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ANNEXURE P-23

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH (NAHARLAGUN)

WP(C) No. 475 (AP) of 2018

Shri Neelam Talum & Ors.

... Petitioners.

Vs.

Arunachal Pradesh Public Service Commission & Ors.

... Respondents.

Advocates for the petitioners: Mr. A Hela
Mr. M. Linggi.

Advocate for the respondents: Mr. A. Apang,
Sr. Advocate, SC APPSC.

WP(C) No. 486 (AP) of 2018

Kulenso Pul & Ors.

... Petitioners.

Vs.

The State of Arunachal Pradesh & Ors.

... Respondents.

Advocates for the petitioners: Mr. S. Mow
Mr. M. Opo
Mrs. N. Nada
Mr. M. Molo



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Mr. S.D. Loda

Advocate for the respondents: Mr. A. Apang,
Sr. Advocate, SC APPSC.

WP(C) No. 636 (AP) of 2018

Remi Mize & Ors.

... *Petitioners.*

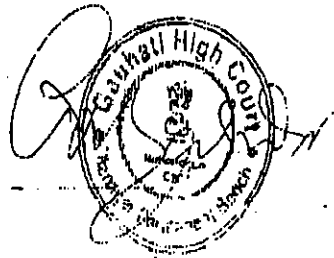
Vs.

Arunachal Pradesh Public Service Commission & Ors.

... *Respondents.*

Advocates for the petitioners: Mr. D. Panging
Mr. V. Jamoh
Ms. D. Tamuk
Mr. M. Doji
Ms. E. Perme
Mr. M. Gibi
Mr. G. Basar
Mr. O. Tayeng
Mr. Marge D
Mr A. Modi
Mr. D. Jhony

Advocates for the respondents: Mr. A. Apang,
Sr. Advocate, SC APPSC
Mr. R. Sonar
Mr. L. Tapa



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Mr. R. Taku
Mr. T. Devi
Mr. H. Bapu

WP(C) No. 604 (AP) of 2018

Shri Tazing Taggu & Ors.

... *Petitioners.*

Vs.

Arunachal Pradesh Public Service Commission & Ors.

... *Respondents.*

Advocates for the petitioners:

- Mr. N. Ratan
- Mr. K. Loya
- Mr. T. Taggu
- Mr. R. Ngomle
- Mr. M. Ninu
- Mr. B. Tajik
- Mr. O. Sitek
- Mr. B. Murtem
- Mr. D. Panging
- Ms. D. Tamuk
- Mr. M. Gibi
- Mr. Marge D

Advocates for the respondents:

- Mr. A. Apang,
- Sr. Advocate, SC APPSC
- Mr. R. Sonar
- Mr. L. Tapa



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Mr. T. Taku

Mr. T. Devi

Mr. H. Bapu

!!! BEFORE !!!

HON'BLE MR. JUSTICE NELSON SAILO

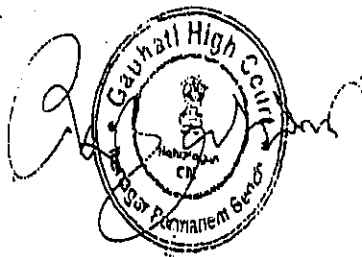
Dates of Hearing : 20th & 21st June, 2019 and
24th to 27th June, 2019.

Date of Judgment : 16th September 2019

JUDGMENT AND ORDER (CAV)

~~This order will dispose of all the 4 (four) writ petitions WP(C) Nos. 475 and 486 of 2018 are filed by the petitioners alleging various anomalies and irregularities committed in the Arunachal Pradesh Public Service Combined Competitive Preliminary Examination - 2017 (the Prelims). WP(C) No. 475 of 2018 covers alleged anomalies in various subjects while WP(C) No. 486 of 2018 is in respect of Commerce subject only.~~

2. WP(C) Nos. 636 and 604 of 2018 on the other hand are filed by the candidates who were successful in the Prelims but were prevented from appearing in the Main Examination (the Mains) due to the prevailing situation at the relevant time. Since consideration and determination of these 2 (two)

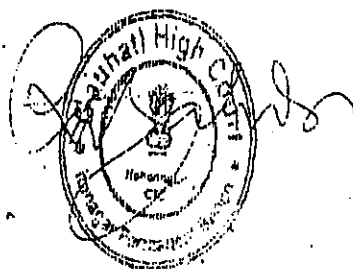


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writ petitions will only arise depending upon the outcome in the first 2 (two) writ petitions, WP(C) Nos. 475 and 486 of 2018 are therefore being taken up for consideration first.

