



2022 INSC 536

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

M.A. NOS. 539-569 OF 2022

IN

CIVIL APPEAL NOS. 5065-5095 OF 2021

HARYANA STAFF SELECTION COMMISSIONAPPELLANT(S)

VERSUS

PRIYANKA AND OTHERS ETC.RESPONDENT(S)

WITH

CONTEMPT PETITION(C) NOS. 888-918 OF 2021

IN

C.A. NOS. 5065-5095 OF 2021

WITH

CONTEMPT PETITION(C) NO. 11 OF 2022

IN

C.A.NO. 5090 OF 2021 @ C.A. NOS. 5065-5095 OF 2021

WITH

M.A. DIARY NO. 9711 OF 2022 IN C.A.NO. 5065 OF 2021 @ C.A.
NOS. 5065-5095 OF 2021

WITH

M.A. DIARY NO. 9760 OF 2022 IN C.A. NOS. 5065-5095 OF 2021

ORDER

Dinesh Maheshwari, J.

1. We have heard learned counsel for the parties in relation to the applications seeking clarification/modification of the judgment and order dated 01.09.2021 passed by this Court in Civil Appeal Nos. 5065-5095 of 2021 arising out of Special Leave Petition (C) Nos. 25184-25214 of 2018

and in relation to Contempt Petition (C) Nos. 888-918 of 2021 and 11 of

2022 as also various other applications for intervention/direction/clarification, as filed by the cross-section of

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candidates and the Haryana Staff Selection Commission (for short 'the Commission').

2. The relevant background aspects of the matter are that the Commission had issued an advertisement inviting applications for appointment to the post of Post-Graduate Teachers in different disciplines for which, the candidate was required to possess the qualification of B.Ed. The advertisement was issued on 28.06.2015 and the last date for submission of online application form was 12.10.2015. The requirement had been that on the date of submission of the application, the candidate ought to possess B.Ed. degree.

3. The genesis of dispute leading to the present scenario had been in the fact that some of the candidates had appeared in B.Ed. examination of the respective universities and though their final result had not been declared but, on request, they were provided with the provisional/confidential result of B.Ed. examination by the respective universities before 12.10.2015. These candidates applied in pursuance of the advertisement aforesaid. However, at the time of screening, their candidature was rejected by the Commission only on the ground that the result of their B.Ed. course had not been finally declared by the respective universities prior to the cut-off date, i.e., 12.10.2015; and they could not have applied on the basis of the alleged provisional/confidential result.

4. Such rejection of candidature was challenged by some of these candidates and the batch of writ petitions led by CWP No. 2701 of 2016

was decided by a learned Single Judge of Punjab and Haryana High Court on 23.10.2017. The learned Single Judge was of the view that the result obtained by the writ petitioners could not have been considered invalid, as the same was obtained not from any other source but from the university itself. The learned Single Judge disapproved the rejection of candidature of writ petitioners and issued directions in the following terms: -

“Hence, in view of what has been stated hereinabove, as also as per the ratio of the Division Bench judgment in CWP no.9533 of 2001, “Ankita Beniwal vs. Haryana Public Service Commission”, these petitions are allowed and the respondent Commission is directed to interview the petitioners if they otherwise come within the zone of selection as per the marks obtained by the last candidate, in each category in which the petitioners have applied, provided of course that the result in the case of each petitioner, in the examination concerned, was disclosed by the respondent University prior to the cut off date, i.e. 12.10.2015 as per the corrigendum Annexure P-2.”

5. The Division Bench of the High Court endorsed the views of the learned Single Judge and found that the candidates who had obtained provisional/confidential result before the cut-off date were eligible to be considered in the selection process in question. The Division Bench, *inter alia*, observed and held as under: -

“.....However, the fact remains that all the petitioners had qualified the B.Ed. examination and they were eligible to apply for appointment to the post of Post Graduate Teacher. Ultimately marks could be considered at the time of interview and if it affects the merits, the same can be taken into consideration. In any case, the final result was also declared on 5.11.2015 i.e. before the Screening Test, which took place on 6.3.2016, i.e. much before the date the Screening Test was conducted.

