

Matilda Toppo and Ors Vs. Social Welfare Women and Child Development Dept

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Court : Jharkhand

Decided On : May-21-2015

Appellant : Matilda Toppo and Ors

Respondent : Social Welfare Women and Child Development Dept

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI WP(S) No. 1316 of 2013
1.Matilda Toppo 2.Praneshwari Kisku 3.Sangeeta Devi 4.Shanti Devi 5.Smt. Kusum Kumari 6.Smt. Radha Devi 7.Yashoda Devi 8.Urmila Devi ... Petitioners -
Versus- 1.The State of Jharkhand 2.The Principal Secretary, Social Welfare, Woman and Child Development Department, Government of Jharkhand, Dhurwa, Ranchi. 3.The Director, Social Welfare, Woman and Child Development Department, Government of Jharkhand, Dhurwa, Ranchi 4.The Commissioner, North Chotanagpur Division, Hazaribagh 5.The Deputy Director, Social Welfare & Women and Child Development Department, North Chotanagpur Division, Hazaribagh ... Respondents With WP(S) No. 4608 of 2012 1.Mamta Masum 2.Taiaba Khatoon 3.Asha Kumari Paswan 4.Kumari Punam 5.Ajmeri Khatoon 6.Anita Kumari 7.Sarswati Devi 8.Purnima Kumari 9.Sandhaya Kumari 10.Chandmuni Devi 11.Kumari Anju 12.Usha Prasad 13.Rukmani Devi 14.Usha Kumari 15.Yasoda Devi 16.Madhuri Devi ... Petitioners -Versus- 1.The State of Jharkhand 2.The Principal Secretary, department of Social Welfare, Woman and

Child Development , Government of Jharkhand, Ranchi. 3.The Director, Social Welfare Directorate, Department of Social Welfare Woman and Child Development , Ranchi 4.The Commissioner, North Chotanagpur Division, Ranchi 5.The Deputy Commissioner, Hazaribagh 6.The Deputy Commissioner, Chatra 7.The Deputy Commissioner, Koderma 8.The Deputy Commissioner, Ramgarh 9.The Deputy Director (Welfare), Hazaribagh ... Respondents With WP(S) No. 1334 of 2013 Dipa Kumari Sinha ... Petitioner -Versus- 1.The State of Jharkhand 2.The Secretary, Social Welfare, Woman and Child Development Department, Directorate of Welfare, State of Jharkhand, Ranchi. 3.Director, Social Welfare, Woman and Child Development Department, State of Jharkhand, Dhurwa, Ranchi 4.Commissioner, North Chotanagpur Division, Hazaribagh 5.Deputy Director, Welfare, North Chotanagpur Division, Hazaribagh ... Respondents ----

2. CORAM :HONBLE MR. JUSTICE APARESH KUMAR SINGH ---- For the Petitioners :M/s. A.K.Sinha, Sr. Advocate, Anil Kumar, Sr.Advocate, S.Arun, D.K.Dubey, Ashutosh Kumar Singh, V.Gopal, A.R.Choudhary, K. P. Choudhary & A.K.Singh For the Respondents :M/s. A.Allam, Sr. Advocate,N.Sharmin & A.K.Shekhar, JC to GP VI ---- 15- 21.05.2015 Heard learned counsel for the parties. In all these three writ petitions commonality is that petitioners herein are serving Aanganbari Sevikas, who were candidates in a limited Departmental selection exercise for appointment to the post of Lady Supervisors against 25% quota under two separate advertisements dated 5.8.2011 and 21.3.2012 under the Department of Social Welfare, Women and Child Development. Petitioners in WP(S) No.1316/2013 were candidates in the first recruitment exercise held on 18.12.2011 under advertisement of 2011 (Annexure 10), which was meant to fill up the backlog vacancies to the post of lady supervisors against vacancies shown therein. Petitioners in other two writ petitions are admittedly candidates, who had appeared in exam held on 25.4.2012 under advertisement of 2012 (Annexure 3 of WP(S) No.4608/2012), which was meant to fill up the regular vacancies to the same post. Petitioners in first two writ petitions have approached this Court with the grievance that the respondents have decided to cancel the examinations held under two advertisements to the post of lady supervisors through channel of limited exam of departmental candidates, vide order dated 9.2.2013. Petitioner in the third writ petition, however, came with a grievance that answers to certain

questions have not been properly evaluated though she had marked the correct answers and, therefore, the answer sheet should be rechecked. Her contention is based upon information furnished under RTI containing petitioner's answer sheet. However, no master answer sheet or key-answer has been provided to the petitioner. She has found infirmities in the answers to question nos.1,11,13,14,27,30,34,40,50, and 18 after obtaining her answer book under RTI. She represented before the Director, Social Welfare for correction in the answer sheet with some supporting documents enclosed thereof, vide Annexure