3. Be it stated at the outset that this Court vide Order dated 14.11.2018 passed in WP(C) Nos. 475 and 486 of 2018, directed the Vice Chancellor, Rajiv Gandhi University (the RGU), Doimukh to constitute an Expert Committee comprising of a panel of 5 (five) eminent faculty members to examine the irregularities alleged in the 2 (two) writ petitions in the conduct of the Prelims by the Arunachal Pradesh Public Service Commission (the Commission) and to submit the report before this Court in a sealed cover within a period of 45 days from the date of receipt of a certified copy of the Order. The said Order however, was put to challenge by the Commission before a Division Bench of this Court in W.A. No. ⁴⁶⁰ 359 of 2018 and the Division Bench vide an interim Order dated 26.02.2019, stayed the Order dated 14.11.2018 pending consideration of the appeal. It was also observed by the Division Bench that the pendency of the appeal will not be a bar for the writ Court to consider the writ petitions on merit and in accordance with law.

4. Mr. Niloy Dutta, the learned Advocate General, Arunachal Pradesh referring to the Order dated 26.02.2019 passed in W.A. No. 359 of 2018 submits that the writ appellate Court was of the view that the interim Order



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dated 14.11.2018 was passed by this Court even before arriving at a definite conclusion on merits in the writ petitions and therefore, the same was stayed.

He submits that while doing so, the appellate Court did not debar the writ Court from considering the writ petitions on merit and in accordance with law.

As such, there is no impediment for this Court to consider the writ petitions.

5. The issues involved in WP(C) No. 475 and in WP(C) No. 486 of 2018 being similar, the factual matrix of the case as projected by the petitioners in WP(C) No. 475 of 2018 is being referred to hereunder for brevity and convenience.

6. The Governor of Arunachal Pradesh in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India framed the Arunachal Pradesh Public Service Combined Competitive Examination Rules, 2001 (the Rules of 2001) which came into force w.e.f 02.03.2001 to regulate recruitment to the said Service. The Commission as per the Rules of 2001 is to hold a combined Competitive Examination in two stages viz; Prelims and Mains Examinations as prescribed thereunder. The Mains comprises of two components, i.e., written examination and interview.

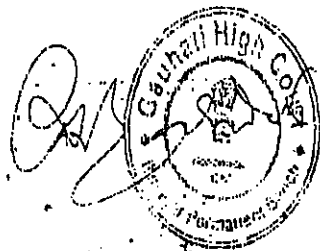
7. The Commission vide an Advertisement issued under Memo No. PSC-R(A)/09/2016 dated 09.05.2017 invited applications for admission to the Prelims for filling up 57 posts in various categories as mentioned in the



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Advertisement. Thereafter, the number of posts were increased vide Addendums dated 25.05.2017, 20.06.2017, 17.09.2017, 25.10.2017 and 28.05.2018 taking the posts to 111 but later, reduced to 105 posts. The petitioners submitted their respective application by selecting the optional subject of their choice and then, sat for the Prelims held on 26.11.2017 at 14 examination centers.

8. However, after the Prelims was conducted, a number of representations were filed before the Commission, alleging mass copy pasting from unreliable websites, errors in questions papers, out of syllabus, unsealed questions papers, lack of moderation etc. It was also represented that there were several anomalies, discrepancies and ambiguities in questions and optional answers, which prejudiced the interest of candidates. The Commission therefore, conducted an inquiry into the complaints and upon finding that there were anomalies, the Prelims held on 26.11.2017 was cancelled vide Order dated 15.12.2017 (Annexure-3). Thereafter, a notice vide Memo No. PSC-R(A)/09/2016 (VOL-I), dated 24.04.2018 (Annexure-4) was issued notifying 29.07.2018 as the date for re-conducting the Prelims and the candidates were informed to use the admit cards issued to them earlier. Prelims was accordingly, re-conducted on 29.07.2018. However, anomalies similar to the previous ones, crept in again and the aggrieved candidates submitted a number of representations which included 3 separate



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representations filed by candidates of Commerce, Civil Engineering and Geography optional subjects on 30.07.2018, 30.07.2018 and 01.08.2018 (date of receipt) respectively before the Chairman and the Secretary of the Commission. The Commission on receiving the representations took the opinion of the panel subject experts on the 3 optional subjects and they rendered their opinions through email, admitting that there were 30, 49 and 3 questions in Geography, Commerce and Civil Engineering respectively which were out of syllabus. The Commission accepted the opinion and dropped the identified questions in the 3 optional subjects and after allotting marks on pro-rata basis, declared the results on 02.08.2018.

