

State of Rajasthan Vs Hanuman Jat

Court: RAJASTHAN HIGH COURT (JAIPUR BENCH)

Date of Decision: May 13, 2016

Acts Referred: Constitution of India, 1950 - Article 14, Article 16(4)

Citation: (2017) 1 RLW 525

Hon'ble Judges: Mr. Ajay Rastogi, CJ. and Mr. Dinesh Chandra Somani, J.

Bench: Division Bench

Advocate: Mr. Rajendra Prasad, Additional Advocate General assisted by Mr. Sandeep Maheshwari, Mr. Sandeep Taneja, Mr. Dheeraj Singhal, Advocates, for the Appellants; Mr. Raghunandan Sharma, Mr. Ram Pratap Saini, Mr. Tanveer Ahmed, Mr. J.K. Yogi, Mr. Sandeep Kalwan

Final Decision: Dismissed

Judgement

Mr. Ajay Rastogi, C.J.â€”Initially, the intra-court appeals came to be preferred against the interim orders passed by the learned Single Judge in

the batch of writ petitions on 27th April 2016 and also thereafter. It would be appropriate to quote the interim order dated 27th April, 2016:-

Heard.

As an interim measure, the respondents are directed to permit the petitioner(s) of the corresponding reserved category, who has/have secured

more marks than the last cut off for the General category candidate (Male/Female); in the main examination(s) which is/are scheduled to be held on

7th May, 2016.

Matter be listed again on 20th May, 2016 along with connected cases. In the meantime, the respondents may file reply to the writ application(s)

wherever they have not filed, if so advised.

2. When the special appeals filed against the interim order came at the motion stage, it was brought to the notice of this Court that the root question

raised in the batch of writ petitions is in regard to the procedure, which has been adopted by the Rajasthan Subordinate Ministerial Service

Selection Board (for short "the Board") in holding the preliminary examination for short-listing the candidates and preparing the list of candidates

15 times the number of vacancies category-wise, to be admitted to the main examination, initiated pursuant to the advertisement dated 4th

November, 2015 advertising 4400 posts of Patwari (3979 for non-scheduled areas and 421 for scheduled areas) in relation to various districts.

The preliminary examination was held on 13.2.2016 for short-listing the candidates and result was declared on 17.3.2016 and accordingly, a list of

candidates 15 times the number of vacancies category-wise was prepared and published for being admitted to the main examination scheduled to

be held on 7th May, 2016. At the time when the appeals were being heard against the interim orders, both parties jointly consented that since the

facts are not in dispute and a short question of law is involved and a large number of writ petitions are being filed, the Court may, if considered

appropriate, list the writ petitions itself before the Division Bench. On the consent of the parties, vide order dated 3rd May, 2016, we directed the

Registry to list all the writ petitions arising from the advertisement dated 4th November, 2015 in regard to the selection process, which the Board

initiated of the post of Patwari, before the Division Bench. In compliance of the said order, the writ petitions are listed before us on 4th May, 2016

along with the appeals and the matters were heard on 4th May, 2016. Since the main examination was scheduled to be held on 7th May, 2016

and no time is left to pronounce the final judgment before the scheduled date of examination, we reserved the judgment and observed that let the

date of examination may be postponed awaiting decision of this Court.

3. In the batch of writ petitions, the procedure, which has been adopted by the Board in holding the preliminary examination for short- listing the

candidates and preparing the list of candidates 15 times the number of vacancies category-wise to be admitted to the main examination is assailed

being illegal and violative of Article 14 of the Constitution. The facts and circumstances that emerged the group of writ petitions are as under:

4. The selection for the post of Patwari is being held in accordance with the Rajasthan Land Revenue (Land Record) Rules, 1957 (for short,

hereinafter referred to as ""the Rules of 1957"" read with Rajasthan Schedule Area Subordinate, Ministerial, Class-IV Service (Recruitment And

Other Service Conditions) Rules, 2014 (for short, hereinafter referred to as ""the Rules of 2014"" and as per the Scheme of the Rules, the final

select list is prepared on the basis of written examination. The posts of Patwari came to be advertised by the Board vide advertisement no.5 dated

4.11.2015 indicating the vacancies available in various districts categorywise in non-scheduled areas and scheduled areas separately of General,

