supreme Court in Hari Singh Mann Vs. Harbhajan Singh Bajwa and Others, and State of Punjab Vs. Davinder Pal Singh Bhullar and

Others etc., also held that inherent power under Sec. 482 Cr. P.C. cannot be exercised to review a judgment or final order in a criminal case

which is expressly barred by the Code of Criminal Procedure. Second option that Section 482 Cr. P.C. empowers the High Court to convert itself

into a Court of appeal, whereas legislature has not authorized it expressly or indirectly, also does not appear to be legally sound. Section 482 Cr.

P.C. empowers the High Court to exercise its inherent powers to make such orders as may be necessary to give effect to any order under the

Code or to prevent abuse of the process of law or otherwise, to secure the ends of justice. It is trite that such power has to be exercised sparingly

and with caution. The High Court can exercise power on application as also suo-motu but only when there is no remedy available to litigant within

the parameters of the Code. But to say that this provision even entitles the High Court to convert itself into the Court of appeal whereas legislature

has not provided so, may not be legally correct.

47. There is no specific provision contained in Section 167 Cr. P.C. but in exceptional circumstances the High Court, if approached even by the

State, may give police custody of an accused from judicial custody [See Central Bureau of Investigation, Special Investigation Cell-I, New Delhi

Vs. Anupam J. Kulkarni, However, since two of the options in this question are apparently incorrect and demonstrably erroneous, wrong and

misleading, which no reasonable law knowing person would accept to be correct, therefore this question deserves to be deleted.

48. Besides, when this question was given in RJS Pre Examination 2011 as question no. 56 of A-series, the option no. 2 given therefor, was

indicated that all the options are correct and since all the mentioned options were not correct (question and three options given therein were exactly

same) therefore RPSC rightly deleted the question, which deletion was upheld by the High Court. Obviously there being no distinction between

two questions and all the above answers and if in that examination, RPSC accepted that all the three options are not correct, it cannot insist on

their correctness now in this examination.

Question No. 16 of C-series (Question No. 43 of A-series):-

Q. Facts showing existence of state of mind or body or bodily feelings of a person are relevant under which of the following Acts?

(1) u/s 280 of the Code of Criminal Procedure 1973.

(2) Under Order 18 Rule 12 of the CPC 1908.

(3) u/s 14 of the Indian Evidence Act, 1872.

(4) Under all the above Sections and Acts.

49. The objection regarding this question is that since it pertains to CPC, which is not included in the syllabus of APP Gr. II examination, therefore,

this is out of syllabus and further that framing of the question is not in conformity with Section 14 of the Indian Evidence Act, therefore option no. 3

has wrongly been taken as correct by RPSC.

50. The provisions of the Indian Evidence Act especially its Section 14 also applies to the criminal trials under the Code of Criminal Procedure.

The objection that it should apply only to proceedings in CPC is therefore rejected. Moreover the question is straightway lifted from the main

provision of Section 14 as evident from caption of Section 14, which reads thus - ""Facts showing existence of state of mind, or of body, of bodily

feeling"". Therefore option no. 3 has rightly been taken as the correct option by RPSC.

Question No. 18 of C-series which Question No. 45 of A-series:-

Q. Which of the following case was decided on the basis of ""tears from eyes"" evidence of a women, namely?

(1) State of Rajasthan Vs. Smt. Kanuri Devi, 1998 Rajasthan

(2) Shamim Rahmani and Others Vs. State of U.P.,

(3) K.M. Nanavati Vs. State of Maharashtra,

(4) Palvinder Koer Vs. State of Punjab, 1952 S.C.

51. Objection of the petitioners about this question is that it has not been properly framed inasmuch as there is no decision delivered on the basis of

tears from eyes"". Evidence of a woman on the basis of ""tears from eyes"" is not envisaged in law. The correct option accepted by RPSC is option

no. 1. State of Rajasthan Vs. Kanoori, was a case in which accused Kanoori was charged for offence of murder of her husband. In Para 16 of the

judgment, the Court made reference to number of witnesses in whose presence she confessed having committed murder of her husband. Statement

of Poona Ram (PW-7) was to the effect that initially the accused had shown her ignorance about the murder of Gumana Ram but when she was

asked twice or thrice, she confessed her guilt. He further stated that when two Sarpanchas Amana Ram and Bhoma Ram asked the accused about

foot prints, she told that she had killed her husband and she had committed mistake. This witness further stated that accused did not weep and

there were no tears in her eyes. There are three Head Notes of the judgment given in the said report, none of which refers to "tears from eyes".

The Court only intended to indicate demeanour of the accused with reference to the statement of witnesses, who rather stated that there were "no

tears in her eyes", that means that she had no repentance.

