



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(through Virtual Mode from Jammu)

Reserved on : 18.11.2022.

Pronounced on: 06.09.2023.

WP(C) No. 1757/2021

c/w

WP(C) No. 345/2022

1. Afshana Anjum Baba, Aged 31 years,
D/o Mubarak Ahmad Baba,
R/o Manzgam Kulgam.
2. Khuban, Aged 28 years,
D/o Shakeel Ahmad Buch,
R/o Buchpora Srinagar.
3. Shiba Zahoor, Aged 29 years,
D/o Zahoor Ahmad Rather,
R/o Buchpora Srinagar.
4. Bibi Nighaar, Aged 28 years,
D/o Qazi Abdul Qadoos,
R/o Tangdar Kupwara.
5. Basira Mehraj, Aged 28 years,
D/o Mehraj u Din Bhat,
R/o Tarigam Kulgam.
6. Saima Qamar, Aged 28 yrs,
D/o Mohammad Aslam,
R/o Poonch, Jammu.
7. Azeem Raja, Aged 29 years,
D/o Ghulam Rasool,
R/o Shah Mohalla, Nawab Bazar,
Srinagar.
8. Ghulam Ahmad Najar, Aged 41 years,
S/o Gh. Rasool Najar,
R/o Kralpora, Kupwara.

.....Petitioner(s)

Through: Mr. Salman Khursheed, Sr. Advocate with
Mr. Shah Faizal , Ms. Sakshi Kotiyal & Ms. Arifa
Rashid, Advocate .

Vs



1. Union Territory of Jammu & Kashmir through its Chief Secretary, Government of J&K, Civil Secretariat, Srinagar/Jammu.
2. Commissioner Secretary to Government, Forest Department, Civil Secretariat, Srinagar /Jammu.
3. J& K Public Service Commission through its Secretary, Solina Srinagar/Resham Ghar Colony Jammu.
4. Kafel Ahmad Mir, Aged 37 years, S/o Abdul Rehman Mir, R/o Sadura Anantnag.
5. Javaid Iqbal Bhat, Aged 31 years, S/o Mauzam Ali, R/o Kanelwan Bijbehara.
6. Farooq Ahmad Parray, Aged 27 years, S/o Ghulam Qadir Parray, R/o Tulmulla, Ganderbal.
7. Mohammad Saleem Wani, Aged 39 years, S/o Habibullah Wani, R/o Yore, Khosipora Qazigund, Anantnag.
8. Majid Hussain, Aged 36 years, R/o Nazeer Ahmad Gangoo R/o Lal Bazar , Srinagar.
9. Raja Shoaib, Aged 40 years, S/o Abdul Hamit Bhat, R/o 43, Kohsheen House, Rajbagh , Ext. Srinagar.

..... Respondent(s)

Through: Mr. D. C. Raina, AG with Mr. Fayaz Ahmad Bhat, AAG & Mr. Sajjad Ashraf, GA for R - 1& 2.
Mr. M. Y Bhat , Sr. Advocate with Mr. Hamza Prince, Advocate for R -3.
Mr. Jahangir Iqbal Ganai, Sr. Advocate with Mr. Murfat Naseem, Advocate for R - 4 to 7.



Mr. A. Haqani, Sr. Advocate with Mr. Shaqir Haqani, Ms. Malika Rashid Wani, Advocate and Mr. Aasif Wani, Advocate for R -8.

Mr. R. A. Jan. Sr. Advocate with Mr. Aswad Attar, Advocate & Mr. Taha Khalil, Advocate for R -9.

Coram: **HON'BLE MR. JUSTICE RAJNESH OSWAL**, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

Per: Rahul Bharti -J

WP(C) No. 1757/2021

01. An upfront issue , in its legal connotation , in the case is that though body height of persons is a homogeneous dimension but can an agender homogeneity , equalizing male and female , be prescribed and applied in a selection process with respect to public employment to proclaim that it amounts to equality of height prescription under article 14 of the Constitution of India purporting no discrimination , directly or indirectly, against female candidates .

02. Mount Everest , standing at the height of 29030 ft. , with a claim of being the highest point on Earth , succumbed to ascent by 6 ft. tall Sir Edmund Hillary in May, 1953 and 5 ft. tall Junko Ishibashi in May, 1975 making them first man and woman to be at the peak of the Mt. Everest to be followed in their footsteps by many men and women to scale the peak . As the long height was not an



advantage for Sir Edmund Hillary, so was the short height not a handicap for Junko Ishibashi to conquer the Everest. However, given to the then Govt. of Jammu & Kashmir and also for the Jammu & Kashmir Public Service Commission, seven (7) female candidates, found short in height by two or three inches but otherwise found meritorious to be in final select list, are not to be reckoned height fit to be Range Officer Grade -I in the J&K Forest (Gazetted) Service. Present case has this scenario presenting before us for adjudication at the call and challenge of said 7 (seven) female candidates.

03. Our judgment holds the key whether the seven (7) female candidates are to ascend peak of their achievement to become Range Officer Grade -I or to descend to the abyss of absurdity of a rule relating to the height requirement which is meaning to play foul against their recommendation for appointment.

04. A relevance serving opening to this judgment is catching the contour of the case at the outset and that is as to whether with respect to an employment/recruitment in /to public service, a prescribed physical standard, in terms of height and chest measurement, can be agender without bearing any distinction between two sexes i.e. male and female; and whether on that basis seven (7) female candidates, who competed amongst 567



contestants to come out fully qualified on the basis of written test, interview and walk test so as to figure in final selection list of 28 candidates against 44 posts under selection, can be faltered at the last step to appointment just because their height is found to be short by few inches to the agender prescribed height standard.

05. Thus, the present case engages this court pitted with a call to pick between a status quo of the recruitment rule which means to choke merit backed entitlement of said seven female candidates for recommendation for appointment or the constitutional commitment of policy and polity under the Constitution of India which aims to empower women in all walks of national life by doing away with every conceivable roadblock propping up in the way so as to enable women to excel and stand tall on their merit in the social and public life.

06. Hardware (facts) of this case needs to be set out in chronology before we come to software (legal issue) involved for adjudication in the matter. Hardware component of this case has multiple situations which have converged to give rise to this case. We shall proceed with the chronology of the facts and situations governing and attending the case.

Chronology of the case



07. Vide Statutory Rule and Order (“**SRO**” in short) no. 359 dated 24.07.1970 framed by reference to Proviso to section 124 of the then obtaining Constitution of Jammu & Kashmir (akin to Proviso to article 309 of the Constitution of India), Jammu & Kashmir Forest (Gazetted) Service Recruitment Rules, 1970 came to be framed thereby creating and constituting the Jammu & Kashmir Forest (Gazetted) Service of the then State of Jammu & Kashmir (now of the UT of Jammu & Kashmir).

08. In the composition of the said service, as originally contemplated in terms of said SRO-359 of 1970, the post of Range Officer -I was not figuring in the cadre of Jammu & Kashmir Forest (Gazetted) Service. The post of Range Officer -I in the said Service was a late addition by virtue of SRO -106 of 1992 dated 30.04.1992 when the post of Range Officer Class -V came to be provided in the cadre of Jammu & Kashmir Forest (Gazetted) Service.

09. In terms of this SRO 106 of 1992, as is gatherable from the very original text of it, the physical standard requirements for direct recruitment came to be prescribed as under: -

- a. Height -163 cms;
- b. Chest girth (fully expanded) 184 cms;
Chest expansion 5 cms;



- c. Physical test consisting of a walk of 25 kms to be completed in 4 hours;
- d. Physical fitness certification from Chief Medical Officer.

10. As per this SRO -106 of 1992 to be read as part and parcel of parent SRO 359 of 1970, there is no gender distinction conceived and provided between male and female candidate /s or for that matter even region-wise candidates in terms of height, chest and physical endurance walk requirement.

11. In this SRO -106 of 1992, as per the text, the required chest girth fully expanded is 184 cms, which though seems to be a case of typographical mistake as same is 84 cms but nevertheless remained un-amended and uncorrected. This aspect has a passing reflection on the mindset on the part of the rule making authority as would be adverted to later on in the judgment.

12. The physical qualification for direct recruitment so prescribed in terms of SRO -106 of 1992 for the post of Range Officer Gazetted came to be revised vide SRO-264 dated 27.08.1998. The revised physical standard qualification for direct recruitment, as come to be provided under said SRO -264 of 1998, is as follows:-

- (a) (i) Height for general category 5.6 feet
- (ii) Height for candidates belonging to districts Leh & Kargil. 5.4 feet



The rest of the parameters with respect to chest and walk test remained same as provided in SRO -106 of 1992.

13. The aforesaid revised physical requirements so prescribed also maintained agender nature i.e. no gender distinction in terms of height/chest between male and female candidate / s aspiring to get selected for the post of Range Officer in the Jammu & Kashmir Forest (Gazetted) Service. It may be fitting not to miss a mention here that perhaps that is the reason that very few women were able to join the service as Range Officer since the introduction of the Post in 1992 till date.

14. Thus , from SRO -106 of 1992 to coming into force of SRO - 264 of 1998 on 27.08.1998, the height requirement for direct recruitment aspiring candidate / s had remained 163 cms which is equivalent to 5 feet 4.173 inches, whereas under revised rule position w.e.f 27/08/1998 the height requirement came to be 167.6 cms being equivalent to 5.6 feet for General category and for Leh & Kargil districts candidates height requirement came to be 5.4 feet which is equivalent to 164.5 cms.

Present Case Setup

15. In the context of the selection exercise, being the subject matter in the present case , for the posts of Range Officer s Grade -I Forest (Territorial) in the Jammu & Kashmir Forest (Gazetted)



Service, the Department of Forest, Ecology and Environment, Govt. of Jammu & Kashmir, vide its letter no. FST/Ser/80/2017 dated 08.02.2018, came to refer forty four (44) posts of Range Officers Grade-I Forest (Territorial) to the Jammu & Kashmir Public Service Commission (**“JKPSC”** in short). Range Officer Grade -I is a gazetted post with Pay Scale of Rs. 9300 -348000 with grade pay of Rs. 4280 (pre-revised).

16. The break up of forty four (44) posts as referred for selection comprised of 25 posts in Open Merit (OM) and 19 posts in Reserved category in the manner of 9 posts under Reserved Backward Area (RBA), 3 under Schedule Caste (SC), 05 under Scheduled Tribe (ST) and 2 posts under Actual Line of Control (ALC). Pursuant to this requisition from the J&K Forest, Ecology and Environment Department, Govt. of J&K, the JKPSC came to issue a selection advertisement notification no PSC/Exam/2018/19 dated 15.03.2018 inviting applications from the permanent residents of the then State of Jammu & Kashmir for appearing in the competitive examination for direct recruitment to the posts of Range Officers Grade -I Forest (Territorial) in accordance with the rules laid down vide said SRO-359 dated 24.07.1970 and SRO-432 dated 28.12.2007 read with the J&K Public Service Commission (Conduct of Examination) Rules, 2005.



17. In the advertisement notification with respect to the Eligibility conditions figuring at clause – (3) A & C, qualification required and prescribed with respect to educational and physical standards was mentioned. A candidate was required to be possessing B. Sc. Forestry as qualification. A candidate was required to possess physical standard in terms of prescribed height of 5.6 feet for General and 5.4 feet for Leh & Kargil region ; 84 cm chest girth fully expanded and chest expansion 05 cm. A walk of 25 km to be completed in four (4) hours as a physical endurance test requirement was also mentioned in the clause -C to Eligibility condition clause 3(C)(v) of the said advertisement notification.

18. Process of submission of application forms started in the year 2018 from 19.03.2018 to 20.04.2018 when out of 575 applications finally received, 567 applications were found to be in order for the applicants to sit in the written examination which was conducted in the year 2019 from 20.03.2019 to 14.04.2019.

