

PETITIONER:
COMPTROLLER AND AUDITOR GENERAL OF INDIA, GIAN PRAKASH, NEWD

Vs.

RESPONDENT:
K.S. JAGANNATHAN & ANR.

DATE OF JUDGMENT 01/04/1986

BENCH:
MADON, D.P.
BENCH:
MADON, D.P.
PATHAK, R.S.
SEN, A.P. (J)

CITATION:
1987 AIR 537 1986 SCR (2) 17
1986 SCC (2) 679 1986 SCALE (1) 1077
CITATOR INFO :
RF 1992 SC 1 (91)

ACT:

Constitution of India :
Article 226 - Powers of Court - Writ of Mandamus -
Issuance of - To direct Government/public authority to
exercise its discretion in a particular manner.

Articles 16(4), 46 and 335 - Qualifying examinations
for promotion - Relaxation of standards in the case of
Scheduled Caste/Tribe candidates - Validity/permisibility
of - Whether to be consistent with efficiency of service.

The Comptroller and Auditor General's Manual of
Standing Orders (Administrative), Volume I, Chapter V, paras
195, 197, 198, 199 & 207 - Subordinate Accounts Service
Examinations (Ordinary) - Relaxation of standard for
Scheduled Caste/Tribe candidates - Whether violates Ministry
of Home Affairs Office Memorandum dated January 21, 1977 -
Relaxation - Determination in advance - Notification
before the examination Necessity of.

Statutory interpretation - Welfare Legislation -
Necessity for being construed in the light of constitutional
provisions guaranteeing protection.

Practice and Procedure - Passing of orders and giving
directions to compel performance in a proper and lawful
manner of discretion conferred upon Government/public
authority - Competency of High Court.

Civil Services - Members of Scheduled Castes/Tribes -
Relaxation of standards in qualifying examinations for
promotion - Determination in advance - Notification before
examination - Necessity for.

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HEADNOTE:

Office Memorandum No. 36021/10/76-Estt.(SCT) dated
January 21, 1977 issued by the Department of Personnel and
Administrative Reforms to all Ministries and Departments,
required that if a sufficient number of Scheduled Caste and
Scheduled Tribe candidates were not available in the
qualifying examinations on the basis of the general
standard, to fill all the vacancies reserved for them in the
promotional posts suitable relaxation in the qualifying

standard be made in their case, bearing in mind (1) the number of vacancies reserved, (2) the performance of the Scheduled Caste and Scheduled Tribe candidates as well as the general candidates in that examination, (3) the minimum standard of fitness for appointment to the post, and also (4) the overall strength of the cadre and that of the Scheduled Castes and Scheduled Tribes in that cadre, the extent of relaxation to be determined on each occasion having regard to the relevant factors.

The respondents, who belong to the Scheduled Castes, were working as Selection Grade Auditors in the Department of Indian Audit and Accounts, appeared for Part II Subordinate Accounts Service (S.A.S.) Examination (Ordinary) in December, 1980 for the next promotional post of Section Officer. The total aggregate of all the papers was 500 marks. Candidates were required to obtain the minimum of 40 per cent marks in the individual subject and 45 per cent in the aggregate. The first respondent secured 213 marks (42.6%) and the second 204 marks (40.8%), but failed to reach the aggregate requirement of 225 marks. The Department gave a general relaxation of 5 grace marks in the aggregate, inclusive of 5 marks in one or more subjects, to all the candidates. As against that the Scheduled Caste and Scheduled Tribe candidates were given 8 grace marks in the aggregate inclusive of 5 grace marks in one or more subjects, which could be of no avail to the respondents.

The respondents filed a petition under Art. 226 for a direction to the appellants to make suitable relaxation in the qualifying standard of marks for Part II of the S.A.S. Examination held in December 1980 in terms of the aforesaid Office Memorandum and to declare them as having passed the said examination.

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That writ petition was dismissed but the writ appeal was allowed by a Division Bench holding that the authorities concerned had not applied their mind to the actual state of affairs that existed, in fixing the relaxation which negated the benefit that lawfully would have gone to the Scheduled Caste and Scheduled Tribe candidates, and directed the appellants to grant suitable relaxation to the respondents as envisaged in the Office Memorandum dated January 21, 1977 and to consider whether they had qualified in Part II of the said examination.

In this appeal by special leave it was contended for the appellants that a Division Bench of a High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner, that fixing a relaxed or lower standard in advance for a qualifying examination was not permissible in law, that the authorities could not give relaxation to Scheduled Caste and Scheduled Tribe candidates in such manner as to impair the efficiency of the service, and that the relaxation could be made provided the candidates belonging to Scheduled Castes and Scheduled Tribes were found fit for promotion.

Dismissing the appeal, the Court,

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HELD : 1. The High Courts exercising jurisdiction under Article 226 of the Constitution have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations

and materials or in such a manner as to frustrate the object of conferring discretion or the policy for implementing which such discretion has been conferred. In all such cases and any other fit and proper case the High Court can compel the performance in a proper and lawful manner of the discretion so conferred and in a proper case in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions, which the government or the public

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authority should have passed or given had it properly and lawfully exercised its discretion. [39 A-D]

In the instant case, what the Division Bench did was to issue directions to appellants in the exercise of its jurisdiction under Art. 226 of the Constitution. [36H; 37A]

Dwarkanath, Hindu Undivided Family v. Income Tax Officer, Special Circle, Kanpur & Anr., [1965] 3 S.C.R. 536, 540; Hochtief Gammon v. State of Orissa & Ors., [1976] 1 S.C.R. 667, 676; Mayor of Rochester v. Regina, [1858] E.B. & E. 1024, 1032, 1034; The King v. The Revising Barrister for the Borough of Hanley, [1912] 3 K.B. 518, 528-9, 531; Padfield and Ors. v. Minister of Agriculture, Fisheries and Food & Ors., [1968] A.C. 997 and Halsbury's Law's of England, 4th Edition (Vol. I, Para 89) referred to.

2. By reason of the provisions of Art. 16(4) of the Constitution a treatment to the members of the Scheduled Castes and Scheduled Tribes different from that given to others in matters relating to employment or appointment to any office under the State does not violate the fundamental right to equality of opportunity for all citizens in such matters guaranteed by Art. 16(1). The reservation in favour of backward classes of citizens, including the members of the Scheduled Castes and Scheduled Tribes, as contemplated by Art. 16(4), can be made not merely in respect of initial recruitment but also in respect of posts to which promotions are to be made. [40 C-E]

State of Punjab v. Hiralal & Ors., [1971] 3 S.C.R. 267; and Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India & Ors., [1981] 1 S.C.C. 246 referred to.

3.1 The Office Memorandum dated January 21, 1977 is not intended only for the Department of the Comptroller and Auditor-General of India. It also applies to all Ministries and Departments. The discretion conferred by it is to be exercised in the discharge of constitutional duty imposed by Art. 335 in keeping with the Directive Principles laid down in Art. 46, for its object is to provide an adequate opportunity of promotion to the members of the Scheduled Castes and Scheduled Tribes. [55 D; 39 E; G; 40 B]

State of Kerala & Anr. v. N.M. Thomas & Ors., [1976] 1 S.C.R. 906 referred to.

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3.2 The Office Memorandum neither provides a general relaxation for all examinations nor is the relaxation to be made under it unguided or not based on any principle. On the contrary, it expressly provides that the extent of relaxation should be decided on each occasion whenever such examination is held by taking into account all relevant factors, including those specifically set out therein. [45 D-E]

3.3 It postulates two qualifying standards, one a general qualifying standard for all candidates appearing in the departmental competitive examinations for promotion and in departmental confirmation examinations, and the other a relaxed or lower qualifying standard for the candidates belonging to the Scheduled Castes and Scheduled Tribes in

respect of each examination, so that if a sufficient number of candidates belonging to these Castes and Tribes do not qualify according to the general standard, they can be considered for promotion in the light of the relaxed or lower qualifying standard, where there are a number of vacancies in the posts falling in the reserved quota and not enough candidates belonging to these Castes and Tribes to fill such vacancies according to the general qualifying standard. When these two qualifying standards are fixed the difference between the general qualifying standard and the relaxed or lower qualifying standard will form the zone of consideration when the result of each examination is ascertained according to the general qualifying standard. The relaxed or lower qualifying standard is the minimum upto which the discretion under the said office memorandum could be exercised. The fixation of the relaxed or lower qualifying standard, however, could not be construed to mean that all those who qualify according to that standard are to be promoted. How many are to be promoted must depend upon the number of vacancies which remain unfilled on the basis of the general qualifying standard. [41 D-E; 42 B-D; G; 43 D-E]

