

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5444 OF 2019

(ARISING OUT OF SLP(CIVIL) NO.31957 OF 2018)

Vishal Ashok Thorat and ors. ...APPELLANT(S)

VERSUS

Rajesh Shrirambapu Fate & ors. ...RESPONDENT(S)  
WITHCIVIL APPEAL NO. 5446 OF 2019

(ARISING OUT OF SLP(CIVIL) NO.2658 OF 2019)

State of Maharashtra ...APPELLANT(S)

VERSUS

Rajesh Shrirambapu Fate and ors. ...RESPONDENT(S)  
WITHCIVIL APPEAL NO. 5445 OF 2019

(ARISING OUT OF SLP(CIVIL) NO.31580 OF 2018)

Abhijit Appasahab Vasagade &amp; ors. ...APPELLANT(S)

VERSUS

Rajesh Shrirambapu Fate and others. ...RESPONDENT(S)

J U D G M E N TASHOK BHUSHAN, J.

1. All these appeals have been filed against the common judgment dated 28.09.2018 of the Bombay High Court, Bench at Nagpur in W.P.No. 1270 of 2018 filed by Rajesh

Shrirambapu Fate, respondent no.1 in these appeals by which judgment the High Court has partly allowed the writ petition of respondent no.1.

2. We may first notice the facts and events leading to filing of these appeals.

3. In transport Department of the State of Maharashtra there were posts of Assistant Inspector of Motor Vehicles, Group-C. Under proviso to Article 309, Governor of Maharashtra by notification dated 23.12.2016 framed the Rules namely "Assistant Inspector of Motor Vehicles, Group-C in Motor Vehicles Department (Recruitment) Rules 2016" (hereinafter referred to as "Rules, 2016").

4. The State government sent a requisition on 29.12.2016 to Maharashtra Public Service Commission (hereinafter referred to as MPSC) for conducting examinations. MPSC issued advertisement no. 2 of 2017 dated 30.01.2017 inviting online applications for 188 posts of Assistant Motor Vehicles Inspector Group-C for which Preliminary Examination was to take place on 30.04.2017 and Main Examination of eligible candidate was likely to be held on 06.08.2017. The State government had sent further requisition for additional 670 posts. MPSC issued a

declaration notifying 858 posts which subsequently reduced to 833 posts. Relevant examination was conducted on 30.04.2017 in which more than 69,000 candidates participated.

5. On 30.06.2017, result of preliminary exam was declared in which 9,870 candidates were declared qualified for the Mains examination. On 01.07.2017, MPSC issued advertisement no.48 of 2017 for Main examination which was conducted on 06.08.2017. Writ Petition No.7329 of 2017 was filed by respondent No.1 challenging only the Rules, 2016 which petition was disposed of by the High Court on 13.11.2017 granting leave to writ petitioner to make appropriate representation to the State Government. The State Government was directed to take suitable decision in the next two months. The State Government vide order dated 01.02.2018 rejected the representation of respondent No.1. The MPSC declared the final result of examination publishing a select list of 832 candidates on 31.03.2018. On 07.05.2018, MPSC recommended 832 candidates to the State Government for appointment State Government on 15.05.2018 directed Transport Commissioner to take further steps for 832 selected candidates. On 05.06.2018, Transport

Commissioner asked selected candidates to come for verification of documents.

6. The respondent No.1 filed a second Writ Petition No. 1270 of 2018 challenging only Rules, 2016 in which writ petition, petitioner filed an amendment application praying for quashing of the advertisements dated 30.01.2017 and 01.07.2017 as well as list of selected candidates which amendment application was allowed by the High Court on 13.04.2018. The High Court on 12.06.2018 had passed an interim order for maintaining status quo.

7. Apart from writ petition filed by the respondent no.1 challenging the Rules and subsequently the advertisement, there had been several challenges before the Maharashtra Administrative Tribunal as well as the High Court pertaining to 2016 Rules and the Advertisement no. 2 of 2017 and 48 of 2017.

