REPORTABLE

2026 INSC 64

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 273 OF 2026
[ARISING OUT OF SLP (CIVIL) NO. 20366/2024]

RAJASTHAN PUBLIC SERVICE COMMISSION, AJMER ... APPELLANT

VS.

YATI JAIN & ORS. ... RESPONDENTS

WITH

CIVIL APPEAL NO. 274 OF 2026
[ARISING OUT OF SLP (CIVIL) NO. 20367/2024]

RAJASTHAN PUBLIC SERVICE COMMISSION, AJMER ... APPELLANT

VS.

AAKRITI SAXENA & ORS. ... RESPONDENTS

WITH

CIVIL APPEAL NO. 275 OF 2026
[ARISING OUT OF SLP (CIVIL) NO. 22025/2024]

RAJASTHAN PUBLIC SERVICE COMMISSION, AJMER ... APPELLANT

VS.

VIVEK KUMAR MEENA & ANR. ... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

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1. Leave granted.

THE APPEALS

2. The three appeals under consideration, presented by the common appellant[1], arise out of separate but similar judgments rendered by a Division Bench of the High Court for Judicature for Rajasthan at Jaipur[2];

[1] Rajasthan Public Service Commission
[2] High Court

hence we propose to decide the same by this common judgment and order.

3. The lead appeal, arising out of SLP (C) No. 20366/2024, questions the judgment and order dated 2nd May, 2024 whereby the appellant's writ appeal[3] was dismissed and the order of a Single Judge dated 23rd August, 2023 allowing the writ petition[4] of the respondent (Yati Jain) was affirmed.

4. The other two appeals, arising out of SLP (C) No. 20367/2024 and SLP (C) No. 22025/2024, also take exception to the judgments and orders dated 2nd May, 2024 of the Division Bench of the High Court which dismissed the appellant's writ appeals[5] carried from the judgments and orders dated 2nd May, 2023 and dated 20th October, 2023 allowing the writ petitions[6] of the respondent (Aakriti Saxena) and the respondent (Vivek Kumar Meena), respectively, and thereby upheld the same.

BRIEF FACTS OF CIVIL APPEAL ARISING OUT OF SLP (C) NO. 20366/2024

5. The dispute stems from an advertisement dated 19th September, 2019 issued by the appellant for recruitment of Junior Legal Officer (JLO) on one hundred fifty-six (156) posts.

6. The result of selection was declared on 15th April, 2021. A provisional reserve list of even date was also prepared by the appellant.

7. Between 7th June 2021 and 10th August 2021, the appellant recommended one hundred fifty-two (152) successful candidates to the

[3] D.B. Special Appeal Writ No. 34/2024
[4] S.B. Civil Writ Petition No. 8926/2022
[5] D.B. Special Appeal Writ No. 889/2023 and D.B. Special Appeal Writ No. 52/2024
[6] S.B. Civil Writ Petition No. 5652/2022 and S.B. Civil Writ Petition No. 14675/2016

Department of Law and Legal Affairs of the State of Rajasthan[7] for issuance of offers of appointment.

8. On 27th January, 2022, the Appointing Authority informed the appellant that six (6) out of the one hundred fifty-two (152) candidates, who were recommended, had not joined. A request was made to recommend more names from the reserve list to fill up the vacancies.

9. Between 19th April 2022 and 22nd April, 2022, the appellant recommended the names of six (6) candidates from the reserve list, which included 4 candidates with ranks from R-1 to R-4, 1 candidate from General Category-EWS (R-23) and 1 candidate from General Category – PWD (Blind) (R-69). Yati Jain, who figured as R-5, did not figure in the list of recommended candidates.

10. Crestfallen, Yati Jain invoked the writ jurisdiction of the High Court in June, 2022 seeking a direction to the authorities to cancel the appointment of one Shri Vikas Kumar (appointed from the original list), who had not joined despite receiving an offer of appointment, and to instead requisition her name from the reserve list.

11. Meanwhile, on 14th July, 2022, the Appointing Authority cancelled the appointment offered to Shri Vikas Kumar. However, the appellant did not recommend the name of Yati Jain to fill up the post remaining vacant upon cancellation of appointment of the said Vikas Kumar.

12. While the matter stood thus, a total of one hundred forty (140) vacancies on the post of Junior Legal Officer was advertised on 5th July, 2023 for recruitment.

[7] Appointing Authority

13. The Single Judge of the High Court, while hearing the writ petition of Yati Jain passed an interim order directing that the post which fell vacant due to cancellation of the offer of appointment of Shri Vikas Kumar shall not be filled up.

14. *Vide* judgment and order dated 23rd August, 2023, the Single Judge allowed the writ petition of Yati Jain by directing the respondents *"to pick up name of petitioner from the reserve list to consider her candidature for appointment on the post of JLO fallen vacant due to non joining of Vikas Kumar pursuant to recruitment initiated vide advertisement dated 19-09-2019"*.

15. Aggrieved by the aforesaid judgment and order, the appellant preferred a writ appeal but remained unsuccessful. The fate of the writ appeal has been noticed hereinabove.

BRIEF FACTS OF CIVIL APPEAL ARISING OUT OF SLP (C) NO. 20367/2024

16. In this appeal, the genesis of the dispute is an advertisement dated 6th July, 2020 issued by the appellant seeking applications for appointment on eleven (11) vacancies in the post of Assistant Statistical Officer (ASO).

17. On 3rd August, 2021, the appellant declared the final result of selection.

18. Recommendation of ten (10) successful candidates was made by the appellant on 13th August, 2021 to the department concerned, i.e. the Agriculture Department, for appointment. It also intimated that seven (7) candidates were placed in the reserve list.

19. One Mr. Sunil Machhera, a candidate who figured in the original merit list and was offered appointment, submitted an application dated 28th

February, 2022 to the effect that he was selected for the Indian Statistical Service, 2021 and that he would not join the post of ASO. Having derived knowledge of such fact, Aakriti Saxena submitted an application to select her from the reserve list where she figured as R-1.

20. Notably, the concerned department had not forwarded any requisition to the appellant for recommending a candidate from the reserve list to fill up the vacancy caused because of non-joining by the said Sunil Machhera.

21. Aggrieved by the inaction to consider her application, Aakriti Saxena approached the High Court with a writ petition on 5th April, 2022.

22. *Vide* the judgment and order dated 2nd May, 2023, the same Single Judge (who allowed the writ petition of Yati Jain) held in favour of Aakriti Saxena and allowed her writ petition by directing the respondents *"to pick up the name of petitioner from the reserve list and to consider her candidature for appointment on the post of ASO against the vacant post, available in the Department due to not joining of Mr. Sunil Machhera the candidate from the main list and shall offer appointment to the petitioner …"*.

23. As noted above, the aggrieved appellant's writ appeal met the same fate as its earlier appeal.

BRIEF FACTS OF CIVIL APPEAL ARISING OUT OF SLP (C) NO. 22025/2024

24. This appeal has its roots in an advertisement dated 18th September, 2013 issued by the appellant seeking applications for appointment on one hundred fifty (150) vacant posts of Junior Legal Officer – 2013-14.

25. Declaration of result was made by the appellant on 23rd November, 2015.

26. A provisional reserve list dated 3rd December, 2015 was also prepared by the appellant.

27. Between 11th December, 2015 and 30th March, 2016, the appellant recommended one hundred forty-seven (147) candidates from the select list to the Appointing Authority for issuance of offers of appointment.

28. On 9th June, 2016, the Appointing Authority requested for recommendations in respect of twenty-seven (27) candidates from the reserve list for appointment.

29. On 8th August, 2016, twenty-seven (27) candidates from the reserve list were recommended by the appellant.

30. Appointment of one recommended candidate, Mr. Raj Kumar Meena, who did not join was cancelled on 9th December, 2016. No requisition was sent by the Appointing Authority to the appellant to recommend any candidate to fill up the vacancy remaining unfilled because of cancellation of appointment of the said Raj Kumar Meena.

31. Vivek Kumar Meena, in the meanwhile, had applied under Article 226 of the Constitution on 17th October, 2016 before the High Court.

32. *Vide* the judgment and order dated 20th October, 2023, the Single Judge allowed the writ petition of Vivek Kumar Meena *"with direction to the respondents to consider the case of the petitioner for appointment on the post of Junior Legal Officer, if he is otherwise found eligible and suitable"*.

