

Reserved On : 17/04/2025

Pronounced On : 24/04/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 849 of 2022****In****R/SPECIAL CIVIL APPLICATION NO. 3714 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA** Sd/-**and****HONOURABLE MS. JUSTICE GITA GOPI** Sd/-

Approved for Reporting	Yes	No
	✓	

=====

UMESHKUMAR PRATAPSIKH PARMAR & ORS.

Versus

STATE OF GUJARAT & ORS.

=====

Appearance:

MS MEGHA JANI(1028) for the Appellant(s) No. 1,2,3,4,5

DELETED for the Respondent(s) No. 15,16,7,9

MS NIRALI SARDA, AGP for the Respondent(s) No. 1

MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 2

MR SP KOTIA(5687) for the Respondent(s) No. 11,12,4,6,8

NOTICE SERVED for the Respondent(s) No. 10,13,14,3,5

=====

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA**and****HONOURABLE MS. JUSTICE GITA GOPI****CAV JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

- The present Letters Patent Appeal filed under Clause 15 of the Letters Patent, 1865 is directed against the CAV Judgment dated 05.05.2022 passed by the learned Single

Judge dismissing the writ petition filed by the present appellants.

2. BRIEF FACTS :

- a) The present appellants-original petitioners No.2 and 4 to 7 filed the captioned writ petition assailing the Corrigendum dated 10.01.2020 issued by the respondent No.2-Gujarat Public Service Commission (GPSC) declaring revised final results in respect of the combined competitive examinations (main) for recruitment to the posts of Deputy Section Officer (State Secretariat), Deputy Section Officer (GPSC), Deputy Section Officer (Vidhan Sabha) and Deputy Section Officer (Mamlatdar) (Revenue Department) Class-III.
- b) The GPSC published an advertisement for recruitment of Class-III Posts on 15.09.2018. Preliminary examinations were held on 21.02.2019. Main examinations were held on 19.05.2019 and 26.05.2019. The final results of the main examination were declared on 13.09.2019. The appellants were declared successful, and accordingly, the GPSC informed the appellants on 30.09.2019 that their names are recommended to the State Government for appointment. Accordingly, the appellants were called for document verification on 09.10.2019, and on 07.11.2019.

- c) The GPSC published a notice on 17.09.2019 calling upon the candidates for rechecking of marks, and in case they are willing to do so, they shall apply within a period of 30 days and the last date for rechecking was fixed as 23.10.2019.
- d) It appears that thereafter, in view of receipt of applications filed by 9 candidates from 04.12.2019 to 18.12.2019 pointing out an error in one of the answer keys of sub question No.XII of question No.8 of the paper book from choice (A) to (B), the GPSC referred the same for expert opinion.
- e) The GPSC, after taking experts opinion, rectified the error and vide Corrigendum dated 10.01.2020, the marks were reallocated. This resulted in selection of 12 earlier unsuccessful candidates and ouster of 12 candidates, including 7 petitioners and hence, the writ petition was filed. The learned Single Judge, after hearing the respective parties, rejected the writ petition, which has given rise to the present Letters Patent Appeal.

SUBMISSIONS ON BEHALF OF APPELLANTS-CANDIDATES :

3. Learned advocate Ms.Megha Jani appearing for the appellants has submitted that the judgment passed by the learned Single Judge calls for interference since the learned Single Judge has failed to consider Rule 18 of the Deputy Section Officer, Class III and the Deputy Mamlatdar, Class III (Combined Competitive Examination) Rules, 2018 (in short “the Rules of 2018”), which was promulgated vide Notification dated 14.09.2018.
4. It is submitted by learned advocate Ms. Megha Jani that the learned Judge has failed to consider that the impugned revision vide Corrigendum dated 10.01.2020 is *de hors* the rules applicable to the examination in question. While pointing out Sub-Rule (1) of Rule 18 of the Rules of 2018, it is contended that the same allows the candidates to apply for rechecking of their marks in the mains examination within a time frame of 30 days from the date of declaration of results, and similarly, Sub-Rule (2) allows candidates to apply for obtaining mark sheet of the mains examination within 15 days of the date of declaration of the results. It is submitted that corresponding instructions are also given under the Advertisement at Clause 16(4) and Clause 17(1), and the GPSC has failed to produce anything on record to show

that the time frame, as stipulated under these provisions, was followed in the present case.