8. Before the Maharashtra Administrative Tribunal Rules, 2016 were challenged by Manoj Chavahan by filing O.A. No.615 of 2017, which was dismissed on 06.12.2017 repelling the challenge to the Rules. Several other O.As. filed before Maharashtra State Administrative Tribunal were also dismissed on 06.12.2017. One O.A. No. 481 of 2018 filed by

Ajitpalsingh Nirmalsingh Khalsa was also dismissed on 06.12.2017 against which Writ Petition No.8179 of 2017 filed by Ajitpalsingh Nirmalsingh Khalsa which was also dismissed by the High Court on 18.01.2018 and SLP No. 3452 of 2018 challenging the judgment dated 18.01.2018 of the High Court was dismissed by this Court on 09.02.2018. Writ Petition No.7685 of 2017, Dinesh Kisanrao Sawarkar versus State of Maharashtra was also dismissed by the High Court on 17.01.2018 against which SLP No.13258 of 2018 was dismissed on 04.05.2018. In Writ Petition filed by the respondent No.1, i.e., 1270 of 2018 both State Government as well as MPSC filed counter affidavits. Respondent Nos.4 to 22 in Civil Appeal of Vishal Ashok Thorat had filed application for impleadment in Writ Petition No.1270 of 2018 along with the counter affidavit, which applications were allowed by the High Court. The High Court vide its judgment dated 28.09.2018 partly allowed the writ petition. The High Court although held that writ petitioner, i.e., respondent No.1 cannot be permitted to challenge the advertisements dated 30.01.2017 and 01.07.2017 but the High Court set aside the Proviso at the end of Rule 3(iii) and Rule 3(iv) and also Rule 4 of Rules, 2016. The High Court ultimately directed the respondent to choose and select

only those persons, who had participated in the selection process and who fulfilled the requirement of practical experiences and driving licences as per the qualifications prescribed by the Central Government, i.e., as per substantive part of Rule 3(iii) and Rule 3(iv) of Rules, 2016.

9. Civil Appeal No.5444 of 2019 has been filed by Vishal Ashok Thorat and 545 other candidates, whose names are included in the select list of 832 candidates. These selected candidates were not made parties to the Writ Petition No.1270 of 2018 before the High Court.

10. Civil Appeal No.5446 of 2019 has been filed by the State of Maharashtra aggrieved against the judgment of the High Court dated 28.09.2018. In the appeal, several grounds have been taken by the State of Maharashtra challenging the judgment dated 28.09.2018.

11. Civil Appeal No.5445 of 2019, Abhijit Appasaheb Vasagade and 11 other candidates are appellants, who were included in the select list of 832 candidates and who got themselves impleaded in W.P. No.1270 of 2018 before the High Court. These appellants also aggrieved by the judgment of the High Court dated 28.09.2018 have filed the appeal

challenging judgment on various grounds.

12. In these appeals, we have heard Dr. Abhishek Manu Singvi, Shri Jayant Bhushan and Mr. Paramjit Singh Patwalia, Senior Advocates for the appellant. Shri Shekhar Naphade, Senior Advocate has appeared for respondent No.1. Shri P.S. Narasimha, learned senior Advocate has been heard for the applicants, who had prayed for intervention. We have also heard other learned counsel in support of the appeals.

13. Learned Counsel for the appellant in Civil Appeal of Vishal Ashok Thorat has led the arguments. He submitted that the writ petition filed by the respondent No.1 ought to have been dismissed on laches and on conduct. It is submitted that the respondent No.1 has no locus to challenge the recruitment of Assistant Motor Vehicles Inspector. The respondent No.1 in his earlier writ petition being W.P.No.729 of 2017 having not challenged the advertisement Nos.2 of 2017 and 48 of 2017, he cannot be allowed to challenge the same in W.P. No.1270 of 2018 by allowing the amendment application.

14. It is submitted that the respondent No.1 in pursuance of advertisements cannot be said to be aggrieved by the

recruitment. It is submitted that the amendment in W.P. No.1270 of 2018 was filed by the respondent No.1 only when the result was declared on 31.03.2018. It is submitted that one nephew of respondent No.1 had also applied in pursuance of advertisement and could not be selected in the result dated 31.03.2018, hence the respondent No.1 thereafter sought to challenge the advertisement, which challenge ought to have been rejected by the High Court. It is submitted that High Court having returned the finding in paragraph 48 of the impugned judgment that writ petition cannot be permitted to challenge the advertisements dated 30.01.2017 and 01.07.2017, it ought not to have issued direction in paragraph 51 which is nothing but indirectly entertaining the challenge to the advertisement which could not have been directly entertained.

