

Case relating to revaluation:

Parties : M.A. Ravivarma & Others Versus The Secretary, Tamil Nadu Public Service Commission & Others

Court : High Court of Judicature at Madras

Case No : Writ Appeal Nos.649, 650, 651, 652, 653, 982, 1041, 1090 and 933 of 2009 & W.P.Nos.11486, 12840, 1841,12842, 12843, 12844, 13786, 13016 and 13017 of 2009 & connected miscellaneous petitions

Judges: THE HONOURABLE CHIEF JUSTICE MR. H.L. GOKHALE & THE HONOURABLE MR. JUSTICE D. MURUGESAN

Appearing Advocates : For the Appellant: M.Kamalanathan, AR.L. Sundaresan, Senior Counsel for P.K. Rajesh Praveen Kumar, Vijay Narayan, Senior Counsel, K.M. Vijayan, Senior Counsel, N.G.R. Prasad, S. Haridoss, R. Muthukumaraswamy, Senior Counsel for P. Narayanamurthy, R. Subramanian, Senior Counsel for Suchit Anant Palande, Advocates. For the Respondent: R1, V.T. Gopalan, Senior Counsel Assisted by Ms.C.N.G.Ezhilarasi, Standing Counsel for T.N.P.S.C., R2, J. Raja Kalifulla, Govt. Pleader.

Date of Judgment : 18-09-2009

Head Note :-

Constitution of India - Article 226 - Writ petitions challenging the results of the main examination for the Group-I Services for the year 2006-2007 conducted on 16/17.8.2008 by the Tamil Nadu Public Service Commission wherein the appellants were the unsuccessful candidates - The learned single Judge has disposed of the writ petitions filed by some of the appellants herein by granting only limited relief to three petitioners – Appeal - There was controversy about some 21 questions and out of them, the Public Service Commission accepted that there are doubts on the veracity of the correctness of the answers to eight questions. Seven out of them were on humanities, and what the Public Service Commission has done is to give marks to the unsuccessful candidates for the answers that they had given as per the report of the Expert Committee. As far as the successful candidates are concerned, they were given marks for the answers that they have given, which were corresponding to the key answers. As has been, and has been accepted by the Public Service Commission both the group of answers are probable answers and could be assessed as the correct answers. In this state of affairs, there was no prejudice to any of the unsuccessful candidates in the marks that they were given for those questions - Only one question i.e., Question No.45 was the one on Science where as per the key answer, the correct answer was A, whereas, according to the Expert Committee, both A or B could be the correct answer. In any case, those unsuccessful candidates, who marked either A or B as the correct answer for Question No.45 have been given the marks as the correct answer. It could be said that the question being one on Science perhaps either the key answer is correct or the expert committee answer is correct. But since both the group of candidates are

given 1.5 marks for that answer the element of prejudice gets eliminated - Once the unsuccessful candidates are given marks for the answers that they had given, it cannot lie in their mouth to say that the marks given to the successful candidates should be reduced. This is because, the disputed questions were on humanities where probably both answers were the correct answers. The only question, which was on Science, can be said to be the one where perhaps only one answer was the correct answer, but the Expert Committee opined that either A or B was the correct answer. Therefore, no prejudice is caused in giving marks for that answer either to the successful candidates or to the unsuccessful candidates - There is no longer any case for prejudice to the unsuccessful candidates - The unsuccessful candidates who raised grievance were allowed to write the main examination. Their answers were corrected on the basis of a liberal yardstick, as accepted by the Expert Committee. The main papers of only those who obtained the cut-off marks were evaluated. In view of grant of marks to both groups of candidates for the disputed questions in the preliminary examination, the rigor of prejudice has been taken off and therefore, there is no occasion to say that there has been any unfair or impartial treatment to any of the candidates - There is no reason to interfere with the results of the examination, since no prejudice has been caused - All the appeals filed by the unsuccessful candidates are dismissed. The writ petitions filed by them and the P.I.L. by an advocate are also dismissed. The results of the examination held by the Tamil Nadu Public Service Commission shall stand confirmed and the Service Commission and the State Government will be at liberty to proceed with the issuance of the posting orders.

Para 60 to 67

Cases Referred:

1. State of Bihar vs. Upendra Narayan Singh and others (2009) 5 SCC 65
2. M.P. State Co-operative Bank Ltd. vs. Nanuram Yadav (2007) 8 S.C.C. 264
3. U.P. Jal Nigam vs. Jaswant Singh (2006) 11 S.C.C. 464
4. Tilokchand vs. H.B. Munshi (1969) 1 S.C.C. 110
5. Cumbum Roadways (P) Ltd. vs. Somu Transport (P) Ltd. A.I.R. 1966 S.C. 1366
6. Sadananda Halo vs. Momtaz Ali Sheikh (2008) 4 S.C.C. 619
7. Union of India Vs. Rajesh.P.U. 2003 (7) SCC 285
8. Balbir Kaur v.U.P.Secondary Education Services Selection Board 2008 (12) SCC 1
9. Jagdish Kumar vs. State of H.P. reported in 2005 (13) SCC 606
10. Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna 2004 SC 4116
11. Pankaj Sharma v. State of J&K 2008 4 SCC 273

Comparative Citation:

2009 (7) MLJ 436

Judgment :-

(PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge passed in W.P.No.3131 of 2009 dated 30.04.2009.)

H.L. Gokhale, C.J.

All these appeals, in Group (A) above, seek to challenge the common judgment and order dated 30.4.2009 rendered by a learned single Judge of this Court (V.Ramasubramanian,J.) in W.P. Nos.29831, 29832, 30554, 30738 to 30740, 30742 to 30744, 30770, 30771, 30794 to 30796, 30798, 30900 of 2008, 450, 787, 989, 3130, 3131 of 2009 and W.P. (MD) Nos.11731, 12390 of 2008, 63 and 231 of 2009 and connected miscellaneous petitions, whereby the learned single Judge has disposed of the writ petitions filed by some of the appellants herein by granting only limited relief to three petitioners. All those writ petitions basically sought to challenge the results of the main examination for the Group-I Services for the year 2006-2007 conducted on 16/17.8.2008 by the Tamil Nadu Public Service Commission wherein the appellants were the unsuccessful candidates. These petitions were the third round of petitions by the unsuccessful candidates.

2 (i). Apart from this common prayer, some of the petitions (e.g., W.P. No.30554 of 2008) also sought a direction that the results of the said examination be declared after complying with the directions of another learned single Judge of this Court (P. Jyothimani, J.) dated 13.8.2008 issued earlier in W.P. No.18780 of 2008 and other writ petitions concerning this very examination. The petitions before P. Jyothimani, J. were the second round of petitions by the unsuccessful candidates. Some of the petitions (i.e., W.P. Nos.29832 and 29831 of 2008) sought a prayer that there should be a revaluation of the answers in the main examination by comparing them with the last three candidates selected in each category. Some others (i.e., W.P. Nos.30738 and 30739 of 2008) sought that the main examination itself be conducted afresh. Some petitions (e.g., W.P.Nos.30740, 30743 and W.P.No.30770 of 2008) sought that the main examination be conducted afresh on the basis of the findings given by the Expert Committee in W.P. No.19121 of 2008, and as per the directions issued in W.P. No.18888 of 2008, which were the petitions decided in the group of petitions by P. Jyothimani, J. along with the above referred W.P.No.18780 of 2008.

2(ii). Some petitions e.g., W.P.No.30794, 30795 and 30796 of 2008 sought the examination to be conducted as per the directions issued in W.P. No.12127 of 2008. W.P. No.12127 of 2008 was the first round of petition by the unsuccessful candidates and it was decided by N. Paul Vasanthakumar, J. on 31.7.2008, wherein the learned single Judge had directed appointment of an Expert Committee, since according to the learned Judge some of the questions were confusing and some of the answers in the Preliminary Examination were not correctly

assessed.

2(iii) W.P. No.30795 of 2008 filed by one M.A. Ravivarma prior to the oral examination sought to challenge the provisional list for the oral examination. This petitioner filed another Writ Petition No.3131 of 2009 after the oral test, which sought to challenge all the proceedings of the examination. All these petitions have been disposed of by V.Ramasubramanian, J. by his common judgment dated 30.04.2009, which is impugned herein.

