

## HIGH COURT OF ORISSA: CUTTACK

**W.P.(C) No. 18368, 18378, 18384, 18339, 18111, 18972, 17522, 18989, 19515, 19751, 2340, 18337, 19101 and 19110 of 2018**

In the matter of applications under Articles 226 and 227 of Constitution of India.

**In W.P.(c) No.18368 of 2018**

Ranjan Kumar Pradhan and another

**In W.P.(c) No.18378 of 2018**

Ipsita Mohanty

**In W.P.(c) No.18384 of 2018**

Anushruti Choudhury

**In W.P.(c) No.18339 of 2018**

Biswa Bhusan Nayak

**In W.P.(c) No.18111 of 2018**

Manoj Kumar Barik

**In W.P.(c) No.18972 of 2018**

Janak Rout

**In W.P.(c) No.17522 of 2018**

Mamata Mohanty and others

**In W.P.(c) No.18989 of 2018**

Banali Tripathy

**In W.P.(c) No.19515 of 2018**

Dhananjaya Nayak

**In W.P.(c) No.19751 of 2018**

Susanta Kumar Nayak

**In W.P.(c) No.2340 of 2018**

Amarendra Pradhan and others

**In W.P.(c) No.18337 of 2018**

Dr. Pradeep Kumar Pradhan and others

**In W.P.(c) No.19101 of 2018**

Jitendriya Panigrahi

**In W.P.(c) No.19110 of 2018**

Pradeep Kumar Samal and another

... Petitioners

-Versus-

High Court of Judicature of Orissa and another

... Opp. Parties  
[In all the cases]

For Petitioners : Mr. V. Narasingh, R.L. Pradhan,  
J. Samanta Ray & S.G. Das.  
[In W.P.(C) No.18368 of 2018]

Mr. V. Narasingh, R.L. Pradhan,  
J. Samanta Ray & S.G. Das.  
**[In W.P.(C) No.18378 of 2018]**

Mr. V. Narasingh, R.L. Pradhan,  
J. Samanta Ray & S.G. Das.  
**[In W.P.(C) No.18384 of 2018]**

M/s. A Pattnaik, T.K. Pattnaik,  
A. Pattnaik, S. Pattnaik, B.S. Rayaguru,  
S. Mohapatra, R. Pati, P.P. Mulin, S.P.  
Moharana  
**[In W.P.(C) No.18339 of 2018]**

M/s. Gautam Mukherjee  
P. Mukherjee, A.C. Panda, S.D. Ray,  
S. Sahoo & S. Panda  
**[In W.P.(C) No.18111 of 2018]**

M/s. Brahma Nanda Tripathy &  
D. Chatterjee.  
**[In W.P.(C) No.18972 of 2018]**

Sri S.K. Nayak, Sr. Adv.  
M/s Tahali Charan Mohanty, Sr. Adv.  
J. Mohanty, R.P. Bhagat, M.M. Mohanty,  
& C.R. Dhal  
**[In W.P.(C) No.17522 of 2018]**

M/s. Tahali Charan Mohanty, Sr. Adv.  
B.K. Tripathy, K. Kar, R.P. Bhagat &  
G.P. Mohanty.  
**[In W.P.(C) No.18989 of 2018]**

M/s. Umakanta Sahoo,  
S.K. Mohanty & S. Das  
**[In W.P.(C) No.19515 of 2018]**

M/s. Gopal Sinha, P.P. Behera  
K. Khuntia & A.Ku. Parida  
**[In W.P.(C) No.19751 of 2018]**

M/s. P.R. Chhatoi, A.B. Mallick &  
G.S. Muduli  
**[In W.P.(C) No.2340 of 2018]**

M/s. A. Pattnaik, B.S. Rayguru  
& B. Mohanty  
[In W.P.(C) No.18337 of 2018]

M/s. Choudhury Aswini Kumar Das  
H.B. Dash, R. Das Nayak & B.K. Sethy  
[In W.P.(C) No.19101 of 2018]

M/s. B.S. Rayguru, A. Pattnaik,  
B.K. Mishr & A.U. Senapati  
[In W.P.(C) No.19110 of 2018]

For Opp. Parties : Mr. R.K. Mohapatra, Govt. Advocate  
Mr. P.K. Muduli, Addl. Govt. Advocate.

