

**Chief Justice's Court**

**Case :-** SPECIAL APPEAL No. - 231 of 2023

**Appellant :-** Desh Raj Singh And Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Irrigation And Water Resources Deptt. Govt. U.P. Lko. And Ors

**Counsel for Appellant :-** Shri H.G.S. Parihar, Senior Advocate assisted by Mrs. Meenakshi Singh Parihar, Advocate

**Counsel for Respondent :-** Shri Anand Kumar Singh, Standing Counsel

**Hon'ble Arun Bhansali, Chief Justice**

**Hon'ble Jaspreet Singh, J.**

**(Per:- Jaspreet Singh, J.)**

1. The appellants before this Court are the successful candidates who had cleared Ziledari Qualifying Examination 2018 held as per Irrigation Department Ziledars Services Rules, 1963 (hereinafter referred to as Rules, 1963) for promotion from amongst confirmed Seench Parveshak working in the Irrigation and Water Resources Department fulfilling the eligibility condition as prescribed under Rule 6 of the Rules, 1963.
2. The said examination was held on 13.11.2018 and it became a subject matter of controversy as several complaints were received primarily relating to the malpractice and corruption inflicting the examination which included demand of illegal gratification from some candidates to grant them the benefit in the qualifying examination.
3. In pursuance of the aforesaid complaints, a selection Committee was constituted to examine the authenticity of the complaints. Three separate Committees were constituted from time to time and the earlier Committee indicated that out of the candidates who had appeared for the examination, 318 candidates had cleared the examination successfully whereas 172 candidates did not qualify, 37 candidates remained absent and the

candidature of two persons was rejected. In the meantime, the report of the third Enquiry Committee found acceptance by the State and as a consequence an order dated 26.07.2019 was passed cancelling the Ziledari Qualifying Examination, 2018 as a whole.

4. In the first instance, the appellants herein along with other candidates instituted writ petition bearing no.20263 (S/S) of 2020 (Het Ram & Ors. v. State of U.P & Ors.). In the said writ petition, the direct challenge was made to the order dated 26.07.2019 whereby the examination of 2018 was cancelled. This Court after hearing the parties by means of its judgment dated 05.08.2021 allowed the writ petition, holding that the order impugned dated 26.07.2019 had been passed in utter disregard to the principles of natural justice and without considering that most of the candidates who had appeared in the examination did not stand benefited from the malpractices adopted by the members of Selection Committee, hence, without undertaking any exercise as to distinguish the case of the tainted from the untainted candidates and yet a conclusion was arrived at that the examination as a whole was mired in malpractices did not find favour with the Court.

5. Thus, while allowing the writ petition, a direction was issued to the respondents of the writ petition to reconsider the claim of the petitioners of the Writ Petition No.20263 (S/S) of 2020 along with other selected candidates for the grant of promotion on the post of Ziledar by holding a fresh and full fledged enquiry of the examination and also ascertain the merit of each candidate who had applied for selection and record specific finding as to the extent of influence/malpractice adopted by one of the

members of the Selection Committee and in case, if the candidates are found to have been involved in such malpractice then appropriate orders should be passed after affording an opportunity of hearing to the petitioners and other candidates and this exercise be completed within a period of four months.

6. Since the directions issued by this Court in Writ Petition no.20263 (S/S) of 2020 was not complied with within the prescribed time hence, the present appellants along with other persons who were parties to Writ Petition No.20263 (S/S) of 2020 filed a Contempt Application (Civil) No.804 of 2022 (Het Ram and Ors. v. Ashok Kumar Singh).

7. In the said contempt proceedings, a compliance affidavit dated 25.07.2022 was filed wherein in para-11, it was stated that in compliance of the order passed by the writ court, a full fledged enquiry had been held and action was taken against the officers of Selection Committee. It was also indicated that all of the petitioners in the contempt petition were found to be eligible for promotion. The contempt Court considering the statement contained in the compliance affidavit found that the order passed by the writ court had been complied with, hence, the contempt petition was dismissed.

8. Thereafter, another limb of litigation emanated on account of an order passed by the Superintending Engineer 7th Circle for conducting a fresh Ziledari Qualifying Examination, 2021. This order dated 07.10.2022 was challenged in WRIT-A no.7022 of 2022. The writ court by means of the order dated 20.10.2022 passed an interim order directing that the departmental authorities may proceed with the promotion of the candidates

to the post of Zildar in accordance with the notification dated 11.10.2022 for the posts other than the posts for which the writ petitioners had been declared to be selected by means of order dated 05.08.2021.

9. Since there was clear directions by the Court contained in the judgment dated 05.08.2021 passed in Writ Petition No.20263 (S/S) of 2020 and despite the State authorities having filed an affidavit of compliance in the contempt proceedings yet the appellants who were the writ petitioners were not promoted hence they once again filed a Contempt Application (Civil) No. 2017 of 2022 (Saurabh Tripathi and Ors. v. Mustaq Ahmad).

10. In this contempt petition, the contempt Court was pleased to issue notice to show cause as to why the authority concerned should not be punished for willful disobedience of the directions given by the Court. The respondent authorities did not comply with the order but sought four weeks time to file an affidavit of compliance. This Court noticed the said request but instead granted a shorter time to the authority to comply.

11. When the matter came up before the contempt Court on 28.11.2022 another compliance affidavit was filed which was in utter defiance to the judgment of the Court dated 05.08.2021 as well as it was contrary to the interim order dated 20.10.2022 passed in WRIT-A no.7022 of 2022. Along with the said affidavit, a copy of an order dated 25.11.2022 was placed on record before the contempt Court.

12. The impact of the order dated 25.11.2022 was that it recalled and set aside the order dated 21.07.2022 [by which, after an inquiry, it was found that the petitioners of Contempt Application No.804 of 2022 amongst other

candidates totaling 335 were found eligible for promotion]. The said order dated 25.11.2022 directed that a fresh examination be held and this in effect amounted to not only resiling from the affidavit of compliance filed in the earlier Contempt Application No.804 of 2022 but also had the impact of violating the orders passed by the writ court dated 05.08.2021 as well as the interim order granted by the Court dated 20.10.2022 in WRIT-A No.7022 of 2022.

13. The respondent authorities went further ahead by proceeding with the fresh examination by issuing an office order dated 25.11.2022 indicating the date of fresh examination to be held by 20-25 December, 2022 and the date of declaration of results as 16.01.2022. It also indicated that a five member Committee had been constituted to complete the entire selection process. The said office order dated 25.11.2022 further indicated that the last date for submission of applications was 14.12.2022 and the admit cards could be obtained between 17.12.2022 to 20.12.2022.

14. It is in the aforesaid factual backdrop the writ petitioners filed another writ petition bearing WRIT-A no.8335 of 2022 (Desh Raj Singh and Ors. v. State of U.P. and Ors.), wherein the order dated 25.11.2022 and the subsequent notice of holding examination dated 02.12.2022 was assailed. This writ petition bearing No.8335 of 2022 was connected with WRIT-A No.7022 of 2022 (which was already pending and wherein an interim order dated 20.10.2022 had been passed) and both the writ petitions were heard and have been dismissed by the judgment dated 27.04.2023 passed by the learned Single Judge which is the subject matter of the instant special appeal.

15. A Coordinate Bench of this Court while entertaining the instant special appeal had required the State counsel to seek instructions and in the meantime as an interim measure provided that the fresh departmental examination may go on, however, the final results shall not be declared.

16. It is in the aforesaid factual back ground, Shri H.G.S Parihar, learned Senior Counsel assisted by Ms. Meenakshi Parihar Singh, learned counsel for the appellants has assailed the order passed by the writ court primarily on the ground that the learned Single Judge was not justified in dismissing the writ petitions specially when the impugned orders were directly in teeth of the final order passed by the writ court dated 05.08.2021 in Writ Petition No.20263 (S/S) of 2020 as well as in derogation of the affidavit of compliance filed in Contempt Application No.804 of 2022.

17. It is urged that once an affidavit of compliance had been filed and a specific stand had been taken by the departmental authorities which persuaded the Court to dismiss the contempt petition as the order of the writ court stood complied with. However, the respondent authorities by passing the subsequent orders have overreached the earlier orders passed by the Court and the same was per se contemptuous and arbitrary.

18. It is further urged that from time to time different Committees were constituted by the State to examine the sanctity of Ziledari Examination of 2018 in context with the complaints received against certain member of the Selection Committee. It is submitted that the nature of discrepancies and malpractices which mired the Ziledari Examination of 2018 was primarily relating to corrupt and inappropriate manner adopted while evaluating the answer copies and was attributed to certain members of the Selection

Committee constituted for holding the examination in the first instance.

