

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CWP-1563-2024 (O&M)
Reserved on 23.04.2024
Date of Decision:31.05.2024

SUKRITI MALIK*Petitioner(s)*
V/s.
STATE OF HARYANA AND OTHERS*Respondents*

2. CWP-25781-2023 (O&M)

VARUN BHARDWAJ Petitioner(s)

V/s.

STATE OF HARYANA AND ANOTHER Respondents

3. CWP-28289-2023 (O&M)

ARUNA KUMARI AND OTHERS*Petitioner(s)*

V/s.

STATE OF HARYANA AND OTHERS*Respondents*

4. **CWP-17365-2023 (O&M)**

VIJENDRA KUMAR SWAMI*Petitioner(s)*

STATE OF HARYANA AND OTHERS V/s.*Respondents*

5. **CWP-1842-2024 (O&M)**

PAWAN KUMAR Petitioner(s)

V/s.

STATE OF HARYANA THROUGH ITS PRINCIPAL SECRETARY,
DEPARTMENT OF SCHOOL EDUCATION

.....Respondents

6. **CWP-6731-2024 (O&M)**

DEEPAK*Petitioner(s)*

STATE OF HARYANA AND OTHERS V/s.*Respondents*



7. CWP-1946-2024 (O&M)
SANDEEP AND OTHERS Petitioner(s)
V/s.
STATE OF HARYANA AND ANOTHER Respondents

8. CWP-4774-2023 (O&M)
KULDEEP SINGH Petitioner(s)
V/s.
STATE OF HARYANA AND OTHERS Respondents

9. CWP-605-2023 (O&M)
ARPIT GAHLAWAT Petitioner(s)
V/s.
STATE OF HARYANA AND OTHERS Respondents

10. LPA-1037-2023 (O&M)
HARYANA STAFF SELECTION COMMISSION Appellant (s)
V/s.
RAHUL AND ANOTHER Respondents

11. LPA-1245-2023 (O&M)
HARYANA STAFF SELECTION COMMISSION Appellant (s)
V/s.
ANIRUDH AND ANOTHER Respondents

12. LPA-1237-2023 (O&M)
HARYANA STAFF SELECTION COMMISSION Appellant (s)
V/s.
SATYAPAL AND OTHERS Respondents

13. LPA-1253-2023 (O&M)
HARYANA STAFF SELECTION COMMISSION Appellant (s)
V/s.
ANIL KUMAR AND OTHERS Respondents



14. LPA-1244-2023 (O&M)

HARYANA STAFF SELECTION COMMISSION Appellant (s)

V/s.

PARVEEN KUMAR AND OTHERS*Respondents*

15. LPA-1256-2023 (O&M)

HARYANA STAFF SELECTION COMMISSION Appellant (s)

V/s.

DEVENDER AND OTHERS*Respondents*

16. LPA-1273-2023 (O&M)

HARYANA STAFF SELECTION COMMISSION Appellant (s)

V/s.

SANJAY KADIAN AND OTHERS*Respondents*

17. *LPA-1264-2023 (O&M)*

HARYANA STAFF SELECTION COMMISSION Appellant (s)

 $V/s.$

MADHU AND ANOTHER*Respondents*

18. LPA-1271-2023 (O&M)

HARYANA STAFF SELECTION COMMISSION Appellant (s)

V/s.

AJAY KUMAR AND OTHERS *.....Respondents*

19. LPA-1270-2023 (O&M)

HARYANA STAFF SELECTION COMMISSION Appellant (s)

V/s.

AHMED AND OTHERS*Respondents*

20. LPA-1268-2023 (O&M)

HARYANA STAFF SELECTION COMMISSION Appellant (s)

 $V/s.$

ANGREZ AND ANOTHER*Respondents*

21. *LPA-1267-2023 (O&M)*

HARYANA STAFF SELECTION COMMISSION Appellant (s)

 $V/s.$

AJAY AND ANOTHER*Respondents*



22. LPA-1272-2023 (O&M)
HARYANA STAFF SELECTION COMMISSION Appellant (s)
V/s.
SANDEEP KUMAR AND OTHERS Respondents

23. LPA-1261-2023 (O&M)
HARYANA STAFF SELECTION COMMISSION Appellant (s)
V/s.
PANKAJ KUMAR AND ANOTHER Respondents

24. LPA-1277-2023 (O&M)
HARYANA STAFF SELECTION COMMISSION Appellant (s)
V/s.
ISMILE KHAN AND OTHERS Respondents

25. LPA-1262-2023 (O&M)
HARYANA STAFF SELECTION COMMISSION Appellant (s)
V/s.
PARVEEN AND OTHERS Respondents

26. LPA-1276-2023 (O&M)
HARYANA STAFF SELECTION COMMISSION Appellant (s)
V/s.
NITESH KUMAR AND OTHERS Respondents

27. LPA-1028-2023 (O&M)
SEEMA SAROHA AND OTHERS Appellant (s)
V/s.
STATE OF HARYANA AND OTHERS Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Saurabh Bajaj, Advocate
for the appellant in LPA-1028-2023.

Mr. Divyank Shukla, Advocate and Ms. Nikita Goel, Advocate
with Mr. Hitesh Pandit, Advocate,
for respondent Nos. 2 to 5 in CWP No. 605-2023.



Mr. Sarthak Gupta, Advocate
for the petitioners in CWPs No. 25781 & 28289 of 2023.

Mr. Prashant Singh Chauhan, Advocate,
Mr. Himanshu Munjal, Advocate with
Mr. Aman Yadav, Advocate and
Mr. Sumit Chahal, Advocate
for the petitioners in CWP-4774-2023.

Mr. Ravinder Singh Dhull, Advocate
for the petitioners in CWP-17365-2023.

Mr. R.S. Malik (Ravi) and Ms. Sukriti Malik, Advocates
for the petitioners in CWPs No.1842, 6731 and 1563 of 2024.

Mr. D.S. Patwalia, Senior Advocate, assisted by
Mr. Kannan Malik, Advocate
for the respondents in LPA-1037-2023.

Mr. B.R. Mahajan, Advocate General, Haryana assisted by
Ms. Shruti Jain Goyal, Senior DAG, Haryana,
Mr. Hitesh Pandit, Addl. A.G., Haryana,
Mr. Divyansh Shukla, Advocate and
Ms. Nitika Goel, Advocate for the respondents

SANJEEV PRAKASH SHARMA, J.

1. The present two batches of cases essentially raise connected issues. While one batch is of the LPAs preferred against the order dated 04.08.2023 passed by the learned Single Bench wherein it was directed that the examination which was to be held on 05.08.2023 and 06.08.2023 by the Haryana Staff Selection Commissioner (hereinafter referred to as “the Commission”) for Groups-C and D shall remain stayed and would be held only after the revised merit list of Common Eligibility Test (CET) is published in terms of the judgment. It also proceeded to set aside the result of the CET held on 05/06.11.2022.



2. In the batch Writ Petitions which were heard together, the challenge is to the addition of 5% bonus marks on the basis of the socio economic criteria of the candidate to the total percentage of marks obtained by him in the CET. The Writ Petitions challenged the introduction of the socio economic criteria in the subsequent examination for appointment for the post also whether it is provided to add 2.5% marks to the total marks obtained in the examination for selection for Groups C and D posts.

3. In the LPA filed by the State, is against the order of learned Single Judge dated 04.08.2023 whereby the learned Single Judge has set aside the result of the CET declared by the respondents which was made a basis for participation in the main examination conducted for selection for various posts of Groups C and D.