33. Significantly, the Single Judge did not give a positive direction for appointment as in the cases of Yati Jain and Aakriti Saxena; instead, required the respondents to consider the case of Vivek Kumar Meena subject to suitability.

34. The writ appeal of the appellant, too, did not find favour of the Division Bench.

WHAT WEIGHED WITH THE SINGLE JUDGES TO ALLOW THE WRIT PETITIONS?

35. We have noted the individual operative directions given by the Single Judges while allowing the three writ petitions. While the writ petitions of Yati Jain and Aakriti Saxena were decided by a common Judge, Vivek Kumar Meena's writ petition came to be decided by another Single Judge.

36. In the process of allowing the writ petitions, the Judges presiding over the respective benches appear to have placed reliance on the decisions of this Court in ***Manoj Manu v. Union of India***[8], ***State of Jammu and Kashmir v. Sat Pal***[9]***, State of Uttar Pradesh v. Ram Swarup Saroj***[10] and ***Purshottam v. Chairman, M.S.E.B.***[11] as well as other Decisions of the High Court. However, though the decision of this Court in ***State of Bihar v. Amrendra Kumar Mishra***[12], which relied on ***State of U.P. v. Harish Chandra***[13], as well as the decision in ***State of Orissa v. Rajkishore Nanda***[14] were cited, the Single Judges preferred not to

[8] (2013) 12 SCC 171
[9] (2013) 11 SCC 737
[10] (2000) 3 SCC 699
[11] (1996) 6 SCC 49
[12] (2006) 12 SCC 561
[13] (1996) 9 SCC 309
[14] (2010) 6 SCC 777

apply the law laid down therein for reasons which do not appear on a reading of their decisions.

IMPUGNED JUDGMENT IN ALL THREE CIVIL APPEALS:

37. The impugned judgments and orders of dismissal of all three writ appeals apart from being rendered on the same date are verbatim similar, except the case numbers and the recruitment cycles.

38. The Division Bench, *inter alia*, held as follows:

> *" …, the learned Single Judge had clearly dealt with the dates of non-joining of the selected candidates and has come to the conclusion that the appellant (sic, writ petitioner) had applied to the Court within a period of six months from the date of non-joining of the candidate from the main select list. State has not preferred any appeal against the order and there is no direction to the appellant in the impugned order. Hence, we do not find any force in the present appeal filed by the RPSC and the same is accordingly, dismissed."*

39. Considering that the Division Bench held the writ appeals to be without any force since the State of Rajasthan did not appeal against the decisions of the Single Judges, there is admittedly scant reasoning on the aspect of merits. However, we have noted that the Division Bench approved the directions of the Single Judges on the ground that Yati Jain, Aakriti Saxena and Vivek Kumar Meena[15] had applied to the Court within a period of six months from the date of non-joining of the candidates recommended for appointment from the select list and, thus, there was no reason to interfere. We have also noted that the Division Bench placed reliance on two previous decisions of the High Court in

[15] the writ petitioners, hereafter, when referred to collectively

State of Rajasthan v. Dr. Shri Kishan Joshi & Ors.[16] and ***RPSC v. Dr. Harish Nagpal & Ors.***[17].

40. Though not expressly dismissed on the ground of lack of *locus standi*, we do find a hint that the "Special Appeals" were not maintainable at the instance of the appellant since the State of Rajasthan had chosen not to appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

41. Appearing on behalf of the appellant, Mr. Samant, learned counsel contended that the Division Bench was wholly incorrect in returning a finding that since the State of Rajasthan had not appealed against the decisions of the Single Judges, the appellant could not have carried the same in appeal. According to him, the appellant is a constitutional functionary having its independent duties and responsibilities. Without a recommendation of the appellant, no candidate either from the select/merit list or from the waiting/reserve list can be appointed. In these cases, without even such recommendation being made by the appellant, relief has been granted which is *per se* illegal. That apart, the Singles Judge of the High Court grossly erred in making the directions in their respective decisions which were impugned in the intra-court appeals and the Division Bench equally erred in not correcting such flawed decisions. Reference was made to several decisions of this Court in support of the point that the appellant's appeals were well-nigh maintainable in law and that the law relating to the duties and

[16] D.B. Civil Special Appeal (Writ) No. 81/2020
[17] D.B. Special Appeal (Writ) No. 554 / 2017

responsibilities of a Public Service Commission, like the appellant, as well as the law on waiting/reserve list and its operation were not borne in mind.

SUBMISSIONS ON BEHALF OF THE WRIT PETITIONERS

42. Mr. K. Parameshwar, learned senior counsel for Yati Jain, submitted as follows:

(i) the stand taken by the appellant strikes at the very object and purpose of maintaining a waiting/reserve list. A reserve list is not an independent or parallel source of recruitment but is intended to operate as a contingency mechanism if vacancies arising from the same cycle of recruitment remain unfilled owing to non-joining of candidates offered appointment. Its relevance arises only upon the complete utilization of the original select list. It is only after appointment orders have been issued to the last candidate in the original list that the reserve list can meaningfully commence operation. Any interpretation to the contrary would render the concept of a reserve list illusory.

(ii) Rule 24 of the Rajasthan Rules, 1981 does not admit of a purely literal or mechanical construction. Computing the six-month validity of the reserve list from the date of forwarding or publication of the original list would frustrate the very purpose for which the rule was enacted. Such an interpretation would allow administrative delay on the part of the State to render the reserve list otiose even before the original list is exhausted, resulting in manifest inequity and prejudice to candidates in the reserve list through no fault of theirs.

(iii) In light of the principle of purposive interpretation, Rule 24 must be construed in a manner that advances the object sought to be achieved.

The mischief sought to be remedied is the non-filling of vacancies arising due to non-joining of selected candidates within the same recruitment cycle. Consequently, the six-month period for operation of the reserve list can only commence from the date on which the last appointment from the original list is made or from the date on which a vacancy arises on account of non-joining. Any other construction would lead to anomalous and unjust consequences.

(iv) On facts, the interpretation canvassed by the appellant leads to a manifestly absurd result. The appointment order to the last candidate in the original list was issued on 31st December, 2021, several months after the Commission had forwarded its recommendations. Had the appointment been issued only a few weeks later, the reserve list, as computed by the appellant, would have expired on 09th February, 2022 even before the original list was fully exhausted. Such a construction would render the reserve list inoperative prior to the emergence of a non-joining vacancy. Upon cancellation of the said appointment, a vacancy would have arisen with no valid reserve list to draw from. The interpretation that furthers the legislative intent of timely filling of vacancies must therefore prevail. Accordingly, the six-month validity of the reserve list must commence from the date of appointment of the last candidate in the original list, and upon his non-joining, the respondent became eligible for appointment.

(v) The writ petition under Article 226 was clearly maintainable in view of the arbitrary and discriminatory conduct of the appellant. While it is settled law that a candidate does not acquire an indefeasible right to appointment merely by being placed in a select or waiting list, it is

equally well settled that the recruiting authority and the State are bound to act in a non-arbitrary manner and cannot treat similarly situated candidates unequally.

(vi) Appellant's conduct is *ex facie* arbitrary. On the one hand, the appellant asserted that the reserve list had expired on a particular date; on the other hand, it itself forwarded names from the same reserve list to the State Government even thereafter. Such conduct amounts to blowing hot and cold at the same time and offends the guarantee of equality under Article 14. Appellant cannot selectively operate the reserve list for some candidates while denying its benefit to others who stand on the same footing as Yati Jain.

(vii) The role of the State Government in granting repeated extensions to the selected candidate, followed by belated cancellation of the appointment, has further compounded the arbitrariness. This administrative indulgence directly prejudiced Yati Jain as the non-joining vacancy, which ought to have been promptly recognised, was allowed to persist until the appellant sought to treat the reserve list as having lapsed.

(viii) Public employment constitutes a material resource of the community. Access to such a scarce public resource is regulated through competitive examinations and merit-based selection. To deny appointment to a meritorious candidate in the reserve list against a non-joining vacancy of the same recruitment cycle, on the basis of arbitrary administrative action, results in substantive inequality. Telling such a candidate to await a future recruitment cycle offers no real

redress, particularly when the vacancy has already arisen and remains unfilled.