- 5.** It is also submitted by learned advocate Ms. Jani that there is no provision under the rules applicable to the examination under question, which allows GPSC to re-evaluate the results once declared, either on an application by candidates or suo moto and the same can be confirmed from a bare reading of Clause 17(5) and 17(6) of the Advertisement, and hence the appraisal of a question in its entirety and awarding marks thereon, after the results had already been declared, cannot be termed as anything other than re-evaluation. Hence, it is urged by her that in absence of any provisions, the GPSC has no powers to re-evaluate the results, after declaration.
- 6.** It is further submitted that the learned Single Judge has failed to appreciate that the merit list dated 13.09.2019 includes 52 candidates, who had already succeeded in examinations under Advertisement No.40/2018-19 for recruitment to higher Class I and Class II posts on 04.07.2019. Such candidates would obviously decline to join Class III posts under the present Advertisement No.55/2018-19. As admitted in its affidavit dated 11.11.2020, the GPSC has received representations from 7

candidates for withdrawal of their candidature before the declaration of results. Considering further that in the past, the GPSC has called for such representations from candidates and permitted withdrawal on representation being made, the merit list dated 13.09.2019 is ex-facie erroneous in respect of inclusion of 52 such candidates and at least, to the extent of inclusion of 7 candidates who had expressly withdrawn their candidature before the declaration of the results. It is further submitted that once a candidate submits an Affidavit withdrawing his candidature, the GPSC is required to comply with the request, and the GPSC cannot forcibly give merits to a candidate who has expressly forfeited his participation in the examinations.

7. Learned advocate Ms. Megha Jani has also submitted that the learned Single Judge has erred in holding that communication dated 09.10.2019 and 07.11.2019 issued by the GPSC cannot be relied upon to submit that by virtue of these clarifications and recommendations to the Government, the appellants had, in their favour, a right which had accrued to them. It is submitted that the learned Single Judge has failed to appreciate the decision of the Supreme Court in the case of Commissioner of Police and Another vs. Umesh Kumar, (2020) 10 S.C.C.

448, which is not applicable to the facts and circumstances of the present case.

8. She has also pointed out that the appellants under the legitimate impression that they had been selected, missed various civil services examinations that took place in the interim period and thus, have been deprived of opportunities, without fault of their own, which has caused irreparable damage to the career and growth prospects of the appellants.
9. It is finally submitted by learned advocate Ms. Jani that all the appellants have been declared as unsuccessful on the basis of the re-evaluation of the marks and are placed in the list of unsuccessful candidates for want of one mark. She has submitted that after the aforesaid recruitment was undertaken, no fresh recruitment is held by the respondents and as on today, the appellants-petitioners are ready and willing to give up their claim of seniority and also salary for the intervening period in case this Court finds them eligible for being appointed to the post of Deputy Mamlatdar. She has submitted the communications of each of the appellant addressed to her. The same are ordered to be taken on record.

10. In support of her submissions, learned advocate Ms.Megha Jani has placed reliance on the decision of the Division Bench dated 29.01.2016 passed in Letters Patent Appeal No.1303 of 2015 (Bharwani Jitendra K. and Others vs. State of Gujarat and Ors.). Reliance is also placed on the order dated 27.03.2023 of the Division Bench in Letters Patent Appeal No.838 of 2022 (The Secretary vs. Yatinkumar Babubhai Panchal and Others). Thus, it is urged that the judgment and order passed by the learned Single Judge may be quashed and set aside and the respondents may be directed to appoint the appellants on the post of Deputy Mamlatdar.

SUBMISSIONS ON BEHALF OF THE RESPONDENT-GPSC:

11. Opposing the present appeal, learned advocate Mr.Harsheel D. Shukla appearing for the respondent - GPSC has submitted that the appellants were declared unsuccessful on the re-evaluation of the answer key to the sub question No.XII of question No.8 of Paper Book from choice (A) to (B) of Paper-II pertaining to English grammar and the same was done in view of the representations received by 9 candidates. It is submitted that the matter was referred to the Expert Committee and the Expert Committee thereafter, opined that the answer

key to such question was incorrect and the result was again altered, which resulted into the ouster of the appellants and inclusion of the candidates who had suffered because of the mistake committed in the answer key. It is submitted that the final result of the Competitive Examination was declared on 13.09.2019, which consisted of 411 successful candidates including the present appellants, and they were recommended for appointment to the State Government on 20.09.2019. It is submitted that the respondent-GPSC published the final result on 13.09.2019 subject to the rechecking of the answer sheets / marks and after such publication of final result, the GPSC issued notice on 17.09.2019 informing the candidates that if they were willing to apply for rechecking of marks, they may apply for the same within a period of 30 days and the last date for rechecking was 23.10.2019.

