

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CWP-25505-2021(O&M)
RESERVED ON:05.07.2023
PRONOUNCED ON:11.08.2023
- RAKESH SIHAG

.....PETITIONER
- VERSUS
- STATE OF HARYANA AND OTHERS

.....RESPONDENTS
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CWP-102-2022
- RAVINDER AND OTHERS

.....PETITIONERS
- VERSUS
- STATE OF HARYANA AND OTHERS

.....RESPONDENTS
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CWP-108-2022
- YOGESH KUMAR AND OTHERS

.....PETITIONERS
- VERSUS
- STATE OF HARYANA AND OTHERS

.....RESPONDENTS
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CWP-1111-2022
- NARENDER KUMAR

.....PETITIONER
- VERSUS
- STATE OF HARYANA AND ANOTHER

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CWP-115-2022
- KASHMIR SINGH

.....PETITIONER
- VERSUS
- STATE OF HARYANA AND OTHERS

.....RESPONDENTS

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	VERSUS	
STATE OF HARYANA AND OTHERS		RESPONDENTS
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	VERSUS	
STATE OF HARYANA AND OTHERS		RESPONDENTS
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VERSUS		
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VERSUS		
STATE OF HARYANA AND OTHERS	RESPONDENTS	
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VERSUS		
STATE OF HARYANA AND OTHERS	RESPONDENTS	
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VERSUS		
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VERSUS		
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	STATE OF HARYANA AND OTHERS	RESPONDENTS

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VERSUS	
STATE OF HARYANA AND OTHERS	RESPONDENTS
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VERSUS	
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VERSUS	
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VERSUS	
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VERSUS	
STATE OF HARYANA AND OTHERS	RESPONDENTS

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....PETITIONER

VERSUS

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....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ankur Sidhav, Advocate for the petitioners in CWP Nos.25505 of 2021, CWP Nos.26248, 26458, 26763, 26900 of 2021, CWP No.102 of 2022, CWP Nos.26242, 26252, 26864 of 2021 and CWP No.521 of 2022.

Mr. Sumit Sangwan, Advocate for the petitioner in CWP No.8004 of 2023.

Mr. Bhupinder Malik, Advocate for the petitioners in CWP Nos.21665 and 26755 of 2021.

Ms. Anjali, Advocate for Mr. Devender Arya, Advocate for the petitioners in CWP Nos.26870 and 20978 of 2021.

Mr. B.S. Rathee, Advocate for the petitioners in CWP No.25655 of 2021.

Mr. Surender Pal, Advocate for the petitioner in CWP No.26460 of 2021.

Mr. Sanchit Punia, Advocate for the petitioner in CWP No.27063 of 2021.

Mr. Akshit Dhiman, Advocate for Mr. Dhiraj Chawla, Advocate for the petitioner in CWP No.14601 of 2022.

Mr. Ravi Malik, Advocate for the petitioner in CWP No.26788 of 2021.

Mr. Jasbir Mor, Advocate for the petitioners in CWP Nos.14012, 14024, 14072 of 2022, CWP Nos.21288 and 21387 of 2021.

Mr. Kamal Mor, Advocate for the petitioner in CWP No.401 of 2022.

Ms. Shaveta Sanghi, Advocate and
Mr. Lokesh Sharma, Advocate for
the petitioners in CWP No.277 of 2022.

Mr. Amandeep Singh, Advocate for
Mr. Chaderhas Yadav, Advocate for
the petitioner in CWP No.1111 of 2022.

Mr. Rajat Mor, Advocate for the
petitioner in CWP No.2376 of 2022.

Mr. Ravinder Singh Dhull, Advocate with
Mr. Namit Sharma, Advocate for
the petitioners in CWP Nos.102 and 108 of 2022.

Mr. D.S. Patwalia, Sr. Advocate with
Mr. Kanan Malik, Advocate for the
applicants in CWP No.25505 of 2021.

Mr. Amarjit Beniwal, Advocate
for the petitioners in CWP-14829-2022.

Mr. Ashwani Gaur, Advocate for
the petitioner in CWP-21418-2022.

Mr. Karan Singh, Advocate for
the petitioner in CWP-26853-2021.

Mr. Talim Hussain, Advocate for
the petitioners in CWP-610-2022.

Mr. Sumit Gujjar, Advocate for
the petitioner in CWP-26788-2021.

Ms. Shruti Jain, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J

By this common order, this Court intends to dispose off CWP-
102-2022, CWP-108-2022, CWP-1111-2022, CWP-115-2022, CWP-14012-
2022, CWP-20966-2021, CWP-20978-2021, CWP-21288-2021, CWP-21383-
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2. The jurisdiction of this Court under Article 226 of Constitution of India has been invoked for issuance of a writ in the nature of mandamus directing the respondents to consider raw marks (and not normalized marks) qua the petitioner(s) and to grant them consequential benefits accordingly, *inter-alia*, consider him/her short-listed for Physical Screening Test, if found eligible/more meritorious with further direction to the respondents to allow the petitioner(s) to appear for Physical Screening Test and one seat be kept reserved/vacant for him/her till the final outcome of the present writ petition.

3. Since in all the writ petitions, appointment to the post of either male constables or female constables has been assailed pertaining to one advertisement No. 04/2020 dated 30.12.2020 (Annexure P-1) on a common question of law i.e., the procedure for checking of written exam has been changed by adopting normalization method of evaluation (percentile formula), which was not mentioned in the advertisement. There is no other ground

raised before this Court in any of the writ petitions putting up the challenge to the selection process. Therefore, I am taking up the facts from CWP-2555-2021 in brief which are by and large identical in this bunch of writ petitions.

