## IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

#### :ORDER:

- (1) D.B. Civil Writ Petition No.825/2010. (Sharwan Kumar Vs. RPSC & Others)
- (2) D.B. Civil Writ Petition No.11317/2009. (Devendra Singh Udawat Vs. State of Rajasthan & Ors.)
- (3) D.B. Civil Writ Petition No.10385/2009. (Hansraj & Anr. Vs. State of Rajasthan & Ors.)
- (4) D.B. Civil Writ Petition No.11318/2009. (Bhawani Singh Bhati Vs. State of Rajasthan & Ors.)
- (5) D.B. Civil Writ Petition No.2457/2010. (Ku. Himanshu Bhatia Vs. RPSC & Ors.)
- (6) D.B. Civil Writ Petition No.3069/2010. (Jaita Ram Vs. State of Rajasthan & Ors.)
- (7) D.B. Civil Writ Petition No.2823/2010. (Sumit Mittal Vs. RPSC & Ors.)
- (8) D.B. Civil Writ Petition No.10811/2009. (Ahsan Ahmed Vs. State of Rajasthan & Ors.)
- (9) D.B. Civil Writ Petition No.4094/2010. (Prem Ratan Ojha Vs. RPSC & Ors.)
- (10) D.B. Civil Writ Petition No.3401/2010. (Mahendra Pratap Bhati Vs. State of Rajasthan & Ors.)
- (11) D.B. Civil Writ Petition No.4539/2010. (Kalpesh Nikawat Vs. State of Rajasthan & Ors.)

DATE OF ORDER:

May 10, 2010

#### PRESENT

## HON'BLE MR. JUSTICE A.M. KAPADIA

## HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

<u>Reportable</u>

Mr. Hanuman Singh Choudhary/Dr. P.S. Bhati/Mr.

Manoj Bhandari/Mr. Tribhuwan Gupta/Mr. B.L. Bhati/Mr.

H.R. Rawal/Mr. R.K. Bhardwaj for the petitioners.

Mr. J.P. Joshi for the RPSC.

Mr. R.L. Jangid, Addl. Advocate General.

Mr. Vineet Kumar Mathur for Raj. High Court.

#### BY THE COURT (Per Hon'ble Mr. Vyas, J.):

In all the above writ petitions, common prayer has been made by the petitioners that action of the respondents in adopting scaling system for assessment in the Rajasthan Judicial Service Examination 2008 for recruitment to Rajasthan Judicial Service may be declared illegal and unconstitutional and the same may be guashed and set aside. Further, it is prayed that Rajasthan Public Service Commission may be directed to issue fresh merit list on the basis of raw marks obtained by the candidates without applying the formula of scaling. It is also prayed that all actions undertaken during the pendency of the writ petitions to the detriment of the petitioners may be declared illegal and be set aside and, in case appointments are issued to persons having marks lower than the actual raw marks secured by the petitioner under his category, then, the said appointments may be declared illegal and/or the petitioner may be adequately compensated by being declared selected for the consecutive appointments. the alternative, it is prayed that the respondents may be directed to conduct fresh examination in pursuance of notification Annex.-1.

Since in all the above writ petitions common question is involved that whether scaling system adopted by the Rajasthan Public Service Commission for the purpose of selection for recruitment in the Rajasthan Judicial Service is illegal and unconstitutional, we are deciding all these writ petitions by this common judgment/order. For the purpose of adjudicating the controversy, we are taking into consideration the facts narrated in D.B. Civil Writ Petition No.825/2010, Sharwan Kumar Vs. R.P.S.C. & Others.

According to brief facts of the case, advertisement Annex.-1 was issued by the Rajasthan Public Service Commission, whereby, applications were invited from the Law Graduates for recruitment to the posts of Civil Judge (Junior Division) cum Judicial Magistrate in the cadre of Rajasthan Judicial Service. In pursuance of the said notification Annex.-1 dated 27.08.2008, along with other eligible candidates the applied. Thereafter, petitioner also written examination for RJS Examination 2008 was conducted on 7th and 8th February, 2009 in accordance with Rajasthan Judicial Service Rules, 1955 (hereinafter

referred to as "the Rules of 1955"). The petitioner along with other eligible candidates appeared at the said written examination and expected to get through in the written examination. But, surprisingly as per result of the written examination, the petitioner was not declared qualified for interview as cut-off marks for the General Category (Boys) based on scaled scores rather than the original raw marks obtained by the aspirants in the written examination. As per the petitioner, the result was to be declared only on the basis of raw marks because as per provisions of the Rules of 1955 framed in exercise of the powers conferred by Article 234, read with Article 238, and the proviso to Article 309 of the Constitution of India, complete procedure was prescribed for the selection and recruitment to the Rajasthan Judicial Service.

As per learned counsel for the petitioner, according to Rule 19 of the Rules of 1955, there is provision that the Commission shall prepare a list of candidates recommended by them for direct recruitment in order of their proficiency as disclosed by their aggregate marks. It is further provided that the Commission shall not recommend any candidate who has failed to obtain a minimum of 45% marks in the

aggregate both written and oral examination and 35% marks in all the compulsory papers. Therefore, it is obvious that there is complete procedure provided and no other method is permissible for declaring a candidate successful in the written examination. But, the Commission has adopted "scaling system" which is not even provided in the Rules of 1955. The entire procedure of Recruitment for the Rajasthan Judicial Service has been provided under Part Vth of the Rules of 1955.

