

HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench: Hon'ble Shri Dharendra Mishra, &  
Hon'ble Shri R.N.Chandrakar, JJ

Writ Petition (s) No. 4856 of 2009

- Petitioners
1. Hemanand Mani Tripathi S/o Shri Dineshmani Tripathi, aged about 34 years, R/o 75, Halland Hall Hostel, Allahabad (UP)
  2. Anirudh Dwivedi S/o Shri Hari Prasad Dwivedi, aged about 31 years, R/o 35D/9-A, Jayantipur, Dhoomanganj, Allahabad (UP)
  3. Ashok Kumar Pandey, S/o Late Shri Ram Abhilakh Pandey, aged about 36 years, R/o EWS - 40, ADA Colony, Preetam Nagar, Police Station Dhoomanganj, District Allahabad (UP)
  4. Arvind Kumar Pandey S/o Gulab Dutta Pandey, aged about 31 years R/o Vishwanathpur, District Sant Kabir Nagar (UP)
  5. Akhilesh Pratap Singh, S/o Aditya Pratap Singh, aged about 31 years, R/o 61D/78/1, Om Gayatri Nagar, Teliarganj, Allahabad (UP)
  6. Ravishankar Pandey, S/o Neelu Shukla, aged about 34 years, R/o House No. 398 Avas Vikas Colony, District Lakhimpur, Kheri (UP)
  7. Raghvendra Kumar Shrivastava, S/o Giriraj Lal Shrivastava, aged about 33 years, R/o 5483/5-A, Unchwagarhi, Rajapur, District Allahabad (UP).
  8. Pramod Kumar Upadhyay, S/o Mahesh Upadhyay, aged about 33 years, R/o 141 Sohbatia Bagh, Allahabad (UP)
  9. Ashok Kumar, S/o Natthu Prasad, aged about 35 years, R/o ZA/10C, Beli Road, Jagram Chauraha, New Kātra, Allahabad (UP).

Versus

- Respondents
1. State of Chhattisgarh, through Secretary, General Administrative Department, DKS Bhawan, Mantralaya, Raipur, District Raipur(CG)
  2. Chhattisgarh Public Service Commission, through Secretary, Chhattisgarh Public Service Commission, Raipur, District Raipur (CG)
  3. Deputy Secretary, General Administrative Department, Raipur, District Raipur (CG)
  4. Examination Controller, Public Service Commission, Chhattisgarh, Raipur, District Raipur (CG)



5. Chandrabhan Singh Jadean, S/o Shri Jagdish Singh Jadean, age 32 years, R/o C/o Shivratan Prajapati, Infront of Gurudwara, Dayalband, Bilaspur, CG.
6. Mithlesh Kumar Gupta, S/o Shri Munshi Sao, age 29 years, R/o C/o Shivratan Prajapati, Infront of Gurudwara, Dayalband, Bilaspur, CG.

**Writ Petition under Article 226 of the Constitution of India**

Present:

Shri Awadh Tripathi, counsel for the petitioners.  
 Shri U.N.S. Deo, Govt. Advocate for State/respondents No. 1 & 3.  
 Shri Sanjay K. Agrawal with Shri Abhishek Sinha, counsel for respondents No. 2 & 4.  
 Shri Mateen Siddiqui, counsel for respondent No.5.  
 Dr. N.K. Shukla, Sr. Advocate as amicus curiae.

**ORDER**

(Passed on 25<sup>th</sup> March, 2010)

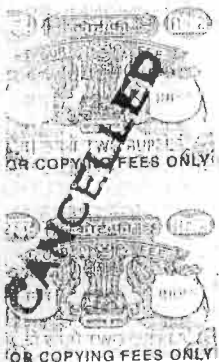
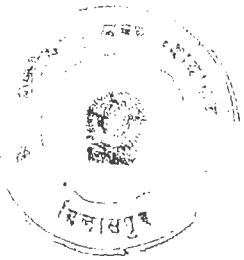
*Per Dharendra Mishra, J*