(ix) ***Sat Pal*** (supra) was relied on for the proposition that the relevant date for determining the commencement and operation of a reserve list is not the date of preparation of the original list but the date on which the vacancy arises or the last appointment is made.

(x) Appellant lacks institutional *locus standi* to assail the impugned judgment. The constitutional role of a Public Service Commission is confined to conducting the selection process and recommending candidates in accordance with the requisition made by the State. The determination of vacancies, their filling up, and the interpretation adopted by the appointing authority fall within the exclusive domain of the State Government as employer. Where the State itself has accepted the judicial directions and has chosen not to contest them, the appellant cannot claim to be an aggrieved party.

43. On behalf of Aakriti Saxena and Vivek Kumar Meena, similar submissions have been advanced by Mr. Ronak Karanpuria, learned counsel.

(i) Appellant's contention that the reserve list had lapsed after six months is belied by the conduct of the authorities themselves. Even after the alleged expiry of the waiting list, appointments were made, cancellations effected, and vacancies acknowledged by the State Government. Affidavits filed by the State confirmed that several posts continued to remain vacant owing to non-joining of candidates.

(ii) The limitation attached to the operation of a waiting/reserve list cannot be applied mechanically in a situation where vacancies arise

due to non-joining and the appointing authority itself continues to treat the recruitment process as subsisting. Respondents – Aakriti Saxena and Vivek Kumar Meena – cannot be made to suffer for administrative delay or indecision. Had the appointments of the candidates who refused to accept the offers were promptly cancelled, the vacancies relatable to the respondents – Aakriti Saxena and Vivek Kumar Meena – would have arisen well within the prescribed period.

(iii) Respondents – Aakriti Saxena and Vivek Kumar Meena – had submitted representations and invoked legal remedies within time and that their claims cannot be defeated by the inaction of the recruiting agency. The waiting/reserve list remained alive both *de facto* and *de jure*, as evidenced by continued recruitment-related actions undertaken by the State and the appellant.

(iv) The role of a Public Service Commission is recommendatory in nature. Once the State Government, being the appointing authority, repeatedly directed the appellant by communications dated 28th June, 2024, 25th July, 2024, and 02nd August, 2024 to process the respondent's appointment, the appellant could not sit in appeal over such directions.

(v) On equitable considerations, learned counsel submitted that Respondent – Vivek Kumar Meena – has been litigating continuously since 2016 and has now crossed the upper age threshold, entirely due to the pendency of proceedings and not on account of any fault on his part.

(vi) Respondent – Aakriti Saxena – had approached the writ court with due diligence and at the earliest available opportunity. The selected candidate having declined to join on 28th February, 2022, the respondent – Aakriti Saxena – being next in order of merit in the General Category reserve list, submitted representations seeking appointment on 29th March, 2022. The writ petition was thereafter filed on 05th April, 2022, i.e., within a month of the vacancy having been confirmed.

(vii) The orders of the Single Judges on the writ petitions of the respondents – Aakriti Saxena and Vivek Kumar Meena – are well considered and well written; hence, the same were upheld by the Division Bench; and, there being no infirmity in the orders passed by the Division Bench, no interference is called for.

ISSUES:

44. Having heard Mr. Samant, Mr. Parameshwar, and Mr. Karanpuria, we are of the considered opinion that the following issues emerge for our decision:

(i) Whether the appellant is a person aggrieved having *locus standi* to maintain the writ appeals notwithstanding that the State of Rajasthan had not challenged the directions given by the Single Judges by preferring appeals?

(ii) What is a waiting list? When precisely does the right of a wait-listed candidate to be considered for appointment accrues? On facts of these appeals, did the right (if, at all) accrue on and from the date

of refusal to accept the offer by the candidate(s) who were offered appointment or from any prior date?

(iii) If no requisition is received by the appellant from the Appointing Authority or the employer, as the case may be, to fill up a vacancy (resulting from non-joining by a candidate offered appointment) by appointing a candidate figuring in the reserve/waiting list, could the High Court have issued a mandamus to "pick up" the name from the waiting/reserve list for appointment or even to direct consideration of the candidature of a candidate from the waiting/reserve list?

(iv) Whether the impugned judgments and orders of the Division Bench of the High Court, as well as those rendered by the Single Judges, sustainable in law?

ANALYSIS:

ISSUE A - MAINTAINABILITY OF THE SPECIAL (WRIT) APPEALS:

45. An appeal is always a creature of statute. We need not burden our judgment with precedents on this point of law.

46. Suffice it to note, the right of appeal is the right of reaching out to a superior court, invoking its authority to have a relook at the facts vis-à-vis the law applicable and to rectify the errors committed by a court inferior in the hierarchy. It is a very valuable right. Therefore, when the statute confers such a right of appeal, it is open to the person aggrieved to seek correction of the errors committed by the inferior court.

47. While writ appeals are creatures of statutes as well, it occupies a distinctive position within the judicial landscape within a high court. It is

an intra-court appeal where a division bench of two judges may sit in appeal over the decision of a colleague single judge.

48. We may profitably refer to ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[18] where this Court traced the history of writs in the Indian context. It was held:

> **24.** Before the coming of the Constitution on 26-1-1950, no court in India except three High Courts of Calcutta, Bombay and Madras could issue the writs, that too within their original jurisdiction. Prior to Article 226 of the Constitution, under Section 45 of the Specific Relief Act, the power to issue an order in the nature of mandamus was there. This power of the Courts to issue writs was very truncated and the position has been summarised in the *Law of Writs* by V.G. Ramachandran, Vol. 1 (Eastern Book Company). At p. 12, the learned author observed:
>
> > "… The power to issue writs was limited to three High Courts. The other High Courts in India, however, were created by the Crown under Section 16 of the High Courts Act, 1861 but they had no such power. It is necessary to mention that under Section 45 of the Specific Relief Act, 1877, even the High Courts of Madras, Calcutta and Bombay could not issue the writs of prohibition and certiorari or an order outside the local limits of their original civil jurisdiction."
>
> **25.** The power to issue writs underwent a sea change with the coming of the Constitution from 26-1-1950. Now writs can be issued by the High Courts only under Article 226 of the Constitution and by the Supreme Court only under Article 32 of the Constitution. …

49. While the exercise of writs is a power expressly conferred on the high courts by the Constitution, writ appellate jurisdiction is not. Such jurisdiction is conferred either by the Letters Patent or by the statutes relating to the high courts concerned. The power exercised by the high courts under Article 226 is plenary, in the sense that the power is wide and expansive; but it is not unlimited, since such power has to be exercised on certain well-established and well-recognised principles. After all, it is a discretionary remedy. It is the responsibility of the high

[18] (2010) 8 SCC 329

courts as custodians of the Constitution to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere where it is against the social interest and public good.

50. We may now understand the character as well as the nature of power exercisable by an appellate bench of a high court, comprising of two or more judges, when it derives authority either from the Letters Patent or the relevant statute to sit in appeal carried from an order passed by a judge of the same high court in exercise of writ jurisdiction, sitting singly, both on facts as well as law. It is the internal working of the high court which splits it into different 'Benches' and yet the court remains one. A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a "Court of Correction", corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. We draw guidance for this settled legal proposition from the decision of this Court in ***Baddula Lakshmaiah v. Sri Anjaneya Swami Temple***[19]*.*

51. When and how such an appellate power in the intra-court jurisdiction may be exercised? In our considered opinion, exercise of intra-court appellate jurisdiction could be called for if the judgment/order under challenge is palpably erroneous or suffers from perversity; but, it may not be exercised when two views are possible on a given set of facts and one of two views has been taken which is a plausible view.

52. We may only note that in the context of whether a division bench in an intra-court appeal could have remitted a writ petition to the single judge

[19] (1996) 3 SCC 52

for moulding the relief, this Court expressed its reservations in ***Roma Sonkar v. M.P. State Public Service Commission***[20]. It was, however, held in such connection as follows:

> **3.** … It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. …

53. With specific reference to the State of Rajasthan, Section 18 of the Rajasthan High Court Ordinance, 1949 provides for an appeal to the High Court from judgments of Judges of the High Court itself. This, read in conjunction with the Rules of the High Court of Judicature for Rajasthan, 1952, provides for a "Special Appeal" before a Division Bench.

54. However, neither the Statute nor the Rules guide us in determining who may apply for such a "Special Appeal" or a writ appeal.