15. It is submitted that Rule 3 of Rules, 2016 fully complies with the notification of the Central government dated 12.06.1989 issued under Section 213(4) of Motor Vehicles Act, 1988. The substantive part of Rule 3 is fully in consonance with qualifications prescribed by notification dated 12.06.1989. The State government by Proviso in Rule (iii) and Rule 3(iv) has given only



breathing time to those candidates who does not fulfill qualification to obtain it during the probation period, which cannot be said to be contrary to notification dated 12.06.1989.

16. It is further submitted that by subsequent notification dated 08.03.2019 of the Central Government, the notification dated 12.06.1989 has been substituted. Now the requirement of notification dated 12.06.1989 is no longer in continuance. The State is free to make appointment of the selected candidates.

17. It is further submitted that six writ petitions were already dismissed by the High Court, where the whole recruitment process was under challenge. Three Special Leave Petitions were filed against the judgment of the High Court which too were dismissed by this Court. It is submitted that respondent No.1, who was writ petitioner in Writ Petition No.1270 of 2018, had not impleaded any selected candidates, hence, no direction could be issued by the High Court with regard to select list dated 31.03.2018. It is further submitted that Section 213 of the Motor Vehicles Act prohibits appointment of candidates, who do not fulfill the qualifications as notified by the

Central Government. None of the selected candidates having been appointed and the notification dated 12.06.1989 being not in operation, there is no impediment in appointment of the selected candidates who fulfill the qualifications, which are prescribed as on date. It is submitted that proviso to Rule 3(iii) and Rule 3(iv) is not contradictory to notification dated 12.06.1989 but is in harmony. The High Court ought to have dismissed the writ petition denying relief to the respondent No.1 who was writ petitioner in the facts of the present case. In the facts and circumstances of the present case the respondent No.1 has no locus to challenge the recruitment and selection.

18. In support of the appeal filed by the State of Maharashtra, learned senior counsel submits that respondent No.1 had no locus to file a writ petition, he having not participated. It is submitted that provisos to Rule 3(iii) and Rule 3(iv) of Rules, 2016 do not at all lower minimum qualification prescribed by Central Government vide notification dated 12.06.1989, but it merely gives breathing period of two years (before completion of probation period) to selected candidates to gain experience of one year and driving licence. It is

submitted that direction in paragraph 51 of the judgment cannot be complied as on date, in view of fact that notification of the Central Government dated 12.06.1989, is no longer in operation. Rules, 2016 do not change the minimum qualification which is same as provided in substantive provision of Rule 3 and proviso carves out only an exception giving some time to acquire the qualification during the probation period by which provision the zone of consideration has been enlarged enabling the more meritorious candidates to apply for the post. The High Court committed error in treating the writ petition filed by the respondent as Public Interest Litigation whereas in the service matters no Public Interest Litigation can be entertained.

19. It is further submitted that if only the qualification mentioned in the notification dated 12.06.1989 is adhered to, there are only 25 candidates in the entire list of selected candidates who shall be available for appointment leaving almost all the posts of Assistant Inspector of Motor Vehicles vacant which is not in the interest of the State. The Court should take into consideration the subsequent events. The notification dated 08.03.2019

issued by the Central Government is important subsequent event, which has knocked out the very basis of the judgment of the High Court.

20. It is further contended that it is the State, which has legislative competence with regard to the State Public Services Commission under Entry 41 List II of the Seventh Schedule of the Constitution of India. Thus, the State was fully empowered to make Rules providing for recruitment to the post of Assistant Inspector of Motor Vehicles.

21. Learned senior counsel appearing for the appellants in the appeal filed by Abhijit Appasaheb Vasagade and others has adopted the submissions made in appeal filed by Vishal Ashok Thorat and others. It is further submitted that respondent No.1 in his earlier Writ Petition No.7239 of 2017 having not challenged the advertisement Nos. 2 of 2017 and 48 of 2017 had given up the right to challenge these advertisements, hence, he has no right to challenge these advertisements in his second Writ Petition No.1270 of 2018. The appellants who are included in the list of 832 selected candidates grinded for two years and 9 months and at the instance of respondent No.1 selection could not have been interfered with by the High Court. Respondent No.1 is

legally estopped from challenging the selection process.