19. The allegations and the findings recorded by the subsequent Committee so constituted to verify the said complaints clearly indicated that it was not as if the tainted could not be distinguished from untainted rather it was an individual act of certain members of the Selection Committee who had fudged the evaluation of the answer sheet to favour certain tainted candidates for extraneous consideration.

20. In course of enquiry the Committee found that discrepancies related to inappropriate evaluation of answer-sheets such as certain questions which were not answered, yet marks were given. For certain questions more marks were awarded and in certain cases despite having given the appropriate marks but while adding the sum total as an aggregate, higher marks were awarded in favour of some candidates who were declared pass and successful in the examination.

21. It is further submitted that it is not a case where there was rampant use of unfair means across the center where the examination was held or the candidates in majority or as a whole were permitted to take recourse to illegal and unfair means while writing the examination.

22. In sum and substance, the submission is that the examination was conducted appropriately but on account of corrupt means adopted by certain members of the Selection Committee, who were involved in evaluation of the answer sheets, they had given inappropriate marks in order to favour some candidates. It is thus urged that the nature of complaint and the material which surfaced after enquiry was done, it

revealed that it was a clear case where the tainted could be distinguished from untainted and it only required revaluation of the answer sheet and in such circumstances, it was not open for the learned Single Judge to have dismissed the writ petition, specially, when the writ court in its judgment dated 05.08.2021 passed in Writ Petition No.20263 (S/S) of 2020 had directed that an exercise be held to distinguish the tainted from the untainted and in pursuance thereof once the Committee had given its finding that the discrepancies were confined to the evaluation of the answer-sheets and was not in context with unfair means used by the candidates while writing the examination which impacted the examination as a whole, hence, it was a clear case where the tainted could be distinguished from the untainted.

23. By dismissing the writ petition the learned Single Judge has given premium to the tainted candidates as a consequence the untainted candidates including the appellants herein have been made to suffer which is contrary to the mandate and the dictum of the Apex Court expressed in **Sachin Kumar and others v. Delhi Subordinate Service Selection Board (DSSSB) and others; (2021) 4 SCC 631.**

24. It is further urged that the learned Single Judge misconstrued the dictum in the case of **Sachin Kumar** (supra) though it has been copiously mentioned in the impugned judgment. It is further urged that the learned Single Judge without dealing with the dictum of the decision in **Sachin Kumar** (supra) and without meeting with the reasons as mentioned in the inquiry reports it has merely upheld the arbitrary decision of the authorities by which fresh examination has been held.



25. Moreover, the order of the authorities for holding fresh examination was clearly in teeth of the orders passed by the writ Court and the contempt Court. By the impugned order, the learned Single Judge has in fact given impetus to the department and the State authorities to overreach the judicial orders passed by the Court which is clearly impermissible in a State governed by the rule of law. For all the aforesaid reasons, it is urged that the impugned judgment passed by the learned Single Judge dated 27.04.2023 is patently erroneous and as such deserves to be set aside and the writ petition deserves to be allowed.

26. Shri Anand Kumar Singh, learned standing counsel for the State-respondents has supported the judgment of the learned Single Judge. He has submitted that on 06.08.2018, vide Office Order bearing No.1009/E-6-Ka, the State Government notified the holding of the Ziledari Eligibility Examination at Lucknow. In furtherance thereof, vide Office Order dated 24.10.2018, a Selection Committee was constituted, who was also required to hold the examination, which was scheduled to be held on 13.11.2018. It is also submitted that after the written examination was held, the candidates were required to appear in an interview which was held between 14.11.2018 to 16.11.2018 and thereafter the results were declared on 26.11.2018.

27. Soon after the examination was held, certain complaints were received indicating that the examination held on 13.11.2018 was mired with serious irregularities and malpractices. Acting upon the same and in order to ensure that the examination is not polluted, a Government Order cancelling the examination was issued on 26.07.2019.

28. It is further submitted that the order cancelling the examination was taken after due investigation in respect of the complaints received. Soon after the complaints were received, action was taken and a three Member Enquiry Committee was set up on 29.11.2018. The said three Member Enquiry Committee submitted its report on 24.01.2019. The said Committee found that the complaints which had been made were having substance and the Members of the Selection Committee were put under suspension. The disciplinary proceedings were also initiated against the Members of the Selection Committee and an enquiry report dated 24.01.2019 was submitted. This was followed by another enquiry report submitted by a two Member Committee constituted on 15.02.2019 which enquired into the irregularities and malpractices said to have mired the Qualification Examination, 2018. Since, the Enquiry Committee found that the allegations of irregularities were prima-facie made out and it vitiated the examination, hence, in the aforesaid backdrop the order dated 26.07.2019 cancelling the examination was issued.

29. It is further urged that the said order dated 26.07.2019 was made the subject matter of Writ Petition No.20263 (S/S) of 2020, which came to be allowed on 05.08.2021 requiring the respondents-authorities to undertake an exercise to determine the tainted candidates from the untainted once.

30. It is further urged that in compliance of the order passed by the High Court dated 05.08.2021, another Enquiry Committee was constituted vide order dated 12.01.2022 to segregate the tainted from the untainted candidates who had appeared in the examination of 2018. The said Enquiry Committee submitted its report dated 29.06.2022 and 08.07.2022 with the

findings that there were discrepancies in the evaluation of the answer-sheets and in large number of cases, there were serious discrepancies regarding the marks which have been awarded and on the basis of the aforesaid findings, it was not feasible to segregate the tainted from the untainted candidates.

31. It is urged that certain candidates had filed a Contempt Application (Civil) No.804/2022 wherein Shri Ashok Kumar Singh had filed an affidavit of compliance though he was not authorized to do so and moreso when the said affidavit was filed just few days prior to his retirement. It is urged that the said affidavit did not take note of the Government Order dated 16.02.2022 by which the then Engineer-in-Chief was directed to furnish a proposal for holding fresh examination and it be informed to the Court.

32. Shri Ashok Kumar Singh, the then Engineer-in-Chief ignoring the Government Order dated 16.02.2022 and without seeking prior approval of the State Government passed the order dated 21.07.2022 and based upon it, he filed the affidavit of compliance without seeking prior approval. Hence, the State submits that no rights could accrue in favour of the parties, who were the petitioners in the contempt petition.

33. In context of the second Contempt Application (Civil) No.2017/2022 that an affidavit was filed indicating the Government Order dated 16.02.2022, 09.09.2022 as well as referring to the discrepancies found in the earlier Enquiry Report dated 29.06.2022 and 08.07.2022 and the constitution of a fresh Committee vide order dated 12.01.2022 which led to taking a decision of holding fresh examination, which later came to be

challenged in WRIT-A No.7022/2022.

34. It is further urged that some of the candidates had filed a writ petition before this Court at Allahabad bearing WRIT-A No.1965/2021, Dharmendra Kumar and 5 others v. State of U.P. and others, wherein an order was passed by the Court directing the authorities to hold fresh examination. Considering the aforesaid facts and circumstances a decision was taken to hold fresh examination between 20th to 25th December, 2022, in compliance of the order passed in WRIT-A No.1965/2021. Despite the aforesaid facts having been brought to the notice of the Contempt Court which did not find favour with the Contempt Court, a direction was issued requiring the Chief Secretary to file his personal affidavit.

35. In compliance of the said order, a personal affidavit of the Chief Secretary stating complete and correct facts was filed before the Contempt Judge and while the aforesaid proceedings remained pending. The appellants in the meantime, filed a writ petition challenging the order dated 25.11.2022 for holding a fresh examination, which needless to say has been dismissed, appropriately.

36. It is urged that in the aforesaid factual background, it would reveal from the records that the Examination, 2018 was vitiated and despite efforts made, in compliance of the order passed by the writ Court dated 05.08.2021, the Committee so constituted to segregate the tainted from the untainted could not give a clear finding rather it came to the conclusion that there was rampant irregularities which were intricate and it vitiated the entire examination and it was not feasible to segregate the tainted from the untainted.

37. It is also urged that it is the obligation of the State to ensure that proper, fair and transparent examination is held so that the persons who take the examinations do not benefit from any irregularities and malpractices. Once the State had issued certain Government Orders and the then Engineer-in-Chief, Ashok Kumar Singh ignoring the said Government Orders had filed an affidavit indicating the compliance without seeking the prior approval of the State Government, hence, the same cannot be binding on the State. The Chief Secretary of the State had furnished his personal affidavit indicating the true and correct facts and all the aforesaid irregularities have been noticed by the learned Single Judge while dismissing the writ petition and there is no illegality in the order passed by the learned Single Judge, hence, the appeal being devoid of merits is liable to be dismissed.

