

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SHEEL NAGU,**

**ACTING CHIEF JUSTICE**

**&**

**HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)**

**R.P. No.620 of 2024**

**JYOTSNA DOHALIA AND ANOTHER .....PETITIONERS**

**Versus**

**HIGH COURT OF MADHYA PRADESH**

**AND ANOTHER**

**.....RESPONDENTS**

.....  
Shri Atul Choudhari – Advocate for petitioners.

Shri Aditya Adhikari – Senior Advocate with Shri Eijaz Nazar

Siddiqui – Advocate for respondents.  
.....

Reserved on : 30.05.2024

Pronounced on : 13.06.2024  
.....

**ORDER**

***Per : Sheel Nagu, Acting Chief Justice***

This petition seeks review/recalling of order dated 07.05.2024 passed in W.P. No.12399/2024, by which the said writ petition was dismissed.

2. Learned counsel for rival parties are heard on the question of admission so also final disposal.

3. In W.P. No.12399/2024, petitioners sought following reliefs:

“(i) A writ of certiorari quashing the result dated

10.03.2024 (P-3), in the interest of justice;

(ii) A direction to the respondents to re-evaluate the marks in accordance with the new eligibility criteria and revise the result accordingly;

(iii) A direction to the respondents to conduct main examination in accordance with the revised results;

(iv) Any other appropriate writ, order or direction which the Hon'ble Supreme may deem just and proper in the nature and circumstances of the case."

4. Before embarking upon the process of adjudication, it would be apt to delineate the attending factual matrix in a chronological manner as follows:

<b>Date</b>	<b>Particulars</b>
17.11.2023	Advertisement issued calling applications from eligible Law Graduates under the Amended Recruitment Rules (prescribing minimum 70% marks in all the 10 Semesters in LL.B. without ATKT or in the alternative 3 years experience at the Bar.
15.12.2023	The Apex Court in <b>WP(S) Civil No.1380/2023 (Monika Yadav and others vs. High Court of M.P. and another)</b> while hearing challenge to the <i>vires</i> of Amended Recruitment Rules by interim order permitted all Law Graduates to appear in Preliminary Examination as per the unamended Recruitment Rules, however subject to outcome in said Writ Petition pending before Division Bench of this Court assailing <i>vires</i> of the Amended Recruitment Rules.
14.01.2024	Preliminary Examination is held where all Law Graduates satisfying the Unamended Recruitment Rules participated subject to outcome in the petition challenging <i>vires</i> of the Amended Recruitment Rules.

10.03.2024 Result of Preliminary Examination is declared.

Category wise cut off marks in the Preliminary Examination were as follows:

<i>Cat.</i>	<i>No. of posts of year 2022</i>	<i>Backlog Posts</i>	<i>Cut-off-Marks</i>	<i>No. of candidates qualified</i>
<i>UR</i>	<i>31</i>	<i>14</i>	<i>113</i>	<i>529</i>
<i>SC</i>	<i>09</i>	<i>10</i>	<i>89</i>	<i>196</i>
<i>ST</i>	<i>12</i>	<i>109</i>	<i>82</i>	<i>93</i>
<i>OBC</i>	<i>09</i>	<i>01</i>	<i>109</i>	<i>108</i>
<b><i>Total</i></b>	<b><i>61</i></b>	<b><i>134</i></b>		<b><i>926</i></b>
	<i>(including 05 PH)</i>	<i>(including 06 PH)</i>		

926 candidates who secured marks equal or more than the cut off marks were declared qualified for Main Examination subject to outcome of W.P. No.15150/2023 (*Devansh Kaushik vs. State of M.P. and others*) challenging *vires* of Amended Recruitment Rules pending before Division Bench of this Court.

30/31.03.24 Main Examination is held.

01.04.2024 Division Bench of the High Court dismisses WP No.15150/2023 alongwith connected matters thereby upholding the *vires* of Amended Recruitment Rules.

26.04.2024 The Apex Court dismisses SLA(C) No.9570/2024 (*Garima Khare vs. High Court of M.P. and another*) by upholding judgment dated 01.04.2024 of Division Bench of this Court thereby in turn upholding the *vires* of Amended Recruitment Rules.

06.05.2024 WP No.12399/2024 is filed by two petitioners claiming that both are eligible under the Amended Recruitment Rules and had appeared in Preliminary Examination but could not make it to the Main Examination since they secured 112 & 108

marks in Preliminary Examination as against the cut off marks of 113 for unreserved category.

Ground raised, was that if the candidates who are ineligible as per Amended Recruitment Rules, are weeded out at the stage of Preliminary Examination then there is all the possibility of cut off marks getting reduced much below 113 for unreserved category.