SC, ST, OBC, SBC and all other horizontal reservation. It may be noticed that for non-scheduled areas, in respect of 31 districts, there were

3979 vacancies, whereas in scheduled areas, 421 vacancies were advertised in respect of 5 districts and thus, in all total 4400 vacancies were

advertised. The applications were invited on-line from the candidates, who intended to participate in the selection process against the vacancies

notified for nonscheduled and scheduled areas separately. In all 8,18,719 applications were received and considering the sizeable number of

candidates, who intended to participate in the selection process, the Board decided to hold Screening Test for short-listing the number of

candidates to be admitted to the main examination. Notices were published for holding the Screening Test for short-listing the candidates 15 times

the number of vacancies categorywise and the condition was incorporated in the Scheme of examination and syllabus that after preliminary

examination, candidates 15 times the number of vacancies category-wise will be held eligible to appear in the main examination. The relevant

portion of the Scheme of examination and syllabus is quoted below:-

3- izkfjHkd ijh{kk ds mijkar eq[; ijh{kk ds fy, dqy fjfDr;ksa ds oxZokj 15 xquk vH;fFkZ;ksa dks ;ksX; ?kksf""kr fd;k

tk;sxkA eq[; ijh{kk ds fy, ;ksX; ?kksf""kr djrs le; cksMZ }kjk fu/kkZfjr ;ksX;rk lwph ds vafre izklrkad ij leku vad ikus

okys lHkh vH;fFkZ;ksa dks ;ksX; ekuk tk;sxkA

5. The preliminary examination was held on 13.2.2016, in which 6,45,071 candidates appeared and result was declared on 17.3.2016 and

accordingly, a list of candidates 15 times the number of vacancies categorywise to be admitted to main examination scheduled to be held on 7th

May, 2016, was prepared and published by the Board. The cut-off marks for short-listing the candidates to be called for main examination

category-wise are as follows:-

General :- 104.51

Scheduled Caste :- 112.78

Scheduled Tribe :- 106.58

Other Backward Classes :- 147.45

6. Obviously, the candidates belonging to the reserved categories SC/ST/OBC raised grievance that when in the general category, the candidates

securing 104.51 marks are being considered to be admitted in the main examination, the candidates of reserved categories SC/ST/OBC securing

104.51 marks at least have a legitimate right to be admitted in the main examination and a batch of writ petitions came to be filed with the prayer

that the candidates of reserved categories SC/ST/OBC securing 104.51 marks (last cut-off marks in general category candidates) may be

admitted to the main examination. The learned Single Judge in the batch of writ petitions passed such interim orders on 27.4.2016 and also

thereafter.

7. In sum and substance, the grievance of the petitioners is that they are members of SC/ST/OBC categories and submitted their applications for

participating in the selection process for the post of Patwari initiated by the Board vide advertisement dated 4th November, 2015. They appeared

in the preliminary examination held by the Board for short-listing the candidates to be called for main examination. But, their main grievance is that

the Board has mis-interpreted the Scheme of holding preliminary examination and preparing the list of candidates 15 times the number of vacancies

category-wise to be admitted to the main examination and the procedure followed by the Board has turned out to be oppressive to the interest of

the candidates belonging to reserved categories of SC/ST/OBC. It is further stated that while the general category candidates, who secured lesser

marks, have been admitted to the main examination, the persons belonging to SC/ST/OBC categories securing higher marks, have not been

admitted to the main examination and the Board has prepared the list category-wise in the manner that the list of candidates of general category has

been prepared excluding the entire reserved category candidates notwithstanding the fact that reserved category candidates on account of their

merit standing can be positioned in the general category. A direct consequence of this is that the Board has brought about a positive reservation in

favour of the unreserved category. Such reservation amounts to massive affirmative action in favour of general category, which is constitutionally

impermissible and is violative of the mandate of Article 14 of the Constitution of India.