1. The petitioners have prayed for quashing of Circular dated 16<sup>th</sup> September, 2008 (Annexure P/1) issued by the General Administration Department of the State of Chhattisgarh prescribing maximum age limit for direct recruitment on services/posts of the State Govt. as also for quashing of advertisement dated 20<sup>th</sup> September, 2008 (Annexure P/2) whereby applications have been invited from eligible candidates for State Services Examination, 2008 by the Chhattisgarh Public Service Commission (in short "PSC")
2. Briefly stated, facts of the case are that the State Government vide its Circular dated 2<sup>nd</sup> June, 2008 gave relaxation of two years (30+2 years) in upper age limit to all the candidates participating in PSC examination. The relaxation was to be valid till 31<sup>st</sup> May, 2009. PSC issued an advertisement on 3<sup>rd</sup> September, 2008 and invited applications for various civil posts in the State. The State Govt. vide its Circular dated 16<sup>th</sup> September, 2008 (Annexure P/1) modified its earlier circulars and prescribed upper age limit of 30 years and allowed relaxation of five years to local residents of the State. PSC issued fresh advertisement for recruitment superseding its earlier advertisement dated 3<sup>rd</sup> September, 2008 and the age criteria in the

subsequent advertisement was fixed as per Circular dated 16<sup>th</sup> September, 2008 i.e. maximum age limit of 30 years with relaxation of five years for the local residents of the State of Chhattisgarh. The petitioners submitted their applications in response to the advertisement and successfully participated in the preliminary examination held on 2<sup>nd</sup> February, 2009. They were informed about the result by the Examination Controller vide its Memo dated 18<sup>th</sup> May, 2009. The petitioners were called upon to deposit requisite fee along with application for appearing in PSC Main Examination. The petitioners submitted their applications with requisite fee. However, PSC declared the petitioners ineligible for Main Examination, 2008 on the ground of overage, vide Annexure P/9.

3. Shri Awadh Tripathi, learned counsel for the petitioners argued that the petitioners submitted their applications in response to the advertisement dated 3<sup>rd</sup> September, 2008 and successfully participated in the preliminary examination. They were not aware about the subsequent advertisement issued on 20<sup>th</sup> September, 2008. They submitted their applications for Main Examination as directed by PSC vide their communication dated 18<sup>th</sup> May, 2009. However, after commencing selection process vide advertisement dated 3<sup>rd</sup> September, 2008, the eligibility criteria with respect to age was changed and the maximum age was reduced from 37 years to 30 years vide Circular dated 16<sup>th</sup> September, 2008 (Annexure P/1), which discriminates between the candidates, who are permanent residents of State of Chhattisgarh and the candidates out of the State of Chhattisgarh, and the same is illegal, unconstitutional and in violation of sub-clause (2) of Article 16 as also Articles 14 & 15 of the Constitution of India. The local residents of Chhattisgarh are entitled for relaxation of seven years in the upper age limit whereas the petitioners, who are otherwise eligible as per advertisement dated 3<sup>rd</sup> September, 2008 were declared ineligible on the basis of Circular dated 16<sup>th</sup> September, 2008. The Circular of Annexure P/1, according relaxation to the local residents has not been issued with the prior concurrence of the Parliament and as such, ultra vires Article 16(2) of the Constitution.

4. Reliance is placed on the judgments in the matters of *Kendriya Vidyalaya Sangathan and others Vs. Sajal Kumar Roy and*



*others*<sup>1</sup> and *Union of India and others Vs. Sanjay Pant and others*<sup>2</sup>.

5. Shri U.N.S. Deo, learned Govt. Advocate appearing for the State/respondents No. 1 & 3, would argue that the Circular of Annexure P/1 or the advertisement (Annexure P/2) issued on the basis of Circular of Annexure P/1 does not bar any citizen of India from participating in the recruitment process, provided he fulfills the eligibility criteria as prescribed in the advertisement, which has been issued in accordance with the relevant rules and circulars of the State Govt. Article 16(2) of the Constitution prohibits discrimination only on the ground of religion, race, caste, sex, descent, place of birth, and residence in respect of any employment or office under the State. In the instant case, the petitioners being the residents of other States and not conforming to the eligibility criteria with respect to maximum age under the Rules, have been held to be ineligible not only on the ground that they belong to other States, but also on the ground that they are overage, and the same cannot be termed to be in violation of Article 16(2) of the Constitution.