4. Since both the issues in the LPAs and Writ Petitions are interrelated, we have decided to hear them together and although, we have heard the case relating to LPA earlier, we decided to hear both the batches afresh together after noticing the submissions of learned counsel respectively in all the cases.

5. Before we deal with the arguments of the appellants (Commission) in the batch of LPAs and the writ petitioners in the batch of Writ Petitions, who have challenged the socio economic criteria, it would be apposite to mention the brief facts which have culled out from the judgment passed by the learned Single Judge as well as from the facts as have come on record in the pleadings.

6. The State of Haryana issued a notification dated 05.05.2022 laying down the Policy for Recruitment to Group C and D posts by



conducting a Common Eligibility Test known as CET. It would be apposite to quote certain clauses of the gazette notification dated 05.05.2022 for alluding at appropriate place while deciding these cases.

“2. **Definitions:-**

XXXXXXX

- (iv) ‘CET’ marks means the marks obtained by an applicant in CET;
- (v) ‘CET Score’ means the CET marks plus the marks of socio-economic criteria weightage, admissible if any;

XXXXXXX

- (xi) 'Marks of Socio-economic criteria weightage' means the marks on account of weightage of socioeconomic criteria and experience, if any, upto the specified limit. It is admissible for-

- (a) determination of CET Score of an applicant for Group C posts as per provision in Annexure-A to this policy;
- (b) for determination of marks of skill and/or written examination obtained by a candidate for Group C posts, as per provision in Annexure-B to this policy; and
- (c) determination of CET Score of an applicant for Group D posts, as per provision in Second Schedule to Haryana Group D Employees (Recruitment and Conditions of Service) Act, 2018 (5 of 2018);

- (xii) 'Parivar Pehchan Number' means the family identification number issued under section 5 of the Haryana Parivar Pehchan Act, 2021 (20 of 2021);

- (xiii) "Total of CET marks' means the total of the maximum marks of CET and maximum marks of socio-economie criteria weightage;

- (xiv) Total marks of skill and/or written examination of a post' means total of the maximum marks of skill and/or written examination and maximum marks of socio-economic criteria weightage;

XXXXXXXXX



7. **CET EXAMINATION AND MARKS FOR GROUP-C POSTS:**

(i) An applicant who intends to apply for direct recruitment to any applicable Group C post shall have to appear in CET for Group C posts.

(ii) XXXXXXXX

(iii) XXXXXXXX

(iv) XXXXXXXX

(v) Every applicant, who appears in the CET, shall be given marks based on his performance in the CET. An applicant of general category shall have to obtain minimum 50% marks in CET (excluding the socio-economic criteria weightage) to be eligible for skill and/or written examination of second stage, however, an applicant of reserved category (both vertical and horizontal) shall receive concession @ 10%, for the purpose of eligibility for CET, i.e. the minimum cut-off for such candidates shall be 40% (excluding the socio-economic criteria weightage). An applicant of any category, who obtains less than the minimum marks in CET, shall have to re-appear in CET in the next or any subsequent attempt.

(vi) XXXXXXXX

(vii) An applicant shall be eligible to reappear in CET whenever conducted on a subsequent date and the CET marks shall be revised if the applicant improves it in the next or any subsequent attempts.

(viii) There shall be no restriction on the number of attempts to appear in the written examination component of the CET. If an applicant who has already qualified the CET for Group C post will have the option to appear again in CET to improve his CET marks in the next or any subsequent occasion, if he so desires.

(ix) The CET marks obtained by an applicant shall be valid for a period of three years from the date of declaration of the result of CET. Provided that if an applicant improves his CET marks in the next or any subsequent attempt, then the fresh period of validity of three years will commence from the date of declaration of result of such attempt.

(x) For clarification on validity of CET marks, see Illustration No. I at Annexure-C of this Policy.



For calculation of CET score of an applicant, the marks obtained in the CET shall be added to the score, if any, on account of socio-economic criteria weightage to arrive at the CET score of the applicant. The calculation methodology for arriving at the CET score has been illustrated at Illustration No. 2 at Annexure-C.

(xi) XXXXXX”

7. The same criteria were also notified for Group-D posts in Clause 8 of the said notification, which reads as under:-

“8. **CET EXAMINATION AND MARKS FOR GROUP D POSTS:**

(i) An applicant who intends to apply for direct recruitment to any applicable Group D post shall have to appear in the CET for Group D posts.

(ii) The Commission shall issue an advertisement for Group D posts based on requisition received from the Departments of State Government or any Board, Corporation, statutory body or any other agency owned and controlled by the State Government stating its intent to conduct the CET.

(iii) An applicant who does not possess the CET minimum educational qualification specified for CET but has attained the minimum age before the last date of registration for CET on the designated portal and is due to appear for the examination to attain the appropriate educational qualification during the year in which the CET is conducted, shall also be eligible to appear in the CET:

Provided that such applicant shall not be eligible to apply for selection against the advertised posts like other eligible candidates of similar category having equal to or lesser CET marks until he acquires the minimum essential educational qualification and/or experience, if any, specified for that post by the last date for attaining such minimum qualification specified in the advertisement issued by the Commission.

(iv) An applicant who has not attained the minimum age or who has crossed the maximum age limit prescribed by Government for entry into Government service for Group C post as on the last date fixed in the advertisement published by



the Commission for registration for CET shall be ineligible to appear in CET. The relaxation in upper age limit to the applicants of Scheduled Castes, Backward Classes and other categories and of experience shall be admissible as per rules or instructions issued by Government from time to time.

(v) Every applicant, who appears in the CET, shall be given marks based on his performance in the CET. An applicant of general category shall have to obtain minimum 50% marks in CET (excluding the socio-economic criteria weightage), however, an applicant of reserved category (both vertical and horizontal) shall receive concession @ 10%, for the purpose of eligibility for CET i.e. minimum cut-off for such candidates shall be 40% (excluding the socio-economic criteria weightage). An applicant of any category who obtains less than the minimum marks in CET he shall have to re-appear in CET the next or any subsequent attempt.

(vi) The CET marks of applicants shall be declared on the website of the Commission.

(vii) An applicant shall be eligible to re-appear In CET whenever conducted on a subsequent date and the CET marks shall be revised if the applicant improves it in the next or any subsequent attempts.

(viii) There shall be no restriction on the number of attempts to appear in the written examination component of the CET. If an applicant who has already qualified the CET for Group D post will have the option to appear again in CET to improve his CET marks in the next or any subsequent occasion, if he so desires:

(ix) The CET marks obtained by an applicant shall be valid for a period of three years from the date of declaration of the result of CET. Provided that if an applicant improves his CET marks in the next or any subsequent attempt, then the fresh period of validity of three years shall commence from the date of declaration of result of such attempt.

For clarification on validity of CET marks, see Illustration No.I at Annexure-C of this policy.

(x) For calculation of CET score of an applicant, the marks obtained in the CET shall be added to the score, if any, on account of socio-economic criteria weightage to arrive at



the CET score of the applicant. The calculation methodology for arriving at the CET score has been illustrated at lustration No. 3 at Annexure-C for ease of understanding.

(xi) CET marks and the marks of socio-economic criteria weightage, if any, shall be declared on the website of the Commission In respect of the applicants who have achieved the specified cut-off as per sub-clause (v) above.”