8. It is also their submission that reservation in favour of general category is constitutionally not envisaged and thus, action of the Board is not

sustainable in law. In support of their submissions, Learned counsel submitted that all candidates of reserved categories- SC/ST/OBC, who have

secured marks upto 104.51 (cut off marks fixed in the general category) are eligible to be called and admitted to the main examination and such

positive reservation for general category is unconstitutional and not permissible by law. Learned counsel for the petitioners placed reliance on the

decisions of the Apex Court in A.P. Public Service Commission v. Balaji Badhavath and ors. (2009(5) SCALE 246) and Ajithkumar P.

and Ors. v. Remin K.R. and Ors. (2015 (10) SCALE 684) and the judgment of the Division Bench of Allahabad High Court in U.P. Power

Corporation Ltd. and Ors. v. Nitin Kumar and ors. (2015(5) ADJ 417) and also the judgment of the Single Bench of this Court in Bhawani

Singh Kaviya and ors. v. State of Rajasthan and Anr. (RLW 2008 (4) Raj. 3138).

9. Per contra, learned counsel for the respondents submitted that the procedure, which has been followed by the Board, in holding the preliminary

examination for shortlisting the number of candidates and preparing the list of candidates 15 times the number of vacancies categorywise to be

admitted to the main examination, is permissible by law and the purpose of holding Screening Test is to ensure the standard of eligibility of the

candidates and the rule of reservation for the candidates to be admitted to the main examination cannot be applied and also not permissible under

Article 16(4) of the Constitution of India. It is further submitted that the marks secured in the preliminary examination is for the purpose of

admission to the main examination and such marks obtained in the preliminary examination are not to be added in the main examination or for the

purpose of preparing the final merit list of the candidates for giving appointments and thus, the rule of reservation is not applicable. In support of

their submissions, learned counsel for the respondents placed reliance on the judgment of the Apex Court in *Chattar Singh and ors. v. State of*

Rajasthan and ors. (1996(11) SCC 742 = AIR 1997 SC 303) and the judgment of the Division Bench of this Court in *Dharamveer Tholia v.*

State of Rajasthan & anr. (RLW 2000(3) Raj. 1809 = 2000(3) WLC 399).

10. Learned Additional Advocate General for the State further submits that the candidates belonging to one category cannot be shifted to another

category at least upto the stage of holding preliminary examination, which is held only for the purpose of short-listing the candidates to be admitted

to the main examination. The marks obtained in the preliminary examination do not constitute merit of the candidates and after the judgment of the

Division Bench of this Court in the case of *Dharamveer Tholia* (supra) and which has been followed by the Board in declaring the candidates to be

admitted to the main examination, who participated in the preliminary examination for short listing the number of candidates to be admitted to the

main examination, the rule of reservation and Article 16(4) of the Constitution have no application to the facts and circumstances of the instant

case. The very foundation, on which the petitioners proceeded to question the procedure, which has been followed by the Board in admitting the

candidates to the main examination, is neither justiciable nor has any merit.

11. Learned Additional Advocate General further submits that in the present facts and circumstances, what has been contended by the petitioners

is accepted, it may make the whole selection process unworkable, the ratio of candidates 15 times the number of vacancies category-wise will be

frustrated and the purpose of admitting the candidates to the main examination on short listing the number of candidates category wise will lose its

sanctity. More so, the marks secured in the preliminary examination are not added in the final selection of the candidates to be considered for

appointments.

12. We have heard the learned counsel for the parties and also perused the materials available on record.

13. At the outset, it may be noticed that the facts are not in dispute. The question, which arises for consideration is whether the procedure, which

has been followed by the Board for short-listing the candidates to be admitted to the main examination by adopting the mechanism of 15 times the

number of vacancies category-wise, is permissible by law. Though the facts are not in dispute, but still we consider it appropriate to refer in nutshell

for proper appreciation and adjudication of the controversy, that the selection process for filling up 4400 posts of Patwari (3979 for nonscheduled

areas and 421 for scheduled areas in various districts) came to be initiated by the Board under the Rules of 1957 read with Rules 2014 vide

advertisement dated 4.11.2015. The applications were invited on-line. The selections are based on the basis of written examination. In all

8,18,719 applications were received and it being large in number, the Board took decision to hold preliminary examination for short-listing the

candidates to be admitted to the main examination and the marks secured in the preliminary examination is not to be added while preparing the final

select list of the candidates. The Scheme of examination itself provides that candidates 15 times the number of vacancies category-wise will be held

eligible to appear in the main examination.