4. The factual background finally can be crystallised to the effect that respondent No.3-Haryana Staff Selection Commission (hereinafter referred to as 'Commission) has published an A, inter alia, for filling up 5500 posts of male constables and 1100 posts of Female Constables and examination for male constables were scheduled to be held in four shifts on 07.08.2021 and 08.08.2021 and when the question paper got leaked, then the said examination of male constables were cancelled and rescheduled in six shifts (having 4 sets of question paper in each shift and as such total 24 sets of question papers) on 31.10.2021, 01.11.2021 and 02.11.2021.

5. The exams for the post of Female Constables was conducted on September 18 and 19, 2021 in three shifts (in 3 sets of question papers in total) and on 21.09.2021 (Annexure R-3/3), a general public notice applicable to all advertisements, was issued by the Commission, for normalization of marks. The result of written examination of Male Constable was declared on 11.12.2021 and the petitioners hereinabove challenged the same, inter alia, on ground of 'Rules of the game changed in mid way' by adopting normalization method of evaluation (percentile formula). The petitioners were granted interim relief vide order dated 17.12.2021 passed in CWP-25505-2021 permitting them to appear provisionally in Physical Screening Test subject to outcome of the present writ petition. The order dated 17.12.2021 reads as under:-

“Pursuant to order dated 15.12.2021, learned State

counsel requests for an adjournment to file reply.

Per contra, learned counsel for the petitioner contents that the action of the respondent-Commission in altering the rules of selection after the cutoff date is in derogation of well settled law and as a result of change in criteria, candidates getting lesser marks than the petitioner have been called for physical screening test, whereas the petitioner has not been called for the same.

Notice of motion.

Mr. Pankaj Middha, Addl. AG, Haryana, accepts notice on behalf of the respondents and requests for time to file reply.

List on 17.01.2022. Reply, if any, be filed before the date fixed with copy in advance to learned counsel for the petitioner.

In the meantime, the petitioner is allowed to participate in the physical screening test purely on provisional basis and subject to the outcome of the writ petition. Result of the petitioner is directed not to be declared without the permission of the Court.”

6. The final Result of Female Constables were declared on 15.12.2021 adopting Normalization method adding additional marks in percentile score which was challenged in ***Taruna vs. State of Haryana and others vide writ petition bearing CWP No. 26242 of 2021*** and various other writ petitions, wherein as an interim measure, on 21.12.2021 appointments, if any, were ordered to be subject to the final outcome of the said writ petitions.

The order dated 21.12.2021 reads as under:-

“ Learned counsel for the petitioner(s) contends that the action of the respondent-Commission in altering the rules of selection after the cutoff date is in derogation of well settled law and as a result of the aforementioned change in criteria,

candidates securing lesser marks than the petitioner(s) has/have been selected for the post of constable female.

Notice of motion.

Mr. Rajesh Gaur, Addl. AG, Haryana, accepts notice on behalf of the respondents and requests for time to file reply.

List on 17.01.2022.

Reply, if any, be filed before the date fixed with copy in advance to learned counsel for the petitioner.

Appointments, if any made, shall be subject to the outcome of the writ petition.

List for hearing along with CWP No.25505 of 2021.

A photocopy of this order be placed on the file of the connected case.”

7. He argues that the new formula i.e. Equi-Percentile is corrupt (due to addition of socio-economic marks), in view of the Annexures A-4 and A-5 (in CM No. 14799-CWP of 2022), showing lesser meritorious candidates (who attempted same question paper) getting selected and more meritorious candidates left un-selected/ in waiting list and also in view of Additional Reply dated 08.09.2022, admitting the variations in same shift at scattered locations from which it is abundantly clear that the fundamental right to equality under Article 14 and equal opportunity in matters related to public employment under Article 16 of the Constitution, of the petitioners has been gravely violated while adopting the method of evaluation, which is impermissible and liable to be set aside and the respondents are liable to be directed to consider raw marks and not normalized marks for declaring/ revising the final result.

8. Learned counsel on behalf of the petitioner(s) setting up the challenge to method of evaluation midway of process vehemently contended

that it has been done illegally applying the with the help of Public Notice dated 21.09.2021 with retrospective effect applying to an advertisement dated 30.12.2020 with cut-off date to be 10.02.2021. It is also averred that such act of the respondents No.3-Haryana Staff Selection Commission is as such prejudicial to the interest of the petitioners and is against the well settled principle of law that the criteria for selection cannot be changed midway' or once the process has started, whereas, the normalization (Percentile Formula) has been applied even after conducting of examination on August 07, 2021 for Male Constables and on September 18 and 19, 2021 of Female Constables). Learned counsel has further asserted that even thereafter, and new Formula of Equi-Percentile had been applied in June, 2022, during the pendency of the present petitions even after declaring result (admitting the fault in earlier Percentile formula), which is absolutely impermissible. Finally relying upon a case law laid down in **'Bishnu Biswas & Ors. Vs. Union of India'** to argue that in view of the principle of 'Legitimate Expectation' the respondents are legally bound to follow and adopt the rules and procedure applicable as on the date of publishing the advertisement i.e. 30.12.2020 (cut-off date 10.02.2021) and no other procedure can be adopted subsequently at any stage and the petitioners have legitimate expectation from the respondents to adhere to the same, so that they may be given equal opportunity under Articles 14 and 16 of the Constitution of India.

9. Further reliance has been placed upon the judicial pronouncement rendered by the Apex Court in the case of **'P.Mohanan Pillai Vs. State of Kerala & Ors.'** AIR 2007 SC 2840, to assert that the eligibility criteria as also the procedure as was prevailing on the date of vacancy should ordinarily be

followed.

10. This Court, vide order dated 22.05.2014 passed in CWP No. 2201 of 2014 titled as 'Vikas Sharma Vs. State of Haryana and Ors.' has directed the service commissions H.P.S.C, H.S.S.C. and H.S.T.S.B. to declare complete/detailed results of all the advertisements in order to bring transparency and dispel doubts, but the same has not been complied till date by the respondents and Raw-marks result has deliberately been concealed against the said direction/ judgment dated 22.05.2014.