8. In the said notification procedure for recruitment of Group C posts and Group D posts was also laid down and for the purpose, it would be apposite to quote the process for recruitment of Group C posts, which reads as under:-

“9. **PROCESS FOR RECRUITMENT OF GROUP C POSTS:**

(i) After publication of CET Score in accordance with sub-clause (xi) of clause 7 above, the posts available for recruitment shall be advertised by the Commission along with the syllabus, procedure/manner of conducting skill and/or written examination of the advertised posts and last date for attaining minimum educational qualifications and/or experience. On the advertisement being issued, the Commission shall invite applications electronically of the eligible candidates based on the merit list of CET Score to know whether the candidate is willing to appear for skill and/or written examination for that post.

Provided that the maximum number of eligible candidates for the skill and/or written examination who shall be eligible to appear in such examination based on number of posts advertised by the Commission as under:-

- (a) candidates equal to five times the number of posts advertised if the number is less than 30;*
- (b) 150 candidates if the number is between 30 and 40;*
- (c) Candidates equal to four times the number of posts advertised if the number is greater than 40;*

The eligible candidates shall apply electronically on the website of the Commission using their Registration Number.



The last date for submission of application shall also be mentioned in the advertisement by the Commission.

(ii) If the CET score of the last candidate who has applied for the post in terms of sub-clause (i) above is achieved by more than one candidate, then all the candidates at the cut off CET score who have applied for the post shall be entitled to be considered for appearing in the skill and/or written examination for the posts) advertised by the Commission.

(iii) Only those candidates, who fulfill the minimum educational qualifications and other eligibility conditions for a post advertised by the Commission as on the last date specified in the advertisement issued by the Commission under sub-clause (i) above who applied for the post for consideration shall be issued an Admit Card and be eligible to appear in the skill and/or written examination to be conducted by the Commission.

(iv) On receipt of requisitions of the posts of different nomenclature but of similar educational qualifications, the Commission shall be competent to hold one common skill and/or written examination with the condition that the distribution/allocation shall be on merit-based option given by the successful candidates.

(v) XXXXXXXX

(vi) For consideration of a candidate against a post of general category, such candidate has to secure minimum 50% marks (excluding socio-economic criteria weightage) in the skill and/or written examination to be considered for selection/recruitment. In case of consideration against the reserved category post (whether vertical or horizontal) the candidate shall receive a concession @ 10% for the purpose of eligibility for the purpose of skill and/or written examination, i.e. the minimum cut off for such candidates shall be 40% (excluding socio-economic criteria weightage) because they have been given 10% concession in minimum marks.

For calculation of marks of skill and/or written examination of Group C post, see Illustration No. 4 at Annexure-C of this Policy.



(vii) *The Commission shall on the basis of marks obtained in the written/skill examination and the socio economic criteria weightage @ 2.5%, admissible if any, shortlist the candidates for selection, recommendation or waiting list in the respective categories and publish on the website in accordance with clause 12.*

For calculation of total marks of skill and/or written examination of a candidate, the marks obtained in skill and/or written examination shall be added to the score, if any, on account of socio-economic criteria weightage to derive at the total marks of skill and/or written examination of the candidate. The calculation methodology for deriving at the total marks of skill and/or written examination of a candidate has been illustrated at Illustration No.5 at Annexure-C for ease of understanding.

Save as otherwise provided in any instructions of Government, in case of non-availability of eligible candidate(s) of respective category after the skill and/or written examination for the post which remain unfilled shall be re-advertised as per reservation policy. A clear mention of this condition shall be made in the advertisement issued by the Commission.”

SOCIO ECONOMIC CRITERIA

9. The socio-economic criteria for CET for Group-C Posts was laid down as under to be alluded at the relevant time:-

“Annexure – A

[See Sub-clause (xi) of clause 2]

SOCIO ECONOMIC CRITERIA FOR COMMON ELIGIBILITY TEST FOR GROUP C POSTS

Maximum five percent socio-economic criteria weightage in CET shall be admissible to eligible candidates under the following circumstances:-

(1) *An applicant who is bonafide resident of Haryana shall be entitled to 5% weightage provided that -*

(i) *neither he himself nor any person from amongst the applicant's family is/was or has been a regular employee in any Department/ Board/ Corporation/ Company/ Statutory Body/ Commission/ Authority of*



Haryana Government or any other State Government or Government of India; and

(ii) gross annual income of family from all sources i.e., salary, agriculture, business, profession etc. for the financial year prior to the year of application should be less than one lakh eighty thousand rupees only.

Note. - Regarding (i) and (i), it shall be confirmed from the data of Parivar Pehchan Patra and/or HRMS.

Explanation.- The term 'regular employee' does not include a person who is working on contractual basis, daily wages or as a Guest Teacher, Anganwari Workers, etc.

(5 %)

(2) The definition of Family for the purpose of Socio-Economic Criteria:-

(i)	Male applicant means the applicant himself, his father, mother, wife, unmarried brother(s) and son(s);
(ii)	Female un-married applicant means the applicant herself, her father, mother and unmarried brother(s)
(iii)	Female married applicant means the applicant herself, her husband, father-in-law, mother-in-law, unmarried brother-in-law and son(s).
(iv)	Divorced female applicant means the applicant herself, her father, mother, unmarried brother(s) and son(s);

(3) If the applicant being a bonafide resident of Haryana is:-

(i)	A widow; or
(ii)	The first or the second child and his father had died before attaining the age of forty two years; or
(iii)	the first or the second child and his father had died before the applicant had attained the age of fifteen years;

shall be entitled to 5% weightage subject to entries in Parivar Pehchan Patra or certificate issued by the competent authority in the specified proforma.

(5 %)

(4) If the applicant being a bonafide resident of Haryana belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of the State which is neither a Scheduled Caste nor a Backward Class shall be entitled to 5% weightage.

(5 %)

(5) If the applicant being a bonafide resident of Haryana, he shall be awarded half percent weightage for each year or part thereof exceeding six months of experience, on the same or a higher post in any



Department/Board/ Corporation/ Company/ Statutory Body/ Commission/ Authority/Co-operative Banks etc. under Haryana Government. No weightage of experience shall be awarded for any period less than six months or for a period exceeding eight years.

(Maximum 4 %)

Note.- No condition of gross family income and employment of any family member in service shall be applicable for the purpose of weightage of experience.

(6) Other Conditions:

(i) No applicant shall be given more than a total of 5% socio-economic criteria weightage under any circumstances. Thereby, if an applicant is eligible for more than 5% socio-economic criteria weightage in terms of provision in Para (1) to (5) above, the socio-economic criteria weightage shall be maximum 5%.

(ii) The weightage by Haryana Staff Selection Commission or any other recruiting agency/body under Haryana Government shall be given only once in a lifetime for appointment on regular basis to a post of Group C or D

(iii) If a person himself or his family member is once selected/appointed with or without getting the benefit of weightage, no other family member shall be considered for weightage for selection/appointment to the same or any other post for which application has been submitted by any member of the family, as defined in para 2 above.

Explanation.— *The term 'once selected/appointed' does not include the person whose services are terminated due to revision of selection list declared in compliance of the directions of Hon'ble High Court or any other competent authority, in such case that selection/ appointment shall be ignored for this purpose.*

(iv) If at a time two or more family members become eligible for merit list of CET of the Group C and/or Group D posts and are eligible to be considered for the Socio-economic Criteria weightage in such case the elder/eldest amongst the two or more eligible family members respectively will be considered for the purpose of socio-economic criteria weightage. However, the weightage of experience shall be admissible to more than one family member, if any, based on para (5) above.

(v) If a person resigns from government service while working on regular basis in any Department/ Board/Corporation under Haryana Government, any State Government or Government of India on whatsoever



reason, he or any other family member shall not be eligible to claim the socio-economic criteria weightage again.”

