

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 5554 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 960 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 18291 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Approved for Reporting	Yes	No
		✓

**ANKITABEN AMRUTBHAI PARMAR**  
**Versus**  
**STATE OF GUJARAT & ORS.**

Appearance:

MR KEVALSINH B RATHOD(10250) for the Petitioner(s) No. 1

MR.AMIT R JOSHI(6682) for the Petitioner(s) No. 1

MS NIDHI VYAS, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1

MR JAGRAT SHAH for MR SIMRANJITSINGH H VIRK(11607) for the Respondent(s) No. 2

NOTICE SERVED BY DS for the Respondent(s) No. 2,3,4,6,7

REFUSED SERVED (N)(10) for the Respondent(s) No. 5

**CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT****Date : 30/04/2026****JUDGEMENT**

1. Heard Mr. Kevalsinh B. Rathod, learned advocate for the petitioner, Ms. Nidhi Vyas, learned AGP for the respondent No. 1 and Mr. Jagrat Shah, learned advocate appearing on behalf of Mr. Simranjitsingh H. Virk, learned advocate for the respondent No. 2.

2. Rule returnable forthwith. Learned advocates appearing for the respective respondent Nos.1 & 2 waive

service of notice. Though served, none of the private respondents have appeared in the matter.

3. With the consent of the learned advocates for the respective parties, the matters were taken up for hearing.

4. At the outset it is required to be noted that vide its order dated 10.04.2026, this Court passed the following order:

*"1. Heard Mr. Kevalsinh B. Rathod, learned Advocate for the petitioner, Ms. Nidhi Vyas, learned Assistant Government Pleader and Ms. Ruchi Rampuria, learned Advocate appearing on behalf of Mr. Simranjitsingh H. Virk, learned Advocate for the respondent No.2.*

*2. At the outset, Mr. Rathod, learned Advocate for the petitioner, would submit that merit list in question was prepared by respondent No. 2 on the basis of the Government Resolution dated 01.08.2018, which was quashed and set aside by the Division Bench of this Court vide its judgment and order dated 05.08.2020 passed in Letters Patent Appeal No. 1910 of 2019 in Special Civil Application No. 18968 of 2018 and allied matters. It is submitted that in view of the aforesaid dictum of the Division Bench of this Court, the respondents are required to prepare a fresh merit list. Mr. Rathod, learned Advocate, would also rely upon the decision of the Coordinate Bench of this Court dated 29.03.2022 passed in Special Civil Application No. 12983 of 2020 and allied matters.*

*3. Prima facie, there is substance in the arguments of Mr. Rathod, learned Advocate for the petitioner. At this stage, Ms. Rampuria would request for some time in the matter and to take appropriate instructions in regard to the preparation of a fresh merit list.*

*4. S.O. to 24.04.2026. List on top of the board."*

5. Mr. Shah, learned advocate for the respondent No.2, would state that pursuant to the aforesaid order passed by this Court and having noticed the decision of the Division Bench of this Court as well as the Hon'ble Apex Court, the respondent No. 2 undertook the exercise and, accordingly, prepared the revised merit list. Upon the instruction of his client, Mr. Shah, learned advocate, makes a conscious statement that the names of the petitioners herein now appear in the revised merit list; consequently, their names will be forwarded to the respondent No. 1 - State for the purpose of the appointment.

6. Per contra, Ms. Nidhi Vyas, learned AGP would state that in view of said development, any fresh recommendation will be sent by the respondent No. 2, the cases of the petitioners will be considered and appropriate decision in regard to their appointment will be taken by competent authority of the respondent No. 1 at the earliest.

7. Having heard learned counsels for the respective parties and upon perusal of the prayers made in the respective petitions, there is hardly any dispute remains that after the decision of the Division Bench of this Court in the case of ***Tamannaben Ashokbhai Desai vs. Shital Amrutlal Nishar*** reported in (2021) 2 GLR 1696 and also of Hon'ble Apex Court in case of ***Saurabh Yadav & Ors. vs. State of Uttar Pradesh & Ors.*** Reported in (2021) 4

SCC 542, the respondent No.2 was required to prepare the fresh merit list. It is reported to this Court that pursuant to the aforesaid order passed by this Court, an exercise was undertaken by the respondent No. 2. All these petitioners before this Court were found to be meritorious, as their names appear in the revised merit list prepared by the respondent No. 2.

8. In view of the aforesaid, the respondent No. 2 is hereby directed to send the names of the petitioners being found meritorious to the respondent No. 1 within a week from today along with revised merit list.

8.1. Upon receipt of such recommendation from the respondent No. 2, respondent No. 1 - State is hereby directed to take appropriate decision in regard to issuance of appointment order in favour of the petitioners within six weeks from today.

8.2. Once the appointment orders shall be issued in favour of the respective petitioners, the petitioners shall be treated as having been appointed from the date their juniors were issued appointment orders. However, the period from that date until the date of their actual appointment will be treated as notional for all purposes. The petitioners shall not be entitled to backwages for that period.

9. Furthermore, upon preparation of the revised merit list, any persons including the respondents herein are

going to be affected, as per the settled position of law and to avoid future litigation, the respondent No. 1 is hereby directed to treat them at bottom of the fresh merit list and issue afresh appointment order to them by treating their services as afresh appointment from that date of issuance of the order, for all purposes including seniority. Meaning thereby, they will not entitle to claim any seniority and or any other benefits due to their previous appointment. Nonetheless, the wages already paid to them till date, shall not be recovered.