52. The objection of the petitioners is that the case was not decided on the basis of "tears from eyes" evidence of a woman, which implies

presence of "tears in the eyes" of the women, whereas the judgment refers to absence of "tears in the eyes". In the question, reference is made

"women" thus suggesting multiple number of woman, whereas the judgment which has been taken as the correct option refers to conviction of

single accused, who was a "woman". Therefore even if one does not go into the wisdom of the paper setter in giving such a strange question, this

question is liable to be deleted for these factual errors.

Question No. 25 of C-series (Question No. 52 of A-series):-

Q. Which of the following Section is considered as the spinal cord of the civil litigation in India:

(1) Section 105 of the Indian Evidence Act, 1872

(2) Section 91 of the Indian Evidence Act, 1872

(3) Section 92 provision 1 to 6 of the Indian Evidence Act, 1872

(4) Section 104 of the Indian Evidence Act, 1872

53. Objection about this question is that each single provision referred to in all four options has equal importance in civil litigation in India. The

respondents have sought to justify framing of this question by producing the question paper of Law of Evidence (First Paper of LL.B. (Part III)

Examination, 2012, conducted by the University of Rajasthan, Jaipur. Question No. 7 in that paper was ""Why exceptions of Section 92 of Indian

Evidence Act, 1872 are considered as spinal cord of civil litigation? Explain the statement and mention its exception."" Similarly worded question is

also mentioned as Question No. 16 at page 67 of the Babel Law Series (25 Question & Answer on the Law of Evidence) written by Dr. Basanti

Lal Babel. This question and the question in Examination Paper of LL.B. Third year, were worded entirely differently. But here, this question in the

Examination was rather framed in a strange way by asking the candidates as to which Sections in of the options, is considered as the spinal cord of

Civil Litigation in India. In law, there is no concept like spinal cord. It is only a way of expression to underline importance of a given thing. This

would be a subjective opinion of each student of law. One may be entitled to hold the opinion that Sections 91 (about evidence of terms of

contracts, grants and other dispositions of property reduced to form of documents), or 104 (about burden of proving fact to be proved to make

evidence admissible) or 105 (burden of proving that case of accused comes within exceptions) of the Indian evidence Act, 1872, are as much

important as Section 92 (about exclusion of evidence of oral agreement), of the Indian Evidence Act for civil litigation in India. The question,

therefore, was highly misleading and confusing and the option no. 3 given in response to this question therefore cannot be saved even on the

analogy that it was ""most appropriate"" and ""more correct out of the alternative options"". Therefore, this question is also liable to be deleted.

Question No. 30 of C-series (Question No. 57 of A-series):-

Q. A witness cannot be converted into an accused person, though may be compelled to answer questions relating to an offence. Under which

Section of the Indian Evidence Act, 1872, this immunity is granted to a witness?

(1) u/s 148

(2) u/s 163

(3) u/s 131

(4) u/s 132

54. Objection about this question is that all four options given therein are correct, whereas, according to RPSC, option no. 4 i.e. ""Under Section

132"" of the Indian Evidence Act, is the correct answer. Section 132 provides that ""A witness shall not be excused from answering any question as

to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will

criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to

a penalty or forfeiture of any kind."" This is subject to proviso which indicates that "". no such answer, which a witness shall be compelled to give,

shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence

by such answer."" This is the direct and nearest provision and Sections 131, 148 and 163, respectively, given in other options, are nowhere nearer

the problem posed in the question. The objection to this question is therefore liable to be rejected.

Question No. 38 of C-series (Question No. 65 of A-series):-

Q. Which provision of the Code of Criminal Procedure 1973 empowers the presiding officer to dispense with the personal attendance of an

accused at the time of recording of statement of witnesses?

(1) Section 299

(2) Section 273

(3) Section 205

(4) Section 285

55. Objection about this question is that Section 273 cannot be taken as the only correct answer. Section 205 of the Cr. P.C. also empowers a

Magistrate to dispense with personal attendance of accused. Section 205 of-course empowers a magistrate to dispense with personal attendance

of accused but the question is not only this much. The question covers the complete provision of Section 273 of the Cr. P.C. which, inter-alia,

provides that all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal

attendance is dispensed with, in the presence of his pleader, which is what has been put in the question as a problem. This objection is also

therefore liable to be rejected.

Question No. 42 of C-series (Question No. 69 of A-series):-

Q. Who of the following is competent to disqualify from holding a driving license or revoke such license under Motor Vehicle Act, 1988 namely?