It was further argued that the action of the State in extending relaxation in upper age limit to the bonafide residents of the State of Chhattisgarh in the matters of employment cannot be termed to be arbitrary or discriminatory as the candidates belonging to State of Chhattisgarh are class apart from the candidates belonging to other States. The State of Chhattisgarh, keeping in view the special circumstances that PSC examination for civil services could not be held annually in the past in the State of Chhattisgarh as after 2000, examinations were held only in 2003, 2005 and 2008, with a purpose to address the difficulties faced by the unemployed youths of the State, provided age relaxation to the candidates who are bonafide residents of Chhattisgarh, which is an affirmative action of the State.

6. Reliance is placed on the judgments in the matter of *Srimathi Champakam Dorairajan and another Vs. State of Madras*<sup>3</sup>, *Welfare Association, A.R.P., Maharashtra and another Vs.*

<sup>1</sup> (2006) 8 SCC 671

<sup>2</sup> AIR 1993 SC 1365

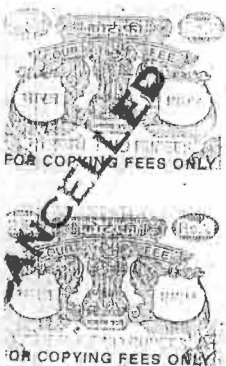
<sup>3</sup> AIR (38) 1951 Madras 120 (C.N. 14)

*Ranjit P. Gohil and others*<sup>4</sup> and *K. Thimmappa and others Vs. Chairman, Central Bd. Of Dirs, SBI and another*<sup>5</sup>.

7. Advancing similar arguments, Shri Sanjay K. Agrawal with Shri Abhishek Sinha, learned counsel appearing for PSC & Shri Mateen Siddiqui, learned counsel for respondent No.5, would argue that recruitment for the State Civil Service Posts is made by State Services Examination, which is held annually by PSC. The State of Chhattisgarh published the State Services Examination Rules (in short "Examination Rules") dated 22<sup>nd</sup> September, 2008. Rule 5 provides for eligibility conditions. Rule 5(c) prescribes that a candidate must have attained the age of 21 years and must not have attained the age of 30 years on 1<sup>st</sup> January next following the date of advertisement. The relaxation in age is provided under Rule 5(c)(b), according to which relaxation of five year in upper age limit is allowed to a candidate domiciled in the State of Chhattisgarh. Rule 5(c)(b) clearly provides that the age limit shall be applicable as per Circular dated 16<sup>th</sup> September, 2008 issued by the Govt. of Chhattisgarh. The State Govt. vide its Circular dated 16<sup>th</sup> September, 2008 fixed the upper age limit at 30 years with relaxation of five years to the local residents of Chhattisgarh. PSC superseding its earlier advertisements dated 3<sup>rd</sup> September, 2008 issued fresh advertisement on 20<sup>th</sup> September, 2008 fixing age criteria in accordance with Circular of the State Govt. dated 16<sup>th</sup> September, 2008. Thus, the petitioners in response to the above advertisement issued by PSC, having participated in the recruitment process, cannot be permitted to challenge the same, including age criteria on the ground of discrimination.

8. Repelling the argument that the candidates belonging to other States have been discriminated as against the candidates domiciled in the State of Chhattisgarh, it was argued that through advertisement dated 20<sup>th</sup> September, 2008, PSC invited applications from all eligible candidates, who fulfilled the eligibility criteria as prescribed in the advertisement, no candidate has been declared ineligible on the ground of place of residence. Relaxation in age to the permanent residents of the State of Chhattisgarh is in the public interest and not violative of Article 16(2) of the Constitution and

<sup>4</sup> AIR 2003 SC 1266  
<sup>5</sup> AIR 2001 SC 467





there is no discrimination by granting relaxation of age to the local residents of Chhattisgarh. The petitioners having participated in the recruitment process on the basis of advertisement dated 20<sup>th</sup> September, 2008, which clearly prescribes maximum age limit for the candidates of State of Chhattisgarh and other candidates, without any demur or protest, cannot now be permitted to challenge the aforesaid condition in the advertisement on any ground whatsoever. Referring to additional affidavit filed on behalf of the PSC dated 20<sup>th</sup> January, 2001, it was argued that out of 7609 candidates, who qualified for Main Examination, 1494 candidates are residents of the States other than Chhattisgarh.