In the writ petition, it is specifically stated by the petitioner that there is no provision in the Rules of 1955 for adopting scaling system to assess the suitability of the candidates appearing in the written examination; but, inspite of the fact that Hon'ble Supreme Court, in the case of Sanjay Singh Vs. Union Public Service Commission, reported in (2007) 3 SCC 720, disapproved the "scaling system" for recruitment in Judicial Service, the Rajasthan Public Service Commission has illegally and in contravention of the pronouncement in Sanjay Singh's case (supra) applied scaling system which is not permissible in law. It is also pointed out that in the case of Sarita Naushad Vs. Rajasthan Public Service Commission, the Division

Bench of this Court has already declared the "scaling system" as arbitrary and unconstitutional; but, again, for recruitment for the year 2008, the Rajasthan Public Service Commission has ignored the judgment of the Hon'ble apex Court in Sanjay Singh's case (supra) and judgment of the co-ordinate Division Bench of this Court in Sarita Naushad's case (supra) and has again applied the scaling system, therefore, the conduct of the Rajasthan Public Service Commission is totally arbitrary, unconstitutional and in contravention of the adjudication made by the Hon'ble Supreme Court. Therefore, the whole process which is undertaken shall be declared illegal and "scaling system" adopted by the Rajasthan Public Service Commission for the purpose of recruitment to the Rajasthan Judicial Service shall be declared illegal and the Commission may be directed to take into consideration only the raw (actual) marks obtained by the candidate in the written examination and shall proceed further for selection in accordance with the Rules of 1955.

This writ petition was filed before this Court on 23.01.2010. Notices were issued by the co-ordinate Division Bench on 27.01.2010. On that date, learned counsel Shri J.P. Joshi, appearing on behalf of the

Rajasthan Public Service Commission, was directed to accept notices. Thereafter, reply was filed by the Rajasthan Public Service Commission.

After hearing both the parties on 18.02.2010, while taking into consideration the settled legal position laid down by the Hon'ble Supreme Court in Sanjay Singh's case (supra) and Division Bench judgment of this Court in Sarita Naushad's case, following interim order was passed:

"Heard learned counsel for the parties on the stay application.

It is contended by learned counsel for the petitioner that this writ petition has been filed by the petitioner challenging the "scaling system" adopted by the Rajasthan Public Service Commission, upon which, result of the RJS Examination, 2008 has been declared. According to petitioner, no scaling system can be adopted by the Rajasthan Public Service Commission for declaring result of the RJS examination without consultation of the High Court in view of Rule 14 and 15 of the Rules of 1955.

Upon this argument, a pointed guery was made to counsel appearing on behalf of the High Court, Mr. V.K. Mathur whether consultation was made by Commission with the High Court for applying the scaling system in the RJS Examination 2008. It is stated at Bar by learned counsel for the High Court that no made such consultation was by the Rajasthan Public Service Commission for the scaling system applying in competitive examination for recruitment to

the Rajasthan Judicial Service for 2008.

Learned counsel for the Commission, Mr. J.P. Joshi submits that the matter with regard to applying the "scaling system" in the RJS Examination is subjudice in the Hon'ble Supreme Court because earlier Division Bench of this Court at the Jaipur Bench has held in respect of selection of the year 2005 that "scaling system" is violative of Articles 14 and 16 of the Constitution of India and passed certain direction against respondent R.P.S.C. Against the said judgment rendered by the Division Bench on 27.10.2009 in D.B. Civil Writ Petition No.3942/2007, Naushad Vs. RPSC & Others, and 17 other writ petitions, the Commission has filed petition for special leave to appeal (Civil) before the Hon'ble Supreme Court and the Hon'ble Supreme Court while issuing notice passed interim stay upon the directions contained in the impugned order as against the respondents, therefore, there is no of granting question stay upon interviews, for which process is going on, on the basis of the result of the written examination declared by the Commission while adopting the scaling system for recruitment for the subsequent year 2008.

Further, it is submitted by Mr. Joshi, learned counsel for the Rajasthan Public Service Commission, that Hon'ble Supreme Court has posted the special appeals filed by the Commission on 3rd March, 2010 for final disposal vide order dated 15.02.2010.

Learned counsel for the petitioner, however, vehemently disputes this position. It is urged that the Hon'ble Supreme Court has not stayed the effect and operation of the judgment rendered by the Division Bench in Sarita Naushad's case (supra) which has been passed while following the judgment of the Supreme Court in Sanjay Singh's case ((2007) 3 SCC 720, Sanjay Singh & Another Vs. U.P. Public Service

Commission, Allahabad & Another), in which, Hon'ble Supreme Court has held that scaling system is violative of Articles 14 and 16 of the Constitution of India. Learned counsel for the petitioner submits that the Supreme Court has only stayed the directions contained in the said judgment passed by the Division Bench as against the Rajasthan Public Service Commission and there is no stay as such upon the adjudication made against the scaling system by the Division Bench.

We have considered the submissions made by the respective parties and perused Rule 14 of the Rajasthan Judicial Service Rules, 1955, in which, it is specifically provided that a competitive examination for recruitment to the Rajasthan Service shall be held at such intervals as the Governor may, in consultation with the Court, from time to time, determine and shall be conducted by the Commission at such time and dates as it may notify. Further, under Rule 15, there is provision for syllabus, in which, it is provided that syllabus and rules relating to competitive examination shall be as in Schedule-III. Further, there is proviso, in which, it is provided that they may be amended by the Governor from time to time in consultation with the Commission and the Court: meaning thereby, in both, Rules 14 and 15 of the Rules of 1955, the legislature has specifically mentioned that consultation with the High Court in conducting the examination as well as for prescribing the syllabus is mandatory. Rules 14 and 15 of the Rules of 1955 read as under:

**"14.Examination.**-A competitive examination for recruitment to the Service, shall be held at such intervals as the Governor may, in consultation with the Court, from time to time determine, and shall be conducted by the Commission at such time and at such dates as it may

notify.