38. The Court has heard learned counsel for the parties and also perused the material on record.

39. At the outset, it may be noticed that the learned Single Judge after noticing the facts brought on record and considering the submissions of the respective parties has recorded his findings as under:-

"46. Selection for public employment must be fair, impartial and in accordance with the provisions of recruitment rules and the mandate of Articles 14 and 16 of the Constitution of India. If there are systematic irregularities, corruption and malpractices, selection process would get vitiated as it would be in violation of the equality clause as enshrined in Articles 14 and 16 of the Constitution of India.

47. If the recruitment process has resulted violation of sanctity and fairness of the process itself, such a recruitment process gets vitiated and ought to be cancelled. Irregularities enlisted hereinabove have been found in successive enquiry reports. The three members committee, which was responsible for conducting the examination, have been found to have indulged in large scale corruption and allowed systematic irregularities and malpractices in the examination. Not only disciplinary proceedings have been directed to be initiated against the members of the examination

committee but the FIR has also been directed to be lodged against them.

48. In my view, result of such an examination cannot be given effect to as it would amount to putting premium on gross and systematic irregularities, malpractices and corruption committed in conducting the examination. This Court should ensure that the recruitment process is fair, impartial and as per the mandate of statutory prescription and equality clause as enshrined under Articles 14 and 16 of the Constitution of India. Any recruitment process to public post should be beyond any suspicion and any malpractice. Corruption in public employment would be against the constitutional goal of Equality of status and of opportunity, a goad enshrined in the preamble of the Constitution. Recruitment has to be fair, transparent and accountable, if there are irregularities and malpractices and illegality in the recruitment process, it would undermine very legitimacy of the recruitment process.

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50. In the present case, as the reports of the committees would suggest that there was no possibility to segregate the candidates, who had indulged in malpractices and deficiencies of serious nature found in the enquiries which had impacted the very legitimacy of the entire examination process, therefore, decision of the Government to cancel the entire examination cannot be held to be irrational or arbitrary. "

40. From the perusal of the aforesaid, it would indicate that the learned Single Judge had noticed the irregularities as mentioned in the successive enquiry reports and agreed with it to the extent that the entire examination was vitiated and it was not feasible to segregate the tainted from the untainted. It also noticed that disciplinary proceedings were initiated against the Committee Members who had got the examination held and it also recommended to lodge FIR against them, hence, such an examination cannot be given effect too, and it dismissed the writ petition.

41. In the aforesaid factual background, it will be worthwhile to examine the matter in question chronologically.

42. On 24.10.2018, a three Member Selection Committee was constituted which comprised of Shri Rameshwar Kumar Mishra, Shri Ramraj and Shri Raj Kumar Gangwar. This three Member Committee was responsible for holding the examination of 2018. The examination of 2018

was held on 13.11.2018 and the interview was held on 14.11.2018 to 16.11.2018 and thereafter the results were declared on 29.11.2018 wherein 318 candidates had qualified, 172 candidates did not qualify, 37 candidates remained absent and the candidature of two were rejected.

43. Certain complaints were received regarding sanctity of the examination so held and in order to examine the validity of the said complaints, an Enquiry Committee was set up by the Engineer-in-Chief who was the Head of the Department by means of the order dated 29.11.2018.

44. An enquiry report was submitted on 24.01.2019 and it *prima-facie* found substance to the complaints and this led to initiation of disciplinary proceedings against the Members of the Selection Committee. The said enquiry report dated 24.01.2019 submitted on 28.01.2019 found the role of Shri Raj Kumar Gangwar as incriminating. Thereafter, another order dated 27.03.2019 was passed by Deputy Secretary directing to lodge an FIR against Shri Raj Kumar Gangwar.

45. A two Member Committee was constituted to examine as to whether the examination stood vitiated in light of the complaints received and in this regard the aforesaid two Member Committee furnished its report on 27.04.2022 and the relevant portion thereof reads as under:-

**"उत्तर पुस्तिकाएं** :- जिलेदारी अर्ह परीक्षा-2018 की लिखित परीक्षा में शामिल परीक्षार्थियों के उत्तर पुस्तिकाओं (कुल 490 अर्थार्थियों में से 486 की उत्तर पुस्तिकाएं समिति के पास उपलब्ध) के परीक्षणोपरान्त यह पाया गया कि इनका मूल्यांकन श्री रामेश्वर मिश्रा, अध्यक्ष/अधीक्षण अभियन्ता एवं श्री रामराज, सदस्य/अधिशासी अभियन्ता द्वारा की गई है। समिति के एक अन्य सदस्य श्री राजकुमार गंगवार द्वारा एक भी उत्तर पुस्तिका का मूल्यांकन नहीं किया गया है। स्पष्टतः समिति के सदस्य श्री राजकुमार गंगवार द्वारा उत्तर पुस्तिकाओं के मूल्यांकन में दुराचार परिलक्षित नहीं होता है।

**साक्षात्कार की अंक तालिका:-** जिलेदारी अर्ह परीक्षा-2018 का साक्षात्कार दिनांक 14-16 नवंबर, 2018 को आयोजित किया गया जिसमें परीक्षा समिति के अध्यक्ष एवं दोनों सदस्यों द्वारा मूल्यांकन किया गया। साक्षात्कार अंक तालिका के परीक्षणोपरान्त यह पाया गया कि समिति के सदस्य श्री राजकुमार गंगवार द्वारा साक्षात्कार में skewed marking नहीं की गयी हैं एवं इनके द्वारा किया गया मूल्यांकन औसत अंक के करीब है एवं सिर्फ श्री राजकुमार गंगवार द्वारा साक्षात्कार में प्रदान किये गये अंक के कारण कोई भी अभ्यर्थी साक्षात्कार में सफल या असफल नहीं हुआ है। स्पष्टतः समिति के सदस्य श्री राजकुमार गंगवार द्वारा साक्षात्कार में अत्यधिक या अत्यल्प अंक देकर पक्षपात करना परिलक्षित नहीं होता है।

अभिलेखों के परीक्षणोपरान्त समिति इस निष्कर्ष पर पहुंची है कि लिखित परीक्षा के प्रश्न पत्र लीक करने उत्तर पुस्तिकाओं के मूल्यांकन में गडबडी तथा साक्षात्कार में पक्षपात कर लिखित परीक्षा एवं साक्षात्कार के परिणाम पर श्री राजकुमार गंगवार, आरोपित सदस्य का दुष्प्रभाव सिद्ध नहीं होता है।"

46. From a perusal of the aforesaid report, it reveals that evaluation of the answer-sheets was done by Shri Rameshwar Kumar Mishra and Shri Ramraj. It further revealed that marking and grant of marks in the interview did not impact the examination.

47. This was further got enquired and another detailed report was submitted by a five Member Committee dated 29.06.2022 and the relevant part of the said report is being reproduced hereinafter for ready reference:-

"निष्कर्ष: प्रमुख अभियन्ता कार्यालय द्वारा उत्तीर्ण घोषित अभ्यर्थियों की सूची एवं जिलेदारी अर्ह परीक्षा आयोजन समिति-2018 द्वारा तैयार किये गये परीक्षाफल (लिखित परीक्षा एवं साक्षात्कार की अंकतालिका) का मिलान, साक्षात्कार की सदस्यवार अंकतालिका एवं परीक्षाफल का मिलान, लिखित परीक्षा की अंकतालिका एवं उत्तर पुस्तिकाओं के प्रथम पृष्ठ पर अंकित किये गये अंकों का मिलान, उत्तर पुस्तिकाओं के प्रथम पृष्ठ पर अंकित कुल अंक एवं हल प्रश्नों के प्राप्तांकों के जोड़ (टेबुलेशन) का मिलान, पूर्णांक से अधिक प्राप्तांक वाले हल प्रश्न, दो बार मूल्यांकित प्रश्न में पाई गई त्रुटियों के आधार पर त्रुटियुक्त उत्तर पुस्तिकाओं वाले अभ्यर्थियों को क्रमशः TABLE-A एवं TABLE-B में दर्शाया गया है। अनेक उत्तर पुस्तिकाओं में मूल्यांकन हेतु अवशेष हल प्रश्न (टेबल संख्या-5) पाये गये हैं। इस स्थिति में समिति किसी भी अंतिम निष्कर्ष पर पहुंचने में असमर्थ है।

अंतिम जांच आख्या आवश्यक कार्यवाही हेतु प्रेषित है। माननीय उच्च न्यायालय के आदेश एवं अवमानना वाद से आच्छादित इस प्रकार में कृप्या अपने ससमय यथोचित निर्णय लेना चाहें।"

48. The record further indicates that under the Chairmanship of Shri Prabhat Kumar Dubey, a five Member Committee, the report dated



08.07.2022 was also furnished wherein after taking note of the situation and in order to rectify the discrepancies, the matter was re-evaluated and the report was submitted which is available on record as Annexure No.SA-9 at running page 340 of the paper-book.