19. Out of this written examination with 567 candidates appearing , 40 candidates came to be shortlisted for viva -voce (interview). Roll number and name wise position of said 40 candidates is as under: -

BD No.	Roll No.	Name of the Candidate	MCAT	Marks
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1.	190013	Mir Faizan Anwar	OM	426.00
2.	190016	Yasir Amin	OM	417. 50
3.	190019	Suhail Ahmed Wani	OM	383. 50
4.	190031	Rameez Raja	RBA	430. 50
5.	190038	Kaffel Ahmad Mir	OM	371.00
6.	190046	Arooq Ahmad Shah	RBA	404.00
7.	190059	Azeem Raja	OM	400.00
8.	190064	Shiba Zahoor	OM	395.00
9.	190065	Adnan Ahmat Bhat	OM	408.00
10.	190069	Gh. Ahmad Najar	RBA	392.00
11.	190070	Javid Ahmad Chopan	RBA	381.50
12.	190074	Basira Mehraj	OM	420.00
13.	190082	Sofi Farhan Meeraj	OM	419.00
14.	190095	Prince Ahmad Mir	OM	334.50
15.	190096	Khuban	OM	408.00
16.	1900107	Mir Rizwan Qazi	OM	312. 50
17.	1900109	Afshan Anjum Baba	RBA	385.50
18.	1900117	Majid Hussain	OM	343.00
19.	1900118	Iavaid Iqbal Bhat	OM	353.00
20.	1900121	Rayees Ahmad Tantray	OM	398.50
21.	1900123	Nesa Imtiyaz	OM	412.50
22.	1900148	Mudasir Ahmad Shah	RBA	404 .00
23.	1900153	Reyaz Rasool Malik	OM	328 .00
24.	1900161	Basharat Ajaz Khan	ALC	404 .00
25.	1900272	Raja Shoaib	OM	378 .00
26.	1900347	Haroon Mushtaq	RBA	410 .00
27.	1900355	Deskyong Namgyal	ST	344.50
28.	1900362	Saqib Murtaza	OM	433.50
29.	1900364	Saima Qamar	ST	398 .00
30.	1900365	Rakesh Singh	OM	396.50
31.	1900368	Farooz Ahamad Parray	OM	361 .00
32.	1900373	Anil Kumar Bhagat	SC	389.50
33.	1900376	Parvaiz Ahmad Shagoo	OM	373.50
34.	1900380	Bibi Nagaar	OM	381.50
35.	1900395	Sameer Ahmad	OM	379.50
36.	1900396	Sameer Ahmed	RBA	327.50
37.	1900403	Aurang Zeb	ST	371.50
38.	1900421	Mohd Saleem Wani	OM	368.50
39.	1900439	Vinod Kumar Sharma	RBA	324.50



40.	1900571	Naveed Ahmad Padder	OM	343.50
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It is pertinent to mention here that though the posts referred and advertised for selection were 44 but only 40 candidates came to pass through the written examination , meaning thus as against the demand the supply was found short. Composition of this 40 shortlisted candidates was that 26 candidates were in open merit (OM) category, 9 in Resident of Backward Area (RBA) category, 3 ST and 1 SC category.

20. The JKPSC , vide its notification no. PSC/Exam/56/2019 dated 25.06.2019 , came to declare the names and roll numbers of said 40 candidates qualifying the written examination and found eligible for the next stage of selection process i.e. , viva-voce (interview). It is pertinent to mention here that eight (8) writ - petitioners and six (6) private respondents no. 4 to 9 herein all figured in this list of 40 candidates eligible for the interview stage of selection . All the petitioners and the private respondents , except the petitioner no. 1 -Afshan Anjum (RBA) and the petitioner no. 6 - Saima Qamar (ST) , were open merit (OM)competitors.

21. Interviews came to be conducted from 29.07.2019 to 31.07.2019. Out of said 40 candidates so interviewed, 29 (twenty - nine) candidates came to be further shortlisted by the JKPSC , vide



its notification no. PS C/Exam/67/2019 dated 20.09.2019 meant for 29 posts' appointment and leaving remaining 15 posts with no race for selection. Said 15 posts comprised of 7 RBA posts, 3 SC posts, 3 ST posts and 2 ALC posts which thus fell out of purview of the selection process.

22. In this list of twenty nine (29) candidates, eight (8) came to be female candidates and twenty one (21) male candidates. This list of eight (8) female candidates included the writ petitioners no. 1 to 7 whereas the private respondents no. 4 to 9 failed to find place in the list of twenty one (21) male candidates. This is a very important statistic and aspect in the context of the case to be kept in constant perspective. It is at this stage of the selection process that the issue of height deficit of eight (8) female candidates in the select list of twenty eight (28) candidates cropped up to come into play.

23. Of twenty nine (29) interview qualifying candidates, all male and female candidates were subjected alike to physical test of 25 km walk in four hours which was held on 01.10.2019 and its outcome was conveyed on 03.10.2019 by the Director General, Youth Services & Sports, J&K Govt. to JKPSA whereby out of said twenty nine (29) candidates only twenty eight (28) were declared qualified in said walk test as well whereas one (1) candidate did not



appear leaving only twenty eight (28) candidates as final merit drawn claimants for recommendation for appointment.

24. Thus, the selection race finally came to be with a best find of 28 candidates having cleared the written test, interview and physical endurance test warranting a recommendation for appointment as foregone conclusion . List of said twenty eight (28) candidates , inclusive of the petitioners ' names as shown in bold , is as under :-

Sr. No.	Name of the Candidate
1.	Rameez Raja
2.	Mir Faizan Anwar
3.	Sofi Farhan Meeraaj
4.	Yasir Amin
5.	Neesa Imtiyaz
6.	Adnan Ahmad Bhat
7.	Mudasir Ahmad Shah
8.	Basharat Ajaz Khan
9.	Arooq Ahmad Shah
10.	Rayees Ahmad Tantray
11.	Anil Kumar Bhagat
12.	Suhail Ahmad Wani
13.	Javiad Ahmad Chopan
14.	Sameer Ahmad
15.	Vinod Kumar Sharma
16.	Sameer Ahmed
17.	Rakesh Singh
18.	Deskyong Namgyal
19.	Aurang Zeb



20.	Haroon Mushtaq
21.	Basira Mehraj
22.	Khuban Buch
23.	Azeem Raja
24.	Saima Qamar
25.	Shiba Zahoor
26.	Gh. Ahmad Najar
27.	Afshan Anjum Baba
28.	Bibi Nagaar

25. In this list of twenty eight (28) shortlisted candidates, the merit -wise position of eight (8) female candidates , seven (7) of them being the writ petitioners no. 1 to 7 herein , is as under: -

- i) Neesa Imtiyaz -Rank 7.
- ii) Basira Mehraj – Rank 4 (Petitioner no. 5) .
- iii) Khuban – Rank 9 (Petitioner no. 2) .
- iv) Azeem Raja – Rank 14 (Petitioner no. 7) .
- v) Saima Qamar – Rank 16 (Petitioner no. 6) .
- vi) Shiba Zahoor – Rank 18 (Petitioner no. 3) .
- vii) Afshan Anjum Baba – Rank 22 (Petitioner no. 1) .
- viii) Bibi Nighaar – rank 24 (Petitioner no. 4) .

26. Out of twenty eight (28) finally selected candidates , drawn out of written examination , interview and physical endurance test , waiting to be recommended finally for appointment subject to the formality of medical examination, nineteen (19) candidates were



reported medically fit for being recommended to the Govt. , for appointment to the Service. This medical fitness aspect included the physical measurement aspect in terms of height and chest prescribed for the candidates.

27. With respect to fifteen (15) candidates , borne out of these nineteen (19) all cleared candidates , there was found to be no issue whatsoever for their onward recommendation for appointment to the State Govt. , by the JKPSC and accordingly said fifteen (15) candidates came to be so recommended by the JKPSC . These fifteen (15) candidates are enlisted as under :-

Sr. No.	Roll No.	Name of the Candidate	Category	Marks
1.	1900031	Rameez Raja	RBA/OM	430.50
2.	1900013	Mir Faizan Anwar	OM	426.00
3.	1900082	Sofi Farhan Meeraj	OM	419.00
4.	1900016	Yasir Amin	OM	417.50
5.	19000123	Neesa Imtiyaz	OM	412.50
6.	1900065	Adnan Ahmad Bhat	OM	408.00
7.	19000148	Mudasir ahmad Shah	RBA/OM	404.00
8.	19000161	Basharat Ajaz Khan	ALC/OM	404.00
9.	1900046	Arooq Ahmad Shah	RBA/OM	404.00
10.	19000121	Rayees Ahmad Tantray	OM	398.50
11.	19000373	Anil Kumar Bhagat	SC/OM	389.50
12.	1900019	Suhail Ahmad Wani	OM	383.50
13.	1900070	Javiad Ahmad Chopan	RBA/OM	381.50
14.	1900395	Mushtaq Hussain	OM/IS	379.50
15.	1900439	Kuldeep Raj Sharma	RBA	324.50



Out of these fifteen (15) candidates, fourteen (14) are males and one (1) female. Fifteen (15) candidates came to be recommended under open merit (OM) category and one (1) candidate as RBA category. The only female candidate , who came to figure in the list of fifteen (15) recommended candidates for appointment , is Nissa Imtiyaz . This is a very relevant statistic to be taken note of that in the final list of 28 candidates , 8 came to be women and 20 men whereas in the list of 15 recommended for appointment only one (1) happens to be woman and 14 men.

28. However, with respect to four (4) out of these nineteen (1 9) candidates found medically fit, said four (4) candidates ' onward recommendations got held up because of their getting named along with the writ petitioners herein as respondent nos. 3 to 14 in a writ petition WP(C) no. 3182/2019 titled "Majid Hussain Vs State of J&K and others ". With respect to these four (4) candidates, the issue was concerning the status of their academic qualification in terms of their academic degrees from non -ICAR Universities.

29. After the screening of nineteen (19) candidates as medically fit out of finally shortlisted twenty eight (28) candidates, eight (8) candidates left over are those with respect to whom the issue of height factor came to be cited in the manner that as against the respective medical certificate s provided by them with respect to their



respective heights, their actual height in the medical examination was found out to be falling short of the requisite height of 5.6 feet for general category .

30. Out of said eight (8) candidates, seven (7) candidates happened to be the females and one male , all of them now being the writ petitioners in the present case before us . In this regard, the status of their respective height -wise position is given as under: -

Sr. No.	Name of the Candidate	Height as per certificate	Height as per medical report
1.	Afshan Anjum Baba (Female)	170 cm	5.2 ½ feet
2.	Khuban (Female)	5.3 feet	5.2 feet
3.	Shiba Zahoor (Female)	5.6 feet	5.4 ½ feet
4.	Bibi Nighaar (Female)	170 cm	5.5 feet
5.	Basira Mehraj (Female)	5.6 feet	5.4 ½ feet
6.	Saima Qamar (Female)	5.5 feet	165 cm
7.	Gh. Ahmad Najar (Male)	5.6 feet	5.4 feet
8.	Azeem Raja (Female) सत्यमेव जयते	5.6 feet	4.10 feet

31. While the situation came to be so confronting the JKPSC with respect to 28 finally shortlisted candidates meant for recommendation for appointment out of which only 15 being found medically fit to be recommended and others having issue on account of qualification status and women candidates having physical requirement height status , the JKPSC , acting through its Secretary , came to address a letter no. PSC/Exam/RO(Forest)/2018 /1 dated 18.10.2019 to the



Department of Forest, Ecology & Environment, Govt., of Jammu & Kashmir with respect to issue of shortlisted female candidates in the list of twenty (28) candidates found with shortage in height while the SRO 359 of 1970 was providing for one height requirement for male and female thus warranting a recheck in the rule matter.

32. In this backdrop of the situation, very first writ petition WP(C) no. 3145/2019 titled “Kaffel Ahmad Mir and others Vs **State & others**” came to be preferred by six (6) male candidates in which they came to question the very entitlement of the candidates figuring in the list of 28 candidates, carrying deficiency of height, to appear in the selection process itself. These six (6) male competitors thus sought the ouster of eight (8) female candidates from the merit list and correspondingly asking for redrawing of the merit list composition by their inclusion i.e. of said six (6) male candidates in the merit list for purpose of their consequent recommendation for appointment. All these six male candidates, as petitioners in the writ petition WP(C) no. 3145/2019, are the candidates who had figured in the list of 40 shortlisted for interview stage of competition but failing to make it beyond interview stage.

33. In said writ petition WP (C) 3182/2019, the respondent nos. 6 to 17 were named as under :-



- i) Basira Mehraj -as respondent no. 6,
- ii) Neesa Imtiyaz – as respondent no. 7,
- iii) Khuban – as respondent no.8,
- iv) Mudasir Ahmad Shah – as respondent no.9,
- v) Arooq Ahmad Shah – as respondent no. 10,
- vi) Azeem Raja – as respondent no.11,
- vii) Saima Qamar – as respondent no.12,
- viii) Shiba Zahoor – as respondent no.13,
- ix) Gh. Ahmad Najar – as respondent no.14,
- x) Afshan Anjum Baba – as respondent no.15,
- xi) Javid Ahmad Chopan – respondent no.16 &
- xii) Bibi Nagaar – respondent no.17.