**15.Syllabus.**-The syllabus and the rules relating to the competitive examination shall be as in Schedule-III:

Provided that they may be amended by the Governor from time to time in consultation with the Commission and the Court."

In the case of Sarita Naushad (supra), the Division Bench of this Court at Jaipur Bench while following the adjudication made in Sanjay Singh's case passed the following order:

"(60) Supreme Court in SLP No.10539/2007 filed by Sarita Noushad and another SLP (C) No.10631/2007 while making the further appointments subject to the decision of the writ petitions, on 12.12.2008, requested this Court for early disposal of the writ petition at an early date but the writ petitions could not be disposed of for one reason or the other. above, the persons selected and appointed against the vacancies of the RJS Examination, 2005 have worked for one year and a half, therefore, we have not disturbed their appointments. But still, in the aforesaid facts and circumstances of present writ petitions, the the issue remains that most of the petitioners, who have approached the Court in time in 2007, either before interview or iust interview, have suffered on account of scaling which has already been declared illegal while answering Questions No.(i) to (iv) in the affirmative and the delay in disposal of the writ petitions may not be allowed to stand in their way for granting relief for all times to come and simply on the ground that the advertised vacancies have been filled up even after obtaining more raw marks plus interview marks and some of them have also been deprived of interview as per their raw marks and cut off marks worked out on the basis of raw marks in the RJS Examination, 2005. In order to save the petitioners from injustice which has been caused on account of violation of RJS Rules, 1955 and violation of Articles 14 and 16 of the Constitution of India, as discussed in detail in the preceding paras, Question No.(v) is also answered in the manner that Sanjay Singh (supra) is fully applicable to the facts and circumstances of the present case.

- (61) The ends of justice can only be met out if the petitioners' cases are considered for future vacancies as the same relief has been granted by the Supreme Court in Sanjay Singh (supra). Therefore, the writ petitions succeed and the same are allowed as indicated below:-
- (i) RPSC is directed to prepare the list of the candidates of RJS Examination, 2005 as per Schedule-III of the RJS Rules, 1955, to be called for interview as per raw cut off marks for the purpose of ascertaining whether any of the petitioners was entitled to be called for interview in their respective categories.
- (ii) RPSC is further directed to prepare a list as per Schedule-III of the RJS Rules, 1955, of RJS Examination, 2005, of the petitioners who have obtained more raw marks plus interview marks than the selected and appointed candidates, in their respective categories.
- (iii) All the petitioners who were entitled for interview as per Schedule-III in the ratio of 1:3 in their respective category as per their raw marks considering the fact of cut off raw marks but have not been called for interview, as per Relief No.(i), be now called for interview along with the candidates be interviewed for to the examination of RJS 2008 and further, in case they obtain more raw

marks+interview marks than the candidates of the merit list of the RJS Examination, 2005 as per their raw marks + interview marks, then their cases may be considered for appointment against future vacancies and if found suitable, respondents may issue appropriate orders before finalising the selections and appointment pursuant the **RJS** to Examination, 2008.

- (iv) The petitioners who have interviewed but could not be selected on account of scaling down their marks and scaling up the marks of the selected and appointed persons as referred in Relief No. (ii) and have further obtained more than 45 per cent raw marks+interview marks in the aggregate higher than persons already selected/appointed as per raw marks and interview marks of RJS Examination, 2005 be considered for appointment against future vacancies and in case they are found suitable, then, respondents may issue appropriate orders before finalising the appointment selections and of RJS Examination, 2008;
- (62) A copy of this order be placed on the files of all the connected cases."

In the above case of Sarita Naushad, selection process of RJS Examination 2005 was in question, therefore, aforesaid direction in para 61 (i) to 61 (v) were made by the Division Bench; but, in para 60, it has categorically been held that in order to save the petitioners from injustice which has been caused on account of violation of RJS Rules 1955 and Articles 14 and 16 of the Constitution of India, as discussed in the preceding para, question No.5 is also answered in the manner that Saniav Singh's judgment is fully applicable on the facts and circumstances of the present case.

The Hon'ble apex Court, in the

petition for special leave to appeal (Civil) filed by the Rajasthan Public Service Commission against judgment 27.10.2009, has passed order that there shall be interim stay of the directions contained in the impugned order against the respondents; meaning thereby, the directions to the Rajasthan Public Service Commission, incorporated in para 61(i) to 61(iv) have been stayed. order dated 18.12.2009 passed by the Hon'ble apex Court is quite unequivocal and specific which is as under: "Issue notice.

Interim stay of the directions contained in the impugned order as against the respondents."

In this view of the matter, we are convinced by the argument of learned counsel for the petitioner that there is no operating upon the effect operation of the judgment of the Division Bench of this Court rendered in Sarita Naushad's case, in which, the Division Bench held that scaling system is illegal and only interim stay upon the directions contained in the impugned judgment as against the respondents is granted. Therefore, the whole adjudication of the judgment has not been stayed by the Supreme Court and Hon'ble stav operating as upon the directions against the Rajasthan Public Service Commission and not upon the adjudication made by the Division Bench while following judgment of the Hon'ble Supreme Court in the case of Sanjay Singh (supra); meaning thereby, as per the judgment of the Division Bench of this Court passed in Sarita Naushad's case, the Rajasthan Public Service Commission is not at liberty to again conduct the interviews on the basis of the result which is declared while applying the scaling system.