- 07.05.2024 WP No.12399/2024 is dismissed on merits.  
10.05.2024 Result of the Main Examination is declared.  
25.05.2024 Present Review Petition is filed seeking review of the order dated 10.05.2024.

5. Pertinently, the dates for interview have not yet been notified and thus the process of recruitment is incomplete.

6. Learned counsel for review petitioners has raised following grounds:

(i) When the entire selection process right from the initial stage of Preliminary Examination was subject to outcome in WP No.15150/2023 and connected petitions before this Court, then the High Court ought to have started the process of weeding out the candidates ineligible under the Amended Recruitment Rules, from the stage of Preliminary Examination and not from any subsequent stage.

(ii) If the aforesaid procedure had been followed then number of candidates appearing in Preliminary Examination would have obviously reduced.

(iii) The said reduction in number of candidates appearing in Preliminary Examination would automatically and as a necessary

consequence lead to reduction in cut off marks declared for Preliminary Examination result.

(iv) As per Clause 7(2) of the advertisement dated 17.11.2023, out of the candidates who have secured passing marks of 60% for unreserved and 55% for reserved category candidates, 10 such candidates against each advertised vacancy are stipulated to be called for Main Examination.

7. In this factual background, it is contended by Review Petitioner that cut off marks will always be higher if number of candidates appearing in the Preliminary Examination is more. Whereas cut off marks would automatically drop to a lower point if the number of candidates appearing in Preliminary Examination is comparatively less.

7.1 Thus, it is urged that the concept of cut off marks is directly relatable to the number of candidates appearing in Preliminary Examination. The more, the number of candidates, the higher would be the cut off marks. Whereas less the number of candidates, lower would be the cut off marks.

7.2 It is also contended by Review Petitioner that by weeding out the candidates, who are ineligible under the Amended Recruitment Rules, right from the stage of Preliminary Examination, reduction in cut off marks is inevitable.

7.3 It is further contended by Review Petitioner that by excluding the Preliminary Examination from the process of weeding out of ineligible candidates under the Amended Recruitment Rules, anomalous situation has arisen where even those candidates who may have secured more marks than the cut off marks in Preliminary Examination, but were ineligible under the Amended Recruitment Rules, have been permitted to appear in

Main Examination and may also be called for interview.

7.4 It is lastly contended that if the aforesaid happens then it may lead to appointment as Civil Judge Entry Level of various candidates, who are ineligible under the Amended Recruitment Rules.

8. In the order under review, the Co-ordinate Bench dismissed the petition by *inter alia* rendering following observation/finding:

“2. *The case of the petitioners is that they are candidates, who applied for the post of Civil Judge, Junior Division (Entry Level) Recruitment Examination, 2022 which was held on 14.01.2024 in pursuance to the advertisement dated 17.11.2023. As per the petitioners, they are eligible candidates to appear in the examination. Vide notification dated 23.06.2023 the eligibility criteria in terms of Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 was amended to the effect that a candidate would be eligible to apply for Civil Judge examination if he has been in continuous practice as an advocate for at least three years or in the alternative has secured 70% or above marks in case of candidates belonging to General and OBC category and 50% or above marks in case of candidates belonging to Scheduled Castes/Scheduled Tribes category, in his/her first attempt without ATKT. It is the case of the petitioners that several candidates have challenged the validity of the rules by filing several writ petitions, one of them being W.P. No.15150 of 2023. During pendency of the petition the examination cell has declared the result of the preliminary examination in accordance with sub clause (2) of clause 7 of the advertisement in the ratio of 1:10 on 10.03.2024 with a note that the result will be subject to outcome of pending litigation before the High Court of Madhya Pradesh. The result has been declared in accordance with the previous criteria i.e. without following the amended provisions. In pursuance to the orders passed by the Hon'ble Supreme Court as well as by the Division Bench of this Court, all the candidates were permitted to participate in the examination with an observation that "the grant of the interim order herein and the subsequent proceeding thereto will not create any equity in favour of the candidates so taking the benefit." The petitioner No.1 has scored 112 marks and petitioner No.2 has scored 108 marks in the preliminary examination. It is an expectation of the petitioners that if the ineligible candidates were weeded out, the petitioners may be selected and they can be permitted for main examination.*

3. However, the fact remains that the main examination is over and the final result is to be declared. This court vide order dated 01.04.2024 has dismissed the writ petitions. The same was put to challenge by filing an SLP (C) No.9570 of 2024 (Garima Khare vs. The High Court of Madhya Pradesh and another) and the Hon'ble Supreme Court vide order dated 26.04.2024 has dismissed the special leave petition thereby upholding the validity of the amended rules as well as the advertisement dated 17.11.2023.