9.1 The aforesaid direction is issued in light of the following decision of the Division Bench of this Court dated 29.01.2016 passed in the case of ***Bharwani Jitendra and others vs. State of Guajrat and others, being Letters Patent Appeal No.1303 of 2015***, wherein it observed and held thus:

*"7. From the record it has emerged that the appellants appeared in the examination for the post in question as per the advertisement issued by the respondent No.3. Their names appeared in the merit-list at the first instance and they got appointment on the basis of the merit-list. The appellants worked on the post in question for a period of one and half year. In the meantime, representations were received by the respondent authorities about the wrong key-answers for some of the questions and therefore the concerned respondent authorities has taken the help of the experts and found that certain answer-keys were incorrect. Accordingly, decision was taken to rectify the said mistake and on the basis of correct answer-keys, revised merit-list was published and in the said revised merit-list the appellants could not get the place. Accordingly, their services were terminated. It has also emerged from record that before terminating the services of the appellants the respondent authorities have not issued any notice to the appellants nor any opportunity of hearing was given to them. Thus, in view of the aforesaid admitted position it is clear that the*

*respondents have violated the principles of natural justice.*

8. *From the affidavit filed by the respondent authorities and from the submissions canvassed on behalf of the learned AGP, it is also clear that it is not the case of the respondent authorities that the appellants have played any fraud or adopted any malpractice. It is also an admitted position that it was the mistake on the part of the concerned authority while preparing the answer-keys on the basis of which the merit-list was prepared in which the names of the appellants were reflected and they got the appointment. It is also true that because of the mistake of the concerned authority while preparing the key-answers, meritorious candidates should not suffer and therefore there is no fault on the part of the respondent authorities in correcting the key-answers and on the basis of which in preparing the revised merit-list. Thus, we are of the opinion that the respondent authorities have not committed any illegality while preparing the revised merit-list on the basis of the corrected key-answers.*

9. *Thus, in view of the aforesaid facts and circumstances of the case, the issue which this Court has to decide is whether the appellants are entitled to claim any relief from this Court?*

12. *Admittedly, in the present case, it is not the case of the respondent authorities that the present appellants have played any fraud or malpractice during the course of the examination or in preparation of key-answers. It was only a mistake on the part of the respondent authorities in preparing the key-answers. Thus, in the facts of the present case the respondent authorities were duty bound to follow the principles of natural justice and without giving opportunity of hearing to the appellants their services ought not to have been terminated.*

13. *In the case of **Rajesh Kumar & Others (supra)** relied upon by learned advocate Mr. Gadhvi for the appellants, the Hon'ble Supreme Court in similar set of facts, observed in para 22 as under:*

*“22. In the result, we allow these appeals, set aside the order passed by the High Court and direct that:*

*(1) answer scripts of candidates appearing in 'A' series of competition examination held pursuant to advertisement No.1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr.(Prof.) CN Sinha and Prof. KSP Singh and the observations made in*

*the body of this order and a fresh merit list drawn up on that basis.*

*(2) Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.*

***(3) In case writ petitioners-respondent nos. 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.***

***(4) Such of the appellants as do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement No.1406 of 2006 and the second selection held pursuant to advertisement No.1906 of 2006.***

*(5) The needful shall be done by the respondents – State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them.”*

14. *The facts of the present case are almost similar to that of the case decided by the Hon’ble Supreme Court in **Vikas Pratap Singh & Others (supra)**, wherein the Hon’ble Supreme Court held and directed as under:*

*“27. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.*

28. *In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.*

29. **Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list.** *The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.*

30. **We clarify that their appointment shall for all intents and purpose be fresh appointment which would not entitle the appellants to any back wages, seniority or any other benefit based on their earlier appointment.**

31. *The order passed by the High Court shall stand modified to the above extent. Appeals disposed of. There shall be no order as to costs."*

15. *Keeping in mind the aforesaid decisions rendered by the Hon'ble Supreme Court in Rajesh Kumar & Others (supra) and Vikas Pratap Singh & Others (supra), we are of the opinion that in the present case also the error committed by the respondent authorities in the matter of preparation of the key-answers could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit-list nor in preparation of the erroneous key-answers. Moreover, the appellants have worked on the post in question for more than one and half years and because of termination of the services of the appellants it would not only affect the economic security of the appellants and their dependants but also adversely affect their careers more particularly when most of the appellants are more than 32 years of age and some of them are more than 35 years of age. **Thus, if their termination orders are not quashed and set aside, it would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous preparation of the answer scripts. However, at the same time, we are of the opinion that their continuation in service should neither give any unfair advantage to the appellants nor cause undue***

***prejudice to the candidates selected qua the revised merit list.** We are informed that because of the interim relief granted by the learned Single Judge and thereafter by this Court, five posts of Accountant are kept vacant so far as Letters Patent Appeal No.1303 of 2014 is concerned. Similarly, two posts of Accountant are kept vacant so far as Letters Patent Appeal No.1304 of 2014 is concerned. Thus, total seven posts are kept vacant by way of interim orders.”*

*(Emphasis supplied)*

10. In light of the aforesaid facts and circumstances and for the foregoing reasons, all these petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly.

11. Direct service is permitted.

SHAHANAZ

**(MAULIK J.SHELAT,J)**