Learned counsel for the appellant has vehemently argued that in this case, some of the candidates could not apply for conveying their result confidentially and therefore, they could not be discriminated against.

The said contention was rightly repelled by the learned Single Bench of this Court. If some of the candidates did not bother to apply for confidential result, they are to blame themselves for the said

lapse. In any case, those who are vigilant and had applied for confidential result and it was conveyed before the cut off date i.e. 12.10.2015, which made them eligible for applying for the post, their case has to be considered and decided in terms of the directions of the learned Single Bench of this Court.

We are of the view that many times, Universities, due to some administrative reasons or slackness is unable to declare the result in time. The candidates, who are to get employment or further admission on the basis of the said result, are not to be made to suffer for the same. Therefore, most of the Universities have made provision for declaring the result provisionally/ confidentially, which is correct approach in such cases. Therefore, whether or not, there are any rules, the University, which has got the power to declare the final result, has also got the power to declare the result confidentially/provisionally before it is officially declared.”

6. The aforesaid observations and findings were sufficient to conclude the matter but the Division Bench of the High Court further proceeded to suggest that the Commission should amend the Rules in the manner that in future, educational qualification should be considered only at the time of screening or interview.

7. The judgment and order so passed by the Division Bench of the High Court was in challenge before this Court in the appeals arising out of SLP(C) Nos. 25184-25214 of 2018. During consideration of the said SLPs, this Court also considered the prayer for interim relief and taking note of the number of candidates projected before it and looking to the submissions made by the learned counsel appearing for the Commission to leave the posts vacant, this Court passed the interim order dated 27.11.2018 in the following terms: -

- “1. Heard the learned senior counsel appearing on behalf the applicants in I.A.No.144358/2018.
2. A prayer has been made in the application not to fill the posts by the candidates lower in merit to the applicants-respondents, as they may suffer irreparable loss.

3. The dispute is about the provisional result and final result. Since the statement has been made by learned counsel appearing for the Haryana Staff Selection Commission to keep the posts vacant, the respondents are 74 and including the intervenors, number appears to be 90.

4. Let 90 posts be kept vacant, as offered by the petitioner and the appointments made shall be subject to the outcome of the special leave petition. I.A. No. 144358/2018 stands disposed of accordingly.”

8. The said SLPs and the connected IAs were finally considered and disposed of by this Court on 01.09.2021. This Court affirmed the views of the High Court so far the question of eligibility of the candidates possessing provisional/confidential result was concerned, as long as authenticity of such result was not in doubt. This Court held that the candidates concerned (the respondents) cannot be said to be not qualified on the cut-off date as the provisional/confidential result had been declared by the respective universities in their favour prior to the said date and the applications were filed well within time with such provisional/confidential result. Thus, this Court declined to interfere with the principal part of the order impugned. However, the other directions by the Division Bench of the High Court to the Commission, to amend the Rules, were found to be rather unnecessary, particularly when those aspects were not the matters in issue. Therefore, the directions issued by the Division Bench of the High Court beyond the subject-matter of the writ petitions were disapproved and were set aside.

9. While concluding on the matter, this Court took note of the interim order dated 27.11.2018 and, looking to the circumstances of the case and the facts as projected, issued directions as under: -

“Since this Court had, vide interim order dated 27.11.2018, directed that 90 posts be kept vacant by the Haryana Staff Selection Commission/appellant i.e., 74 posts for the private respondents herein and remaining 16 posts for the intervenors who had till then filed intervention applications, we direct that the said 90 posts be offered to the 74 private respondents and 16 intervenors (who have filed the intervention application prior to the passing of the order dated 27.11.2018) within four weeks from today, and they shall be given appointment on due verification, without any delay.

It is further provided that the aforesaid 90 candidates shall be placed just below the candidates who have already joined and the seniority of the 90 candidates shall be on the basis of the *inter se* merit among them. The respondents shall not be entitled to any salary for the period they have not worked, and they would only be entitled for their due seniority with increment, if any, as their appointment shall be deemed to be notionally from the date of appointment of other candidates who were earlier selected and appointed in response to the advertisement dated 28.06.2015.”