(1) Licensing Authority

(2) Court

(3) Governor and President

(4) Licensing Authority and Court

56. According to petitioners, both options no. 2 and 4 are correct answer to the question, as per Sections 19 and 20 of the Motor Vehicles Act,

1989, whereas RPSC has taken only option no. 1 as correct answer. The question presupposes one authority competent to disqualify a person

from holding a driving license as well as revoke such license. Sub-Section (1) of Section 19 of the Motor Vehicles Act, 1988, after clauses (a) to

(h), refers to both and provides that if a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard as

enumerated in clauses (a) to (h), may, for the reasons to be recorded in writing, disqualify that person for a specified period for holding or

obtaining any driving licence, or revoke any such licence. Section 20 refers to power of the Court to declare a person disqualified from holding any

driving licence and does not empower the Court to revoke the licence in that provision. This objection is therefore liable to be rejected.

Question No. 43 of C-series (Question No. 70 of A-series):-

Q. When any person is injured or property of a third party is damaged as a result of an accident the duty of the driver, according to Section 134 of

Motor Vehicle Act, 1988 is

(1) firstly to inform to the police about the accident

(2) To take the injured person to nearest hospital for medical treatment

(3) To inform to the family members or relative of the victim of accident

(4) To take injured immediately for medical help to nearest hospital or registered medical practitioner and then inform to police about the accident

57. RPSC has, for this question, treated option no. 2 as the correct answer, whereas, according to the petitioners, option no. 4 is also the correct

answer. Sub-Section (b) of Section 134 of the Motor Vehicles Act provides that when any person is injured or any property of a third party is

damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall give

on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence,

including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police

station as soon as possible, and in any case within twenty-four hours of the occurrence, and as per sub-Section (c) give the required information in

writing to the insurer. A perusal of Section 134 therefore makes it clear that option no. 1, which inter-alia, provides that firstly the driver shall

inform to the police about the incident, may not be the only correct answer, but the option no. 2 as well as option no. 4 would be both correct.

Question is not thus as to what should be the first duty of the driver in the event of an accident resulting into injury to any person or damage to any

property of a third party, but is rather simple and is based on the provision of Section 134, supra. Had the paper setter used the ''firstly'' in the

body of question itself {when is used in option (1)}, then perhaps what RPSC is contending would be correct. Therefore, this objection is liable to

be upheld and the question is liable to be deleted.

Question No. 58 of C-series (Question No. 85 of A-series):-

Q. Search and seizure under the Arms Act, 1959 can be carried out by

(1) Magistrate

(2) Superintendent of Police

(3) Officer in Charge of the Police Station

(4) Superintendent of C.B.I.

58. Objection about this question is that all four options given therein are correct according to Sections 22 and 23 of the Arms Act, 1989, whereas

according to RPSC Section 22 of the Arms Act empowers only the Magistrate to make search and seizure and therefore that is the only correct

answer. Section 23 is confined to search of vessels, vehicles or other means of conveyance and seize any arms or ammunition that may be found

therein. Section 24A(d) also refers to the search and seizure by an officer subordinate to the Central or the State Government authorized by the

notification of the Central Government to search and seize any person or premises etc, within the notified disturbed area. Section 24B(1)(c) also

refers to the authorization by the Central Government by notification in favour of the officer subordinate to the Central Government or a State

Government. Contention that Section 23 which also refers to authorization of Magistrate and police officer and any other officer specially

empowered by the Central Government is only confined to search and seizure of any vessels, vehicles and other means of conveyance and seize

any arms or ammunition that may be found in the area. Therefore, option no. 1 should be taken to be the only correct answer because all other

provisions, namely Sections 23, 24A and 24B, refer to authorization by the Central Government as the condition precedent for search and seizure

by such officer. In the circumstances, the option no. 1 i.e. ""Magistrate"", who can carry search and seizure under the Arms Act, without the

requirement of anything more has to be accepted as the correct option on the analogy being ""most appropriate"" and ""more correct out of the

alternative answers"".

Question No. 66 of C-series (Question No. 93 of A-series):-

Q. Which one of the following is not a condition which can be imposed by State Government for transport and export of excisable goods, under

Rajasthan Excise Act, 1950, unless?

(1) Fee fixed under Sec. 28 is paid

(2) undertaking for payment of fee under Sec. 28 has been given

(3) Payment made to the manufacturer

(4) Special permission from State Government has been taken

59. According to the petitioners, this question carries two correct options, being options no. 3 and 4, as per Sections 11 and 12 of the Rajasthan

Excise Act, 1950. According to RPSC, however, the question is based on Section 12. A combined reading of Sections 12 and 13 makes it clear

that while they refer to other three options, but none of these provisions provides that payment made to the manufacturer would be the condition

precedent for transportation or export of excisable goods. Payment made to the manufacturer is something which would depend on the mutual

agreement between the parties. Thus, option no. 3 is the correct answer. The objection is therefore liable to be rejected.