4. The candidates who appear for departmental competitive examinations for promotion and departmental confirmation examinations know in advance the general qualifying standard because such standard is prescribed. It is but in consonance with reason and logic that the relaxed or lower qualifying standard should also be fixed in advance and made known so that the candidates belonging to the Scheduled

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Castes and Scheduled Tribes will know before they appear for the examination to what extent they can expect relaxation for themselves on the basis of the criteria set out in the office memorandum. [42 H; 43 A, 44 C, 43 B; 44 C]

5. It is not open to the appellants in the instant case to assail the eligibility of the respondents for promotion in view of the requisite certificate under para 207 of the Comptroller and Auditor General's Manual of Standing Orders (Administrative), Volume I, Chapter V, having been given to them by the concerned Accountant General/Head of Office with due responsibility and not as a matter of form, that they were regular in attendance, energetic, of good moral character and business like habits and not likely to be disqualified for appointment to the Subordinate Accounts Service as not possessing the aptitude for the work of a holder of a post in that service, and that they had a reasonable prospect of passing the examination. Unless some event had occurred between the date of the giving of the certificate and final declaration of results, which could disqualify a candidate from discharging the duties of a post in the S.A.S., he is to be considered fit for promotion subject only to the condition that he passes the examination. [55F, 33G-H; 34A, 55B-C]

6.1 Public good and public interest both require that the administration of the Government and the functioning of its Services should be carried out properly and efficiently. Article 335 of the Constitution, which provides for the claims of the members of the Scheduled Castes and Scheduled Tribes to be taken into consideration in the making of appointments to services and posts in connection with the affairs of the Union or of a State, itself requires that this should be done consistently with the maintenance of efficiency of administration. [54 E-F]

6.2 The question of impairment of efficiency of the

Subordinate Accounts Service in the instant case, however, does not arise. The respondents were selected as candidates for the said examination by the Accountant General/Head of Office under para 199 of the Manual, the essential condition of such selection being that the candidates so selected would, if qualified by examination, be likely to be efficient in all the duties of the S.A.S. It is, therefore, not open to the appellants to take a contrary stand. [54 F; 55 A; F-G]

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7. The entire procedure followed in the case of S.A.S. Examination held in December 1980 by the Department of Comptroller and Auditor-General of India in respect of the Scheduled Caste and Scheduled Tribe candidates was completely contrary to what was required to be done under the office memorandum dated January 21, 1977. No relaxed or lower standard for the candidates belonging to these Castes and Tribes was fixed in advance of the examination. The relaxation by way of grace marks given after the results were ascertained on the basis of the general qualifying standard was without proper application of mind and without taking the relevant factors into consideration. In the proposals submitted for moderation of results and award of grace marks no attempt had been made to focus the attention of the Comptroller and Auditor-General on the actual state of affairs that existed, the total number of vacancies reserved and the overall strength of the Scheduled Castes and Scheduled Tribes in that cadre. It was, therefore, violative of Art. 335 of the Constitution and accordingly bad in law. [55 G - 56 B]

8. Where two alternative interpretations of a statute are possible and the department prefers one of them, its action cannot be said to be unreasonable. However, what has happened in the instant case is that while two Departments of the Government have taken one view the Department of the Comptroller and Auditor-General has taken a contrary view, which is neither warranted nor tenable. The interpretation to be placed upon the said Office Memorandum must be in keeping with Arts. 16(4), 46 and 335 of the Constitution. [48 C-D]

V.V. Iyer v. Jasjit Singh, AIR 1973 S.C. 194 distinguished.

In order to do complete justice to all concerned, as required by Art. 142 of the Constitution, it was directed that there shall be a relaxation of 25 marks in all for candidates belonging to the Scheduled Castes and Scheduled Tribes for Part II of the Subordinate Accounts Service Examinations (Ordinary) held in December 1980 and subsequent thereto by the Office of Comptroller and Auditor-General of India. The respondents and all other candidates similarly situated, who would pass the said examinations as a result of the aforesaid relaxation, shall be declared to have passed such examinations

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and to have been promoted to the Subordinate Accounts Service of the said Department in the vacancies reserved for the members of the Scheduled Castes and Scheduled Tribes with effect from the date when the final declaration of the results of each such examination was made. They will not, however, rank in seniority above those who have already passed and have been promoted, but will be placed in the seniority list after all those who have passed in Part II of the S.A.S. Examinations (Ordinary) held so far, ranking inter se according to the rules relating to seniority. Relaxed or lower standard for future examinations shall be

fixed in advance and notified to the candidates. [57 A; C-H; 58 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2952 of 1984.

From the Judgment and Order dated 12.1.1984 of the Madras High Court in W.A. No. 409 of 1982.

M.S. Gujral, R.N. Poddar, Dalveer Bhandari and P.P. Singh for the Appellants.

Respondent-in-person, V.A. Bobde (Amicus Curiae) for the Respondents.

The Judgment of the Court was delivered by

MADON, J. : This Appeal filed by Special Leave granted by this Court under Article 136 of the Constitution is directed against the judgment of a Division Bench of the Madras High Court in Writ Appeal No. 409 of 1982 and raises a question of importance to the members of the Scheduled Castes and the Scheduled Tribes working in the Department of Indian Audit and Accounts who seek promotion to the Subordinate Accounts Service.

The Respondents belong to the Scheduled Castes and are working as Selection Grade Auditors in the Department of Indian Audit and Accounts at Madras. The next promotional post for them is that of Section Officer in the same Department and in order to obtain such promotion, Selection Grade Auditors are required to pass the Subordinate Accounts Service

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Examination (hereinafter referred to as "the SAS Examination"). The SAS Examination consists of two parts, namely, Part I and Part II. Both the Respondents have passed the Part I Examination held in December 1979. They appeared for the Part II Examination in December 1980. Both of them secured the minimum number of marks in each individual subject which was 40 per cent and in some papers more than the minimum number of marks but failed to secure the aggregate minimum which was 45 percent. The First Respondent secured 42.4 per cent and the Second Respondent 40.8 per cent.

The Respondents thereupon filed a petition under Article 226 of the Constitution, being Writ Petition No. 10706 of 1981, in the Madras High Court praying for a writ of mandamus directing the Comptroller and Auditor-General of India and the Accountant General-I, Madras - the Appellants before us - to make in accordance with the instructions contained in the Office Memorandum No. 36021/10/76-Estt. (SCT) dated January 21, 1977, issued by the Department of Personnel & Administrative Reforms to all Ministries etc. suitable relaxation for the Respondents in the qualifying standard of marks for Part II of the SAS Examination held in December 1980 and to declare them as having passed the said examination. The said writ petition was dismissed with no order as to costs by a learned Single Judge of the High Court. The Respondents thereupon filed the aforesaid Writ Appeal No. 409 of 1982 which was allowed by a Division Bench of the High Court directing the Appellants to give suitable relaxation to the Respondents within two months from the date of its judgment and to consider whether the Respondents had qualified themselves in Part II of the SAS Examination held in December 1980 and further directing the Appellants, while granting such relaxation, to bear in mind the observations made by it in its judgment as also the criteria

envisaged in the said Office Memorandum dated January 21, 1977. The Division Bench made no order with respect to the costs of the Appeal.

The Respondents were represented by advocates at the hearing of the writ petition but they appeared before the Division Bench in person. They are also not represented at the hearing of this Appeal but with a view to ensure that no injustice may result to the Respondents by reason of their not having legal assistance, we requested Mr. V.A. Bobde, 26

Advocate, to appear as amicus curiae, and the Court is greatly beholden to Mr. Bobde for the assistance which he has rendered to the Court and the labour and industry which he has put in order to enable him to do so.

Before examining the judgment under appeal and the correctness of the submissions advanced at the Bar, it is necessary to refer to certain provisions of the Constitution, the relevant Office Memoranda and the Standing Orders bearing upon the subject.

The Constitution of India has made certain provisions with a view to undo the wrong and to right the injustice done to the members of the Scheduled Castes and the Scheduled Tribes for centuries. Article 335 of the Constitution provides that the claims of the members of the Scheduled Castes and the Scheduled Tribes should be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. Article 46, which occurs in Part IV containing the Directive Principles of State Policy, provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Article 16 which embodies the Fundamental Right of all citizens to equality of opportunity in matters relating to employment or appointment to any office under the State, makes an exception in clause (4). Clause (4) is as follows :

"(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

The said Office Memorandum dated January 21, 1977, referred to above, provides as follows :

"Subject :- Relaxation of standards in the case of Scheduled Caste/Tribe candidates in qualifying

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examinations for promotion to the higher grade on the basis of seniority subject to fitness.