10. The aforesaid directions having not been complied with, some of the candidates/writ petitioners moved this Court in contempt jurisdiction by filing Contempt Petition (C) Nos. 888-918 of 2021. Therein, while issuing notices on 17.01.2022, this Court expected that the respondents would comply with the order dated 01.09.2021 by the next date. Then, on 16.02.2022, this Court also examined another contempt petition bearing No. 11 of 2022 and, while issuing notices therein, this Court took note of laxity on the part of the Commission and observed in relation to the Contempt Petition (C) Nos. 888-918 of 2021 as under: -

“CONMT.PET.(C) No. 888-918/2021 in C.A. No. 5065-5095/2021

By order dated 01.09.2021, this Court had directed that the concerned 90 candidates shall be appointed and placed just below the candidates who had already joined and the seniority of the 90 candidates shall be on the basis of the *inter se* merit among them. The appointments were to be made within four weeks from the date of the order dated 01.09.2021. Since the appointments were not made by the respondents/alleged contemnors, notice was issued to the respondents/alleged contemnors in these contempt petitions on 29.11.2021. The counter affidavit has been filed on behalf of the respondents/alleged contemnors in which they have stated that 35

candidates out of 90 have been offered appointments and that too only after the contempt notice was issued to the respondents/alleged contemnors. In the counter affidavit, nothing has been stated about what steps had been taken by the respondents/alleged contemnors within four weeks, which time was granted by this Court to them to appoint the said 90 candidates.

It is unfortunate that the candidates, who got favourable order of this Court, have to again rush to this Court to get the order implemented. Since no explanation has been given by the respondents/alleged contemnors as to what steps they had taken within four weeks time which was granted to them and further the order has yet not been fully complied even after the issuance of the notice in these contempt petitions, we direct that the respondents/alleged contemnors be present personally on the next date of hearing so as to enable the Court, if necessary, to frame the charges.

List on 15.03.2022.”

11. Then, on 15.03.2022, this Court took note of the submissions made on behalf of the contemnors that the appointment letters had been issued to 90 candidates who were directed to be appointed by the order dated 01.09.2021. While granting time to the petitioners to file response, the matters were adjourned while dispensing with personal presence of the contemnors. However, thereafter, Miscellaneous Applications Nos. 539-569 of 2020 and the other connected matters were directed to be listed before the Bench that had passed the order dated 01.09.2021. The contempt petitions were also later on ordered to be placed with the said Miscellaneous Applications. In this manner, these applications and contempt petitions have been placed before us for consideration alongwith several other applications seeking intervention/direction/clarification.

12. The crux of submissions of the Commission and its prayer for modification with respect to relevant facts could be usefully reproduced from the contents of their application as follows: -

“10. That in continuation of para no 6 of present application, it is relevant to bring to the kind notice of this Hon'ble Court that out of total 90 respondents the Haryana Staff Selection Commission could only recommend total 44 respondents as only these are the candidates who are falling in merit zone after considering their confidential results valid for the posts in question. Further, it is pertinent to mention here that the need of clarification arises here as in judgement dated 01.09.2021 (reproduced in para no 2 of present application) the Hon'ble Court directed to offer appointment to these 90 respondents. But as mentioned in para no 6 above it is reiterated at the cost of repetition that the number of respondents are having lesser marks than the marks secured by last selected candidate (also known as cut off marks) in their respective category. Further, there are number of candidates who are found to be placed higher in merit than the respondents and by ignoring the preferential right of meritorious candidates appointment non-meritorious to respondents cannot be offered without bringing the said fact to the kind attention of this Hon'ble Court.

Further, it is also pertinent to mention here that there are similarly situated candidates (as like respondents) who have applied for the post of PGT and TGT but could not get selected as they were also declared ineligible at time of scrutiny of documents on account of confidential results. If confidential result of such similarly situated candidates is considered then number of such candidates are again higher in merit than the respondents in the present petition and preferential right of such similarly situated candidates cannot be defeated without bringing the said fact to attention of this Hon'ble Court.