Question No. 74 of C-series (Question No. 1 of A-series);-

Q. Who among of the following is not a ""public servant"" according to Section 21 of the Indian Penal Code 1860?

(1) Chief Minister and Prime Minister

(2) Judge and Magistrate

(3) Government servant appointed on deputation

(4) Principal of Government College

60. As per the petitioners, all four options given below this question are correct, whereas, according to RPSC, option no. 3 is the correct answer

because a government servant while on deputation would not be a public servant To bring home their point, the respondents have cited a judgment

of the Supreme Court in S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, wherein it has been held that a civil servant working on

deputation with a cooperative society would not be a public servant and therefore sanction for his prosecution would not be necessary. Whenever

a government servant is working on deputation against a non-government post, he would be as per the ratio of aforesaid judgment is not a public

servant. This can be best understood with reference to Explanation 2 given below Section 21 of the IPC providing that ""Whenever the words

public servant"" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal

defect there may be in his right to hold that situation."" What is therefore important to decide the character of a public servant is that he should be in

actual possession of the situation of a public servant. The option indicated as correct choice by RPSC is therefore the nearest correct answer. The

objection of the petitioners is therefore rejected.

Question No. 75 of C-series (Question No. 2 of A-series):-

Q. In which Section of the Indian Penal Code, 1860, the principle of ""Expiatory theory"" of punishment has been incorporated?

(1) Section 70

(2) Section 71

(3) Section 75

(4) Section 73 & 74

61. According to the petitioners, this question is out of syllabus because theory of expiatory is provided in the subject of criminology and criminal

administration and option no. 4 cannot be correct because it pertains to solitary confinement of a convict, which cannot be treated as part of

expiatory theory. RPSC has in support of its stand, relied on the Book of IPC authored by Prof. Tridivesh Bhattacharya, published by the Central

Law Agency, Allahabad, in its 6th edition, author of which while discussing principle of expiatory, has referred to solitary confinement as one of the

methods of expiatory theory to instill feeling of repentance in the accused. It being the subject relating to criminology, cannot be said to be outside

the syllabus. That option has to be therefore accepted as correct on the analogy of being nearest answer.

Question No. 77 of C-series (Question No. 4 of A-series):-

Q. ""A"" soldier fires on the silent mob, by order of his superior officer in conformity with the commands of the law, due to which ""C"" dies. Here ""A

(1) Will not be liable according to Section 76 of the Indian Penal Code 1860

(2) Will not to be liable according to Section 79 of the Indian Penal Code 1860

(3) Will be liable under Sec. 304 of the Indian Penal Code 1860

(4) Will be liable under Sec. 307 of the Indian Penal Code 1860

62. Objection about this question is that it has not been properly framed and the given instance would not constitute offence of Section 304 IPC.

According to Section 76, option no. 1 should the correct answer. According to RPSC, however, in the case of soldiers, the IPC does not

recognize the duty of blind obedience for orders of superiors as sufficient to protect him from the penal consequences of his act. However, the act

done by such soldier in the illustrations will fall in exception (3) to Section 300 IPC and therefore, he would be liable to punishment under Sec. 304

IPC. Illustration (a) given below Section 76 of the IPC reads as under,

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

63. The question thus appears to have been straightway lifted from the illustration with insertion of word ''silent'' immediately before the word

''mob''. The illustration given in question can hardly fall within the Exception. 3 to Section 300 IPC, which inter-alia provides that culpable homicide

is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers

given to him by law and causes death by doing an act which he in good faith, believes to be lawful and necessary for the due discharge of his duty

as such public servant and without ill-will towards the person whose death is caused. What is missing in Exception. 3 is the command by a superior

officer and this Exception refers to either a public servant or an offender aiding a public servant, both, acting for advancement of public justice; then

postulates that one of them exceeds the powers given to him by law and thereby causes death in good faith believing it to be lawful and necessary

for the due discharge of his duty.

64. Section 76 segregates such exception to fall in two categories, namely (i) nothing is the offence which is done by a person bound, or by

mistake of fact believing himself bound, by law; (ii) nothing is an offence which is done by a person who is, or who by reason of a mistake of fact

and not by reason of a mistake of law, in good faith believes himself to be, bound by law to do it. What is significant is that ''A'', the soldier, in the

given illustration believes in good faith that he has to follow the command of his superior officer, asking him to fire on the mob. Question postulates

that he fires on the mob by the orders of his superior officer in conformity with the command of law. This will squarely fall in the exceptions carved

out in Section 76. Such exception would also extend to the firing by a soldier on a silent mob on the order of his superior officer, which is in

conformity with the commands of law because in that event also this would be covered by later part of Section 76, namely, ""who by reason of a

mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it."" Objection with regard to this

question is therefore upheld. Option (1) alone should be treated as correct answer.

Question No. 78 of C-series (Question No. 5 of A-series):-

Q. In which of the following offences the benefit of Section 85 of the Indian Penal Code 1860 will not be given to the accused person, namely,

offences under?