In this view of the matter, we deem it just and proper to direct the Rajasthan Public Service Commission not to declare the result of the interviews which is going on for recruitment in pursuance of the RJS Examination 2008 on the basis of the result of the written examination declared while applying the scaling system without consultation with the High Court. Ordered accordingly. The Rajasthan Public Service Commission is, therefore, directed not to declare the result of the RJS Examination 2008 till disposal of this writ petition."

Against above interim order dated 18.02.2010 passed by this Court, the Rajasthan Public Service Commission preferred Special Leave to Appeal petition No.(C)-6569/2010 before the Hon'ble Supreme Court, in which, on 25.02.2010, while the petition was mentioned, upon hearing counsel the Court made the following order:

"List on 15.03.2010.

There shall be interim stay of the impugned order till then."

It is brought to our notice that though in the SLP interim stay upon impugned order dated 18.02.2010 was passed and SLP was ordered to be listed on 15.03.2010, the RPSC without waiting for adjudication of the SLP declared the final result inspite of pendency of the SLP before the Hon'ble Supreme Court. Today, it is brought to our notice that Hon'ble apex Court has

passed an order on 05.05.2010 in number of special appeals filed against the judgment in Sarita Naushad's case, in which, the scaling system adopted by the RPSC was guashed for the selections of the year 2005 as well as against the interim order dated 18.02.2010 passed in this writ petition for selections of the year 2008, whereby, directions were issued in respect of candidates of RJS Examination 2005 for considering cases of six candidates namely, Sarita Naushad, Asutosh Kumawat, Rajant Khatri, Tosita Verma, Sarita Dhakad and Divya Singh on the basis of raw marks obtained by them only and, the RPSC withdrew the SLP No.(C)-6569/2010 filed against the interim order dated 18.02.2010. Therefore, Hon'ble Court apex observed that appointments in pursuance of this order of those candidates of 2005 Examination would take place after appointment of the candidates selected for 2008 but they will be entitled to get their seniority; meaning thereby no case with regard to selection of the year 2008 is pending before the Hon'ble Supreme Court and gist of the order dated 05.05.2010 for considering the case of Sarita Naushad and other five persons is that Hon'ble Supreme Court did not approve the scaling Order dated 05.05.2010 passed by the system.

#### Hon'ble Supreme Court reads as follows:

#### "IN THE SUPREME COURT OF INDIA

# CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.4235 OF 2010

[Arising out of SLP (C) No.2580 of 2010]

R.P.S.C.

...APELLANT.

**VERSUS** 

BALVEER SINGH JAT & ORS. ...RESPONDENTS.

WITH CIVIL APPEAL NO.4236 OF 2010 (Arising out of SLP (C) No.2599/2010) CIVIL APPEAL NO.4237 OF 2010 (Arising out of SLP (C) No.2653/2010) CIVIL APPEAL NO.4238 OF 2010 (Arising out of SLP (C) No.2729/2010) CIVIL APPEAL NO.4239 OF 2010 (Arising out of SLP (C) No.2755/2010) CIVIL APPEAL NO.4240 OF 2010 (Arising out of SLP (C) No.2757/2010) CIVIL APPEAL NO.4241 OF 2010 (Arising out of SLP (C) No.2761/2010) CIVIL APPEAL NO.4242 OF 2010 (Arising out of SLP (C) No.2769/2010) CIVIL APPEAL NO.4243 OF 2010 (Arising out of SLP (C) No.2768/2010)

CIVIL APPEAL NO.4244 OF 2010 (Arising out of SLP (C) No.2770/2010) CIVIL APPEAL NO.4245 OF 2010 (Arising out of SLP (C) No.2989/2010) CIVIL APPEAL NO.4246 OF 2010 (Arising out of SLP (C) No.3005/2010) CIVIL APPEAL NO.4247 OF 2010 (Arising out of SLP (C) No.3291/2010) CIVIL APPEAL NO.4248 OF 2010

(Arising out of SLP (C) No.3293/2010) CIVIL APPEAL NO.4249 OF 2010 (Arising out of SLP (C) No.3294/2010) CIVIL APPEAL NO.4250 OF 2010 (Arising out of SLP (C) No.3297/2010) CIVIL APPEAL NO.4251 OF 2010 (Arising out of SLP (C) No.3299/2010) CIVIL APPEAL NO.4252 OF 2010 (Arising out of SLP (C) No.33879/2010)

#### **AND**

SLP (C) No.6569/2010, W.P. (C) NO.102/2010, W.P. (C) NO.113/2010, W.P. (C) NO.114/2010, W.P. (C) NO.134/2010, W.P. (C) NO.142/2010, W.P. (C) NO.146/2010, and W.P. (C) NO.128/2010,

#### ORDER

Leave granted.

In 2005, Rajasthan Public Service Commission conducted test for the posts of Civil Judge (Junior Division) and 87 candidates were selected and they were appointed as Civil Judge (Junior Division) in 2007. The Rajasthan Public Service Commission had adopted a method of scaling for the purpose of assessment of answer sheets. Because of this, some of the candidates who had obtained less raw marks which were sealed up were called for interview and subsequently selected and appointed. Therefore series of writ petitions were filed before the High Court challenging the scaling method adopted by the Public Service Commission. The High Court by the impugned judgment has given certain directions and held that the fresh interviews of the candidates to be taken based on their raw marks obtained by them. As regards the candidates who have been already appointed by Rajasthan Public Service Commission, the High Court held that their appointments shall not be disturbed.