4. However, since the respondents did not meet her

3. grievances, she has approached this Court for reevaluation of the incorrect answers. In the first two writ petitions, during its pendency, petitioners came with grievance that the respondent-Department had chosen to hold fresh exam on 2.6.2013 containing the vacancies of the two advertisements for recruitment to the post of lady supervisors from the limited exam of departmental candidates i.e. the Anganbari Sevika. It would not be out of place to mention that the rule provides that 25% of the total vacancies to the post of lady supervisors are to be filled up from the channel of limited departmental exam of serving Anganbari Sevika and rest 75% are to be filled up through direct recruitment. The controversy herein is, therefore, in the context of exam held for the departmental candidates. By order dated 17.5.2013 this Court after taking note of the submissions of the petitioners as also the respondent-State passed an interim order restraining the respondents from holding such exam scheduled on 2.6.2013. The matter was thereafter adjourned for final adjudication. The order dated 17.5.2013 is quoted hereunder, as it also encapsulates the submissions of the parties on certain aspects relating to merit of the matter as well. 17.05.2013 Petitioners, in both the writ applications, have prayed for stay of the examination scheduled to be held on 2nd June , 2013 for the limited examination of the departmental candidates for the post of lady supervisor under the department of Women and Family Welfare, Govt. of Jharkhand. An interlocutory application with said prayer has also been filed in W.P.S. No. 1316 of 2013 being I.A. No. 3176 of 2013. The writ petitions are directed against the order of cancellation of the examinations and the results pursuant to the examination held on 18.12.2011 and 25.4.2012 for such

appointment to the post of lady supervisor through the channel of limited examination of departmental candidates. It is argued by the learned Sr. Counsel Mr. Anil Kr Sinha, appearing on behalf of the petitioners that the entire documents on record which includes the report of the committee constituted by the department itself annexed as Annexure-17 to W.P.S. No. 1316 of 2013 dated 16.5.2012 show that in the aforesaid 2 examinations held separately for back log and regular vacancies of lady supervisor, however what has only been detected is wrong answer to one question each in two examinations. In fact the committee suggested to delete the marks of the said wrong answer by evaluating the results afresh and preparing a fresh merit list. It is submitted that no malpractices were discovered during the course of inquiry by the committee, still the decision has been taken by the Respondent- State to cancel the examination which is highly arbitrary and illegal. The same is under challenge in the present writ applications. However, during the pendency of the writ applications, without the issue being adjudicated the respondents have chosen to hold fresh examination in the same nature on 2nd June, 2013 combining the vacancies of both the

4. examinations which were earmarked for backlog and regular vacancies. This would definitely have an adverse effect on the case of the present petitioners, who are admittedly one of the successful candidates. Learned counsel for the Respondent- State, Mr. A. Allam, Sr. S.C. II has referred to the decision of the Government contained in letter issued by the Secretary, Human Resource Department as Annexure-19 to W.P.S. No 1316 of 2013 dated 9.2.2013 to submit that for certain irregularities and repeated evaluation of the merit list of the candidates a suspicion arose in relation to the conduct of the examination and that is why decision has been taken to cancel the examination itself. However, learned counsel for the State is not able to substantiate the aforesaid statement contained in the letter dated 9.2.2013 as to whether any malpractices or use of unfair means have been reported in the said examinations on the basis of any material brought on record. In these circumstances, it appears that the petitioners are justified in seeking a stay of fresh examination scheduled to be held on 2nd June, 2013 for filling up the same vacancies. In that view of the matter, respondents are restrained from holding such examination scheduled to be held on 2nd June, 2013. Let the matter be placed under the heading for admission so that matter can