55. In our considered opinion, the Division Bench has erred in its reasoning. It was of the opinion that since the State has not preferred an appeal and there being no positive direction to the appellant which it was required to comply, the Division Bench did *"not find any force"* in the present appeals. This is in the teeth of various decisions of this Court which we propose to discuss below.

56. First, who can appeal is a fundamental question that we must answer to put this *lis* to rest.

57. A writ appeal is a continuation of the original writ petition. One may make a profitable reference to the decision in ***Committee of***

[20] (2018) 17 SCC 106

Management, Arya Nagar Inter College v. Sree Kumar Tiwary[21] in this regard.

58. Drawing inspiration from the aforesaid proposition, we can conclude that anyone who may file a writ petition would have the *locus standi* to file a writ appeal *albeit* with some caveats.

59. Any discussion on the topic of a "person aggrieved" would be incomplete without reference to the landmark decision of this Court in ***Bar Council of Maharashtra v. M.V. Dabholkar***[22]. There, the meaning of "person aggrieved" as appearing in the Advocates Act, 1961 was decided by ruling as follows:

> **31.** The Bar Council is "a person aggrieved" for these reasons. First, the words "person aggrieved" in the Act are of wide import in the context of the purpose and provisions of the statute. In disciplinary proceedings before the Disciplinary Committee there is no lis and there are no parties. Therefore, the word "person" will embrace the Bar Council which represents the Bar of the State. Second, the Bar Council is "a person aggrieved" because it represents the collective conscience of the standards of professional conduct and etiquette. The Bar Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a Disciplinary Committee is entrusted with such inquiry. Once an inquiry starts, the Bar Council has no control over its decision. The Bar Council may entrust it to another Disciplinary Committee or the Bar Council may make a report to the Bar Council of India. This indicates that the Bar Council is all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession. Fourth, a decision of a Disciplinary Committee can only be corrected by appeals as provided under the Act. When the Bar Council initiates proceedings by referring cases of misconduct to Disciplinary Committee, the Bar Council in the performance of its functions under the Act is interested in the "task of seeing that the advocates maintain the proper standards and etiquette of the profession. Fifth, the Bar Council is vitally" concerned with the decision in the context of the functions of the Bar Council. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics.

[21] (1997) 4 SCC 388
[22] (1975) 2 SCC 702

60. We may at this stage also seek guidance from the eloquent words of Hon'ble R.S. Sarkaria, J. (as His Lordship then was) while speaking for this Court in ***Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed***[23]. The instructive passage reads as follows:

> **13.** This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction.
> …
> **34.** This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter, (see State of Orissa v. Madan Gopal Rungta [1951 SCC 1024 : AIR 1952 SC 12 : 1952 SCR 28] ; Calcutta Gas Co. v. State of W.B. [AIR 1962 SC 1044 : 1962 Supp (3) SCR 1] ; Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa [(1967) 1 SCA 413] ; Gadde Venkateswara Rao v. Government of A.P. [AIR 1966 SC 828 : (1966) 2 SCR 172] ; State of Orissa v. Rajasaheb Chandanmall [(1973) 3 SCC 739] ; Satyanarayana Sinha Dr v. S. Lal & Co. [(1973) 2 SCC 696 : (1973) SCC (Cri) 1002]).
> **35.** The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.
> …

[23] (1976) 1 SCC 671

> **38.** The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved". In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".
>
> **39.** To distinguish such applicants from "strangers", among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person
>
> > "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?"
>
> Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?
>
> …
>
> **48.** In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore he is not a "person aggrieved" and has no locus standi to challenge the grant of the no-objection certificate.
>
> (emphasis ours)

61. The question as to whether the Andhra Pradesh Public Service Commission had the *locus standi* to file a special leave petition before this Court, in the given facts, came up for consideration in ***A.P. Public***

Service Commission v. Baloji Badhavath[24]. This Court had the occasion to observe thus:

> **46.** So far as the question of locus standi of the appellant to file this special leave petition is concerned, we are of the opinion that it has the locus standi. The High Court not only has set aside GOMs dated 31-12-1997 but it has also set aside Notification dated 27-12-2007. If the High Court's judgment is to be implemented, a fresh selection procedure has to be undertaken by the appellant. Furthermore, in terms of Order 41 Rule 4 of the Code of Civil Procedure, the appellate court, in the event, finds merit in the appeal at the instance of one of the respondents may set aside the entire judgment although another respondent had not appealed thereagainst. The Commission had undertaken the task of holding preliminary examination. It had followed the procedure laid down in its notification issued in this behalf and the GOMs issued by the State. It, therefore, could maintain a writ petition.

62. ***Office of the Odisha Lokayukta v. Dr. Pradeep Kumar Panigrahi and Ors.***[25] is another decision where this Court was called upon to decide whether the Lokayukta, who was responsible for conducting the preliminary inquiry and which was interfered with by the High Court, had the *locus standi* to file a special leave petition before this Court. The relevant passage therefrom reads as follows:

> **39.** The further objection raised by the respondents is in reference to the locus standi of the appellant in filing appeal in this Court and in support of his submission, counsel placed reliance on the judgments of this Court in *National Commission for Women* v. *State of Delhi* [(2010) 12 SCC 599] and *M.S. Kazi* v. *Muslim Education Society* [(2016) 9 SCC 263]. In our considered view, the submission is wholly bereft of merit for the reason that the action of the appellant initiated pursuant to order dated 11th December, 2020 for conducting a preliminary inquiry in exercise of powers conferred under Section 20(1) of the Act, 2014 was a subject matter of challenge before the High Court at the instance of respondent no. 1 and if that is being interfered with and the action of the appellant is being set aside under the impugned judgment dated 3rd February, 2021, the appellant, indeed, was a person aggrieved and has a locus standi to question the action interfered with by the Division Bench of the High Court and the only remedy available with the appellant is to question the order of the Division Bench of the High Court by filing an special leave petition in this Court under Article 136 of the Constitution.

[24] (2009) 5 SCC 1
[25] 2023 SCC OnLine SC 17539

63. Moving to a slightly different context, we notice in ***Jatan Kumar Golcha v. Golcha Properties (P) Ltd.***[26] that this Court held it to be well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment.

64. In ***State of Punjab v. Amar Singh***[27], a three-judge Bench of this Court speaking on the general rule as to who can appeal held as follows:

> **29.** …The ordinary rule is that only a party to a suit adversely affected by the decree or any of his representatives-in-interest may file an appeal. Under such circumstances a person who is not a party may prefer an appeal with the leave of the appellate court "if he would be prejudicially affected by the judgment *and* if it would be binding on him as res judicata under Explanation 6 to Section 11". (see Mulla: *Civil Procedure Code*, 13th Edn., Vol. 1, p. 421) …

65. Taking a cue from the aforesaid precedents, to our mind, it is clear that a person aggrieved having *locus standi* to prefer an appeal would be one who is directly affected or impacted by a judgment, order or decision even though the same does not directly require him to do something, or, one, who being a party to a suit, is adversely affected by the decree. To file an appeal, such a person typically needs to show affectation of a legal right or interest, or that he is likely to suffer a legal wrong as a result of its impact. A mere interest or concern in the subject matter decided by the original court would not be enough.

66. It is also relevant to consider whether the party seeking to appeal was a party to the proceedings before the original court. If he was and a

[26] (1970) 3 SCC 573
[27] (1974) 2 SCC 70

decision is given jeopardising his interest, he would necessarily have a right of carrying such decision to be tested in an appeal. It is only in exceptional cases that a party-respondent may be told off at the gates by the appellate court on the ground of lack of affectation of right or interest.

67. Premised on the above discussion, as a general proposition, we summarise the conditions that need to be satisfied before a person is entitled to maintain an appeal. These are:

1) that the appealing party has been a party in the proceedings from which the appeal has arisen;
2) that the definitive and conclusive ruling of the High Court on the rights of the parties in dispute is the subject of the appeal; and
3) that he is a 'person aggrieved', that is, a party who has been *adversely affected* by the determination.

68. Condition (1) supra may, however, stand relaxed in given cases as emphasised in ***Jatan Kumar Golcha*** (supra) and ***Amar Singh*** (supra).

69. Applying the aforesaid principles, we now propose to consider whether the appellant had *locus standi* to appeal notwithstanding that the State of Rajasthan had chosen not to do so.