9. Reliance is placed on the judgments in the matters of *Kailash Chand Sharma Vs. State of Rajasthan & others*<sup>6</sup> and *Jitendra Kumar Singh and another Vs. State of U.P. and others*<sup>7</sup>
10. We have heard learned counsel for the parties and perused the material available on record.
11. On the basis of averments of the respective parties and arguments advanced, the following questions emerge for decision of this writ petition:

1. Whether the respondent/PSC after commencing recruitment process vide advertisement dated 3<sup>rd</sup> September, 2008, was justified in altering the eligibility criteria and lowering the upper age limit from 35 years to 30 years for the candidates belonging to the States other than the State of Chhattisgarh by issuing fresh advertisement dated 20<sup>th</sup> September, 2008 (Annexure P/2) on the basis of Circular dated 16<sup>th</sup> September, 2008 (Annexure P/1), issued by the State?"
2. Whether prescribing different upper age limits i.e. 35 years for the candidates belonging to the State of Chhattisgarh and 30 years for the rest, is an act of discrimination in the matters of

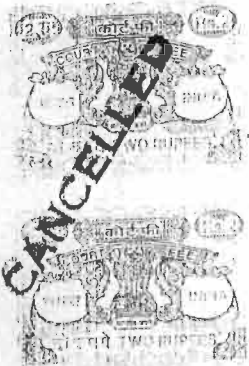
<sup>6</sup> 2002 (6) SCC 562  
<sup>7</sup> JT 2010 (1) SC 177

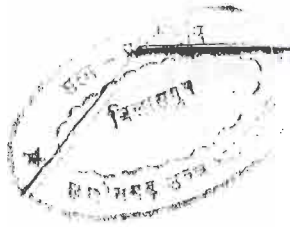
employment as contemplated under Article 16(2) of the Constitution?

3. Whether providing different upper age limits for the candidates belonging to the State of Chhattisgarh and other States in the matters of employment is arbitrary and discriminatory and in violation of Articles 14 & 15 of the Constitution?

1. Whether the respondent/PSC after commencing recruitment ..... issued by the State?"

12. So far as the first issue is concerned, PSC vide its advertisement dated 3<sup>rd</sup> September, 2008, issued on the basis of earlier circulars and Examination Rules framed by the State, invited applications for PSC Examination to be held under the Examination Rules for civil services in the State of Chhattisgarh, in which any candidate whose age was between 21 to 37 years could apply for the posts, other than the post of Dy. Superintendent of Police. Category of candidates, who were entitled for relaxation in age was to be provided, subject to maximum age limit of 45 years. The State Govt. vide its Circular dated 16<sup>th</sup> September, 2008 (Annexure P/1) superseding all its earlier circulars regarding maximum age limit for direct recruitment, prescribed maximum age limit for the candidates of Chhattisgarh as 35 years and for others 30 years. In pursuance of the aforesaid circular, PSC canceling the earlier advertisement dated 3<sup>rd</sup> September, 2008 (Annexure P/3), issued fresh advertisement, dated 20<sup>th</sup> September, 2008 and prescribed maximum age limit of 35 years for the candidates, who are bonafide residents of Chhattisgarh, and 30 years for the candidates of other States. The last date for receiving the applications was fixed as 3<sup>rd</sup> November, 2008. Thus, recruitment process was commenced afresh vide advertisement dated 20<sup>th</sup> September, 2008 and therefore, contention of the petitioners that the eligibility criteria was changed in the midst of selection process to the detriment of the candidates is without any substance





11 Whether prescribing different age ..... under Article 16(2) of the Constitution?

13 As to the second question, indisputably, direct recruitment to various civil posts of the State is made by combined competitive examination – State Services Examination, which is conducted under the Examination Rules. Rule 5 of the Examination Rules deals with eligibility conditions. Rule 5(c) prescribes minimum and maximum age limit of the candidates, who may be eligible to participate in the recruitment process. It confers power upon the State Government to vary the lower and upper age limit for any of the services included in the Examination Rules, looking to the exigencies of services.