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**P R E S E N T :**

**THE HONOURABLE THE CHIEF JUSTICE SHRI K.S. JHAVERI  
A N D  
THE HONOURABLE SHRI JUSTICE K.R. MOHAPATRA**

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**Heard and Decided on 10.12.2018**  
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**K.S. JHAVERI, CJ.** By all these writ petitions, the petitioners have challenged the recruitment process adopted by the Orissa High Court in the District Judge Examination for the year 2018.

2. The facts of the case are that the petitioners are either judicial officers or advocates and they have challenged the procedure adopted by the this Court.

3. Mr. Narasingh, learned counsel for the petitioners, in first three cases, has submitted that even if the petitioners have seven years of practice at the Bar, they are debarred from participating the selection process of the direct recruitment in the cadre of District

Judge on the ground that they are serving as judicial officers and they are not practicing as advocate on the date of submission of their applications. Learned counsel for the petitioners has mainly submitted as under:

"A. The issue which falls for kind consideration of this Hon'ble Court in the present writ application, is whether the petitioner-applicants who have 7 years of practice at bar can be debarred from participating in the selection process for "direct recruitment in the cadre of District Judge" on the ground they serving as judicial officers and are not in practice as advocates on the date of submission of the application.

B. The opp.parties have in their counter sought/prayed for dismissal of the writ application primarily on two grounds:

1. In view of the law laid down in Deepak Aggarwal vrs. Keshav Koushik in (2013) 5 SCC 277, the petitioners are not eligible to participate in the selection process as they were not continuing as an advocate on the date of application. (Para-5, 6, 7 and 11 of the counter affidavit in W.P.(C) No.19110/2018 filed by the opposite party No.1)

2. Full Court of this Hon'ble Court on 30.10.2018 has been pleased to reject the candidatures of the petitioners and other similarly situated candidates on the ground that "they were not in practice as an advocate on the date of submission of the application". (Para-5 of the Counter Affidavit filed in W.P.(C) No.19110/2018 filed by the Opp.Party No.1)

C. It is pertinent to bring to the kind notice of this Hon'ble Court that the issue(s) involved in the present writ application and the judgment relied upon by the opp.party in Deepak Aggarwal vrs. Keshav Koushik in (2013) 5 SCC 277 has been referred to larger bench in (2018) 4 SCC 619 (Dheeraj Mor vs. Hon'ble High Court of Delhi) and pending adjudication before the Apex Court.

The Apex Court, during pendency of such proceeding, has permitted similarly situated candidates not only to participate in the selection process for appointment but also directed the concerned Opp.Parties to proceed with

the appointment in case they are found eligible, post selection, subject to the decision of the Constitution Bench."

In support of his submission, Mr. Narasingh, learned counsel for the respective petitioners has relied upon the decision of the Hon'ble Supreme Court in the case of *Dheeraj Mor vs. High Court of Delhi*, reported in (2018) 4 SCC 619, wherein the Hon'ble Supreme Court in paragraphs-2, 8, 12, 13, 14, 15 and 16 has held as under:

"2. The petitioners have raised mainly two contentions - (i) in case a candidate has completed seven years of practice as an advocate, he/she shall be an eligible candidate despite the fact that on the date of the application/appointment, he/she is in the service of Union or State; (ii) the members who are in judicial service as Civil Judge, Junior Division or Senior Division, in case they have completed seven years as Judicial Officers or seven years as Judicial Officer-cum-Advocate, they should be treated as eligible candidates.

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8. In *Deepak Aggarwal v. Keshav Kaushik and Others*, 4, a 4 (2013) 5 SCC 277 three-judge Bench of this Court held that the appellants did not cease to be advocates while working as Assistant District Attorney/Public Prosecutor/Deputy Advocate General. In arriving at this decision, this Court also dealt with the expression, "if he has been for not less than 7 years an advocate" in Article 233(2). Paras 51 and 102 read as follows :-

*"51. From the above, we have no doubt that the expression, "the service" in Article 233(2) means the "judicial service". Other members of the service of the Union or State are as it is excluded because Article 233 contemplates only two sources from which the District Judges can be appointed. These sources are: (i) judicial service; and (ii) the advocate/pleader or in other words from the Bar. The District Judges can, thus, be appointed from no source other than judicial service or from amongst advocates. Article 233(2) excludes appointment of District Judges from the judicial service and restricts eligibility of appointment as District Judges from amongst*

*the advocates or pleaders having practice of not less than seven years and who have been recommended by the High Court as such.” xxx xxx xxx*