70. Article 315 of the Constitution lays down that there shall be a Public Service Commission for the Union and one for each State. Appellant, therefore, owes its existence to the Constitution. Under Article 320, it is *inter alia* the duty of the appellant to conduct examinations for appointments to the services of the State of Rajasthan. Also, the appellant has to be consulted by the State of Rajasthan on all matters

referred to in clause (3) of Article 320 and it is the duty of the appellant to advise the State on any matter so referred.

71. The method and manner of conducting the recruitment process and other ancillary matters are generally provided by recruitment rules, which in these appeals are the Rajasthan Legal State and Subordinate Services Rules, 1981[28] and the Rajasthan Agriculture Subordinate Service Rules, 1978[29]. As of necessity, the relevant rule has to be looked into for determining as to when and to what extent any candidate figuring in the waiting/reserve list drawn up by the appellant acquires a right to claim appointment based on his position in such list.

72. Our discussion ought to be taken forward by noticing a passage from the decision of a three-Judge Bench in ***Jatinder Kumar v. State of Punjab***[30], where this Court held:

> **12.** The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability, varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission. The selection has to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the

[28] Rajasthan Rules, 1981
[29] Rajasthan Agriculture Rules, 1978
[30] (1985) 1 SCC 182

> Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz. bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus.

73. What stands out from the above passage is that although the recommendations made by a Public Service Commission are not binding and hence, may or may not be accepted by the Government of the State, one thing is clear: the latter has no authority to appoint anyone not recommended by the former.

74. Regard being had to the nature of duties and functions of the appellant and that the State could only appoint such candidates as are recommended by the appellant, no claim for consideration/appointment could have been possible without the writ petitioners being recommended by the appellant and through a process by which it is way-laid. If a direction to the State violates a certain statutory rule, why should the appellant not be considered an aggrieved person? Concomitantly, in our considered opinion, a direction to the State of Rajasthan to appoint a candidate from the waiting list who has not been recommended for appointment does give the appellant a legal peg for a justiciable claim to hang on.

75. In any event, there is one other feature that we have noticed from the orders of the Single Judges. Ultimately, while disposing of the writ

petitions, the Single Judges did not direct the State of Rajasthan and/or its officers only to implement its orders; on the contrary, directions were given to the "respondents" in the writ petition to act in a particular manner. Appellant being one of such "respondents" and if the State of Rajasthan, acting in compliance with the orders had requisitioned the names of the writ petitioners from the appellant and the appellant were to refuse to make any recommendation on the ground that the waiting list has lapsed or on any other valid ground, it would be a clear case of contempt. Thus, the Division Bench fell in error in holding that the directions of the Single Judges were not for the appellant before us to comply.

76. We are, therefore, constrained to hold that the appellant did fit in the category of a person "aggrieved" by the orders of the Single Judges of the High Court and did have the *locus standi* to approach the Division Bench for the reasons discussed above.

77. The writ petitioners have relied on the decision in ***A.P. Public Service Commission v. P. Chandra Mouleesware Reddy***[31] to contend that the appellant has no *locus standi* since there has been no direction to conduct a fresh selection process. We find that this decision is not applicable in the present case. In that case, only ten (10) of the nineteen (19) proposed vacancies were filled due to the mistake of the State which it accepted. It did not challenge the order of the competent Tribunal. As the order of the Tribunal was not found to be unjustified, the High Court of Andhra Pradesh refused to interfere therewith. Since

[31] (2006) 8 SCC 330

the Public Service Commission was not required to carry out any fresh exercise to comply with the direction of the Tribunal and since the State had already accepted its mistake, observations were made in such context that it did not have *locus standi*.

78. In ***P. Chandra Mouleesware Reddy*** (supra), it has not been laid down that only when a Public Service Commission is directed to conduct a fresh selection process, it would acquire the *locus standi* to appeal against such direction. The present appeals do not present a comparable situation and hence, the relied on decision is of no help to the writ petitioners.

79. The question of maintainability of the "Special Appeals" before the Division Bench is, thus, answered in favour of the appellant.

ISSUES B, C AND D - ON MERITS OF THE RIVAL CLAIMS:

80. These issues are addressed together since they are inter-related.

A WAITING LIST

81. What is a waiting list? What is the extent of right that could be claimed by a wait-listed candidate for securing an appointment? For answering this question, one may immediately read the decision of a three-Judge Bench of this Court in ***Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat***[32]. Relevant extracts from it read as follows:

> **8.** Coming to the next issue, the first question is what is a waiting list?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary?; and lastly how long can it operate? These are some important questions which do arise as a result of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is a list of

[32] 1994 Supp (2) SCC 591

eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.

(emphasis ours)

82. ***Gujarat State Dy. Executive Engineers' Assn.*** (supra) was cited with approval in ***Surinder Singh v. State of Punjab***[33]. This Court observed, and we say rightly, that waiting lists are not perennial sources of recruitment and that candidates on the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected does not join and the waiting list is still operative.

83. In ***Rakhi Roy v. High Court of Delhi***[34], once again this Court reiterated that a waiting list cannot be used as a reservoir to fill up vacancies which come into existence after issuance of notification / advertisement.

84. The rationale behind preparing fresh select lists and not operating stale lists was considered by this Court in ***M.P. Electricity Board v. Virendra Kumar Sharma***[35]. While allowing the appeal carried by the employer from the decision of the High Court of Madhya Pradesh, this Court had this to say:

> **5.** Any scheme for selection will depend upon the terms on which selections are made. In the present case, there is a scheme as provided in the circular dated 9-12-1968 and that circular also provided for the panel to be valid/current for a particular period namely one year. After that period, the list would lapse and fresh panel has to be prepared. If that is the scheme, none of the decisions relied upon by the learned counsel for the respondent would be of any assistance. The High Court is also not justified in relying upon the decision in *Shivsingh case [(1988) 1 MPWN 24]* inasmuch as the scheme of appointment was entirely different. Moreover the validity/currency of panel was for a particular period; that is a salutary principle, behind that Rule so that after the selections are made and appointments to be made may take long time, it is possible that new candidates may have become available who are better or more qualified than those selected, and if they are appointed it would be in the best interests of the institution. Hence we do not think there was any justification for the High Court to have interfered in the matter and directed appointment of the respondent. The order made

[33] (1997) 8 SCC 488
[34] (2010) 2 SCC 637
[35] (2002) 9 SCC 650

by the High Court is set aside and the writ petition filed by the respondent shall stand dismissed.

(emphasis ours)

85. A similar case such as the present is the one decided by this Court in ***U.P. Public Service Commission v. Surendra Kumar***[36]. It would be useful to reproduce below what was ruled by this Court:

> **12.** Having heard the learned counsel on both sides, we have perused the order dated 18-5-2018 passed by the High Court and other material placed on record. For the purpose of operating wait-list, the Government of Uttar Pradesh has issued instructions from time to time. It is clear from the various government orders that wait-list period is valid only for a period of one year. Though requisition is made for making selection for 178 number of posts, but the appellant Commission, after declaring results of the examination, has made initial recommendation for substantive number of posts i.e. 156 posts vide letter dated 12-8-2010. It appears that the said list is prepared by including candidates who have submitted all the requisite documents within the period prescribed. Further recommendations were also made, but there is no reason for not computing the period of one year from 12-8-2010. When recommendations were made for substantive number of posts on 12-8-2010, we are of the view that period of one year for operating wait-list is to be computed from 12-8-2010 but not from the last recommendation made for one post, vide letter dated 28-8-2012. The reason for restricting 156 names in the initial recommendation vide letter dated 12-8-2010, is explained in Para 11 of the counter-affidavit filed before the High Court.
>
> (emphasis ours)

86. The key aspects of a waiting list, in relation to service law disputes, that can be deduced from the aforesaid decisions is this:

(i) a waiting list is normally prepared after the select/merit list is drawn;

(ii) it would include candidates who have qualified the recruitment examination but are not so meritorious such that they can be immediately appointed on the number of vacancies advertised;

[36] (2019) 2 SCC 195

(iii) such list would operate like a merit-based queue for vacancies that remain unfilled after offers of appointment given to the candidates in the select/merit list are not accepted;

(iv) a waiting list has a limited validity period;

(v) validity period of a waiting list depends on the recruitment rules and should no such period be mentioned, it can *bona fide* be operated till the next advertisement is issued without, however, violating provisions in such rules, if any, requiring recruitment process to be initiated either semi-annually or annually; and

(vi) an opportunity to a candidate in the waiting list for securing appointment arises only when vacancies remain unfilled after the process of appointing candidates from the select/merit list is over and hence, it is regarded as a procedural outcome which is part of a structured process rather than a fortuitous circumstance.