Now, pursuant to the directions of High Court, it appears the that 8 candidates who had already undergone interview secured more marks than the candidates who were already appointed to the Judicial Service based on raw marks and six other candidates namely, Sarita Noushad, Ashutosh Kumawat, Rajant Khatri, Toshita Verma, Sarita Dhakad and Divya Singh were not subjected to interview though they have got higher raw marks. They have to be interviewed by the Raiasthan Public Service Commission. If any one of them is found to be eligible, such candidates who had already secured more marks than, the last candidate appointed, should be considered appointment. The Raiasthan Public Service Commission is directed to conduct interview of above named six candidates within a period of three weeks. The eight candidates who had already undergone interview, need not be interviewed again. Final list of eligible candidates based on the marks secured by the candidates who were already interviewed and are to be interviewed, shall be prepared and from the said list appointments on nine vacant posts shall be made in order of merits. We are told that the names of the candidates who were already selected in 2008 are sent for appointment to the Government. Naturally, the appointments pursuant to this order would take place after the appointments of the candidates selected in 2008 but they will be entitled to get seniority after their appointments.

The civil appeals are disposed of accordingly.

SLP (C) No.6569/2010, W.P. (C) NO.102/2010, W.P. (C) NO.113/2010, W.P. (C) NO.114/2010, W.P. (C) NO.134/2010, W.P. (C) NO.142/2010, W.P. (C) NO.146/2010, and W.P. (C) No.128/2010,

All the writ petitions filed under Article 32 in respect of the years 2005 and 2008 and special leave petition (C) No.6569 of 2010 are dismissed as withdrawn."

Upon perusal of the aforesaid order, it is revealed that the special leave to appeal petition, filed against order dated 18.02.2010 passed in this writ petition, was dismissed as withdrawn by the Hon'ble Supreme Court; meaning thereby, the order dated 18.02.2010 came into operation, in which, on 18.02.2010, a direction was issued in this writ petition that the Rajasthan Public Service Commission shall not declare the result of RJS Examination 2008 till disposal of this writ petition. Therefore, if any result has been declared and recommendations have been made to the State Government for appointment in the Rajasthan Judicial Service 2008 in interregnum period commencing from 15.03.2010 to 05.05.2010 the same cannot be allowed to remain in existence because SLP against the order dated 18.02.2010 has been withdrawn by the RPSC and order dated 18.02.2010 passed in this writ petition restraining the Rajasthan Public Service Commission from declaring the result again comes in operation because the same has not been quashed by the Hon'ble Supreme Court; more so, the gist and essence of the order dated 05.05.2010 passed by the Hon'ble Supreme Court is that Hon'ble apex Court has disapproved the "scaling system" which is applied by the Rajasthan Public Service Commission in supererogation of the jurisdiction and power conferred upon the Commission by the Rules of 1955 in respect of vacancies of the year 2005. Therefore, if any recommendation has been made after passing of the order dated 18.02.2010, by which, the Commission was restrained from declaring the result, no appointment can be made by the State because Government of Rajasthan is bound by order dated 18.02.2010.

It is very strange that on 18.02.2010 interim order was passed that result shall not be declared against which SLP No.(C)-6569/2010 was preferred before the Hon'ble Supreme Court, in which, Hon'ble apex Court passed interim order whereby operation of order dated 18.02.2010 was stayed and said SLP was pending before the apex Court against order dated 18.02.2010; but, the RPSC without waiting for the final outcome of the SLP, knowing that the matter is

subjudice and order dated 18.02.2010 has not been set aside by the apex Court, declared the result and recommended names to the State Government for appointment in such playful manner.

We are unable to understand why action was required to be taken by the Commission in such hurried haste when the SLP filed by the Rajasthan Public Service Commission against order dated 18.02.2010 was pending before the Hon'ble Supreme Court. Upon perusal of the order dated 05.05.2010, it emerges that on the one hand the result was declared after passing of the interim order dated 25.02.2010 and names were recommended to the State Government appointment by the Commission while saying that Hon'ble apex Court has stayed operation of order dated 18.02.2010 passed in this writ petition and, on the other hand, the Commission has withdrawn the said SLP No.(C)-6569/2010 on 05.05.2010 filed against order dated 18.02.2010 after declaring the result and did not put correct facts before the Hon'ble apex Court that names of the candidates have been sent after passing of interim order by the Hon'ble apex Court on Further, the RPSC withdrew the SLP 25.02.2010. filed against order dated 18.02.2010; meaning thereby,

the order dated 18.02.2010 came into operation and if any recommendation has been made contrary to the said order the same is ab initio illegal and void.

Learned counsel for the petitioner submits that the controversy involved in this matter with regard to adopting "scaling system" by the Rajasthan Public Service Commission for recruitment to Judicial Service has already been decided by the Hon'ble Supreme Court in Sanjay Singh's case, reported in (2007) 3 SCC 720, so also, the Division Bench of this Court in Sarita Naushad's case (supra), while following the adjudication made by the Hon'ble apex Court in Sanjay Singh's case, quashed the "scaling system" adopted by the RPSC and, now, order dated 05.05.2010 passed by the Hon'ble Supreme Court leaves no manner of doubt, in which, the Hon'ble Supreme Court has passed order for considering the case of Sarita Naushad on the basis of raw marks. Therefore, it is obvious that Hon'ble Supreme Court has disapproved the "scaling system" adopted by the Rajasthan Public Service Commission. Hence, this writ petition may be allowed and the result declared by the Commission after passing of the order dated 18.02.2010 and recommendations made on the basis of result so declared may be held illegal and void because the controversy involved in this case with regard to applicability of scaling system has already been disapproved by the Hon'ble Supreme Court and this Court and, further, while issuing directions for considering the case of Sarita Naushad on the basis of raw marks in the order dated 05.05.2010 the Hon'ble apex Court has again disapproved the scaling system adopted by the Rajasthan Public Service Commission.