be finally adjudicated as the pleadings have already been completed. Accordingly, post these cases on 17th June, 2013. I.A. No. 3176 of 2013 filed in W.P.S. No. 1316 of 2013 stands disposed of. The matters after few adjournments were taken on 15.10.2014. On that day the petitioners submitted that wholesale cancellation of the exam process was not justified on the basis of materials brought on record by the respondents. The exam process could be saved as there has been no malpractices alleged in the conduct of the exam though infirmities have been pointed out by the respondents. A detailed order was passed on the said date encapsulating the reasons brought on record by the respondents through their counter affidavit to support their decision to cancel the examination. The relevant paragraphs of the counter affidavit were also extracted in the said order and the Court upon appreciation of the rival contention of parties sought the view of the respondents whether respondents are justified in cancelling the exam in the light of the fact that no malpractices had been alleged or shown in the conduct of the examination. This was also keeping in view the judgment rendered by the Hon'ble Supreme Court, referred to therein. The doctrine of proportionality applies in circumstances when in an exam process though certain infirmities are noticed but there are no malpractices alleged or established or it is not of such a widespread nature as to the annul the entire selection process itself. This Court therefore considered it proper to direct the

5. respondent-State to come out with a concrete suggestion after reconsidering the whole issue in that light. For better appreciation the order dated 15.10.2014 is also quoted hereunder: 15.10.2014 Heard counsel for the parties. Earlier on 17.5.2013, a detailed order was passed recording the submission of the learned counsel for the parties. As would appear from perusal of the said order, the respondent- department had chosen to hold examination for regular and backlog vacancies on 2.6.2013. The petitioners were aggrieved as in relation to the backlog and regular vacancies two different examination held on 18.12.2011 and 25.4.2012 for appointment to the post of Lady Supervisor through the channel of limited examination of departmental candidates have been annulled by the order impugned in the present writ applications being dated 9.2.2013. After hearing the counsel for the parties, this Court on the said occasion had restrained the respondents from holding a fresh examination scheduled to be held on 2.6.2013.

The matter was adjourned, thereafter so that the issue may be finally adjudicated. The respondent- State have filed supplementary counter affidavit on 29.8.2013. Mr. A. Allam, learned Sr. S.C.II, appearing on behalf of the State submitted that apart from the findings rendered by the Committee constituted by the Department as contained in Annexure-17 to W.P.S. No. 1316 of 2013 dated 16.5.2012, the Commissioner, North Chotanagpur Division who was also part of the said Committee had through letter dated 16.7.2012 requested the department to give approval of cancellation of examination held on 18.12.2011 and 25.4.2012. Learned counsel for the respondent- State has referred to the reasons culled out from the aforesaid letter at para 15 and 16 of the instant supplementary counter affidavit, which are being quoted herein below:- Para 15:- That it is further required to mention that in the question -cum-answer sheet of both the papers there was lack of proper instruction to the examinees like:- (i) There was no instruction not to write the name of candidates in the answer sheet except first page of the answer sheet (ii) There was no instruction that examinee should tick mark in the only correct box of the answer and if examinee put marks like cross marks / any marks in other box then examinee will get zero marks even examinee put tick marks in the box of correct answer (iii) There was no instruction that there was no option to change the answer (iv) There was no instruction that examinee should not write any identification marks in any part of the answer sheet (v) There was no place for signature of Invigilator in the answer sheet Aforesaid grounds No.(i) to (iv) is sufficient to cancel answer sheet of any examinee but due to the reason that no instructions given in this regard in the answer sheet, now it is not justified to cancel answer sheet of any examinee Para 16:- That due to aforesaid lack of proper instruction for examinee several examinee wrote her name in the inner page of the answer sheet, several examinee change the answer by cutting previous answer, several examinee put cross mark in one box and tick mark in other box. None of the answer sheet contains signature of Invigilator on the date of examination. Therefore there is a doubt about the fairness of the examination but it is also not possible to give allegation any particular examinee due to lack of proper instruction in the answer sheet. Respondents have also annexed the copies of the answer sheet of the examination held on 25.4.2012 to the said affidavit. Upon perusal of the additional ground shown in para 15 and 16 of