87. Quite often, appointing authorities have to justify in course of proceedings before a court of law its refusal to appoint candidates figuring in the waiting list. Broadly, two situations emerge depending upon the reaction of the selected candidate upon receiving an offer of appointment. The first situation is, he may not accept the offer within the permitted time and the offer gets cancelled. If the waiting list is alive on the date of cancellation, there is no reason why the candidate figuring at the top of such list should not be offered appointment. An acceptable reason has to be provided in support of non-appointment by the appointing authority, because a public employer has no license to act arbitrarily. The second situation arises when the selected candidate upon

receiving an offer of appointment accepts such offer, joins the post but resigns immediately or some time thereafter. This could again result in emergence of two situations. The first is, when the resignation takes place during the validity period of the waiting list. In such a situation, the candidate next in line can legitimately be offered appointment, provided the waiting list is alive. Again, acceptable reason has to be assigned to justify non-appointment. However, upon resignation happening at a point of time when the waiting list is no longer alive, there is nothing much that the candidate can legitimately expect owing to his/her position in the said list.

88. The canvas would be a bit different when the selection of candidates and drawing up of the select/merit list followed by preparation of the waiting list is by a Public Service Commission. Here, the recommendations have to be preceded by requisitions. Even though cancellation of appointment could have been effected during the period the waiting list is alive, unless a requisition is made by the appointing authority, such a Commission may not be bound to recommend any candidate from the waiting list. Each case, therefore, has to be adjudicated based on the peculiar facts as well as the governing rules.

89. Having noticed what a waiting list means and to what extent a wait-listed candidate has any right, courts have to bear in mind the law laid down by the Constitution Bench of this Court in ***Shankarsan Dash v. Union of India***[37] that a candidate included in a select/merit list does not have an indefeasible right of appointment even if a vacancy exists.

[37] (1991) 3 SCC 47

90. On a conspectus of the decisions of this Court governing the field of a select/merit list as well as waiting list, as understood in service jurisprudence, the law seems to be well-settled that when a candidate included in a select/merit list has no indefeasible right of appointment, it would be too far-fetched to think that a candidate in the waiting/reserve list would have a better right than a candidate in the select/merit list. We, thus, hold that a wait-listed candidate has no right of appointment, much less an indefeasible right, except when the governing recruitment rules permit a small window authorizing appointments therefrom in the specified exceptional circumstances and the appointing authority, for no good reason, denies or refuses an appointment or the reason assigned therefor is found to be arbitrary and/or discriminatory and that too, when the waiting list has not expired. What should be given primacy, therefore, is the nature and extent of right prescribed by the relevant rules.

DECISION ON THE CLAIMS OF THE WRIT PETITIONERS

91. Whether or not a claim of a candidate, who figures in a waiting/reserve list ought to succeed or not must be tested bearing in mind the facts of each particular case. Much depends on the date when the select/merit list is drawn up together with the date of preparation of the waiting list, the date on which names are requisitioned from a Public Service Commission by the appointing authority of the State and the period of validity of such list, as ordained by the relevant recruitment rules.

92. This segment of our analysis must begin with noticing the relevant rules framed by the State of Rajasthan. Rule 24 of the Rajasthan Rules, 1981

and Rule 21 of the Rajasthan Agriculture Rules, 1978 are identically worded. We quote Rule 21 below:

> **21.** Recommendations of the Commission.- The commission shall prepare a list of the candidate whom they consider suitable for appointment to the posts concerned and arranged in the order of merit. The Commission shall forward the list to the Appointing Authority:
> Provided that the Commission may to the extent of 50% of the advertised vacancies, keep names of suitable candidate on the reserve list. The commission may, on requisition, recommend the names of such candidates in the order of merit to the appointing authority within six months from the date on which the original list is forwarded by the Commission to the Appointing Authority.
> (emphasis ours)

93. Although neither Rule 24 nor Rule 21 in so many words stipulate that the life of the reserve list would expire six months after the date the original list is forwarded by the appellant to the appointing authority, it does not confer any power on the appellant to forward the list thereafter either. Meaningfully construed, particularly having regard to user of the modal verb "may" twice in the same provision, we hold that not only is it the discretion of the appellant to prepare a reserve list, it is also in its discretion to forward names of candidates from the reserve list upon receiving a requisition in that behalf. However, exercise of the discretion not to forward names of candidates from the reserve list has to be supported by valid reasons.

94. It is noted that the Department of Personnel, Government of Rajasthan, had issued a series of circulars clarifying the legal position governing the operation of reserve lists in direct recruitment through the Rajasthan Public Service Commission.

(i) By circular dated 19th January 2001, the Department clarified that a reserve list, permissible up to 50% of the advertised vacancies,

is not an independent source of recruitment but is confined to the selection for which it is prepared, operable only to meet contingencies of non-joining of selected candidates and strictly within six months from the date on which the original recommendation is forwarded by the Commission to the Government. It was further clarified that vacancies arising after a selected candidate has joined and subsequently resigned are future vacancies and that, upon initiation of a fresh recruitment process, the earlier selection and reserve list lapse.

(ii) By a subsequent circular dated 13th January 2016, the Department clarified that where the original recommendation is forwarded in parts or upon revision, the six-month period for operating the reserve list shall be reckoned from the date of dispatch of the last part of the original recommendation, provided the recruitment process has not attained finality or the resultant vacancies have not been carried forward into a subsequent recruitment cycle. In such cases, the six-month period would similarly commence from the date of transmission of the final recommendation.

(iii) Finally, the Department of Personnel, by its circular dated 26th April 2018, clarified that for the purposes of determining when a fresh recruitment process commences, the date of holding of the next examination shall be treated as the date of initiation of the fresh process. Consequently, once the examination for the subsequent recruitment is held, the earlier selection process and its reserve list stand lapsed by operation of policy.

95. Law is well settled that executive instructions may supplement, but not supplant, statutory rules and should be subservient to statutory provisions. A profitable reference may be made to the decision of this Court in ***Union of India v. Ashok Kumar Aggarwal***[38] in this regard.

96. In any event, these are clarificatory circulars which cannot override the statutory rules.

97. It would not be inapt, at this stage, to recapitulate the bare facts leading to invocation of the writ jurisdiction of the High Court by the writ petitioners.

(i) Yati Jain invoked the writ jurisdiction sometime in June, 2022. However, it is noticed that upon declaration of result of selection on 15th April, 2021 and preparation of a provisional reserve list on the same date, names of one hundred fifty-two (152) candidates from the original list was forwarded on 7th June, 2021 to the Appointing Authority. The last recommendation was made by the appellant on 10th August, 2021. In light of a meaningful construction of Rule 24, bearing in mind the decision in ***Surendra Kumar*** (supra), the reserve list could remain alive and effective for six months from 7th June, 2021, i.e., till 6th December, 2021. If an extended life were to be given, at the highest, the reserve list (if six months were counted from 10th August, 2021) could remain alive till 6th February, 2022. Thus, no candidate in the reserve list, in view of Rule 24, could legitimately claim a right to be recommended for appointment beyond the statutorily

[38] (2013) 16 SCC 147

prescribed limit of six months. However, merely because one candidate did not join service and his offer of appointment was cancelled on 14th July, 2022, such cancellation could not have afforded any ground for any candidate from the waiting/reserve list to claim that he/she ought to be recommended as if such list continued to remain alive on the said date. The writ petition of Yati Jain was, therefore, presented at a period of time when the reserve list was no longer valid. Notably, candidates figuring in the reserve list were recommended, between 19th April, 2022 and 22nd April, 2022 pursuant to requisition dated 27th January, 2022. Requisition from the Appointing Authority to recommend names from the reserve list having been received by the appellant within six months from 10th August, 2021, the delay on the part of the appellant to recommend names of candidates from the waiting/reserve list could not have operated to their detriment. Yati Jain, thus, had no right in law to claim that her name should have been recommended by the appellant once the appointment of the said Vikas Kumar was cancelled on 14th July, 2022. The High Court, in our opinion, was, therefore, completely in error in counting the period of six months for validity of the reserve list from 22nd April, 2022.