*"102. As regards construction of the expression, "if he has been for not less than seven years an advocate" in Article 233(2) of the Constitution, we think Mr Prashant Bhushan was right in his submission that this expression means seven years as an advocate immediately preceding the application and not seven years any time in the past. This is clear by use of "has been". The present perfect continuous tense is used for a position which began at sometime in the past and is still continuing. Therefore, one of the essential requirements articulated by the above expression in Article 233(2) is that such person must with requisite period be continuing as an advocate on the date of application." (Emphasis Supplied)*

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12. Some of the learned counsel have also invited our attention to All India Judges Association and others v. Union of India and others, Kumar Padma Prasad v. Union of India and others and State of Assam v. Horizon Union and another

13. In the order dated 03.04.2017 in Sukhda Pritam and Anr v. Hon'ble High Court of Rajasthan and Anr which is one of the cases in the batch, there is also a reference to rules framed by certain states which provide that "in computing the period of seven years there shall be included a period during which he (a candidate) has held judicial office". This is also an issue which is required to be considered.

14. In view of the various decisions of this Court, one major issue arising for consideration is whether the eligibility for appointment as district judge is to be seen only at the time of appointment or at the time of application or both. Thus, having regard to the contentions and the materials placed before us and having regard to the ratio and observations in the cases referred to above, some of which are apparently diverse, we are also of the view that these cases involve substantial questions of law as to the interpretation of Article 233 of the Constitution of India. Therefore, we are of the opinion that this matter should be placed before Hon'ble the Chief Justice of India for constituting an appropriate Bench.

15. Learned counsel for the petitioners pointed out that all the petitioners herein, by virtue of interim orders, have appeared in the written examinations and in some cases they have also attended the interview. We are informed that in some of the cases, appointment of other eligible candidates is held up on account of pendency of these cases.

16. The Registry may seek appropriate orders from Hon'ble the Chief Justice of India having regard to the special circumstances referred to above, for an early posting."

He has also relied upon paragraphs-1 and 4 of the order dated 15.02.2018 passed by the Hon'ble Supreme Court in W.P.(C) No.64 of 2018 (Nitin Raj vs. High Court of Delhi), which are reproduced hereinbelow:

The issue in these writ petitions is whether i) the petitioners, who are judicial officers in service, but who have completed seven years before rendering service or; ii) who have a combined service of practice as lawyer and judicial service of seven years or; iii) even in judicial service of seven years, are eligible to participate in the selection to the Delhi Higher Judicial Service.

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The learned counsel has brought to our notice a Reference made by this Court as per Order dated 23.01.2018 to a larger Bench in SLP (C) No. 14156 of 2015 and connected matters. We direct the High Court of Delhi to register the applications of the petitioners and intervenors, if they are otherwise in order, ignoring the objections regarding seven years practice and in case they are otherwise eligible as per the three aspects referred to above."

Apart from the above, learned counsel for the petitioners tries to justify his argument placing reliance upon various interim

orders viz. orders dated 31.07.2018, 08.10.2018, 09.10.2018, 24.07.2018 and 26.09.2018 passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.14156 of 2015 (Dheeraj Mor vs. Hon'ble High Court of Delhi) as well as order dated 10.05.2018 in Writ Petition (Civil) No.316 of 2017 (G. Sabitha & Ors vs. High Court of Judicature at Hyderabad) and submits that the Hon'ble Supreme Court has clarified the position in the said orders permitting the candidates to participate in the selection process.

4. Dr. Tahali Charan Mohanty, learned Senior Advocate appearing for the petitioners in W.P.(c) No.17522 of 2018, W.P.(C) No.18989 of 2018 and other connected cases places reliance upon the decision of the Hon'ble Supreme Court in the case of Vijay Kumar Mishra and another vs. High Court of judicature at Patna and others reported in (2016) 9 SCC 313 and has emphasized on paragraphs-8 and 24 thereof, which read as under:

"8. The text of Article 233(2) only prohibits the appointment of a person as a District Judge, if such person is already in the service of either the Union or the State. It does not prohibit the consideration of the candidature of a person who is in the service of the Union or the State. A person who is in the service of either of the Union or the State would still have the option, if selected to join the service as a District Judge or continue with his existing employment. Compelling a person to resign his job even for the purpose of assessing his suitability for appointment as a District Judge, in our opinion, is not permitted either by the text of Art. 233(2) nor contemplated under the scheme of the constitution



as it would not serve any constitutionally desirable purpose.