49. From the aforesaid three reports all that can be seen is that there were discrepancies in calculation of the marks that is to say that the answer-sheets were not properly evaluated and marks were not properly granted so much so that marks were given even for certain questions which were not answered. In certain cases some candidates had received less marks but while tabulating their total, higher marks were awarded and discrepancies of like nature were discovered which indicated that it was the Members of the examination Committee who had not evaluated the answer copies properly and the discrepancies which were discovered were of clerical nature and it was not related to leak of questions, use of unfair means by the candidates while writing the examination and in any case it did not impact the entire examination or was such nature that the tainted could not be segregated from the untainted.

50. At this stage, it will be appropriate to take a glance at certain decisions of the Apex Court in context of public examinations. In **B. Ramanjini and others v. State of A.P. and others, (2002) 5 SCC 533**, the Apex Court held as under:-

"8. Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be

shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other. Further, in this case, the first examinations were held on 19-4-1998. The same stood cancelled by the order made on 15-5-1998. Fresh examinations were held on 11-7-1998 and results have been published on 29-7-1998. Interviews were however held on 29-7-1998 (*sic* 27-8-1998) in such cases. The events have taken place in quick succession. The parties have approached the court after further examinations were held and after having participated in the second examination. It is clear that such persons would not be entitled to get relief at the hands of the court. Even if they had not participated in the second examination, they need not have waited till the results had been announced and then approached the Tribunal or the High Court. In such cases, it would lead to very serious anomalous results involving great public inconvenience in holding fresh examinations for a large number of candidates and in Anantapur district alone nearly 1800 candidates were selected as a result of the examinations held for the second time. Therefore, we think, the High Court ought not to have interfered with the order made by the Government on 15-5-1998 in cancelling the examinations and holding fresh examination."

51. Again in **Union of India through the Secretary, Ministry of Home**

**Affairs and others v. Joseph P. Cherian, (2005) 8 SCC 180**, it held as

under:-

"5. We find that the High Court's approach is clearly indefensible. There was no challenge to the cancellation of the result in the writ petition. In fact, the High Court itself noted that on the basis of a single individual's challenge the question whether the examination in its entirety was to be nullified was not examined. Yet it granted relief to the respondent employee with clearly unsustainable directions. The High Court's view appears to be that if unfair means were adopted at one centre, result of other centres should not have been cancelled. This view is wholly indefensible. The Staff Court of Inquiry recorded a finding that there were serious irregularities in the conduct of examination at Jalandhar centre and unfair means on a large scale were adopted. There was leakage of question papers and its transmission to candidates at other centres through modern modes of communication was not ruled out. Having regard to all these factors, the decision to cancel the examination was taken. When the results of 1995 examination have been cancelled, the question of the respondent employee's case being considered on the basis of marks secured by him at the said examination does not arise. As is settled in a long line of decisions, while considering the case of mass malpractice there is no scope of examining an individual's case. (See *Bihar School Examination Board v. Subhas Chandra Sinha* [(1970) 1 SCC 648 : AIR 1970 SC 1269], *Krishan Yadav v. State of Haryana* [(1994) 4 SCC 165 : 1994 SCC (L&S) 937 : (1994) 27 ATC 547 : AIR 1994 SC 2166], *P. Ratnakar Rao v. Govt. of A.P.* [(1996) 5 SCC 359 : AIR 1996 SC 2523], *Kendriya Vidyalaya Sangathan v. Ajay Kumar Das* [(2002) 4 SCC 503 : 2002 SCC (L&S) 582] and *Union of India v. O. Chakradhar* [(2002) 3 SCC 146 : 2002 SCC (L&S) 361 : AIR 2002 SC

1119])."

52. Lately the Apex Court in the case of **Sachin Kumar** (supra) has held as under:-

"35. In deciding this batch of SLPs, we need not reinvent the wheel. Over the last five decades, several decisions of this Court have dealt with the fundamental issue of when the process of an examination can stand vitiated. Essentially, the answer to the issue turns upon whether the irregularities in the process have taken place at a systemic level so as to vitiate the sanctity of the process. There are cases which border upon or cross over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examination or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of malpractices or unfair means. Where a recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrongdoing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrongdoing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrongdoers, the selection of the untainted candidates can be allowed to pass muster by taking the selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in the constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to the norm of equality of opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who have indulged in malpractices and to penalise them for their wrongdoing, it would be unfair to impose the burden of their wrongdoing on those who are free from taint. To treat the innocent and the wrongdoers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles, that it becomes appropriate to advert to the precedents of this Court which hold the field.

36. Over four decades ago, in *Bihar School Examination Board v. Subhas Chandra Sinha* [*Bihar School Examination Board v. Subhas Chandra Sinha*, (1970) 1 SCC 648], a three-Judge Bench of this Court dealt with a case involving a challenge to the decision to cancel the annual secondary school examination in relation to a particular centre in a district in Bihar. The irregularities at the centre were summarised in the following extracts contained in the judgment of this Court : (SCC p. 650, para 5)

“5. The Tabulators of the Hanswadih Centre reported that the percentage of successful examinees was as high as 80% whereas the average at the Arrah, Dalippur Centre was only 50%. They were therefore asked to prepare percentage subject-wise. All the Tabulators submitted these percentages. The matter was referred to the Unfair Means Committee of the Board. The Committee in its turn asked the Moderators to look into all the answer books where the percentage was 80% or more. They reported unfair means on a mass scale. The Chairman then passed an order on 30-8-1969 cancelling the examination in all subjects at the Hanswadih Centre allowing the examinees to re-appear at the Supplementary Examination in September 1969 without payment of fresh fees. The Headmasters of the three schools concerned were also informed by registered letters. The action of the Chairman was placed before the Board at its meeting on 9-9-1969 and was approved. It was stated in the return that a complaint was received from one Satnarain Singh of Jagdishpur, who, however, wrote a letter that he had made no such complaint.”

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39. The decision of a three-Judge Bench of this Court in *Anamica Mishra v. U.P. Public Service Commission* [*Anamica Mishra v. U.P. Public Service Commission*, 1990 Supp SCC 692 : 1991 SCC (L&S) 461] (“*Anamica Mishra*”) involved recruitment to various posts in the educational services of the State of Uttar Pradesh. There was a two-stage recruitment involving a written test and interview. It was found that after the written examination, due to the improper feeding of data into the computer, some candidates who had a better performance in the written examination were not called for interview and candidates who secured lesser marks were not only called for the interview but were finally selected. The entire process was cancelled by the Public Service Commission. Dealing with the situation, this Court observed : (SCC p. 693, para 4)

“4. We have heard the counsel for the parties and are of the view that when no defect was pointed out in regard to the written examination and the sole objection was confined to exclusion of a group of successful candidates in the written examination from the interview, there was no justification for cancelling the written part of the recruitment examination. On the other hand, the situation could have been appropriately met by setting aside the recruitment and asking for a fresh interview of all eligible candidates on the basis of the written examination and select those who on the basis of the written and the freshly-held interview became eligible for selection.”

The case is, therefore, representative of a situation where the cancellation of the entire recruitment process was held not to be justified since there was no systemic flaw in the written test, and the issue was only with regard to calling the candidates for the interview. The situation could have

been remedied by setting aside the selection made after the interview stage and calling for a fresh interview of all eligible candidates. This is the ultimate direction which was issued by the Court.

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45. The Court noted inter alia the decision in *Anamica Mishra* [*Anamica Mishra v. U.P. Public Service Commission*, 1990 Supp SCC 692 : 1991 SCC (L&S) 461] where tainted cases were separated from the non-tainted ones and only where it is found impossible or highly improbable could “en masse orders of termination have been issued”. Hence, in the view of this Court, an effort should have been made to segregate the tainted from the non-tainted candidates. The decided cases were broadly categorised along the following lines : (*Inderpreet Singh Kahlon case* [*Inderpreet Singh Kahlon v. State of Punjab*, (2006) 11 SCC 356 : (2007) 1 SCC (L&S) 444] , SCC pp. 385-86, para 52)

“52. ... (i) Cases where the “event” has been investigated:

(a) *State (UT of Chandigarh) v. Dilbagh Singh* [*State (UT of Chandigarh) v. Dilbagh Singh*, (1993) 1 SCC 154 : 1993 SCC (L&S) 144] , SCC, paras 3 and 7.

(b) *Krishan Yadav v. State of Haryana* [*Krishan Yadav v. State of Haryana*, (1994) 4 SCC 165 : 1994 SCC (L&S) 937] , SCC, paras 12, 15 and 22.