14. The preliminary examination was held on 13.2.2016, in which 6,45,071 candidates appeared and result was declared on 17.3.2015 and a list

of candidates 15 times the number of vacancies category-wise to be admitted to the main examination scheduled to be held on 7.5.2016 was

prepared and published. The list of candidates 15 times the number of vacancies category-wise to be admitted to the main examination prepared

by the Board is not the subject matter of challenge in the batch of writ petitions. However, since the cut-off marks fixed in the preliminary

examination for short listing the candidates for general category being lower in comparison to the cut off marks for SC/ST/OBC categories, a

complaint has been lodged by the members of the reserved categories- SC/ST/OBC and their grievance is that since the last candidate in general

category secured lower marks, at least those candidates of SC/ST/OBC categories, who have secured higher marks or 104.51 marks (i.e. cut off

marks fixed in the general category) should be made entitled to be admitted to the main examination, even if they exceed 15 times the number of

vacancies in their own reserved categories and denial from participation and admission to the main examination will be violative of Article 16(4) of

the Constitution.

15. It may be relevant to note that against the advertised vacancies, if multiplied by 15 times, the candidates to be admitted to the Main

Examination approximately come to 67,000 candidates for which arrangements are to be made but what is being contended by the petitioners is

accepted even on hypothetical figures, it may be more than One Lac Fifty Thousand of candidates to be admitted to the Main Examination and that

may be 30 times of the number of vacancies although the requirement is 15 times of the vacancies category-wise frustrates the purpose of

shortlisting the candidates for being admitted to the Main Examination.

16. The same very question arose for consideration before the coordinate Division Bench of this Court in the case of Dharamveer Tholia (supra),

in which the question of interpretation was of Rule 15 of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined

Competitive Examinations) Rules, 1999, which envisages the scheme of examination providing that the competitive examination shall be conducted

in two stages i.e. Preliminary Examination and Main Examination followed by interview and the number of candidates to be admitted to the main

examination will be 15 times the total approximate number of vacancies (category-wise). Rule 15 of the Rules of 1999 is quoted below:-

15. Scheme of Examination, Personality and Viva-voce Test: The Competitive Examination shall be conducted by the Commission in two stage

i.e. Preliminary Examination and Main Examination as per the scheme specified in Schedule-III. The marks obtained in the Preliminary Examination

by the candidates, are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit. The

number of candidates to be admitted to the Main Examination will be 15 times the total approximate number of vacancies (category wise) to be

filled in the year in the various services and posts but in the said range all those candidates who secure the same percentage of marks as may be

fixed by the Commission for any lower range will be admitted to the Main Examination.

Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission in their discretion shall be

summoned by them for an interview. The Commission shall award marks to each candidate interviewed by them, having regard to their character,

personality, address, physique and knowledge of Rajasthani Culture. However, for selection to the Rajasthan Police Service candidates having ""C

Certificate of N.C.C. will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such

candidate.

Provided that the commission, on intimation being received from the Government before declaration of the result of the Preliminary Examination,

may increase or decrease the number of vacancies advertised.

17. There were facts and circumstances where the cut off marks for the candidates of OBC category was higher than the general category and

question was that if cut off marks for general category is lower than the category of OBC, such OBC candidates, who have secured marks upto

the cut off marks fixed for general category, are entitled to be admitted to the main examination and the Division Bench examined this question and

framed the following 7 questions of law in the batch of writ petitions:-

(i) Whether it is permissible for the R.P.S.C. to draw a list in terms of Rule 15 by excluding reserved category from general category

notwithstanding the fact that reserve category persons on their merit standing find placement in general category"

(ii) Whether it is permissible for the R.P.S.C. to have a higher cut off standard for the OBC as compare to the general category"

(iii) Whether it is constitutionally permissible for the R.P.S.C. to operate Rule 15 in a manner that disadvantaged sections, reserved category

(OBC) is made to suffer handicaps on account of reservation as compare to general category"

(iv) Whether Rule 15 as interpreted by R.P.S.C. is unconstitutional has offended Articles 14, 15(4) and 16(4) of the Constitution of India"

(v) Whether Rule 15 as interpreted by R.P.S.C. is contrary to law Laid down by apex court"

(vi) Whether general category can be codified as non-reserved category and excluded in all situations meritorious reserved category candidates

and can find place in general category on their own merit standing"