10. The socio-economic criteria skill and/or written examination for Group C posts to be alluded at the relevant time reproduced as under:-

ANNEXURE-B
[See sub-clause (xi) of clause 2]
Socio Economic Criteria for Skill and/or Written Examination for Group C Posts
Maximum two and a half percent socio-economic criteria weightage in skill and/or written examination shall be admissible to eligible candidates under the following circumstances:-

[I] An applicant who is bona fide resident of Haryana shall be entitled to 2.5% weightage provided that -

- (i) neither he himself nor any person from amongst the applicant's family is/was or has been a regular employee in any Department/ Board/ Corporation/ Company/ Statutory Body/ Commission/ Authority of Haryana Government or any other State Government or Government of India; and*
- (ii) gross annual income of the family from all sources i.e., salary, agriculture, business, profession etc. for the financial year prior to the year of application should be less than one lakh eighty thousand rupees only.*

Note. - Regarding (i) and (ii), it shall be confirmed from the data of Parivar Pehchan Patra and/or HRMS.

Explanation. — The term 'regular employee' does not include a person who is working on contractual basis,daily wages or as a Guest Teacher, Anganwari Workers, etc.

(2.5%)

(2) The definition of Family for the purpose of Socio-Economic Criteria-

(i)	Male applicant means the applicant himself, his father, mother, wife, unmarried brother(s) and son(s);
(ii)	Female un-married applicant means the applicant herself, her father, mother and unmarried brother(s)
(iii)	Female married applicant means the applicant herself, her husband, father-in-law, mother-in-law, unmarried brother-in-law and son(s).
(iv)	Divorced female applicant means the applicant herself, her father, mother, unmarried brother(s) and son(s);



(3) If the applicant being a bonafide resident of Haryana is:-

(i)	A widow; or
(ii)	the first or the second child and his father had died before attaining the age of forty two years; or
(iii)	the first or the second child and his father had died before the applicant had attained the age of fifteen years;

shall be entitled to 2.5% weightage subject to entries in Parivar Pehchan Patra or certificate issued by the competent authority, in the specified proforma,

(2.5%)

(4) If the applicant being a bonafide resident of Haryana belongs to such a denotified tribe (Vimukt Jatis and Tapriwas Jatis) or Nomadic tribe of the State which is neither a Scheduled Caste nor a Backward Class shall be entitled to 2.5% weightage.

(2.5%)

(5) If the applicant being a bonafide resident of Haryana, he shall be awarded half percent weightage for each year or part thereof exceeding six months of experience, on the same or a higher post in any Department/Board/ Corporation/ Company/ Statutory Body/ Commission/ Authority/Co-operative Banks etc. under Haryana Government. No weightage of experience shall be awarded for any period less than six months or for a period exceeding eight years.

(Maximum 4%)

Note.— No condition of gross family income and employment of any family member in service shall be applicable for the purpose of weightage of experience.

(6) Other Conditions:

(i) No applicant shall be given more than a total of 2.5% socio-economic criteria weightage under any circumstances. Thereby, if an applicant is eligible for more than 2.5% socio-economic criteria weightage in terms of provision in para (1) to (5) above, the socio-economic criteria weightage shall be maximum 2.5%.

(ii) The weightage by Haryana Staff Selection Commission or any other recruiting agency/body under Haryana Government shall be given only once in a lifetime for appointment on regular basis to a post of Group C or D.

(iii) If a person himself or his family member is once selected/appointed with or without getting the benefit of weightage, no other family member shall be considered for weightage for



selection/appointment to the same or any other post for which application has been submitted by any member of the family, as defined in para 2 above.

Explanation.— *The term 'once selected/appointed' does not include the person whose services are terminated due to revision of selection list declared in compliance of the directions of Hon'ble High Court or any other competent authority, in such case that selection/appointment shall be ignored for this purpose.*

(iv) If at a time two or more family members become eligible for merit list of CET of the Group C and/or Group D posts and are eligible to be considered for the Socio-economic Criteria weightage in such case the elder/eldest amongst the two or more eligible family members respectively will be considered for the purpose of socio-economic criteria weightage. However, the weightage of experience shall be admissible to more than one family member, if any, based on para (5) above.

(v) If a person resigns from government service while working on regular basis in any Department/ Board/Corporation under Haryana Government, any State Government or Government of India on whatsoever reason, he or any other family member shall not be eligible to claim the socio-economic criteria weightage again.”

11. Vide amendment dated 31.05.2022, certain Class of posts were included in Group-C and sub clause 3 (iii) providing minimum educational qualification was also amended of the notification dated 05.05.2022. The syllabus for CET was also substituted and Clause (iv) was substituted. However, for the present controversy, we may not be required to notice the said notification to the aforesaid extent.

12. Interestingly another gazette notification was issued on 20.02.2023 by the Human Resources Department, Haryana Government whereby following amendment was made to the notification dated 05.05.2022 as quoted previously in Annexure A and B as under:-



(I) In Annexure-A:-

- (i) *in para (1), the words "who is bonafide resident of Haryana" shall be, omitted;*
- (ii) *in para (3), the words "being a bonafide resident of Haryana" shall be omitted;*
- (iii) *in para (4), the words "being a bonafide resident of Haryana" shall be omitted;*
- (iv) *in para (5), for the words and sign "if the applicant being a bonafide resident of Haryana, he" the words "The applicant" shall be substituted;*

(II) In Annexure-B:-

- (i) *in para (1), the words "who is bonafide resident of Haryana" shall be, omitted;*
- (ii) *in para (3), the words "being a bonafide resident of Haryana" shall be omitted;*
- (iii) *in para (4), the words "being a bonafide resident of Haryana" shall be omitted;*
- (iv) *in para (5), for the words and sign "if the applicant being a bonafide resident of Haryana, he" the words "The applicant" shall be substituted;"*

13. Before we deal with the submissions raised by the learned counsel for the petitioners relating to the challenge of socio economic criteria, we deem it appropriate to decide the preliminary objection taken by the State of Haryana with regard to the maintainability of the Writ Petitions.

14. Learned Advocate General, Haryana raised a preliminary objection to the maintainability of the Writ Petitions on the ground that the petitioners had participated in the selection process and before the result was declared, the petitioners have filed these Writ Petitions. It is submitted that the Written Tests were conducted on 29.04.2023, 30.04.2023, 13.05.2023 and 14.05.2023 and the selection criteria was laid down under the advertisement on 21.02.2023. However, the Writ Petitions were filed on 12.12.2023. The



earlier Writ Petition which was pending before this Court, challenge has been made to the socio economic criteria, where 20 marks were being awarded, while, in the present advertisement, only 5% weightage in respect of the socio economic criteria has been applied. If the socio economic criteria is amended or set aside it will affect all the candidates who had participated in the examination and the Rules of the examination cannot be changed in a mid-way. Therefore, he submits that the Writ Petitions should be dismissed on this count only.

15. The petitioners on the other hand submitted that the socio economic criteria has resulted in changing the complete result of the examination. Candidates who were otherwise lower in merit, have been placed in the merit by giving them 5% additional marks under the garb of socio economic criteria. Further 2.5% marks were also to be given to them in the main result which would be published after the examination has been conducted resulting in the higher meritorious candidates being ousted.

16. It is submitted that principal of estoppel would not apply as the candidates agreeing to participate in the examination cannot be considered to have agreed to illegality being committed.

17. In a recent judgment Dr.Meeta Sahai Vs. State of Bihar; 2019 (20) SCC 17 the apex Court had held that the candidate agreeing to participate only accepts prescribed procedure and not the illegality in it. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution unless he/she participates in the selection process.