(1) Section 323, 325, 340 and 355

(2) Section 272, 279, 292 and 294

(3) Section 312, 300, 376, 497, 498 & 361

(4) Section 295, 296, 297 and 298

65. As per the objections of the petitioners this question has been framed contrary to Section 85 of the IPC, whereas, according to the

respondents, option no. 2 is correct answer because of the offences mentioned therein requires theory of strict liability applicable to each one of

those offences and there is no requirement of "mens rea". Section 85 IPC is a general exception providing that nothing is an offence, which is done

by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either

wrong, or contrary to law. This is subject to providing that the thing which intoxicated him was administered to him without his knowledge or

against his will. But there are certain offences in which the theory of strict liability applies. Office under Sec. 272 IPC refers to adulteration of food

or drink intended for sale. Section 279 makes rash driving or riding on a public way, as offence. Section 292 IPC makes sales of obscene books,

pamphlet, paper, writing, drawing, paining, representation, figure or any other object, as offence. Section 293 IPC makes sale, distribution,

exhibition, circulation etc. of obscene objects to young person under the age of twenty years, an offence. The respondents have relied on a book

on IPC by Prof. Surya Narayan Misra, according to whom, in common law there are three recognized exceptions to the general principle of mens

rea, which are (i) public nuisance, (ii) criminal libel, and (iii) contempt of Court. Offences enumerated in second option which is chosen as correct

by RPSC would clearly fall first within two exceptions, thus making the theory of strict liability applicable. Objection in this regard to this question

is therefore rejected.

Question No. 83 of C-series (Question No. 10 of A-series):-

Q. A person may be responsible for the theft of his own property under Sec. 379 of the Indian Penal Code 1860, when he has given his property

to other as a-

(1) Bailment and use

(2) Gift and trust

(3) Security

(4) Bailment, gift, repair & use

66. Objection about this question is that it contains two correct options. According to RPSC, option no. 3 is the correct answer, whereas

according to the petitioners, option no. 1 is also correct answer. The question is based on illustration (J) given below Section 378 IPC, according

to which option no. 3 is the correct answer. Therefore, the objection raised by the petitioners is liable to be rejected.

Question No. 90 of C-series (Question No. 17 of A-series):-

Q. ''A'' with the intention of murdering ''B'' instigates ''C a lunatic to give poison to ''B'', ''C instead of giving it to ''B'' takes poison himself. Here, in

this case

(1) ''A'' is not guilty as ''B'' a lunatic cannot be an offender in the eyes of law

(2) ''A'' is guilty of causing death of lunatic only

(3) ''A'' is guilty of abetment

(4) None of the above

67. According to the objection raised by the petitioners that option no. 2 is correct answer whereas, according to RPSC, option no. 3 is the

correct answer. In the given illustration, the option no. 3 would be the nearest correct answer as ''A'' would be guilty of abetting ''C'' who is lunatic,

to give poison to ''B'' but incidentally ''C has consumed it himself. He cannot be held guilty of causing death of ''C''. Option selected by RPSC

should therefore be accepted correct being nearest correct answer.

Question No. 93 of C-series (Question No. 20 of A-series):-

Q. The offence of ""trespass"" under the Indian Penal Code 1860 basically is an offence against the-

(1) Ownership

(2) Possession

(3) Reputation

(4) Privacy and Possession

68. As per the petitioners, the option no. 4 is the correct answer, whereas, according to RPSC, option no. 2 is the correct answer. Definition of

''criminal trespass'' is given under Sec. 441 IPC, according to which, offence of criminal trespass is said to have caused when someone enters into

or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such

property. It is therefore the offence against (sic) Option no. 2 has rightly been taken to be the correct answer. Privacy given in option no. 4 has

nothing to do with the offence of criminal trespass.

69. A close scrutiny of the questions vis-a-vis options given thereunder clearly proves that questions no. 13, 18, 25 and 43 and option no. (3) of

question no. 77 of C-series, are ""clearly demonstrated to be wrong"", which ""no reasonable body of men well versed"" in the subject of law would

regard as correct.

70. Adverting now to the objection of estoppel, contention that some of the candidates who not only appeared in the written examination, but also

appeared in the interview, and approached this Court after they failed, would be estopped from challenging the selection and their writ petition

should be dismissed applying the doctrine of estoppel, has to be viewed in the light of what these candidates have asserted that they appeared for

the interview on the basis of first result in the first lot. It was thereafter that RPSC twice revised the result and called certain other candidates in

subsequent lots to face interview. Date of interviews was extended upto 16.01.2013. If that is the case, the petitioners obviously could not have

visualized that after declaration of their result and even after their appearance in the interview, RPSC would decide to bring in many other

candidates to face interview by extending the zone of consideration. Expansion of the zone of consideration has certainly resulted in reducing the

chance of their selection. Fact that 31 candidates out of 170 candidates have been finally selected, substantiate their this contention. In view of

these facts, therefore, the plea of estoppel may not be available to the respondents. This plea is therefore rejected.