11 That as already submitted above, COCP NO.... and COCP No.... arising out of judgement dated 01.09.2021 passed in Civil Appeal No. 5065-5095 of 2021 are filed before this Hon'ble Court for the implementation of the above said judgement and the same are listed before this Hon'ble Court on 16.02.2022.

11A. That, further the Hon'ble High Court had granted relief to the respondents in the present case but various other similar writ petitions involving the same issue of confidential result are pending before the Hon'ble High Court as they were adjourned over a period of time Sine Die in view of the above said petitions pending before this Hon'ble Court. That it is further pertinent to mention that after this Hon'ble Court decided the SLP on 01.09.2021, many LPA/ writs pending before the Hon'ble High Court were decided subsequently on various dates as 25.11.2021, 03.12.2021, 17.12.2021, 21.12.2021. The list of the cases i.e. writs and LPA's decided by the Hon'ble High Court is attached at **Annexure-A/8**. It is further pertinent to mention that certain writs and LPAs are still pending before the Hon'ble High Court on the same issue. The list of cases i.e. writs and LPA's pending before the Hon'ble High Court is also annexed as **Annexure-A/9**. After the above judgement dated 01.09.2021, many representations have been received from the candidates who had been considered ineligible on account of their

confidential result and are now claiming parity with the respondents in the present case.

12. That with regard to the direction of this Hon'ble Court in judgement dated 01.09.2021, to place the 90 respondents just below the candidates who were selected earlier, it is pertinent to mention here that the recommendation of candidates/merit list is prepared on the basis of marks of the candidates in written examination and viva-voce etc. as per criteria. If any candidate is having higher marks than the candidate who was selected earlier in the same advertisement, then such candidate who is having higher marks is having preferential right to be considered on top merit in comparison to the candidate who is having lesser marks. Further, merit is always prepared on the basis of marks and not on the basis of date of joining and as such the respondents who are having higher marks than the candidates selected earlier for the post in question were placed on their actual merit position. Thus, after declaration of result on the basis of selection criteria notified for the various subjects/posts of PGT and TGT, the placement of the candidates in the original result is prepared before submitting it to the concerned requisitioning department. The selection criteria on the basis of which final result was prepared for the post of PGT as well as TGT is mentioned in para no 3 of present application. Thus, seniority of candidate changes with change in marks and date of birth and candidates with higher marks cannot be placed below in merit than the candidates who secured lesser marks.

13. That in the above facts and circumstances it is in the interest of justice that the clarifications on the issues mentioned above may kindly be granted.

14. That the applicants, therefore, most respectfully prays that this Hon'ble Court be pleased to:

PRAYER

a) Allow the present application and clarify the judgement dated 01.09.2021 passed by this Hon'ble Court as prayed for in para no 10 and 12 of present application and/or

b) Pass further such orders as this Hon'ble Court may deem fit and proper in the fact and circumstances of the present case.

For such act of Kindness the petitioner shall ever remain grateful as in duty bound."

13. The position has been clarified as regards offer of appointment in the affidavit filed by the Additional Chief Secretary to the Government in its School Education Department, in the following terms: -

"6. That the whole selection process spreading in various stages starting from issuing advertisement until the declaration of final result has been carried out by the HSSC. The subsequent role of the Department of issuing the offer of appointment came into play only after getting the subject wise recommendations received after

verification of documents from the HSSC over a period of time. After receiving recommendations, the offer of appointment has been issued to 90 candidates in an expeditious manner by the Department.

7. That this Hon'ble Court at the time of dismissing the SLP (C) No. 25184-25214 of on 01.09.2021, directed to offer said 90 posts to respondents/interveners within four weeks. The, HSSC had the recommendations pertaining to the respondents alongwith interveners on different dates mentioned as in following table: -