The writ petitioners herein were, thus, all figuring in this array of twelve (12) respondents.

34. In said writ petition filed before this court, then existing as High Court of Jammu & Kashmir, an interim order dated 29.10.2019 came to be passed carrying an interim direction for the JKPSC to make recommendation in favour of only those candidates who meet the physical standards in accordance with the rules.

35. The aforesaid writ petition came to be followed in its footsteps with institution of a writ petition WP(C) no. 3182/2019 titled **“Majid Hussain Vs State & others”** in which the inclusion of twelve (12) candidates, as figuring in the list of twenty eight (28)



finally shortlisted candidates out of written and interview, came to be questioned on the ground of lack of prescribed qualification /standard, both educational as well as physical. The petitioner Majid Hussain in the abovementioned writ petition is also one of candidates figuring in the list of forty (40). The candidates whose selection to figure in list of twenty eight (28) candidates came to be so questioned are as under :-

- i. Haroon Mushtaq – respondent no. 3,
- ii. Rakesh Singh – respondent no.4,
- iii. Aurang zaib – respondent no.5,
- iv. Deskyong Namgyal – respondent no.6,
- v. Basira Mehraj – respondent no.7,
- vi. Khuban – respondent no.8,
- vii. Azeem Raja – respondent no.9,
- viii. Saima Qamar – respondent no.10,
- ix. Shiba Zahoor – respondent no.11,
- x. Afshan Anjum Baba – respondent no.12,
- xi. Gh. Ahmad Najar – respondent no.13 &
- xii. Bibi Nagaar – respondent no.14.

The petitioners herein were again figuring in this array of twelve (12) respondents.

36. In this writ petition, in terms of an interim order dated 02.11.2019, the learned Single Bench of this High Court came to order stay of the selection of the afore-named persons figuring as



respondent nos. 3 to 14 in said writ petition. It is pertinent to mention here that out of these 12 respondents no. 3 to 14, 9 respondents were pointed out as lacking the requisite height and 3 respondents objected in the context of their degree status.

37. In view of the interim direction so passed in the aforesaid two writ petitions, the JKPSCT, vide its communication no. PSC/Exam/RO(Forest)/2018/1 dated 13/11/2019, had come to recommend the names of fifteen (15) candidates only as being undisputed out of twenty (28) candidates to the Department of Forest, Ecology & Environment, Govt. of J&K for the purpose of consequent appointments leaving thirteen (13) candidates un-recommended.

38. Pursuant to the recommendations so made by the JKPSCT with respect to fifteen (15) candidates for appointment as a Range Officer Grade -I, the respondent no. 1 - Department of Forest, Ecology and Environment, Govt. of UT of Jammu & Kashmir came forward with a Govt. Order no. 519 -JK(Est) of 2019 dated 25.11.2019 thereby ordering appointment of fifteen (15) candidates as Range Officers Grade -I in the Pay -Scale of Level 6E (35900 -113500).

39. With respect to remaining un-recommended thirteen (13) candidates, twelve (12) candidates are the ones whose participation



in the selection process came to be under challenge in the aforementioned two writ petitions on account of purported deficiency pertaining to educational as well as physical qualification, whereas one candidate's recommendation was kept on hold by the JKPSC for some technical issue having nothing to do with the litigation so germinated in the matter.

40. Finding themselves being prejudiced on account of their purported height factor deficiency despite having come successful in the written examination and interview as also in the walk test of 25 km within four hours, six female candidates namely 1) Afshan Anjum Baba, 2) Khuban, 3) Shiba Zahoor, 4) Bibi Nagaar, 5) Saima Qamar & 6) Saima Qamar, who are the writ-petitioners 1 to 6 herein, came to file a writ petition WP(C) no. 3798/2019 titled **"Afshan Anjum Baba and others Vs UT of J&K and others"** before this Court thereby seeking the following reliefs: -

"a. Issue a writ of mandamus or any other appropriate writ, order or directions, to declare the SRO-359 of 24th July, 1970 (impugned herein) as ultra vires to the Constitution of India in so far as the impugned rule suffers from the voice of gender discrimination while prescribing same physical standards for male and female candidates alike.



b. *Issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondent J&K Public Service Commission to forward the names of all the petitioner to the department for their appointment against the post of Range Officers Grade-I Forest in the J&K Forest Department (Territorial) since the names of the petitioners have been withheld on the basis of this impugned discriminatory rule.*

c. *Any other writ, order of direction which this Hon'ble Court may deem fit and proper also be issued in favour of the petitioners and against the respondents."*

41. With respect to the present writ petitioners 1 to 8 , who came to figure in the final select list of twenty eight (28) candidates , their respective merit position in the merit list obtained as follow: -

- i. Petitioner no. 1 -Afshan Anjum Baba at Sr. no. 12 as RBA/OM,
- ii. Petitioner no. 2 -Khuban at Sr. no. 7 as OM,
- iii. Petitioner no. 3 – Shiba Zahoor at Sr. no. 10 as OM,
- iv. Petitioner no. 4 - Bibi Nagaar at Sr. no. 13 as RBA/OM,
- v. Petitioner no. 5 - Basira Mehraj at Sr. no. 6 as OM.



vi. Petitioner no. 6 – Saima Qamar at Sr. no. 9 as
ST/OM &

vii. Petitioner no. 7 Azeem Raja at Sr. no. 14 .

viii. Petitioner no. 8 Gh. Ahmad Najjar at Sr. no. 19 .

42. In the meantime, two more writ petitions WP(C) 3655/2019 titled **“Parvaiz Ahmad Shagoo and others Vs UT of J&K & others”** and **“Azeem Raja Vs UT of J&K and others”** came to be preferred before this High Court relating to the matter of selection process/exercise in reference. It is pertinent to mention here that petitioner Parvaiz Ahmad Shagoo in the writ petition WP(C) no. 3655/2020 was also figuring in the list of 40 candidates and his case was similar with that of petitioners in WP (C) no. 3145/2019 & 3182/ 2019 in targeting the writ petitioners 1 to 7 herein in particular. In so far as writ petition filed by Azeem Raja is concerned , she happened to be one of eight (8) female candidates whose recommendation for appointment was also being sought to be undermined on account of her short height. The writ petitioner no. 7 herein is said Azeem Raja.

43. While the aforesaid five writ petitions were so pending consideration before this court, on account of coming into scene of Jammu & Kashmir Reorganization Act, 2019 thereby extending the jurisdiction of the Central Administrative Tribunal CAT with respect



to matters of UT of Jammu & Kashmir and UT of Ladakh qua the service as well as service selection related all pending writ petitions came to be transferred from the High Court of Jammu & Kashmir and Ladakh to the Central Administrative Tribunal Jammu Bench pursuant to Notification no. G.S.R. 267(E) dated 29th April, 2020 read with Notification no. G.S.R. 317(E) dated 28th May, 2020, issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) and so were said five writ petitions above referred.

44. Thus, writ petition WP(C) no. 3145/2019 titled “Kaffel Ahmad Mir and others Vs State & others” upon its transfer to the Central Administrative Tribunal, Jammu Bench (**“CAT Jammu Bench”** in short) came to be diarized as T.A. no. 62/5540/2020 . In the writ petition WP(C) 3145/2019 , registered as T.A. no. 62/5540/2020 titled “Kaffel Ahmad Mir and others Vs State of J&K and others”, the petitioners figuring therein were as under: -

- i) Kaffel Ahmad Mir – petitioner no. 1,
- ii) Prince Ahmad Mir – petitioner no. 2,
- iii) Javaid Iqbal Bhat – petitioner no. 3,
- iv) Reyaz Rasool Malik – petitioner no. 4,
- v) Arooz Ahmad Parray – petitioner no. 5 &
- vi) Mohd. Saleem Wani – petitioner no. 6.



Whereas, the private respondents in said case were twelve (12) in numbers figuring from serial no. 6 to 17.

45. The writ petition WP(C) no. 3182 /2019 titled “Majid Hussain Vs State of J&K and others ” came to be diarized as T.A. no. 62/5677/2020.

46. The writ petition WP(C) no. 3798/2019 titled “Afshan Anjum Baba and others Vs UT of J&K **& Ors**” came to be diarized as T. A. no. 62/5610/2020 .

47. The writ petition WP (C) 3655/2019 titled “Parvaiz Ahmad Shagoo and other s Vs UT of J&K & Ors ” came to be registered as T.A. no. 61/1693/2020 . The writ petition titled “Azeem Raja Vs UT of J&K and others ” got registered as T. A. no. 62/920/2021 .

48. Thus, all the aforesaid five writ petitions came to be re - registered as five transfer applications i.e.

T.A.62/5540/2020: Kaffel Ahmad & Ors Vs State of J&K & Ors,

T.A. 62/5677/2020 : Majid Hussain Vs State of J& K and Ors ,

T.A. 62/ 5610 /2020 : Afshan Anjum & Ors Vs UT of J&K & Ors ,

T.A. 61/1693/2020 Parvaiz Ahmad Shagoo Vs UT of J&K & Ors ,

T.A .62/920/2021 Azeem Raja Vs UT of J&K & Ors



before the CAT Jammu Bench, thereby bringing the battle of the adjudication of the matter at the disposal of the CAT Jammu Bench.

49. JKPSC in its stance in the cases before the CAT Jammu Bench at first instance had come to acknowledge and plead that non-distinction in the prescribed physical parameters in terms of SRO-359 of 1970 ex-facie appears to be suffering from gender discrimination and, as such, needed rectification in the rule before actual appointments are made. JKPSC went to the extent of saying that physical standard prescribed was recognizing geographical distinction between Leh & Kargil districts as a class apart vis-a-vis rest of the then State of Jammu & Kashmir but in the context of Nature prescribed distinction between male and female physical parameters, the rule was gender dissolving. This stance on the part of the JKPSC before CAT Jammu Bench came to be later retracted and revised by coming forward with the second reply which put forth mechanical mindset at the forefront saying that the rules are what they are and, as such, the same are to be carried in compliance to the extent of disqualifying the female candidates who otherwise happened to be in the merit list.

50. It is pertinent to bear in mind that JKPSC had appeared to answer the cases before CAT Jammu Bench in the light of its Secretary's communication no. PSC/Exam/R.O.(Forest)/2018/1



dated 18.10.2019 addressed to the Commissioner/ Secretary to Government, Forest Department, Govt. Of UT of J&K bearing a reference that successful female candidates have approached the higher authorities requesting re-visiting the physical standard to be scaled down to a lower side as against male candidates and, as such, clarification was solicited from the government's end.

51. The CAT Jammu Bench considering the fact that the controversy involved in all the five cases was of same nature came to hear them collectively and pass five judgments all dated 12.07.2021 but placing respective judgment qua each case individually.

52. T.A. no. 6 2/5540/2020 titled "Kaf fel Ahmad Mir Vs State of J&K & Ors" came to be disposed of by the CAT Jammu Bench vide its judgment dated 12/07/2021 holding the select list appended as annexure -B to communication no. PSC/Exam/RO/Grade -I/Territorial/2018 dated 20.09.2019 vitiated to the extent of the candidates being included who did not fulfill the height criteria and accordingly passed the following consequent directions: -

- a. The select list i.e. Annexure -B to Communication no. PSC/Exam/RO/Grade -I/Territorial/2018 dated 20.09.2019 (Annexure -1) includes the names of the



persons inclusive of respondent nos. 6 to 14 who are to figure in the Walk Test and Medical Examination. So, PSC (respondent no. 3) shall in the first instance conduct the exercise of height measurement, if not conducted as on date;

- b. To conduct the tests mentioned in the advertisement notice;
- c. Thereafter prepare the final select list of candidates who fulfill all the eligibility criteria mentioned in the advertisement notice;
- d. Follow the procedure for bringing the selection procedure to its conclusion.

This exercise was directed to be carried out from the date of receipt of the judgment. The JKPSC, in particular, was directed to ensure that the final list does not contain the name of the candidates who do not fulfill the eligibility criteria as per the rules and conditions of the advertisement notice.

53. T.A. no. 62/5677/2020 titled “Majid Hussain Vs State of J&K & Ors” too came to be disposed of on the same conclusion and directions as reproduced herein above with respect to T.A. no. 62/5540/2020.



54. T.A. no. 61/1693/2020 titled Parvai z Ahmad Shagoo Vs State also came to be concluded on the same directions as reproduced herein above with respect to T.A. no. 6 2/5540/2020.