(vii) Whether the massive affirmative action in favour of general category (non-reserved category) is permissible under Articles 15 and 16 of the

Constitution of India"

18. After examining the judgment of the Apex Court in the case of Chatter Singh (supra), the Division Bench of this Court in Dharamveer Tholia

(supra) finally observed as follows:-

49. Rule 15 of the Rules of 1999 provides the procedure to prepare the list of candidates for appearing in the main examination, therefore, the

result of the preliminary examination cannot be considered to be a final result. In regard to the submission made by the Senior Counsel for the

petitioner about the reservation policy provided under Article 16 (4) of the Constitution as well as the judgments cited are not in dispute but the

same in our view, will not be of any help or assistance to the petitioners at this stage of short listing. The judgment of the Hon"ble Supreme Court

relied on by the petitioner in Sabharwal's case (supra) pertains to the promotion policy and also of the vacancies based on roster system which in

our opinion, will be applicable only at the time of preparing the final select list. As per Rule 15, the RPSC shall permit the candidates 15 times the

total approximate number of vacancies in each category in the main examination and this Rule has been upheld by the Supreme Court in Chattar

Singh's case (supra). The reservation policy is meant for recruitment only and there is no other reservation policy for short listing in examination.

As such, the actions of the RPSC are within the mandate of Article 16(4) of the Constitution of India as well as the Rules of 1999. If the contention

of the learned Counsel for the petitioners is accepted, the thousands of meritorious candidates who have been selected as per the preliminary

examination will be affected and their interest will be jeopardized.

50. It is seen from the additional affidavit filed by the Service Commission that the Commission has declared the result of the preliminary

examination on 27th May, 2000- and the list of successful candidates coming within the range of 15 times the number of vacancies set apart for that

category was also published and the list of candidates who were not able to come within that range was also published. It is useful to reproduce

the details furnished in Paragraphs 3, 4, 5 and 6 of the additional affidavit:

3. That in general category, there are in all 252 vacancies meant for male candidates and 105 vacancies are meant for female candidates. Thus,

combined vacancies in general category comes to 357 and the Commission has admitted 5412 candidates for the main examination in terms of

Rule 15 of the Rules.

4. That similarly, the combined vacancies reserved in OBC category are 140 and the Commission has admitted 2109 candidates for the main

examination, which constitute 15 times the number of vacancies/posts reserved in the OBC category.

5. That similarly, there are 102 combined vacancies reserved in the SC category for male and female both and the Commission has admitted 1538

candidates for the main examination, which also constitute 15 times the number of vacancies reserved in that category.

6. That in ST category, 78 combined vacancies meant for both male and female have been reserved and the Commission has admitted 1190

candidates for the main examination, which constitutes 15 times the number of vacancies reserved in that category.

51. As held by the Supreme Court, the list of candidates belonging to one category cannot be shifted to another category on the basis of their merit

as the list of successful candidates in the preliminary examination is meant only for short-listing the candidates for the main examination and it does

not constitute merit of the candidates which is done at the time of preparation of final merit Under Rule 17 of the Rules. If the contention of the

petitioners is accepted that instead of preparing separate list for each category, a list should be prepared on the basis of over-all merit attained by

the candidates appearing in the preliminary examination, it would result in exclusion of 1498 candidates from the general category and in their place

1051 candidates from OBC category will be shifted to the general category; 137 candidates from SC category will also be shifted to the general

category and similarly, 175 from the ST category shall have to be shifted to the general category. In addition to that, in general category, the female

candidates who have secured higher cut-off marks fixed for the general category (male) shall also be shifted to the general category (male) in the

number of 157. It is also seen from Para 9 that if the revision is to take place in accordance with the interpretation put forward by the petitioners,

the cut-off marks in each category shall have to be revised in the following manner:

CUT-OFF MARKS Revised: Male Female 1. General 216 139 2. SCs. 158 90 3. STs. 166 72 4. OBCs 185 132
Existing: 1. General 203 144

2. SCs 163 91 3. STs 174 72 4. OBCs 204 136.

52. We are of the opinion that such an exercise is not warranted in view of the Supreme Court decision in Chattar Singh's case (supra).