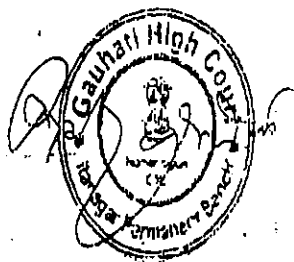
9. Thereafter, a representation was filed by 76 students who had opted Geography as their optional subject on 10.08.2018, alleging technical error/anomaly in Geography Series 'C'. On the basis of their representation, the Commission constituted a Six Member Committee to verify and rectify the technical/machine error in Geography 'C' Series. The report said there was technical/machine error in Geography 'C' Series, and the Commission again being convinced declared the second phase result on 16.08.2018, in which all the 76 students were found qualified for the Mains.

10. Again on 21.08.2018, another representation was filed by candidates praying for constitution of an Expert Committee, headed by a Senior Professor



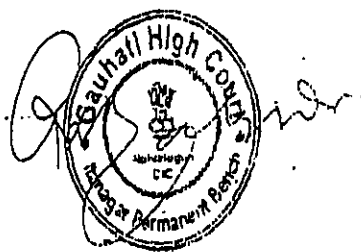
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to look into their grievances. They prayed that they be given compensatory marks for all the questions or the examination in Commerce subject to be re-conducted and if not, they should be allowed to appear in the Main Examination pending redressal of their grievances. However, as the Commission did not consider their prayer, the Commerce students got their papers checked by senior Professors of the RGU. Upon finding that there were as many as 100 questions out of syllabus, they approached this Court by filing WP(C) No. 417 of 2018. The writ petition was disposed of with a direction to the respondent authority concerned to dispose the representation dated 20.08.2018 (21.08.2018) by a reasoned and speaking order. As was directed, the Commission then disposed the representation vide Order dated 24.09.2018. However, during the pendency of WP(C) No. 417 of 2018, a representation dated 03.09.2018 was filed before the Governor as well as before the Secretary of the Commission by some of the candidates, praying for the Prelims to be conducted again but as the same was not considered, WP(C) No. 475 of 2018 was then filed with a prayer for the constitution of an Expert Committee. That is how Order dated 14.11.2018, directing the Vice Chancellor of RGU to constitute an Expert Committee to look into the matter and to submit a report in a sealed cover within a time frame as stated earlier came to be passed.



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11. Mr. A. Hela, the learned counsel for the petitioners in WP(C) No.475 (AP) of 2018 submits that after the Prelims was re-conducted on 29.07.2018, the Commission declared the results on 02.08.2018 i.e., within three days time because after the representations by three different optional subject candidates was submitted, it found all the representations to be legitimate and the anomalies to be true. The Commission being aware of the fact that more representations may be forthcoming, declared the results in three days time so that if any representation is filed by any other candidate, it will be in violation of Clause 28 of the Arunachal Pradesh Public Service Commission Rules of Procedure & Conduct of Examination Guidelines 2012 (the 2012 Guidelines) as it provides that no representation/complaint will be entertained after the declaration of results. The learned counsel submits that thereafter, 76 students of Geography optional paper who were given 'C' Series question paper and who did not qualify, filed their representation on 10.08.2018 under the influence of the All Arunachal Pradesh Student Union (AAPSU), alleging that there were anomalies/technical errors in answer keys in 'C' Series question paper. The Commission then on 14.08.2018, constituted a six (6) member Expert Committee comprising of 1 Controller of Examination, 2 Section Officers, 1 Computer Programmer and 2 Technical Experts vide an Order dated 14.08.2018 to verify the technical/machine errors only. Referring to the Speaking Order dated 24.09.2018, the learned counsel submits that the



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stand of the Commission is that the grievances regarding correction of Geography optional paper of 'C' series is completely different from the issue raised by the Commerce candidates. In fact, while addressing the technical/machine error in respect of 'C' series of Geography optional paper, the Technical Experts verified and checked all other optional papers including commerce optional paper to see if there were similar errors but no error was found. Accordingly, the Technical Experts certified that they verified all other papers and found them to be correct. Thereafter, on 16.08.2018, the second phase result was declared, declaring all the 76 Geography students qualified for the Mains.