55. T. A. no. 62/920/2021 titled “Azeem Raja Vs UT of J&K & Ors ” came to be dismissed for non -joinder of the necessary party /ies as in the said case the petitioner A zeem Raja , being a female candidate , was seeking a relief with respect to height prescription in the application of SRO -359 of 1970 which did not differentiate between male and female candidates. The CAT Jammu Bench came to hold that it is not within its power to issue directions to the Government to frame rules and to legislate and it came to hold that physical standard (height) prescribed by the rules and the advertisement cannot be said to be illegal, arbitrary and discriminatory or violative of articles 14/15/16 & 21 of the Constitution of India.

56. In so far as T. A. no. 62/5610/2020 titled “Afshan Anjum Baba and others Vs UT of J&K **& Ors**” is concerned , the same came to be disposed of by rejection on the same note and context as the case of T. A. no. 62/920/2021 titled Azeem Raja Vs UT of J&K & Ors .



57. CAT Jammu Bench in dealing with the application T.A. no. 62/5610/2020 [WP(C) no. 3798/2019] which was filed by the writ petitioners 1 to 6 herein came to act upon the following premise: -

- a. It is the policy of the Govt. to fix physical and other parameters as qualifying standards for a highly competitive selection process.
- b. Prescribing of height requirement with respect to selection and appointment in a government service is a matter within the Govt. Policy and it is for the Govt. to see what qualification to be held by a person who is to be appointed for the post of Range Officer.
- c. The court does not interfere unless the policy is unconstitutional, arbitrary or irrational or contrary to the statutory provisions and it is improper for the Judges to step into the sphere except in a rare and exceptional case.
- d. Recommending the case of the candidates those selected but found short of height prescribed for regularization would be an injustice to those persons who opted not to apply for the post on account of lacking height prescribed.
- e. There was no scope for approbation and reprobation for the female candidates. CAT Jammu Bench was not vested with reach to strike down the prescription settled by executive as an employer in its wisdom.
- f. Rules of the game cannot be changed once the game is played. Delay and laches on the part of the female candidates reckoned from the date of issuance of



advertisement notification dated 15.03.2018 till filing of the writ petition WP(C) no. 3798/2019 (T.A. no. 62/5610/2020) i.e. almost after a gap of one and a half year to question the height parameter requirement and the discrimination attending there with.

- g. Non-joinder of the necessary party in the form of candidates 15 in numbers, who came to be appointed on the recommendation of JKPSC by the Govt., out of 28 finally shortlisted candidates.

In support of its conclusions arrived at in dismissing T.A. no. 62/5610/2020 (WP(C) no. 3798/2019), CAT Jammu Bench cited following judgments to buttress the reasoning in its judgment. Said judgments are: -

1. Krushna Chandra Sahu Vs State of Orissa , (1995) 6 SCC 1.
2. Zonal Manager Vs Aarya K. Babu , (2019)8 SCC 587.
3. P.U. Joshi Vs Accountant General , (2003)2 SCC 632.
4. Chandigarh Administration Vs Jasmine Kaur , (2014)10 SCC 521.
5. Chandra Prakash Tiwari Vs Shakuntala Shukla , (2002)6 SCC 127.
6. Air Commodore Naveen Jain Vs Union of India , (2019)10 SCC 34.
7. Madan Lal Vs State of Jammu & Kashmir , (1995)3 SCC 486.
8. "Ramesh Chandra Shah Vs Anil Joshi" (2013)11 SCC 309.
9. District Collector Vs M. Tripura Sundari Devi , (1990)3 SCC 655.



10. Manish Kumar Shahi Vs State of Bihar , (2010)12 SCC 576.
11. Pradeep Kumar Rai Vs Dinesh Kumar Pandey , (2015)11 SCC 493.
12. Amrit Lal Berry Vs Collector of Central Excise , (1975) 4 SCC 714.
13. Trilokchand Motichand Vs H. B. Munshi , (1970) SCC 898.
14. Arun Tewari Vs Zila Mansavi Shikshak Singh , (1998) SCC 331.

58. Thus, out of five (5) petitions so disposed of by the CAT Jammu Bench , two (2) petitions i.e. T. A. no. 62/920/2021 titled Azeem Raja Vs UT of J&K and others & T. A. no. 62/5610/2020 titled Afshan Anjum Baba and others Vs UT of J&K and others came to be negated bearing the parting directions similar to one as in the other three petitions i.e. T.A. no. 62/5540/2020 titled Kafel Ahmad Mir Vs State of J&K and others , T.A. no. 62/5677/2020 titled Majid Hussain Vs State of J&K and others & T.A. no. 61/1693/2020 titled Parvai z Ahmad Shagoo Vs State of J&K and others .

59. Upon passing of the judgments by the CAT Jammu Bench in the aforesaid five (5) cases, the JKPSCT , in its 17th meeting with an agenda item no. 17 -18 held on 06.08.2021 , came to order rejection of candidature of eight (8) candidates because of deficiency



in prescribed height requirement. Out of these eight (8) candidates , seven (7) happened to be female candidates and one (1) male .

60. Pursuant to this decision at its end , the JKPSC's approval for cancellation of the candidature of eight (8) candidates on account of height deficiency factor came to be apprised vide its communication no. PSC/Exam/RO/F/2018/1 dated 27.08.2021 to the Department of Forest, Ecology & Environment, Govt. of Jammu & Kashmir.

61. On account of purported ouster of eight (8) candidates from the list of twenty (28) candidates , and purportedly acting in compliance with the direction of the CAT Jammu Bench in terms of its judgment dated 12.07.2021, the JKPSC , vide its communication no. PSC/Exam/ RO(Forest)/2018/1 dated 27.08.2021 , came to forward the names of six (6) candidates , in place of ousted candidates , for their medical examination by the Govt. Medical College, Srinagar. These candidates happened to be the ones who were petitioners in T.A. No. 62/5540/2020 titled "Kaffel Ahmad Mir Vs State of J&K & Ors ".

62. Vide another communication no. PSC/Stamp/RO/Grade - I/2018/1 dated 02.09.2021 , the JKPSC came to forward the name



of Majid Hussain, the petitioner in T.A. no. 62/5677/2020 to Govt. Medical College Srinagar for medical examination.

63. On account of the aforesaid emerging developments, five (5) female candidates out of the six (6) candidates, who were the petitioners in T. A. no. 62/5610/2020 titled “Afshan Anjum Baba and others Vs State of J&K and others”, came forward with the institution of the present writ petition WP(C) no. 1757/2021 instituted on 03.09.2021 before this Court thereby challenging the judgment dated 12.07.2021 passed by the CAT Jammu Bench in T. A. no. 62/5610/2020, and consequently asking for quashment of SRO-359 of 1970 in the context of prescription of height requirement without discrimination between the male and female candidate, read with a direction unto the JKPSC to forward the selection list dated 20.09.2019 figuring the names of twenty (28) candidates to the Govt., for carrying out the appointments against the posts of Range Officers Grade -I.

64. In this writ petition WP(C) no. 1757/2021, five (5) female petitioners originally petitioning this court are –

- i) Afshan Anjum Baba – petitioner no. 1,
- ii) Khuban – petitioner no. 2,
- iii) Shiba Zahoor – petitioner no. 3,
- iv) Bibi Nig haar – petitioner no. 4 &



v) Basira Mehraj – petitioner no. 5.

Saima Qamar, who was along with the above named female candidates in T. A. no. 62/5610/2020, opted to stay out in joining five writ petitioners in the institution of writ petition to fight for her claim.

65. It is this writ petition WP(C) no. 1757/2021 filed by five petitioners which presented itself for adjudication before this court.

66. Some developments on the file of this case post its institution need to be referred for the sake of having clear perspective.

67. In this writ petition, the original writ petitioners 1 to 5 carried forward the same set up of respondents as were in their T. A. No. 62/5610/2020 and those are (1) UT of Jammu & Kashmir through its Chief Secretary as the respondent no.1, (2) Commissioner/Secretary to Govt., Forest Department as the respondent no. 2 & (3) J&K Public Service Commission as the respondent no. 3.

68. Considering that they need to intervene in the writ petition WP(C) no. 1757/2021 as respondents so as to oppose the writ petition, an application CM no. 6241/ 2021 came to be filed by four (4) applicants namely Kaffel Ahmad Mir, Javaid Iqbal Bhat, Arooz



Ahmad Parray & Mohammad Saleem Wani on 17.09.2021 for their impleadment. It is pertinent to mention here that these four (4) applicants were out of six (6) petitioners figuring in T.A. no. 62/5540/2020 titled Kaffel Ahmad Mir Vs State .

69. Similarly, an application CM no. 6296/2021 came to be filed by Majid Hussain on 21.09.2021 also seeking his impleadment as a party respondent in the writ petition WP(C) no. 1757/2021. Applicant Majid Hussain was the petitioner in T.A. no. 62/5677/2020.

70. It is pertinent to mention here that in the aforementioned two T.As i.e. T.A. no. 62/5540/2020 titled “Kaffel Ahmad Mir & Ors Vs State of J&K & Ors” & T.A. no. 62/5677/2020 titled “Majid Hussain Vs State of J&K & Ors”, the original writ petitioner s 1 to 5 in the present WP(C) no. 1757/2021 were named as the party respondents therein but in T. A. no. 62/5610/2020 titled “Afshan Anjum Baba and others Vs State of J&K and others ” only three respondents all being officials had figured and that is the reason that application for impleadment as the respondents came to be so filed resulting in impleadment of new respondents in addition to the originally named respondents 1 to 3.



71. In terms of orders dated 07.10.2021 and 07.12.2021 impleadment of private respondents came to take place who came to be granted time to file reply to the writ petition.

72. Thus, the writ petition WP(C) no. 1757/2021 came to have the respondents 1 to 9. The respondent no. 9 –Raja Shoaib came to be impleaded last in terms of an order dated 17.12.2021 passed in CM no. 7633/2021 .

73. In between , an application CM no. 673/2021 came to be filed on 06.10.2021 by the applicant namely Saima Qamar (female), Azeem Raja (female) and Gh. Ahmad Najar (male), seeking their impleadment as co -petitioners in WP(C) no. 1757/2021. It is pertinent to mention here that applicant Saima Qamar was one of the six petitioners in T. A. no. 62/5610/2020 , whereas A zeem Raja was the petitioner in T. A. no. 62/920/2021 .

74. Thus, with the addition of these three applicants as co -petitioners, the writ petition came to be on behalf of the eight (8) petitioners and nine (9) respondents in the matter.

75. It is this position of parties which is finally obtaining on the file and the contest has obtained against each other with UT of J&K, JKPSK and private respondents on same page against the petitioners.



76. In the case on 07.11.2021, the Division Bench was pleased to stay operation of the impugned judgment dated 12.07.2021 passed in the petitioners' T.A. no. 62/5610/2020 by the CAT Jammu Bench with a direction to the official respondents figuring in the writ petition not to finalize the selection in question. Notice on behalf of the JKPSK came to be accepted by the counsel.

77. In terms of an order dated 27.12.2021, the Division Bench came to modify the direction as given in the order dated 09.09.2021 and thus came to allow the respondent no. 1 – Govt. of UT of J&K to act upon the recommendation of the respondent no. 3 – JKPSK with a rider to keep 8 posts reserved out of the available posts to be later on utilized for the petitioners in the event of their succeeding in the writ petition. This direction to keep 8 (eight) posts available came to be reiterated in an order dated 14.03.2022.

78. This case has not only the facts which were on board at the passing of the impugned judgment dated 12.07.2021 by the CAT Jammu Bench but also facts post institution of this writ petition and all of them having bearing on the core aspect of this case.

79. JKPSK, vide its communication no. PSC/DR/Posts/2019 dated 11.02.2022, came to release 15 out of 44 posts of Range



Officers Grade -I back to Govt. , because when only 29 candidates had come to be finally shortlisted, there was no takers for 15 posts.

80. In view of the subsequent developments having accrued during the pendency of the writ petition WP(C) no. 1757/2021, the writ petitioners 1 to 8 came forward with institution of writ petition WP(C) no. 345/2022 on 21/02/2022 in which in terms of an order dated 31.03.2022 notice came to be issued to the respondents and the interim directions operating in the first writ petition WP(C) no. 1757/2021 were directed to govern the subsequent writ petition WP(C) no. 345/2022. In this writ petition WP(C) no. 345/2022, 8 (eight) writ petitioners are seeking quashment of Order no. PSC/DR/Posts/2019 dated 11.02.2022 issued by respondent no. 3-JKPSC whereby posts going un-recommended for appointment other than 15 posts recommended for appointment of candidates were returned back to the Govt. Outcome of this writ petition WP(C) no. 345/2022 is obviously dependent upon outcome of writ petition WP(C) no. 1757/2021.