18. In view of the succinct law aforesaid, we reject the contentions raised by the learned Advocate General, Haryana that the Principles/Rules of the game cannot be changed in a mid way, would have no application to the present case. If an illegal procedure has been adopted, this Court cannot close its eyes and allow illegality to perpetuate. Since, the socio economic criteria would have application in all the fields, and we have heard the arguments at length on the merits, we reject the preliminary objections raised by the learned Advocate General, Haryana and hold the Writ Petitions to be maintainable.

Validity of the Socio Economic Criteria

19. The socio economic criteria for Groups C and D posts has been referred to in Annexure-A (Supra). A look at the Annexure along with amendments made vide notification dated 20.02.2023 reflects that 5% weightage has been provided to a candidate on different accounts. It is submitted that the percentage of marks as awarded under Annexure A (Supra) is wholly violative of Articles 14, 15 and 16 of the Constitution of India and it creates an artificial classification amongst equals on the basis of residence, family, income, place of birth and the status in the Society. It is submitted that before laying down the socio economic criteria, neither quantifiable data was collected nor any extensive study for the purpose of introduction of socio economic criteria was conducted. No commission was also constituted. It is submitted that merely because a candidate's family member is a regular employee of the State Government or Government of India, cannot be a reason to deprive him or lowering down his merit in comparison whose family member is not an employee with the Government although he/she may



be son or daughter of a businessman, doctor, shop keeper or a lawyer. It is submitted that socio economic criteria adopted for grant of bonus marks, has no nexus to the purpose sought to be achieved.

20. Reliance has been placed on the judgments rendered by the apex Court in the cases of “Pardeep Jain Vs. Union of India” ; 1984 AIR (SC)1420, “Kailash Chand Sharma Vs. State of Rajasthan and Others” ; 2002 (6) SCC 562, “V.N. Sunanda Reddy Vs. State of Andhara Pradesh” ; AIR 1995 SC 914 and judgment passed in CWP-11071-2011 by the Full Bench of this Court in Abhishek Rishi Vs. State of Punjab; ILR (2013) P&H 957. The same shall be referred at the relevant part.

21. The State of Haryana’s case as per their written submissions is as under:-

“1. The notification dated 30.12.2021 was repealed the Chief Secretary to Govt. of Haryana notified the Common Eligibility Test for Group C & D posts vide notification dated 05.05.2022. The selection criteria for the group- C posts is already mentioned under para -2 of this notification. As per the sub-clause 2 of section 2 of definitions it was specified that the teaching posts are not included/covered under this notification. Therefore, when the requisition for recruitment of TGT posts was received from the Director Elementary Education, Haryana the answering respondent approached the O/o the Chief Secretary to Govt. of Haryana by way of letter dated 13.01.2022 and requested them to guide regarding the criteria to be adopted for selection to the post of TGT Category. The O/o The Chief Secretary to Govt. of Haryana vide dated 25.03.2022 specified the criteria for conducting exam for teaching posts of group -C as under:-

"No CET Exam

Written Examination: 95 marks

Socio-economic Criteria: 5% weightage



Waiting list as per other Group C Posts."

Therefore, accordingly the said criteria, as specified was adopted. As regards the socio economic criteria, it is submitted that the same criteria as laid down in the CET notification dated 05.05.2022 was adopted. The said criteria was duly mentioned under para 12(1) of the Advertisement no. 2/2023 dated 21.02.2023.

XXX

XXXX

XXX

1. Equality code i.e. Article 14, 15 & 16 of the Constitution mandates that all citizens of the country are treated alike. At the same time, it also casts a duty upon the State to achieve the ultimate goal of substantive equality so that 'equality' which is the underlying principle of the Constitution is not reduced to a mere 'farce'.

2. Our society is a diversified society where every citizen does not have equal access to opportunities for their social and economic development due to multitude of socio-economic factors prevailing in the society. Some members of the society are unequals with other members in respect of ability and qualification for public employment. They are unable to compete in terms of absolute equality with the members of other communities and groups in the society. Hence, in order to make them compete on conditions of equality with others in respect of jobs and employments of the State certain relaxations and other factors ensuring equality are imperative.

** Ram Bhagat and Anr. Vs. State of Haryana, 1997(11) SCC*

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3. Therefore, the framers of the Constitution have empowered the State Government to make special provisions for persons who belong to such disadvantaged and weaker sections of the society. The Article 15(3) of the Constitution of India reads as under: -

"Nothing in this article shall prevent the State from making any special provisions for women or children. "



Further Article 15(4) of the Constitution of India reads as under: -

"Nothing in this article or in clause 2 of the Article 29 shall prevent the State from making any special provisions for the advancement of any socially and educationally backward classes of citizens or the Scheduled Caste and Scheduled Tribes."

Article 38(2) of the Constitution of India reads as under: -

"State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst group of people residing in different areas or engaged in different vocations. "

Article 46 of the Constitution of India reads as under: -

"State shall promote with special care the educational and economic interests of the weaker section of the people, and, in particular, of the Scheduled Caste and the Scheduled Tribes, and shall protect them from special injustice and all form of exploitation."

4. These special provisions follow the principle of "Salus Populi est Suprema Lex" i.e. the welfare of the people is the supreme law, meaning thereby that collective interest of the society outweighs the individual interest.

5. It is with this broad perspective, the respondent State has taken an initiative to grant some incentive or relaxation in the form of marks under Socio Economic Criteria and Experience to the candidates of certain classes which, owing to their background or for reasons historical or otherwise, are unequals to compete in terms of equality with others for jobs and employment under the State.

6. Article 15 prohibits discrimination on various grounds and Article 16 mandates equality of opportunity in public employment and bars any discrimination in public employment. At the same time, both the Articles empower the State to take affirmative action to achieve actual' equality i.e. measures



which would bring about equality in opportunity and status. Social reservation under Article 16(4) is only one species of the affirmative action envisaged by Article 15, 16 and Directive Principles of State Policy enshrined under Part IV of the Constitution, apart from other reservations granted under Article 15(3), (5), (6), 16(1) and 16(6) and other special provisions in the form of weightage/relaxation/concessions provided under Article 15(3), 15(4), Article 335.

7. The co-relation of Article 15(1), 15(2), and 15(3) & 15(4) and 16(1), 16(2) & 16(4) has been succinctly explained by the Hon'ble Supreme Court in:

- *Government of Andhra Pradesh Vs. P.B. Vijaykumar, 1995(4) SCC 520*
- *Dr. Preeti Srivastava Vs. State of Madhya Pradesh, 1997(7) SCC 120*
- *Union of India & Ors. Vs. V.K. Prabhakaran, 1997(11) SCC 638*
- *Vijay Lakshmi Vs. Punjab University & Ors., 2003(8) SCC 440*
- *Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors., (2021)4 SCC 542*

8. Therefore, the contention of the Petitioners that the socio economic criteria is nothing but another form of reservation with respect of which the State Government has no jurisdiction is wholly misconceived.