4. However, it is argued before this Court that the preparation of the preliminary examination result was in pursuance to the unamended rules as the interim relief was granted and all the candidates were permitted to continue. However, the cut off was 113 marks and it is an admitted position that both the petitioners have not achieved the target. The preliminary examination was only to consider the eligibility of the candidates and if the candidates are eligible they are to be called for appearing in the main examination in the ratio of 1:10. It is nowhere mentioned in the writ petition that how a candidate who cannot even touch the cut off marks can be permitted to appear in the main examination and how the result of the preliminary examination which was prepared by the examination cell is defective. It is only an apprehension of the petitioners that once the validity of the amended rules has been upheld by the Division Bench of this Court as well as by the Hon'ble Supreme Court then there will be a scrutiny of the candidates which will be done prior to preparation of the main results and all those candidates who are not having the benchmark in terms of the amended rules they will be thrown out of the final list. Therefore, there is every possibility that the petitioners may have chance now of achieving the benchmark, but the fact remains that the petitioners could not even attain the cut off marks in the preliminary examination. The sorting of the candidates after the main examination is over will not create any possibility that the candidates who have not even attained the benchmark in the preliminary examination, their names can be considered in the preliminary examination list or in the main list. In absence of any explanation that could be given by the petitioners to the aforesaid, no benefit could be extended to them. Even otherwise all the candidates were permitted to appear in the examination in terms of the interim order granted by the Hon'ble Supreme Court but once the validity of the amended rules has been upheld by the Hon'ble Supreme Court in SLP (C) No.9570 of 2024 no benefit can be extended to the petitioners. The admitted position being that cut off marks in

*the eligibility examination could not be obtained by the petitioners, no relief can be extended to them.”*

9. Shri Aditya Adhikari, learned Senior Advocate for High Court of Madhya Pradesh has filed reply admitting that the entire examination right from the preliminary stage has been held in terms of the orders passed by Apex Court dated 15.12.2023 making the process, subject to outcome in the petitions pending in the High Court challenging the *vires* of Amended Recruitment Rules. The High Court further admits that *vires* of the Amended Recruitment Rules has been upheld not only by this Court but also by Apex Court. However, the High Court submits that weeding out process of ineligible candidates is to start from the stage of order of Apex Court dated 26.04.2024 upholding the order of Co-ordinate Bench of this Court upholding *vires* of Amended Recruitment Rules. Reply of High Court further reveals that High Court has objected that much water has flown under the bridge and thus it is too late in the day to accept the submissions of Review Petitioners. Contents of reply also reveal that the High Court is apprehensive that if the weeding out process commences at the Preliminary Examination stage then lot many things done will have to be undone. Main Examination which is already held will have to be re-scheduled and resulting in adversely affecting number of candidates who appeared in the Main Examination. Moreover none of such candidates were made party in the petition. It is lastly submitted by learned senior counsel for High Court that the Review Petitioners are attempting to re-argue the entire case on merits which is beyond review jurisdiction of this Court.



10. This Court after hearing learned counsel for the rival parties and the stand taken by the High Court in its Return, is of the opinion that the order under review suffers from palpable error for reasons infra:

(i) The Co-ordinate Bench of this Court while passing the order under review was under the misconception that cut off marks in Preliminary Examination result, are equivalent to passing marks and thus are sacrosanct not subject to change.

(ii) Order under review suffers from error apparent on the face of the record since it overlooks the cardinal and palpable fact that weeding out of ineligible candidates at the Preliminary Examination stage would lead to reduction in the number of candidates who secured passing marks in Preliminary Examination. This reduction shall invariably lead to reduction in cut off marks, thereby entitling several candidates who were earlier situated below the cut off marks, to come up and secure a place in the Main Examination.

(iii) The Co-ordinate Bench while passing the impugned order fell in palpable error in failing to understand the real import and purpose behind the concept of cut off marks.

(iv) The Coordinate Bench while passing the impugned order further fell in error apparent on face of the record by ignoring the obvious fact that the entire recruitment process right from the stage of Preliminary Examination was subject to outcome

in the challenge in the High Court made to the Amended Recruitment Rules. Once the Amended Recruitment Rules were upheld not only by this Court but also by Apex Court, the right course of action should have been to weed out all those ineligible candidates, who failed to satisfy the Amended Recruitment Rules and who were provisionally allowed to appear by way of judicial order in the Preliminary Examination. Thus, need arises to cleanse the entire recruitment process of the ineligible candidates right from Preliminary Examination.

(v) The Coordinate Bench further committed palpable error by failing to see that if weeding out of ineligible candidates is not done from Preliminary Examination stage, then the possibility of ineligible candidates securing appointment as Civil Judge (Entry Level) cannot be ruled out.