81. Despite interim court directions mandating the official respondents, in particular, the respondent nos. 1 & 2 not to carry forward the selection expect for all 15 candidates recommended by JKPSC, the JK PSC came to refer on 28.04.2022, seven (7) non-selected candidates who were out of the private respondents herein



for walk test by issuance of notification no.
PSC/Exam/R.O.(O)/2018/1 .

82. Not only this , the JKPSC, vide its communication no.
PSC/Exam/R.O.(F) -2018/II dated 31.05.2022 , came to
recommend to the Govt., seven (7) new names for appointment as
Range Officers Grade -I in place of eight (8) candidates purportedly
ousted out of the list of twenty nine 29 shortlisted candidates,
which includes the petitioners as well. All these seven (7) candidates
figured as the respondent nos. 4 to 9 in the present writ petition.

Filing of Reply on behalf of the respondents to the present writ
petition :

83. Reply on behalf of the respondent nos. 1 & 2 i.e. Govt. of
UT of J&K and Department of Forest came to be first submitted on
18.10.2021 .

84. Private respondents nos. 4 to 7 i.e. 4, out of 6 petitioners in
Kaffel Ahmad Mir and others Vs State of J&K and others , came to
submit their reply to the writ petition on 21.10.2021 .

85. Reply on behalf of the respondent no. 8 -Majid Hussain,
who was the sole petitioner in T.A. no. 62/5677/2020, WP(C) no.
3182/2019 came to be submitted on 21.10.2021.



86. Reply on behalf of the respondent no. 3 -JKPSC to the writ petition came to be submitted on 16.12.2021 .

87. Before proceeding to deal with the merits of the present case, we would like to lay out some important related and contemporary aspects cited in the case and which have a bearing with respect to our judgment making in the case and this we state under heading :

Related/Contemporary Aspects

88. The writ petitioner's bank reliance upon a Study done by one Angus Deaton with respect to subject of "Height, health and inequality: the distribution of adult heights in India". Angus Deaton, the author of the said study, is from Centre for Health & Wellbeing and Research Program in Development Studies, Princeton Universities, in which a reference has been made that average -wise Indian males in different States of India have longer height as compared to females. In the context of J&K, average male height has been found to be 168.3 cm and female 154.9 cm. This has been cited to plead a fact that rule with respect to height prescription in SRO 106 of 1992 is an exhibit of absentmindedness of the part of the rule making authority to be in sync with the reality of life in Indian context in general and of J&K in particular that females'



average height is shorter than males whereas the height prescribed in SRO 162 of 1992 read with SRO 264 of 1998 is more male conceptualized than female related .

89. Previous to the selection process initiated pursuant to the JKPSC's advertisement notification dated 15.03.2018 in issue in the present case, the JKPSC had carried out selection process for Range Officer Grade -I on an earlier occasion in which some of the petitioners could not get their application forms through for competing in the examination of the time because of height factor. This fact is being cited by the learned counsel for the private respondents to highlight the fact that most of the petitioners were aware of his/her height requirement deficiency as obtaining in terms of the rules , and , thus, their entry in the selection process in reference to advertisement notification dated 15.03.2018 was lacking bonafide and their consequent success in getting through written examination, interview, physical endurance test ought not to fetch them any equity in their favour.

90. The petitioners highlight the fact that except for this J&K Forest (Gazetted) Service constituted in terms of SRO -359 of 1970 read with SRO -106 of 1992 in the context of height prescription, in most of other allied Services now in the UT of J&K and before that in the State of J&K requiring height factor for recruitment, a



classification has been maintained between male and female height with prescribed female height lower in comparison to the prescribed male height and so also with respect to the requirement of chest girth prescribed separately for male and female.

91. The petitioners cite the fact that for the post of Range Officer under the Central Entrance and Training Rules (Revised) 2004, height and chest prescribed for male and female are different with respect to male height of 163 cm (5.4 feet) whereas for female 150 cm (4.11 feet) are prescribed.

92. The petitioners cite advertisement notice no. PSC/Exam/2007/25 of 2007 by JKPS for the same very post of Range Officer Territorial wherein the height prescribed was 5.4 feet (163 cm) which was on the lesser side though without any classification between the male and the female candidates but on the lesser side to the one prescribed in 2018 notification.

93. The petitioners refer to a Notification F. No. 3 -17/99 -RT dated 10.01.2006 issued by the Govt. of India, Ministry of Environment & Forest with respect to Entrance & Training Rules (Revised) 2004 for Forest Range Officers notified vide Gazette Notification GFR no. 466(E) dated 22.07.2004 wherein the existing physical standard were changed to new ones provided



differently for male as well as female. Existing male height was 163 cm and female height was 150 cm which stood revised to remain same but with respect to chest girth the existing requirement of 84 cm for male is revised to 79 cm and for female existing 79 cm to revised 74 cm.

94. The petitioners refer to an advertisement notification no. PSC/Exam/2013/27 dated 22.04.2013 for selection to the post of Range Officer Grade -I in which the height prescribed though without differentiation between male and female was 163 cm (5.4 feet) lower than the one in issue.

95. The petitioner s also cite JK PSC Notification no. PSC/Exam/2015/27 dated 21.08.2015 for the selection for the post of Range Officer Grade -I with a prescription of height 163 cm (5.4 feet) lower than the one in issue .

96. The petitioners cite PSC advertisement notification no. PSC/Exam/23/2017 dated 24.04.2017 for selection to the posts of Assistant Conservator of Forest in the very same J&K Forest (Gazetted) Service in which there is a separate prescription of height for male and female candidates with height for females on lesser side than male height .



97. The petitioners cite that with respect to the J&K Forest Protection Force (Gazetted) Service Recruitment Rules brought into existence vide SRO-421 of 2017 dated 05.10.2017, height prescription is obtaining separately for male and female candidates. In the context of male candidates height requirement is 165 cm with chest girth of 84 cm, whereas for female candidates height requirement is 160 cm and chest girth is 79 cm.

98. The petitioners cite that in a selection advertisement notice no. PSC/Exam/2018/38 dated 25.05.2018 issued by JKPSA for the Combined Competitive Examination for the post of Jr. Scale Kashmir Administrative Service, Police Service and Accounts Service, there was a separate height and chest prescription with respect to male and female candidates. Prescribed male height and chest girth is 165 cm & 84 cm and for female 150 cm and 79 cm.

99. The petitioners cite that in selection advertisement no. PSC/Exam/2018/17 dated 19.04.2018 issued by the JKPSA for the post of Range Officer Wild Life, height prescribed though without distinction between male and female is 5.4 feet (163 cm) which is on the lesser side than the height in reference under SRO -359 of 1970 read with SRO -106 of 1992.



100. The petitioners cite that in the UPSC examination notice no.05/2019 -IFOS dated 18.03.2019 for the Indian Forest Service there is a distinction approved for physical requirements with respect to male and female candidates as with respect to male candidates height and chest requirement is 150 cm and 84 cm and for female candidates 140 cm and 79 cm.

101. The petitioners cite that with respect to selection of 215 vacancies of Range Officer Grade -I in the J&K Forest Gazetted Service, J KPSC vide its communication no. PSC/Exam/R.O.(F)/2018/01 dated 09.07.2020 addressed to the Forest Department, UT of J&K had recommended appointments of 04 persons as Range Officer Grade -I Territorial in which the candidate at Sr. no. 1 Muneera Bandy, who being a female candidate was having 164 cm height but came to be so appointed notwithstanding the height deficit.

102. While as against 44 posts of Range Officers Grade -I referred by the Department of Forest, Ecology & Environment, the Govt. of UT of J&K to J KPSC, only 29 candidates came to be shortlisted which had resulted in release of 15 posts so referred to it for selection. With respect to these 15 posts, the Department of Forest, Ecology & Environment, the Govt. of UT of J&K came to make second reference vide communication no. FST/Ser/65/2020



dated 28.10.2020 to JKPSC for carrying out the selection process afresh. In this referral for selection, insistence for height parameter without any distinction between male and female candidates was reiterated to be 5.6 feet.

103. During the pendency of the adjudication in the matter before the CAT Jammu Bench, a meeting had taken place between the Department of Forest, Ecology & Environment, Govt. of UT of J&K and JKPSC on the height issue aspect, but the General Administration Department (GAD), Govt. of UT of J&K vide its communication no. GDC -154/CM/2020 dated 24.12.2020 addressed to the Secretary, JKPSC, impressed upon JKPSC to contest the pending cases before the CAT vigorously instead of becoming realistic to the issue. This ritualistic mind set was given a go ahead given by the UT of J&K over the realistic mindset approach with respect to the issue involved in the case. In fact, in the meeting dated 24.12.2020 as is born from the GADs communication no. GDC/154/14/2019 dated 24.12.2020 bearing reference to the meeting of 22.12.2020 with respect to the selection matter in issue in the context of height prescription without any distinction between male and female candidates, a meeting had taken place between the GAD officials and the Department of Forest, Ecology & Environment in which as per item no. 2, the Department of Forest,



Ecology and Environment was called upon to move a proposal for amendment of physical standards obtaining with respect to SRO - 359 of 1970 read with SRO -106 of 1992.

104. The Department of Forest, Ecology & Environment, Govt. of UT of J&K in its communication no. FST -Ser/83/2021 -02 - Forest dated 04.08.2021 addressed to the Principal Chief Conservator of Forest, J&K Srinagar referred to the exercise with respect to proposed amendment to SRO -359 of 1970 read with SRO -106 of 1992 with reference to the amendment in physical standards of female candidates for their selection for the posts of Range Officer under direct recruitment.

105. The petitioners cite that J&K Services Selection Board's advertisement dated 21.10.2021 for 800 posts of Sub -Inspectors under J&K Civil Services (Decentralization & Recruitment) Act, 2010 read with Police Rules, 1960 also prescribed separate height and chest girth for male and female candidates as for male height required is 5.6 feet and chest girth is 32 inch, whereas female candidate height required is 5.4 feet and no chest dimension.

106. O.M. no. GAD -MTGO RB -IV/200/2021 -09 -GAD dated 03.02.2022 came to be issued vide which General Administration Department (GAD), Govt. of UT of J&K came to apprise that the



Administrative Council has decided to withdraw all posts referred to JKPSC and Service Selection Board prior to 31.10.2019 for which selection was not made. In view of this development, the respondents 1 & 2 i.e. Govt. of UT of J&K and the Commissioner/Secretary to Govt., Forest Department submits that the writ petition filed by the petitioners is rendered infructuous because of non challenge to this development.

107. The petitioners have highlighted a development that Govt. of UT of J&K came to realize the fact that there cannot be a same height for male and female in the matter of selection to the public service and for this purpose vide Govt. Order no. 22 -JK(Fst) 2022 dated 07.03.2022 an amendment came to be made to the J&K Forest (Subordinate) Service Rules, 1991, framed vide SRO-335 dated 28.11.1991. In view of the amendment so made, for male candidates height and chest requirement came to be separately prescribed i.e. 163 cm and 84 cm and for female 150 cm and 79 cm.

108. This act is literally an acknowledgment on the part of the Govt. of UT of J&K that SRO-359 of 1970 was out of tune with constitutional reality of the time. In fact, even with respect to physical endurance test, male and female candidates came to be recognized as a class apart by prescribing 25 km walk in four hours by male and 16 km walk in four hours by female. This Service is



also source of recruitment to posts of Range Officer Grade -I in J&K Forest (Gazetted) Service by 50% promotion mode from the post of Range officer II born on the cadre of J&K Forest (Subordinate) Service. Thus 50% persons to be recruitment to the posts of Range Officer Grade I can be from Range officer II bearing different height prescription for male and female but for 50% direct recruitment to post of Range Officer Grade -I, there is only one height prescription without any male and female distinction. This development is sufficient in itself amounting to self correction and statement from the Govt. that SRO 106 of 1992 read with SRO 164 of 1998 are factually and legally misconceived in terms of height prescription therein.

109. The petitioners cite that with respect to J &K Soil Conservation (Subordinate) Service Recruitment Rules, 2004, revision came to be effected vide Govt. Order no. 38 -JK (Fst) of 2022 dated 29.03.2022 whereby height prescription for male and female candidates came to be separate, as for male candidates height requirement came to be 163 cm and for female the same is 150 cm.