22. In Seventh Schedule, List III (concurrent list) Entry 35 provides for "Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied" which Entry does not empower the Central Government to prescribe minimum qualification for Assistant Inspector of Motor Vehicles. The notification dated 12.06.1989 cannot be benchmarked to test constitutional validity of provisos to Rule 3(iii), Rule 3(iv) and Rule 4 of Rules, 2016.

23. Shri Shekhar Naphade, learned senior counsel appearing for respondent No.1 refuting the submissions of the counsel for the appellants submits that respondent No.1 is qualified for the post of Assistant Inspector of Motor Vehicles and had jurisdiction to challenge the Rules, 2016. There is no delay on the part of the writ petitioner i.e. respondent No.1 in challenging Rules, 2016. Rule 3(iii) and Rule 3(iv) of Rules, 2016 diluted the minimum qualification as prescribed by the Central Government by its notification dated 12.06.1989. The State cannot appoint a person who does not fulfil the minimum qualification. The appointment of such person even on probation is neither in the public interest nor in the interest of public

exchequer. Disqualified person cannot be allowed by the State to get salary even though when they are not discharging the duty of Assistant Inspector of Motor Vehicles. The High Court could not be a mute spectator in a situation where the State has framed Rules for appointment of a person who does not fulfil the qualification. No error has been committed by the High Court in setting aside Rule 3(iii), Rule 3(iv) and Rule 4 of the Rules, 2016. Many selected candidates were added in the writ petition even though on their own instance and were heard by the High Court hence it cannot be said that selected candidates were not heard by the High Court. The notification dated 08.03.2019 by which the Central Government has now substituted earlier notification dated 12.06.1989 is not applicable in the present case. Since, the entire process of recruitment has been completed during currency of notification dated 12.06.1989. The notification dated 01.08.2016 by the Government of India as relied by the appellant has never been published in the Gazette.

24. We have heard the learned counsel for the parties and perused the records.

25. We may first notice the Rule 3 and Rule 4 of Rules, 2016 framed by the State of Maharashtra which were subject matter of consideration by the High Court. Rules, 2016 were framed in exercise of power conferred by the proviso to Article 309 of the Constitution in supersession of all existing Rules. Rule 3 and Rule 4 which are relevant in the present case are as follows:

"3. Appointment to the post of Assistant Inspector of Motor Vehicles Group 'C' in Motor Vehicle Department, shall be made by nomination on the basis of the result of a competitive examination held by the Commission from amongst the following candidates who,--

- (i) ... ..
- (ii) ... ..
- (iii) possess practical experience of repairing and maintenance of light motor vehicles, heavy goods vehicles and heavy passenger vehicles, for a period of not less than one year gained after acquiring the qualifications mentioned in clause (ii), in workshop run by a Central or State Government undertaking or Department or in a institution recognized by Government from time to time. The experience as trainee or apprentice shall be counted towards requisite experience:

Provided that, if a person not possessing practical experience of one year as above on the last date of submission of application for admission to the competitive examination held by Commission shall

obtain such experience before completion of the period of probation in workshop run by a Government undertaking or Department or in a institution recognized by Government, from time to time; and

- (iv) Possess a valid driving license authorizing him to drive motor cycle with gears, light motor vehicles and transport vehicles, (heavy good vehicles and heavy passenger vehicles) issued by the Competent Authority on the last date of submission of the application for the admission to the competitive examination held by the Commission;

Provided that, if a person not holding a valid license for heavy goods vehicles or heavy passenger vehicles, as the case may be, or both heavy good vehicles and heavy passenger vehicles on the last date of submission of application for admission to the competitive examination held by the Commission, shall obtain such driving license before completion of the period of probation, failing which, he shall be liable to be discharged from the service.

He shall renew the driving license from time to time, without break; and

- (v) ... ..  
 (vi) ... ..  
 (vii) ... ..

4. A person appointed to the post of Assistant Motor Vehicles Inspector shall not perform the duty and responsibility of the said post till he gains and acquires the prescribed experience and driving license within probation period as



mentioned in proviso to clause (iii) and clause (iv) of Rule 3."