12. Mr. A. Hela, the learned counsel submits that all the above actions have collectively been termed by the Commission as the action of an expert committee in order to manipulate the petitioners as well as the Court. He submits that the Commission in fact has never constituted any expert committee and that the grievances of the petitioners can be well appreciated from the representation filed by them on 03.09.2018 before the Governor of the State and the Secretary of the Commission [ANNEXURE-10 (Series)] on behalf of candidates of all the optional subjects. Through the representation, they have clearly pointed out the anomalies in all the optional subject including act of plagiarism, mass copy and paste from single/one source, out of syllabus questions in all subjects, incorrect questions, spelling errors,



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question with wrong options, lack of moderation, no normalization of marks of diverse subjects (e.g. Mathematics and English), violation of statutory rules and not maintaining transparency in conducting such prestigious examination. The learned counsel submits that as for the nature of examination by the Six Member Expert Committee, the same was purely and only to verify the technical/machine mistakes.

13. Mr. A. Hela further submits that the Commission is absolutely silent on the contentions and grievances raised in the representation dated 03.09.2018. There is no mention about the same anywhere in the affidavit-in-opposition to WP(C) No. 475/2018, I.A(C) No. 199/2018, Writ Appeal No. 359/2018 or in the Reasoned and Speaking order dated 25.09.2018. The Reasoned and Speaking Order was specifically to redress the issues raised by the Commerce students in their representation dated 20.08.2018. He submits that the petitioners after seeing the findings of the Commission in Geography, Commerce and Civil Engineering consulted Professor and Assistant Professors of the State and Central Universities to verify as to whether there were anomalies in the questions of the remaining 19 optional subjects. Consequently, while few of them certified, others orally informed the petitioners that they found anomalies in all the optional subjects. It was only thereafter that the petitioners filed their representation and then the writ petition before this Court i.e., WP(C) No. 475/2018.



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14. Mr. A. Hela further submits that after filing of the WP(C) No. 475/2018, the petitioners filed I.A. No. 199/2018 in which the petitioners pointed out the findings of the Apex Court and High Courts on invoking of '*Wednesbury Principle*' also known as '*Wednesbury Unreasonableness*'. He submits that Dr. Rajendra K. Babu and Dr. Otem Padung, are senior Professors who have been teaching Commerce to Graduates, PGs and Ph.D scholars and they have earned themselves a name in the field of education. Similarly, Professor Dr. Kiran Kumar, Head of Geography Department is also a distinguished Professor in the subject. They having noticed anomalies in the questions set on the subject, their opinion ought to be considered for better resolution of the case. The learned counsel further submits that the alleged committee report presented before this Court and which was also shown to the counsels for the petitioners includes the name of only four Professors i.e. 2 Professors of Commerce subject, 1 of Civil Engineering and 1 of Geography. On the other hand, the Commission claims to have consulted or have taken opinion of Subject Experts in all the 22 subjects. There were total 76 Geography students of Series 'C', who filed representation dated 10.08.2018 through AAPSU and remarkably, all of them got selected for the Mains. The learned counsel submits that such action itself is in violation of the 2012 Guidelines.

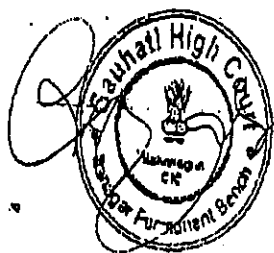
15. Mr. A. Hela further submits that the allegation of wrong questions, mass copy pasting from single sources or units, wrong answer keys,