110. In the light of the afore stated facts and circumstances, we have scanned and looked into the salient aspects of the CAT Jammu Bench's judgments and the standpoint of the respondents.

**CAT's Judgments in three cases**

111. In T.A. no. 62/5540/2020 (WP(C) no. 3145/2019) titled Kaffel Ahmad Mir and others Vs State & others, the CAT Jammu Bench came to hold that since height prescription is a requirement prescribed by the State in exercise of power under section 124 of the Constitution of Jammu & Kashmir is within the wisdom of the State and cannot be substituted by the CAT Jammu Bench as it is, without any exception in favour of female candidates. CAT Jammu Bench came to hold that inclusion of 8 candidates over short of height prescription in the select list dated 20.09.2019 issued by the JKPSC is vitiated to the said extent and thus warranted directions from the CAT Jammu Bench which came to be imparted as under: -

- a. The select list i.e. Annexure -B to Communication no. PSC/Exam/RO/Grade -I/Territorial/2018 dated 20.09.2019 (Annexure -1) includes the names of the persons inclusive of respondent nos. 6 to 14 who are to figure in the Walk Test and Medical Examination. So, PSC (respondent no. 3) shall in the first instance conduct the exercise of height measurement, if not conducted as on date;
- b. Conduct the tests mentioned in the advertisement notice.



- c. Thereafter prepare the final select list of candidates who fulfill all the eligibility criteria mentioned in the advertisement notice.
- d. Follow the procedure for bringing the selection procedure to its conclusion.

112. In its aforesaid judgment, the CAT Jammu Bench came to rely upon the following judgments: -

- i) Manjusree v/s State of Andhra Pradesh, 2008 SC 1420.
- ii) Bedanga Talukdar v/s Saifu daullah Khan and others, 2012 SC 1803.
- iii) Firdousa Ahmed v/s State of J&K, (2010)4 JKK 996.
- iv) Sudesh Kumar v/s State of J&K, LPA no. 68/2019 date of decision 06.03.2019.
- v) Chandigarh Admn. v/s Jasmine Kaur, (2014) 10 SCC 521,
- vi) Chandra Prakash Tiwari v/s Shakuntal a Shukla, (2002) 6 SCC 127,
- vii) Air Commodore Naveen v/s Union of India, of India, (2019) 10 SCC 34,
- viii) Madan Lal v/s The State of Jammu & Kashmir, (1995) 3 SCC 486,
- ix) Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309.
- x) District Collector v. M. Tripura Sundari Devi, (1990) 3 SCC 655,
- xi) Manish Kumar Shahi v. State of Bihar, 2010 (12) SCC 576,
- xii) P.U. Joshi Vs Accountant Genral, (2003)2 SCC 632 &
- xiii) Balco Employees Union Vs Union of India, (2002)2 SCC 333.



113. The judgment of CAT Jammu Bench in the case of Majid Hussain Vs State of J&K and others as T.A. no. 65/5677/2020 (WP(C) no. 3182/2019) and in the case of Parvaiz Ahmad Shagoo and others Vs UT of J&K & Ors as T.A. no. 61/1693/2020 proceeded on the same text and tone as in the case of Kaffel Ahmad Mir and others Vs State of J&K and others as T. A. no. 62/5540/2020.

Reply/response to the present writ petition by the respondents

114. The respondent nos. 1 & 2 i.e. Govt. of UT of Jammu & Kashmir and its Forest Department, in its reply came to maintain that the petitioners were the persons having no genuine cause of action to have the grievance set up in the writ petition. The respondents 1 & 2 defended SRO -359 of 1970 read with SRO -106 of 1992 by saying that the same does not suffer from any illegality as the State being the employer had kept in mind several features including the nature of job, aptitude requisite for the efficient discharge of the duties and functionality of the qualification. The respondent nos. 1 & 2 have urged this Court not to extend the scope of this writ petition beyond examination of the legality of the CAT Jammu Bench. In support of its contention so made in its reply, the respondents 1 & 2 refer to the following judgments of the Hon'ble Supreme Court of India: -



- i) Islamic Academy of Education and another Vs State of Karnataka and others, (2003)6 SCC 697.
- ii) Federation of Railway Officers Association and others Vs Union of India, (2003)4 SCC 289.
- iii) Directorate of Film Festivals Vs Gaurav Ashwin Jain and others, (2007)4 SCC 737.
- iv) State of Punjab and others Vs Ram Lubhaya Bagga and others, (1995) 4 SCC 117.
- v) Balco Employees Union (Regd.) Vs Union of India and others, (2002)2 SCC 333 &
- vi) Chief Manager, Punjab National Bank and others Vs Anit Kumar Das, 2021(2) SLR 354 (SC).

115. The respondent no. 3 - JKPSC in its reply has submitted that there is no justification for the intervention of this Court in the matter at the instance of the writ petitioners, as the selection criteria as well as the prescribed qualification/standards were notified in advance in the selection advertisement notification itself to which the petitioners participated without any demur only to be caught on the wrong foot with the filing of the writ petition WP(C) no. 3798/2019 (T. A. no. 62/5610/2020) titled Afshan Anjum Baba and others Vs UT of J&K and others.

116. JKPSC has submitted that the petitioners were not only aware of all the criteria in the advertisement notice but even joined the selection race by producing fraudulent medical certificates regarding their height which made the JKPSC to permit them to



compete in the selection process initially and, as such, the petitioners are the persons not carrying clean hands at their end.

JKPSC has defended the selection process as to the exclusion of the petitioner s being made in accordance with rules and the criteria. JKPSC is maintaining the stand that it has neither authority nor any requirement to relax the prescribed standards/eligibility. JKPSC with respect to its contrast stand first stated before the CAT Jammu Bench, has stated that the said stand withdrawn inter alia for the reasons that firstly it did not cover the full factual background of the case and secondly same was filed without approval of the competent authority.

117. The respondents 4 to 7, i.e. the persons who were petitioners in T .A. no. 62/5540/2020 (WP(C) no.3145/2019 titled “Kaffel Ahmad Mir and others Vs State of J&K and others ”), in their reply have led thrust that the petitioners took part in the selection process knowing fully well the procedure laid down in SRO -359 of 1970 read with SRO -106 of 1992 and as such cannot turn around to question the same. The respondents 4 to 7 have alleged the petitioners to have resorted to unfair means in gaining participation in the selection process given the fact that on earlier occasions f or the selection process for the same post, majority of the petitioners were weeded out on account of lack of height requirement, as



warranted under SRO -359 of 1970 read with SRO -106 of 1992. The respondents 4 to 7 are vehemently questioning the maintainability of the writ petition by the petitioners on the count that they have chosen not to question the respective judgments by the CAT Jammu Bench in T.A. no. 62/540/2020, T. A. no. 62/5677/2020 & T.A. no. 61/1693/2020 and on account of the said omission the CAT Jammu Bench judgments in the said three T.A.s become final against the petitioners and, therefore, operate as a res judicata.

118. The reply submitted by the respondent no. 8 -Majid Hussain also proceeded on the similar tone and tenor as reply submitted by the respondents 4 to 7. The respondent no. 8 has pressed into service the principle of res judicata against the petitioners on account of their failure to call in question the judgment dated 12.07.2021 passed by the CAT Jammu Bench in T. A. nos. 62/5677/2020, 61/1693/2020 & 62/5540/2020. The respondent no. 8 presses into service the principle of estoppel against the petitioners on account of the fact that the petitioners, out of their own free will, voluntarily and without any demur applied before JKPSA in response to the selection advertisement notice dated 15.03.2018 in the face of the rule position obtaining with respect to height requirement which had remained in force over a prolonged period carrying a legal permission of constitutional



validity particularly when it does not suffer any gender discrimination and applicable uniformly to all the citizens irrespective of sex.

119. Thus, what was the battle field in five cases before CAT Jammu Bench is the action replay in the present writ petition before us, by pressing into service the same set up of submissions and arguments with addition of some technical one as to the sustainability of the writ petition in an over -all scenario of the case .

120. The written submissions submitted on behalf of the respondent no. 1 pressed into service the following case law: -

- i. State of West Bengal Vs Subhas Kumar Chatterjee and others, (2010)11 SCC 694.
- ii. Zonal Manager, Bank of India Vs Aarya K. Babu, (2019)8 SCC 587.
- iii. Pradeep Kumar Roy Vs Dinesh Kumar Pandey, (2015)11 SCC 493.
- iv. Chief Manager Punjab National Bank Vs Anit Kumar Das, (2021)2 SLR 354(SC).
- v. State of Tripura Vs Subash Chandra (2017)5 SCC 163.
- vi. Balco Employees Union Vs Union of India, (2002)2 SCC 333.
- vii. State of Punjab and others Vs Ram Lubhaya Bagga and others,(1995) 4 SCC 117.



- viii. Directorate of Film Festivals Vs Gaurav Ashwin Jain and others, (2007)4 SCC 737.
- ix. Air Commodore Naveen Jain Vs Union of India, (2019)10 SCC 34.
- x. Ramesh Chandra Shah Vs Anil Joshi, (2013)11 SCC 309.
- xi. Islamic Academy of Education and another Vs State of Karnataka and others, (2003)6 SCC 697.
- xii. P.U. Joshi Vs Accountant General, (2003)2 SCC 632.
- xiii. Arun Tewari Vs Zila Mansavi Shikshak Singh, (1998) SCC 331.
- xiv. (2019)2 SCC 404, Zahoor Ahmad Rather and others Vs Sheikh Imtiyaz Ahmad and others.
- xv. 1951 SC 41, Charanjit Lal Chowdhary Vs Union of India.
- xvi. 1959 AP 471, Mahant Narayana Dessjivaru Vs State of Andhra, Hyderabad and others.
- xvii. 1980 SC 286, Ganga Sugar Corporation Ltd. and others Vs State of UP.
- xviii. 1977 JK 4, Avtar Singh Vs State of J&K.
- xix. (2008) 2 SCC 254, Karnataka Bank Ltd. Vs State of A.P.
- xx. (2006) 6 SCC 395, K. H. Siraj Vs High Court of Kerala and others.
- xxi. 1994 AIR 1808, J&K Public Service Commission Vs Dr. Narender Mohan.



121. The respondent no. 3 -JKPSC in its written submission has pressed into service the rationale for defending non -gender distinguishing height prescription by saying that the women while working as Range Officer are required to work for protection and development of forest, requiring movement in forest at time accompanied by one or two persons only and, as such, require sound body, stamina and strong nervous systems , which justify the height prescription without discrimination between male and female. JKPSC in its written submissions have gone to the extent of saying that if women of lesser height will be appointed then in that eventuality weak women have to work in tough situations, terrains and wild life area and such women cannot be a substitute of men of stronger bodies. JKPSC is acknowledging that it is because of this height prescription that good number of women could not get selected in the said Forest Service.

122. From the petitioners' end in their written submissions they have come to reflect upon violation of article 14 of the Constitution of India with respect to the height prescription in SRO-359 of 1970 , corresponding services requirements in terms of height and other physical factors providing both for male and female, conduct of JKPSC, bona fide conduct of the petitioners in the matter of submitting their medical certificates issued by the respective Chief



Medical Officers and moulding of relief by striking down the provisions, reading down the provisions, application of equal opportunity principle, direction to the government to exercise its power to relax in the justification for not challenging the CAT judgments in the said three T.A.s. In support of their submissions, the petitioners have pressed into service the following case law.

- i) Dr. (Major) Meeta Sahai Vs State of Bihar and others, (2019)20 SCC 17 .
- ii) D. S. Nakara Vs Union of India, (1983)1 SCC 305.
- iii) Delhi Transport Corporation Vs DTC Maz door Congress, 1991 Supp.1 SCC 600.
- iv) Lt. Col. Nitisha and Others Vs Union of India and others, (2021)15 SCC 125 .
- v) State of Maharashtra and others Vs Ravdeep Singh Sohal, 2009 SCC 184.

123. The private respondents from their end have also provided the written submissions following the tone and tenor of their respective replies.

Court's appraisal and summation: _____

124. Job/employment getting , in commensuration with one's ability/merit , is a life making moment for a young man and woman and that is the reason there is a lways keen competition to avail an y



given opportunity for job/employment for which the aspirants invest their time and energy to do well in the selection field .