26. Section 213 sub-section (4) of Motor Vehicles Act, 1988 provides for:

"Section 213(4) The Central Government may, having regard to the objects of the Act, by notification in the Official Gazette, prescribe the minimum qualifications which the said officers or any class thereof shall possess for being appointed as such."

27. Notification dated 12.06.1989 has been issued by the Central Government in exercise of its power under Section 213(4) of Motor Vehicles Act provides as follows:

"GOVERNMENT OF INDIA  
NOTIFICATION

SO 443(E), dated 12.6.1989: In exercise of the powers conferred by Sub-Section (4) of Section 213 of the Motor Vehicles Act, 1988 (59 of 1988), the Central Government hereby prescribed that the minimum qualification for the class of officers consisting of the category of Inspector of Motor Vehicles or Assistant Inspector of Motor Vehicles by whatever names called shall be as under:-

- (1) Minimum general educational qualification of a pass in X standard; and
- (2) A diploma in Automobile Engineering (3-year course of a diploma in Mechanical Engineering awarded by the State Board of Technical Education (3 years course); and

- (3) Working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine; and
- (4) Must hold a driving licence authorising him to drive motor cycle, heavy goods vehicles and heavy passenger motor vehicles.

2.           ...           ...           ...           ...

3.           ...           ...           ...           ..."

28. Reverting to the facts of the present case the MPSC issued the Advertisement dated 30.01.2017 (Advertisement No. 2 of 2017) for filling up the posts of Assistant Inspector of Motor Vehicles. In pursuance of which preliminary examination was held on 30.04.2017, the result of which was declared on 30.06.2017 and main examination was also held on 06.08.2017. Much after holding of the above examinations, respondent No.1 filed Writ Petition No.7239 of 2017 wherein there was no challenge to the advertisement Nos.2 of 2017 and 48 of 2017 (for main examination). Only challenge raised by respondent No.1 was to the Rules, 2016. The writ petition was disposed of on 13.11.2017 giving liberty to make representation in the matter to the State. The State rejected the representation

of respondent No.1 referring to order of Maharashtra Administrative Tribunal where similar challenge to the Rules was rejected. Writ Petition No.1270 of 2018 was filed by respondent No.1 on 27.02.2018 wherein he again only challenged the Recruitment Rules, 2016. The result of main examination held on 06.08.2017 for 633 posts of Assistant Inspector of Motor Vehicles was declared on 31.03.2018. It was thereafter when respondent No.1 filed application for amendment on 13.04.2018 which was allowed by the High Court. It is useful to refer to the amended prayers which were added in Writ Petition No.1270 of 2018, which are to the following effect:

"iii-a) By way of appropriate writ, order or direction, hold and declare that the preliminary advertisement dated 30.01.2017 and main advertisement dated 01.07.2017 issued by Respondent No.2 in pursuance to the Notification issued by Respondent on 23.12.2016, as ultra-virus, arbitrary, unreasonable and illegal and also direct that the entire recruitment process undertaken pursuant to said Recruitment Rules, dated 23.12.2016 be quashed and set aside.

iii-b) By way of appropriate writ, order or direction, hold and declare that, the select list published on dated 31.03.2017 vide Annexure-XII in pursuance to the preliminary advertisement dated 30.01.2017 and main advertisement dated 01.07.2017 issued by M.P.S.C. in pursuance to the Notification issued by Respondent on 23.12.2016, as ultra-virus, arbitrary, unreasonable and illegal.

iii-c)By further order, direction, writ direct Respondent to issue fresh advertisement in accordance with rules prescribed by the Central Government in that behalf by Notification dated 12.06.1989 and to carry out fresh process of selection in pursuance to that fresh advertisement be issued in accordance with the rules prescribed by the Central Government in that behalf by Notification dated 12.06.1989."

29. The High Court, thus, permitted the respondent No.1 to challenge the advertisement Nos.2 of 2017 and 48 of 2017 and the entire recruitment process undertaken thereunder. Respondent No.1 was also permitted to challenge the select list dated 31.03.2018. Respondent No.1 in his writ petition sought to challenge advertisements only on 13.04.2018 whereas advertisement for preliminary examination was first issued on 30.01.2017. Admittedly, respondent No.1 never applied against the advertisement to participate in the recruitment for the post of Assistant Inspector of Motor Vehicles.