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each other and exchange answers keys and thereby, resulting in the selection of candidates from the such centers to be comparatively higher than the other centers. The petitioners somehow could procure two affidavits of the students of particular examination centers affirming and declaring the double seating arrangements at Two Examination Centers. The affidavits are of Bijay Gara S/o Tabi Gara, Roll No. 112852 with Blue Mount, Daporijo as the examination center. The other is by Olam Jamoh S/o Taben Jamoh, Roll No. 114638 with the Examination Center as JN College, Pasighat. The two results declared by the Commission on 02.08.2018 and 16.08.2018 shows that a total 128 students were selected as qualified candidates from the said examination centers. This, he submits only amounts to violation of Clause 26 (ii) and (viii) of the 2012 Guidelines. He submits that the result declared quite clearly shows that students bearing simultaneous/alternate roll numbers have qualified as successful candidates and therefore, the matter should be investigated upon to find out whether the students bearing alternate roll numbers have marked wrong answers similarly or not or in the alternative, a fresh examination should be re-conducted.

17. Mr. A. Hela submits that for students belonging to far flung areas it was not at all possible to file representation within the stipulated time. No notification inviting representation was issued and therefore, the students got the opportunity of filing a combined representation only on 03.09.2018,



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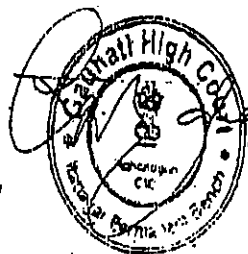
pointing anomalies in all the 22 optional subjects. The learned counsel submits that although I.A 199/2018 was filed seeking stay of the Mains scheduled to be held on 10.11.2018 but it was allowed to be held resulting in protests/dharnas created by the students. As a result, a large number of students, 650 to 700 approximately, out of the 1339 students could not give the Mains leading to multiplicity of proceedings, as the qualified candidates who could not give Mains filed petition for the Exams to be re-conducted and further, those who gave the examination have filed a writ petition for declaration of the results. The Commission has dealt with the issue in such a manner that it had caused chaos and an unsatisfactory feeling amongst the students and further, if re-examination is not conducted, it will only be an unending legal battle.

18. The learned counsel places his reliance on the following decisions:-

i) *Manish Ujwal & Ors. Vs. Maharishi Dayanand Saraswati University & Ors.*
(2005) 13 SCC 744

ii) *Judgment & Order dated 01.10.2013 of Madras High Court in W.P.(MD) Nos. 13267 & 14940 of 2013 (J. Antony Clara Vs. The State of Tamil Nadu & Ors.*

iii) *Judgment dated 15.06.2015 of the Apex Court in W.P.(C) No. 298 of 2015 (Tanvi Sarwal Vs. Central Board of Secondary Education & Ors.)*



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iv) *Sanjay Singh & Anr. Vs. UPPSC, Allahabad & Anr. (2007) 3 SCC 720*

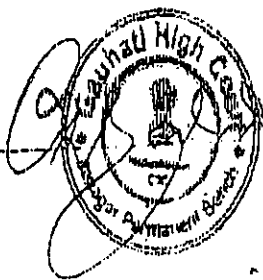
v) *Richal & Ors. Vs. Rajasthan Public Service & Ors. (2018) 8 SCC 81*

vi) *Subash Chandra Verma & Ors. Vs. State of Bihar & Ors. 1995 Suppl (1) SCC 325.*

vii) *Judgment & Order dated 28.07.2015 of the Orissa High Court in WP(C) Nos. 10842 & 13086 of 2015 (Madhumala Bisoyee & Ors. Vs. Odisha Public Service Commission & Anr.),*

viii) *Judgment & Order dated 30.08.2012 of the Punjab and Haryana High Court in CWP No.10309 of 2012 (Jitender Kumar & Anr. Vs. Haryana Public Service Commission).*

19. Mr. S. Mow the learned counsel for the petitioners in WP(C) No. 486 (AP) of 2018 reiterates and adopts the argument of Mr. A. Hela. By referring to paragraph No. 11 of the Affidavit-in-opposition dated 06.10.2018 filed by the Commission, he submits that only 64 questions and not 125 questions were examined and therefore, the second representation submitted on 21.08.2018 has not at all been addressed by the Commission. He further submits that the Commission has also not published the answer keys which in fact could have helped in addressing the issue or if not, given a clearer picture on the controversy. He submits that the anomalies found in the Commerce



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optional subject alone warrants re-examination or alternately, a thorough examination by an expert committee. He submits that the Commission has been functioning on its whims and fancies and playing tricks/tactics to complete the examination procedure as expeditiously as possible, which quite obviously gives a strong scent of its attempts to cover up a big mess. The Commission has admitted that there are anomalies in the question papers, which was beyond its control. Therefore, to make out as to whether such anomalies are part of any corrupt practices or leakage of question paper, it can only be verified by a constituted SIT.