11. While concluding the arguments, learned counsel for the petitioner(s) has contended that such applicability of equi percentile formula is not at all sustainable in the eyes of law on two grounds, first, the petitioners are not challenging the equi-percentile formula, but its applicability in present set of facts where the system of adding additional/ Socio-economic marks is there, second, the judgments relied upon by the respondents are not at all applicable to the present facts as the matter in dispute/issue, in those judgments is not of adding additional marks after normalization, therefore, the same are liable to be rejected and not considered.

12. Lastly, reliance has been made upon various judgments of the Apex Court as rendered in the case 'Anmol Kumar Tiwari & Ors. Vs. State of Jharkhand & Ors' and another judgment dated 12.05.016 in 'Nidhi Kaim Vs. State of M.P.', as well as 'Ramjit Singh Kardam and Ors. Vs. Sanjeev Kumar and Ors.' (Civil appeal no. 2103 of 2020) while observing that, 'Malice in Law' means mala-fide exercise of statutory power for purposes foreign to those for which it is in law intended. The recruitment process must be transparent, fair, just, uniform, logical and fool proof and not violating

fundamental rights under Article 14 and 16 of even a single candidate and as such must not be prejudicial to any candidate and bribery and nepotism should not guide the appointments and it should not be by way of adopting pick and choose policy by arbitrarily selecting candidates without any legal and reasonable justification for the same by applying some absurd formula in different conditions than the other State/Public Service Commissions, which are not having any system of adding additional/ Socio-economic marks.

13. No question or argument in addition to above by any of the learned Advocates appearing on different writ petitions.

14. Ms. Shruti Jain, Sr. DAG Haryana for respondent No.3- Commission has vehemently contended that there is a difference in selection criteria and method of evaluation and in the present case, there is no challenge to the criteria of selection process followed by the Commission clarifying that the selection for the post of male and female constable has been made strictly according to the criteria as prescribed in the statutory service rules i.e. Rule 12.6 of Punjab Police Rules, 1934, (as applicable to State of Haryana), which gets mentioned in the tisement No. 04/2020 dated 31.12.2020. It is asserted that method of evaluation is a scientific method to evaluate the performance of a candidate in the written examination, when the written examination is held in different shifts and with differently difficulty levels. Ms. Jain also argues that the recruitment agencies have absolute power to select a method of evaluation subject to the restriction to the effect that no candidate is put to disadvantageous position due to difficult paper. Generally, the standard method of evaluation in written/OMR based examination i.e. preparation of result on the basis of marks awarded to the candidates against the questions

attempted by them without any further processing of those marks is done by the Commission.

15. She has laid stress on the factual aspect that a significantly large number of applications were received: total 8,25,921 applications in case of Male Constable, against 5500 advertised posts and total 2,54,985 applications in case of Female Constables, against 1100 posts and also the incident of paper leakage on 07.08.2021, in case of Constable (Male) examination forced the Commission to introduce more than one question paper in each shift justifying the method of evaluation an explanation has been made on behalf of the Commission stating that accordingly, in case of Male Constable 4 sets of papers were introduced in each shift (total of six shifts) with 4 sets in each shift whereas in case of female constables, the written examination was conducted in three shifts. On behalf of the respondent No.2-Commission, it is submitted that in view of the expert advice obtained from the “Indian Statistical Institute, New Delhi” it adopted Normalization procedure based on percentile method to calculate the final marks of candidates in multi-shift examination, while referring to a notice dated 21.09.2021 (Annexure R-3/3 to say that the method of calculation of percentile marks was mentioned and explained in detail well in time, which do not amount to change of criteria of selection.

16. Assertion is that there is no difference between percentile method and equi-percentile method, as both are ranked based method, same procedure is followed in both the methods to work out the result inasmuch as percentile marks of candidates are converted into equated score or normalized score so that an entity can be added to it for preparing the final merit list. Further the

stand of the Commission is that actually the more transparent and fairer mode of evaluating the written examination has been adopted and none of the candidates can contend that any prejudice was caused to them even if for the sake of arguments, it is assumed that such formula was not in their knowledge or was not mentioned in the advertisement particularly in the light of the peculiar situation arisen out of large number of applicants and subsequently leakage of question papers and accordingly examination was conducted in multiple shifts with multiple set of question papers, which necessitated the adoption of scientific method of normalization to bring all the candidates on a uniform platform considering the difference in level of difficulty of questions in various sets of papers conducted in different shifts. Stressing upon such circumstantial change it is not always feasible to inform the candidates in advance as to which mode of evaluating the written test will be adopted.

17. On the question of marks awarded during the physical screening test earmarked for a total of 20 marks, Ms. Jain would submits that it cannot be the case that all the candidates, who applied and appeared will get the 20 marks, which are allocated under various heads such as educational qualification, socio -economy status etc., which always varies from individual to individual. Therefore, these marks are neither required to be nor can be normalized, which otherwise would ruin very idea of normalization of difficulty level accrued among different shifts because, it may remove the error in score of few candidates within shift on one hand, but certainly will curtail the chances of a candidate of some other shifts in a bunch from the selection and it is bound to forfeit the purpose of normalization.

18. While folding up the submissions lastly, learned State counsel has

drawn attention of this Court to the fact that female candidates were well informed vide general public notice dated 21.09.2021 (Annexure R-3/3) immediately after the date of written test of the last evening shift held on 19.09.2021, whereas in the case of male candidates information was provided vide public notice dated 25.10.2021 i.e., almost one week prior to the date of written examination, which commenced during 31.10.2021 to 02.11.2021.