3. Some of the unsuccessful candidates, such as, S.Srinivasan and others have filed fresh original writ petitions at this stage being W.P.Nos.12840 to 12844 of 2009, 13786, 13016 and 13017 of 2009. These petitions seek to challenge the results of the Group - I Main Examination of the year 2006-2007, and seek a direction to conduct fresh preliminary examination. There is one more original writ petition being W.P.No.11486 of 2009 filed by one K.Sudalai Muthu, an advocate, who has arrayed Central Bureau of Investigation, New Delhi as the second respondent therein. This petition seeks an investigation and appropriate action against the T.N.P.S.C. and one Manitha Neyam Free Coaching Centre, Chennai, which is a coaching institute coaching the candidates appearing in competitive examinations, and which centre is supposed to have indulged in some malpractices in this examination, and against which centre there are certain observations made in the judgment rendered by V.Ramasubramaniam, J. All these fresh petitions are placed in Group (D) above.

4. Some of the candidates who were successful in this examination have taken out petitions to implead themselves as party respondents in the above appeals. All those impleading petitioners contend that there is no reason to entertain these appeals and the result of the examination be left undisturbed. These impleading petitions are grouped in Group (B) above.

5. Some of the successful candidates i.e., one M.Indumathi and others have taken out a separate miscellaneous petition by M.P.No.11 of 2009 in one of these writ appeals being W.A.No.652 of 2009 to implead themselves as party respondents. Their impleading petition, however, has a prayer in the nature of a Cross Appeal. These impleading petitioners submit that there is no reason for the unsuccessful candidates to make any grievance. These successful candidates contend that inasmuch as they were not given notice in either of the earlier three rounds of petitions, their submissions were not effectively placed in the course of the earlier three judgments. According to them, the answers given as the key answers at the preliminary examination were correct answers and that this aspect has not been placed effectively by the T.N.P.S.C. in the earlier rounds of litigations. They have applied to implead, in view of the public notice issued by this Court to the successful candidates. They submit that, in any case, no prejudice has been caused to the unsuccessful candidates in any manner whatsoever under the impugned judgment, and therefore, there was no need to disturb the result of the examination. This impleading petition has been separately shown in Group (C) above.

6. Last but not the least, is the writ appeal filed by the above referred Coaching Centre being W.A.No.1090 of 2009, which seeks to expunge the adverse findings rendered in the impugned judgment against it. It is shown under Group (E) above.

7. The facts leading to this litigation are as follows: -The Tamil Nadu Public Service Commission (hereinafter referred to as 'TNPSC') notified 172 vacancies in the Group-I Services in the State of Tamil Nadu, vide a notification dated 1.8.2007. They were for the posts such as Deputy Collector, Deputy Superintendent of Police (Category-I), Commercial Tax Officer, Deputy Registrar of Cooperative Societies, District Registrar, Assistant Director of Rural Development Department (Panchayat) / Personal Assistant (Development) to Collector, District Employment Officer and Divisional Officer in the Fire & Rescue Services Department. The last date for submitting the applications and receiving them was 31.8.2007. The date fixed for the Preliminary Examination was 16.12.2007, though the examination was actually held on 23.12.2007. The Preliminary Examination consisted of a single paper in General Knowledge. The paper was supposed to be of Degree standard and was of Objective Type. It was to contain 200 questions, each question carrying 1.5 marks, totalling 300 marks.

8. Clause 10 of the said notification laid down the procedure of selection, which reads as follows: -

"10. Procedure of Selection:

The selection will be made in three successive stages, viz. (i) Preliminary Examination for selection of candidates for admission to the Main Written Examination and (ii) Main Written Examination (iii) followed by an Oral Test in the shape of an Interview.

The Preliminary Examination is meant to serve as a screening test only. The marks obtained in the Preliminary Examination by the candidates who are declared qualified for admission to the Main Written Examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Written Examination will be exactly ten times the number of candidates to be recruited having regard to the rule of reservation of appointments.

Final selection will be made on the basis of the total marks obtained by the candidates at the Main Written Examination and Oral Test taken together subject to the rule of reservation of appointments and the options exercised by the candidates in the order of preference in which they wish to be selected. Candidates selected in the Main Written Examination should attend the Oral Test. A candidate who has not appeared in any one of the papers in the Main Written Examination or Oral Test will not be considered for selection, even if he/she secures qualifying marks for selection in the Main Written Examination. (For further details please refer paragraph

22(b) of the Institutions, etc. to candidates)."

9. It is material to note that after holding of the Preliminary Examination on 23.12.2007, some of the candidates filed their objections pointing out that the questions posed in the Preliminary Examination were wrong. These objections were, however, not filed within the period of three days from the date of the examination, which is the requirement as per Instruction No.42 of the Instructions to the Candidates. Consequently, the objections were not considered. The result of the examination was declared on 25.4.2008. Some of the candidates who did not clear the examination were also of the view that some questions, though answered by them correctly, were not assessed as correct answers

because the key answers prepared by the TNPSC itself were erroneous. The questions in the Preliminary Examination were of objective type. As against each question, three or four choices of answers were given. There were hollow circles against those four choices and a candidate had to darken one of those circles corresponding to the answer, which according to him/her was the correct answer. That answer book was assessed with the help of a computerised programme.

10. Some of the candidates who had participated in their Preliminary Examination raised doubts about the correctness of the answers. They, however, formed this opinion only after the declaration of the results of the Preliminary Examination on 25.4.2008 when they discussed the issue among themselves and on the basis of self-evaluation. That led some of the candidates, numbering 31, to file Writ Petition No.12127 of 2008 etc. as a batch. They raised doubts either regarding the validity of the questions or the correctness of the key answers. That batch of writ petitions came up before a learned single Judge of this Court (N. Paul Vasanthakumar, J.) and on 31.7.2008, the learned single Judge issued the following directions: -"18. In the light of the above findings and having regard to the judgments cited supra, I am inclined to pass the following orders:

(i) The petitioners herein are directed to submit representation pointing out the number of questions where the questions are not correctly asked, more number of answers are found correct as per leading text books and whether key answer to the questions are correctly given on or before 7.8.2008.

(ii) On receiving the said representations the respondent/TNPSC is directed to place the disputed questions/answers before the Expert Committee to be constituted by it for verification as to whether the questions pointed out are correct, if more than one answer given in the choice are correct and whether the key answers given to any question pointed out by the petitioners are wrong.

(iii) On verifying the same, the Expert Committee is directed to award marks to such of those petitioners who attempted the said questions and on that basis determine the final marks of the petitioners in the preliminary examination.

(iv) Since the above said exercise will take some time and in view of fixation of date for the main written examination as 16.8.2008 and 17.8.2008, the respondent/ TNPSC is directed to permit the petitioners herein to write the main written examinations along with 1750 candidates, who are already found eligible to write main written examination.

(v) By following the above process, if the petitioners are getting the required cut-off marks prescribed for the respective category, their final written examination papers shall be valued. If the petitioners are not getting the required cut-off marks, their final written examination papers need not be valued.

(vi) Since the preliminary examination results were published as early as on 25.4.2008, and the main written examination is to be held on 16.8.2008 and 17.8.2008, the benefit of this order is restricted to the writ petitioners herein, as no general directions could be issued at this belated stage.

All The writ petitions are ordered accordingly. No costs. Connected miscellaneous petitions are closed."

11. As can be seen from paragraph 18(iv) and (vi) of the above directions dated 31.7.2008, the Court restricted the permission to write the Main Written Examination only to the petitioners (who were 31 in number) along with 1750 candidates who were already found eligible to write the Main Written Examination. The learned single Judge did not grant any general direction as he was of the view that it could not be given at a belated stage when the Main Written Examination was to be conducted only a few days thereafter, i.e. on 16/17.8.2008.

12. It appears that thereafter, some other candidates filed Writ Petition Nos.18780, 18888 and 19121 of 2008 etc. as a batch. They again questioned the validity of some of the questions and the correctness of the key answers. This batch of writ petitions came up before P. Jyothimani, J. The learned single Judge was of the view that the suspicion in the minds of the candidates that there had been some discrepancies, was well founded. The learned Judge referred to some of the questions and the key answers corresponding to those questions and according to the learned Judge, some of them were wrong answers. In this view of the matter, the learned Judge felt that the 77 petitioners who had filed the batch of writ petitions before him also deserved the participation in the Main Written Examination since they had received only a few marks less than the cut-off marks received by some 1750 candidates who were declared successful in the Preliminary Examination. The learned Judge was of the view that if these candidates were being denied participation only because of the errors on the part of the examining body, at least those who will get marks more than the cut-off marks after the report of the Expert Committee appointed under the order of N. Paul Vasanthakumar, J. should be allowed to write the Main Written Examination.