19. The Division Bench of this Court is clear in its view that the list of candidates 15 times the number of vacancies category-wise belonging to one

category cannot be shifted to another category on the basis of their merit as the list of successful candidates in the preliminary examination is meant

only for short-listing the candidates for the main examination and that does not constitute the merit of the candidates, which is done at the time of

preparation of final merits of the candidates.

20. It cannot be disputed that the purpose of holding Screening Test is to ensure the basic standard of eligibility of the candidates and even at the

stage of admission to the main examination, the rule of reservation of posts cannot be applied. Reservation for applicants is also not permissible

under Article 16(4) of the Constitution.

21. This has been recognised by the existence of legal authority to conduct the preliminary examination whenever unmanageable and large number

of applications are received for filling up the limited number of posts. Indisputably, in the selection process, the preliminary examination, which was

held for short listing the candidates to be admitted to the main examination, is not a part of the main examination. The merit of the candidates is not

judged thereby and only eligibility criteria is fixed. Such a test is being held for the purpose of judging the basic eligibility of the candidates. How

and in what manner the State or Recruiting Authority would comply with the constitutional mandate of law is ordinarily not allowed to be

questioned.

22. It is always open for the Recruiting Authority to adopt a mode for short-listing the candidates if the applications received are large in number

for limited posts, but criteria for short listing has to be reasonable based on rational and intelligible differentia, which has nexus with the object

sought to be achieved and which will depend upon the facts and circumstances of each case. At the same time, it has also become clear that

whenever there is a particular provision for short listing of the candidates in the Rules or selection process, then those rules or instructions have to

be followed. Even in the absence of Rules/Regulations, short listing of number of candidates has always been approved by the Apex Court in B.

Ramakichenin alia Balagandhi v. Union of India and ors. (2008) 1 SCC 362), relevant portion where of (para 16) reads ad infra:-

Even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the selection body

can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview

all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to

interview all of them. In this situation, the procedure of short- listing can be resorted to by the selection body, even though there is no mention of

shortlisting in the rules or in the advertisement.

23. The short listing of candidates if figures are large and unmanageable, is permissible by law and there can be different mode, which can be

adopted for short listing the candidates, but the criteria must have rational basis and in conformity with the mandate of Articles 14 and 16 of the

Constitution. If the recruiting authority takes a decision to short list the candidates based on their academic record, higher qualification than the

minimum qualification prescribed for the post or by holding written examination etc, being time tested still the criteria has to be reasonable, rational

and permissible by law.

24. The decision regarding short listing the number of candidates, who have applied for the post, shall not be based on any extraneous

consideration but at the same time to aid and help the process of selection of the best candidates amongst the applicants for the post in question.

The short listing of the candidates to be admitted to the main examination is by adopting the method of holding preliminary examination, which is

one of the mode to judge the eligibility of the candidates, the rule of reservation of posts or even the reservation for applicants is not acknowledged

or permissible under Article 16(4) of the Constitution. The marks obtained in the preliminary examination is neither a part of the main examination

nor added while preparing the final merit list of the candidates for giving appointments.

25. In our considered view, the reservation is applied at the time of recruitment and not at the time of preliminary examination for short listing the

number of candidates and it is the duty of the recruiting authority to ensure fair and competitive examination. There is a distinction between the

holding of preliminary examination and the main examination. The preliminary examination is held to short list the candidates and marks obtained in

such examination are not added while determining the final merit of the candidates and thus, reservation of applicants is not applied at the stage of

preliminary examination, as settled by the Apex Court in the case of Chattar Singh (supra) and also by the coordinate Division Bench of this Court

in the case of Dharamveer Tholia (supra). We are clear in our view that the rule of reservation is not applied at the time of short listing the

candidates and Article 16(4) for reservation is not applied in every stage of selection process as being envisaged in the facts and circumstances of

the case and we are in full agreement with the view expressed by the Division Bench of this Court in the case of Dharamveer Tholia (supra).

26. The issue is always cropped in as & when the reserved category qualify with the better marks in comparison to general category and despite

the members of the reserved category are within 15 times, the candidates in excess from reserved category, if are permitted to admit in the Main

Examination, the very purpose of shortlisting the number of candidates shall be frustrated and interpretation for shortlisting the candidates remain

dependent on the procedure prescribed or as per the Rules, if so provided but we find that whenever the cut-off of general category is lower than

the cut-off of reserved category, this question is always being raised. But, in our considered view, the legal proposition of shortlisting and publishing

the list of candidates to be admitted to the Main Examination will remain dependent on the settled proposition of law and not on the facts of each

case as and when came for scrutiny.