71. Taking up now the objections with regard to involvement of Prof. J.K. Malik, it would be suffice to observe this such objection has already

been rejected by a coordinate bench of this Court after considering the affidavit filed by him, in which Prof. J.K. Malik denied allegations on oath

and allegations being disputed on fact, were not taken as proved by this Court. That judgment of this Court in the case of Girraj Kumar Vyas,

supra, has attained finality. Issues raised, considered and rejected therein therefore are not open to be agitated again. The objection so raised is

therefore rejected.

72. Contention that since RPSC has deleted questions no. 23 and 27 of A-series (questions no. 96 and 100 of C-series) at the time of declaring

first result on the premise that the options thereunder carried incorrect citations and therefore questions no. 29, 44 and 45 of A-series should also

be deleted because the options given thereunder also carries incorrect citations and the expert committee constituted in compliance of the judgment

of this Court in Girraj Kumar Vyas, supra, had recommended so, is noticed to be rejected. Perusal of the record produced by RPSC indicates

that the questions no. 23 and 27, deletion of which was recommended by the said expert committee, had already been deleted by RPSC even

before declaration of the first result. Though the said expert committee also therewith recommended deletion of questions no. 29, 44 and 45 of A-

series but perusal of those questions and the options given thereunder do not indicate that anyone of them was from outside the syllabus. There

was no necessity for the paper setter to give complete citations because in all the four options given to each of these questions, title of the case,

year of the judgment and name of the Court; being the Supreme Court or names of the High Courts, have been given. That would mean that the

judgments delivered in those years by such Courts with title given in different options, would have to be related to the questions. The candidates

were required to find out as to in which of the judgments by which Court and in which year, the principle of law referred to in the questions, was

decided, and that rather made the questions easier for the candidates because a leading judgment might be reported in multiple number of law

journals, with no law journal having been specifically indicated in options of any of the three questions. Though this Court cannot make out a new

case on behalf of any of the parties because no one has questioned deletion of two similar questions. But, if RPSC has taken an erroneous decision

for the reasons best known to it, that would not be binding on this Court and the matter before this Court would have to be decided on its own

merits. Besides, as per the stand of RPSC, its "full commission" did not approve the recommendation of the said committee.

73. Having held that four questions should be deleted and answer key in respect of one should be changed, this Court has to now decide what

should be the fate of the examination held by RPSC. The Supreme Court in number of cases has held that even if there are inaccuracies in framing

of certain questions and there are multiple number of correct options in respect to any or some of the questions, the Courts should try to save the

process of selection so that the efforts made and exercise undertaken by the examining body as well as the candidates appearing therein, do not go

waste. This is settled proposition of law that the examination should not be ordered to be cancelled and fresh examination should not be ordered

unless there are compelling reasons for directing so, particularly when there is no allegation of any malpractice, fraud or corrupt practice. But the

core question is as to in what forum the present competitive examination conducted by RPSC should be saved. This would require certain deeper

analysis of the situation, which may emerge following the conclusion reached by this Court about five questions, referred to above.

74. Figures disclosed by RPSC reveal that when the result was for the first time revised with deletion of one question and second result was

declared, 74 additional candidates were called to face interview and 12 out of them, were selected finally. When second time the result was

revised with deletion of two questions and third result was declared, 96 candidates had to be again called for interview, 19 candidates out of them

were selected. Thus, 31 (12+19) candidates were selected out of 170 (74+96), who were called to face interview following revision of result on

two different occasions. As per RPSC, if simultaneous exclusion was made at the time of first revision of result, 9 candidates were liable to be

excluded and at the time of second revision, 31 candidates were liable to be excluded. Had RPSC applied the ratio of three times the available

vacancies plus bunching principle, then only 544 candidates could have been called for interview as against which it actually called 672 candidates,

three of whom were ineligible and thus out of 669 candidates who were interviewed, 125 were such, who otherwise did not deserve to be called

for interview on that formula. Out of these 125 candidates, 23 candidates have been selected as against total 159 vacancies. Since those figures

have been furnished by RPSC, they have to be accepted as correct. In view of the analysis that has been made above with regard to correctness

of questions and the options given thereunder, while questions no. 13, 18, 25 and 43 of C-series are liable to be deleted, answer key with respect

to question 77 (C-series) has be changed. On the figures of earlier two revisions consequent upon deletion of three (1+2) questions, it can easily

be visualized that the said exercise is likely to bring about drastic changes in the result that may be ultimately declared.