13. In the meanwhile, the cut-off marks of the various categories of candidates in respect of the Preliminary Examination were published by the TNPSC, which were as follows:

TABLE

As per the order of N.Paul Vasanthakumar, J. those who got marks more than these cut-off marks subsequent to the report of the Expert Committee were to be permitted to write the Main Written Examination.

14. The learned single Judge (P. Jyothimani, J.), therefore, disposed of the writ petitions by his judgment dated 13th August, 2008 containing the following directions:

"17. For the reasons stated, the above writ petitions stand disposed of with the following directions:-(i) The respondent, Tamil Nadu Public Service Commission, shall permit the petitioners herein to write final examinations to be conducted on 16.08.2008 and 17.08.2008 in various centres at Chennai by issuing Hall Tickets to them. As submitted by the learned counsel appearing for the Tamil Nadu Public Service Commission, the petitioners are entitled to collect their respective Hall Tickets from the Secretary, Tamil Nadu Public Service Commission, Chennai, in its office on or before 5.00 p.m. on 14.08.2008. It is made clear that allowing the petitioners to write the examinations does not mean that their rights to appear for final examination are recognised by this Court.

(ii) The answer papers of final examinations to be taken by the petitioners as per the above said direction shall be kept separately in a sealed cover by the Tamil Nadu Public Service Commission without referring for valuation.

(iii) All the petitioners before this Court are permitted to make individual representation to the respondent, Tamil Nadu Public Service Commission, bringing out the specific instances of mistake ascertained by them in the question papers or in the key answers, provided such questions are attended by the petitioners concerned. They must also disclose their names, addresses, register numbers, question numbers, question booklet series, the Writ Petition Numbers, the genuine doubt about their key answers etc. in the representation. Such representations shall be submitted by the petitioners to the Secretary, Tamil Nadu Public Service Commission, in its office on or before 5.00 p.m. on 14.08.2008. As fairly submitted by the learned counsel for the respondent Public Service Commission, on submission of such representation by individual petitioner, the Tamil Nadu Public Service Commission shall acknowledge the receipt of such objections by making proper endorsement.

(iv) On receipt of the said representations, the respondent Service Commission shall place the entire issue before the Experts Committee to be constituted by it for verification by comparing the necessary papers of the concerned petitioners and to arrive at a final decision about its correctness or otherwise. In the event of the Experts appointed by the respondent Service

Commission deciding that the questions attempted

by the individual petitioner are either wrong or some mistakes have crept in, the respondent Service Commission shall grant necessary marks to the concerned petitioners.

(v) After completion of the above said exercise, the respondent Service Commission shall decide about the petitioners entitlement or eligibility of the petitioners to write the final written examination based on the cut off mark issued by the Service Commission and thereafter, the Service Commission shall direct valuation of the final examination papers of those petitioners alone. With regard to the petitioners, who are not able to get the required cut off mark, after the exercise made by the Service Commission as stated above, their final written examination papers need not be valued and the said factum shall be published by the Service Commission in its usual manner.

(vi) It is made clear that the decision of the Tamil Nadu Public Service Commission after referring to the Experts opinion shall be final, however subject to any legal remedy, which may be available to the petitioners. All other rights of Public Service Commission as per the Notification issued by them shall continue to be operative. It is made clear that if the petitioners do not appear before the respondent Service Commission by the time stipulated for submitting their objections and receiving Hall Tickets, they are not entitled for the benefits given in this order.

Connected M.Ps. are closed. No costs."

15. Now, it so transpired, as can be seen from the above narration that apart from the 31 candidates who had filed the earlier batch of writ petitions which were decided by N. Paul Vasanthakumar, J., some 77 candidates had filed this second batch of writ petitions which had come up before P. Jyothimani, J. Some other candidates had filed a writ petition at Madurai Bench. It is accepted by the TNPSC that the number of candidates who had approached the High Court totalled to 125. The TNPSC gave an opportunity to all these 125 candidates to write the Main Written Examination along with the other 1796 candidates who had passed the Preliminary Examination. This figure of 1796 is the revised figure of successful candidates as per the TNPSC, as against the earlier figure of 1750.

16. It is relevant to note that the Expert Committee examined some 40 objections submitted to it and came to the conclusion that 21 of them were justified. According to the TNPSC, the accepted objections were only eight. It is material to note that in view of para 17 (iv) of the order of P. Jyothimani, J. the papers of the Preliminary Examination in respect of these 125 candidates were re-examined in the light of the answers stated to be correct by the Expert Committee. Then it was seen that only 25 out of these 125 were getting marks more than the cut-off marks received by the 1796 candidates in the preliminary examination. Hence, although the 125

candidates were allowed to write the Main Written Examination, the papers of only these 25 candidates were evaluated for the Main Written Examination as per para 17(v) of the above order. Thus, they were brought on par with the 1796 candidates who had passed the Preliminary Examination with their cut-off marks. On examination of their Main Written Examination papers, however, it was found that only two candidates could be selected for the Oral Interview, which is the third stage. (We are, however, informed that ultimately both these candidates did not pass the Oral Interview which was held later on).

17. After the result in the main examination, a number of petitions came to be filed, which was the third round of their litigation. V. Ramasubramaniam, J., who heard the matter, categorised them into three categories and his operative order on them in the impugned judgment is as follows: -

"Category No.1: W.P. No.450 of 2009 and 7 other petitions filed by 20 candidates (they came to the court for the first time). Irrespective of whether they challenged the main or preliminary examination, they were dismissed by the common judgment dated 30.4.2009 on the ground of delay and laches.

Category No.2: These were W.P. No.29831 of 2008 and six other petitions by seven out of 25 above candidates who passed the preliminary examination by reaching the cut-off marks. Their papers were evaluated for the main examination, but they failed in the main examination. Their petitions were dismissed by the same common judgment.

Category No.3: These were W.P. No.30795 of 2008 and 11 other petitions by M.A. Ravivarma and others. They were candidates out of the 100 (other than above 25 out of 125 candidates) who were allowed to write the main examination, but failed in the preliminary examination even as per the yardstick revised by the expert committee and hence, their papers for the main examination were not evaluated. The learned single Judge directed the papers of three candidates (V. Balasubramanian, C. Sanghu and A. Arivukkannan) to be evaluated by applying a further liberal yardstick. Except this relief, the other petitions were dismissed by the same judgment. (Incidentally, after this liberal evaluation for the preliminary examination, their papers were evaluated for the main examination, but they failed in the main examination)."

18. Arguments advanced on behalf of the appellants and TNPSC:

Mr. Vijay Narayan, learned senior counsel and other counsel appearing for the appellants submitted that once it was held that there was an error in some of the answers, the entire examination ought to be held as vitiated and should, therefore, be set aside. As against this submission, Mr. V.T. Gopalan, learned senior counsel for the Commission pointed out that the grievance with respect to the denial of participation in the Main Written Examination was made by only 125 candidates, which was on the basis of an allegedly wrong assessment of some answers. He pointed out that the examination was a massive exercise. Some 85,913

candidates had appeared in this examination, out of which 1796 candidates obtained the necessary cut-off marks in the Preliminary Examination. Further in view of the orders passed by N. Paul Vasanthakumar, J. and P. Jyothimani, J. and in view of the report of the Expert Committee received thereafter, 25 candidates out of these 125 were treated to have obtained the cut-off marks and passed the Preliminary Examination. N. Paul Vasanthakumar, J. and P. Jyothimani, J. had in terms restricted the relief to only these candidates. The direction of both these learned Judges restricting the relief were not challenged in any way by any of the candidates. That apart, according to Mr. Gopalan, the restrictive direction was well justified, since the relief could be granted only to those who had approached the Court. This was clearly reflected in the order of N. Paul Vasanthakumar, J. and also in the order of P. Jyothimani, J., which have been quoted above. It was faintly suggested on behalf of the appellants that some of the 1796 candidates who had passed the Preliminary Examination were treated as passed on the basis of wrong answers. Mr. Gopalan submitted that at no point of time it had been earlier canvassed on behalf of any of the unsuccessful candidates that some of these 1796 candidates be excluded for any such reason. Their endeavour has all throughout been to include themselves in the Main Written Examination. That has already been permitted and the 125 candidates were permitted additionally to write the Main Written Examination though only 25 could be held eligible for assessment in the main examination. Having accepted the orders passed by two learned Judges as above, it was not permissible for the appellants now to turn back and say for the first time that whether they are selected or not, these 1796 candidates should not be treated as having passed the Preliminary Examination, and that the result of the Preliminary Examination itself be cancelled.