(ii) Insofar as Aakriti Saxena is concerned, it is observed that result of selection was declared on 3rd August, 2021 and recommendation of candidates figuring in the select/merit list was made by the appellant on 13th August, 2021. She approached the

writ court on 5th April, 2022. The six-month validity period of the reserve list, therefore, ought to have been counted from 13th August, 2021 and not from the date of cancellation of appointment offered to the said Sunil Machhera. As noted above, the concerned department did not even requisition any name from the appellant for filling up the vacancy caused by reason of cancellation of appointment of the said Sunil Machhera. Here too, the Single Judge erred in counting the period of six months from the date of cancellation of appointment of the said Sunil Machhera.

(iii) Vivek Kumar Meena also does not stand on substantially firmer ground. Initially, names were recommended by the appellant between 11th December, 2015 and 30th March, 2016. Pursuant to requisition dated 9th June, 2016 received from the Appointing Authority, candidates from the waiting/reserve list were recommended on 8th August, 2016. It is true that in terms of Rule 24 of the Rajasthan Rules, 1981, the reserve list had expired and outlived its utility on 8th August, 2016. In any event, names from such expired list were recommended which is sought to be made the sheet anchor of the claim of Vivek Kumar Meena for appointment, who presented his writ petition on 17th October, 2016. The Single Judge, while disposing of the writ petition of Vivek Kumar Meena, found himself bound by the decisions of Division Benches of the High Court but was cautious in not directing that the name of Vivek Kumar Meena be "picked up" from the waiting/reserve list realising that the same had expired long

back; hence, a direction for consideration of his candidature followed swayed more by recommendations made from the expired list. This was plainly not permissible.

98. Claim of parity having been urged pointing to the six (6) and twenty seven (27) candidates who were recommended from the reserve list beyond expiry of its life, we need to consider the same now. Such a claim is not sustainable for two reasons: (i) no challenge has been laid to their recommendations and consequent appointments and (ii) no person can claim "negative equality" under the Indian Constitution.

99. The immortal words of B.P. Jeevan Reddy, J. (as His Lordship then was) in the decision in ***Chandigarh Admnistration v. Jagjit Singh***[39] still echoes to answer the claim raised by the writ petitioners. The relevant passage reads as follows:

> **8.** We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult

[39] (1995) 1 SCC 745

to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course — barring exceptional situations — would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)

(emphasis in original)

100. A profitable reference may also be made to the decision in ***State of Odisha v. Anup Kumar Senapati***[40], wherein it was held as follows:

> **39.** It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid have been released under the 1994 Order as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed.
>
> (emphasis ours)

[40] (2019) 19 SCC 626

101. Perpetuation of illegality ought to be shunned by any Court of law. This forms the basis for denying the plea of negative equality; a view that has clearly been reiterated very recently in ***Tinku v. State of Haryana***[41] as follows:

> **11.** The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea. The court will not compel the authority to repeat that illegality over again. If such claims are entertained and directions issued, that would not only be against the tenets of the justice but would negate its ethos resulting in the law being a causality culminating in anarchy and lawlessness. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction. Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification.
>
> (emphasis ours)

102. Law being too well-settled, the illegality in recommending some of the candidates figuring in the reserve list could not have been made the basis for issuance of a writ of mandamus citing Article 14 of the Constitution.

103. Quite apart, there is one other serious flaw which the Single Judges failed to notice. The writ petitioners did not invoke the writ jurisdiction within the six months' time period during which the reserve list would have been alive and effective. In fact, the writ petitions were presented after expiry of such period. What would be the effect thereof? Can any benefit accrue in their favour even though the writ petitions were

[41] 2024 SCC OnLine SC 3292

presented at a time when, for all intents and purposes, the reserve lists was dead and ineffective?

104. The answers to such questions are not far to seek. In ***Harish Chandra*** (supra), this Court had the occasion to consider whether candidates figuring in a merit list, which had expired on the date they approached the high court seeking mandamus, could have complained of breach of any legal right arising out of their non-appointment. It was held thus:

> **9.** Coming to the merits of the matter, in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules the conclusion is irresistible that a select list prepared under the Recruitment Rules has its life only for one year from the date of the preparation of the list and it expires thereafter. Rule 26 is extracted hereinbelow in extenso:
> ***
> **10.** Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the writ petitioners. Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4-4-1987 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist. In the course of hearing the learned counsel for the respondents, no doubt have pointed out some materials which indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned counsel appearing for the appellants submitted that in some cases pursuant to the direction of the Court some appointments have been made but in some other cases it might have been done by the appointing authority. Even though we are persuaded to accept the submission of the learned counsel for the respondents that on some occasions appointments have been made by the appointing authority from a select list even after the expiry of one year from the date of selection

> but such an illegal action of the appointing authority does not confer a right on an applicant to be enforced by a court under Article 226 of the Constitution. We have no hesitation in coming to the conclusion that such appointments by the appointing authority have been made contrary to the provisions of the Statutory Rules for some unknown reason and we deprecate the practice adopted by the appointing authority in making such appointments contrary to the Statutory Rules. But at the same time it is difficult for us to sustain the direction given by the High Court since, admittedly, the life of the select list prepared on 4-4-1987 had expired long since and the respondents who claim their rights to be appointed on the basis of such list did not have a subsisting right on the date they approached the High Court. We may not be understood to imply that the High Court must issue such direction, if the writ petition was filed before the expiry of the period of one year and the same was disposed of after the expiry of the statutory period. In view of the aforesaid conclusion of ours it is not necessary to deal with the question whether the stand of the State Government that there existed one vacancy in the year 1987 is correct or not.
>
> (emphasis ours)

105. Plainly, therefore, the writ petitions could not have been entertained having regard to the dates of its presentation. On such dates, the reserve lists had expired and none of the writ petitioners figuring in such lists could claim any right to seek a mandamus of the nature issued by the Single Judges.

106. Much of what Mr. Parameshwar has argued fails to impress us because none of the writ petitioners subjected Rule 24 of the Rajasthan Rules, 1981 or Rule 21 of the Rajasthan Agriculture Rules, 1978 to any challenge. Without challenging Rule 24/Rule 21 and on the face of such rule not generating any absurd result, we are inclined to read the same literally and not in the manner Mr. Parameshwar would like us to read it.

107. We have noted the submissions advanced on behalf of the writ petitioners in substantial detail. Such submissions proceed on a fallacious understanding of the law relating to a waiting/reserve list. We might sound harsh but solely based on the result of selection the reality

is that, the candidates who figure in a waiting/reserve list are not the best crop of aspirants applying for selection. If the appointing authority has valid reasons not to appoint candidates from the waiting/reserve list and sets up whatever defence, which is not found to be unreasonable or arbitrary, a writ court having regard to the discretion that must be conceded to the appointing authority to select the best talent for appointment would be loath to interfere with such a decision and not command, by a mandamus, to appoint candidates figuring in the waiting/reserve list.

108. The line of judicial precedents noticed above suggest that even a candidate figuring in the select/merit list has no indefeasible right of appointment. Viewed from that stand point, we repeat, a candidate figuring in the wating list cannot claim a better right than those who find place in the select/merit list. He/she, therefore, can claim only as much as the governing rules relating to recruitment enable or permit, more particularly when the life of a waiting/reserve list is limited.

109. Having regard to the facts and circumstances present before us, we are of the firm view that the first of the two Single Judges of the High Court has completely erred in holding that Yati Jain *"had subsisting right of consideration for her candidature on merit against the post of JLO fallen vacant due to non-joining of Vikas Kumar on the date of filing petition, and thereafter for six months from 14-7-2022"*. Similar such findings have been returned in Aakriti Saxena's writ petition where the Single Judge held that her right accrued on 28th February, 2022, i.e., the date when the said Sunil Machhera did not join service. Yet another similar

finding was recorded while disposing of the writ petition of Vijay Kumar Meena by the other Single Judge that name from the reserve list should have been requisitioned when the said Raj Kumar Meena did not join service and his appointment was subsequently cancelled on 09th December, 2016.

