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CA 797/94

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Serial No. of Order	Date of Order	Order with Signature	Office note as to action (if any) taken on order
6.	26-9-96	<p>Heard Shri J.K. Mishra-2, learned counsel for the Applicant and Shri Uma Ballav Mohapatra, learned Addl. Standing Counsel (Central) for the Respondents. The relief prayed for in the main Original Application is to direct the Respondents to promote the applicant to the Post of Upper Division Clerk when he became eligible i.e. after completion of eight years of regular service i.e. in the year 1990. Shri J.K. Mishra-2 learned Counsel for the applicant has taken me through the background of the case. In this Misc. Application No.641 of 1996, the applicant prayed for orders to stay the letter dated 19-9-1996 till final disposal of the Original Application or to stay the discretionary marking of 100 as given to Opp.Party No.2 in Appendix-II. The applicant has claimed that he belongs to SC and he should have been considered for promotion in the fifth year when he was due or in the 8th year i.e. in the year 1990. He was not considered and till 1996 he was not given his due as per his averments. Annexure-8 is a limited departmental competitive examination for the post of Upper Division Clerk in Govt. of India Text Book Press, Bhubaneswar. It</p>	<p>MA NO. 222/95</p> <p>Counter has not been filed. Adj. to 3.4.95.</p> <p>MA. at FLA' filed by Mr. U.D. Mohapatra ASE praying for extension of time to file Counter.</p> <p>For orders Pl.</p> <p><i>DB</i></p> <p>31-3-95</p> <p>Bench.</p> <p>Counter has not filed.</p> <p>For further orders.</p> <p><i>guter</i></p> <p>21/4</p> <p>13-4-95</p> <p>Counter appears to have been filed in the Court on 24.4.95. Copy not served.</p> <p>For hearing Pl.</p> <p><i>DB</i></p> <p>16/5/95</p> <p>Bench.</p> <p>Adj. to Post Summer Vacation.</p> <p>For hearing Pl.</p> <p><i>DB</i></p> <p>21/6/95</p> <p>Bench.</p>

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		<p>is dated 19-9-1996 and this examination is going to be held on 29-9-1996. Besides, the other points mentioned by Shri Mishra, in his arguments, para-6 of the Appendix to Annexure-8 are to be quoted;</p> <p>"The Manager has the discretion to fix qualifying marks in any or all the subjects at the examination".</p> <p>This is an unbridled discretion. There are no guidelines also to control the discretion. The qualifying marks can be 20% or 90%. Similarly in para-2 of Annexure-8 it has been mentioned 'Evaluation of record of service of such of the candidates who attain at the written examination, a minimum standard as may be fixed by the Manager in his discretion, carrying a maximum of 100 marks'. This again is entirely discretionary and it is exercised by only one person i.e. Manager (Admn.), Government of India, Text Book Press, Bhubaneswar. Such unbridled discretion, is uncontrolled by any guidelines given to a single individual can not easily pass. The well known test of constitutional propriety. Since it is a M.A. and since the O.A. is a Division Bench matter, there is no need at this stage to declare these two provisions as ultravires and this should ^{be} leave to the Division Bench to decide. It would</p>	<p>M.A 641/96 for stay.</p> <p>For orders (As per memo)</p> <p>Bench</p> <p>25-9-96</p>

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7.	25.4.97.	<p>suffice to say that this examination can not be allowed to be conducted when the examiner has such a discretion in his control. This is unhe^{ar}d in any examination system. Shri U.B. Mohapatra, learned Additional Standing Counsel states that this examination is entirely intended for the benefit of the applicant and if he qualifies in the examination, he will himself get promotion. Since the Examn. is going to be held on 29th of September, 1996, after hearing the submission of the Additional Standing Counsel, the said examination proposed at Annexure-8 is hereby stayed till the disposal of the Original Application. M.A. is disposed of.</p> <p>A copy of this order be made available to the counsel for both sides.</p> <p><i>Narasimhaswami</i> Member (Administrative)</p> <p>Heard the learned lawyer for the applicant and the learned Additional Standing Counsel on behalf of the respondents. In this case, the applicant had filed MA No.641 /96 on 25.9.96 and this was disposed of in order dated 26.9.1996. The learned lawyer for the applicant has now filed a memo seeking permission to</p>	<p>A copy of order may be given to advocate for the applicant for the</p> <p><i>Deben</i> 27.9.96</p> <p><i>27.09.96</i> SOL</p> <p>Received copy <i>P. M. Mishra</i> for the applicant. 27.9.96</p> <p>Received copy <i>27.9.96</i></p>

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		<p>withdraw MA No.641/96 and OA No.797/94.</p> <p>As M.A. has already been disposed of, no withdrawal of M.A. can be permitted.</p> <p>O.A.No.797/94 is permitted to be withdrawn and is disposed of as such.</p> <p style="text-align: right;">VICE-CHAIRMAN 25/4/97</p>	<p>A copy of Order may be given to Respondent's Counsel.</p> <p>to 2/10/96</p> <p style="text-align: right;">25.10.96 S.O.(J)</p> <p>Memo filed by the Counsel for the Applicant for withdrawal of MA641/96 copy served.</p> <p>For Orders</p> <p style="text-align: right;">Bench</p> <p>24/4/97</p> <p>Order no. 4. Dt. 25.4.97</p> <p>A copy of order may be given to both the Counsel.</p> <p>30/4/97</p> <p style="text-align: right;">30.04.97 S.O.(J)</p> <p>Received a copy on behalf of U. B. Banerjee 20.4.97</p> <p style="text-align: right;">20/4/97</p>