6. the instant affidavit and the copy of the answer sheet are enclosed as Annexure- A, it is evident that the answer sheet itself contained instruction on the first page that examinees had to mark their answer by ticking the correct box against such question. One of the ground shown at page 15 that no instruction were issued to the examinees to tick the mark in only the correct box of the answer sheet, therefore does not seem to be made out. The other ground as indicated therein is that the examinees were not instructed to write the name of the candidates in the answer sheet except on the first page or to write any identification mark in any part of the answer sheet or not to change the option of any answer. The examinations were held for objective type questions and it is obvious that candidates who chose to undertake such examination were expected to record only one correct answer against each question and not to mark more than one answer to any question, which itself would render the particular answer unworthy of being evaluated. The other two grounds of not putting any identification mark on the answer sheet or putting signature on the other pages of the answer sheet are also attributable to the fault of individual candidates. But the stand taken by the respondents in the supplementary counter affidavit does not disclose that the examination was vitiated on account of malpractice. The letter of the Commissioner, Chottanagpur Division dated 16.7.2012 also shows that because of such error in the answer sheet found, it may give rise to a suspicion. The Committee constituted by the State Government, which examined the issue was comprised of the Commissioner, South Chotanagpur Division and included the Deputy Commissioner of Hazaribag, Chatra, Koderma and Ramgarh and the Deputy Director, Welfare. It is the case of the petitioners that the said Committee duly constituted by the State Government had only detected one wrong answer to one question each in two examinations, and had suggested to delete the marks of the said wrong answer by evaluating the result afresh and preparing a fresh merit list. Reference has been made to the specific directions issued by the Director, Social Welfare dated 31.5.2012, Annexure-15 addressed to the Commissioner, South Chotanagpur Division in view of his earlier letter no. 154 dated 16.5.2012. Petitioner have also referred to the notings of the Minister, Department of Social Welfare, obtained under R.T.I, which are dated 13.12.2012 enclosed as Annexure- 21 to the rejoinder to the counter affidavit. In the wake of aforesaid facts, it is

submitted on behalf of the petitioners that when no malpractice has been shown to have been found in the conduct of the examinations, the entire examinations should not be cancelled. It is submitted that such a approach would be unreasonable and in such circumstance, the Doctrine of Proportionality should be applied to save the examination process, though there has been no malpractice in the examinations. Answer can be evaluated afresh after excluding the two incorrect answer and excluding such answer sheet where it has been found that candidates have recorded some identification marks or signature on the answer sheet in other pages as well or that they have marked more than one answer against one question or they have crossed some answers contrary to the instruction. Learned counsel for the petitioner has relied upon judgments rendered in the case of Jitendra Kumar & others Vrs. State of Haryana & another reported in 2008(2)SCC161 and in the case of Rajesh Kumar & others Vrs. State of Bihar and others reported in 2013(4)SCC690 in support of their aforesaid submissions. In view of the aforesaid submissions made and the law laid down on the subject by the Hon'ble Supreme Court applying the

7. Doctrine of Proportionality in such cases, before taking a final decision in the matter, the respondent- State are allowed one more indulgence to come out with their concrete suggestion after reconsidering the whole issue in that light. Accordingly, on the request of learned Sr. S.C.II, the matter is adjourned for 4 weeks. Let the case appear in the week commencing 24th November, 2014. Let a copy of this order be handed over to the learned counsel for the State. It transpires that the Department took more than six months time to come out with their response by filing a supplementary counter affidavit on 12.5.2015. Learned senior counsel for the respondents, however, has fairly submitted that nothing new has been found in any inquiry after the last counter affidavit filed by the respondents on the subject though there are correspondences brought on record between the officials of the State, which support the decision to annul the exam itself. It also transpires from the said affidavit that no further inquiry has been held by the respondents, which could show that the examination process was vitiated on account of malpractices adopted in the conduct of the examination. In any case there are no allegations against any of the candidates or a group of candidates much less against the petitioners herein that they indulged in a malpractice in the

exam. It is, however, one of the submissions of the respondents in the said counter affidavit that upon cancellation of the examination they would give age relaxation to all those candidates, who were applicants in the two examinations held in 2011 and 2012. The Commissioner, North Chotanagpur in his letter dated 30.12.2014 (Annexure-F) has only stated that since decision to cancel the two exams held on 18.12.2011 and 25.04.2012 has been taken for technical difficulties earlier vide letter dated 9.2.2013 by the department, it would be advisable to hold fresh exam by giving age relaxation to such candidates, who were applicants in the two exams. In sum and substance the decision for cancellation of exam is not substantiated by any malpractices or further reasons found in an inquiry after the said affidavit filed by the respondents in the matter on 29.8.2013, which was taken into note while passing the detailed order dated 15.10.2014, quoted herein-above. The infirmities which have been found from the counter affidavit of the

8. respondents in the order dated 15.10.2014 are such which can be taken care of in a re-evaluation exercise by the respondents of the answer-sheets of the candidates who appeared in the examinations held in 2011 and 2012 to weed out such incorrect answer sheet suffering from such irregularities so that answer sheets, which are proper and valid in that respect are duly evaluated once again to come out with a final revised result of such successful candidates. Petitioners in the first writ petition were candidates under advertisement of 2011 and a merit list was also published, vide Annexures 13/1 and