19. Before concluding her submissions reliance has been made on a judgment by the Supreme Court in ***State of Uttar Pradesh and Others vs. Atul Kumar Dwivedi and Others***, 2002 SCC online SC 17 dated 07.01.2022 with a specific attention to para 90 & 91, which reads as under:-

*“In conclusion, the exercise undertaken by the Board in adopting the process of normalization at the initial stage, that is to say, at the level of Rule 15(b) of Recruitment Rules was quite consistent with the requirements of law. The power exercised by the Board was well within its jurisdiction and as emphasized by the High Court there were no allegations of mala fides or absence of bona fides at any juncture of the process. One more facet of the matter is the note of caution expressed by this Court in paragraph 20 of its decision in ***Sunil Kumar and others vs. Bihar Public Service Commission and Others***. As observed by this Court, the decisions made by expert bodies, including the Public Services Commissions, should not be lightly interfered with, unless instances of arbitrary and mala fide exercise of power are made out.*

We have, therefore, no hesitation in accepting the challenge raised on behalf of the State and allowing these appeals and setting aside the judgment and order passed by the High Court presently under challenge. The results declared by the Board on 28th February 2019 shall now be given effect as early as possible.”

20. Heard learned counsel for the respective parties.

21. To summarise the rival contentions advanced by the parties, the submissions, learned counsel appearing on behalf of the petitioners in brief can be recorded as under:-

(i) The thrust of the petitioner, while laying challenge to the normalised percentile score to determine the eligibility of the candidates dehoes the criteria laid down in the advertisement No. 04/2020 dated 30.12.2020 (Annexure P-1),

(ii) Such method once adopted already shows that the students having secured more marks have been put to disadvantageous position and have been exited from the eligibility list, who otherwise have attained the qualifying marks, if actual-raw marks are assigned.

(iii) The new method of normalization by applying equi percentile mode, is illegal, which was not brought to the notice of the petitioners-candidates prior to submission of application forms under the advertisement No.04 of 2020 (Annexure P-1).

22. The justification on behalf of the State would be crystallized as under:-

(i) Ms. Shruti Jain, Ld. Sr. DAG Haryana drew a difference in selection criteria and method of evaluation. The Commission-Respondent No.3 being a recruitment agency did not deviate from the selection criteria and strictly adhered to it as was enumerated in the advertisements as well as the statutory rules particularly Rule 12.16 of Punjab Police Rules, 1934. The necessity to adopt a different mode of evaluation arose in the light of large number of applicants i.e., 8,25,921 in the case of male candidates against 5500 advertised posts whereas 2,54,,985 applications were received in the category of female constables against 1100 posts. Adding further to the irony the question paper

got leaked on 07.08.2021 and under compulsion the answering respondent has to introduce more than one question paper in each shift, whereby for male constables four sets of papers were introduced in each shift, while conducting the examination in six shifts, whereas in case of female constables the written test was conducted in three shifts. The conduct of written test in multiple shifts resulted into difficulty level in question paper of various shifts leading to change in the result to the extent that the maximum number of candidates who get higher score in the written examination were those candidates, who attempted the question paper, which was relatively less difficult culminating into prejudice to the candidates appearing in other shifts.

(ii) As far as none of the candidates-petitioner can contend any prejudice was caused to the. In fact, such contention is not only mis-placed but fallacious, inasmuch the merit is to be prepared on the basis of marks secured in the written examination and under socio-economic criteria and on account of higher qualification. The equi-percentile formula is considered most accurate among all the available formulas of normalization, which made its wide acceptance all over in the result, where some additional marks are to be added to written marks. It is also vigorously submitted by the respondent that if this formula is discarded then all the result of UPSC, Gate examination, Neet-PG will be invalid where normalization has been done between different subjects to reach a common equi-percentile score.

(iii) To stand on a firm footing, the learned State counsel has referred to general public notice dated 21.09.2021 (Annexure R-3/3) i.e., just after the date of written examination held on 19.09.2021 (last evening shift) to the effect that respondent No.3 shall be opting for normalization method in case of

multiple shift examination with different difficulty level, whereas in the case of male candidates, it was informed vide public notice dated 25.10.2021 much in advance to the holding of written examination during the period 31.10.2021 to 02.11.2021.

23. Prior to having regard to the aforesaid submissions, it would be unjust for this Court if order dated 15.07.2022 during the earlier proceeding is ignored vide which certain qualifications were sought from the Haryana Staff Selection Commission-respondent No.3 on the following issues:-

(i) At what stage, this formula can be introduced by the Commission?

(ii) Was the normalization method so adopted by the Commission was even informed to the candidates?

(iii) What is the difference between both results of Female Constable declared firstly by adopting Percentile Method on 15.12.2021 and thereafter by adopting equi percentile method on dated 17.06.2022.

(iv) How base shift was selected by the Commission?

24. The aforesaid queries have been issue wise answered by the respondent No.3.

25. The answer to 1st issue was that the stand taken by the Commission-respondent No.3 elaborates that it cannot anticipate the number of applications that would be received against the post(s) and accordingly, the conduct of examination. It is not always to inform the candidate about normalization method at the time of advertisement since the factors like number of applications, number of shifts for the exam to be conducted, number of total question papers to be used as well as difficulty level likely to occur vide multiple question papers settled for different shifts. All these

factors are post received of applications from the candidates leaves the discretion with the Commission to decide and adopt any other suitable transparent and fair method of evaluation such as normalization, scaling or moderation etc. Hence, such decision of adopting a method for evaluation of written examination can be conveyed to the candidates at any time or at the stage before processing of the result of written examination, which do not effect in any way the selection criteria including the performance of the candidates in the written test.

26. On the second query put by this Court, explanation came forth in the form of General Public Notice dated 21.09.2021 in the case of female candidates i.e., two days after the conduct of written examination on 19.09.2021 (last evening shift), whereas in the case of male candidates, it was well in advance to say at least one week vide public notice dated 25.10.2021 before conduct of the written examination, which held from 31.10.2021 till 02.11.2021.