- 12.** It is submitted by learned advocate Mr. Shukla that in all 252 applications were received for rechecking of the marks and thereafter, 9 candidates submitted applications relating to the incorrect answer key as mentioned hereinabove and such applications were received from 04.12.2019 to 18.12.2019. He has submitted that the matter was referred to the Expert Committee for opinion

and when it was found that the answer key was incorrect, the GPSC decided to rectify the error by applying the correct answer key. As a consequence, thereof, the marks in Paper II were revised in as many as 138 of the cases either by increasing 1 (one) mark or decreasing 1 (one) mark.

13. It is contended by learned advocate Mr.Harsheel D. Shukla that considering the larger interest of the candidates, so as to see that no deserving candidate would suffer because of the *bona fide* error, the respondent - GPSC issued the revised Final List on 10.01.2020. As a result, 12 candidates including the appellants, were shifted from list of successful candidates vide revised list on 10.01.2020. While placing reliance on Rule 20 of the Rules of 2018, he has submitted that the candidates have no right to be appointed even if their name figures in select list.

14. It is further submitted by learned advocate Mr. Shukla that the Examination was conducted as per the Rules of 2018 which does not provide any provision to prepare waiting list. It is submitted that thereafter, two recruitments were undertaken in the years 2019, 2020, 2022 and 2023 for the post of Deputy Section Officer,

however no recruitment with regard to the filling up the post of Deputy Mamlatdar has been undertaken.

- 15.** Learned advocate Mr. Harsheel D. Shukla in support of his submissions has placed reliance on the judgment of the Supreme Court in the case of Umesh Kumar (supra) and in case of A.P. Public Service Commission vs. Balaji Badhavath and Others, (2009) 5 S.C.C. 1. Thus, it is urged that the present appeal may not be entertained.

ANALYSIS OF FACTS AND OPINION :

- 16.** We have heard the learned advocates appearing for the respective parties.
- 17.** The kernel of the dispute involved in the present case, is as to whether the GPSC can re-evaluate the answer-sheets of the candidates-appellants, after publication of the merit list, and declare them as unsuccessful, after the recommendation of their appointment.
- 18.** The facts, as narrated hereinabove are not in dispute. All the appellants have undertaken the recruitment process initiated by the respondent - GPSC for filling up Class III posts of Deputy Section Officer (State Secretariat), Deputy Section Officer (GPSC), Deputy

Section Officer (Vidhan Sabha) and Deputy Section Officer (Mamlatdar) (Revenue Department) Class-III.

- 19.** All the appellants had applied for the post of Deputy Mamlatdar, after undertaking necessary recruitment process, the respondent-GPSC declared the merit list on 13.09.2019.
- 20.** Accordingly, the names of the appellants figured in the merit list of successful candidates and the GPSC issued recommendation letters dated 13.09.2019. The communication dated 30.09.2019 issued by the Section Officer of the GPSC reveals that their names were recommended to the General Administration Department of the State Government for appointments. It was clarified that the necessary exercise with regard to the verification of documents, eligibility etc. will be undertaken including medical check-up and only after such exercise is undertaken and in case the appellants satisfy the same, they will be issued appointment letters.
- 21.** On 09.10.2019, the Department invited the successful candidates, who are eligible for the recruitment of Deputy Mamlatdar to remain present for verification of the documents. On 07.11.2019, they were also called

upon for submission of documents for caste verification.

- 22.** At this stage, it is pertinent to note that the respondent-GPSC after publication of the Final Merit list on 13.09.2019, has issued Notice on 17.09.2019 informing all the candidates to apply for rechecking of marks and in case they are willing to do so, they have to file the application within a period of 30 days. The last date for submitting the application for rechecking was 23.09.2019. In all 252 applications were received.
- 23.** Thereafter, 9 candidates submitted applications with regard to the incorrect answer key to the sub question No.XII of question No.8 of the paper book from choice (A) to (B) of Paper II. Their applications were received from 04.12.2019 to 18.12.2019. The respondent-GPSC, in order to ascertain the grievance of such candidates, referred the matter to the Subject Expert Committee and ultimately, the opinion of the Subject Expert Committee was accepted, which opined that there was an error in applying the answer key for question No.XII of question 8 of Paper II.
- 24.** In view of the opinion of the Expert Committee, the marks were reallocated. After such exercise was

undertaken, the GPSC issued the Corrigendum of final result vide Notification dated 10.01.2020. As a consequence of the aforesaid exercise undertaken by the GPSC, the present appellants were shifted from the successful candidates to the list of unsuccessful candidates and accordingly, the names of the successful candidates were recommended to the State Government for further appointment.