75. Since RPSC has not excluded any candidate, who were already interviewed, number of such candidates being 125. As it is, this would always

be a surplus number, contrary to its own rule to call only the candidates three times of available number of vacancies. If above referred to four

questions are deleted and answer of one question is changed, number of candidates liable to excluded would also substantially increase and at the

same time, number of candidates, who will have to be additionally called to face interview, would also be enormously high. If one were to make a

reasonable assessment in the given facts situation, such figure might exceed 200 candidates and could be anywhere between 200 to 300

candidates. If the decision of RPSC that those who have already been interviewed should not be excluded, is not interfered with, the total figure of

such candidates plus those who might be required to face interview if the result is so revised, is likely to go in the vicinity of 1000. Considering that

only 159 vacancies were notified, despite the provisions of calling of candidates only three times the number of available vacancies, the RPSC

would be required to interview candidates more than six times such number of vacancies. In this projected scenario, ultimate picture that is likely to

emerge would be quite disturbing, in which those selected may be deselected and many new candidates might get selected.

76. Contention that RPSC in its "full commission" has taken a decision that minimum three times candidates of number of vacancies shall be called

for interview but there is no maximum limit, therefore, even if it has called four-and-a-half times candidates of number of vacancies for interview,

that would not affect the fairness the process of selection, deserves to be rejected for the reasons to be stated presently. Merit of a candidate in

any written examination and for that matter in a competitive examination, is determined on the basis of his performance in such written examination.

If the candidates are subjected to examination on the basis of wrong answer-key, it is bound to prejudice them affecting fairness of the process of

selection. Selection in the instant case though is entirely based on interview but converse of it is also true that those who fail to secure high merit in

written examination, would have no chance to get selected. The chance to appear in interview is solely dependent on the position one secures in

the merit prepared on the basis of written examination, even if it is styled as the screening test for the purpose of shortlisting the candidates. More

the number of candidates appearing for interview, lesser the chances of one getting selected. If the rule to call candidates three times the number of

vacancies is strictly adhered to, probabilities of the candidates falling within that limit, would be much higher as compared to the situation when

four-and-a-half times candidates of the number of vacancies are called for interview. Taking the worst fact scenario, if the principle on which

RPSC has called all the candidates, by not excluding those from the list who were already interviewed and calling additional number of candidates

each time, after the result was revised, is again applied while implementing this judgment, total number of candidates interviewed/to be interviewed,

might go upto 1000. Doing so would frustrate the very purpose of screening test, which is intended to shortlist the candidates. This would amount

to treating unequals as equals and would be discriminatory qua the more meritorious candidates, who despite securing better merit would have

significantly reduced chances of selection, with number of interviewees so high. Chances of selection of more meritorious candidates would thus be

substantially diminished. There being no weightage of the written examination, they will be treated at par with those who may have figured much

below in the merit of the written examination than them, Their selection in such a situation would depend on the subjective evaluation of their merit

by members of the interviewing board, thus giving them the leverage to eliminate more meritorious candidates as against those with lesser merit.

Interpretation placed by RPSC on its rule is thus bound to create an anomalous situation leading to absurd consequences. The screening test in the

name of shortlisting can be justified only if the rule as originally prescribed by RPSC is strictly adhered to.

77. In view of the aforesaid discussion, all these writ petitions are allowed and impugned select list dt. 02.02.2013 (Annexure-5 to Writ Petition

No. 2142/2013) is set-aside, with following directions:-

(1) that RPSC shall make fresh evaluation of the answer-sheets of the candidates by deleting questions no. 13, 18, 25 and 43 and changing answer

to question no. 77, by taking option (1) as correct, all of C-series, and corresponding questions in A-series, B-series and D-series and on that

basis prepare fresh merit list;

(2) that RPSC shall on that basis prepare a list of candidates, who fall within three times the number of vacancies plus applying the bunching

principle;

(3) that RPSC shall thereafter conduct interviews of such candidates in that list, who have already not been interviewed;

(4) that RPSC shall thereafter prepare a combined select list of the candidates, who were already interviewed and those who are interviewed

pursuant to this judgment in the order of merit, and forward the same to the government for appointment;

(5) that such exercise shall be undertaken and completed by RPSC within three months from the date copy of this order is received by them.

This also disposes of stay applications,

78. As this judgment comes to a close, it is deemed appropriate to briefly deal with the arguments advanced on behalf of the petitioners placing

reliance on the judgment of the Supreme Court in Praveen Singh''s case, supra, that interview should not be the only basis for selection and that

wherever appointments are entirely based on interview, there is always a room for suspicion for the common appointments. There may be high

level selection post where a person may be selected on the basis of interview alone. Reliance was placed on judgment of the Supreme Court in Dr.