Learned counsel appearing for the RPSC has filed application today along with written submissions, which are as follows :

"The humble counsel for respondent most respectfully submits as under:-

- 1. In the SLP preferred against the judgment rendered by this Hon'ble Court in the case of Sarita Naushad, the Hon'ble Supreme Court after hearing all the parties granted leave and have maintained the interim order passed earlier in the SLP.
- 2. That against the selection of year 2008, some writ petitions were filed under Article 32 of the Constitution of India. All the writ petitions filed under Article 32 in respect of years 2005 and 2008 have been dismissed as withdrawn. With regard to selection of year 2008, Hon'ble Supreme Court made following interim arrangement:-

"We are told that the names of the candidates who were already selected in 2008 are sent for appointment to the Government. Naturally, the appointments pursuant to this order would take place after the appointments of the candidates selected in 2008 but they will be entitled to get seniority after their appointments."

Thus, the issue with regard to scaling has been kept open by the Hon'ble Supreme Court as main appeal has been kept pending as it evident from the information gathered from internet, copy enclosed and in view of the fact that no direction has been given by the Hon'ble Supreme Court with regard to selection 2008 and on the contrary, the Hon'ble Supreme Court has observed that the candidates now sought to be interviewed pursuant to the direction of the Hon'ble Supreme Court will get appointment only after the appointments of 2008 are made by the State Government, therefore, unless appointment meets with regard to selection of 2008 are made, direction with regard to 2005 cannot be carried out. More over, the Hon'ble Supreme Court has not made a general direction that all candidates securing higher raw marks than the candidates selected by RPSc shall be called for interview but in fact the Hon'ble Supreme Court has given clearance to the appointment sought to be made pursuant to selection of 2008 and the candidates identified by the Hon'ble Supreme Court who were writ petitions before the High Court shall be entitled to get appointment only after the appointment of 2008 are made.

That in view of this clear order 3. passed by the Hon'ble Supreme Court, impediment in there is no making appointment for the year 2008 and unless the appointments of 2008 are made, the direction given by Hon'ble Supreme Court with regard to candidates of 2005 shall not be carried out and it will become impracticable if appointments of 2008 are not made. Thus for proper implementation of order of Hon'ble Supreme Court, the appointments pursuant to selection made in 2008 are required to be made, moreso, when the Hon'ble Supreme Court declined to grant interim relief against appointments of 2008 which was sought in writ petitions filed under Article 32 of the Constitution of India being W.P. (C) NO.102/2010, W.P. (C) NO.113/2010, NO.114/2010, W.P. (C) W.P. NO.134/2010, W.P. (C) NO.142/2010, W.P. (C) NO.146/2010 & W.P. NO.128/2010. Not only the interim relief was not granted but the writ petition itself was dismissed as withdrawn. Therefore, the Hon'ble Supreme Court declined to make any interference in the selection of 2008 in the writ petitions referred to above.

In view of the above position and the interim arrangement made by the Hon'ble Supreme Court, no further direction is required to be passed in this writ petition."

We have considered the submissions made by learned counsel for the petitioner as well as written submissions made by counsel for the Rajasthan Public Service Commission also.

Appointments to the Rajasthan Judicial Service are required to be made strictly in accordance with Rules of 1955, in which, complete procedure has been prescribed for direct recruitment under Part Vth. Rule 19 of the Rules of 1955 is as follows:

"19. List of candidates recommended by the Commission: (1) The

Commission shall prepare a list of candidates recommended by them for direct recruitment in order of their proficiency as disclosed by their aggregate marks. If two or more of such candidates obtain equal marks in the aggregate the Commission shall arrange them in order of merit on the basis of their general suitability for service.

Provided that the Commission shall not recommend any candidate who has failed to obtain minimum of 45% marks in the aggregate both of Written and Oral Examinations.

Provided further than while selecting candidates from the vacancies advertised, the Commission may (i) if intimation of additional requirement is sent to the Commission before the selection and (ii) if suitable persons are available, keep on their reserve list more candidates whose number shall exceed 50% of the advertised vacancies. The names of such candidates may be recommended on the requisition to the appointing authorities within six months from the date on which the original list is forwarded by the Commission to the Government.

(2) Two copies of such list shall be submitted by the Commission to the Governor."

Upon perusal of the above Rule 19, it emerges that there is no power conferred upon the RPSC to adopt any scaling system for assessing the suitability of the candidates in the written examination. Further, it is specifically provided by the Legislature that the Commission shall not recommend any candidate who

has failed to obtain minimum of 45% aggregate marks both in the written and oral examination, therefore, for the purpose of selection, marks obtained in the written and oral examination and none else is required to be taken into consideration. No power has been given by the Legislature to the Rajasthan Public Service Commission to adopt any other procedure. Rule 19 of the Rules of 1955 was taken into account by the coordinate Division Bench of this Court in Sarita Naushad's case which has been taken into consideration by this Court while passing the interim order dated 18.02.2010.