27. In our view, after the judgment of the Division Bench of this Court in the case of Dharamveer Tholia (supra) examining the issuance of list of

candidates 15 times the number of vacancies category-wise as per Rule 15, relying upon the decision of the Apex Court in the case of Chattar

Singh (supra) and upholding the list relating to General, SC, ST, OBC categories to be in consonance with law and in conformity with the mandate

of the Constitution, the issue is now no more res integra and open for consideration, unless we differ from the view expressed by the coordinate

Division Bench of this Court.

28. Although in one of the judgments of the Single Bench in Bhawani Singh Kaviya (supra), while examining the selfsame controversy, the Single

Bench of this Court has distinguished the judgment of the Division Bench in Dharamveer Tholia (supra) on the premise that the Division Bench has

not examined the question and what does general category means, but, with due respect, we may say that the Division Bench in Dharamveer

Tholia (supra) has examined the very question in its judgment which is reported in RLW 2000(3) Raj.1809 = 2000(3) WLC 399 and we have

also noticed the questions which were framed and answered by the Division Bench and in our considered view, the judgment of the Single Bench

of this Court in Bhawani Singh Kaviya (supra) in the light of the DB judgment in Dharamveer Tholia (supra), cannot be approved by us.

29. As regards the judgments of the Apex Court relied upon by the learned counsel for the petitioners in A.P. Public Service Commission v.

Baloji Badhavath and ors. (supra) and Ajithkumar P. and Ors. v. Remin K.R. and Ors. (supra), the same are not of any assistance. A.P.

Public Service Commission v. Baloji Badhavath and ors. (supra) was a case where two criteria were adopted one for general category and

other for reserved category for holding preliminary examination and also for main examination and candidates were short listed on preliminary

examination in the ratio of 1:50 to the total number of vacancies available at material time irrespective of the communities, which is not the facts and

circumstances in the instant case. At the same time, Ajithkumar P. and Ors. v. Remin K.R. and Ors. (supra) was a case where the notification

did not specify the number of posts sought to be filled up but mentioned that the posts are sought to be filled up from three sources, number of

posts were not identified and the Commission took a decision that 2000 applicants are to be called out of 42,000 applicants to appear in the

examination and after the list of 2000 candidates was published, it revealed that certain sections of the society remained unrepresented. Such

additional candidates were included to appear in the main examination. The Apex Court observed that relaxation in cut off marks for

unrepresented categories is outside the purview of Rule 3 examinations. The legal principle laid down has no application to the facts and

circumstances of the present case.

30. As regards the Division Bench judgment of Allahabad High Court in U.P. Power Corporation Ltd. and ors. v. Nitin Kumar and ors.

(supra) is concerned, it was a case where the matter came up for consideration at the stage seeking benefit of reservation in the Main Written

Examination which determines merit of the candidate. The judgment relied upon has no application to the facts and circumstances of the present

case.

31. The petitioners have also placed reliance on the judgment of the High Court of Calcutta in AST 405/2010 Mahadev Mahato and ors. v.

State and ors. decided on 16th December, 2010, which has examined the selfsame controversy, but that judgment has been set aside by the

Apex Court in Civil Appeal No.6534 of 2014 decided on 18th July, 2014.

32. After having taken note of the submissions made by the parties and the proposition of law of which we have made discussion at length, we are

of the view that once the list of candidates 15 times the number of vacancies category-wise has been prepared and published by the Board, we

find no fault in the decision making process in preparing the list of candidates 15 times the number of vacancies category-wise to be admitted to the

main examination and the rule of reservation of posts cannot be applied & even the reservation of candidates is not permissible under Article 16(4)

of the Constitution at this stage.

33. Consequently, we find no force in the batch of writ petitions and are accordingly dismissed.

34. The special appeals arise out of the interim orders passed by the learned Single Judge in the batch of writ petitions. In view of dismissal of the

batch of writ petitions, the special appeals have become infructuous and accordingly, disposed of. No costs.