14. It is pertinent to mention here that the whole selection process was subjected to an inquiry by a High Power Committee, the report of which was furnished vide Annexure-17 dated 16th May, 2012. It would not be out of place to mention here that inquiry was conducted by the High Power Committee in which the Commissioner, North Chotanagpur, Hazaribagh was the Chairperson and Deputy Commissioners of Hazaribagh, Chatra, Koderma and Ramgarh districts were the members along with Deputy Director, Welfare as its Member Secretary. Reference of the Constitution of the said committee is being made for the reasons that the respondents, in their counter affidavit, have sought to justify the cancellation of the examination based upon a recommendation of the Commissioner, North Chotanagpur himself later on vide letter dated 16.7.2012 (Annexure-16 to W.P.(S)

No. 1316 of 2013). However, the said letter does allege or show use of malpractices in the process of selection, except that one question each of the two exams were found to be having wrong answers. The committee had recommended that these two answers be deleted while reevaluating the answer-sheet of the candidates of both the exams to publish a final result. Counsel for petitioner in the first writ petitioner has categorically pointed out by reference to Annexure-17 that apart from one answer which was found incorrect in respect of first exam of 2011, infirmities which are pointed out in the counter affidavit in respect of the selection exercise is only in respect of 2nd Exam of 2012. In that situation not only the clubbing of two exams by the respondents in a fresh exam scheduled to be held on 2nd June, 2013 was not

9. proper, but the fresh evaluation process should also be done independently for two exams separately held on 18.12.2011 and 25.4.2012 under two different advertisements, which were in respect of the backlog and regular vacancies. The relevant material issue, which is involved in the third writ petition is also required to be discussed hereunder as in some way the final decision in these batch of writ petitions would also have a bearing upon the issues raised in the said writ petition. In the third writ petition, as has been noticed, upon being hearing the learned counsel appearing on behalf of petitioners and State that there was no process adopted by the respondents or examining body for publication of a key answer-sheet or master answer-sheet after conduct of the exams inviting objection in respect of the answers to the relevant question from candidates to find out as to whether there were certain wrong questions or answers in the key answers which require reference to an expert body and any consequent correction in the final evaluation of the answer-sheet. In the absence of such a procedure laid down in the said examination process which incidentally relates to second exam of 2012 for which the petitioners of second and third writ petitions are concerned, this Court under the powers of judicial review is required to test whether the selection process would have suffered on account of evaluation undertaken with answers, which were either wrong or incorrect. The petitioner in third writ petition Deepa Kumari Sinha sought certain information under R.T.I, in respect of her answer-sheet. On being furnished with the answer-sheet she claims to have noticed certain infirmities in the evaluation of answer to question nos.

1,11,13,14,27,30,34,40,50, and

18. She ventured to make a representation by claiming that answers to these questions are not correctly evaluated and she has put the right answer which were indicated in the said representation, Annexure-4 made to the Director, Social Welfare. Certain documents were also annexed to the said representation in support of the same. The respondents in the said writ petition however have not given categorical replies to the allegations that answers of these questions were not correct. They have only stated that the answers have been rightly evaluated

10. on the basis of master answer-sheet. This Court therefore is required to enter into an exercise under the powers of judicial review to test whether the contention of the petitioner that certain certain question had a wrong answer is made out on facts or not. Having given patient hearing to the counsel for the parties in the instant writ petition and having considered the relevant questions and the answers which are being pointed out by the petitioners that has been wrongly evaluated, it appears to the Court that contention of the petitioner in respect of question nos. 1, 11, 18, 27, 30 and 34 are either not supported by any convincing documents or on the face of it are in the nature of guess work on her part. However, in respect of answers relating to question nos. 13, 14, 40 and 50, the answers which the petitioner has shown to the said question, give an impression that either the questions have not been correctly evaluated as per its correct answers or that the master-sheet does not have correct answers to these questions. The principle of law on such a issue is well settled by the Hon'ble Supreme Court such as rendered in the case of Rajesh Kumar & ors. Vs. State of Bihar & ors, reported in 2013(4) SCC690relied upon by the counsel for the petitioners. The settled proposition of law on this issue is that because of an erroneous evaluation no one should suffer. Those who may have succeeded in the exam because of this erroneous evaluation should also be subjected to a fresh evaluation, in order to have a level playing field with those persons who may have suffered because of such erroneous evaluation by incorrect answers to certain questions by the Examining Body. The opinion of Hon'ble Supreme Court as contained in para 19 is apposite to be quoted hereunder as it squarely applies to the facts of the present case also.