Sr. No.	Subject	Number of Candidates	Date of Recommendation	Offer of Appointment issued by Department of School Education on
1.	PGT Punjabi	02	25.01.2021 (Received on 10.11.2021)	04.02.2022 (Delay occurred due to outbreak of Pandemic COVID-19)
2.	PGT Psychology	03	23.02.2022	02.03.2022
3.	PGT Mathematics	31	16.01.2019, 31.01.2022 & 23.02.2022	06.03.2019, 08.02.2022; 14.02.2022 & 02.03.2022
4.	PGT Chemistry	14	18.01.2022 & 3.02.2022	08.02.2022 & 02.03.2022
5.	PGT Sociology	07	18.01.2022 & 23.02.2022	08.02.2022 & 02.03.2022
6.	PGT Physics	10	21.01.2022	14.02.2022
7.	PGT History	09	02.02.2022, 15.02.2022 & 23.02.2022	14.02.2022 & 02.03.2022
8.	PGT Economics	06	04.02.2022 & 23.02.2022	14.02.2022 & 02.03.2022
9.	TGT Science	03	12.02.2022	14.02.2022
10.	PGT Commerce	04	04.02.2022 & 23.02.2022	14.02.2022 & 02.03.2022

11.	PGT English	02	21.01.2022 & 23.02.2022	14.02.2022 & 02.03.2022
12.	PGT Sanskrit	01		Advertisement Withdrawn on dated 09.02.2021 due to Court Litigations pending before the Hon'ble Punjab & Haryana High Court.
13.	TGT English	01		Advertisement Withdrawn on dated 19.02.2021 due to Court Litigations pending before the Hon'ble Punjab & Haryana High Court.
--	Total	93	-----	-----

8. That as on today, 90 the respondents and intervenors in SLP. No. 25184-25214 of 2018 have been duly issued offer of appointment as recommended by HSSC. The Department has complied with the directions of this Hon'ble Court. The Deponent tenders its sincere apology for delay in compliance of the direction of the judgment dated 01.09.2021. The copies of recommendations received from HSSC and offer of appointments issued by the Department are appended alongwith as **Annexure R-1/1 (Colly)** and **Annexure R-1/2 (Colly)** respectively.

9. That in view of the submissions made above, the Deponent most humbly submits that the efforts had all along been made bonafidely and the orders of this Hon'ble Court have been implemented now. The Deponent once again regrets and humbly tenders his unqualified apology for the delay.”

14. The Commission has pointed out its stand and compliance in the affidavit of its Secretary while stating, *inter alia*, as under: -

“2. That there was no malafide intention of the authorities of Commission at any point of time to circumvent the judgement dated

01.09.2022 passed by this Hon'ble Court by taking recourse to unsustainable justification. The deponent at any point of time is bound to act fairly, expeditiously and in accordance with the orders of this Court but reason for delay in recommendation was out of total 13 categories of posts posts involved in SLP No. 25184-25214 of 2018 the Commission, because of withdrawal of 2 posts by the requisitioning department i.e. PGT Sanskrit under category 16 of Advt. no. 4/2015 and TGT English under category 1 of Advt. no. 9/2015 the Commission could not recommend the candidates for 2 categories of posts. Further, many candidates who have subsequent to judgement dated 01.09.2021 been found to be higher in merit than the respondents in SLP No. 25184-25214 of 2018 and clarification to this effect was required as to whether merit of candidate can be compromised when candidates higher in merit than respondents are available. However, as the Clarification application no. 24570 of 2022 could not be taken up for hearing on 16.02.2022, the Commission thereafter has recommended all the petitioners involved in SLP 25184-25214 of 2018 except the candidates who applied for the post of TGT English and PGT Sanskrit as also mentioned above.”

“3. That in the judgement dated 01.09.2021 this Hon'ble Court in view of order dated 27.11.2018 in SLP No. 25184-25214 of 2018 directed to give appointment to 90 candidates. However, as per memo of parties of SLP No. 25184-25214 of 2018 alongwith interlocutory applications filed before 27.11.2018 the total number is 93 instead of 90 candidates as also shown in table drawn above in para no. 2. The details of these 93 candidates alongwith their SLP or I. A no. is annexed as **Annexure R-3/2**.

4. That the deponent here prays that the compliance report of judgement dated 01.09.2021 may please be taken on record. By 23.02.2022 all the 93 candidates have been duly recommended except the candidate namely Ms. Sangita for the post of PGT Sanskrit and Mr. Deepak for the post of TGT English as those two posts have been withdrawn by the requisitioning department after filing of SLP. Copy of recommendation letters of all candidates involved in SLP is placed are **Annexure R-3/3**.