27. The stance over query No.3 came to be replied in para 8 & 9 of additional reply dated 16.08.2022 filed by Bharti Bhushan, under Secretary, Haryana Staff Selection Commission, which read as under:-

“8.That with regard to the third question that what is the difference between both results of Female Constable declared firstly by adopting Percentile Method on dated 15.12.2021 and thereafter by adopting equi-percentile Method on dated 17.06.2022, it is pertinent to mention here that basically, there is no difference between Percentile method and equi-percentile method. Both are rank based method and same procedure is followed in both the methods to work out the result. Percentile method is first stage of equi-percentile method, it is perfect, and

error free if no extra marks are required to be added further to this percentile score. This formula is widely adopted in entrance examinations where nothing is to be added to written examination marks. The limitation of this formula is that, nothing can be added to Percentile score as it is rank based score and raises raw marks of even 50marks to 98.5 percentile depending upon the rank among the candidates of that shift in which candidate has appeared. The equi- percentile formula further converts this percentile score into equated marks like raw marks in reference to a randomly selected base shift Now at second stage additional marks of socio-economic criteria and additional qualification can be added to these equated marks of written examination to prepare the final result. Additional marks if added directly to percentile score then it gives erroneous results.

9. That in the result for the post of Female Constable declared on dated 15.12.2021 the same was declared by adopting percentile method solely and additional marks either of socio economic criteria or of addition qualification were added to percentile score which exceeded the selection criteria of 100 marks examination. Thereafter, in the result for the post of Female Constable declared on 17.06.2022, the entire result dated 15.12.2021 was taken as it is after excluding additional marks and the percentile scores of candidates were converted into equated score by applying equi percentile formula and in the equated score so received marks of socio economic criteria and additional qualifications were added and final result was declared. Thus, the error which had crept in preparation of the result declared on 15.12.2021, which was challenged by number of candidates in the court, the same has been rectified by revising the result as per the suggestion of the institute i.e. Indian Statistical Institute annexed as Annexure R-3/4. However, it is relevant to mention here that out of total 1100 candidates selected for the post of Female Constable (G.D.) vide result dated

15.12.2021 only 188 candidates got ousted from result dated 17.06.2022 and remaining candidates remained same. Further, a comparative sheet disclosing the need of revision of result dated 15.12.2021 alongwith adopting normalization method for preparing result for post of female constable will be produced with the data of actual candidates in a sealed cover before the Hon'ble Court.”

28. The reply to issue No.4 has been placed before this Court vide para 10 to 12 of additional reply dated 16.08.2022 filed by Bharti Bhushan, under Secretary, Haryana Staff Selection Commission, which read as under:-

“10. That regarding the fourth query regarding the adoption of a base shift, it is relevant to mention here that there is no rule to select a shift as reference or base shift. Any shift can be selected as reference or base shift and will give the same result upto the level of four decimal places. It was observed from the decision of Hon'ble Supreme Court of India declared on 7th January, 2022 in recruitment case of Sub-Inspector (U.P. Police) in which the base shift was selected randomly and result was prepared by equi-percentile method on the basis of this base shift. In this examination which was held in 2017, the candidates had to score 50%, 45% and 40% in various categories to qualify for Physical Screening Test and Physical Measurement Test to enter further process of selection. Since the base shift was selected randomly resulting in reducing the marks of some candidates who were on margin line, consequently on the basis of these equated normalised marks they couldn't qualify for PST/PMT. Aggrieved of this result, these candidates moved to Allahabad High Court and won the case. The Uttar Pradesh Police challenged this verdict in Hon'ble Supreme Court of India resulting in reversal of decision of Allahabad High Court, consequently the equated score calculated by applying equi-percentile method was upheld. In the present case, the Commission (HSSC) sought the opinion

of Indian Statistical Institute on normalization method and on selection of base year. As suggested by the Indian Statistical Institute the following are the ways to select a base shift :-

(i) One of the shifts is chosen randomly. The entire array of actual raw marks from that should be the presumptive scale.

(ii) For each shift, find the mean of the raw marks. Choose th shift with the maximum mean. The raw marks in this shi may be chosen as the presumptive scale.

(iii) Choose the shift in which maximum number of candida appeared for the examination. The corresponding array the actual raw marks in the shift would constitute presumptive scale.

(iv) Combine the entire list of raw marks (across all shifts). This array would constitute the presumptive scale of marks.

11. That from the above suggestions of Indian Statistical institute, it is clear that any shift can be taken as base shift randomly. though the Commission by taking all the implications of base shift into consideration has taken that shift as base shift which was easier out of all other shifts and whose mean was maximum. Obviously the shift which is easier and in which maximum candidates are clearing the said examination would have maximum mean over the other shifts. The logic behind choosing the easier shift as base shift is that by doing so the possibility of lowering down of marks is eradicated. In simple words it can be said that when the marks of other shifts are brought equal to the marks of shift which has maximum highest score and mean in that scenario the marks of candidates from other shifts will increase and marks of no candidate will decrease or will be lowered down. Thus, this was the logic/reason for selecting the easier shift with highest score and maximum mean as base shift in case of both Male Constable and Female Constable. It is relevant to mention

here that to determine the easiest shifts, following three factors were considered;

i) Marks of Rank-1 of each shift and last candidate shortlisted in each shift but this method is not scientific as Rank-1 may have different level of knowledge.

ii) Average mean score of all the candidates in each shift calculated by statical formula. It is more reliable.

iii) The number of candidates in seven times on the basis of raw marks in written examination before calculating the percentile score. The easiest shift will have a greater number of candidates.

All the above factors were taken into account to select base shift and the Commission chose easiest shift as base shift as the mean of easiest base shift will be more and marks of candidates from other shift will increase accordingly.