In Sanjay Singh's case (supra), Hon'ble Supreme Court has held that scaling system/method is irrational and arbitrary. Para 17 to 21 of the said judgment run as under :

"17. It is no doubt true that the Judicial Service Rules govern the recruitment to Judicial Service, having been made in exercise of under Article 234, power in consultation with both the Commission and the High Court. provides what examinations also conducted should be and the maximum marks for each subject in the examination. **But the Judicial** Service Rules entrust the function of conducting examinations to the Commission. The Judicial Service Rules do not prescribe the manner and procedure for holdina the examination and valuation of answerscripts and award of the final marks declaration of the results. and Therefore, it is for the Commission to regulate the manner in which it will conduct the examination and value the answer-scripts subject, however, to the provisions of the Judicial Service Rules. If the Commission has made Rules to regulate the procedure and conduct of the examination, they will naturally apply to any examination conducted by it for recruitment to any service, including the Judicial Service. But where the Judicial Service Rules make a specific provision in regard to any aspect of examination, such provision prevail, and the provision of he PSC Procedure Rules, to the extent it is inconsistent with the Judicial Service Rules, will be inapplicable. Further, if both the Rules have made provision in regard to a particular matter, the PSC Procedure Rules will yield to the Judicial Service Rules.

#### 18. The manner in which the list of

candidates as per merit should be prepared is provided both in the Judicial Service Rules and the PSC Procedure Rules. Relevant portion of Rule 20 (3) and Note (i) of Appendix II of the Judicial Service Rules and Rule 51 of the PSC Procedure Rules providing for the aggregation of marks and preparation of the merit list, are extracted below:

#### Judicial Service Rules

#### **PSC Procedure Rules**

"20. (3) The Commission then"51. The marks sheets so obtained shall prepare a final list of selectedshall be opened on the last day of candidates in order of theirinterview and immediately disclosed proficiency as *bythereafter* the marks marks finally interview/personality test shall be aggregate of awarded to each candidate in the added to the marks obtained by the written examination and thecandidates interview." examination. Thereafter, on the

Note (i) of Appendix II -- "(i) The basis of the totals so obtained the marks obtained in the interview merit list shall be prepared and will be added to the marks placed before the Commission for obtained in the written papers and final declaration of the result; the candidate's place will depend on the aggregate of both."

Provided that the Commission may, with a view to eliminating variation in the marks awarded to candidates at any examination or interview, adopt any method, device or formula which they consider proper for the purpose."

(different emphasis supplied)

As the field is occupied by Rule 20 (3) and Note (i) of Appendix II of the Judicial Service Rules, they will prevail over the general provision in Rule 51 of the PSC Procedure Rules.

Rule 20 (3) provides for the final list of selected candidates in order of their proficiency as disclosed by the aggregate of "marks finally awarded to each candidate in the written examination and the interview". Note (i) to Appendix II of the Judicial Rules provides that Service "marks obtained in the interview" will be added to "the marks obtained in the written papers" and that the candidate's place will depend on the aggregate of both. Though the Judicial Service refers Rules "marks finally awarded", the said Rules do not contain a provision similar to the proviso to Rule 51 of the PSC Procedure Rules, enabling the Commission to adopt any method, or formula to eliminate variation in the marks. It is not possible to read the proviso to Rule 51 or words to that effect into Rule 20 (3) or Note (i) of Appendix II of the Judicial Service Rules. It is well settled that courts will not add words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot make up the deficiency, where the working as it exists is clear and unambiguous. While the courts can adopt a construction which will carry out the obvious intention of the legislative or the rule-making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules. Therefore, Rule 20 (3) and Note (i) of Appendix II have to be read as they are without the addition of the proviso to Rule 51 of the PSC Procedure Rules. what can be taken into account for final preparing list of selected "marks candidates, finally are awarded to a candidates" in the

written examination and interview. The marks assigned by the examiner are not necessarily the marks finally awarded to a candidate. If there is any error in the marks awarded by the examiner it can be corrected bv alwavs Commission and the corected marks will be "the final marks awarded to the candidate." Where the Commission is of the view that there is "examiner variability' in the marks (due to strict or liberal assessment of answer-scripts) or improper assessment on account of erratic or careless marking by an examiner, they can be corrected appropriately by moderation. The moderation is either by adding (in the case of strict examiners) or deducting (in the case of liberal examiners) a particular number of marks which has been decided with reference to principles of moderation applied. If there is erratic or careless marking, moderation is by fresh valuation by another examiner. Therefore, the marks assigned by the examiner as moderated will be the marks finally awarded to the candidates or marks candidates. obtained bv the Moderation, it has to be held, is inherent in the evaluation of answerscripts in any large scale examination, where there are more than one examiner.

20. We cannot accept the contention of the petitioner that the words "marks awarded" or "marks obtained in the written papers" refer only to the actual marks awarded by the examiner. "Valuation" is a process which does not end on marks being awarded by an examiner. Award of marks by the examiner is only one stage of the process of valuation.

Moderation when employed by the examining authority, becomes part of the process of valuation and the marks awarded on moderation become the final marks of the candidate. In fact Rule 20 (3) specifically refers to the finally awarded to each candidate in the written examination", thereby implying that the marks awarded by the examiner can be altered by moderation.