9. Another contention that the preferential treatment given under socio-economic criteria is anti-meritarian is also devoid of any merit. In B.K. Pavitra vs Union Of India, (2019) 16 SCC 129, the Hon'ble Supreme Court held:

"122. An assumption implicit in the critique of reservations is that awarding opportunities in government services based on "merit" results in an increase in administrative efficiency. Firstly, it must be noted that administrative efficiency is an outcome of the actions taken by officials after they have been appointed or promoted and is not tied to the selection method itself. The argument that one selection method



produces officials capable of taking better actions than a second method must be empirically proven based on an evaluation of the outcomes produced by officials selected through both methods. Secondly, arguments that attack reservations on the grounds of efficiency equate merit with candidates who perform better than other candidates on seemingly -neutral criteria, e.g. standardised examinations. Thus, candidates who score beyond a particular -cut-off point are considered meritorious and others are —non-meritorious. However, this is a distorted understanding of the function —merit plays in society

127. It is well settled that existing inequalities in society can lead to a seemingly —neutral system discriminating in favour of privileged candidates. As Marc Galanter notes, three broad kinds of resources are necessary to produce the results in competitive exams that qualify as indicators of—merit. These are: -

... (a) economic resources (for prior education, training, materials, freedom from work etc.); (b) social and cultural resources (networks of contacts, confidence, guidance and advice, information, etc.); and (c) intrinsic ability and hard work..

128 The first two criteria are evidently not the products of a candidate's own efforts but rather the structural conditions into which they are born. By the addition of upliftment of SCs and STs in the moral compass of merit in government appointments and promotions, the Constitution mitigates the risk that the lack of the first two criteria will perpetuate the structural inequalities existing in society."

10. There is no valid ground to challenge the grant of marks on account of experience or restricting consideration of experience, gained in Government organizations/ instrumentalities. For securing appointment on regular basis, all eligible persons have to compete on merit. It is only weightage to the extent of 4 marks has been assigned to experience which is normally done in all selection processes. Reliance can be placed on:



- *Sachivalaya Dainik Vetan Bhogi Karamchari Union, Jaipur Vs. State of Rajasthan & Ors., 2017(1) SCC 421*
- *University of Delhi Vs. Delhi University Contract Employees, AIR 2021 SCC 3305*

11. The grant of 5% marks under socio-economic criteria and experience to candidates cannot be termed as a form of reservation as contented by petitioners. It only allows certain categories of persons for additional marks and these certain categories forms reasonable classification under the Constitution of India and the same is nowhere prohibited and also therefore, cannot be termed discriminatory. Grant of 5 marks in no way compromises the merit.

12. Now, the benefit of socio-economic criteria has been extended to all the citizens of India alike irrespective of their rural or urban background, without there being any discrimination so that there is equitable distribution of benefit and opportunities among all the sections of the society.

13. The policy was formulated by the Government after due application of mind with a view to help the persons who have disadvantages in getting the Government employment and are socially backward. There is nothing arbitrary in the policy rather there is a benevolent object which is sought to be achieved.

14. The socio-economic criteria has already been upheld by the Hon'ble Division Bench of this Court in CWP No. 10792 of 2018 titled as "*Deepak & Others versus State of Haryana & Another*"

15. It is a well settled law that so long as the decision of the government is not actuated with any malice or is not an outcome of arbitrary and whimsical act, the same should not be interfered by the Court of law under Article 226 of the Constitution of India.

- *Ram Singh Vijay Pal Singh and others versus State of U.P. and others (2007) 6 SCC 44.*"

22. Having noticed the submissions of the State, we find that in the case of **Deepak** Vs. **State of Haryana**, (CWP-6731-2024) the socio economic



criteria was not examined and therefore, we have chosen to examine the same on merits in the present cases.

23. In Pardeep Jain Vs. Union of India; 1984 AIR (SC) 1420, the Supreme Court has observed as under:-

22. So much for admission to the M.B.B.S. course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to post graduate courses, such as, M.D., M.S. and the like. There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in Jagdish Saran's case, and we wholly endorse what he has said:

"The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scale of speciality here the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph. D., M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss the considerations we have expended upon as important loss their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk."

"If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs no disciplines of social in consequence, but more at the higher



levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

"Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post graduate or post doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tune performance at the difficult highest of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting substandard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by over ruling equality and quality all together, is a social risk where the stage is post graduate or post-doctoral."

These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and in deed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasized that playing with merit, so far as admissions to post graduate courses are concerned, for pampering local feeling, will boomerang. We may with advantage reproduce the recommendation of the Indian Medical Council on this point which



may not be the last word in social wisdom but is certainly worthy of consideration:

"Student for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities."

The Medical Education Review Committee has also expressed the opinion that "all admissions to the post-graduate courses in any institution should be open to candidates on an all India basis and there should be no restriction regarding domicile in the State/UT in which the institution is located." So also in the policy statement filed by the learned Attorney General, the Government of India has categorically expressed the view that:

"So far as admissions to the institutions of post- graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes."

We are, therefore, of the view that so far as admissions to post-graduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to border considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university may be given preference for admission to the post-graduate course in the same medical colleges or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the M.B.B.S. course. But, even in regard, to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro- surgery and cardiology are concerned, there should be no



reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis.”

24. In **Kailash Chand Sharma Vs. State of Rajasthan and Others;** 2002 (6) SCC 562, the apex Court, while considering the question whether the domiciles of the particular districts of the State of Rajasthan could be given extra bonus marks in the selection process only on the basis of residence and whether the said exercise was constitutionally valid when tested on the touchstone of Articles 14 and 16 of the Constitution of India, held that *We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Article 16(3). An argument of this nature flies in the face of the peremptory language of Article 16(2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself — be it within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into districts with a view to offer employment to the residents of that district on a preferential basis.”*

25. In **V.N. Sunanda Reddy Vs. State of Andhara Pradesh;** AIR 1995 SC 914, the apex Court had struck down 5 marks for passing Telugu language.

26. The Full Bench of this Court in **Abhishek Rishi Vs. State of Punjab;** ILR (2013) P&H 957 in CWP-11071-2011 has set aside five



additional marks to the candidates who had passed Middle and Matriculation from the Schools situated in rural areas of the State of Punjab and has observed as under:-

“42. In our view both the studies can at best be seen as symptomatic of the ills that rural students may face to reach the level of university education in the miniscule proportion. The studies do not address the question of public employment which is required to be governed by constitutional and statutory provisions. In the present case, our concern is with employment and service rules framed under the Panchayti Raj Act, 1994. The Division Bench in Sudesh Rani did not consider the effect of Article 16(3) and Article 35 of the Constitution of India. The Award of 5 additional marks to the candidates who passed 8th and 10th standard examination from rural areas was upheld solely on the basis of the publication of the University which did not form material before the Government for grant of concessions inter alia involving residence and domicile. The studies to our mind do not form quantifiable data and empirical, scientific study originating or sponsored through its own official agencies bearing the stamp of the Government in the matter of public employment to fall in the exception carved out in Kailash Chand Sharma case, and therefore, has not been correctly decided and is not good law. Data culled out from contact with a small group of university students is not the best material to sustain validity of rules of employment and confer benefits of far reaching consequences or to safely rely upon it. These academic studies did not make any recommendation for employment or grant of marks for rural education at the level of eighth and tenth standard. The ratio of law laid down in Pradeep Jain v. Union of India; AIR 1984 SC 1420 is applicable for purposes of admission to colleges and is not intended to be the law of employment in public services.”



27. In State of Himachal Pradesh Vs. Amarnath Sharma; 1994 (4)

SLR 436 the apex Court has held as under:-

“8. So far as the weightage provided for the candidates belonging to a family which has no member in the organised employment, we are of the view that the High Court was justified in holding the same to be arbitrary. There is no justification for providing any weightage or incentive for a class of citizens which is not socially and educationally backward. An affluent family having education and social status cannot be given any preference in the matters relating to employment or appointment to any office under the State in the scheme of Articles 14 and 16 of the Constitution of India. We, therefore, agree with the High Court and set aside the weightage of 10 marks for a candidate "belonging to a family for whom not even one member is in organized employment". This shall operate prospectively from the date of this judgment. Any selection made prior to the date of this judgment, on the basis of the memorandum shall be considered valid.