19. Mr. Vijay Narayan, learned Senior Counsel appearing for the appellant in W.A.No.653 of 2009 submitted that the examination by the Public Service Commission is expected to be of high order. It is for this purpose that the recognition and protection had been given to the Commission under Article 320 of the Constitution of India. To emphasize the importance of its work and also to point out as to how its work has suffered over the years, he referred to the observations of the Apex Court in paragraph 42 of the judgment rendered in State of Bihar vs. Upendra Narayan Singh and others reported in (2009) 5 SCC 65 to the effect that the hopes and expectations of the framers of the Constitution in that behalf have been belied by what has actually happened in the last four decades. It has been further observed that the Public Service Commissions which have been given the status of constitutional authorities and which are supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoils system.

20. With a view to point out some of the serious failures in the examination under consideration, he drew our attention to the example of one Ponnuerusan. He was a candidate bearing Registration No.00407010. Strangely enough, in the mark sheet showing the marks obtained by him in the oral examination and in the written examination, he was shown as a female candidate. It was pointed out that for the Most Backward Class Community, to which he belongs, the cut off marks for the female candidates were 180. Since he was considered as a

female candidate, he was allowed for the interview as he scored 183 marks. He would not have been otherwise allowed for the interview since the marks required for the male candidates belonging to MBC Community were 196.50. It is another matter that when this fact was brought to the notice of the Public Service Commission, his name was removed from the list of successful candidates, though he got the highest marks in the interview. Mr. Vijay Narayan drew our attention to the publication in a Tamil newspaper dated 01st October 2008, which shows that another candidate was suspended for receiving bribe while working as an employee in the Registration Department. He also received the highest marks in the oral examination. The employees are supposed to file 'No Objection Certificates' given by their employer, under Clause 15(g) of the Advertisement, in the prescribed form. The form is supposed to state that the employer has no objection to the candidate's application for being considered for the post. It is submitted that this person has not submitted the No Objection Certificate at all. As far as this submission is concerned, Mr. Gopalan, learned Senior Counsel appearing for the Public Service Commission pointed out that if the person concerned has suppressed this fact of his employment, there was no source for the Public Service Commission to know as to whether he has committed any such misconduct. In any case, since this particular aspect was brought to the notice of the Commission, the Commission will verify as to whether the statement attributed to him is correct. Mr. Gopalan further submitted that both these persons were not made respondents in these petitions and therefore, we do not have the opportunity to get their explanation on whatever that has been alleged.

21. In this behalf, Mr. Vijay Narayan, learned senior counsel criticized the learned single Judge, whose judgment is under challenge. The learned Single Judge has discussed the case of Ponnuerusan in paragraph 32 of the impugned judgment. The learned Single Judge has held that at the highest, it is a mistake on the part of the Public Service Commission and merely on that basis, it is not possible to vitiate the entire selection process. Mr. Vijay Narayan submitted that the order should have been to the contrary. He then submitted that the final examination was held on 16th and 17th August 2008. The Expert Committee was formed on 25th August 2008, which gave its report on 24th September 2008 and valuation of the papers of some 1700 candidates was done during 6th November and 20th November 2008. As far as the 125 candidates, who were allowed to give the final examination under the orders of the Court, are concerned, their papers were also evaluated in view of the order passed by the Court. Mr. Vijay Narayan, however, contends that, according to his instructions, they have been evaluated by some different examiners and that they should have been examined by those who examined the other 1700 papers. As far as this submission is concerned, Mr. Gopalan drew our attention to paragraph 19(g) of the counter filed before the learned Single Judge, on behalf of the Public Service Commission, wherein this allegation viz., that for these 25 candidates, a separate evaluation was done, has been emphatically denied. It is stated in that counter that the question papers of the candidates were not identifiable, since dummy numbers were given to all the

papers before they were sent for valuation and so the papers of these 25 candidates were also evaluated like the rest of the candidates.

22. Mr. N.G.R. Prasad, learned counsel appearing for the appellant in W.A.No.652 of 2009 adopted the argument of Mr.Vijay Narayan. He mainly submitted that if according to the Expert Committee, 21 out of 200 questions were being wrongly assessed, it was a serious matter and the Court should not confine the relief only to permitting the 125 candidates who came to the Court to appear for the final examination. In view of the magnitude of the problem, he submitted that the result of the entire examination should be scrapped.

23. Mr. K.M. Vijayan, learned senior counsel appeared for the appellant in W.A. No.653 of 2009 arising out of W.P. No.450 of 2009 filed by one Mr. Chandrasekaran and others. These petitioners were not amongst those who had filed the petitions earlier, leading to the orders passed by N. Paul Vasanthakumar and P. Jyothimani, J.J. They had filed a petition for the first time before V. Ramasubramanian, J. to point out the irregularities in the examination conducted by the TNPSC. He also appeared for the Advocate -Petitioner who has filed a fresh petition in public interest which was placed along with these appeals. This petitioner has sought a C.B.I. enquiry against the TNPSC and the particular Coaching Centre. He has also sought the cancellation of the entire examination.

24. The submissions of Mr. Vijayan were threefold. His first submission was that when the grievance was the same, the relief should be extended to all, i.e., if 21 questions were assessed on the basis of wrong answers and were subsequently corrected, it means that out of 200 marks, 31.5 marks went one way or the other in a wrong manner. According to him 17,062 candidates, who are said to have passed the preliminary examination, are supposed to have passed the examination on the basis of wrong answers. If it is so, the grievance is a grievance in rem and therefore, the entire examination should be set aside. He relied upon paragraph 24(7) of the judgment of the Apex Court in the case of M.P. State Co-operative Bank Ltd. vs. Nanuram Yadav reported in (2007) 8 S.C.C. 264 to submit that if the mischief is widespread and all pervasive, the relief should be to set aside the examination. It is, however, material to note that in the matter before the Apex Court, out of 60 appointments, 58 appointments, i.e., practically all the appointments, were disputed. That is certainly not the case in the present matter.

25. The second submission of Mr. Vijayan is that the learned single Judge has failed to do complete justice. He submitted that when the learned single Judge found that a coaching centre had perhaps played a dubious role in the selection of the candidates, the learned single Judge ought to have directed an enquiry against the coaching centre. A separate writ petition has been filed by an Advocate in that behalf, being W.P. No.11486 of 2009 and which is placed before this Court along with this group of appeals and Mr. Vijayan has appeared for the petitioner therein. He

prayed that a C.B.I. enquiry be conducted against the coaching centre and against the TNPSC in view of the observations of the learned single Judge made in paragraphs 30 and 31 of his impugned judgment. The third submission of Mr. Vijayan was concerning the two cases of Mr. Ponnuerusan and Rajendran, who according to him, were wrongly allowed to write the examination. The grievance in that behalf has already been discussed.

26. Mr. V.R. Kamalanathan appeared for the appellant Mr. Ravi Varma in W.A. No.649 of 2009. It was his submission that this appellant ought to have been awarded three extra marks and the marks which have been deducted from his tally should not have been deducted, in which event, he would have crossed the cut-off marks for the preliminary examination.

27. As far as Mr. Ravivarma's case is concerned, Mr. V.T. Gopalan, learned senior counsel appearing for the TNPSC pointed out that Mr. Ravi Varma has been allowed to write the main examination in view of the order passed by the learned single Judge and which is impugned in this group of appeals. It is another matter that Mr. Ravi Varma did not pass the main examination and therefore, he urged that the submission was untenable.