(c) *Union of India v. Anand Kumar Pandey* [*Union of India v. Anand Kumar Pandey*, (1994) 5 SCC 663 : 1994 SCC (L&S) 1235] , SCC, para 4.

(d) *Hanuman Prasad v. Union of India* [*Hanuman Prasad v. Union of India*, (1996) 10 SCC 742 : 1997 SCC (L&S) 364] , SCC, para 4.

(e) *Union of India v. O. Chakradhar* [*Union of India v. O. Chakradhar*, (2002) 3 SCC 146 : 2002 SCC (L&S) 361] , SCC, para 9.

(f) *B. Ramanjini v. State of A.P.* [*B. Ramanjini v. State of A.P.*, (2002) 5 SCC 533 : 2002 SCC (L&S) 780] , SCC, para 4.

(ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded:

(a) *O. Chakradhar* [*Union of India v. O. Chakradhar*, (2002) 3 SCC 146 : 2002 SCC (L&S) 361]

(b) *Krishan Yadav* [*Krishan Yadav v. State of Haryana*, (1994) 4 SCC 165 : 1994 SCC (L&S) 937]

(c) *Hanuman Prasad* [*Hanuman Prasad v. Union of India*, (1996) 10 SCC 742 : 1997 SCC (L&S) 364]

(iii) Cases where the selection was made but appointment was not made:

(a) *Dilbagh Singh* [*State (UT of Chandigarh) v. Dilbagh Singh*, (1993) 1 SCC 154 : 1993 SCC (L&S) 144] , SCC, para 3.

(b) *Pritpal Singh v. State of Haryana* [*Pritpal Singh v. State of Haryana*, (1994) 5 SCC 695 : 1994 SCC (L&S) 1239]

(c) *Anand Kumar Pandey* [*Union of India v. Anand Kumar Pandey*, (1994) 5 SCC 663 : 1994 SCC (L&S) 1235] , SCC, para 4.

(d) *Hanuman Prasad* [*Hanuman Prasad v. Union of India*, (1996) 10 SCC 742 : 1997 SCC (L&S) 364]

(e) *B. Ramanjini* [*B. Ramanjini v. State of A.P.*, (2002) 5 SCC 533 : 2002 SCC (L&S) 780] , SCC, para 4.

(iv) *Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules:*

(a) *Krishan Yadav* [*Krishan Yadav v. State of Haryana*, (1994) 4 SCC 165 : 1994 SCC (L&S) 937]

(b) *Pramod Lahudas Meshram v. State of Maharashtra* [*Pramod Lahudas Meshram v. State of Maharashtra*, (1996) 10 SCC 749 : 1996 SCC (L&S) 1487] wherein appointments had been made without following the selection procedure.

(c) *O. Chakradhar* [*Union of India v. O. Chakradhar*, (2002) 3 SCC 146 : 2002 SCC (L&S) 361] wherein appointments had been made without typewriting tests and other procedures of selection having not been followed.”

(emphasis supplied)

53. A more recent decision of a two-Judge Bench was in *State of T.N. v. A Kalaimani* [*State of T.N. v. A Kalaimani*, (2021) 16 SCC 217 : 2019 SCC OnLine SC 1002] (“*Kalaimani*”). The Teachers Recruitment Board in the State of Tamil Nadu had invited applications for selection to the posts of lecturers in Government Polytechnic Colleges. The written examination was of an objective type and candidates were required to fill up OMR sheets. There were allegations of large-scale malpractices in the written examination involving tampering of the OMR sheets. After re-evaluation, discrepancies were found in the entries pertaining to 196 candidates who were beneficiaries of a fraudulent alteration of marks. A decision was taken to cancel the examination which was conducted for selection to the posts of lecturers as the Board was of the view that there were chances of more malpractices being unearthed at a later stage and there was a serious doubt about the purity of the process. The Division Bench of the High Court held [*A. Kalaimani v. State of T.N.*, 2019 SCC OnLine Mad 4435] that the fabrication of the records pertained only to 196 candidates and when a segregation was possible, the entire examination ought not to be cancelled.

54. In appeal, this Court adverted to the decision in *Inderpreet Singh Kahlon* [*Inderpreet Singh Kahlon v. State of Punjab*, (2006) 11 SCC 356 : (2007) 1 SCC (L&S) 444] as well as the view which was taken in *Gohil Vishvaraj Hanubhai v. State of Gujarat* [*Gohil Vishvaraj Hanubhai v. State of Gujarat*, (2017) 13 SCC 621 : (2018) 1 SCC (L&S) 80] (“*Gohil*”) where it was held : (*A Kalaimani case* [*State of T.N. v. A Kalaimani*, (2021) 16 SCC 217 : 2019 SCC OnLine SC 1002] , SCC para 15)

“15. ... ‘21. Purity of the examination process — whether such examination process pertains to assessment of the academic

accomplishment or suitability of candidates for employment under the State — is an unquestionable requirement of the rationality of any examination process. Rationality is an indispensable aspect of public administration under our Constitution [*Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489]. The authority of the State to take appropriate measures to maintain the purity of any examination process is unquestionable. It is too well settled a principle of law in light of the various earlier decisions of this Court that where there are allegations of the occurrence of large-scale malpractices in the course of the conduct of any examination process, the State or its instrumentalities are entitled to cancel the examination [*Per Chelameswar, J.* : [*Nidhi Kaim v. State of M.P.*, (2016) 7 SCC 615 at para 23 : 7 SCEC 611 : (SCC pp. 639-40)]“23. Even otherwise, the argument of the appellants is required to be rejected for the following reasons : under the scheme of our Constitution, the executive power of the State is coextensive with its legislative power. In the absence of any operative legislation, the executive power could certainly be exercised to protect the public interest. The right of each one of the appellants herein for admission to the medical colleges in the State of Madhya Pradesh is itself an emanation of the State's executive action. No doubt, even executive action of the State can create rights. Unless there is something either in the Constitution or law which prohibits the abrogation or abridgment of rights, it is permissible for the State to do so by executive action in accordance with some specified procedure of law. No doubt, that the overarching requirement of the Constitution is that every action of the State must be informed with reason and must be in public interest. Nothing has been brought to our notice which prohibits the impugned executive action. If it is established that the adoption of unfair means on large scale resulted in the contamination of the entrance examination (PMT) process of successive years, the State undoubtedly would have the power to take appropriate action to protect the public interest. I, therefore, reject the submission of the appellants.”;In *Union of India v. Anand Kumar Pandey*, (1994) 5 SCC 663 : 1994 SCC (L&S) 1235 large-scale cheating occurred in the Railway Recruitment Board Examination, specifically in two rooms of a centre. The Board took a decision to subject the successful candidates from that centre to a re-examination. This was set aside by the Central Administrative Tribunal on the ground that such a decision was taken in violation of the principles of natural justice. It was held that there cannot be any straitjacket formula for the application of the principles of natural justice. This Court did not find any fault with the decision to conduct a fresh examination.;In *All India Railway Recruitment Board v. K. Shyam Kumar*, (2010) 6 SCC 614 : (2010) 2 SCC (L&S) 293, large-scale malpractices surfaced in the written test. The recruitment board ordered a retest, which was challenged in the Central Administrative Tribunal. The Tribunal held that a retest was valid. The High Court reversed invoking the *Wednesbury's* principles of reasonableness. This Court held that in the face of such large-scale allegations supported by reports of the Vigilance Department and CBI, the High Court was wrong in reversing the tribunal's decision.]] . This Court has on numerous occasions approved the action of the State or its instrumentalities to cancel examinations whenever such action is believed to be necessary on the basis of some reasonable material to indicate that the examination process is vitiated. They are also not obliged to seek proof of each and

every fact which vitiated the examination process [*Nidhi Kaim v. State of M.P.*, (2016) 7 SCC 615 see paras 42.1 and 42.2 at p. 649 : 7 SCEC 611] .’ (*Gohil Vishvaraj Hanubhai case [Gohil Vishvaraj Hanubhai v. State of Gujarat*, (2017) 13 SCC 621 : (2018) 1 SCC (L&S) 80] , SCC pp. 628-29, para 21)

It was further held in the said judgment as follows : (*Gohil Vishvaraj Hanubhai case [Gohil Vishvaraj Hanubhai v. State of Gujarat*, (2017) 13 SCC 621 : (2018) 1 SCC (L&S) 80] , SCC pp. 631-32, para 30)