9. The High Court, in our view, was not justified in quashing the selection procedure. The High Court has acted merely on surmises and conjectures. We have not been able to find any material illegality in the conduct of interviews. Simply because a candidate obtained less marks for educational qualifications and more marks in the interview, it is no ground to reach the conclusion that the candidate was favoured. The special selection committees at various district levels adopted their own procedure to hold the interviews. At some places lump sum marks were awarded in respect of general knowledge and personality whereas at other places 20 marks were divided into general knowledge and personality separately. We see no illegality in the manner of holding the interviews. We, therefore, set aside the findings of the High Court and hold that the interviews were held properly.”



28. Articles 15(1) and (2) of the Constitution restrained from making discrimination on the ground of placed of birth and reads as under:-

15 (1) *The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*

15 (2) *No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—*

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.”

29. Article 16(2) of the Constitution of India provides that *no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*

30. We further find that the respondents-State has conducted the entire selection in a wholly slipshod manner. The notification of granting the bonus marks of 5% for socio economic criteria and experience is not based on any Rules framed under the proviso to Article 309 of the Constitution of India. It is also noticed that no data was collected before laying down such a socio economic criteria. We also find that while in the preliminary examination, 5% bonus marks on the basis of socio economic criteria have been added. In the main exam and the same has been reduced to 2.5% and there is no reason coming forward. We further find that once the reservations



have already been provided statutorily under the EWS category, as well as on account of social backwardness by providing reservation for backward class, further granting benefit under socio economic criteria would lead to breach of 50% ceiling limit as laid down in **Indira Sawhney Vs Union Of India And Ors** ; AIR 2000 Supreme Court 498 and recognized by the Constitution framers while making amendment in Article 16 (4) (b). This Court finds that what cannot be done directly cannot be done indirectly.

31. This Court finds that the socio economic criteria which has been introduced by the respondents is clearly an act of arbitrariness and discrimination created to the similarly situated persons and no person ought to be given benefits. The notification dated 05.05.2022, whereby marks have been granted on the basis socio economic criteria, is clearly unjustified. It is submitted that the granting of 10 marks on the basis of socio economic criteria experience completely changes the result of a competitive examination. Marks have been allotted to those applicants whose father died or who is a widow or who is from *Vimukt Jaati* and *Teprivas Jati*. It is only available to a person who is having a Haryana domicile and place of residence which is completely against the provisions of the Constitution. We find that the law has been well settled by the Hon'ble Supreme Court that weightage on the basis of residence cannot be allowed to be granted. The Right to Equality, as enshrined in the Constitution, has been violated and a class has been created based on the family background simplicitor which does not have any intangible differentia. The candidates whose parents are in Government job, would be denied 5% weightage while the ward of a shop keeper or a private job holder would be entitled for 5% weightage and ward of a nurse or



peon doctor employed in the State Government would be denied the said benefit.

32. The criteria also provides for gross annual family income to be less than ₹1,80,000/-. Thus, a separate criteria of economically backward class has been carved out which goes beyond the reservations already provided to economically weaker sections of the society.

33. We also find that the definition of “family” for the purpose of socio economic criteria includes all members namely father, mother, wife, unmarried brother and unmarried son. Thus, a person having an unmarried brother, who is employed, would be deprived from being given the benefit of bonus marks under the socio economic criteria. A widow has been granted the benefit while an unmarried daughter has not been given any benefit nor any divorcee has been given any benefit whereas, all three categories of women are not self-sufficient.

34. The socio economic criteria is also subject to entries in *Parivar Pehchan Patra* which is only available for the residents of Haryana. 5% weightage have also been allotted to the residents of Haryana belonging to denotified Tribe whereas, there is not Scheduled Tribe recognized in the State of Haryana.

35. From the perusal of the various conditions laid down in Annexure A as noticed hereinabove, we find that the same does not have any nexus to the purpose sought to be achieved. No State can restrict employment to its own residents alone by allowing the benefit of 5% weightage in marks. The respondents have created an artificial classification to the similarly situated candidates applying for the post.



36. In M. Nagraj Vs. Union of India ; 2006 (8) SCC 212, the Constitution Bench of the apex Court has held that any reservation which may be introduced in the Constitution, cannot be applied *ipso facto* without conducting an exercise as to whether the proposed reservation is required or not. The State's services and posts are not to be doled out as per the choice of the law makers. The Rules are required to be framed after actual data and reaching to a conclusion thereto. It cannot be based on the political agendas.

37. We find from the written submissions of the State as noticed above, that they have miserably failed to understand the ethos of the provisions of the Constitution of India. Once the provisions have been laid down under the Articles 15 and 16 and under the Directive Principles, the same would apply PAN Bharat and the State Government cannot be allowed to introduce special reservations of a nature in public employment where all the citizens are entitled to participate and seek employment.

38. In the opinion of this Court, reservations is required to be adopted by the concerned State Government in terms of Articles 15 and 16, limited to the extent of the requirements of a particular reserved category available in the said State.

39. In Bir Singh Vs. Delhi Jal Board and Otherwise ; (2018) 10 SCC 312, the Supreme Court has held as under:-

“34. It is an unquestionable principle of interpretation that interrelated statutory as well as constitutional provisions have to be harmoniously construed and understood so as to avoid making any provision nugatory and redundant. If the list of Scheduled Castes/Scheduled Tribes in the Presidential Orders under Article 341/342 is subject to alteration only by laws made by Parliament,



operation of the lists of Scheduled Castes and Scheduled Tribes beyond the classes or categories enumerated under the Presidential Order for a particular State/Union Territory by exercise of the enabling power vested by Article 16(4) would have the obvious effect of circumventing the specific constitutional provisions in Articles 341/342. In this regard, it must also be noted that the power under Article 16(4) is not only capable of being exercised by a legislative provision/enactment but also by an Executive Order issued under Article 166 of the Constitution. It will, therefore, be in consonance with the constitutional scheme to understand the enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/Scheduled Tribes enumerated in the Presidential orders for a particular State/Union Territory within the geographical area of that State and not beyond. If in the opinion of a State it is necessary to extend the benefit of reservation to a class/category of Scheduled Castes/Scheduled Tribes beyond those specified in the Lists for that particular State, constitutional discipline would require the State to make its views in the matter prevail with the central authority so as to enable an appropriate parliamentary exercise to be made by an amendment of the Lists of Scheduled Castes/Scheduled Tribes for that particular State. Unilateral action by States on the touchstone of Article 16(4) of the Constitution could be a possible trigger point of constitutional anarchy and therefore must be held to be impermissible under the Constitution.”

40. While principally we agree that the State has to follow the provisions which are for the welfare of the people, but they cannot create an artificial classification which results in discrimination between similarly placed persons. All the candidates who apply for the post are equally entitled to selection based on the common examination conducted for all. Granting



additional marks to persons who are locally placed and who have Haryana Parivar Pehchan Patar in their possession, reflects that while the State has deleted the words “who is bonafide residents of Haryana” by making an amendment on 20.02.2023, the requirement continues under the socio economic criteria for grant of marks.