28. Mr. AR.L. Sundaresan, learned senior counsel appeared for the appellant in W.A. No.650 of 2009 arising out of W.P. No.989 of 2009. This appellant was allowed to write the main examination, but he did not pass it. The submission of the learned senior counsel is that the passing of a candidate in the main examination depends upon the rank at which he or she stands. Undoubtedly, this appellant is not amongst the 172 candidates ranked at the top. Mr. Sundaresan submits that amongst these 172 selected candidates, there are some who must have got the benefit of wrong assessment because they are from the group of 1,796 candidates. Their answer books are corrected in such a way that they included the 21 questions and answers which were subsequently found to be wrong by an Expert Committee. It is thus possible that some of them have got the benefit of wrong answers and therefore, they were allowed to write the main examination. If these wrong answers are removed, may be, that they would not have passed the preliminary examination and in which case, they would not have been the contenders in the main examination. Mr. Sundaresan therefore submits that if such candidates were to be eliminated, may be, this appellant would have found a place among the top 172.

29. In this connection, Mr.Gopalan impressed upon us that this has been a huge exercise. Some 172 posts are to be filled. The posts have been lying vacant from 2004. The Preliminary Examination was held in the year 2007 and in view of the writ petitions and the stay granted in these writ appeals, though 172 candidates have been selected, those posts are not being filled up, causing a serious prejudice to the administration. It is material to note that as far as the 125 candidates who contested these matters all throughout are concerned, their papers for the Preliminary Examination have been examined on the basis of the yardstick laid down by the Expert Committee. It is submitted on their behalf that there were errors were in some 21

questions, which is about 10% of the questions. As against that, on behalf of the TNPSC, it was submitted at one stage that at the highest, the errors were only in eight questions, which means that the errors were in just about 4% of the questions. The issue before the Court, therefore, is as to which approach to be adopted, whether to set aside the results of the entire Preliminary Examination on the basis of the yardstick laid down by the Expert Committee or to hold that the errors in the case of the candidates who raised the issue have been attended and permit the result of the examination conducted by the TNPSC to be acted upon.

30. The 125 candidates whose papers were examined on the basis of the expert committee answers have been permitted to participate in the Main Written Examination. The marks in the Preliminary Examination are no longer relevant when it comes to calling a candidate for an oral interview as provided in Clause 10 of the notification containing the procedure of selection. The candidate has to pass in the Main Written Examination to qualify for the interview. The 125 candidates were permitted to write the Main Written Examination. It is another matter that out of them only 25 obtained the cutoff marks in the preliminary examination for becoming eligible for assessing their papers in the main examination. Earlier, 1796 candidates had been held as having obtained the cut-off marks. It is possible that a few of them could not have achieved the cut-off marks if the yardstick with respect to the 21 corrected answers (or 8 corrected answers as per the TNPSC) was to be applied to them. But, having cleared the Preliminary Examination, these 1796 candidates had to write the Main Written Examination and thereafter, appear for the Oral Interview, and from amongst them, only 172 candidates have been selected. It is stated that in this process, the theoretical possibility of the candidates passing the Main Written Examination and then getting selected in the Oral Interview (though they may not have obtained cut-off marks in the preliminary exam) gets further eliminated. At the most, it could perhaps be said that some of these 1796 candidates may not have been eligible to write the Main Written Examination on the yardstick of the expert committee, but were allowed to write that examination. The fact, however, remains that thereafter they have passed the Main Written Examination, which is a still more stringent examination than the Preliminary Examination, and then the oral interview. In this scenario, once the aggrieved 125 candidates were permitted to give the main examination, it cannot lie in their mouth now to say for the first time after three rounds of petitions that the 1796 candidates or at least some of them should not have been permitted to write the Main Written Examination. The grievance of the 125 candidates having been redressed, nothing needs to be ordered for them thereafter.

31. Mr.V.T. Gopalan, learned senior counsel appearing for the TNPSC submitted that the relief to be granted ought to be restricted to those who have been vigilant in canvassing this litigation. This should be so considering the magnitude of the exercise. He pointed out that some 1,15,492 candidates applied for participating in the selection process in pursuance to the notification issued on 1.8.2007. The applications of 85,913 candidates were found to be in order and they were issued with the hall tickets for appearing in the preliminary examination which

was held on 23.12.2007. The result of the preliminary examination was declared on 25.4.2008. As per the selection procedure, the number of candidates who would qualify for the main examination was fixed at ten times the number of posts which were advertised to be filled up. The posts to be filled up are 172 and therefore, the number of candidates who would qualify for the main examination would be 1,720. It, however, so happened that a good number of candidates got equal number of marks and therefore, the number actually went upto 1,796.

32. In the summer vacation of May 2008, writ petitions were filed by some of the candidates who failed in the preliminary examination. The first judgment was rendered by N. Paul Vasanthakumar, J. on 31.7.2008. The second one was rendered by P. Jyothimani on 13.8.2008. Some orders were passed at the Madurai Bench also, thus resulting in a direction to allow 125 candidates to write the main examination. The main examination was conducted on 16th and 17th August, 2009, in which these 1,796 plus the 125 candidates were allowed to appear. As per the orders of the Court, only 25 out of the 125 candidates obtained the cut-off marks, equivalent to 1,796 candidates. Therefore, although 125 candidates were allowed to appear in the main examination, only the papers of 25 of them were evaluated for the main examination since they had obtained the necessary cut-off marks.

33. Mr. Gopalan pointed out that the number of candidates who were to be called for interview were to be twice the number of posts to be filled up. Again, in view of some of the candidates getting equal number of marks, for 172 posts, 347 candidates were called for the oral interview. Out of the above 25 candidates who got the qualifying marks in the preliminary examination on the basis of the report of the Expert Committee, only two could reach this group of 347. It is another matter that unfortunately, they also failed in the oral interview.

34. The result of the main examination was challenged only by six out of these 25 candidates who filed the writ petition before V. Ramasubramanian, J. Out of the 100 other candidates who were allowed to write the main examination, only 11 filed the writ petition before V. Ramasubramanian, J. Thus, out of these 125 candidates, only 17 candidates came to the Court once again.

35. As far as the 1,796 candidates are concerned, only 20 of them filed another writ petition which came up before V. Ramasubramanian, J. Thus, only 37 candidates were before V. Ramasubramanian, J., leading to his impugned judgment.

36. The learned senior counsel appearing for the TNPSC further pointed out that from amongst these 37 candidates also, only the following persons, viz.,

- (i) 3 candidates out of the group of 25;
- (ii) 5 candidates out of the group of 100, (i.e., only 8 out of the 125;) and
- (iii) 13 out of the 20, who are out of the 1,796 have filed the present appeals. Thus, in all, only 21 candidates have filed these appeals.

37. The submission of Mr. Gopalan is that at the highest only 21 candidates should be

considered for the relief, if at all, and not others, and that the alleged wrong to them had already been attended. He referred to a judgment of the Apex Court in the case of Cumbum Roadways (P) Ltd. vs. Somu Transport (P) Ltd. reported in A.I.R. 1966 S.C. 1366, which was a matter concerning the permits issued under the Motor Vehicles Act, and wherein the Apex Court observed that the High Court has no jurisdiction to interfere with the order of the Appellate Tribunal either in favour of or against the parties which have not come before it. He also referred to the judgment of the Apex Court in the case of Tilokchand vs. H.B. Munshi reported in (1969) 1 S.C.C. 110, where the Court observed that Courts help those who are vigilant and not in slumber over their rights. He referred to another judgment of the Apex Court in the case of U.P. Jal Nigam vs. Jaswant Singh reported in (2006) 11 S.C.C. 464 to the effect that when a person is not vigilant of his right and acquiesces with a situation, relief may be denied to him.