‘30. Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time-consuming process. If it were to be the requirement of law that such identification of the wrongdoers is a must and only the identified wrongdoers be eliminated from the selection process, and until such identification is completed the process cannot be carried on, it would not only result in a great inconvenience to the administration, but also result in a loss of time even to the innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for that matter all the candidates including the wrongdoers) still get an opportunity of participating in the fresh examination process to be conducted by the State.’ ”

56. The decisions in *Railway Recruitment Board [All India Railway Recruitment Board v. K. Shyam Kumar*, (2010) 6 SCC 614 : (2010) 2 SCC (L&S) 293] , *Gohil [Gohil Vishvaraj Hanubhai v. State of Gujarat*, (2017) 13 SCC 621 : (2018) 1 SCC (L&S) 80] and *Kalaimani [State of T.N. v. A Kalaimani*, (2021) 16 SCC 217 : 2019 SCC OnLine SC 1002] all go to emphasise that a recruiting authority is entitled to take a bona fide view, based on the material before it, that the entire process stands vitiated as a result of which a fresh selection process should be initiated. The integrity of the selection process cannot be lightly disregarded by the High Court substituting its own subjective opinion on the sufficiency of the material which has been taken into account by the decision making authority. Undoubtedly, fairness to candidates who participate in the process is an important consideration. There may be situations where candidates who have indulged in irregularities can be identified and it is then possible for the authority to segregate the tainted from the untainted candidates. On the other hand, there may be situations where the nature of the irregularities may be manifold and the number of candidates involved is of such a magnitude that it is impossible to precisely delineate or segregate the tainted from the untainted. A considered decision of the authority based on the material before it taken bona fide should not lightly be interfered in the exercise of the powers of judicial review unless it stands vitiated on grounds of unreasonableness or proportionality."

53. From a perusal of the aforesaid decisions, it would be clear that the Apex Court has clearly held that in what circumstances, the entire examination can be set aside and in cases where the tainted can be segregated from untainted then apparently the entire examination should not be cancelled as in such cases the innocent are also adversely affected



and are treated at par with the wrong doers and that would also be contrary to the spirit of Article 14 of the Constitution of India.

54. Applying the principles as noticed above to the facts of the instant case, it would reveal that the nature of the discrepancies are clearly of such species which falls within the domain of the evaluation. In such circumstances, by getting copies re-evaluated, the entire debacle could be contained. There is no such complaint that the candidates themselves were using unfair means while writing the examination or they previously had the knowledge of the questions which were going to be asked (paper leak) and of such like nature.

55. In the aforesaid backdrop, once the said report was before the Engineer-in-Chief, Shri Ashok Kumar Singh, and on re-evaluation, he found that 331 candidates including the writ petitioners were successful and had filed his affidavit in compliance of the order dated 05.08.2021 passed in Writ Petition No.20263 (S/S) of 2020 cannot be faulted.

56. The submission of the learned standing counsel that Shri Ashok Kumar Singh had furnished affidavit of compliance without seeking prior approval of the State pales into insignificance inasmuch as the order of the writ Court had to be complied with and in light of the report of the Committee which was available, it cannot be said that for filing of an affidavit of compliance prior approval of the State was required.

57. It will be worthwhile to recall that after the order was passed by the writ Court dated 05.08.2021 which was not complied with within the time as mentioned in the order, the petitioners had initiated contempt

proceedings bearing **Contempt Application (Civil) No.804 of 2022**, wherein the Contempt Court on 25.07.2022 had passed the following order which reads as under:-

"Heard learned counsel for the petitioner and Sri Prashant Singh Atal, learned counsel for the respondents.

In furtherance of the order dated 18.05.2022 Sri Ashok Kumar Singh, Engineer in Chief/ Head of Department, Irrigation and Water Resources Department, U.P. Lucknow is present before the Court today.

An affidavit of compliance has been filed by Sri Ashok Kumar Singh wherein in paragraph 11, it has been stated that in compliance of the order passed by the writ court dated 05.08.2021, a full fledged inquiry was held and a total number of 335 candidates have been found eligible for promotion which includes all the 31 petitioners.

It is thus submitted that the order passed by the writ court has been complied with.

In view of the aforesaid, this Court is satisfied that the order passed by the writ Court has been complied with and no further orders are required to be passed. Consequently, the contempt petition stands dismissed. Notices, if any, stands discharged."

58. Despite having filed the said affidavit of compliance, an attempt has been made by the State to resile from the same by taking a plea that Shri Ashok Kumar Singh did not seek prior approval of the State. This too becomes doubtful for the reasons that apparently there was no requirement for the authority under contempt to seek prior approval of the State in filing the said affidavit.

59. It is also relevant to mention that if at all at any subsequent point of time the authorities found that the action of Ashok Kumar Singh was not in accordance with law then nothing prevented the State Authorities to have moved an application for review, recall or even assail the order in an intra-Court appeal or before any superior forum, but the same was not done. Despite facing contempt proceedings, no effort was made by the State-Authorities and its Officers to take legal recourse as may be available to

them in law. The State Authorities continued to flout the writ Court's order and issued the order dated 07.10.2022 for conducting fresh examination.

60. So far as the submissions made by the learned standing counsel that the order dated 07.10.2022 was issued for holding fresh examination was in light of the order passed by the High Court at Allahabad in the case of Dharmendra Kumar And 5 Others v. State of U.P. and Another in WRIT-A No.1965 of 2021 also does not hold much water for the reason that in the case of Dharmendra Kumar certain candidates had merely sought a relief directing the authorities to hold qualifying examination for promotion on the post of Zileदार as early as possible in accordance with the Rules of 1968 and in light thereof, the High Court at Allahabad passed the order which reads as under:-

"Heard Shri Prashant Shukla, learned counsel for the petitioners and learned Standing Counsel for the State respondents.

Petitioner has preferred the present writ petition with the prayer to command the respondents to hold the qualifying examination for promotion on the post of Zileदार forthwith at the earliest as provided in Rule-2 of Appendix-B of the Service Rules 1968.

The petitioners are working as Seench Parvayechhak in the Irrigation Department.

Shri Prashant Shukla, learned counsel for the petitioners submits that as per the prevailing Rules it is paramount responsibility of the Department to conduct the examination for promotion on the post of Zileदार, for which petitioners are fully eligible.

In the facts and circumstances, no useful purpose would be served in keeping the writ petition pending consideration.

Without advertng on the merits of the case, on consent, the writ petition is disposed of asking the respondent/competent authority to conduct the qualifying examination for promotion on the post of Zileदार within three months period, provided that there is no other impediment, and in case petitioners are found fit for promotion, necessary benefits may be provided to them."

61. It is significant to note that the said order was passed on 25.03.2021 and this was much prior to the order which had been passed by the writ

Court dated 05.08.2021 in WRIT-A No.20263 (S/S) of 2020 [Het Ram & Ors. v. State of U.P. & Ors.]. Thus, taking recourse to the said order passed by the writ Court in Dharmendra Kumar for justifying their stand cannot be appreciated inasmuch as the entire scenario had changed after passing of the order dated 05.08.2021 by the High Court at Lucknow.

62. It is in the aforesaid backdrop that the writ Court in the case of **Desh Raj Singh and 4 others v. State of U.P. and others in WRIT-A No.7022/2022** had passed an interim order on 20.10.2022 and the relevant part of the said order reads as under:-

"2. Learned counsel for the petitioners has submitted that the petitioners are working on the post of Irrigation Supervisor (Seench Paryavekshak) in Irrigation Department and are fully eligible and qualified for being promoted to the post of Zileदार. With regard to the promotion an examination was conducted by the opposite parties in 2018 whose result was declared on 26.11.2018. The said result was assailed before this Court by means of writ petition No.20263 of 2020 (S/S) and this Court by means of judgement and order dated 5.8.2021 found that there were serious irregularities in the said examination and allowed the writ petition with direction to the opposite parties for holding full fledged inquiry and weed out ineligible and non deserving candidates. In compliance of the said judgment and order by means of order dated 25.7.2019 an inquiry was conducted and result was declared whereby 335 people including the petitioner were found to be genuine candidates for being appointed on the post of Zileदार. It has further been submitted that subsequent result was also assailed before this Court in WRIT-A No.5315 of 2022 and the petition was dismissed on 24.8.2022 and even special appeal preferred against the said order was also dismissed on 23.9.2022 being Special Appeal No.401 of 2022. The petitioners' counsel submits that the petitioners have been declared to be qualified and selected as per the result declared by the opposite parties on 21.7.2022 and subsequently they have right to be promoted on the post of Zileदार but the opposite parties instead of passing a formal orders for promotion have instead issued notification dated 11.10.2022 for conducting examination for promotion to the post of Zileदार afresh.