19. The submissions made by Mr Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case. In the instant case, there is no allegation of fraud or any malpractice against any of these petitioners or in the conduct of the examination process. In such circumstances, the decision of the respondents to cancel the entire examination process does not seem to justify the test of legal scrutiny under the powers of judicial review. In the facts of the present case, the examination can be saved by applying the doctrine of proportionality. The Hon'ble Apex Court while considering the principles of *Wednesbury* unreasonableness and the scope of doctrine of proportionality in the case of *Chairman, All India Railway Recruitment Board and another -Vs.- K. Shyam Kumar and others* reported in (2010) 6 S.C.C.614 held as follows at paras 36 to 39:

36. *Wednesbury* applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to assess the balance or equation struck by the decision-maker. Proportionality test in some jurisdictions is also described as the least injurious means or minimal impairment test so as to safeguard the fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice it to say that there has been an

overlapping of all these tests in its content and structure, it is difficult to compartmentalise or lay down a straitjacket formula and to say that *Wednesbury* has met with its death knell is too tall a statement. Let us, however, recognise the fact that the current trend seems to favour proportionality test but *Wednesbury* has not met with its judicial burial and a State burial, with full honours is surely not to happen in the near future.

37. Proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

38. Leyland and Anthony in *Textbook on Administrative Law* (5th Edn. OUP, 2005) at p. 331 has amply put as follows: Proportionality works on the assumption that administrative action ought not to go beyond what is necessary to achieve its desired results (in everyday terms, that you should not use a sledgehammer to crack a nut) and in contrast to irrationality is often understood to bring the courts much closer to reviewing the merits of a decision.

39. The courts have to develop an infeasible and principled approach to proportionality, till that is done there will always be an overlapping between the traditional grounds of review and the principle 12. of proportionality and the cases would continue to be decided in the same manner whichever principle is adopted. Proportionality as the word indicates has reference to variables or comparison, it enables the court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision-maker. Therefore, a decision to cancel the exam cannot be justified in the eye of law. The

impugned decision as contained in Annexure 19 to the first writ petition and also part of I.A. in the second writ petition being Memo No.189 dated 9.2.2013 issued by the Principal Secretary, Social Welfare, Women & Child Welfare Department addressed to the Commissioner, North Chotanagpur Division has to be quashed and it is, accordingly, quashed. Having regard to the conspicuous facts and the reasons recorded herein- above, the respondents Department is required to conduct re-evaluation of the answer-sheet of both the exams to weed out the infirmities having noticed in a number of answer sheets by the respondents during course of the inquiry as per report at Annexure 17 and as stated in their counter affidavit in the relevant paragraphs. After weeding out the invalid answer-sheet of such candidates the valid answer-sheet of all other applicants of the two exams need to be re- evaluated to prepare a revised merit-list. Since the cancellation of two examinations have been quashed by this Court, as above, a decision to hold a combined exam also, therefore cannot hold good. Results of the candidates of each exam held on 18.12.2011 and 25.4.2012 are required to be prepared afresh independently upon evaluation of the answer-sheets of such valid answer- sheets of such examination for the purposes of appointment to the post of Lady Supervisors against the vacancies notified under the two advertisements. However, it is also to be observed here that since at least 4 answers in the second exam have been found to be doubtful and may not to be the correct answers to the relevant questions, the correct answer is required to be ascertained by the respondents before undertaking a fresh evaluation process as directed herein- above. It would be open to the respondents to set up a committee of experts to compare the said questions with master answer sheets with aid of all relevant materials to come to a conclusion as to whether answers to such 4 questions were correct in the master answer sheet or not.

13. This exercise be conducted before hand. Dependant upon the report of the expert committee, fresh evaluation of the valid answer sheet of the examinees of the second exam held on 25.4.2012 be conducted thereafter to prepare a revised result for appointment to the post of lady supervisors against the vacancies of limited 25% quota earmarked for the departmental candidates. The entire process, as directed herein-above, be concluded as expeditiously as possible, preferably within a period of 16 weeks from the date of receipt of a copy of this order. With

the aforesaid observations and directions, these writ petitions are allowed in the manner and to the extent indicated herein-above. I.A.Nos.984/2013 and 5419/2014 in WP(S) No.4608 2012 also stand disposed of. (Aparesh Kumar Singh, J.

) Pandey/jk

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