25. During the pendency of the present appeal, and after hearing the learned advocates for the respective parties, we had called upon the respondents to produce the original record of the Expert Committee and the application of 9 candidates. On 27.11.2024, when the matter was heard, the officers of the respondent No.2 had produced the entire record, which was perused by us and we had recorded in the order dated 27.11.2024 as under :-

“2. Today, we have perused the original applications made by the said 9 candidates. All the applications pertain to the answer key to sub-question No.XII of question no.8 of paper No.2. We have also perused the said question. The same is referred as under :-

Q.8(XII) Select appropriate one word for ‘one who leads an austere life’.

A. aesthetic

B. ascetic

C. bohemian

D. debonair

E. heretic

3. The experts have found favour in the objection raised by such 9 candidates and ultimately, it is found that the answer key A. i.e. “asthetic” is incorrect and instead, the answer key B. “ascetic” is correct answer to sub-question No.XII.

4. At this stage, learned advocate Ms. Jani requests for some time. We have also permitted her to look to the applications filed by such candidates pointing out the irregularity committed in the answer key. We have also perused the extracts of the expert’s opinion.”

26. The decisive dates in the present case are as below :-

- Merit list dated 13.09.2019, which includes the names of the appellants.
- Vide communication dated 30.09.2019, the appellants were informed that their names are recommended to the State Government for appointment.
- On 09.10.2019 and 07.11.2019 the appellants were called for verification of documents.
- Date of issuance of notice dated 17.09.2019 informing the candidates to apply for rechecking of the answer sheet by 23.10.2019.
- The applications of 9 candidates for re-evaluation received from 04.12.2019 to 18.12.2019.
- Publication of Corrigendum, excluding the appellants, on 10.01.2020.

27. We shall now refer to the relevant provisions on which reliance is placed by the appellants and the GPSC. Reliance is placed by the appellants on Rule 18 of the aforesaid Rules, 2018. Rule 18(1) of the Rules reads as under :-

“18. Rechecking of mark of Main Examination.-

(1) A candidate who desires to have his marks of Mains Examination rechecked, may apply to the Commission alongwith such fee as may be fixed by the Commission for each papers within a period of thirty days from the date of declaration of the final result of the Main Examination.”

Similar provision has been incorporated in clause 17 of the Advertisement, which is translated as under:

“17. Re-verification of marks: (1) The candidate, who wishes to have his marks of the main examination verified, may apply to the Commission within thirty days from the date of declaration of the final result at the conclusion of the main examination along with a fee of Rs. 50-00 per paper. (2) The candidate shall have to indicate the name of the examination, seat number and name/address. (3) The fee shall be accepted with the application either in cash or through Indian Postal Order at the counter of the office. (4) The candidate can send this application by post. Such application shall have to be accompanied by a crossed Indian Postal Order drawn in favour of the Secretary, Gujarat Public Service Commission, Gandhinagar only. (5) Revaluation of the answer sheets shall not be carried out under any circumstances. (6) The Commission shall not take into account any dispute regarding the marks obtained by the candidate except for the re-verification of marks. (7) The application for re-verification of marks in the Screening Test (Preliminary Test) shall not be entertained.”

28. The respondent-GPSC has placed reliance on Rule 20 of the said Rules. The same reads as under :-

“20. No right to appointment.-The mere success in the examination shall not confer any right to appointment and no candidate shall be appointed to the post unless the Government is satisfied after such inquiries as may be considered necessary that the candidate is suitable in all respects for appointment to the post.”

29. A bare perusal of the provision of Rule 18 reveals that it only pertains to exercise which is to be undertaken for rechecking of marks within a period of 30 days. The clause 17(5) of the advertisement specifically prohibits re-evaluation, and it only permits re-checking. Thus, there is no provision prescribed under the Rules, which permits re-evaluation, and on the contrary, the clause of the advertisement does not permit re-evaluation.