The undersigned is directed to refer to this Department's Office Memorandum No. 8/12/69-Estt.(SCT), dated 23rd December, 1970 in which it has been provided that in promotions made through departmental competitive examinations and in departmental confirmation examinations, if sufficient number of Scheduled Caste/Scheduled Tribe candidates are not available on the basis of the general standard to fill the vacancies reserved for them, candidates belonging to these communities who have not acquired the general qualifying standard should also be considered for promotion/confirmation provided they are not found unfit for such promotion/confirmation. A question has been raised whether relaxation in qualifying standards should be granted

to Scheduled Castes and Scheduled Tribes candidates, on the same basis, in promotions on the basis of seniority subject to fitness, where fitness is decided on the basis of qualifying examination. The matter has been carefully considered and it has now been decided that in promotions made on the basis of seniority subject to fitness in which there is reservation for Scheduled Castes and Scheduled Tribes in accordance with this Department's Office Memorandum No. 27/2/71-Estt. (SCT), dated the 27th November, 1972, and where a qualifying examination is held to determine the fitness of candidates for such promotion, suitable relaxation in the qualifying standard in such examinations should be made in the case of Scheduled Caste/Scheduled Tribe candidates. The extent of relaxation should, however, be decided on each occasion whenever such an examination is held taking into account all relevant factors including (i) the number of vacancies reserved, (ii) the performance of Scheduled Caste/Scheduled Tribe candidates as well as general candidates in that examination, (iii) the minimum standard of fitness for appointment to the post, and also (iv) the overall strength of the cadre and that of the Scheduled Castes and Scheduled Tribes in that cadre."

The Office Memorandum dated December 23, 1970, referred to in the said Office Memorandum dated January 21, 1977, provides as follows :

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"Subject :- Relaxation of standards in favour of Scheduled Castes/Scheduled Tribes candidates in departmental competitive examinations for promotion and in departmental confirmation examinations.

Attention of the Ministry of Finance etc. is invited to Ministry of Home Affairs O.M.No. 1/1/70-Est.(SCT) dated the 25th July, 1970, in which it has been provided that in the case of direct recruitment, whether by examination or otherwise, if sufficient number of Scheduled Castes/Scheduled Tribes candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to these communities may be selected to fill up the remaining vacancies reserved for them provided they are not found unfit for appointment to such post or posts. A question has been raised whether relaxations in the qualifying standards could be granted to Scheduled Castes/Scheduled Tribes candidates on the same basis in promotion made through departmental competitive examinations and in departmental confirmation examinations where such examinations are prescribed to determine the suitability of candidates for confirmation. The matter has been carefully considered and it has been decided that in promotions/confirmations made through such examinations, Scheduled Castes/Scheduled Tribes candidates who have not acquired the general qualifying standard in such examinations could also be considered for promotions/confirmations provided they are not found unfit for such promotions/confirmations. In other words, the qualifying standards in these examinations could be relaxed in favour of Scheduled Castes/Scheduled Tribes candidates in keeping with the above criterion."

The Office Memorandum dated November 27, 1972, referred to in the said Office Memorandum dated January 21, 1977, inter alia provides as follows :

"Subject :- Reservations for Scheduled Castes and Scheduled Tribes in posts filled by promotion Promotions on the basis of seniority subject to

fitness.

The undersigned is directed to refer to para 2-C of the Ministry of Home Affairs O.M. No. 1/12/67-Ests.(C) dated the 29

11th July 1968 according to which there is no reservation for Scheduled Castes and Scheduled Tribes in appointments made by promotion on the basis of seniority subject to fitness, although cases involving supersession of Scheduled Castes and Scheduled Tribes officers in Class I and Class II appointments are required to be submitted for prior approval to the Minister or Deputy Minister concerned and cases of supersession in Class III and Class IV appointments have to be reported within a month to the Minister or Deputy Minister concerned for information.

2. The policy in regard to reservations for Scheduled Castes and Scheduled Tribes officers in posts filled by promotion on the basis of seniority subject to fitness has now been reviewed and it has been decided, in supersession of the orders contained in the aforesaid para 2-C of the O.M. dated 11th July, 1968, that there will be reservation at 15% for Scheduled Castes and 7-1/2% for Scheduled Tribes in promotions made on the basis of seniority subject to fitness, in appointments to all Class I, Class II, Class III and Class IV posts in grades or services in which the element of direct recruitment, if any, does not exceed 50 per cent."

In this connection it will be useful also to refer to Ministry of Home Affairs Office Memorandum No.16/17/67-Estt. (C) dated February 8, 1968. The said Office Memorandum deals with reservations for the members of the Scheduled Castes and the Scheduled Tribes in services and with the minimum standards in examinations for recruitment. The relevant paragraph of the said Office Memorandum is as follows :

"4. In the case of direct recruitment through a qualifying examination a minimum standard is generally fixed and candidates attaining that standard are placed on the select list for appointment against vacancies occurring from time to time. In such cases, therefore, a lower minimum qualifying standard should be fixed for candidates belonging to Scheduled Castes and Scheduled Tribes, taking into account the minimum standard necessary for maintenance of efficiency of administration. If

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the minimum qualifying standard for general candidates is reviewed at a later date, the lower minimum qualifying standard applicable to Scheduled Castes and Scheduled Tribes should be reviewed."

Under Article 148 (5) of the Constitution, subject to the provisions of the Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General are to be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General. The Comptroller and Auditor-General's Manual of Standing Orders (Administrative), Volume I, contains the provisions applying to the organization and control of the Indian Audit and Accounts Department, the Indian Audit and Accounts Service, the Subordinate Accounts Service, clerical staff of the Department, Divisional Accountants and other cognate matters. Chapter VII of the said Manual deals with Divisional Accountants. Under

paragraph 314, Divisional Accountants constitute a separate cadre. Paragraph 318 makes it a specific condition of the appointment of a Divisional Accountant that he is liable for service anywhere within the jurisdiction of the Accountant General concerned including his own office. Under paragraph 335, the cadre of Divisional Accountants in each office has a selection grade with effect from January 1, 1961. Divisional Accountants promoted to the selection grade are normally to be entrusted with charges which are heavier, more important and responsible than those entrusted to other Divisional Accountants. The Respondents belong to this grade. Under paragraph 336 members of the Divisional Accountants' cadre are eligible for promotion to the Subordinate Accounts Service (hereinafter referred to as "the SAS") subject to the conditions governing appointments in that service set out in Chapter V of the said Manual and necessary facilities are to be afforded to them by utilizing the provisions of paragraph 318 and posting from time to time a selected number of Divisional Accountants to work in the Audit Office.

Chapter V of the said Manual deals with the SAS. Paragraph 176 provides that the SAS is a Central Subordinate Service under the rule-making control of the President acting

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in consultation with the Comptroller and Auditor-General constituted for the subordinate supervision of the working of the Indian Audit and Accounts Department. It is divided into several branches. Under paragraph 178, appointments to the SAS are to be made by the Accountants General, etc., partly by confirmation of eligible apprentices and SAS Accountants on probation but mainly by promotion of the eligible clerks in the offices and the Divisional Accountants under their control subject always to the condition that the eligible persons are also qualified in the opinion of the appointing authority by ability, character and experience to discharge adequately and efficiently the duties required of the incumbent of a post in the SAS. Under paragraph 180, no person who has not passed the departmental examination prescribed in Section II of Chapter V is to be eligible for appointment to the SAS. Paragraph 184 deals with seniority in the SAS cadre. Under it, subject to the conditions prescribed in paragraphs 178 and 180, a clerk or a Divisional Accountant who passes the SAS Examination in an earlier examination will have precedence in appointment to the SAS over a person who passes in a later examination. As amongst persons who passes in the same examination, the one senior in the clerical cadre will have a prior claim for such appointment. Further, when the date of completely passing the SAS Examination is the same, the seniority is to be determined according to the year of recruitment. Paragraph 187 provides that appointment to the SAS is departmental promotion for purposes of the orders governing reservation of vacancies in favour of the members of the Scheduled Castes and the Scheduled Tribes, but in so far as appointment is also made from eligible SAS Apprentices and SAS Accountants on probation, the appointing authority is to pay due regard to the proper and adequate representation of these communities in the SAS. Under paragraph 210, no candidate is to be allowed to take the SAS Examination of any branch other than that of the branch which is appropriate to the establishment in which he is serving. The said paragraph further sets out the examinations which are regarded as appropriate to the members of the establishment working in different branches.