125. With respect to public employment, the State. as being the largest employer and its employment has surety and security of its own kind particularly in country like India, the competition to grab an opportunity of employment is very crowded and competitive which often times bring the matter in litigation by and between the selected and non -selection ones. That is how the jurisprudence of selection with respect to public employment has evolved and developed under the Constitution of India.

126. As is evident from the facts and circumstances narrated herein before , the present case is one where the tussle has been very keen making this Court to labour to draw a correct perspective with respect to the present case out of varying aspects attending it.

127. After perusing the entire canvass of the case obtaining in the form of pleadings, vehement submission s and persuasive arguments and appealing case law from both sides, we have no hesitation to observe and register at the very outset that there is every allurements and pull confronting us to succumb to the submissions so made from the respondents' end to dislodge the present writ -petition of the petitioner s, in particular o f the petitioner



nos. 1 to 7 who are the female candidates . The reason for allurements is because there cannot be any iota of difference of opinion and mind with the perspectives with which the respondents in general, and in particular the respondents 4 to 9 , are seeing the case scenario. In a normal happening case where the qualification prescribed for any selection process is well meaning and objective , any candidate not meeting said prescribed qualification cannot be allowed any accommodation in selection participation or recommendation for appointment on any pretext whatsoever or cannot be heard to ask for customization of the requirements prescribed. In that scenario every plea and citation from the respondents' end would have applied on all fours making our job of judgment making most easy.

128. In the present case in the light of the case law cited by the respondents , a very thrusting plea is made out to deal with the petitioner nos. 1 to 7 with vigor as laid down in the said citations and citing that CAT Jammu Bench has followed the said script literally in coming up with the judgments.

129. However, in case of yielding to this solicitation we are afraid that we would be missing the woods for the trees and in the process fail to see and examine the case from the perspective of the Constitution of India and instead would be caught confining our



view and vision dictated purely by the ritual of the rule requirement in reference . We reckon if we do so that would be letting down the justice in the present case to the extent of belittling the Constitution of India's commitment in empowering and freeing the women as a class against entrenched and stereotyped prejudices , be it at the end of the Society in terms of its social norms or at the end of the State in terms of its legal norms.

130. The most eye and mind catching scenario of this case is that from the respondents' end, in particular the respondent nos. 1 & 2's end, there has been no whisper of statement with respect to the rationale in providing gender neutral height and chest prescription in SRO -359 of 1970 read with SRO -106 of 1992 read with SRO 264 of 1998 particularly when not only with respect to other contemporary State and Central Service , the relevant Rules are providing for differential physical standard prescription for male and female candidates , particularly when the said contemporary Services are of demanding nature equal to the one of which the present case is related to , but also in the J&K Forest (Subordinate) Service where the irrationality obtaining in the form of one height prescription without any gender distinction for Range officer II has been set to correction by Govt. of UT of Jammu & Kashmir .



131. We find that there is a sheepish avoidance on the part of the respondent nos. 1 to 3 particularly in affording an explanation as to with which mindset the rule makers of the time at the time of conception of SRO -106 of 1992 had conceived the height prescription without any distinction between male and female sex when the Constitution of India in the year of its making on 26.11.1949 was conceiving and bearing in comprehension for ensuring to the women citizens of India fundamental rights under article 15 & 16 of the Constitution of India vesting with the State a constitutional empowerment to make special provisions for women and children as a class apart. The Constitution of India did provide a generic fundamental right to equality to all citizens under its article 14 but simultaneously carved out an exception in terms of law making for women and children under its article 15 (3).

132. SRO-359 of 1970 read with SRO -106 of 1992 in terms of height and chest prescription without making any gender distinction, is, in fact, pregnant with dormant, passive & latent, if not active and patent discrimination, against women on the face of it. Dissolution of distinction does not and cannot in all cases point out to be a case of generic equality under article 14 of the Constitution of India as that may in some cases amount to pinching form of inequality which the SRO -359 of 1970 read with SRO -106 of



1992 is an exhibit of. Inequality sets in when equality is considered with a dissolved perception as is the case on the part of rule making authority in framing height prescription under SRO -106 of 1992 read with SRO -264 of 1998 without bearing in perspective most obvious and n atural difference and distinction in height requirement of male and female as class apart from each other.

133. The private respondents herein , along with their other colleagues who had come forward with institution of three writ petitions before this Court wh ich later on transferred to CAT Jammu Bench, are the persons who had lost in competition to the petitioner s no. 1 to 7 all being women. This loss was reckoned by the private respondents as usurpation and intrusion by the petitioner s no. 1 to 7 of the meri t position s which would have come to the private res pondents in case the petitioner nos. 1 to 7 participation in the selection process would have been nipped in the bud or clipped in the course of selection process by the JKPSC on account of shortage of height requirement.

134. It is from this “Nothing to lose ” position that the private respondents had ventured to take a hit at the selection of the petitioner s no. 1 to 7 to present a picture that the petitioner s no. 1 to 7, who are otherwise higher in their respective merit as against the private respondents , be downsized by the fact of their deficit



physical height otherwise falling short of so called prescribed height just by one or two inches except in the case of the petitioner no. 7 Azeem Raja who has higher height difference .

135. We have no patience to withhold our observation that the rule makers of SRO-106 of 1992 read with SRO 264 of 1998 were suffering from discernment dysfunctioning in missing out bearing in mind the fact that when Nature herself has made with respect to living beings in general and human beings in particular, two sexes different in terms of respective physical features , functionalities and potentialities which even the highest law of nation in the form of the Constitution of India lost no time to acknowledge and state the said distinction in its perspective , then for the rule makers of the time to prescribe one height requirement, one chest dimension requirement and one physical walk requirement of 25 km in 4 hours for male and female candidates alike was and is nothing but sheer repulsion to the principle of life and law which governs the creation and recognition of two sexes i.e. male and female in their respective dimension. .

136. The respondents urge us to reckon SRO -359 of 1970 read with SRO -106 of 1992 & SRO -264 of 1998 in the context of height prescriptio n requirement as an island in itself in the sea of contemporary service rules wherein male and female candidates



have been differentiated and provided for separately in terms of physical requirement prescription. We cannot extend such a courtesy to the said plea of the respondents to hold that woman of merit cannot be a deserving Range Officer Grade -I in the J&K Forest Gazetted Service in case she is falling short of the prescribed height of 5.6 feet by two or three inches while in any other contemporary Govt. Service her height is not to be a handicap .

137. Without meaning any disrespect to the submissions of the respondents, we are called upon both to accord with and act upon an absurdity as patented by the rule in reference , particularly when we see around in social and public life context that at every public and social place there are separate facilities meant and provided for male and female, in sports competitions from amateur level upto Olympic level male and female sports persons compete separately, separate laws for the treatment and protection of women from social harms and evils, reservation for women in local bodies, and so many varying situations providing separately for women are accepted reality of public life and law.

138. Many laws are evolving to bring forward the women from back pages of life to front page to be co-participant and co-partner in the Nation's life. SRO-359 of 1970 read with SRO -106 of 1992 not only in the context of height prescription of candidates for the post



of Range Officer Grade -I is antiquated but also frozen in time not keeping in reality alignment with the spirit of the Constitution of India which envisages reckoning and recognizing the women with a commitment to empower them by setting aside of the express or implied barriers in law and life which otherwise were least realized to be speed breakers, be it social, religious or legal, in women's drive towards empowerment in and outside the household. So much so even the World of Business and Industry shifted their perception towards women as a class distinct from men and that is the reason that a Scooter which was once meant to be man driven vehicle came to have its equivalent and competitor in the form of Scooty for women to have the freedom to drive on their own empowering them in their own self-dependence.

139. We find that the respondents 1 to 3 in particular in their stance and stand in the case before CAT Jammu Bench and also before us in this case have opted to be ritualistic and perhaps if we can take liberty to say so maleminded to side with the rule prescription rather than being realistic with the fact that the dissolution of sexes in the context of the height rule prescription is inherently discriminatory and antithetical to the equality edifice of the articles 14, 15 & 16 of the Constitution of India making no correlation with the objective to the post of Range Officer -I.



140. We are mindful of the fact that the issue with respect to the legality and validity of height related prescription came to take place at the last leg of selection process when the writ petitioners 1 to 7 were meant to be disqualified from being recommended for appointment because of their lack of requisite height and that invited the debate with respect to the height prescribed bearing no distinction between male and female.

141. If we allow ourselves to be driven by the submissions of the respondents' side to disqualify the petitioner nos. 1 to 7 from agitating their grievance in the matter after their selection participation, then that would mean the prescribed height parameter needs to be challenged by a woman/girl without joining the selection process of a given time and by the time the issue is finally resolved by long drawn course of legal declaration of a constitutional court, last of which is the Hon'ble Supreme Court of India, and till that time a woman/girl aspiring to be Range Officer Grade-I in J&K Forest (Gazetted) Service has to settle herself as a spectator to the selection process/processes passing by while awaiting the outcome of the litigation with respect to the legality and validity of the non-gender height prescription. We cannot read such a state of helplessness in law and life for a woman to get in. In fact we would refer ourselves to legal maxim to best explain the legal



venture of the petitioners no. 1 to 7 and that is “vigilantibus et non dormientibus jura subveniunt” meaning that law aid those who are vigilant, not those who sleep upon their rights. This maxim should have been kept into consideration by the CAT Bench Jammu when it came to denounce the petitioners 1 to 7 in saying that in the face of height prescription many women must not have applied in response to the JKPSC Selection Advertisement Notification and that the petitioners 1 to 7 cannot have an undue advantage by having participated in the selection without requisite physical height eligibility.

142. In this regard the verdict of the Hon'ble Supreme Court of India in the case of Dr. (Major) Meeta Sahai Vs State of Bihar and others, (2019)20 SCC 17 which strongly comes to our aid, in which in para 17 the Hon'ble Supreme Court of India has attended the situation in the following manner: -

“17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its



violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

143. Though, the CAT Jammu Bench in its judgment has registered its inability to examine the legality of non-gender distinguishing prescribed height requirement by holding that unless and until the policy is unconstitutional, arbitrary or irrational or contrary to the statutory provisions, it is improper for the Judges to step into the sphere except in a rare and exceptional case but the CAT Jammu Bench failed to pose a question of rationality / irrationality attending the said height requirement and then examine the case before it from the angle of rationality/ irrationality of the prescribed height which was dissolving difference between male and female candidates by subscribing a non-gender height requirement.

144. SRO 106 of 1992 read with SRO 264 of 1998 are product of exercise of legislative power of the Governor vested under proviso to section 125 of the then Constitution of India (akin to article 309 of the Constitution of India). Said SROs are amenable to judicial review jurisdiction of this Court in case of being in conflict with the Constitution of India Part III guaranteed fundamental rights of



persons. No other legal formality is required to be done before dealing with a rule so framed if found coming in the way of depriving a person of his/her fundamental right which in the present case is of the petitioners no. 1 to 7 in the context of height prescription which is unfair, unreasonable and irrational at every point of its operation and effect. In this regard, judgment of the Hon'ble Supreme Court of India in the case of Brajendra Singh Yambem Vs Union of India and Ors 2016 AIR SC 4107 comes to our assistance.

145. The very act on the part of the Govt. of UT of J&K in coming up at its own with an amendment to the J&K Forest (Subordinate) Service Recruitment Rules, 1991 vide Govt. Order no. 22-JK(Fst)2022 dated 07.03.2022 thereby prescribing separate height for male and female candidates aspiring to become Range Officer -II in the J&K Forest Subordinate Service, is an express acknowledgement on the part of the Govt. , as being the rule making authority , that SRO -335 of 1991 with respect to the J&K Forest (Subordinate Service) Recruitment Rules, 1991 in which height requirement for Forester and consequently for Range Officer -II being non -gender distinguishing seriously devoid of rationale and reason was requiring immediate amendment for sparing the embarrassment further so as to come up with separate height prescription for male



and female candidates and even separate chest dimension for male and female candidates, separate distance for walk test for male and female candidates.

146. Now, what has been set right and correct for the J&K Forest (Subordinate) Service if not to be applicable in the case of J&K Forest (Gazetted) Service is and would be an exhibit of absurdity in itself to say the least when both S ervices are better half of each other.

147. The irrationality of height prescription incorporated in terms of SRO -106 of 1992 read with SRO -264 of 1998 is self - exhibited from the fact that the post of Range Officer Grade -I came to be placed in the cadre of J&K Forest (Gazetted) Service vide SRO -106 of 1992 . The height prescription for the candidate was 163 cms without bearing any geographical or biological distinction but upon coming into scene of SRO -264 of 1998 , a geographical distinction came to be recognized and introduced, inasmuch as, for General Category candidate prescribed height came to be 5.6 feet, but for the candidate of Leh and Kargil districts of Ladakh province the height prescription came to be 5.4 feet , meaning thereby that the rule making authority came to realize a fact that the said two districts of province of Ladakh were having a different and distinct height scenario of its inhabitants .