30. The High Court although has permitted respondent No.1 to amend the prayer in the writ petition by including challenge to the advertisements as well as challenge to the select list but in the impugned judgment the High Court has categorically held that respondent No.1 cannot be

allowed to challenge the advertisements dated 30.01.2017 and 01.07.2017. The High Court in paragraph 48 of its judgment has clearly held that writ petitioner cannot be permitted to challenge the advertisements dated 30.01.2017 and 01.07.2017. In paragraph 48 of the judgment following was held:

"48. When petitioner has not challenged the advertisement in Writ Petition No.7239 of 2017, this Writ Petition cannot be viewed independent of order dated 13.11.2017 in earlier Writ Petition. Preliminary advertisement and main advertisement were all issued before Writ Petition No.7239/2017 was filed in High Court on 31.10.2017. We, therefore, do not find it necessary to delve into various judgments mentioned supra. It follows that the petitioner cannot be permitted to challenge the advertisements dated 30.01.2017 and 01.07.2017. However, that does not preclude him from challenging the dilution in qualifications effected by the State Government for recruitment as per 2016 Rules for the post of Assistant Inspector of Motor Vehicles. He is a citizen and also qualified, as per norms prescribed by the Central Government to compete for it."

31. When the High Court held that respondent No.1 could not be permitted to challenge the advertisements dated 30.01.2017 and 01.07.2017, we failed to appreciate that how the High Court could have interfered with the select list of 832 candidates, which was prepared after

preliminary examination and main examination in pursuance to the advertisements dated 30.01.2017 and 01.07.2017. When respondent No.1 was not allowed to challenge the advertisements, tinkering with the select list by the High Court was impermissible and self-contradictory. The High Court in paragraph 51 of the judgment has issued following direction:

"51. Consequently, we direct respondents to choose and select from the aspirants who have participated in selection process, only such candidates who fulfill the requirements of practical experience and driving licence, as per the qualification prescribed by the Central Government i.e. as per substantive part of Rule 3(iii) and Rule 3(iv) of 2016 Rules."

32. The direction in paragraph 51 of the impugned judgment clearly directed the select list to be re-drawn by including only those candidates who fulfill the requirements of practical experience and driving licence as prescribed by the Central Government i.e. as substantive part of Rule 3(iii) and Rule 3(iv) of Rules, 2016, which the High Court could not do in view of its finding in paragraph 48 of the judgment. When a person is not permitted to challenge the advertisements and process of recruitment, the select list which is outcome of such

recruitment process cannot be interfered at the instance of such person. The High Court, thus, clearly erred in issuing direction in paragraph 51 to modify the select list dated 31.03.2018.

33. One more submission raised by the learned counsel for the appellant in civil appeal filed by Vishal Ashok Thorat needs to be noticed. The submission of the appellant is that respondent No.1 in his Writ Petition No.1270 of 2018 did not implead any of the selected candidates out of the list of 832. No selected candidate having been impleaded by respondent No.1, the High Court erred in issuing direction to modify and review the select list. The direction of the High Court in paragraph 51 is clearly against the interest of the appellants, who as per direction shall go out of the select list, the select list having been published on 31.03.2018, i.e., much before the date when respondent No.1 filed application for amendment in the writ petition for challenging the advertisement Nos.2 of 2017 and 48 of 2017, he ought to have impleaded the selected candidates whose names were already published by the MPSC. Respondent No.1 without bringing the selected candidates on record could not have obtained any order

adverse to the selected candidates. The appellants rightly placed reliance on the Constitution Bench judgment of this Court in **Udit Narain Singh, Malpatharia vs. Additional Member Board of Revenue, Bihar and another, AIR 1963 SC 786**. The Constitution Bench in paragraphs 6, 7 and 9 laid down following:

"6. The question is whether in a writ in the nature of certiorari filed under Art. 226 of the Constitution the party or parties in whose favour a tribunal or authority had made an order, which is sought to be quashed, is or are necessary party or parties. While learned Additional Solicitor General contends that in such a writ the said tribunal or authority is the only necessary party and the parties in whose favour the said tribunal or authority made an order or created rights are not necessary parties but may at best be only proper parties and that it is open to this Court, even at this very late stage, to direct the impleading of the said parties for a final adjudication of the controversy, learned counsel for the respondents contends that whether or not the authority concerned is necessary party, the said parties would certainly be necessary parties, for otherwise the High Court would be deciding a case behind the back of the parties that would be affected by its decision.