12. That thus, the decision of Commission to select the easiest shift having least difficulty level as base shift was more reliable because by doing so none of the candidate will be losing marks as marks of other shifts which are comparatively tougher will increase slightly. It is scientifically proved that shortlisted candidates will remain the same whatever may be the base shift, it will not be going to affect the selected candidates but only increase or decrease the cut-off marks of selected candidates, in support of this argument the Commission will produce supporting data in a sealed cover of actual candidates who appeared in written examination. If we select easy shift then cut-off will be higher on the other side if difficult shift is selected as base shift, then the cut-off will be lowered but shortlisted candidates will remain the same. In this case, the cut-off marks are immaterial since there is no qualifying cut-off marks/percentage. It is only with a view to reduce the resentment among the candidates in terms of

marks that the easy shift was selected and the result remains unaffected by changing base shift.”

29. To advert for adjudicating the question in hand before proceeding further, it is imperative to examine difference between percentile/raw-marks and the normalized equi-percentile formula.

30. The percentile method of normalization can be understood in a simplified manner i.e. percentile of a candidate obtained in the respective shifts is calculated shift-wise. Suppose an examination is conducted in three shifts and the percentile is calculated for shift-1 shift-2 and shift-3 using formulae as under and thereafter files of all shifts are combined together into a single file:-

$$\text{Percentile} = \frac{\text{No. of candidates scored marks less than particular marks in the written examination in that particular respective shift (m)}}{\text{Total number of candidates appeared for the exam for that particular respective shift (n)}} \times 100$$

31. Now, percentile score of candidate having highest marks in that particular shift will always be 100.

32. Percentile marks of candidates are converted into equated score or normalized score so that an entity can be added to it for preparing the final merit list.

Formulae for equi percentile is as under:-

$$Y = Y1 + \frac{(Y2 - Y1)}{(X2 - X1)} * (X - X1)$$

Y= Equated score or normalized score

Y1= Marks corresponding to immediate lower percentile from Shift 1

Y2= Marks corresponding to immediate upper percentile from Shift 1

X1= Immediate lower percentile from Shift 1

X2= Immediate upper percentile from Shift 1

X= Percentile of candidate of respective shift.

33. In the case in hand one shift is taken as a base shift with reference to which the marks in other shifts are equated or normalized.

34. According to Indian Statistical Institute, following are the ways to select a base shift:-

(i) One of the shifts is chosen randomly. The entire array of actual raw marks from that should be the presumptive scale.

(ii) For each shift, find the mean of the raw marks. Choose the shift with the maximum mean. The raw marks in this shift may be chosen as the presumptive scale.

(iii) Choose the shift in which maximum number of candidates appeared for examination. The corresponding array of the actual raw marks in the shift would constitute the presumptive scale.

(iv) Combine the entire list of raw marks (across all shifts). This array would constitute the presumptive scale of marks.

35. From the above ways as suggested by the Indian Statistical Institute, it is clear that any shift can be taken as base shift randomly.

36. In the light of above discussion apparently there is no difference between percentile method and equi-percentile method. Both are rank based methods to work out the result. Moreover, if no extra marks are required further to this percentile score, which is the first stage of equi-percentile mode, the same is transparent, perfect and free of any error. In a scenario where nothing is to be added to the written examination marks, this formulae is successfully applied, as it raises raw marks of even 50 to 98.5 percentile largely depending upon the rank achieved by the candidate of a shift in which he appeared.

37. At the same time equi-percentile method is a step ahead which converts this percentile score into equated marks like raw marks in reference to a randomly selected base shift. It is not in dispute that all the normalization modes are actually statistical formula based on dispersion pattern having its own limitations. The limitation to the percentile formulae is that nothing can be added to it for reaching to a final score which otherwise may squeeze the difference of marks to a small percentile difference.

38. Therefore, it can be safely concluded to the mind of this Court that the percentile formula is perfect and error free wherein, nothing has been added to percentile and the equi-percentile formula at the same time perfectly calculated the equated marks, which has the duty of maintaining the candidate securing higher raw marks over and above the candidate securing lesser raw marks in the written examination in same set of paper or shift.

39. This Court is also sanguine of the fact that the criteria of selection as pointed out by the respondent-Commission, was knowledge test/written examination carries 80% weightage whereas, 10% weightage each was earmarked for the socio-economic status and for the additional qualification. It is on this basis the candidates were short listed to appear in the physical screening test as well as physical measurement test and thereafter who qualified were invited for document verification/scrutiny. In this way the marks obtained in the socio-economic status as well as for additional qualification are added to the marks of knowledge test/written examination and accordingly the final merit list was prepared.

40. At this stage, it is of utmost consideration to test the submissions of respondent-Commission, as to what necessitated the shifting in the

examinations under question before this Court from percentile to equi-percentile method, which as a matter of fact remain un-rebutted. The result for the post of Female Constable was declared on dated 15.12.2021 by adopting percentile method solely and additional marks either of socio-economic criteria or of addition qualification were added to percentile score, which exceeded the selection criteria of 100 marks examination. After the declaration of the final result of Female constable (GD), the candidates approached the Commission mentioning that raw marks of socio-economic criteria cannot be added to the percentile marks. The Commission went through the correspondence made with the Indian Statistical Institute (ISI) and it transpired that the Commission inadvertently did not specify that socio-economic marks are to be added in the written examination marks. The Commission approached ISI informing the same but the ISI informed that the marks for socio-economic criteria may be added to the percentile marks obtained by the candidates. However, the Commission kept on receiving the representations. Therefore, even after the declaration of the result of Female Constable (GD), the Commission again approached the ISI (Indian Statistical Institute), New Delhi and the ISI recommended equi-percentile method. Copy of the write-up recommending equi-percentile method is enclosed as Annexure R-3/4 with Short Reply.

41. Thereafter, in the result for the post of Female Constable declared on 17.06.2022, the entire result dated 15.12.2021 was taken as it is after excluding additional marks and the percentile scores of candidates were converted into equated score by applying equi-percentile formula and in the equated score so received marks of socio-economic criteria and additional

qualifications were added and final result was declared. Thus, the error which had crept in preparation of the result declared on 15.12.2021, which was challenged by number of candidates in the court, the same has been rectified by revising the result as per the suggestion of the institute i.e., Indian Statistical Institute. However, it is relevant to mention here that out of total 1100 candidates selected for the post of Female Constable (G.D) vide result dated 15.12.2021 only 188 candidates got ousted from result dated 17.06.2022 and remaining candidates remained same.