The State Government vide its Circular dated 16<sup>th</sup> September, 2008 superseding its earlier circulars regarding maximum age limit, prescribed maximum age limit of 30 years for all the candidates other than the State of Chhattisgarh and 35 years for the candidates, who are local residents of State of Chhattisgarh. The Examination Rules have been accordingly amended and notified on 22<sup>nd</sup> September, 2008 and it has been specifically clarified that the age limit shall be applicable as per Circular dated 16<sup>th</sup> September, 2008 of the Govt. of Chhattisgarh, General Administration Department.

14. Article 16 of the Constitution guarantees equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State. Sub-clause (2) of Article 16 reads as under:

“(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

15. In *Kendriya Vidyalaya*<sup>1</sup>, pursuant to the advertisement issued by the appellant-Sangathan for recruitment to the post of Lower Division Clerk (LDC), the respondents applied for appointment to the post of LDC. They were permitted to appear at the examination and typing test even though they were overage, in contravention of the relevant recruitment rules. The age limit prescribed therefor was 18 to 25 years as on the appointed date, which was, however, relaxable. The



higher authorities of the school were moved for cancellation of the recruitment of LDCs. The Central Administrative Tribunal directed the appellant- Sangathan to relax the age of the candidates. On appeal by the Sangathan against the order of the Tribunal, the High Court held that the Tribunal could not have directed for relaxation of age for appointment of the private respondents until and unless the appointing authority exercises the power of relaxation of age-limit, and directed the appointing authority to consider the case of the respondents for relaxation of age-limit, include their names in the select list and thereafter, issue appointment orders to them in accordance with law on the basis of merits of the candidates.

On further appeal by the Sangathan, the Supreme Court held that recruitment rules as well as advertisement provides for age limit of 25 years for appointment to the post of LDC. Relaxation could also be granted in favour of those, who fall within the descriptions given in second part of Article 45 of the Education Code for Kendriya Vidyalayas in deserving cases. Since the appellants were bound by the rules, the discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. Since the respondents do not come within the purview of the exception contained in Article 45 of the Education Code, the Tribunal or the High Court could not issue any direction regarding relaxation of age.

16. In the matter of *Sanjay Pant*<sup>2</sup>, the respondent was granted scholarship for prosecuting his studies by the Andaman Nicobar Administration. He had to execute a personal bond to serve Andaman and Nicobar Administration for a minimum period of three years. The respondent appeared before the interview board for selection to the post of Statistical Assistant. However, he was not selected on the ground that he did not have 10 years continuous education in Andaman and Nicobar Islands and since he was not a local candidate, he was not offered a regular appointment. The Tribunal allowed appeal of the respondent on the ground that requirement of residence in a particular territory is opposed to Article 16(2) of the Constitution; such restrictions could be imposed only by a law made by Parliament under Article 16(3) of the Constitution.



Dismissing the appeal of the Sangathan, the Supreme Court confirmed the order of the Tribunal:

17. In the matter of *Kailash Chand Sharma*<sup>6</sup>, the Hon'ble Supreme Court interpreting the use of word "only" in Article 16(2) held thus:

"An analysis of Article 16 indicates two things : firstly, discrimination only on the ground of residence (or place of birth) insofar as public employment is concerned, is prohibited; secondly, Parliament is empowered to make the law prescribing residential requirement within a State or Union Territory, as the case may be, in relation to a class or classes of employment. That means, in the absence of a parliamentary law, even the prescription of requirement as to residence within the State is a taboo. However, the prohibitory mandate under Article 16(2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This, in effect, is the import of the expression "only".

18. In the matter of *Srimathi Champakam Dorairajan*<sup>7</sup>, Government's order in the matter of admission in the Madras University was questioned on the ground that it was inconsistent with Articles 15 & 29(2) of the Constitution as it constitutes discrimination on the consideration of religion, race, caste, language etc. The Full Bench of the Madras High Court, interpreting Articles 15(1) and 29(2) of the Constitution, held that the aforesaid Articles would apply only if the persons of a particular religion, race or caste is totally excluded on the ground of their religion, race or caste, but would not apply when no person of any religion, race or caste is denied admission as such.

Hon'ble Shri Somasundaram J, in his concurring judgment, interpreting the word "only" occurring in Article 15(1) and 29(2) held that any action of the State would be prohibited under the aforesaid provisions only when discrimination or denial is solely on the ground of religion, race, caste or language etc. It follows therefore that one of the grounds of discrimination or denial may be on the basis of religion, race, caste, language, but it should not be the sole ground.