3. Learned counsel for the petitioner has further invited the attention of this Court to the order dated 7.10.2022 written by Superintending Engineering, Irrigation Department, 7th Division, Irrigation Work, Lucknow stating that after dismissal of the contempt there is no legal impediment for filling up the "Remaining" vacancies.

4. Learned counsel for that petitioners has submitted that the respondents are at liberty to fill-up the remaining post but they cannot fill up the post on which the petitioners have been selected and in this regard learned Standing counsel was asked to obtain specific instructions as to whether

the proceedings to fill up the remaining post is underway which is evident from the order dated 7.10.2022.

5. Learned Standing counsel, on the basis of written instructions received from Engineer-in-Chief Irrigation, has informed this Court that the proposed examination is only an eligibility examination for promotion to the post of Zileadar and further informed this Court that the process for promotion pursuant to the selections held in 2018 is under active consideration by the respondents.

6. These instructions have been received despite clear query put up by this Court to the opposite parties to inform as to whether the respondents are proceeding to fill up the posts on which the petitioners have already been selected.

7. Learned Standing counsel, on the other hand, has sought two weeks' time to file counter affidavit. In light of the above, the opposite parties may proceed with the promotion of the candidates to the post of Zileadar in accordance with the notification dated 11.10.2022 for the posts other than the posts for which the petitioners have been declared to be selected by means of the order dated 5.8.2021.

8. Considering that according to the written instructions received from the opposite parties, the matter with regard to promotion of the petitioners is still pending, let the said exercise be conducted expeditiously and informed to this Court by the next date of listing."

63. Be that as it may, a Contempt Application (Civil) No.2017 of 2022 was filed, wherein the contempt Court on 28.11.2022 passed the following order which reads as under:-

"Having heard learned counsel for the contesting parties and having perused the record, what emerges is that initially the Writ Court vide judgment and order dated 05.08.2021 in Writ Petition No.20263 (S/S) of 2020 had passed certain directions which, for the sake of convenience, are reproduced below:-

"16. The writ petition succeeds and is allowed with a direction to the respondents to reconsider the claim of the petitioner and other selected candidates for the grant of promotion on the post of Zileadar by holding a fresh full-fledged enquiry to examination and merit of the each and other candidates applied for selection and record specific finding in regard to influence/ mal-practice adopted by one of the members of the selection committee and in case the candidates are found involved in such practice an appropriate and speaking order be passed after affording opportunity of hearing to the petitioners and other candidates of the selection proceeding. The said exercise shall be completed within four months from the date of production of a certified copy of this order.

17. Needless to say that in case the petitioners are found to be genuine candidates after passing the order as directed by this

Court, they shall be granted promotion on the post of Zileदार immediate thereafter. The selection proceeding directed by this Court shall continue after the exercise as directed by way of this order."

When the order of the Writ Court was not complied with, the petitioners were constrained to file Contempt Application (Civil) No.804 of 2022 wherein a compliance affidavit was filed by Sri Ashok Kumar Singh, Engineer in Chief/Head of Department, Irrigation Water Resources Department, Government of U.P., Lucknow, duly bringing on record the orders dated 21.07.2022 whereby it was indicated that an enquiry has been held and a list of 335 candidates was issued who had been found eligible for promotion to the post of Zileदार. On the basis of the said affidavit and the orders dated 21.07.2022, the Contempt Court was satisfied that the order passed by the Writ Court has been complied with and no further orders were required to be passed and accordingly the contempt application was dismissed. Again when the petitioners were not promoted, they were constrained to file instant contempt application in which notice was issued. The respondent was directed to file compliance affidavit vide order dated 15.11.2022 which has now resulted in a compliance affidavit being filed today.

In the compliance affidavit it has been contended that in pursuance to the directions issued by the Writ Court dated 05.08.2021, a committee has been constituted and a final decision has been taken whereby it has been decided to cancel the entire selection which commenced in the year 2018 for the post of Zileदार.

The question which arises is that in the earlier contempt application the respondent had filed an affidavit of compliance of a very senior officer namely the Engineer in Chief/Head of Department duly bringing on record the select list dated 21.07.2022 including the order dated 21.07.2022 whereby it was indicated that after holding of an enquiry in terms of the directions issued by the Writ Court dated 05.08.2021 a list of 335 candidates including the petitioners was being issued and thus the only thing which remained was issuance of the consequential promotion order and the Contempt Court was satisfied with the compliance affidavit filed by the respondent and dismissed the contempt application. Again when the petitioners were not promoted, instant contempt application has been filed in which the respondent now has done a volte face and taken a different stand from what had been taken in the earlier round of contempt proceedings between the parties namely an order dated 25.11.2022 being passed by respondent whereby it has been indicated that in compliance of the order of the Writ Court dated 05.08.2021, a committee has been formed and the examination of Zileदार held in the year 2018 has been cancelled.

The volte face and contradiction in both the orders dated 21.07.2022 filed by means of compliance affidavit in the earlier contempt proceedings and the order dated 25.11.2022 now brought on record by means of compliance affidavit is apparent on record. The earlier contempt proceedings were dismissed on the basis of the compliance affidavit whereby it was indicated that the compliance has been done by issuing a list of selected candidates and now in the second round of contempt proceedings, another order dated 25.11.2022 has been passed indicating that the examination itself has been cancelled. This volte face on the part of respondent and that too a senior official of the State Government cannot be countenanced in any manner. It is also not the case of the respondents in the compliance affidavit filed today that the earlier order

passed by them dated 21.07.2022 was passed by an officer who not competent to do so. Shifting the stand from one contempt application to other with respect to the same order passed by the Writ Court and that too by a senior officer of the State Government rather the Head of the Department and that too before the highest Court of the State itself reflects the sorry state of affairs on the part of the officials of the State Government, as already observed at the very beginning of this order.

Keeping in view the aforesaid discussion, the apparent contradiction between two orders dated 21.07.2022 and 25.11.2022 passed by the respondent read with order of the contempt Court dated 25.07.2022 more particularly when it is the Head of the Department, who was required to pass order in pursuance to the order passed by the Writ Court dated 05.08.2021, this Court has no option but to require the Chief Secretary of the State to file his personal affidavit indicating the contradictions in both the orders and the manner in which the earlier contempt application was dismissed on 25.07.2022 believing the version on the part of the respondent of the order of the Writ Court dated 05.08.2021 having been complied with.

Let the personal affidavit be filed by the Chief Secretary within two weeks. List this case on 16.12.2022.

In case the compliance affidavit is not filed then the Chief Secretary of the State shall appear in person along with records to assist the Court.

Officer present in Court today shall remain present on the next date of listing."

64. In the aforesaid background, the Chief Secretary of the State filed his personal affidavit dated 12.12.2022 which was considered by the Contempt Court in its order dated 21.12.2022 and the relevant part thereof reads as under:-

"12. In pursuance of the said order dated 28.11.2022, Chief Secretary, State of U.P., Lucknow filed affidavit dated 12.12.2022, in which, in para 30, it is averred that the then Engineer-in-Chief, Department of Irrigation and Water Resources, Mr. Ashok Kumar Singh did not seek any prior approval from the State Government before passing the order dated 21.07.2022.

However, on being asked the specific question that under which provision, the approval of the State Government is necessary after the directions issued by the writ Court, it is informed by the learned counsel for the respondent that as the irregularities were committed in the selection of Zileadar Examination, 2018, which was reported to the State Government, therefore, it was obligatory on the part of the Engineer-in-Chief that he would have asked for approval from the State Government.

13. It is well settled by the Hon'ble Apex Court that after the direction of the writ Court, no approval is necessary either from the higher authority or from the State Government for making compliance of the directions of the writ Court. In the case of **Commissioner, Karnataka Housing Board Vs. C. Muddaiah, 2007 SCC Online SC 1093**, the Hon'ble Supreme

Court held that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of law is not complied with or is ignored, there will be an end of rule of law. The same issue has also been dealt by a Division Bench of this Court in somewhat same facts in the case of Dr. Rohit Gupta Vs. Principal, S.N. Medical College, Agra reported in AIR 1995 All. 152, wherein the Court has expressed its deep anguish on conduct of Principal of a Medical College, who has passed an order that he will comply with the order of the Court only when he receives some directions from the State Government.

It is also admitted position that the proceedings of writ petition filed against the order dated 25.11.2022 passed by the respondent before the writ Court has no concern with the order of the writ Court dated 05.08.2021 passed in Writ Petition (S/S) No. 20263 of 2020.

Evidently, the ratio laid down in the case of J.S. Parihar (supra) is not applicable in the present case, as admittedly, in the present case, earlier the order of the writ Court dated 05.08.2021 passed in Writ Petition (S/S) No. 20263 of 2020 was complied with and the Select List was also published vide order dated 21.07.2022.