7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final



decision on the question involved in the proceeding.

9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari, the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party."

34. This Court in **Public Service Commission, Uttaranchal vs. Mamta Bisht and others**, (2010) 12 SCC 204, laid down that writ petition could not have been entertained against the selected candidate when he has not been a party in the writ petition. In the above case, Public Service Commission invited applications for the posts of Civil Judge (Junior

Division. The respondent No.1 was not included in the select list. The respondent No.1 filed a writ petition claiming that she ought to have been selected in the reserved category being a woman of Uttaranchal. The claim of respondent No.1 that she was entitled to have been offered the appointment giving her the benefit of horizontal reservation for Uttaranchal women was accepted by the High Court. Challenging the said judgment of the High Court, the appeals were filed by the Public Service Commission, Uttaranchal as well as State of Uttaranchal. This Court set aside the judgment of the High court on the ground that the selected candidate in reserved category vacancy was a necessary party. In paragraph 9 of the judgment following has been laid down:

"9. In case the respondent No. 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in *Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar and Anr.*, AIR 1963 SC 786, wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation

of the principles of natural justice. More so, proviso to Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called "CPC") provide that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153; Babubhai Muljibhai Patel v. Nandlal, Khodidas Barat and Ors., AIR 1974 SC 2105; and Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and Ors., AIR 1987 SC 88)."

35. Shri Shekhar Naphade refuting the above submission has placed reliance on the judgment of this Court in **A. Janardhana vs. Union of India and others, (1983) 3 SCC 601**. This Court in the above case has rejected the submission that those who had scored march over the appellant in the seniority list having not been impleaded as respondents, no relief could have been granted to the appellant. Shri Naphade has relied on paragraph 36 of the judgment which is to the following effect:

"36. It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellants. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellant. By

an order made by the High Court, the names of respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct. Further any application was made to this Court by nine direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P.R. Mridul, learned senior counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negatived on the short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus, the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to General Manager, South Central Railway, Secunderabad and Anr. etc. v. A.V.R. Sidhanti and Ors. etc., (1974) 4 SCC 335. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in this case, this Court observed that the respondents (original

petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating the seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negatived."

36. The judgment of this Court in **A. Janardhana** relied by Shri Naphade is not applicable in the facts of the present case. In the above case, this Court was considering the challenge to the seniority list. This Court has noticed in paragraph 36 that the appellant had not claimed seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention was that criteria adopted by the Union Government in drawing up the seniority list are invalid and illegal and the relief is claimed against

the Union Government restraining it from upsetting or quashing already drawn up valid list. Thus, the relief is claimed against the Union Government and not against any particular individual. This Court by making the above observation has repelled the submission that relief could not have been granted without impleading those who were affected in the seniority list. The claim pertaining to seniority may be laid on different grounds. There may be cases where seniority is claimed against individual person on specific facts, it might be necessary to implead those persons but there may be cases where non-impleadment of person in seniority dispute may not be fatal. The present is a case of recruitment and selection, where after participation in the selection process, 832 candidates were finally selected and were included in the select list. By inclusion in the select list, the selected candidate had acquired right of consideration for appointment, which could not have been taken away in the writ petition filed by respondent No.1, where he could not have challenged the advertisement Nos.2 of 2017 and 48 of 2017.

37. Shri Naphade further submitted that by mere inclusion of the name in the select list, no right has accrued to

the selected candidate for appointment. It may be true that by mere inclusion in the select list, there is no right of appointment but by inclusion in the select list the candidate is entitled for consideration for his appointment, which could not have been denied without there being any valid reason. Thus, we find force in the submission of the appellant that in the present case, the High Court could not have modified the select list without the selected candidates, whose interest was jeopardized by the High Court being impleaded in the writ petition. Thus, directions issued by the High Court in paragraph 51 are not sustainable also in view of the fact that respondent No.1 had not impleaded the selected candidates in his writ petition.