The appropriate examination for those working in Civil and Audit Accounts Offices is SAS (Ordinary) Examination.

As the Respondents were working as Auditors in the office of the Accountant-General, Madras, the appropriate examination for them was the SAS Examination (Ordinary).

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Paragraph 195 provides that the departmental examination qualifying for appointment to the SAS is divided into two parts and an examination in both the parts will be normally held once a year for all Audit and Accounts Offices in all branches on notified dates. The relevant provisions of paragraphs 197 and 198 are as follows :

"197. Subject to the various instructions issued by the Comptroller and Auditor General from time to time, and also subject to his final approval, the Accountants General/Heads of Offices may permit the candidates in their offices to appear in the appropriate branch of the S.A.S. Examination provided they are otherwise eligible to take the Examination. The names and other particulars of the candidates permitted to take the Examination should be sent to the Comptroller and Auditor General by the 15th August each year in Form No. 8 which should not be larger than double foolscap size. The Accountants General and other Heads of the Offices should see that the particulars noted therein are correct especially in regard to the number of chances a candidate has already availed of, the age and the exemption marks obtained by the candidates. To ensure correctness, the Heads of Offices should get the particulars in the statement checked by an Accountant and an Officer other than those who are responsible for its preparation....."

"198. The selection of candidates for the S.A.S. Examination is primarily the responsibility of the Head of the Office who may be aided by an Advisory Committee in the discharge of this responsibility. The composition and strength of the Committee will be determined by the Head of the Office and the Committee itself will be an advisory body only, the final selection resting with the Head of Office himself. The preliminary selection should be made as early as possible after the results of the last S.A.S. Examination are circulated so that intending candidates may start their preparation with the practical certainty that they will be permitted to take up the Examination....."

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Paragraph 199 provides as follows:

"199. The essential condition which shall govern the selection by the Accountant General or other Heads of Offices is that the candidate selected shall, if qualified by examination, be likely to be efficient in all the duties of the Subordinate Accounts Service."

Paragraph 207 provides as follows:

"207. Candidates satisfying the conditions set out in paragraphs 199 to 201 are eligible, but have no claim to appear for the examination. The Heads of Offices should certify at the foot of the statement required in paragraph 197 with due responsibility and not as a matter of form, that the candidates recommended are regular in attendance, energetic, of good moral character and

business-like habits, are not likely to be disqualified for appointment to the Subordinate Accounts Service as not possessing the aptitude for the work of a holder of a post in the Subordinate Accounts Service and that they have a reasonable prospect of passing the examination."

Under paragraph 201, a candidate who has not passed Part I of the SAS Examination, is not to be allowed to take Part II of the SAS Examination. The Respondents were permitted to appear for Part I of the SAS Examination and had passed in that part. They were also permitted to appear for Part II of the SAS Examination. Taking this fact into account in conjunction with the provisions of paragraphs 197, 198, 199 and 207, it is clear that the Respondents were in the opinion of the concerned Accountant General or Head of Office qualified by ability, character and experience to discharge adequately and efficiently the duties required of the incumbent of a post in the SAS as required by paragraph 178 and that if qualified by examination, they were likely to be efficient in all the duties of the SAS as prescribed by paragraph 199. Obviously, they had been given a certificate under paragraph 207, given with due responsibility and not as a matter of form, by the Head of Office certifying that the Respondents were regular in

34 attendance, energetic, of good moral character and business-like habits and not likely to be disqualified for appointment to the SAS as not possessing the aptitude for the work of a holder of a post in the SAS and had a reasonable prospect of passing the SAS Examination.

Under paragraph 234, the number of marks required to secure a pass in each branch is 40 per cent in each subject and 45 per cent in the aggregate.

Sub-paragraphs (a)(i), (ii), (iv) and (vi) of paragraph 282 provide as follows :

"282. (a)(i) There will be reservation at 12-1/2% and 5% of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made (i) by selection (ii) on the results of competitive examination limited to departmental candidates, in or to class III and IV posts, grades or services in which the element of direct recruitment, if any, does not exceed 50%.

(ii) Lists of Scheduled Castes and Scheduled Tribes Officers should be drawn up separately to fill the reserved vacancies. Officers belonging to these classes should be adjudged separately and not along with other officers and if they are suitable for promotion, they should be included in the list irrespective of their merit as compared to others. Promotions against reserved vacancies shall, however, be subject to the candidates satisfying the prescribed minimum standards.

x x x x x x x x x x

(iv) If candidates from Scheduled Castes and Scheduled Tribes obtain, on the basis of their positions in the aforesaid general select list, less vacancies than are reserved for them, the difference should be made up by such of those selected candidates who are in the separate select lists for Scheduled Castes and Scheduled Tribes respectively.

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x x x x x x x x x x

(vi) If owing to non-availability of suitable

candidates belonging to Scheduled Castes/Scheduled Tribes, it becomes necessary to dereserve a reserved vacancy, the proposals for de-reservation should be sent to the Ministry of Home Affairs through the Comptroller & Auditor General, indicating whether claims of Scheduled Castes and Scheduled Tribes candidates eligible for promotion in reserved vacancies have been considered in the manner prescribed in the preceding sub-paragraphs. When de-reservations are agreed to by the Ministry the reserved vacancies can be filled by other candidates subject to the reservation being carried forward to two subsequent years."

x x x x x x x x x x

The reservation of 12-1/2 per cent and 5 per cent mentioned in paragraph 282(a)(i) has been subsequently increased to 15 per cent and 7-1/2 per cent.

The learned Single Judge held that the Respondents had not challenged the validity of the instructions contained in the said Office Memorandum dated January 21, 1977, and, therefore, the only question which fell for consideration was whether those instructions had been carried out. He held that the extent of relaxation in the case of the Scheduled Castes and the Scheduled Tribes candidates would have to be decided every time an examination was held. He referred to an unreported decision of the Orissa High Court in Subodh Chandra Das and another v. Comptroller and Auditor General of India and others, O.J.C. 735 of 1970 decided by R.N. Misra and K.B. Panda, JJ., on September 12, 1973 in which a general relaxation to the extent of three per cent in the aggregate and two per cent in two papers given to the Scheduled Castes and the Scheduled Tribes candidates with effect from the examination held in November 1961 was struck down and to the fact that the Petition for Special Leave to Appeal against the said judgment was dismissed by this Court. The learned Single Judge accepted the statement made in the counter affidavit filed on behalf of the Appellants that necessary and suitable

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relaxation had been made in favour of the Respondents after taking into account the various factors contained in the said Office Memorandum dated January 21, 1977. He accordingly dismissed the writ petition filed by the Respondents.

At the hearing of the writ appeal before the Division Bench the Appellants before us produced the file containing the proposals for moderation of results and award of grace marks for the SAS Examination and Revenue Audit Examination for Section Officers held in December 1980, made by the Joint Director (Exam.), Office of the Comptroller and Auditor-General of India, the notings made thereon by other concerned authorities and the final order passed thereon by the Comptroller and Auditor-General of India, the First Appellant before us. After looking into the said file and analysing the figures to be found therein, the Division Bench came to the conclusion that the authorities concerned had not applied their mind to the actual state of affairs which existed and that this had resulted in an arbitrary fixing of the relaxation which negated the benefit that lawfully would have come to the Scheduled Castes and Scheduled Tribes candidates and that, therefore, the fixing of the relaxation was arbitrary and made in a perverse fashion. The Division Bench further held that it could not straightaway delcare the Respondents as having passed Part II of the SAS Examination held in December 1980 as it was

for the concerned authorities to apply their mind, bearing in mind the criteria which the Division Bench had mentioned, and to consider the case of the Respondents by granting relaxation. The Division Bench accordingly allowed the appeal and passed the order under appeal before us. It is against this judgment and order of the Division Bench that the Appellants have approached this Court in appeal.

The first contention urged by learned Counsel for the Appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the Respondents in their writ petition. What the Division Bench

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did was to issue directions to the Appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari, or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In *Dwarkanath, Hindu Undivided Family v. Income-Tax Officer, Special Circle, Kanpur*, and another, [1965] 3 S.C.R. 536, 540 this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In *Hochtief Gammon v. State of Orissa & Ors.*, [1976] 1 S.C.R. 667, 676 this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the Government or its officers.

Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago Martin, B., in *Mayor of Rochester v. Regina*, [1858] E.B. & E. 1024, 1032, 1034 said :

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That Court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and just and good government require that there ought to be one for the

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execution of the common law or the provisions of a statute : Comyn's Digest, Mandamus (A)
.Instead of being astute to discover reasons for

not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *The King v. The Reviving Barrister for the Borough of Hanley*, [1912] 3 K.B. 518, 528-9, 531. In *Hochtief Gammon's Case* this Court pointed out (at page 675) that the powers of the Courts in relation to the orders of the Government or an officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield and Others v. Minister of Agriculture, Fisheries and Food and Others*, [1968] A.C. 997 the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England*, Fourth Edition, Volume I, Paragraph 89, it is stated that the purpose of an order of mandamus "is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

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There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

It is now necessary to examine the nature of the

discretion conferred by the said Office Memorandum dated January 21, 1977 - "Whether it is a discretionary power simpliciter or a discretionary power coupled with a duty?" From the provisions of the Constitution referred to above, it is transparently clear that it is a discretion to be exercised in the discharge of the Constitutional duty imposed by Article 335 to take into consideration the claims of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. This duty is to be exercised in keeping with the Directive Principle laid down in Article 46 to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Article 37 of the Constitution provides that the Directive Principles of State Policy contained in Part IV of the Constitution, in which Article 46 occurs, are

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fundamental to the governance of the country and that it is the duty of the State to apply these principles in making laws. As said by Murtaza Fazal Ali, J., in *State of Kerala & Anr. v. N.M. Thomas & Ors.*, [1976] 1 S.C.R. 906 (at page 996) "the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles".

The object of the said Office Memorandum dated January 21, 1977, is to provide an adequate opportunity of promotion to the members of the Scheduled Castes and the Scheduled Tribes. By reason of the provisions of Article 16(4) of the Constitution a treatment to the members of the Scheduled Castes and the Scheduled Tribes different from that given to others in matters relating to employment or appointment to any office under the State does not violate the Fundamental Right to equality of opportunity for all citizens in such matters guaranteed by Article 16(1) of the Constitution. It is now well-settled by decisions of this Court that the reservation in favour of backward classes of citizens, including the members of the Scheduled Castes and the Scheduled Tribes, as contemplated by Article 16(4) can be made not merely in respect of initial recruitment but also in respect of posts to which promotions are to be made : (see, for instance : *State of Punjab v. Hiralal & Ors.*, [1971] 3 S.C.R. 267 and *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India and Ors.*, [1981] 1 S.C.C. 246.

The question which now falls to be considered is the manner in which the Comptroller and Auditor-General of India is required to exercise the discretion conferred by the said Office Memorandum dated January 21, 1977, and the manner in which he has, in fact, exercised it. The said Office Memorandum dated January 21, 1977, refers to two other Office Memoranda, namely, the Office Memorandum dated December 23, 1970, and the Office Memorandum dated November 27, 1972. Under the Office Memorandum dated December 23, 1970, where a sufficient number of Scheduled Castes and Scheduled Tribes candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, they may also be considered for promotion provided they are not found unfit for such promotion, and to achieve this, the said Office

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Memorandum directs that the qualifying standard in such examinations can be relaxed in their favour in keeping with the above criterion. The Office Memorandum dated November 27, 1972, fixes the reservation quota for the members of the Scheduled Castes at 15 per cent, and the Scheduled Tribes at 7-1/2 per cent, in appointments filled by promotion on the basis of seniority subject to fitness. Under the said Office Memorandum dated January 21, 1977, if a sufficient number of Scheduled Castes and Scheduled Tribes candidates are not available in the qualifying examinations on the basis of the general standard to fill all the vacancies reserved for them in the promotional posts, suitable relaxation in the qualifying standard for such examinations should be made in the case of the Scheduled Castes and the Scheduled Tribes candidates bearing in mind all relevant factors including, namely, (1) the number of vacancies reserved, (2) the performance of the Scheduled Castes and the Scheduled Tribes candidates as well as the general candidates in that examination, (3) the minimum standard of fitness for appointment to the post, and also (iv) the overall strength of the cadre and that of the Scheduled Castes and the Scheduled Tribes in that cadre. The said Office Memorandum dated January 21, 1977, thus postulates two qualifying standards - one, a general qualifying standard and the other, a relaxed or lower qualifying standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes. Paragraph 4 of the said Office Memorandum dated February 8, 1968, reproduced earlier, shows that in the case of direct recruitment through a qualifying examination a minimum standard is generally to be fixed and that in such cases, a lower minimum qualifying standard should be fixed for the candidates belonging to the Scheduled Castes and the Scheduled Tribes, taking into account the minimum standard necessary for the maintenance of efficiency of administration, and that if the minimum qualifying standard for general candidates is reviewed at a later date, the lower minimum qualifying standard applicable to the Scheduled Castes and Scheduled Tribes candidates should also be reviewed. The Office Memorandum No. 1/1/70-Estt.(SCT) dated July 25, 1970 which deals with examination for direct recruitment also speaks of a general standard and of a lower standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes, the standard being required to be relaxed in their

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case to make up the deficiency in the reservation quota provided they are not found unfit for such post or posts. As seen above, a similar provision exists in the said Office Memorandum dated December 23, 1970, with respect to departmental competitive examinations for promotion and in departmental confirmation examinations.

What is, therefore, required to be done under the said Office Memorandum dated January 21, 1977, is to fix a general qualifying standard for all candidates appearing in departmental competitive examinations for promotion and in departmental confirmation examinations as also to fix a relaxed or lower qualifying standard for the candidates belonging to the Scheduled Castes and the Scheduled Tribes in respect of each examination, so that if a sufficient number of candidates belonging to the Scheduled Castes and the Scheduled Tribes do not qualify according to the general standard, they can be considered for promotion in the light of the relaxed or lower qualifying standard where there are a number of vacancies in the posts falling in the reserved quota and not enough candidates belonging to the Scheduled

Castes and the Scheduled Tribes to fill such vacancies according to the general qualifying standard. In this connection, it should be borne in mind that the Office Memorandum dated December 23, 1970, referred to in the said Office Memorandum dated January 21, 1977, states that it was provided by Office Memorandum No. 1/1/70-Est.(SCT) dated July 25, 1970, that in the case of direct recruitment, whether by examination or otherwise, "if sufficient number of Scheduled Castes/Scheduled Tribes candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to these communities may be selected to fill up the remaining vacancies reserved for them provided they are not found unfit for appointment to such post or posts", and that it had been decided to make a similar relaxation in the case of promotion made through departmental competitive examinations and in departmental confirmation examinations. When these two qualifying standards are fixed, the difference between the general qualifying standard and the relaxed or lower qualifying standard will form the Zone of consideration when the result of each examination is ascertained according to the general qualifying standard. The candidates who appear for departmental competitive exami-

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nations for promotion and departmental confirmation examinations know in advance the general qualifying standard because such standard is prescribed. This naturally postulates that the relaxed or lower qualifying standard should also be fixed in advance and made known so that the candidates belonging to the Scheduled Castes and the Scheduled Tribes will know before they appear for the examination to what extent they can expect relaxation for themselves, provided that the other conditions prescribed by the said Office Memorandum dated January 21, 1977, are fulfilled. The relaxed or lower qualifying standard cannot be fixed for all time or for a number of years. It must of necessity be fixed for each examination because it has to be fixed taking into account the reserved vacancies remaining unfilled and the overall strength of the cadre and of the Scheduled Castes and the Scheduled Tribes in that cadre. This would naturally vary from year to year and cannot be fixed in advance but must necessarily be fixed before each examination and notified so that the candidates appearing in such examination would know what the lower qualifying standard is. The relaxed or lower qualifying standard is the minimum up to which the discretion under the said Office Memorandum dated January 21, 1977, is to be exercised. This should not be construed to mean that all who qualify according to the relaxed or lower qualifying standard are to be promoted. How many are to be promoted must depend upon the number of vacancies which remain unfilled on the basis of the general qualifying standard. For instance, if the general qualifying standard is 45 per cent and the relaxed or lower qualifying standard has been fixed at 35 per cent and if on the basis of the general qualifying standard only ten reserved vacancies remain unfilled, then ten candidates who obtain less than 45 per cent but have obtained 35 per cent or more should be selected in order of merit. If, however, there are fifteen reserved vacancies which remain unfilled according to the general qualifying standard and only ten candidates belonging to the Scheduled Castes and the Scheduled Tribes have obtained 35 per cent or more, the standard cannot be further lowered below 35 per cent to enable the remaining five candidates also to be selected for promotion. The said Office Memorandum dated January 21,

1977, also makes it clear that the relaxed or lower qualifying standard is to be fixed each time an examination is to be held, by taking into account all relevant factors including those specifically set out in the said

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Office Memorandum. This it does by stating that "The extent of relaxation should be decided on each occasion whenever such an examination is held".