(vi) The order under review is palpably erroneous since the Coordinate Bench failed to see that holding of Main Examination on 30/31.03.2024 cannot come in way of petitioners to seek weeding out from the stage of Preliminary Examination especially when the weeding out would be in line with meaningful and correct application of the Amended Recruitment Rules duly upheld by Apex Court.

(vii) In Para 4 of order under review, the Coordinate Bench fell in palpable error by equating Preliminary Examination to

be eligibility exam. The Coordinate Bench lost sight of the fact that Preliminary Examination is a Screening Test for the purpose of shortlisting unmanageably large number of candidates, down to manageable extent by prescribing passing marks and 1:10 ratio of vacancy *vis-a-vis* candidates passing Preliminary Examination for becoming eligible to appear in the Main Examination.

(viii) The order under review is palpably erroneous also on the ground that once the ineligible candidates under Amended Recruitment Rules failed in their attempt to challenge the *vires* of Amended Recruitment Rules and during subsistence of challenge before the High Court as well as the Supreme Court, interim orders were passed allowing such ineligible candidates to appear in Preliminary Examination then the dismissal of petitions challenging *vires* should take away all the benefits extended to ineligible candidates by virtue of interim orders passed by Court. The appearance of such ineligible candidates in Preliminary and Main Examination was provisional. Once these ineligible candidates lost their battle in Court any benefit accruing to them by virtue of interim orders during pendency of challenge, should invariably be withdrawn. This can be done only when all the ineligible candidates, who appeared right from initial stage of recruitment i.e. Preliminary Examination and Main Examination are weeded out.

(ix) The Co-ordinate Bench committed error apparent on the face of record by recording that holding of Main Examination comes in way of rendering justice in W.P. No.12399/2024. Admittedly, the recruitment process is not yet over since the date of interview has not yet been notified. However, delay is not attributable to petitioners especially when participation of ineligible candidates under Amended Recruitment Rules was subject to fate of petitions assailing *vires* of Amended Rules. Challenge to *vires* was repelled by this Court and by Apex Court as late as on 26.04.2024.

11. To ensure purity and administration of justice, the least that is required is to prevent any ineligible candidate to secure appointment on the Post of Civil Judge (Entry Level).

12. In the backdrop of aforesaid discussion and to prevent ineligible candidates under the Amended Rules to secure appointment as Civil Judge (Entry Level), the process of weeding out ought to start from the stage of Preliminary Examination and not from any subsequent stage as has been wrongly undertaken by the High Court. Accordingly, the order under review suffers from palpable error which needs to be corrected by invoking review jurisdiction.

13. The objection of respondents that weeding out/exclusion of ineligible candidates, in their absence, would not be proper, is heard to be rejected at the very outset since it is settled in service jurisprudence that placement of a candidate in Preliminary

Examination result list or Main Examination result list or even for that matter, the final select list prepared after interview, does not afford any justiciable right. Right, if any, is created only when an order of appointment is issued and not before that. Please see [(2020) 2 SCC 173 (*Anupal Singh and Others vs. State of Uttar Pradesh*) (Para 78)].

14. Consequently, present Review Petition stands **allowed** on the following terms :-

(i) The final order dated 07.05.2024 passed in W.P. No.12399/2024 is reviewed and recalled for being palpably erroneous.

(ii) Respondents are directed to weed out/exclude all those candidates from the list of candidates declared successful in Preliminary Examination held on 14.01.2024 who do not fulfill the eligibility criteria under the Amended Recruitment Rules.

(iii) After completing the aforesaid process, the cut-off marks shall be recomputed by applying the ratio of 1:10 vide Clause 7(2) of Advertisement No.113/Examination/CJ/2022 dated 17.11.2022, upon the remaining candidates satisfying the criteria under Amended Recruitment Rules.

(iv) Fresh call letters be issued to all those eligible candidates under Amended Recruitment Rules who have secured more or equal marks to the recomputed cut-off

marks and whose names appear for the first time between the earlier cut-off marks and recomputed cut-off marks, for inviting them to appear in Main Examination.

(v) Only for the aforesaid category of eligible candidates who have secured marks between the earlier cut-off marks and recomputed cut-off marks, fresh Main Examination be held.

(vi) In case any ineligible candidates have already taken part in Main Examination, then such candidates be also weeded out/excluded from the result of Main Examination

(vii) Till the aforesaid process is completed, respondents are restrained from proceeding ahead with the recruitment process commenced vide Advertisement No.113/ Examination/CJ/2022 dated 17.11.2022.

**(SHEEL NAGU)**  
**JUDGE**

**(AMAR NATH (KESHARWANI))**  
**JUDGE**