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24) In my opinion, there is no bar for a person to apply for the post of district judge, if he otherwise, satisfies the qualifications prescribed for the post while remaining in service of Union/State. It is only at the time of his appointment (if occasion so arises) the question of his eligibility arises. Denying such person to apply for participating in selection process when he otherwise fulfills all conditions prescribed in the advertisement by taking recourse to clause (2) of Article 233 would, in my opinion, amount to violating his right guaranteed under Articles 14 and 16 of the Constitution of India.

5. In view of the above position of law and that in the last year the earlier Bench of this Court had allowed the petitioner to appear in the examination, Dr. Mohanty, learned Senior Advocate submitted that the petitioner should be allowed to appear in the examination because in the next year he will be ineligible. Therefore the case of the petitioners may be considered to appear in the District Judge Examination which is starting from 16.12.2018.

6. Mr. B.N.Tripathy, learned counsel, appearing in W.P.(C) No.18972 of 2018 for the petitioner-Judicial Officer, has adopted the above submissions and prayed for the relief as claimed in the petition.

7. Mr. P.R. Chhotoi, learned counsel for the petitioners-Amarendra Pradhan and others, in W.P.(C) No.2340 of 2018, has argued that the petitioners have to wait for five years. In addition to

his submission, Mr. Chhotoi, learned counsel also places reliance upon decision of the Hon'ble Supreme Court in the case of *Malik Mazhar Sultan (3) and another vs. Uttar Pradesh Public Service Commission and others*, reported in (2008) 17 SCC 703, where time schedule is given in para-7, which reads as under:

7. For filling up of vacancies in the cadre District Judge, accepting the proposal to which none has objected, except in the manner hereinafter noticed, we direct as under:

***A. For filling up of vacancies in the cadre of District Judge in respect of***

(a) twenty five per cent vacancies to be filled by direct recruitment from the Bar; and

(b) twenty five per cent by promotion through limited competitive examination of Civil Judges (Senior Division) not having less than five years of qualifying service.

<i>Sl.No.</i>	<i>Description</i>	<i>Date</i>
1.	Number of vacancies to be notified by 31st March the High Court. Vacancies to be calculated including (a) existing vacancies (b) future vacancies that may arise within one year due to retirement. (c) future vacancies that may arise due to elevation to the High Court, death or otherwise, say ten per cent of the number of posts. (d) Vacancies arising due to deputation of judicial officers to other department may be considered as temporary vacancy.	<i>31<sup>st</sup> March</i>
2.	Advertisement inviting applications 15th April from eligible candidates	<i>15<sup>th</sup> April</i>
3.	Last date for receipt of application	<i>30<sup>th</sup> April</i>
4.	Publication of list of eligible applicants. List may be put on website	<i>15<sup>th</sup> May</i>
5.	Dispatch/Issue of admit cards to the eligible applicants.	<i>16<sup>th</sup> May to 15<sup>th</sup> June</i>
6.	Written examination Written examination may (a) Objective questions with multiple choice which can be scrutinized by the computer; and (b) Subjective/narrative	<i>30<sup>th</sup> June</i>
7	Declaration of result of written examination (a) Result may be put on the website and also published in the newspaper	<i>16th August</i>

- (b) The ratio of 1 : 3 of the available vacancies to the successful candidates be maintained.
8. Viva Voce 1st to 7th Sept.
9. Declaration of final select list and communication to the appointing authority 15th Sept.  
 (a) Result may be put on the website and also published in the newspaper  
 (b) Select list be published in order of merit and should be double the number of vacancies notified.  
 (c) Select list shall be valid till the next select list is published.
10. Issue of appointment letter by the competent authority for all existing vacant posts as on date. 30th Sept.
11. Last date for joining. 31<sup>st</sup> October

***B. For filling of vacancies in the cadre of District Judge in respect of fifty per cent vacancies to be filled by promotion***

<i>Sl.No.</i>	<i>Description</i>	<i>Date</i>
1.	Number of vacancies to be notified by the High Court. Vacancies to be calculated including (a) existing vacancies (b) future vacancies that may arise within one year due to retirement. (c) future vacancies that may arise due to elevation to the High Court, death or otherwise, say ten per cent of the number of posts.	31 <sup>st</sup> March
2.	Publication of list of eligible officers (a) The list may be put on the website (b) Zone of consideration should be 1 : 3 of the number of vacancies.	15th May
3.	Receipt of judgments from the eligible officers.	30th May
4.	Viva Voce Criteria (a) ACR for last five years; (b) Evaluation of judgments furnished; and (c) Performance in the oral interview	15th to 31st July
5.	Declaration of final select list and communication to the appointing authority (a) Result may be put on the website and also published in the newspaper (b) Select list be published in order of merit and should be double the number of vacancies notified.	31st August
6.	Issue of appointment letter by the competent authority for all existing vacant posts as on date.	30th September
7.	Last date for joining.	31st October