In the case of the SAS Examinations, Paragraph 234 of the said Manual fixes the general qualifying standard as 40 per cent for each subject and 45 per cent in the aggregate for each part of that Examination. Thus, every candidate appearing in either of the two parts of the SAS Examination knows the minimum percentage of marks he has to obtain in each subject is also in the aggregate percentage of marks and it is in consonance with reason and logic that the candidates belonging to the Scheduled Castes and Scheduled Tribes should also know in advance the maximum relaxation they can expect to get on the basis of the criteria set out in the said Office Memorandum dated January 21, 1977.

It was, however, argued on the basis of the decision of the Orissa High Court referred to above that fixing a relaxed or lower standard in advance was not permissible in law and that when this was done for the SAS Examination, the Orissa High Court had struck it down and the Petition for Special Leave to Appeal against its judgment was dismissed by this Court. The learned Single Judge of the High Court was impressed by this argument. A perusal of the said judgment, however, shows that it has no relevance to the present situation. Before the Orissa High Court, the question was of an Office Memorandum dated May 7, 1955, on which date there was no reservation made in the case of posts to be filled by promotion on the basis of a qualifying examination. The said Office Memorandum dated May 7, 1955, expressly provided that there would be no reservation for the Scheduled Castes and the Scheduled Tribes in regard to the vacancies filled by promotion but where the passing of tests or examinations was laid down as a condition, the authority prescribing the rules for such tests or examinations may issue suitable instructions to ensure that the standard of qualification in respect of the members of the Scheduled Castes and the Scheduled Tribes is not unduly high. By a confidential Circular dated December 18, 1961, issued by the Comptroller and Auditor-General of India instructions were given that a reduction in pass percentage should be made to the extent of 3 per cent in the aggregate and 2 per cent in any two of the papers in each

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part of the SAS Examination in favour of the candidates belonging to the Scheduled Castes and the Scheduled Tribes. It was the case of both the parties before the Orissa High Court that the said Office Memorandum dated May 7, 1955, did not create a reservation in favour of the members of the Scheduled Castes and the Scheduled Tribes under Article 16(4). Further, the said confidential Circular made merely a general relaxation without prescribing any guideline or criterion for giving the relaxation. The Orissa High Court, therefore, held that the concession granted by the instructions contained in the said confidential Circular being unguided did not pass the objective test and was, therefore, bad in law. The High Court further pointed out that there was even no material before it to show that the members of the Scheduled Castes and the Scheduled Tribes were already not in adequate number in employment in the establishment of the Accountant General. The said Office

Memorandum dated January 21, 1977, stands on a wholly different footing from the Office Memorandum referred to in the aforesaid judgment of the Orissa High Court. It neither provides a general relaxation for all examinations nor is the relaxation to be made under it unguided or not based on any principle. On the contrary, it expressly provides that the extent of relaxation should "be decided on each occasion whenever such an examination is held taking into account all relevant factors including those specifically set out therein.'

It appears that the other Departments of the Union of India have implemented the Office Memorandum dated January 21, 1977, in keeping with the interpretation given above. For instance, the Circular No. 63/1/77-SPB I dated January 31, 1978, issued by the Office of the Director General of Posts and Telegraphs, after referring to the said Office Memorandum dated January 21, 1977, states as follows :

"The matter has been examined in detail and it has been decided that a lower standard for SC and ST candidates in all the groups, where the promotion is on the basis of seniority-cum-fitness and there is qualifying examination to determine the fitness of the candidates, to the extent as prescribed in this Office letter No. 63/1/71-SPBI dated 17th July 1971 (copy enclosed) be observed subject to

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the instructions contained in the last sentence of para 1 of Department of Personnel and A.R.O.M. dated 21.1.77 referred to above. It may also be stated that the relaxation of standard should be the minimum limit upto which the competent authorities could go down in order to fill the vacancies reserved for ST and SC in such qualifying examination."

It appears that a doubt was raised as to what should be the relaxed or lower standard in the case of the candidates belonging to the Scheduled Castes and the Scheduled Tribes in qualifying examination for promotion to a higher post on the basis of seniority-cum-fitness. Clarifications in that behalf were issued by a Circular No. 202/17/78/STN/SPB I dated December 19, 1978. These clarifications were as follows :

"a) No relaxation is to be made for SC and ST candidates if sufficient number of candidates belonging to SC/ST qualify to take up the posts reserved for them as per the standard prescribed for other community candidates (40% in each individual paper and 45% in aggregate for O.C. candidates).

b) Relaxation is to be made if sufficient number of ST and SC candidates do not qualify the standard prescribed for other community candidates.

The relaxation may be as follows :-

i) Maximum lowering of standard upto 33% in the individual papers and 38% in the aggregate.

ii) If, however, the number of SC and ST candidates equal to the number of vacancies become available at a high standard, say 35% in individual papers and 40% in the aggregate, no further lowering is to be resorted to.

iii) If the number of SC and ST candidates qualifying at 33% in each individual paper and 38% in the aggregate is not equal to the number of

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vacancies reserved for them, no further lowering is to be resorted to to ensure that number of SC and ST candidates qualifying is equal to the number of vacancies reserved for them. In other words in no case standard is to be lowered below 33% in each individual paper and 38% in the aggregate." B

The Railway Board's Letter No. E/SCT/70CM 15/6(B) dated July 29, 1970, is also instructive. It states :

"Sub : Filling up of promotion vacancies
Relaxation of qualifying marks for Scheduled Castes and Scheduled Tribes.

* * * *

In their letter No. E(SCT)68CM15/10 dated 27th August 1968 the Board had decided to reduce minimum qualifying marks both in "professional ability" and "aggregate" from 60 percent for others to 50 percent for Scheduled Castes and Scheduled Tribes in respect of promotions to selection posts in class III where safety aspect is not involved. A similar concession of 10 percent marks was granted to reserved community candidates in competitive examinations limited to departmental candidates in competitive examinations to fill up 10 per cent of the posts of Clerks scale Rs.130-300 in Board's letter No. E(SCT) 68CM15/10 dated 10th January 1970.

In respect of promotions made on seniority-cum-suitability, the extant instructions are that the cases of Scheduled Castes and Scheduled Tribes should be judged sympathetically without applying too rigid a standard. In order to give practical shape to this provision of "sympathetic consideration", the Board have now decided that a concession of 10 per cent marks may be granted to Scheduled Castes and Scheduled Tribes in the suitability tests written or oral, in the categories where safety aspect is not involved."

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Learned Counsel for the Appellants relied upon a decision of this Court in V.V. Iyer v. Jasjit Singh, A.I.R. 1973 S.C. 194 in which it was held that where two alternative interpretations are possible with respect to the scope and applicability of an Item in Schedule I to the Imports (Control) Order, 1955, made under section 3(1) of the Imports and Exports (Control) Act, 1947, and the Customs authorities have adopted a reasonable view relating thereto which is favourable to the revenue, such finding of the authorities cannot be interfered with by the High Court under Article 226 of the Constitution even though another view which can be adopted is in favour of the subject. In that case, two alter native interpretations were possible with respect to an item in the Schedule to the Imports (Control) Order and the Department had preferred one of them. The interpretation placed by the Department was held by this Court not to be unreasonable. The ratio of the above decision applies where the Court has before it two possible alternative interpretations and the concerned Department of the Government has accepted one of them. Here, what has happened is that two Departments of the Government have taken one view and the Department of the Comptroller and Auditor-General of India has taken a contrary view which is neither warranted nor borne ut by a reading of the relevant Office Memoranda.

What relevance the above decision has to the facts of

the present case is also beyond us. It is not possible to equate the members of the Scheduled Castes with goods imported from abroad. They are human beings like all other human beings, the only difference being that for centuries a large number of their countrymen have not treated them as human beings but as sub-human creatures beyond the pale of society and even of humanity. William Blake in his poem "Auguries of Innocence" said:

"Every Night and every Morn
Some to Misery are Born.
Every Morn and every Night
Some are Born to sweet delight.
Some are Born to sweet delight,
Some are Born to Endless Night."