30. In the present case, the Final Result was published on 13.09.2019 and the applications of 9 candidates for “re-evaluation” were received by the GPSC on 04.12.2019 to 18.12.2019, which are indubitably beyond the period of 30 days prescribed for “re-checking”. We do not find any provision in the Rule or in the advertisement, which empowers the GPSC to re-evaluate the answer sheet. The GPSC, in guise of “re-checking” has “re-evaluated” the answer sheets, that too beyond the statutory period of 30

days, by accepting the applications filed beyond the cut-off date of re-checking. No provision is pointed to us, which empowers the GPSC to undertake the exercise of “re-evaluation”. The action of the GPSC in accepting such application itself was illegal in light of Clause 17(5) of the Advertisement. Even if it is presumed that the GPSC can undertake exercise of “re-evaluation”, the same cannot be at any stage after declaration of the result. Such exercise can only be undertaken within the statutory period. The re-evaluation of the marks beyond the specified period at the discretion of the GPSC at any stage will be an anathema to the finalization/conclusion of the result. The final merit list or the result will always remain in the state of flux putting the career of the candidates at peril if such an approach, is allowed to be adopted. Hence, in absence of any enabling provision and in view of Clause 17(5) of the Advertisement, it was not permissible for the GPSC to accept the applications for re-evaluation after the cut-off date of re-checking. If the application for re-checking is made impermissible after 23.09.2019, the applications seeing re-evaluation which are received beyond the cut-off date cannot be accepted, and as a sequel, no action of re-evaluation was permissible.

- 31.** In the present case, the appellant's case has reached upto the stage of verification of the documents, after they were recommended for appointment, and they were ousted from the list of successful candidates for want of less than one mark on the applications seeking re-evaluation, which was not permissible under the statutory rules.
- 32.** We may, at this stage, refer to the decision of the Supreme Court on the issue of re-evaluation of answer sheet. The Full Bench of the Supreme Court in the case of Promod Kumar Srivastava vs. Chairman, Bihar Public Service Commission, Patna and Others, (2004) 6 S.C.C. 714, on the issue of re-evaluation of the answer books, has held thus:

“7 We have heard the appellant (writ-petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned single judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined

in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education and another V/s. Paritosh Bhupesh Kurmarsheth and others. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The Judgement of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned single judge had clearly erred in having the answer-book of the appellant re-evaluated.”

33. The afore-mentioned decision was considered by the Apex Court in the case of Central Board of Secondary Education through Secretary, All India Pre-medical / Pre-dental Examination and Others vs. Khusboo Shrivastava and Others, (2014) 14 S.C.C. 523. The Supreme Court has held thus:

“7 We find that a three-Judge Bench of this Court in Pramod Kumar Srivastava V/s. Chairman, Bihar Public Service Commission, Patna & Ors. (supra) has clearly held relying on Maharashtra State Board of Secondary and Higher Secondary Education & Anr. V/s. Paritosh Bhupeshkumar Sheth & Ors. (supra) that in the absence of any provision for the re-evaluation of answers books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in Pramod Kumar Srivastava V/s. Chairman, Bihar Public Service Commission, Patna & Ors. (supra) was followed by another three-Judge

Bench of this Court in Board of Secondary Education V/s. Pravas Ranjan Panda & Anr. [(2004) 13 SCC 383] in which the direction of the High Court for re- evaluation of answers books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answers books in the rules.

8 In the present case, the bye-laws of the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 conducted by the CBSE did not provide for re-examination or re- evaluation of answers sheets. Hence, the appellants could not have allowed such re-examination or re-evaluation on the representation of the respondent no.1 and accordingly rejected the representation of the respondent no.1 for re-examination/re-evaluation of her answer sheets.”

- 34.** The Supreme Court in the foregoing decisions, has censured the power of High Courts in issuing the directions to the examinee / recruiting agency to undertake the exercise of re-evaluation of the answer papers in absence of any enabling provisions of Rules/Regulations which permit re-evaluation. The law in this regard is no more *res integra*. Though, the ratio of such decisions will not directly apply in the instant case, however, it is pertinent to note that the issue of re-assessment was raised by the unsuccessful candidates before the examinee / recruiting agency, and when it was refused, the candidates had approached the High Courts by filing writ petitions, and the writ petitions were accepted by issuing directions for undertaking exercise of re-evaluation, in absence of any Rule/Regulations

permitting re-evaluation.

35. The facts in the case of *Promod Kumar Srivastava (supra)*, reveal that though there was the provision for scrutiny of the answer books for the purpose of checking, the High Court had directed ‘re-evaluation’ of the answer books. The Supreme Court did not approve the directions issued by the High Court for re-evaluation of the answer book. It is held that after the scrutiny of marks, if no mistake was found, the re-evaluation of the answer book was impermissible. It is categorically held that “*In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his answer book.*” Thus, applying such observations of the Apex Court in the present case, 9 applicants, who sought re-evaluation of the answer sheet, had no legal right to claim re-evaluation of the answer book/sheet and hence, the GPSC ought to have rejected the applications.