(B) Submissions by impleading successful candidates:

38. Ms. R. Vaigai, learned counsel appeared for some of the selected candidates who are the respondents in these writ petitions. She relied upon a recent judgment of the Apex Court in the case of Sadananda Halo vs. Momtaz Ali Sheikh reported in (2008) 4 S.C.C. 619. That was a case where the recruitment to Armed Constables in different districts of Assam was under consideration, and the Guwahati High Court had interfered into those selections on the alleged ground of large number of candidates not being objectively and properly tested. The Apex Court, however, held that a mere expression to that effect without any further material cannot by itself render the whole selection process illegal. The judgment of the Supreme Court is relied upon for what is stated in paragraph 58 of the judgment that in such writ petitions, a roving enquiry on the factual aspects is not permissible. The Apex Court observed as follows: -

"The High Court not only engaged itself into a non-permitted fact finding exercise, but also went on to rely on the findings of the Amicus Curiae, or as the case may be, the scrutiny team, which in our opinion, was inappropriate. While testing the fairness of the selection process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such microscopic findings. It was not for the High Court to place itself into a position of fact finding commission, that too more particularly at the instance of these petitioners who were candidates. The High Court should, therefore, have restricted itself to the pleadings in the writ petition and the say of the respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the selection committee and also in the process, assumed the role of an appellate tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any justification."

The Apex Court held in that matter that no deviation from the rules or inherent defect in the selection process, which would render the whole selection illegal, had either been alleged or proved.

39. Applying the aforesaid yardstick, Ms.Vaigai submitted that there was no need for the three learned Judges to go for a microscopic examination. Where fairness of a selection process was under consideration, and wherein thousands of candidates were involved, the objective should be to see to it that there should be no unfairness and no prejudice should be caused to the candidates. In fact, under the impugned judgment, V.Ramasubramanian, J has been more considerate for the unsuccessful candidates. They have got the best out of both worlds. The learned Judge has given marks to three candidates by applying both the yardsticks, and yet they could not obtain the minimum cut-off marks in the preliminary examination.

40. Learned counsel further submitted that the postings have been lying vacant for the last about 5 years since 2004. The examination was held in December, 2007 and the selected candidates were waiting for their postings for the last over an year and nine months, and were struck up, because of the stay granted in these proceedings. Their age was getting advanced for other employments due to passage of time. The successful candidates had put in their good effort, appeared for the examination, and passed the same, and were now waiting for their appointments. They had a legitimate expectation in getting their postings, which was frustrated by this 4th round of litigation.

41. Mr.T.V.Ramanujam, learned Senior Counsel appearing for some of the impleaded successful candidates submitted that the principles which would apply to any normal litigation will have to be applied to the present case also. The unsuccessful candidates cannot be permitted to raise new submissions by filing fresh original petitions, and where the unsuccessful candidates have not challenged the validity of the main examination at the earlier state, they cannot be permitted to raise their submission on principles analogues to the one under Order - II Rule - 2 of the Code of Civil Procedure.

42. Mr.R.Muthukumaraswamy, learned Senior Counsel also appearing for some of the impleaded successful candidates submitted that the Court has to restrict itself to considering the entitlement of only those who felt aggrieved and were actually aggrieved by the impugned action. A petition by an advocate in the nature of PIL like the one filed by one K.Sudalai Muthu was certainly not called for. This was a matter concerning selection by the public service commission, and being a kind of service matter, a PIL by an advocate in a service matter was certainly not expected to be entertained. He relied upon the judgment of the Apex Court in the case of Vinoy Kumar Vs. State of U.P. reported in 2001(4) SCC 734.

43. Mr.N.Thiagarajan, learned Senior Counsel also appearing for some of the impleaded successful candidates submitted that in this matter we are concerned with holding of an examination for public service, which was a huge exercise. It had to be seen that the examination was conducted fairly and properly, and that there should be no prejudice to any of the candidates in the manner of holding of the examination. This was at the highest a legal

right, which was involved in this case for the petitioner. This was not a case of breach of any fundamental right, and therefore, all restrictive concepts, such as that of estoppel, acquiescence, and laches, which apply to a legal right will apply to the right of the candidates to have a fair play. He submitted that it was nobody's case that there was any malice involved in the present case, either on facts or in law.

44. The fact that the petitions which were filed earlier were concerned with canceling preliminary examination only was emphasized by the learned counsel appearing for the successful candidates. Thus, Mr.R.Subramanian, learned Senior Counsel relied upon the judgment of the Apex Court reported in AIR 2004 SC 4116 (Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna) to submit that in the absence of rules the learned single Judge should not have directed revaluation by the Expert Committee. He pointed out that, in any case, the prayers in these petitions were to permit the candidates to write the main examination on the ground that they had fared well in the preliminary examination, but certain questions were wrong and although they had written correct answers, the answers were marked as incorrect. According to them, if the valuation was done correctly, they would be eligible to write the main examination. These unsuccessful candidates accepted the appointment of the Expert Committee to go into the details of the questions and answers, but now, they are trying to challenge the main examination, which cannot be permitted.

45. Mr.L.Chandrakumar, learned counsel appearing for some of the impleading successful candidates emphasized the principle of proportionality in granting the relief and relied upon the judgement of the Apex Court in the case of Union of India Vs. Rajesh.P.U. reported in 2003 (7) SCC 285 to submit that in the absence of wide spread infirmities, there cannot be en-bloc cancellation of the examination, which will affect innocent untainted candidates.

46. Mr. Arvind Datar, learned senior counsel appearing for some of the interveners submitted that –

(i) With regard to the second category of candidates, under the impugned judgment, initially, after the order of P. Jyothimani, J., 125 persons were allowed to write the examination and 25 qualified for the main examination, and ultimately 2 were selected for oral interview. He referred to paragraphs 22, 23 and 38 of the order of the learned single Judge. According to him, from paragraphs 22 to 37, there is an elaborate discussion as to why the second category of candidates should not be considered.

(ii) As far as the third category, under the impugned judgment, is concerned, he submitted that they have already got the relief. As a result of the Expert Committee, some people who had got 100 marks get 97 marks. The learned single Judge did not reduce the marks of those who had filed the writ petitions. Mr.Datar, relied on paragraph 39 of the order of P.Jyothimani,J.

He also referred to sub-paragraph (7) of paragraph 50. He submitted that those people who were in the third category have been granted relief and the necessary direction has been given. He submitted that with regard to the third category, the learned single Judge has granted whatever relief that was possible to be given to them. All the three categories have been dealt with by the learned single Judge and each appellant in that category must demonstrate that any finding is perverse in respect of his category.

47. What is the relief that can be granted in these circumstances? Mr.Datar, pointed out that among all the prayers, only in Writ Petition No.11731 of 2008 comprising of three petitioners, there was the prayer for revaluation of the preliminary examination held on 23.12.2007. Everybody else has asked for some limited relief.

48. In these circumstances, learned senior counsel prayed that the writ appeals be dismissed on two grounds, apart from the submissions on the ground of laches etc. The first ground is regarding the aspect of policy choice and the second ground is with regard to proportionality, which is an important factor in administrative law. Both the learned single Judges had the option to set aside the whole examination, but they did not choose to do so. Once the learned single Judge has exercised a policy choice in the impugned judgment, which is an option open to him, and has decided to mould the relief sought for in the writ petitions, the appellate court ought not grant a larger relief unless there are extraordinary reasons compelling it to do so. In the case of an examination which involves 85913 candidates, the courts would set aside the whole examination only if there is an extraordinary, strong factual foundation at the earliest point of time. Apart from W.P. No.11731 of 2008, in none of the writ petitions is there the prayer "leave alone the factual foundation" for setting aside the preliminary examination. Even the petitioners in W.P. No.11731 of 2008 are guilty of laches, and these are the persons who have passed the examination. So, in effect, the only person who has challenged the examination is the one who has passed it. According to the learned senior counsel, after a gap of two years, the entire main examination should not be set aside and therefore, it is prayed that the writ appeals be dismissed.

49. According to the learned senior counsel, the learned Judge has considered the possibility of setting aside the whole examination, but he has opted not to do so and has decided to mould the relief sought for. This discretion has been exercised by the learned single Judge on the basis of an elaborate discussion, which merits acceptance. According to the learned senior counsel, the order of the learned single Judge is a carefully reasoned order which deserves acceptance.

50. As far as proportionality is concerned, it is stated that if the entire examination is set aside, the whole clock will be turned back by two years and successful candidates who have waited for all these long years to write the examination will be driven back to square one for no fault of theirs. According to the learned senior counsel, such successful candidates should not be made

to become victims of this exercise.