Further, it is relevant to bring to the kind knowledge of this Hon'ble Court that out of total 93 candidates interview of 14 candidates were pending. Wherein, 5 candidates remained absent during the interview and thus no mark of interview could be awarded to such candidates, yet the said 5 candidates have also been recommended by Commission in compliance of the judgement dated 01.09.2021.”

15. A variety of submissions have been advanced before us in relation to various applications moved by the respective parties as also in relation to the contempt petitions. The present one being essentially the

proceedings for clarification of the orders passed by this Court with needful directions, and to examine if there be any case of wilful or deliberate disobedience, we need not elaborate on the variegated submissions made by the parties standing at different footings. Suffice it to notice in a nutshell that as per the Commission, the operative part of the order dated 01.09.2021 is likely to result in undue advantage to those candidates who have not even secured cut-off marks and at the same time, it is likely to result in denial of the right of such candidates who are found to be standing higher in merit. It is also the submission of the Commission that there are other similarly situated candidates who were declared ineligible at the time of scrutiny on account of provisional/confidential results and if the provisional/confidential results of such similarly situated candidates are considered, then a number of such candidates would again be higher in merit than the respondents of the appeal and the preferential rights of such similarly situated candidates is likely to be defeated. In continuity, it has also been pointed out by the Commission that various similar writ petitions/intra-court appeals involving similar issues of provisional/confidential result have been decided by the High Court or are pending in the High Court, as they were adjourned over a period of time *sine die* in view of the matter being pending in this Court. The major part of grievance of the intervening applicants is that literal interpretation and application of the order passed by this Court may result in giving preference to less meritorious candidates. The submissions on behalf of the candidates who have been found

meritorious amongst this lot of 90/93 candidates is to maintain their appointment as they nevertheless stand in merit and there cannot be any exception to their appointment. The submissions on behalf of other candidates, who are allegedly standing lower in merit, are to the effect that their appointments be maintained for the same having been accorded pursuant to the long-drawn litigation. The alternative submissions on their behalf are to provide for their accommodation in several other vacancies available with the Government and in that regard, it is submitted that about 3000 vacancies are cumulatively available in all the disciplines.

16. We have given anxious consideration to the rival submissions and have examined the matter in its totality,

17. While issuing directions in the order dated 01.09.2021, this Court had taken note of the interim order dated 27.11.2018 and keeping that in view, it was provided that the offer of appointment shall be made against the said 90 vacancies within 4 weeks to 74 private respondents and 16 intervenors; and they were to be given appointment on due verification without delay. In the totality of circumstances, we had also considered it appropriate to provide that the aforesaid 90 candidates shall be placed below the candidates who had already joined and seniority amongst these 90 candidates would be on the basis of *inter se* merit. The crucial factor as regards the pendency of other writ petitions in the High Court or any matter similarly decided by the High Court as also the particular points in relation to other meritorious candidates did not come up for fuller exposition before

this Court. Even the application seeking clarification/modification was filed late in the month of February, 2022 and that also remained pending when the orders for compliance were passed in the contempt matters. Be that as it may, it remains fundamental in dispensation of justice that the act of the Court should not be to the prejudice of anyone (*actus curiae neminem gravabit*). When it comes to the question of merit, the principles of this maxim are of more serious and emphatic application.

18. A look at the background aspects makes it clear that this long-drawn litigation had its genesis in the Commission taking an entirely unjustified view of ignoring provisional/confidential results even when they were duly verified by the universities. This approach of the Commission was not approved by the learned Single Judge and the Division Bench of the High Court; and the views of the High Court were emphatically affirmed by this Court. Obviously, the unjustified stand of the Commission primarily led to the delay in the process. Furthermore, if the Commission found that the directions in the order dated 01.09.2021 were requiring clarification/modification, they ought to have moved this Court well within the time of four weeks, but they chose to appear late and rather seems to have moved into action only after contempt petitions were filed in this Court and notices were issued. Yet again, even these aspects cannot be allowed to operate prejudicial to the interests of persons standing higher in merit when the process of appointment against the vacancies, which was earlier on hold pursuant to the interim order of this Court, is taken forward; and the