19. If we examine the facts of the present case in the light of above principles of law laid down, we find that in the instant case, discrimination in prescribing maximum age limit for recruitment to the

State Civil Services is not based solely on the ground of place of residence. The candidates of other States are also eligible to apply for the posts advertised, provided they conform to the eligibility criteria prescribed under the Examination Rules. The candidates of Chhattisgarh have been given relaxation in upper-age limit under the special circumstances. It has been contended by the respondents and not disputed by the petitioners that 1494 candidates of other States have been found to be eligible to participate in the Main Examination after result of the Preliminary Examination and therefore, we are unable to accept the challenge to the Circular of Annexure P/1 and fresh advertisement dated 20<sup>th</sup> September, 2008 issued on the basis of Circular of Annexure P/1 on the ground that it is violative of Article 16(2) of the Constitution.

III. Whether providing different upper age ..... violation of Articles 14 & 15 of the Constitution?

20. In the matter of *Jitendra Kumar Singh*<sup>7</sup>, a dispute between the petitioners and the respondents revolved around the issue of reservation of posts for Backward Classes, Scheduled Castes, Scheduled Tribes, Woman candidates, and Sports Persons. Under the relevant rules, provisions for relaxation in fee and upper age limit of five years to OBC etc. candidates were made. The Supreme Court considering that all the candidates i.e. candidates belonging to Woman and OBC etc. categories as also the General category were required to appear for Preliminary Written and Physical Test and Main Written Examination and Interview, held that these were merely eligibility conditions for being permitted to participate in the selection process. Thereafter, the candidates had to appear in the Preliminary Written Test and after being successful to undergo Physical Test. A candidate was also required to secure 50% or more marks. It was only those candidates who qualified in the preliminary written test and the physical test became eligible to appear in the main written test and only such candidates, who secured 40% or above would be declared successful and only after being successful in interview, final merit list was to be prepared on the basis of marks secured in the main written test and the interview and thus, it is quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone



of consideration. The concession in age did not in any manner tilt the balance in favour of the reserved category candidates. In the preparation of final merit/select list. It is permissible for the State in view of Articles 14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes.

Article 14 does not bar rationale classification. It permits reasonable classification for the purpose of legislation and prohibits class legislation. A legislation intended to apply or benefit a "well defined class" is not open to challenge by reference to Article 14 of the Constitution on the ground that the same does not extend a similar benefit or protection to other persons, as has been held in *Welfare Association, A.R.P., Maharashtra*<sup>4</sup>.

21. In *K. Thimmappa*<sup>5</sup>, while considering the prohibition under Article 14 of the Constitution, the Hon'ble Supreme Court held that Article 14 prohibits class legislation and not reasonable classification for the purpose of legislation. If the rule Making Authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well defined class, then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled: -
- (a) that the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from other left out of the group; and
  - (b) that the differentia must have a rational relation to the object sought to be achieved by the statute in question
22. If we examine the facts of the present case in the light of law laid down by the Supreme Court in the aforesaid judgments, we find that relaxation of five years in the upper age limit was extended to the local residents of the State of Chhattisgarh, vide Circular of Annexure P/1, in the peculiar circumstances that PSC examination could not be convened annually in the last nine years. Relaxation of age only enabled certain candidates belonging to the State of Chhattisgarh to fall within the zone of consideration. The concession in age does not, in any manner, favour the candidates of Chhattisgarh in preparation of final merit list as they are also required to participate in the

preliminary examination and only those candidates, who are successful in the preliminary examination, participate in the main examination together with the successful candidates of other States. They are also to face interview after being successful in the main examination. In these circumstances, we are of the opinion that it is permissible for the State to make suitable provisions in the relevant rules keeping in view the interest of the candidates belonging to the State and the same cannot be termed arbitrary, discriminatory or in violation of Articles 14 & 15 of the Constitution of India.

23. In the result, the instant petition being without any substance deserves to be dismissed and is hereby dismissed.

No order as to costs.

Sd/-  
Dhirendra Mishra  
Judge

Sd/-  
R.N.Chandrakar  
Judge