42. In the light of afore-said discussion, I am convinced to the effect that the percentile formula as the limitation that nothing can be added to a percentile to reach the final score, as it squeezes the larger gap of marks to a small percentile difference. This formula is apparently error free and would be perfect, if nothing is to be added to percentile. Further to add anything to a percentile, it is converted to equated marks and the equi-percentile formula perfectly calculates the equated marks and always keeps the candidate securing higher raw marks above the candidate securing lesser raw marks in written examination in same set of paper/shift.

43. The respondent-Commission has also successfully demonstrated before this Court as to what necessitated the introduction of equi-percentile mode of evaluation in the recruitment process. It was primarily on account of large number of applications i.e. 8,25,921 for the post of male constables as against 5500 advertised posts and to account for 1100 posts of female constables 2,54,985 applications were received. Subsequently, in the case of Constable (Male) a paper got leaked on 07.08.2021 and Commission was forced to introduce more than one question paper in each shift. The written

examination was conducted in several shifts and as such difficulty level in question papers for different shifts varied leading to change in the result to the extent that the maximum number of candidates who got highest score in the written examination will be those candidates who attempted the question paper which was relatively less difficult causing prejudice to the candidates who appeared in other shifts. At this stage, to maintain the transparency and fairness as well as to provide equal plain field to all the candidates, the Commission sought expert advise from the Indian Statistical Institute, New Delhi and finally adopted normalization procedure based on percentile method to calculate the final marks of candidates in multi shift examination. However, at this stage it transpired to the Commission inadvertently it did not specified the socio-economic marks which were to be added in the written examination marks and it again approached Indian Statistical Institute, who guided the respondent-Commission to add the socio-economic criteria to the percentile marks already obtained by the candidates. Though, dissatisfied with this procedure numerous representations were being received from the candidates and after declaration of the result of Female Constable (GD), the Indian Statistical Institute recommended equi-percentile method, which was applied in the form, as reproduced, hereinbelow, having reference from Annexure R-3/4:

***“Normalisation of Marks in Competetive Examinations for
Recruitment
Addendum to the Report sent in September and subsequent
communication in February
Abhay G. Bhatt
Indian Statistical Institute, Delhi Centre
March 03, 2022***

The earlier report submitted in September 2021 was with

the understanding that the recruitment process for the advertised posts is based on a single examination.

In December, when asked about incorporating the normalisation in further stages of the recruitment process, the first suggestion was to use the same normalised score marks for all stages of recruitment. This was also categorically borne out by a recent supreme court judgement.

It was pointed out to me that the suggested normalised score when added to the socio-economic marks gave rise to anomalies. e.g. Toppers in the written examination shifts but having very little or zero socio-economic marks failed to clear the final cut-off.

The following modification is suggested which would mitigate such an anomaly. The modified transformation is still based on percentiles.

This note is to further clarify the modification which was suggested through a communication in February.

Continuing with Normalisation in the 2nd stage

- 1. If the entire recruitment process is based only on a single exam, then the normalised score can be taken to be the percentile.*
- 2. Using the same 'normalised score' for all stages is always recommended. However, in the current situation, it seems to have given rise to several anomalies. As such, the following modification is suggested. The normalised score should still be based on percentiles.*
- 3. As prescribed earlier, for each candidate, the shift-wise percentiles can be found out. Once this is done, all the data across shifts should be combined. However, the percentiles are only an intermediate step in this case.*
- 4. The percentiles are pulled back onto a presumptive scale of marks. This can be chosen in many ways, but will be a fixed scale - i.e. same for all the candidates. Hence comparison of marks across shifts are still valid.*

5. Any such pull-back of the percentiles onto some presumptive scale is termed as equi-percentile method.?

6. As the term equi-percentile suggests, any two candidates with the same percentile, irrespective of the shift in which they wrote the examination, will have the same normalised score. Moreover, between any two candidates, the one with higher percentile will also have a higher normalised score.

7. The result of the pull-back would be the normalised score. These normalised score, which are assigned to each candidate, would be in a scale similar to the original one, though not exactly the same. Thus these normalised scores can be used at all future stages of the recruitment process.

Note that this normalised score is completely compatible with the percentiles. i.e. The rank for each and every candidate based on this normalised score will be exactly the same as the one based on percentiles. Hence any shortlisting done earlier based on percentiles alone, will be completely valid even with this new normalised score.

Possible choices for the presumptive scale

The term presumptive scale of marks indicates an array of numbers to which the percentiles would be pulled back.

For example, in the uniform scale, if the array consists of 2000 numbers then all of them would be equidistant.

While for the normal scale, the plot of the numbers in the array would show an inverted bell shaped curve - which indicates that there are fewer numbers at the top and bottom and many more near the mean or the centre.

While there is some level of arbitrariness involved in the choice of the scale, the purpose is to choose one which would be close to the actual distribution of marks in the written examination.

Here some possible choices for the presumptive scale are suggested.

- *One of the shifts is chosen randomly. The entire array of actual raw marks from that shift would be the presumptive scale.*
- *For each shift, find the mean of the raw marks. Choose the shift with the maximum mean. The raw marks in this shift may be chosen as the presumptive scale.*
- *Choose the shift in which maximum number of candidates appeared for the examination. The corresponding array of the actual raw marks in the shift would constitute the presumptive scale.*
- *Combine the entire list of raw marks (across all shifts). This array would constitute the presumptive scale of marks.*

Note that there is no specific reason for choosing one over the other. Possibly some other scale, different from any of the above, may also be chosen.