36. Similarly, in the case of *Khusboo Shrivastava (supra)*, again when the High Court directed for re-evaluation of the answer sheet in absence of any Regulation/By-law permitting the same, the Supreme Court has held that

since the by-laws did not provide for re-examination or re-evaluation, the examination conducting body (CBSE) could not have allowed the re-evaluation. In the said case, the CBSE rejected the representation of the candidate seeking re-evaluation, since there was no provision for re-evaluation, but the High Court issued directions to undertake the same. The Apex Court has set aside the directions issued by the High Court.

- 37.** The learned Single Judge has rejected the writ petition by exclusively placing reliance on the judgment of the Supreme Court in the case of *Umesh Kumar (supra)*. There cannot be any cavil on the proposition of law as declared by the Apex Court in the said case, however, the same will not apply to the established facts of the present case. In the case of *Umesh Kumar (supra)*, the facts suggest that the entire process of recruitment was put in abeyance since the results were challenged before the Tribunal, and the revised result, after re-evaluation of the answer sheets, was declared even before the offers of appointment were made. This is a very vital distinguishing fact. In the present case, the recruitment was never kept in abeyance, and the stage had reached upto the recommendation of appointment to the State Government and only the document verification was left.

There is yet another facet in the present case, which comes to the rescue of the appellants from the judgment of ***Umesh Kumar (supra)***, i.e. absence of any enabling provision of re-evaluation. This issue was neither raised nor dealt by the Apex Court. In the present case, the appellants have specifically contended that the absence of rule empowering the GPSC in re-evaluating the answer sheet, that too beyond the period of 30 days, which is also in the case of re-checking. Hence, the learned Single Judge fell in error in rejecting the writ petition by applying the ratio of the judgement of ***Umesh Kumar (supra)***. Concurrently, reliance placed by the GPSC on Rules 20 of Rules 2018 is misconceived. Rule 20 cannot be invoked in the facts of the present case for validating the illegal and arbitrary action of the GPSC. It is trite that the candidate does not have indefeasible right of appointment merely because he/she is placed in the select list, but it is also a settled legal precedent that the appointment of selected candidates cannot be denied arbitrarily (vide Shankarshan Dash v. Union of India (1991) 3 SCC 47).

- 38.** It is admitted by the GPSC that no recruitment has been undertaken by it for the post of Deputy Mamlatdar after the present recruitment. Some of the candidates have also

withdrawn their names from the appointment of the posts, and the posts have remained vacant. It is true that such posts, which remain unfilled, are required to be carried forward to be filled in the next recruitment process. However, the plight of the appellants cannot be ignored. Due to the legitimate expectation garnered by the appellants of being posted after the recommendation of their appointment, they have not participated in the subsequent recruitment process. Thus, in light of the peculiar facts of the case, and in order to meet the ends of justice, we are of the considered opinion that the appellants cannot be denied the appointments. The present judgement and order shall be confined to the present appellants only, since they have remained vigilant in pursuing the unlawful action. Accordingly, we pass the following order.

FINAL ORDER

- 39.** The Letters Patent Appeal is allowed. The impugned judgement and order passed by the learned single judge is quashed and set aside. The impugned Corrigendum dated 10.01.2020, to the extent of declaring the appellants as unsuccessful, is quashed and set aside. It is clarified that the respondents-GPSC and the State government shall not disturb the appointments or any other benefits accruing therefrom of the private

respondents-candidates.

FURTHER DIRECTIONS

1) The respondents shall issue the appointment and posting orders to the appellants, after undertaking necessary exercise of document verification.

2) In case, nothing is found adverse against the appellants after document verification, they shall be issued the appointment orders.

3) The entire exercise, including the issuance of appointment and posting orders, shall be completed within a period of 06 (six) weeks, from the date of receipt of the writ of this Court.

4) It is clarified that the appellants shall not claim any service benefit of past period. All the service benefits, including seniority, shall be counted from the date of the appointment orders.

40. After the judgment and order was pronounced, learned advocate Mr. Shukla requests for stay of the present judgment and order, however, the request is declined in view of the specific findings recorded by us as above and

in wake of the fact that the appellants are waiting for their appointment and posting order since the year 2019.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(GITA GOPI,J)

CAROLINE / DB # 1