14. In view of above facts and discussions, the argument of Shri Ramesh Kumar Singh, learned Additional Advocate General that the contempt application is not maintainable, is devoid of merit and is hereby rejected.

15. At this stage, learned Additional Advocate General, again drawing the attention of the Court towards the order dated 25.11.2022 passed by the respondent-contemnor, annexed as Annexure A-21, page 180 of the counter affidavit filed by Mr. Durga Shanker Mishra, Chief Secretary, State of U.P., submits that since gross irregularities were found in the selection, therefore, under compelling circumstances, the order dated 21.07.2022 was withdrawn. Relying on the decision of the Hon'ble Apex Court in the case of **Niaz Mohammad & Ors. Vs. State of Haryana & Ors., (1994) 6 SCC 332**, learned Additional Advocate General submits that, in case, the Court is satisfied that although there is disobedience, but the same was a result of compelling circumstances, then no civil contempt will make out. It is, thus, submitted that the present contempt proceedings could not be proceeded. It is lastly submitted that as the order was passed by the respondent-contemnor is sub-judice before the writ Court in Writ-A No. 8335 of 2022, therefore, the contempt proceedings may be deferred.

16. This Court also does not find any force in the aforesaid argument, as admittedly, when the matter was taken up on 15.11.2022, request was made on behalf of the respondent/contemnor to defer the proceedings for complying the order of the writ Court. However, in the meantime, order dated 25.11.2022 was passed by respondent/contemnor, Mr. Mushtaq Ahmad projecting that the order dated 21.07.2022 was passed without any approval of the State Government and there were gross irregularities in the selection process. Evidently, the present contempt proceeding was being adjourned on the ground that the order of the writ Court dated 05.08.2021 shall be complied. Looking to the earlier action taken by the respondent-authority in Contempt Application No. 804 of 2022, which was dismissed on the ground that the order of the writ Court dated 05.08.2021 was complied with by declaring the result vide order dated 21.07.2022, but the applicants have not been promoted as yet, the prayer for deferment is also hereby rejected."



65. Later on, the Contempt Court, in Contempt Application (Civil) No.2017 of 2022, while framing the charge had observed in its order dated 23.12.2022 as under:-

"6. The writ Court vide order dated 05.08.2021 passed in Writ Petition (S/S) No. 20263 of 2020 directed for holding a full fledged enquiry to examination as well as merit of each candidate applied for selection and record specific finding in regard to influence/mal-practice of one of the member of the Selection Committee. It was also directed that, in case, any candidate is found involved in any such mal-practice, appropriate and speaking order would be passed after affording opportunity of hearing to the applicants.

Admittedly, it is nowhere found that any of the applicant or any candidate was involved in the mal-practice. It is also admitted position that the copies were re-examined and on the basis of report of the Enquiry Committee dated 08.07.2022, affidavit of compliance was filed in the Contempt Application No. 804 of 2022 on 25.07.2022 with the averment that the result has been declared for selected candidates vide order dated 21.07.2022 passed by the then Engineer-in-Chief, Mr. Ashok Kumar Singh. Evidently, the aforesaid order was also communicated to the Principal Secretary of the concerned department and on the basis of the said affidavit of compliance dated 25.07.2022, the Contempt Application No. 804 of 2022 was dismissed.

7. However, since the second part of the order of the writ Court dated 05.08.2021, by which, the writ Court discernibly directed to give promotion to the selected candidates on the post of Zileadar, was not being complied with, the present contempt application has been filed. After notices having been issued, Mr. Mushtaq Ahmad, respondent-contemnor put in appearance through Additional Chief Standing Counsel and on the basis of written instructions dated 14th November, 2022, four weeks' time was prayed for compliance of the directions of the writ Court, However surprisingly, in place of complying the order of the writ Court in letter and spirit, the respondent/contemnor passed the order dated 25.11.2022, by which, the earlier order of Engineer-in-Chief, Mr. Ashok Kumar Singh dated 21.07.2022, which was placed along with the affidavit of compliance before the contempt Court in Contempt Application No. 804 of 2022, has been recalled.

8. In view above facts and circumstances, following charge is framed against the respondent/contemnor under Section 12 of the Contempt of Courts Act, 1971.

"Why the respondent/contemnor, Mr. Mushtaq Ahmad, Engineer-in-Chief/Head of Department of Irrigation and Water Resources, U.P., Lucknow be not punished for willfully flouting the order of the writ Court dated 05.08.2021 passed in Writ Petition (S/S) No. 20263 of 2020, by not giving promotion to the applicants on the post of Zileadar, even after filing of the affidavit of compliance dated 25.07.2022 in earlier Contempt Application No. 804 of 2022; as also passing of the order dated 25.11.2022, by which, the order dated 21.07.2022 passed by the then Engineer-in-Chief of the Department (declaring the result of 335 selected candidates in pursuance of the order of the writ Court dated 05.08.2021), has been recalled despite the prayer having been made by the learned Additional Chief Standing Counsel to comply the order of the writ Court on the basis of respondent/contemnor's written instructions dated 14.11.2022."

9. List this case on 23.01.2023 for order on sentence.

10. On the next date, respondent/contemnor shall appear before this Court. In the meantime, respondent/contemnor may file response on the point of sentence."

66. Considering the entire gamut of facts and material on record of the writ Court including the orders passed in contempt proceedings and upon examining the three reports given by the Committee constituted to examine the sanctity of the examination, this Court finds as under:-

(i) There is no material to indicate that there was any widespread usage of unfair means by the candidates while writing the examination.

(ii) It is an undisputed fact that there was no complaint regarding any paper leak which could adversely affect the examination as a whole.

(iii) The material on record does not indicate that there was any wrongdoing by any of the candidates which had an ill impact on the interview. Rather the Committee investigating the sanctity of the examination found that the interview remained unsoiled.

(iv) The Committee examining the sanctity of the examination found that there were allegations against the individual member of the examination Committee for misconduct and this resulted in widespread anomalies in evaluating and awarding marks to the candidates.

(v) The marking anomalies were of such nature i.e. grant of marks for questions not answered, granting of higher marks than deserved, making incorrect computation of marking and of like nature which

all fall in clerical/arithmetical errors or skewed marking/award of marks. This in any case could be cured upon revaluation and it cannot be said to have adversely impacted the entire examination as a whole so as to make it non-feasible to separate the tainted from the untainted.

(vi) An exercise was held to discern the tainted from the untainted and while doing so the discrepancies in marking was rectified after re-evaluation of the answer-sheets and the result was declared.

(vii) Once all the three reports were before the State Authorities with all facts thereafter there was no reason ascribed as to why the three reports may not be relied upon and despite the finding of the three reports there is no explanation as to what extra material was before the State Authorities which if taken note could unsettle the said findings and could justify taking of a decision to cancel the examination and hold a fresh examination.

(viii) In absence of any such cogent material and reasons, the order impugned in the writ petition cancelling the examination and holding fresh examinations are per se arbitrary and suffers from the vice of *ipse-dixit*. The State Authorities while taking a decision to cancel the examination and holding a fresh examination did not adhere to the principles as laid down by the Apex Court in **Sachin Kumar** (supra); **B. Ramanjini** (supra) and **Joseph P. Cherian**.

67. In this view of the matter and taking note of the observations made by the Apex Court in the various decisions noticed above, this Court comes

to a clear conclusion that the orders passed by the authorities for holding fresh examination was not justified and consequently the reasons for dismissing the writ petitions were not sufficient as it ignored the material on record and it is based on incorrect appreciation of the decision of the Apex Court in **Sachin Kumar** (supra).

68. As a result, the special appeal is allowed. The judgment passed by the learned Single Judge dated 27.04.2023 is set aside. The writ petition filed by the appellants is allowed, the order impugned dated 25.11.2022 bearing No.G-217/ई-6(क)/जिले0अर्ह0परीक्षा and Order No.2764/ई-6(क)/जिले0अर्ह0परीक्षा shall stand quashed. The respondents-authorities are directed to first consider the case of the writ petitioners and such other candidates, who were declared successful in the Ziledari Qualifying Examination, 2018 as per report/result dated 08.07.2022 and the necessary exercise relating to their promotion including passing of necessary orders will be undertaken and completed within three months from the date of this judgment. Thereafter, it will be open for the authorities to proceed and give effect to Ziledari Qualifying Examination 2021 for posts other than the ones which were subject matter of writ petition/special appeal.

69. The connected WRIT-A No.7022 of 2022 shall stand disposed of in terms of the observations made in Para-68 above.

70. There shall be no order as to costs.

**(Jaspreet Singh, J.) (Arun Bhansali, CJ.)**

**Order Date :- 22 November, 2024**  
Rakesh/-