110. Rule 24 of the Rajasthan Rules, 1981 and Rule 21 of the Rajasthan Agriculture Rules, 1978 admit of no confusion and clearly envisage that a candidate figuring in the reserve list, comprising names of candidates half the number of vacancies advertised may be recommended within six (6) months from the date on which the original list is forwarded by the appellant to the Appointing Authority/concerned department. Such prescription, in given cases, could reasonably be stretched for counting six months from the date of last requisition made by the appellant provided the select/merit list itself has life on such date and is, therefore, valid and effective; but, in no case can such period be counted from the date a selected candidate expresses disinclination to accept the offer of appointment, which happens to be beyond the six-month statutorily prescribed period. If one were to approve the approach taken by the Single Judges, no selection process would ever attain finality. The six-month limitation incorporated in the applicable rule is designed precisely to bring about a quietus to the process of selection.

WHY THE RATIO OF THE RELIED UPON DECISIONS DO NOT APPLY

111. In ***Manoj Manu*** (supra) this Court held the action of the Union Public Service Commission not to forward the names of the appellants from the reserve/supplementary list arbitrary and discriminatory. It was also held

that non-forwarding of names from the reserve list may not be justified, especially when there is a specific requisition by the appointing authority therefor. The relevant passage from the said decision reads as follows:

> **9.** It can be clearly inferred from the reading of the aforesaid that it is not the case where any of these persons initially joined as Section Officer and thereafter resigned/left/promoted, etc. thereby creating the vacancies again. Had that been the situation viz. after the vacancy had been filled up, and caused again because of some subsequent event, position would have been different. In that eventuality UPSC would be right in not forwarding the names from the list as there is culmination of the process with the exhaustion of the notified vacancies and vacancies arising thereafter have to be filled up by fresh examination. However, in the instant case, out of 184 persons recommended, six persons did not join at all. In these circumstances when the candidates in reserved list on the basis of examination already held, were available and DoPT had approached UPSC "within a reasonable time" to send the names, we do not see any reason or justification on the part of UPSC not to send the names.

112. What distinguishes ***Manoj Manu*** (supra) in the present appeals is this. Appellant recommended names from the reserve lists as and when requisitions were received from the Appointing Authority/department concerned and appointments were also offered to such recommended candidates but insofar as the writ petitioners are concerned, they sought relief because some candidate figuring in the select list did not accept the appointment when offered and the Single Judges proceeded to grant relief under the impression that the validity of the reserve list has to be reckoned from the date the appointed candidate refused to join.

113. Paragraph 11 of the decision in ***Sat Pal*** (supra) appears to have been relied on by the Single Judges, wherein it has been observed as follows:

> **11.** In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate when offers of appointment have been issued

> to those emerging on the top of the merit list. The existence of a waiting list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate after the vacancies for which the recruitment process has been conducted have been filled up. In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil), Grade II for which the recruitment process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly filled up, it cannot be disputed that Trilok Nath who had participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil), Grade II on 22-4-2008. The aforesaid offer was made consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22-4-2008, because the vacancy was offered to Trilok Nath on 22-4-2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23-8-2011 (extracted above), that the waiting list was valid till May 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, insofar as the present controversy is concerned.

Although the above observations seem to aid the writ petitioners, we also find observations in paragraph 16 to the following effect:

> **16.** <u>It is not as if the pleas raised at the hands of the appellants are not fully legitimate.</u> In the facts and circumstances of this case, for reasons which would emerge from our instant order, we would decline to invoke the jurisdiction vested in us under Article 136 of the Constitution of India, for debating and deciding the technical pleas advanced by the appellants. We would rather invoke our jurisdiction under Article 142 of the Constitution of India for doing complete justice in the cause in hand. Entertaining the instant appeals would defeat the ends of justice for which the respondent Sat Pal had approached the High Court. Entertaining the objections filed by the appellants would result in deviating from the merits of the claim raised by the respondent Sat Pal, before the High Court.

114. Reliance placed by the High Court on ***Sat Pal*** (supra) seems misplaced. We could be not quite right but the opening two sentences of paragraphs 11 and 16 of ***Sat Pal*** (supra), which we have underlined in the excerpts

therefrom, do not align with each other. Even otherwise, relief was ultimately granted to the respondent in exercise of power conferred by Article 142 of the Constitution. We, therefore, do not read ***Sat Pal*** (supra) as laying down a binding precedent.

115. In ***Ram Swarup Saroj*** (supra), the writ jurisdiction of the High Court of Allahabad was invoked when the panel was alive. This Court declined interference with the order of the said high court because validity of the panel expired during pendency of litigation and more so when vacancies were available for making appointment.

116. ***Ram Swarup Saroj*** (supra) was a case where the court was approached when the panel was alive. It requires no emphasis that if a litigant approaches the writ court with a grievance of not being offered appointment from a panel when such panel is alive and if the same (panel) expires during the time the writ petition is pending, that is a situation over which the litigant cannot have any control; and, he cannot be put to a disadvantage. The right to relief must relate back to the date the litigant entered the portals of the writ court, if the litigant satisfies such court that he has been illegally denied an appointment; and, in such a case, it is open to the court to make such order that the justice of the case demands and to set things right. Here, the writ petitioners did not approach the writ court when the waiting/reserve lists were alive. Hence, ***Ram Swarup Saroj*** (supra) does not aid them.

117. Heavy reliance was placed on paragraph 4 of the decision in ***Purshottam*** (supra) by the Single Judges. We reproduce the same hereunder:

> **4.** In view of the rival submission the question that arises for consideration is whether a duly-selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature.

118. However, the facts on consideration whereof the aforesaid view was taken is relevant. Purshottam, the candidate, undisputably was selected for the post of Assistant Personnel Officer meant for a Scheduled Tribe category. He had produced the certificate of the Magistrate indicating that he belongs to 'Halba' caste, which is undoubtedly a Scheduled Tribe. However, the employer in accordance with the procedure prescribed referred his case to the Caste Scrutiny Committee for verification. The said committee being of the opinion that the appellant does not belong to Halba caste denied him the right to be employed notwithstanding his selection for the post in question. The said order of the Scrutiny Committee was upheld in appeal but a writ petition being carried, the High Court of Bombay came to the conclusion that the appellant does belong to the Halba caste and therefore he was kept illegally out of employment. The High Court of Bombay, therefore, directed the

employer (Maharashtra State Electricity Board) to consider the case of the appellant for appointment to the post of Assistant Personnel Officer for which he had been duly selected. After the said judgment, the appellant approached the authority but the authority not having given the appointment in question, he again moved the High Court of Bombay. By the impugned judgment, the High Court of Bombay was persuaded to accept the contention of the employer that, in the meantime, somebody else has been appointed to the post and as such there is no vacancy and further, in terms of Regulation 29, the panel of selected persons in which the appellant was included has expired and, therefore, there is no legal right of the appellant to be enforced with by issuance of a mandamus.

119. The facts in ***Purshottam*** (supra), as noticed, makes the position clear that it arose from a case where he was illegally denied appointment on account of the so-called decision of the screening committee. Once the High Court of Bombay reversed the decision of the screening committee, his right to be appointed could not have been taken away on the ground either of expiry of the panel under Regulation 29 or that of non-availability of post, some other person having been appointed.

CONCLUSION

120. We, therefore, reach the irresistible conclusion that the impugned judgments and orders of the Division Bench of the High Court, upholding those of the Single Judges under challenge, are liable to be set aside for the reasons assigned; also, the judgments and orders of the Single

Judges being wholly incorrect, the same too cannot sustain. The same are set aside.

121. Our sympathies are with the writ petitioners but the law being what it is, we hold that they may not be appointed on any of the posts for which they competed.

122. The appeals are, accordingly, allowed. No costs.

EPILOGUE

123. From our combined experience on the Bench, we may safely observe that a substantial number of service-related disputes pending across the country are aggravated by protracted and recurring litigation, resulting in a state of perpetual flux for many candidates across the country. The judiciary would do well to remain circumspect of these practical realities, and interpret service rules in a manner that furthers the very object of a selection process, that is, the selection of the most suitable candidates from suitable candidates for appointment in a timely manner.

.....J.
(DIPANKAR DATTA)

.....J.
(AUGUSTINE GEORGE MASIH)

New Delhi;
January 15, 2026.