(C) Impleading Petitions with a prayer in the nature of Cross Appeal:

51. As the above narration denotes the unsuccessful candidates in the TNPSC examination went on filing petitions after petitions, and prior to these matters coming to this Division Bench, the cause of successful candidates was essentially defended by the Public Service Commission. The submission of the unsuccessful candidates was that there were certain errors in the questions that had been set up for the examination and that some of the answers were also erroneous and therefore, they had suffered in the preliminary examination. Accepting their submission, an Expert Committee was directed to be appointed in the first round of litigation under the judgment of N.Paul Vasanthakumar, J. The number of candidates who were granted the benefit of the opinion of the Expert Committee got increased in the second round of litigation under the judgment of P.Jyothimani, J, and ultimately the number went up to 125 and odd.

52. After the above two rounds of litigations, the third round of litigation went on to V.Ramasubramanian, J, whose judgment is under challenge once again by the unsuccessful candidates. At this stage, for the first time, a large number of successful candidates have impleaded themselves and we have noted the submission canvassed on their behalf.

53. The fact, however, remain that there was no formal notice to them in any of the earlier proceedings. It was their selection, which was at stake, and they had not been afforded any opportunity to place their submission in any of the earlier three rounds of litigations. It was, therefore, that when these appeals came up for hearing before this Bench, that it was deemed necessary that a notice be issued to the successful candidates also, so that they may make their representation concerning the disputed examination. It was from this point of view that a public notice in the nature of a notice under Order 1 Rule 8 of the Code of Civil Procedure was directed to be issued on 5th August, 2009 and it was published in the editions of English Daily The Hindu and Tamil Daily Thinakaran at Chennai, Coimbatore and Madurai. Consequent to the publication of this notice, a number of successful candidates appeared to get impleaded themselves to this proceeding. But some of the candidates i.e., N.Indumathi and others moved a petition in the nature of Cross Appeal being M.P.No.11 of 2009 in W.A.No.652 of 2009. Mr.A.L.Somayaji, learned senior counsel, appeared for these applicants.

54. The submission of Mr.A.L.Somayaji was that the entire basis of appointing an Expert Committee was on the assumption that the original key answers were wrong. He filed detailed documents and authoritative materials on record to point out that in fact the original key answers were not wrong and it was erroneous on the part of the Public Service Commission to have considered the appointment of an Expert Committee. In any case, it is submitted that since the benefit of the opinion of the Expert Committee has been given to the successful

candidates, there was no occasion for the unsuccessful candidates to make any grievance.

55. Mr. Somayaji, submitted that it was permissible for this Court to exercise the powers under Order 41 Rule 22 of the Code of Civil Procedure and set right the finding, which is erroneous, though, otherwise, the impugned judgment of the learned single Judge is in favour of the successful candidates. He submitted that, as respondents, the successful candidates may not have appealed from particular part of the judgment, but they do not support the judgment and the finding that some of the original answers were wrong. To substantiate his legal position, he relied upon the judgments of the Apex Court in the case of Balbir Kaur v. U.P. Secondary Education Services Selection Board reported in 2008 (12) SCC 1 (paras. 29 & 30); Jagdish Kumar vs. State of H.P. reported in 2005 (13) SCC 606.

56. Copious material was placed on behalf of the successful candidates as well as on behalf of the unsuccessful candidates to put forth as to how the answers to the 8 disputed questions were either correct or wrong. It was also pointed out that some of the questions themselves were confusing, their answers were erroneous and there was a variation in the correct answers in the Tamil and English versions. It was also brought to our notice that the syllabus for the examination was published, but there were no particular specified books. Under Instruction No. 28, it was stated that the best and the correct answers are to be given. Now what has happened is that the unsuccessful candidates relied upon the books of some experts, whereas the successful candidates relied upon the books of other experts and also the standard text books prescribed by NCERT to canvass, as stated above, that either the original key answers were wrong or otherwise correct.

57. The TNPSC fairly accepted that 8 questions were confusing in nature and they are Questions Nos. 40, 45, 68, 82, 102, 127, 130 and 173. Out of these 8 questions, Question No. 45 is the only one on Science, whereas the rest were on humanities. Thus, for example, Question No. 130, was as follows: -

“The Pallava rulers believed in

A) Jainism B) Buddhism C) Hinduism D) Shaivism”

The Public Service Commission in its key answers gave Jainism i.e., (A) as the correct answer, whereas we are pointed out on authority that the Pallava Kings were earlier Jains and later on their Queen converted to Shaivism. It is, therefore, difficult to say that a particular answer is correct and the other one is wrong. As stated above, out of these 8 questions, only Question No. 45 is the one, which deals with Science, and which is to the following effect: -

“45. The plant which possesses ‘anticancerous activity is

A) Seetha B) Polyalthia C) Teak D) Murungai”

The Service Commission in its key answers gave A as the correct answer, whereas according to the Expert Committee either A or B can be the correct answer.

58. Mr.Somayaji therefore submits that assuming that there were errors in the eight answers, seven answers were on humanities on which perhaps there were two different answers, and the unsuccessful candidates have been given the benefit of the answers given by the Expert Committee, whereas the successful candidates have marked the answers on the basis of the key answers. According to Mr.Somayaji, no serious prejudice has been caused in this process. Conclusions: -59. We have noted the submissions of the unsuccessful candidates as well as the successful candidates and of the Public Service Commission in extenso. There is a good merit in the submission of the learned counsel on behalf of the unsuccessful candidates that the examination to be conducted by the Public Service Commission has to be of a high order and above any controversy. A democratic system can be administered well only if the civil servants are selected on the basis of merit by open competition and that is why, a specific provision has been made in the Constitution under Article 320 to provide for the examination to be held by the Union and the Public Service Commission. It has been emphasised on behalf of the learned counsel for the unsuccessful candidates that if there are objective questions set up for the preliminary examination, obviously the answers sought should be very clear and there should be no ambiguity about them. If there are four options to a particular question and if only one of them is the correct one, obviously the one assigned as the correct answer in the key answers has to be the correct answer. There cannot be two answers to one question. Therefore, it cannot be disputed that a correct answer must get assessed as the correct answer. There also cannot be any dispute that the yardstick to be applied to all the candidates has got to be a uniform one. One candidate cannot be told that for him a particular answer to a question is the correct answer, whereas for another candidate another answer is the correct answer.

60. Having stated this, we have to look into the problem which has come up in this particular examination and as to how it has been attended. Now the Rules require the candidates to raise their objections within three days of the examination and none of the candidates raised their objections within that period. The successful candidates, in order to substantiate their case, therefore, relied upon a judgment of the Apex Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna (supra) to submit that in view of failure to comply with the required rule, the learned single Judges should not have directed revaluation by the Expert Committee. In any case, as has been submitted by Mr.Somayaji, learned senior counsel appearing in pursuance to the public notice for the successful candidates that the least the learned single Judges should have done was to have issued a notice to the successful candidates before arriving at a conclusion that the key answers were wrong. He pointed out that in fact the questions were such, particularly those from the humanities, which probably had two

correct answers. As we have noted earlier, there was controversy about some 21 questions and out of them, the Public Service Commission accepted that there are doubts on the veracity of the correctness of the answers to eight questions. Seven out of them were on humanities, and what the Public Service Commission has done is to give marks to the unsuccessful candidates for the answers that they had given as per the report of the Expert Committee. As far as the successful candidates are concerned, they were given marks for the answers that they have given, which were corresponding to the key answers. As has been, and has been accepted by the Public Service Commission both the group of answers are probable answers and could be assessed as the correct answers. In this state of affairs, there was no prejudice to any of the unsuccessful candidates in the marks that they were given for those questions. As noted earlier, only one question i.e., Question No.45 was the one on Science where as per the key answer, the correct answer was A, whereas, according to the Expert Committee, both A or B could be the correct answer. In any case, those unsuccessful candidates, who marked either A or B as the correct answer for Question No.45 have been given the marks as the correct answer. It could be said that the question being one on Science perhaps either the key answer is correct or the expert committee answer is correct. But since both the group of candidates are given 1.5 marks for that answer the element of prejudice gets eliminated.

61. In this connection, we may profitably refer to the judgment of the Apex Court in the case of Pankaj Sharma v. State of J&K reported in 2008 4 SCC 273. That was a case concerning the preliminary examination conducted by J&K Public Service Commission. There also were some questions which were claimed to be defective. The Public Service Commission decided to award permissible maximum marks to the disputed answers. The said approach of the J&K Public Service Commission was upheld by the High Court and the High Court declined to set aside the preliminary examination in the larger interest of the administration as well as in the interest of the candidates. The Apex Court held the approach to be the correct one and held that a general action was required to be taken to ensure that no candidates are suffered when there was no fault on his or her part. Strangely enough it was submitted by the unsuccessful candidates that conferring benefit to them in this particular manner was erroneous, which submission was, naturally, turned down.