20. In support of his submissions, the learned counsel relies upon the following authorities:-

i) *Madhumala Bisoyee & Ors. Vs. Odisha Public Service Commission & Anr.*
(Supra)

ii) *Vikas Pratap Singh & Ors. Vs. State of Chhatisgarh & Ors.* (2013)14 SCC
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iii) *J. Antony Clara Vs. The State of Tamil Nadu & Ors.* (Supra)

iv) *Pankaj Sharma Vs. State of Jammu & Kashmir & Ors.* (2008) 4 SCC 273

v) *Mehar Singh Saini Vs. Haryana Public Service Commission* (2010) 13 SCC

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vi) *Richal & Ors. Vs. Rajasthan Public Service & Ors. (Supra)*

vii) *Kanpur University Through Vice Chancellor & Ors. Vs. Samin Gupta*
(1983) 4 SCC 309

21. Mr. A. Apang, learned senior counsel and Standing counsel of the Commission by referring to the affidavit-in-opposition filed by the Commission in the two writ petitions on 06.10.2018 submits that it is the prayer of the petitioners for setting aside and quashing the impugned result Notifications dated 02.08.2018 and 16.08.2018 issued by the Secretary to the Commission where 1339 candidates have been selected for the mains. However, these selected candidates have not been made a party to the writ petitions. Therefore, if the writ petitions are allowed, the rights of the selected candidates will be affected. He further submits that two of the petitioners in WP(C) No. 475(AP)/2018, namely, Sh. Ajay Kumar Yadav and Beauty Lego have qualified the prelims and therefore, the veracity of the signatures in the Vakalatnama is doubtful and the affidavit sworn is false as well.

22. The learned senior counsel further submits that the question papers are not set by the Commission itself but it is out-sourced. The question papers for preliminary examination held on 26.11.2017, which was subsequently cancelled due to multiple errors in about 15 optional subjects was out-sourced to a firm for setting the question and for printing the same. The said firm has



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optional subject alone warrants re-examination or alternately, a thorough examination by an expert committee. He submits that the Commission has been functioning on its whims and fancies and playing tricks/tactics to complete the examination procedure as expeditiously as possible, which quite obviously gives a strong scent of its attempts to cover up a big mess. The Commission has admitted that there are anomalies in the question papers, which was beyond its control. Therefore, to make out as to whether such anomalies are part of any corrupt practices or leakage of question paper, it can only be verified by a constituted SIT.

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iii) *J. Antony Clara Vs. The State of Tamil Nadu & Ors. (Supra)*

iv) *Pankaj Sharma Vs. State of Jammu & Kashmir & Ors. (2008) 4 SCC 273*

v) *Mehar Singh Saini Vs. Haryana Public Service Commission (2010) 13 SCC*

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since being black listed and served with a legal notice. As for the question papers for the prelims held on 29.07.2018, they were set by engaging experts from different Centre and State Government Universities from outside the State in the level of Professors, Associates Professors and Assistant Professors. For this, the Commission maintains a panel of experts in all the optional subjects. At least two sets of question papers were set by two different subject experts. After the questions were set, they are again moderated by subject experts. Out of the two sets, one is selected by draw of lottery by the Commission and then sent to security printers for printing.

23. Mr. A. Apang, the learned senior counsel submits that there were 22 optional subjects for the prelims held on 29.07.2018. For this, the Commission had to engage minimum 44 subject experts from outside the State. Similarly, for moderation, at least 22 subject experts were consulted which indeed is a homogeneous tasks to get the question papers set. After getting the question papers set and moderated, one set is chosen by draw of lottery by the Commission and then given to the security printer for printing. The printer after printing the question papers, seal them in packets which are meant for each exam hall/room in different Examination Centres as per the room plan provided by the Commission. The sealed question packets are delivered by the assigned printer to the Commission and which in turn are handed over to the Centre Superintendent, with seals intact. The sealed packets meant for each