***C. For filling of vacancies in the cadre of Civil Judge (Senior Division) to be filled by promotion.***

<i>Sl.No.</i>	<i>Description</i>	<i>Date</i>
1.	Number of vacancies to be notified by the High Court. Vacancies to be calculated including (a) existing vacancies	31 <sup>st</sup> March

	(b) future vacancies that may arise within one year due to retirement.	
	(c) future vacancies that may arise due to promotion, death or otherwise, say ten per cent of the number of posts.	
2.	Publication of list of eligible officers (a) The list may be put on the website (b) Zone of consideration should be 1 : 3 of the number of vacancies.	15th May
3.	Receipt of judgments from the eligible officers.	30th May
4.	Viva Voce Criteria (a) ACR for last five years; (b) Evaluation of Judgments furnished; and (c) Performance in the oral interview	1st to 16th August
5.	Declaration of final select list and communication to the appointing authority (a) Result may be put on the website and also published in the newspaper (b) Select list be published in order of merit and should be double the number of vacancies notified.	15th September
6.	Issue of appointment letter by the competent authority for all existing vacant posts as on date.	30th September
7.	Last date for joining.	31st October

***D. For appointment to the posts of Civil Judge (Junior Division) by direct recruitment.***

<i>Sl.No.</i>	<i>Description</i>	<i>Date</i>
1.	Number of vacancies to be notified by the High Court. Vacancies to be calculated including (a) existing vacancies (b) future vacancies that may arise within one year due to retirement. (c) future vacancies that may arise due to promotion, death or otherwise, say ten per cent of the number of posts.	15th January
2.	Advertisement inviting applications from eligible candidates.	1st February
3.	Last date for receipt of application.	1st March
4.	Publication of list of eligible applicants The list may be put on the website.	2nd April
5.	Despatch/issue of admit cards to the eligible applicants.	2nd to 30th April
6.	Preliminary written examination. Objective questions with multiple choice which can be scrutinized by computer.	15th May
7.	Declaration of result of preliminary written examination (a) Result may be put on the website and also published in the Newspaper (b) The ratio of 1 : 10 of the available vacancies to the successful candidates be maintained.	15th June
8.	Final Written examination Subjective/narrative.	15th July
9.	Declaration of result of final written examination	30th August

	(a) Result may be put on the website and also published in the Newspaper	
	(b) The ratio of 1 : 3 of the available vacancies to the successful candidates be maintained	
	(c) Dates of interview of the successful candidates may be put on the internet which can be printed by the candidates and no separate intimation of the date of interview need be sent.	
10.	Viva Voce.	1st to 15th October 1st November
11.	Declaration of final select list and communication to the appointing authority	
	(a) Result may be put on the website and also published in the newspaper	
	(b) Select list be published in order of merit and should be double the number of vacancies notified.	
12.	Issue of appointment letter by the competent authority for all existing vacant posts as on date.	1st December
13.	Last date for joining.	2nd January of the following year

8. In one of the matters, another counsel appearing for the petitioner states that the petitioner has completed 9 years of service as a judicial officer and he wants to appear the examination as advocate.

9. Similarly, in another writ petition i.e. W.P.(C) No.18111 of 2018, Mr. G. Mukherjee learned counsel for the petitioner has contended that the petitioner was born on 1<sup>st</sup> of August 1973 and he has completed 45 years, therefore, he is underage and not over-age.

10. We have heard Mr. Narasingh, learned counsel, Dr. T. Mohanty, learned Senior Advocate, Mr. B.N. Tripathy, learned counsel, Mr. G. Mukherjee, learned counsel, Mr. Chhatoi, learned counsel appearing for the respective petitioners as well as other

counsel for the petitioners and Mr. R.K. Mohapatra, learned Government Advocate for the opposite parties.