J.P. Kulshreshtha''s case, supra, wherein their Lordships recognized the undetectable manipulation of results being achieved by remote control

tacits masked as viva-voce test resulting in sabotage of the purity of proceedings. In Praveen Singh''s case, supra, their Lordships held that

interviews as such are not bad but polluting it to attain illegitimate ends is bad. The Supreme Court in Para 9 and 10 of the judgment of Praveen

Singh, supra, held as under:-

9. What does Kulshreshtha''s case (supra) depict? Does it say that interview should be only method of assessment of the merits of the candidates?

The answer obviously cannot be in the affirmative. The vice of manipulation, we are afraid cannot be ruled out. Though interview undoubtedly a

significant factor in the matter of appointments. It plays a strategic role but it also allows creeping in of a lacuna rendering the appointments

illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon only may lead to a sabotage of the

purity of the proceedings. A long catena of decisions of this Court have been noted by the High Court in the judgment but we need not dilate

thereon neither we even wish to sound a contra note. In Ashok Kumar Yadav and Others Vs. State of Haryana and Others, this Court however in

no uncertain terms observed:

There can therefore be no doubt that the viva voce test performs a very useful function in assessing the personal characteristics and traits and in

fact tests the man himself and is therefore regarded as an important tool along with the written examination.

(emphasis supplied).

10. The situation envisaged by Chinnappa Reddy, J. in Lila Dhar Vs. State of Rajasthan and Others, on which strong reliance was placed is totally

different from the contextual facts and the reliance thereon is also totally misplaced. Chinnappa Reddy, J. discussed about the case of services to

which recruitment has necessarily been made from persons of mature personality and it is in that perspective it was held that interview test may be

the only way subject to basic and essential academic and professional requirements being satisfied. The facts in the present context deal with Block

Development Officers at the Panchayat level. Neither the job requires mature personality nor the recruitment should be on the basis of interview

only, having regard to the nature and requirement of the concerned jobs. In any event, the Service Commission itself has recognised a written test

as also viva voce test. The issue therefore pertains as to whether on a proper interpretation of the rules read with the instructions note, the written

examination can be deemed to be a mere qualifying examination and the appointment can only be given through viva voce test-a plain reading of

the same however would negate the question as posed.

79. Although, the Rules of 1978 in so far as they provide for the interview as the only criteria for selection, are not under challenge in these writ

petitions, therefore, I shall refrain from going into their validity. But what has transpired in the present matter is indeed makes out a case for review

of the rules by the rule-making-authority. Assistant Public Prosecutor is an important post, holder of which is required to assist the Court at lowest

ladder of judiciary, where he represents the State. His merit or for that matter, lack of it, is bound to affect working of such Courts. Interview as

the only criteria for appointment may have been a valid consideration at the time when the Rules were framed but in the present times, when the

rate of unemployment is so high, an objective test to judge ability of the candidates to find out if actually they possess the knowledge of the

subjects of law, which a Public prosecutor would be required to deal with in discharge his duties, should always be preferred being a better

method of assessing comparative merit. No doubt, this is a matter of policy for the State to decide but considering the intense cut-throat

competition and the immense number of aspirants, it is high time that the State Government revisits the rules so as to prescribe written examination

as a necessary component of the process of selection with due weightage to it along side interview. The selection based entirely on the interview

may be justified where, as observed by the Supreme Court in Praveen Singh''s case, supra, job requires a mature personality. In the present case,

fresh law graduates, who have been in practice for only two years, are being treated eligible. There is no reason why weightage should not be given

to written examination for the purpose of their selection. This is purest form of selection, which shall eliminate the element of arbitrariness and

subjective choice that may creep in an entirely interview based selection. Even fresh law graduates, who appear for selection for judicial service are

required to attempt a two-stage written examination and thereafter only such candidates who appear high enough in the merit are called for

interview. RPSC, as it is, has been undertaking the protracted exercise of written examination, though presently styled as a screening examination,

for the purpose of shortlisting. The same amount of exercise may take a different form, which may suffice the purpose. This Court therefore deems

it appropriate to direct that a Committee consisting of Chief Secretary to the Government of Rajasthan, Principal Secretary to the Government in

its Department of Personnel and Principal Secretary to the Government in its Department of Law and Legal Affairs, shall within four months,

review the Rules of 1978 so as to consider and decide whether or not, to have written examination along-with interview as the basis for selection

to service under the Rules of 1978 for future selections.

80. And last but not the least, this Court is constrained to observe that almost all the selections by RPSC in the recent past have been marred by

similar deficiencies. Despite this Court repeatedly requiring it to improve its working, things have not changed for better. RPSC needs to improve

not only its own working but also the selection of its choice of the examiners, paper-setter and the experts. The answer-keys should be thoroughly

checked before the actual examinations. RPSC will do well to itself and lacks of unemployed youths, who look upon it as their saviour that it sets

its house in order and take immediate corrective measures to restore its lost glory. A copy of this order be sent to the Chief Secretary to the

Government of Rajasthan, Jaipur, for needful.