But the question is whether the 21. raw marks which re converted into scaled scores on an artificial scale with assumed variables (assumed mean marks and assumed standard deviation) can be considered "marks finally awarded" or "marks obtained". Scaled scores are not marks awarded to a candidate in a written examination, but a figure arrived at for the purpose of being placed on a common scale. It can vary with reference to two arbitrarily fixed variables, namely "assumed "assumed mean" and standard We have dealt with this mean". aspect in grater detail while dealing with Question (iii). For the reasons given while considering Question (iii), we hold that "scaled scores" or "scaled marks" cannot be considered to be marks awarded to a candidate examination". the written Therefore, scale violates Rule 20 (3) and Note (i) of Appendix II of the Judicial Service Rules."

It is also required to be observed that in Sarita Naushad Vs. R.P.S.C., the matter with regard to selection in the RJS Examination 2005, in which, scaling

system was adopted, was in controversy and the Division Bench of this Court while following judgment of Sanjay Singh's case (supra) held that scaling system which is not provided in the Rules of 1955 cannot be made applicable and appointments shall be made strictly in accordance with Rules of 1955. Recently, Hon'ble apex Court has also passed order for taking into consideration the raw marks to assess the suitability of the candidates for selection in respect of RJS Examination 2005, therefore, in our opinion, there is no force in the written submissions made by the Rajasthan Public Service Commission. Hon'ble Supreme Court in Sanjay Singh's case and Division Bench of this Court in Sarita Naushad's case, have held that no other procedure than the procedure prescribed in the Rules of 1955 can be made applicable by the Commission for the purpose of adjudging the suitability of the candidates for Judicial Service.

Upon consideration of written submissions made by learned counsel for the RPSC, it emerges that before the Hon'ble apex Court the controversy with regard to selection of Rajasthan Judicial Service Examination 2008 is not pending because the Commission has withdrawn the SLP No.(C)-6569/2010 filed against

order dated 18.02.2010. Therefore, the written submissions made by the RPSC have no force for the following reasons :

- (A) In Sanjay Singh's case (supra), the Hon'ble Supreme Court disapproved the "scaling system" for recruitment to Judicial Service.
- (B) The Division Bench of this Court in Sarita

  Naushad's case (supra) quashed the scaling
  system adopted by the RPSC for selection in the

  Rajasthan Judicial Service Examination 2005.
- (C) The Division Bench judgment in Sarita Naushad's case was challenged by the RPSC and, now, on 05.05.2010 the Hon'ble apex Court has passed order for Sarita Naushad and other candidates that their cases shall be considered on the basis of raw marks obtained by them; meaning thereby, even in Sarita Naushad's case Hon'ble Supreme Court gave direction that for considering her candidature raw marks obtained by her shall be taken into account, therefore, again, the apex Court has disapproved the "scaling system" adopted by the RPSC which is contrary to Rule 19 of the Rules of 1955.
- (D) The law laid down by the Hon'ble Supreme Court

in Sanjay Singh's case (supra) is having binding force under Article 141 of the Constitution of India. Once adjudication has been made by the apex Court, then, as per law laid down in the case of Official Liquidator Vs. Dayanand, reported in (2008) 10 SCC 1, we have to maintain judicial discipline. In the instant case, inspite of the fact that Hon'ble apex Court declared the "scaling system" void, the Commission has again adopted the said procedure for selection in Rajasthan Judicial Service Examination 2008; and, at present, the question of selections of 2008 is not pending before the Hon'ble apex Therefore, there is no substance in the written submissions advanced by the Commission.

In this view of the matter, we are of the opinion that as per order dated 05.05.2010 passed by Hon'ble Supreme Court in Civil Appeal No.4235/2010, RPSC Vs. Balbir Singh Jat & Others, with number of SLPs, the writ petitions bearing number D.B. Civil Writ Petition No.11317/2009, Devendra Singh Udawat Vs. State of Rajasthan & Others, Civil Writ D.B. Petition No.10385/2009, Hansraj & Another Vs. State of Rajasthan & Others, D.B. Civil Writ Petition No.11318/2009, Bhawani Singh Bhati Vs State of Rajasthan & Others, and D.B Civil Writ Petition No.10811/2009, Ahsan Ahmed Vs State of Rajasthan & Others, in which, selections of 2005 are under challenge shall be governed by aforesaid order dated 05.05.2010, reproduced hereinabove.

With regard to other writ petitions, in which, selections of Rajasthan Judicial Service Examination 2008 are under challenge, while following the adjudication made by the Hon'ble apex Court in Sanjay Singh's case as well as order dated 05.05.2010 and verdict given by the Division Bench of this Court in Sarita Naushad's case, all these writ petitions are allowed. Scaling system adopted by the Rajasthan Public Service Commission in the Rajasthan Judicial Service Examination 2008 is hereby declared illegal and unconstitutional. Consequently, the result declared on the basis of adopting the scaling system during pendency of these writ petitions for Rajasthan Judicial Service Examination 2008 and recommendations made in pursuance of result so declared to the State Government for appointment are hereby declared null and void and the Rajasthan Public Service Commission is directed to prepare fresh merit/select list while taking into consideration the raw marks obtained by the candidates in the written examination and, while proceeding on the basis of raw marks obtained by the

candidates in the written examination, further, add marks obtained in the interview. After preparation of fresh merit/select list, final result may be declared and names of so selected candidates may be recommended to the State Government for appointment. This exercise shall be completed by the Rajasthan Public Service Commission within a period of two months from the date of receipt of certified copy of this order.

There shall, however, be no order as to costs.

(Gopal Krishan Vyas) J. (A.M. Kapadia) J.

Ojha, a./ Vishvakarma a.