The members of the Scheduled Castes were the children of the 49

"Endless Night". Their birth-right was the badge of shame; their inheritance, the overflowing cup of humiliation; their constant and closest companion, degradation; the bride of their marriage, lifelong poverty; and their only fault, to be born to their parents. They were denied education. They were denied jobs except the lowest menial tasks. They were denied contact with persons not belonging to their castes for their touch polluted and even their shadow defiled, though the touch and the shadow of the animals did not, for men rode on horses and elephants and on mules and camels and milked cows, goats and buffaloes. They were denied worship and the doors of the temples were shut in their faces for their very presence was supposed to offend the gods. All these wrongs were done to them by those who fancied themselves their superiors. As the anonymous satirist said :

"We are the precious chosen few:
Let all the rest be damned.
There's only room for one or two:
We can't have Heaven crammed."

The treatment meted out to the members of the Scheduled Castes throughout the ages was an affront to Human Rights. It was in a spirit of atonement for the wrongs done to them and to make restitution for the injury and injustice inflicted upon them that the framers of the Constitution enacted Article 16(4) placing them in a separate class in matters relating to employment or appointment to any office under the State, formulated the Directive Principle embodied in Article 46, and proclaimed the great Constitutional mandate set out in Article 335. F

It is equally not possible to equate the members of the Scheduled Tribes with goods imported from abroad. They too are human beings like other human beings with this difference that for centuries they have preferred to follow the primitive ways of their forefathers. Remote and almost inaccessible in their hilly vastness and secluded forests, civilization has passed them by. The benefits of high sophisticated technology is as unknown to them as its hazards OF noxious fumes and poisonous gases. Simple and naive, they have become a rich mine for exploitation by the human products of civilization. Their lands have been stolen from them by skulduggery and they have

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been tricked into selling the products of their craft and skill for a song. It was to protect them from such exploitation and to enable them to participate in the mainstream of the nation's life that they have been given special treatment by Articles 16(4), 46 and 335 of the Constitution.

The interpretation to be placed upon the said Office

Memorandum dated January 21, 1977, must, therefore, be in keeping with the above provisions of the Constitution and not as if the said Office Memorandum were an entry in a Tariff Schedule or a notification levying import duty upon goods.

What remains now to be examined is the manner in which the Comptroller and Auditor-General of India has exercised his discretion under the said Office Memorandum dated January 21, 1977. As mentioned earlier, the learned Single Judge of the High Court accepted the statement made by the Second Appellant a in his counter affidavit filed on behalf of the Appellants that necessary and suitable relaxations had been made in favour of the Respondents after taking into account the various factors contained in the said Office Memorandum dated January 21, 1977. After the Division Bench of the High Court had perused the file containing the proposals for moderation of results and award of grace marks in the SAS Examination and the Revenue and Audit Examination for Section Officers held in December 1980, this statement held good no longer and accordingly it was sought to be explained away in paragraph 11 of the Petition for Special Leave to Appeal as follows :

"Although the office note did not discuss in detail all the relevant factors, it is incorrect to say that the authorities had not applied their mind to the actual state of affairs that existed, resulting in arbitrary fixing of relaxation. The extent of relaxation is to be decided by the first petitioner (that is, the Comptroller and Auditor-General of India) at his discretion, keeping in view all relevant factors."

Like the counter affidavit filed in the writ petition the affidavit affirming the Petition for Special Leave to Appeal was also not made by the Comptroller and Auditor-General of

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India but by the Joint Director in the Office of the Comptroller and Auditor-General of India. According to the said affidavit, what was stated in the Petition for Special Leave to Appeal was "stated on the basis of information derived from the record of the case". The information to be derived from the record of the case clearly shows that the relevant factors set out in the said Office Memorandum dated January 21, 1977, were not and could not be considered or kept in mind and the so-called relaxation given to the members of the Scheduled Castes and Scheduled Tribes made a mockery of the said Office Memorandum. The office file referred to in paragraph 11 of the Petition for Special Leave to Appeal is the file containing the said proposals for moderation of results and award of grace marks. The said paragraph 11 is an admission that these proposals did not set out all the relevant particulars upon which the Comptroller and Auditor General of India could properly exercise his discretion or be made acquainted with the material data which would enable him to take into account all the relevant factors including the four specifically set out in the said Office Memorandum dated January 21, 1977. The heading of the said proposals itself show that it was concerned only with awarding of grace marks and not with relaxation of the qualifying standard in the case of the candidates belonging to the Scheduled Castes and the Scheduled Tribes. Further, according to the said paragraph 11 the authorities had applied their mind to the actual state of affairs that existed. When what the actual state of affairs that existed is ascertained, the above statement

turns out to be as divorced from reality as the Second Appellant's statement in his counter affidavit referred to above earlier.

It will be useful to refer first to the relevant paragraphs of the said proposals for moderation of results and award of grace marks. Paragraph 4 dealt with Part II of the SAS Examination and was as follows .

"4.(a) Part II : 809 candidates appeared from different offices out of whom 361 have passed showing 44.6% pass which does not compare favourably well with the 28.1% of February 1977, 41.5% of December 1977, 55.51 of December 1978 and 34.4% of December 1979. The figures for the previous years are after

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moderation. The percentages of pass before and after moderation are shown in Table No. II-B. As was done in the case of Part I candidates it is, therefore, recommended that the border line cases where the candidates fail by 5 marks in the aggregate inclusive of 5 marks in one or more subjects may be considered for award of grace marks. This will enable 30 candidates more to clear the examination in Part II; of which three will be from the SC/ST category and the balance from the general candidates. The effect of this proposal will be the percentage of pass of 44.6 will go upto 48.33%.

(b) In the same branch out of 72 SC/ST candidates who appeared for the examination 24 have passed recording 33.3%. As was recommended in the case of Part I candidates, it is recommended that the grace marks in respect of SC/ST candidates may be given 8 in the aggregate inclusive of 5 marks in one or more subjects. This will benefit 5 candidates from this category, of which 3 have already been covered in the general grace recommended for the general candidates in the previous sub-para. The award of this grace mark will increase the percentage of pass in respect of SC/ST candidates from 33.3 to 40.29."

It is difficult to understand how the percentage of 44.6 who passed out of the candidates who appeared for Part II of the SAS Examination held in December 1980 did not compare favourably well with the 28.1 per cent of the February 1977 and 41.5 per cent of the December 1977 examination of Part II of the SAS Examination. No attempt has been made in the said proposals to focus the attention of the Comptroller and Auditor-General of India on the total number of vacancies reserved and the overall strength of the cadre and of the Scheduled Castes and the Scheduled Tribes in that cadre. It is left to be gathered, if one is so minded, from the number of tables annexed to the said proposals. The admitted position, however, is that a general relaxation of five grace marks in the aggregate inclusive of five marks in one or more

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subjects was given to all the candidates and that so far as the candidates belonging to the Scheduled Castes and the Scheduled Tribes were concerned, they were given eight grace marks in the aggregate inclusive of five grace marks in one or more subjects. This resulted in five candidates belonging to the Scheduled Castes and the Scheduled Tribes passing, out of which three had already passed by reason of the grace marks allotted to all the candidates. Thus, the effect of this relaxation was that only two candidates belonging to

the Scheduled Castes and the Scheduled Tribes were enabled to pass the examination. The number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes was 445 in the year 1980, out of which 55 reserved vacancies were for the State of Tamil Nadu. Only 72 candidates belonging to the Scheduled Castes and the Scheduled Tribes appeared for Part 11 SAS Examination held in December 1980. Twenty-four of them had passed without any relaxation and after such relaxation was made altogether 29 passed. As seen earlier, out of these additional five candidates who passed, three had passed by reason of the grace marks allotted generally to all candidates and only two by reason of the additional grace marks given to the Scheduled Castes and the Scheduled Tribes candidates. So far as the State of Tamil Nadu was concerned, not a single candidate passed. As the aggregate number of marks was 500 and eight grace marks were given to the candidates belonging to the Scheduled Castes and the Scheduled Tribes, the percentage of relaxation comes to about 1.3/5 per cent. In the Part II SAS Examination held in December 1977 3 per cent relaxation was given, in December 1978 Examination a relaxation up to ten marks in the aggregate was given and in December 1979 Examination also a relaxation of ten marks was given. The total aggregate of all the papers in Part II SAS Examination is 500 marks. Therefore, the minimum aggregate of 45 per cent would be 225 marks. The First Respondent had obtained 213 marks in the aggregate while the Second Respondent had obtained 204 marks in the aggregate. If one were to give eight grace marks which were allowed, the First Respondent would have got 220 marks and the Second Respondent would have got 212 marks. Had the extent of relaxation been 2.6 per cent that is 13 marks, the First Respondent would have passed and had it been 4.2 per cent, that is, 21 marks, the Second Respondent would have also passed. The percentage of five general grace marks was only 1 per cent. The additional three grace marks given to the Scheduled Castes and the Scheduled Tribes candidates,

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taking into account the extent of general relaxation, works out to 1.3/5 per cent only. When one compares what is being done in the Posts and Telegraphs and in the Railways with what was done in the present case, it is clear that the relaxation which was given was purely an illusory one, paying only lip-service to the said Office Memorandum dated January 21, 1977.