Converting percentiles into normalised score

Once the choice of the presumptive scale has been made (and fixed), the normalised scores can be found in the following manner. The following steps depend on only two inputs:

- *The percentile score of the candidate, say p .*

Note that $0 < p \leq 1$.

- *The presumptive scale, say ARRAY.*

and hence can be calculated separately for each candidate

1. *For the presumptive scale ARRAY, find percentile for each entry in the array. Let the corresponding array of percentiles be called as P-ARRAY. If scores in one of the shifts is used as ARRAY, these P-ARRAY would already have been recorded.*
2. *Consider the entry Y in ARRAY whose corresponding percentile in P-ARRAY is exactly equal to p , the candidate's percentile. If such a value Y exists,³ then Y is the normalised score for candidate with percentile p .*

3. *If the percentile p does not map exactly to any value in P-ARRAY as explained above, the normalised score Y for this p is found by linear interpolation.*

The interpolation can be achieved as follows.

- *Let p_1 denote the percentile from P-ARRAY which is immediately below (less than) p .*
- *Let p_2 denote the percentile from P-ARRAY which is immediately above (greater than) p .*
- *Let Y_1 denote the value in ARRAY corresponding to the percentile p_1 from P-ARRAY.*
- *Let Y_2 denote the value in ARRAY corresponding to the percentile p_2 from P-ARRAY.*
- *The normalised score Y for candidate with percentile p is then calculated as*

$$Y = Y_1 + \frac{Y_2 - Y_1}{p_2 - p_1} (p - p_1)$$

44. It is also not open to the candidates-petitioners to say that the changed method was not informed by the respondent-Commission, as there is no dispute during the course of hearing to the public notice dated 21.09.2021 vide which the information qua the Female Constable was provided and in the case of Male Constables, a public notice dated 25.10.2021 was issued i.e. before the conduct of written examination, which took place during the period in multiple shifts i.e. 31.10.2021 till 02.11.2021.

45. Further, this Court is also sanguine of the fact that the contention of petitioners to the effect that by adopting equi-percentile method, the value of the additional marks has been increased, the difference in marks has been decreased which gave rise to the value of additional marks, is not only misplaced but fallacious too. The merit was prepared on the basis of marks secured in the written examination and marks under socioeconomic criteria

and on assessment of the higher qualification. The marks under the category socioeconomic and higher qualification (total of 20 marks) are not based on any competitive examination, rather were assessed as per the record produced by the candidates.

46. In this way, this Court convincingly agrees to the assertion of the respondent-Commission that even without normalizing the marks of the candidates the additional marks, when added to the raw marks or unprocessed marks, would definitely make a difference in the merit list.

47. Now coming to the case law relied upon by the petitioners in **Vishnu Viswas and others (supra)**, it does not have any relevancy to the proposition involved in the instant bunch of petitions, as in that case the principle of “legitimate expectation” has been discussed, in **P. Mohanan Pillai (supra) and Vikas Sharma (supra)** the Apex Court held eligibility criteria and the procedure as was prevailing on the date of vacancy should ordinarily be followed. In the instant case there is neither any violation to the principle of legitimate expectation i.e. of providing equal opportunity under Articles 14 and 16 of the Constitution of India nor it is a case of diverting from the eligibility criteria or the procedure has been disturbed, rather the same has been followed in the whole process as was advertised at the time of inviting applications in the advertisement No.04/2020 (Annexure P-1).

48. Further the petitioners have made a valiant attempt to argue on the strength of **Anmol Tiwari and other (supra), Nidhi Kaim (supra)** and **Ramjit Singh Kardam and others (supra)** but all these judgments of the Supreme Court deal with a situation where *mala-fide* exercise of statutory powers has been alleged.

49. On the other hand to counter the afore-said case law, Ms. Shruti Jain put reliance on a recent judgment of the Supreme Court rendered in the case of “*State of Uttar Pradesh and others vs. State of Haryana and others*” 2022 (1) SCT 417 (to be checked) while dealing with an identical situation upheld the same formula of equi-percentile, which was also adopted in that case, subsequent to beginning of the process of selection wherein, more than 9 lakhs candidates applied and appeared for written examination, physical standard test and physical efficiency test, held that the exercise undertaken by the Board in adopting the process of normalization was quite consistent and well within its jurisdiction having no allegation of *mala-fide* or absence of *bona-fide* at any juncture of the process.

50. It is in fact not a change in the criteria to be adopted for selection i.e. still as per the advertisement No.04/2020 (Annexure P-1) by way of written examination, socio-economic criteria and higher qualification criteria but is actually the process of evaluation after giving equal playing-field ruling out the difficulty levels in various shifts of the question papers before preparing the ranking and selection list. These are technical matters in the academic field, which should not be interfered with by the Court unless there is violation of any law, mala-fide or arbitrariness to which the petitioners have failed to establish and the Apex Court in clear terms has held on the same lines in *Sanchit Bansal and another vs. Joint admission Board; 2012 (1) SCC 157.*

51. This Court having made exhaustive consideration after testing the submissions of both sides in the light of terms and conditions particularly keeping in mind the process and criteria, of selection would conclusively

record here that the equi-percentile formula is quite accurate as adopted by respondent-Commission which had otherwise also wide acceptance all over the result where any additional marks are to be added to the written marks, which also adopted by the UPSC, and in the examination of GATE as well as NEET-PG. In case for the sake of argument this formula is discarded then results of all these examination would be liable to be declared invalid as normalization is adopted in these examination as well between different subjects to reach a common equi-percentile score.

52. I, therefore, disagree with the contentions of the petitioners having found force in the stance taken by the respondent-Commission, uphold the selection in question and the formula adopted by the respondent-Commission.

53. Resultantly, the writ petitions fail, hence, are ordered to be dismissed, having no merit.

54. Pending miscellaneous application, if any shall stands disposed of.

54. A copy of this order be placed on the file of connected cases.

(SANDEEP MOUDGIL)
JUDGE

11th AUGUST, 2023
Sham

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>