11. Before proceeding with the matter, it will not be out of place to mention that service jurisprudence contemplates that we have to interpret the Rules as it is. This is a condition where the special quota has been fixed as 65% for the direct recruitment and 35% for Judicial Officers to be appointed as District Judge. There is also another bifurcation amongst the Judicial Officers for filling up of the vacancies in the cadre of District Judge from 35% quota. Amongst 35% of vacancies for the Judicial Officers, 25% will be filled up by usual promotion and 10% to be filled up through limited competitive examination. While interpreting the Rule we have to keep in mind that while allowing any judicial officer to appear in the examination as a lawyer, we are depriving genuine practitioners who have practiced for seven years and more and have been waiting for the turn in the direct recruit and if we will allow this interpretation, it will really hurt the class who is not represented before us.

12. In that view of the matter, once a person has entered into Judicial Service he has to remain in that cadre and he cannot claim the benefit meant for other category of candidates for direct recruitment. However, once a candidate is a direct recruit, he has to remain as a lawyer and compete with the lawyers through direct

recruitment quota. But a judicial officer having all the experience and money, he has not struggled at the Bar as a lawyer for seven years whereas the other man has struggled at the Bar for several years. Therefore, while considering the Rule, the Court has to keep in mind that while taking struggle, the experience which he has earned as a lawyer is to be considered as a direct recruit. With regard to the interim order which was passed earlier in several writ petitions to appear the examination for the recruitment of previous year, we can only say that that cannot be treated as a precedent as the same was passed taking into consideration the facts and circumstances of those cases. It is needless to mention here that when a candidate entered into the service, it is the condition precedent that if he wants to appear the examination he has to follow the Service Rules meant for Judicial Officers. The recruitment should be done in accordance with the Service Rules and not otherwise.

13. In our considered opinion, the view taken by us is in consonance with the Rules and it will not be appropriate to set aside the Rules at this stage. The cut-off date and the procedure adopted by this Court for District Judge Examination, 2018 is absolutely in consonance with the Rules in view of the decision of the Hon'ble Supreme Court in the case of ***D.S. Nakara and others vs. Union***

***of India***, reported in AIR 1983 SC 130. The Hon'ble Supreme Court

in paragraphs 15, 16 and 50 has held as under:

"15. Thus the fundamental principle is that Art. 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

16. As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved ? The thrust of Art. 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare state will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of state affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Art. 14. The court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succor. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved. This



approach is noticed in *Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.*(1) when at page 1034, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory”.

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50. There is nothing immutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having no rationale for selecting it and having an undesirable effect of dividing homogeneous class and of introducing the discrimination, the same can be easily severed and set aside. While examining the case under Art. 14, the approach is not: 'either take it or leave it', the approach is removal of arbitrariness and if that can be brought about by severing the mischievous portion the court ought to remove the discriminatory part retaining the beneficial portion. The pensioners do not challenge the liberalised pension scheme. They seek the benefit of it. Their grievance is of the denial to them of the same by arbitrary introduction of words of limitation and we find no difficulty in severing and quashing the same. This approach can be legitimated on the ground that every Government servant retires. State grants upward revision of pension undoubtedly from a date. Event has occurred revision has been earned. Date is merely to avoid payment of arrears which may impose a heavy burden. If the date is wholly removed, revised pensions will have to be paid from the actual date of retirement of each pensioner. That is impermissible. The State cannot be burdened with arrears commencing from the date of retirement of each pensioner. But effective from the specified date future pension of earlier retired Government servants can be computed and paid on the analogy of fitments in revised pay-scales becoming prospectively operative. That removes the nefarious unconstitutional part and retains the beneficial portion. It does not adversely affect future pensioners and their presence in the petitions becomes irrelevant. But before we do so, we must look into the reasons assigned for eligibility criteria, namely, 'in service on the specified

date and retiring after that date'. The only reason we could find in affidavit of Shri Mathur is the following statement in paragraph 5 :

"The date of effect of the impugned orders has been selected on the basis of relevant and valid considerations."

14. Apart from that, the petitioner, who is represented by Mr. Mukherjee, was born on 1<sup>st</sup> of August, 1973 and has completed 45 years on 31<sup>st</sup> July, 2018 and he has entered 46<sup>th</sup> year on the last date of submission of the application form. Therefore, he is over-aged.

15. In that view of the matter, none of the matters requires any consideration and the same are liable to be rejected summarily. It will not be appropriate to allow anybody to appear the examination.

The writ petitions along with connected I.A.s stand dismissed. No order as to costs.

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**K.R. MOHAPATRA**  
**(Judge)**

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**K.S. JHAVERI**  
**(Chief Justice)**