62. In the facts of the present case, as has been noted above, once the unsuccessful candidates are given marks for the answers that they had given, it cannot lie in their mouth to say that the marks given to the successful candidates should be reduced. This is because, as seen by us, the disputed questions were on humanities where probably both answers were the correct answers. The only question, which was on Science, can be said to be the one where perhaps only one answer was the correct answer, but the Expert Committee opined that either A or B was the correct answer. Therefore, in our view, no prejudice is caused in giving marks for that answer either to the successful candidates or to the unsuccessful candidates.

63. As has been rightly pointed out by the learned counsel for the successful candidates, at the highest what is involved in the matter is the legal right to have a fair examination. A candidate is expected to raise all his pleas when he comes to the Court. The unsuccessful candidates had three rounds of litigation prior to coming before this Division Bench. The grievances raised by them have already been attended to in the manner in which the Public Service Commission has dealt with the disputed questions by giving marks to both groups of candidates. Hardly any one of them had any further grievance to canvass at this appeal stage or by filing original petitions. In any case, looked at from the manner in which we have considered the issue, there is no longer any case for prejudice to the unsuccessful candidates.

64. Two stray cases of one Ponnuerusan, though a male candidate, who was considered as a female candidate, and one suspended employee participating in the examination, as disclosed in a newspaper on 01.10.2008 were emphasized by the learned counsel for the unsuccessful candidates. Mr.Gopalan, learned senior counsel appearing for the Public Service Commission, has assured that the Commission will look into the submission and take necessary corrective measure, if not already taken.

65. The preliminary examination is essentially a short listing examination. The right of the candidate to appear for the main examination depends upon his succeeding in the preliminary examination. The unsuccessful candidates who raised grievance were allowed to write the main examination. Their answers were corrected on the basis of a liberal yardstick, as accepted by the Expert Committee. The main papers of only those who obtained the cut-off marks were evaluated. In view of grant of marks to both groups of candidates for the disputed questions in the preliminary examination, the rigor of prejudice has been taken off and therefore, there is no occasion to say that there has been any unfair or impartial treatment to any of the candidates.

66. Having noted, as stated above, in our view, much of the problems would have been avoided had notice been issued to the successful candidates at the level when the matter was heard before the learned single Judges earlier. The unsuccessful candidates have gone on attempting to make new and new submissions, which were not taken at the earliest opportunity. One cannot be permitted to raise such new points as and when one thinks fit and proper. As held by the Apex Court in the case of *Sadananda Halo v. Montaz Ali Sheikh* (supra), a microscopic approach in such huge exercise is not accepted and one has to have a sense of proportionality, particularly when it is seen that at the end of this exercise no prejudice has been caused to the unsuccessful candidates in any manner whatsoever. As stated earlier by us, had the learned single Judge issued notice to the successful candidates much of the trouble would have been avoided and therefore, there is much force in the submission of Mr.A.L.Somayaji that the findings by the learned single Judges in their judgments with respect to errors in the key answers and appointment of the expert committee would not have been called for. In any case, however, we note that the steps taken by the learned Judges were with a desire to see to it that if at all there

was any error that error should be removed since the candidates must have full confidence in the fairness of the examination. As stated earlier, in any case, in the facts of the case, there is no reason to interfere with the results of the examination, since no prejudice has been caused.

67. For the reasons stated above, all the appeals filed by the unsuccessful candidates are dismissed. The writ petitions filed by them and the P.I.L. by an advocate are also dismissed. The results of the examination held by the Tamil Nadu Public Service Commission shall stand confirmed and the Service Commission and the State Government will be at liberty to proceed with the issuance of the posting orders.

(E) Writ Appeal with a prayer to expunge the adverse findings: -68. There is an allegation that a coaching centre in Chennai has played a role in passing of almost 48 candidates out of 172 candidates. The name of the centre is "Saidai Sa. Duraisamy's Manidha Naeyam IAS & IPS Free Coaching Centre". A question is raised as to how out of the 172 selected candidates, 48 candidates are from this Centre. The learned Single Judge has, in the impugned order, directed the Public Service Commission to look into this allegation, since in his view, there appeared some substance therein. This coaching centre has filed a cross appeal to expunge the adverse findings rendered against it. Mr. R. Krishnamoorthy, learned senior counsel appearing for the Centre pointed out that the Centre was not made a party to the petition and it did not have any opportunity to make submissions before the learned Single Judge. It has, therefore, filed a miscellaneous petition seeking permission to file an appeal challenging those findings. The learned senior counsel appearing for the Centre specifically denied that 48 persons were selected from their Centre. He pointed out that only four of their candidates have been selected in this examination, and relied on the records in that behalf.

69. Mr. Vijay Narayan appearing for the unsuccessful candidates had submitted that in this year's examination, the pattern of the question paper was changed and this was known only to the authorities of the Centres. He drew our attention to the question papers set in the previous years and some standard question paper which was prepared by the Centre for the preparation of its own students. It was pointed out that as per the old pattern, in the main examination, answers were to be written in 2700 words in all. In the new pattern, the number of words were increased to 5200 words. He referred to the model question paper, which was circulated to the candidates from the Centre. By calculating the questions and the marks and the words mentioned against the questions, he submitted that the calculation would come to 5200 words. It was alleged that this new pattern was known only to this coaching centre. As far as this aspect is concerned, the counsel for the selected candidates led by Mrs. Nalini Chidambaram, learned Senior Counsel, pointed out that the unsuccessful candidates have not placed before the Court what kind of papers were circulated to the students by such other coaching classes. Merely by making some calculations on the basis of the questions and the number of words within which the reply was to be given, an inference cannot be drawn that the management of this particular

coaching class knew as to what was the new pattern of the questions.

70. The appeal of the coaching centre is directed only against the observations of the learned single Judge contained in paragraphs 30 and 31 of the impugned judgment. Mr. Krishnamoorthy submitted that this coaching centre is providing free coaching to candidates appearing for competitive examinations and has been running since December, 2006 and not just for the last seven months prior to the impugned examination, as alleged by some of the petitioners. As far as this submission is concerned, Mr. Krishnamoorthy, learned senior counsel pointed out that the entire basis of the allegation was wrong. The pattern of the question paper has been changed from the year 2004 itself and not just from the disputed examination. The persons running the coaching centre, therefore, could not be faulted with for informing its students that the answers could be written in 5,200 words and on that score itself, it could not be said that the coaching centre had an idea about the question paper that was to be set for the disputed examination. He pointed out that the coaching centre was very popular, in that, even for getting admission to the coaching class, the candidates had to pass an entrance test. He informed that this year, some 6000 students took the test to join this centre and out of them, some 200 passed and were selected for the coaching.

71. Mr. Krishnamoorthy disputed that 48 students from this coaching centre were selected by the TNPSC and they figured amongst the 172 selected candidates. According to him, it is true that some 25 candidates who received coaching from this coaching centre had passed the UPSC Examination. However, as far as the disputed examination conducted by the TNPSC is concerned, only four of their students have been selected. The learned senior counsel has filed a separate affidavit giving the particulars of the selected candidates from this coaching centre.

72. For the reasons stated above, we do not find any justification on the part of the learned single Judge to give a finding against the concerned Coaching Centre and therefore, W.A.No.1090 of 2009 stands allowed and the adverse findings against the Coaching Centre are expunged.

73. Before we part with this matter, we would like to express our hope that the Tamil Nadu Public Service Commission will be more careful in future while conducting the examinations. If the answers to the questions posed are to be rendered in an objective manner, the Public Service Commission should be very vigilant about the correctness of the answers. The paper setters and the examiners ought to have greater concern for the large number of candidates who give this examination and whose future career depends upon their selection. We expect the Public Service Commission to be much more thoughtful while setting papers for the future examinations to be conducted by them.

74. With these observations, we dispose of all the proceedings. All the connected miscellaneous petitions are closed. The interim orders passed earlier shall stand vacated. In

the facts and circumstances of the case, there will be no order as to costs.