148. Now, it is not that every resident of Leh or Kargil would be of short height, inasmuch as, a person originally born resident of Kashmir or Jammu province could be a resident of Leh and Kargil and that would not mean that he or she *per se* was born with a short height on account of genetic make-up but it is the original and hereditary resident of Leh and Kargil districts who were conceived to be of height shorter to the rest of the region of the then State of Jammu & Kashmir.

149. Now, if the particular region could be the basis of distinction in terms of height prescription, then for same very rule making authority to keep biological aspect of male and female height out of its purview is nothing but an act of absentmindedness which is another name of abandoned application of mind at all the relevant point of time on the part of the rule making authority which kept agender height prescription in play all along the years till the coming into scene of the present case of seven female candidates i.e. the petitioners 1 to 7 to take on the anomaly and absurdity so obtaining in terms of the height prescription in the rules.

150. Development of law with respect to searching, selecting and deleting long and deep seated, intended or unintended, discriminations, denials, deprivations, and tendencies related there with, in the context of due role and rights of Indian women is not a



one hit exercise but an ever evolving exercise at the service end of the Society and the State, the Laity and the Law in their respective role and responsibility. Any presenting occasion or an opportunity to undo a reported or detected discrimination, deprivation or denial, if left or let go begging is to pronounce to a suffering woman that unfairness in life and reluctance of law in her context are mutual serving.

151. We have been confronted with an opportunity through this case to set right a long seated illegal and irrational discrimination in terms of rule position in reference and in case if we also choose to take a copybook approach to the case then we would be keeping ourselves at the same page with the rule making authority, which at the first instance at the time of conception of SRO -106 of 1992 followed by SRO -264 of 1998 had come up with agender height prescription without bearing in mind that male and female heights stand on a different pedestal and cannot be equated under one umbrella.

152. It is pertinent to bear in mind that Govt. Order no. 22 - JK(Fst) 2022 dated 07.03.2022 with respect to J&K Forest (Subordinate) Service amendment coming into scene during the pendency of the controversy involved in the present case, means thereby that a realization finally dawned upon the Govt. not to



embarrass the Constitution of India any further in the context of its article 14, 15 & 16 by perpetuating the artificiality of non -gender height prescription with respect to the J&K Forest Service, be it 'Subordinate' or 'Gazetted' and the Govt., started from the Subordinate Service though shying away from extending it to Gazetted Service for the reason which does not sound any sense to us. The Govt. is not supposed to make and maintain an ego statement and position in the matter of carrying out self correction in its actions/decisions particularly when the correction is warranted to be in alignment with the call of article 14, 15 & 16 of the Constitution of India .

153. Even without the Govt. of UT of J&K having carried out the requisite amendment with respect to the irrationality of the height prescription in J&K Forest (Subordinate) Service , which too from its inception in 1991 in terms of SRO 335 of 1991 was maintaining and requiring height of 163 cms without any gender distinction i.e. male and female candidates and same walk test , even then this court would not have allowed the irrationality of the height requirement to run its course any further because the height prescription was and is amounting to nothing but dishonoring a woman's identify in terms of her physicality getting a dissolved identification with physicality of man. Very fact that even by chest dimension and walk



test the male and female candidate were being kept on same page in said SRO 335 of 1991 and SRO 106 of 1992 is an exhibit of fact that the rule makers of the time were suffering a conviction that post of Range Officer in the Forest Service is to be meant only for men to man. The very thought process was and is nothing but stereotyped and retrogressive.

154. As we have already observed hereinabove, that none of the respondents, in particular the respondents 1 to 3 i.e. Govt. of UT of Jammu & Kashmir and JKPSC, have come forward with a whisper of rationale with respect to non-gender height prescription, so we were to read and are reading the said agender height requirement as inherently discriminatory in nature for all intents and purposes against none else than female candidates who happen to be the petitioner nos. 1 to 7 in the case.

155. We pose a situation to ourselves that in case if rule would have provided a separate height for male and separate for female then surely we would not have entertained any grouse or grievance of the petitioners 1 to 7 herein that the prescribed height for female under the rules is on the higher side as against the prescribed average height of female under rules in the rest of country and the region. In that respect we would have excused ourselves from getting into the dissection of the policy governing the said height



particular prescription for female at the instance of the female candidates similarly situated as the petitioners 1 to 7 herein in the case having qualified the written and interview of the selection competition. Since that is not the situation obtaining in the present case that is why we are led into the adjudication of the rationality/irrationality of non-gender height prescription and that is the reason we have observed that this case is not to be looked only from the lens of the private respondents' standpoint which in routine would have prevailed without requiring any labour from us.

156. Given the fact that in almost all other Govt. Services which are part of the same eco-system of the public employment, which prescribe and require height of a candidate relatable to given service, there is a distinction obtaining between male and female candidates with different height and chest prescribed measurements, then we cannot countenance a concession to the J&K Forest (Gazetted) Service to be an island in itself particularly when the creator and author of all Service and Service Rules is not different entities but only one and that being the State.

157. The Hon'ble Supreme Court of India in the case of Lt. Col. Nitisha and others Vs Union of India and others, (2021)15 SCC 125 has examined the concept of discrimination in the context of women thoroughly by approaching it from the angle of systemic



discrimination. In the limited context of the present case, we are also confronted with the case of indirect discrimination ex -facie pretending non -gender height prescription. What was held by the Hon'ble Supreme Court of India in Lt. Col Nitisha's case in para 123 is reproduced hereunder: -

“123. We must recognize here that the structures of our society have been created by males and for males. As a result, certain structures that may seem to be the “norm” and may appear to be harmless, are a reflection of the insidious patriarchal system. At the time of Independence, our Constitution sought to achieve a transformation in our society by envisaging equal opportunity in public employment and gender equality. Since then, we have continuously endeavored to achieve the guarantee of equality enshrined in our Constitution. A facially equal application of laws to unequal parties is a farce, when the law is structured to cater to a male standpoint. Presently, adjustments, both in thought and letter, are necessary to rebuilt the structures of an equal society. These adjustments and amendments however, are not concessions being granted to a set of persons, but instead are the wrongs being remedied to obliterate years of suppression of opportunities which should have been granted to women. It is not enough proudly state that women officers are allowed to serve the nation in the Armed Forces, when the true picture of



their service conditions tells a different story. A superficial sense of equality is not in the true spirit of the Constitution and attempts to make equality only symbolic.”

158. We reckon that the height prescription in the present case constrains female candidates to think as a man, which thought is held to be abominable for its slaughters a core identity of a woman as held by the Hon’ble Supreme Court of India in the case of Joseph Shine Vs Union of India, 2018 SC 4898 . An antiquated service rule prescription cannot be allowed to stare down essence of articles 14, 15 and 16 of the Constitution of India to the prejudice of entitlement and empowerment of seven female candidates who the petitioners 1 to 7 are.

159. In the case of A. P. Vs P. B. Vijaykumar and another, 1995 SC 1648 , the Hon’ble Supreme Court of India has dealt with as to what is meant by “any special provision for women” in article 15(3) whereby reading an affirmative action or reservation by the State to improve women’s participation in all activities, thereby upholding preference given to women in selection for direct recruitment without being covered under reservation.

160. Having so stated and understood, in the context of facts and circumstances of the case, we hold that CAT Jammu Bench



failed to see and reach the core of the case and fetched the conclusions for its judgments only from the optics of the cases.

161. We, hold that the petitioners 1 to 7's recommendation for appointment should not have been made or held hostage by the JKPSC as being a constitutional body to a discriminatory, unfair, unreasonable and unintelligible height requirement and that it should have been left for the Govt. of UT of J&K to address its discernment and discretion in favour of the petitioners no. 1 to 7 by exercise of its rule relaxing power and appoint the petitioners no. 1 to 7 as Range Officers -Grade I who at the end of day are the merit makers making the Jammu & Kashmir Forest Gazetted Service to get for the very first time in its history induction of 8 women officers borne out of single selection process.

162. Now, coming to the matter of doing what is needed to be done in the present case, we reckon that the ends of justice would be served by directing the JKPSC to consider recommending for appointment the names of the petitioners 1 to 7 to the Govt. of UT of J&K at the first instance on account of their merit based and proved claims, whereupon the Govt. of UT of J&K having the executive power as well as the power under rule 4 of the J&K Civil Services (Classification, Control & Appeal) Rules, 1956 to relax the rigor of any service rule, to consider accepting JKPSC recommendation



with respect to the petitioners 1 to 7 and grant ing appointment to the petitioners 1 to 7 as Range Officer -Grade I by relaxing the height requirement in their favour in acknowledgement of their meritorious position in the selection process.

163. This Court further directs the Govt. of UT of J&K to carry out immediate amendment of the physical requirement stipulated in obtaining in SRO-359 of 1970 read with SRO -106 of 1992 and SRO -264 of 1998 in tune with amendment of like requirement in the J&K Forest (Gazetted) Service so as to set the field free for more female candidates to join the competition in future for the service .

164. In the light of the aforesaid, we hold that judgments passed by the CAT Jammu Bench in T. A. no. 62/5610/2020 & T. A. no. 62/920/2021 is not sound in law and deserves to be set aside and consequently it results in ouster from scene of the respondents 4 to 9 herein as well as the persons who co-figured as the petitioners in T.A. no. 62/5540/2020 , T.A. no. 62/5677/2020 & T. A. no. 61/1693/2020 with respect to their purported claim for selection in place of the writ petitioners 1 to 7.

165. We are conscious of the fact that the petitioners 1 to 7 in particular were party respondents in T. A. no. 62/5540/2020 & T.A. no. 62/5677/2020 in which the CAT Jammu Bench came up with



the respective judgment and that those two judgments along with the judgment in T.A. no. 61/1693/2020 have not been challenged separately by the petitioners 1 to 7 herein but given the fact that in the event of the judgment dated 12.07.2021 passed by the CAT Jammu Bench in T.A. no.62/5610/2020 and T.A. no.62/920/2021 getting reversal through our judgment in the present writ petition, the inevitable consequence would be that the judgments passed by the CAT Jammu Bench in said three T.A.s i.e. T.A. no. 62/5540/2020, T.A. no.62/5677/2020 & T. A. no.61/1693/2020 will *per se* collapse and, therefore, we accordingly declare that the judgments passed in said three T.A.s by the CAT Jammu Bench to be rendered null and void.

166. As a consequence of the reliefs being granted by us in favour of the petitioners 1 to 7 any and all intervening decision/action on the part of the JKPSC as well as the Govt. of UT of J&K with respect to cancellation of candidature of the petitioners 1 to 7 with respect to selection, the recommendation of names of respondents 4 to 6 and other male candidates to substitute the petitioners 1 to 7, action at the end of Govt. of UT of J&K in purportedly accepting the cancellation of candidature of the petitioners no. 1 to 7, and lastly of recalling of all unfilled posts from



selection process pending before selection authorities, shall stand nullified.

167. With respect to the petitioner no. 8 in the present petition, we are afraid that at no point of time he had any cause and case in the matter to even figure in the litigation and, therefore, with respect to him he is held entitled to no relief on the count that he did not figure at his own initiative in any case before the CAT Jammu Bench and otherwise also he is an alien to the matter in issue by every reference of the case.

Disposed of accordingly.

WP(C) No. 345/2022

In the light of the aforementioned final outcome arrived at by us, We, therefore, dispose of the connected writ petition WP(C) no. 345/2022 on the same analogy bearing similar conclusion except with respect to the petitioner no. 8 therein to whom we have ousted from any consideration even in the present writ petition WP(C) no. 345/2022.

Before parting with the judgment, we would like to put on record the reason for some delay caused in judgement making of this case at our end on account of intervening roster shifting between Jammu and Srinagar and also that the case required



perusal of the physical file given its bulk record the perusal of which from the digital file was not feasible.

A best epilogue to end our judgment representing the essence of this case is a quote by Maya Angelou which is “Each time a woman stands up for herself, without knowing it **possibly, without claiming it, she stands up for all women**”.

Jammu
06 .09.2023
Muneesh

(Rahul Bharti)
Judge

(Rajnish Oswal)
Judge

Whether the order is reportable :

Yes

Whether the order is speaking :

Yes