It was, however, submitted on behalf of the Appellants that the authorities cannot give relaxation in such a manner to impair the efficiency of the service and that had the relaxation been given to a greater extent, it would have resulted in impairing the maintenance of efficiency of the SAS. It was further urged that under the said Office Memorandum dated January 21, 1977, relaxation is to be made provided the candidates belonging to the Scheduled Castes and the Scheduled Tribes are not found unfit for promotion. This submission would require to be accepted had it any relevance to the facts of the present case. However much one may desire to better the prospects and promote the interests of the members of the Scheduled Castes and the Scheduled Tribes, no sane-thinking person would want to do it irrespective of the considerations of efficiency, or at the cost of the proper functioning of the administration and the governmental machinery. Public good and public interest both require that the administration of the Government and the functioning of its services should be carried out properly and efficiently. Article 335 of the Constitution, which

provides for the claims of the members of the Scheduled Castes and the Scheduled Tribes to be taken into consideration in the making of appointments to services and posts in connection with the affairs of the Union or of a State, itself requires that this should be done "consistently with the maintenance of efficiency of administration". The question of impairment of efficiency of the SAS service does not, however, arise here. The relevant paragraphs of the said Manual have already been referred to but it will not be out of place in the context of the above submission to refer to them again. The relevant paragraphs are 197, 198, 199 and 207. Both the Respondents were permitted to appear in Part I of the SAS Examination and after passing such examination were permitted to appear for Part II of the SAS Examination. Under paragraph 197, they required permission of the Accountant General or Head of Office to do so. Under paragraph 198, the selection of the

55 candidates was primarily the responsibility of the Head of the Office. Under paragraph 199, the essential condition of such selection was that the candidates selected would, if qualified by examination, be likely to be efficient in all the duties of the SAS. Under paragraph 207, a certificate had to be given to each candidate that he was regular in attendance, energetic, of good moral character and business-like habits and was not likely to be disqualified for appointment to the SAS as not possessing the aptitude for the work of a holder of a post in the SAS and that he had a reasonable prospect of passing the examination. This certificate is required by paragraph 207 to be given "with due responsibility and not as a matter of form". Thus, unless some event had occurred between the date of the giving of the certificate and the final declaration of results which would disqualify a candidate from discharging the duties of a post in the SAS, he is considered to be eligible for promotion to the SAS, subject only to the condition that he passes the examination. The said Office Memorandum dated January 21, 1977, is not intended only for the Department of the Comptroller and Auditor-General of India. It also applies to all Ministries and Departments, and it has to be applied in the context OF the rules governing each Department. The condition contained in the said Office Memorandum dated January 21, 1977, that the candidates belonging to the Scheduled Castes and the Scheduled Tribes should not be found unfit for promotion is a general condition applying to all Ministries and Departments. In the case of candidates selected to appear for the SAS Examination, this condition has already been satisfied by reason of their selection as candidates. If it was considered that the Respondents would not be able to discharge the duties of the holder of a post in the SAS, they would not have been given the relevant certificate required under paragraph 207 of the said Manual. They were given such certificates and it is not open to the Appellants to take a stand contrary to what the certificates given to the Respondents state.

The above discussion shows that the entire procedure followed in the case of the SAS Examination held in December 1980 was completely contrary to what was required to be done under the said Office Memorandum dated January 21, 1977. No relaxed or lower standard for the candidates belonging to the

56 Scheduled Castes and the Scheduled Tribes was fixed in advance of the examination. As it was not fixed in advance,

the question of it being notified to the candidates does not arise. The relaxation by way of grace marks given after the results were ascertained on the basis of the general qualifying standard was without proper application of mind and did not take into consideration the relevant factors, and was, therefore, contrary to what was required to be done by the said Office Memorandum dated January 21, 1977, and the other Office Memoranda referred to earlier and was violative of Article 335 of the Constitution and accordingly must be held to be bad in law.

In the result, this Appeal must fail. The Division Bench of the Madras High Court has, however, contented itself with issuing directions to the Appellants to consider the case of the Respondents and grant suitable relaxation to them within two months from the date of its judgment as to whether they had qualified in Part II Examination of the SAS held in December 1980 and while granting such relaxation to bear in mind the observations made in its judgment as also the criteria envisaged in the said Office Memorandum dated January 21, 1977. The Division Bench did so because it felt that it could not straight away declare the Respondents as having passed the said examination. The judgment of the Division Bench of the Madras High Court was given on January 12, 1984. More than two years have elapsed since then. In the meantime the Appellants have approached this Court by obtaining Special Leave to Appeal and have obtained interim stay of the execution of the order of the Division Bench. This interim stay has now obviously come to an end. Further examinations, however, must have been held in the mean time. In view of the order of interim stay, they must have been held on the same basis as the December 1980 Examination. The Respondents had appeared in Part II of the SAS Examination in December 1980 and, therefore, to give the same or similar directions as were given by the Division Bench of the Madras High Court would result in further delay and would perhaps result in a fresh writ petition. Further, such directions cannot be given only with respect to the Respondents because there may be other candidates belonging to the Scheduled Castes and the Scheduled Tribes who are similarly situated nor can such directions be confined merely to the December 1980 examination. They also

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should not jeopardize those who have already been promoted for none of them are parties to this Appeal. It is, therefore, necessary that in order to do complete justice to all concerned as required by Article 142 of the Constitution, the matter should not be left to the Comptroller and Auditor-General of India but all requisite directions should be given by this Court.

For the reasons given above, we dismiss this Appeal and confirm the judgment of the Division Bench of the Madras High Court in Writ Appeal No. 409 of 1982, but we substitute the following Order for the order passed by it in the said Writ Appeal :

For Part II examination of the Subordinate Accounts Service Examination (Ordinary) and all subsequent Part II examinations of the Subordinate Accounts Service Examination (Ordinary) held thereafter until today there will be a relaxation of 25 marks in all for candidates belonging to the Scheduled Castes and the Scheduled Tribes, that is, this relaxation will cover not only the pass marks to be given in the aggregate but will be inclusive of the pass marks to be given in each individual paper so that the total number of marks

covered by such relaxation will not exceed 25. The Respondents and all other candidates belonging to the Scheduled Castes and the Scheduled Tribes who will pass the said examinations as a result of the above relaxation are declared to have passed such examinations and to have- been promoted to the Subordinate Accounts Service in the vacancies reserved for the members of the Scheduled Castes and the Scheduled Tribes with effect from the date when the final declaration of the results of each such examination was made and will be paid such salary and shall be entitled to all other benefits on the basis of such promotion with effect from the said date. So far as seniority is concerned, however, they will not rank above those who have already passed and have been promoted but will be placed in the seniority list after all those who have passed in Part II of the Subordinate Accounts to Service Examination (Ordinary) held so far, ranking inter se according to the rules relating to

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seniority set out in paragraph 184 of Volume I of the Comptroller and Auditor General's Manual of Standing Orders (Administrative). In respect of all subsequent examinations to be held for the Subordinate Accounts Service, the Comptroller and Auditor-General of India will fix a relaxed or lower standard in advance and notify it to the candidates who are going to appear for such examination. In fixing such standard, he will bear in mind the observations made in this Judgment and what has been held therein.

For the purpose of this Appeal the Respondents have been compelled to come to New Delhi to appear before this Court time and again and also had to spend money on their board and lodging. The Appellants will, therefore, pay to each of the Respondents a sum of Rs.1,500 by way of costs of this Appeal.

As the Respondents are not represented by any Advocate, the Registry will communicate this order to the Respondents without claiming the cost thereof from the Respondents.

Before parting with this Appeal, the Court just once again express its deep sense of appreciation of the valuable assistance rendered to it by Mr. V.A. Bobde, Advocate, who appeared as amicus curiae, and without whose assistance it perhaps may not have been possible to reach the above conclusion.

P.S.S.

Appeal dismissed.

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