38. Although, learned counsel for the parties have made elaborate submissions on the validity of Rule 3(iii) proviso, Rule 3(iv) proviso and Rule 4 but in the facts of the present case, where writ petitioner, i.e., respondent No.1 was held by the High Court not competent to challenge the advertisement Nos.2 of 2017 and 48 of 2017, the High Court committed error in proceeding to examine the validity of the Rules, 2016. The challenge to Rules, 2016 in the

background of the present case ought not to have been allowed to be raised at the instance of the writ petitioner. The respondent No.1, who did not participate in the selection and the High Court had specifically rejected the entitlement of the respondent No.1 to challenge the advertisement Nos.2 of 2017 and 48 of 2017, as held in paragraph 48 of the judgment, permitting him to challenge the validity of the Rules in reference to the same advertisements is nothing but indirectly challenging something which could not be challenged directly by the respondent No.1. The High Court in the facts of the present case, where respondent No.1 was not allowed to challenge the advertisements or the select list should not have been allowed to challenge the Rules, 2016 in so far as the selection in question was concerned. The writ petition filed by respondent No.1 was not styled or framed as PIL. It is well settled that with regard to service jurisprudence, PIL are not entertained. In **Ayaubkhan Noorkhan Pathan vs. State of Maharashtra and others, (2013) 4 SCC 465**, this Court has reiterated that PIL should not be entertained in service matter. In paragraph 15 following has been laid down:



"13. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors., AIR 1999 SC 114; Dattaraj Natthuji Thaware v. State of Maharashtra, AIR 2005 SC 540; and Neetu v. State of Punjab and Ors., AIR 2007 SC 758)"

39. A perusal of the impugned judgment indicates that the High Court was influenced by the submission of the appellant that loss being caused to the public revenue by appointment of Assistant Inspector of Motor Vehicles, who did not fulfill qualification as laid down in notification dated 12.06.1989, the High Court has virtually entertained the writ petition as PIL. Following observations made by the High Court in paragraph 29 clearly indicate that the High Court proceeded to treat the writ petition as PIL, although, it relates to condition of service of Assistant Inspector of Motor Vehicles. In paragraph 29 following has been observed by the High Court:

"We are here, satisfied that the loss being caused to public revenue cannot be ignored and challenge cannot be seen as a grievance pertaining to a service condition. Contention that it cannot, therefore, be seen as public interest litigation, is misconceived. Its larger impact on Society due to hole in taxpayer's money and omission to make requisite service available

to the citizens, all necessitate cognizance by any writ petition."

40. We, thus, are of the view that the High Court ought not to have entertained the writ petition, in which challenge was to the Rules, 2016, which were clearly in reference to recruitment under advertisement Nos.2 of 2017 and 48 of 2017. When the respondent No.1, i.e., writ petitioner was held not entitled to challenge the advertisement Nos.2 of 2017 and 48 of 2017 at his instance, proceeding to entertain the challenge to the validity of the Rules and to strike down the Rules and modifying the select list dated 31.03.2018 was clearly impermissible. The High Court, thus, fell in error in issuing directions in paragraph 51. We are also of the view that in the facts of the present case, it was not necessary for the High Court to enter into the validity of Rule 3(iii), Rule 3(iv) and Rule 4 of the Rules, 2016. We having taken the view that directions issued by the High Court in paragraph No.51 are not sustainable, for the purpose of this case, it is not necessary for us to dwell upon various submissions raised with regard to Rules, 2016, which according to us was not required to be gone into by the High Court in the background of the present case.

41. For the purposes of the present case, we are of the view that contention pertaining to validity of Rule 3(iii), Rule 3(iv) and Rule 4 of the Rules, 2016 need not to be gone into and the issues be left open to be decided in an appropriate case.

42. In view of the forgoing discussions, we allow these appeals, set aside the judgment of the Division Bench of the High Court dated 28.09.2018 and dismiss the Writ Petition No.1270 of 2018. Parties shall bear their own costs.

.....J.  
( ASHOK BHUSHAN )

.....J.  
( NAVIN SINHA )

New Delhi,  
July 19, 2019.