orders of the Court cannot be allowed to operate at conflict with the requirements of merit. In other words, any eventuality leading to the advantage of less meritorious candidates at the cost of meritorious one has to be eschewed. In the peculiar circumstances of this case, we would, of course, enter one caveat that the benefits flowing from the order dated 01.09.2021 could only be extended to the candidates who had approached either the High Court or this Court before passing of the said order and cannot be indiscriminately extended to the persons who chose to remain fence-sitters and did not assert their rights at the relevant point of time.

19. It is also noteworthy that in the directions dated 01.09.2021, this Court had provided for *inter se* merit of the said 90 candidates and they were to be given appointment on due verification. The *inter se* merit would obviously depend upon the candidates facing the interview and to be appointed only if coming within the zone of selection as per the marks obtained by the last candidate in the category in which each of them had applied. Moreover, none of the candidates who had been appointed pursuant to the orders passed by this Court could claim continuance at the cost of more meritorious eligible candidates of the same selection process.

20. Taking note of all the facts and circumstances, it is considered appropriate and hence observed and directed, in continuity with the order dated 01.09.2021, as under: -

(1) The directions issued by this Court shall be read alongwith the directions issued by the learned Single Judge in the order dated 23.10.2017.

(2) The two posts respectively of PGT Sanskrit and TGT English, which had been withdrawn on 10.02.2021 and 22.02.2021, were obviously not available for being offered and the Commission need not make any offer in that regard; the offer if made shall stand annulled *ab initio*.

(3) The selections against the posts which were ordered to be kept vacant by the order dated 27.11.2018 are to be made with reference to the merit standing of the candidates while treating the candidates whose provisional/confidential result had been declared before the cut-off date as eligible. In this regard, it is also clarified that the benefit of the order passed by the High Court, as approved by this Court, shall be available only to the candidates who had approached this Court or the High Court before passing of the order dated 01.09.2021 and not others.

(4) Obviously, the candidates whose cases have been decided by the High Court or are pending in the High Court (as per Annexures 'A8' and 'A9' of the application filed on behalf of the Commission) would also be governed by this order.

(5) In the order dated 27.11.2018, this Court had made all the appointments subject to the decision of this Court. The

Commission appears right in its submissions that the recommendations are made on the basis of the marks obtained in written test and viva-voce and a candidate having higher marks than the candidate selected earlier, ordinarily, should not be placed below in rank. A substantial number of candidates among the respondents had been those who had been deprived of their right to be selected on the baseless proposition of the Commission. On being appointed after the judgment of this Court, their appointment ought to relate back to the original date of selection. In the order dated 01.09.2021, we had provided in regard to such persons, that their appointment shall be deemed to be notionally from the date of appointment of other candidates who were earlier appointed in response to the advertisement dated 28.06.2015. Of course, we had provided that these newly appointed candidates would not be entitled to any salary for the period they had not worked but shall be entitled for due seniority and increment, if any. In continuity with such directions, it is provided that the Commission would be expected to recast the merit in accordance with law. Therein, of course, the candidates who had chosen not to appear for interview or not to agitate the issue in question, would not be entitled for consideration.

(6) Until the Commission carries out the requirements of this order and recasts the merit position and the eligible candidates are issued fresh offer of appointment, status quo as existing today shall be maintained. However, after recasting the merit list, the cases of those candidates who have been given the offer of appointment pursuant to the orders passed by this Court earlier but are to be denied appointment due to merit standing, may be considered for accommodation against the existing vacancies, but only in accordance with law.

With the aforesaid directions/modifications, all the applications including the Interlocutory Applications stand disposed of.

21. No case of wilful or deliberate disobedience being made out, the contempt petitions are disposed of; notices are discharged.

..... J.
(VINEET SARAN)

..... J.
(DINESH MAHESHWARI)

**NEW DELHI;
MAY 09, 2022.**