41. In **Ganga Ram Moolchandani** vs **State Of Rajasthan And Ors** ; 2001 (6) SCC 89, the Supreme Court has held as under:-

“14. In the present case, the attack to the Rule has been resisted on the sole ground that the classification, confining Advocates practising in the Rajasthan High Court or courts subordinate thereto for being eligible for consideration to Rajasthan Higher Judicial Service, has reasonable nexus that they have knowledge of local laws and regional language. Question is whether, in fact, this ground, exists or not? Rule 11 of the Rajasthan Judicial Service Rules which relates to appointment in subordinate Judicial Service in Rajasthan lays down that any Advocate who has practised in any court throughout the territory of India is eligible for the post of Munsif. For the post of Munsif, knowledge of local law and regional language is much more required. The said Rule 11 further lays down that a candidate must possess a thorough knowledge of Hindi written in Devnagri Script. Thus for recruitment to the post of Munsif, there is no requirement that a person should have knowledge of local laws and regional language. If for appointment in subordinate judicial service, neither there is any requirement of knowledge of local laws nor regional language, we really fail to understand how the same is required for higher judicial service in the very same State, i.e., in the State of Rajasthan. Thus, we find that the ground taken by respondent No.2, that purpose of framing such a rule is knowledge of local law and regional language in order to stand the test of [Article 14](#) of the Constitution, is fallacious.”



42. Thus, we find that on the anvil of Articles 14, 15 and 16 of the Constitution of India, socio economic criteria adopted by the respondents is violative and seeks to create a class of unequals amongst equals.

43. We further find that there is no nexus of granting 5% marks in the CET examination and then again granting 2.5% marks in the examination for selection for the post on the basis of socio economic criteria.

44. From the submissions of the State, it is also seen that the criteria has been introduced by the Chief Secretary and even the State Executive while exercising powers under Article 162 of the Constitution of India, cannot be allowed to tinker with the Rules for selection framed under Article 309 of the Constitution of India passed by the Legislature. It is also not placed before us whether the said socio economic criteria was sanctioned by the Governor of the State of Haryana. The provisions, therefore, need to be set aside as they have no sanctity in law.

45. This Court agrees with the submissions raised by the counsel for the petitioners that granting/allowing additional marks for socio economic criteria and experience would further impact on the inter se seniority on the meritorious candidates as the seniority is to be prepared on the basis of the marks obtained and merit in a direct recruitment selection process.

46. In view of the law as laid down in the Kailash Chand Sharma's case (Supra), the bonus marks allotted on the basis of the socio economic criteria are declared to be illegal. The State would, therefore, be required to prepare a fresh merit list based solely on the marks obtained in the CET exam.



Discussion relating to LPA and the order passed by the learned Single Judge dated 04.08.2023

47. Learned Single judge vide his judgment dated 04.08.2023, considered the notification dated 05.05.2022 issued by the State of Haryana for recruitment to Group-C & D through Common Eligibility Test-2022(CET) and found that the CET was conducted on 05/06.11.2022 by the Commission and the result was declared first time on 10.01.2023. On 01.02.2023, the Commission issued a Public Notice informing all the candidates that if they have wrongly raised a claim with regard to the marks under the socio economic criteria, the claim may be withdrawn, failing which, the candidature of the defaulting candidates will be summarily rejected. Another notice was issued on 10.03.2023.

48. In the meanwhile, the Commission issued another advertisement on 07.03.2023 advertising various posts which were to be filled by written examination to be conducted for those candidates who fulfilled the required eligibility conditions. The merit list for calling candidates for interview was to be prepared on the basis of the written test to be held for selection. The candidates were to be called for written test equal to five times the number of posts advertised, based on the merit of the CET score.

49. Learned single Judge, therefore, reached to the conclusion that the CET score is the basis for the process to be undertaken for selection in pursuance to the advertisement dated 07.03.2023. After considering all the facts, learned single judge has reached to the conclusion that the written examination for selection to the various posts had been conducted on 05/06.08.2023. Those candidates, who had withdrawn their claim for marks



under the socio economic criteria, have been given benefit of the same and have been placed in the merit list which was released on 25.07.2023. Candidates were called to appear in the exam wrongfully and even the revised merit list was not adhered to as certain candidates, who had higher marks, have not been called whereas, candidates with lower CET score, have been called. While hearing the cases, following order was passed by this Court on 28.02.2024:-

“It is informed by learned Advocate General, Haryana that the original writ petitioners i.e. Haryana Staff Selection Commission points out that the result published by the Haryana Staff Selection Commission on 25.07.2023 was not finalized and even thereafter, persons were allowed to withdraw their claim relating to the socio-economic category upto 29th July, 2023. However, after 29th July, 2023, no fresh result was declared. The respondents have not explained as to how the candidates knew about their respective position of marks. Certain documents have been handed over to us by the Advocate General, Haryana which also reflects that the Ex-Serviceman who had originally been granted socio-economic marks upto 05 marks were found to be not entitled to those marks. However, out of those 51, there are 04 of them who have been granted socio-economic marks on other categoric reason. Thus, it is apparent that certain revised result was required to be published, more-so, as for each group of examination, for total number of posts, 04 times candidates were required to be called as per the merit of the CET. This Court is unable to understand as to how without the result being published, candidates would come to know about their respective result for participating in the examination.

An affidavit in this regard be filed by the Haryana Staff Selection Commission as to what modus operandi was adopted by them for conducting the examination for the 26 groups for which the examination have already been held. The affidavit



shall be filed along with the relevant documents for the said purpose. It would be appropriate to call the Secretary, Haryana Staff Selection Commission to assist the Court in this respect also.

List this case again on 06.03.2024.”

50. In response to the said order, a consolidated reply by way of an affidavit of Sh. Vinay Kumar, Secretary, Haryana Staff Selection Commission was filed wherein it is stated that as per the CET result dated 10.01.2023, **2,92,175** candidates qualified the CET written examination and **65,389** candidates qualified provisionally. **1,583** candidates, who secured 38 marks and above but below 47.50 marks in the CET, were allowed to submit their application form for recruitment to Group-C post as they had applied the claim for their category and therefore, in the second stage examination, the total number of candidates who could apply under the advertisement dated 07.03.2023 were **3,59,147**. The total **2,68,400** approx. candidates claim marks for socio economic criteria out of which **1,48,654** aprox. have foregone their claims. Approximately **1,00,000** candidates verified their claims and approximately **41,587** candidates have already withdrawn their claims in pursuance of the notices. It is stated in the affidavit that the candidates who had claimed five marks on account of socio economic criteria and who are not actually entitled, were given opportunity by the Commission to withdraw/forego their claims by issuing notice on 01.02.2023, 16.02.2023, 24.02.2023 and 02.03.2023, 07.03.2023, 10.03.2023 and 27.07.2023.

51. However, we find that in the affidavit, it is further stated that on 27.07.2023, further opportunity was given to forego/withdraw the marks under socio economic criteria till 29.07.2023 by 11.59 p.m. and accordingly



6,223 candidates in addition to 23,354 candidates had again foregone their socio economic criteria marks from 27.07.2023 to 29.07.2023.

52. It is also admitted in the affidavit by the respondents that the final result of the CET was declared on 25.07.2023 and thereafter, the affidavit is completely silent as to how candidates were allowed to participate in the examination (second stage) without there being any result published of the CET score, after the candidates had forgone their socio economic criteria marks.

53. Apparently, all these candidates who had forgone their socio economic criteria marks would be placed lower in merit after reducing their marks by five as per the Scheme. The said candidates were allowed to appear in the second stage examination which required five times or four times number of candidates to participate for each group based on the CET score.

54. It is also stated on oath that the Commission had corrected all the data relating to candidates belonging to the Ex-servicemen (ESM) category up to 29.07.2023, while the result was revised on 25.07.2023. A report in this regard has been submitted with the affidavit as **Annexure A-1**.

55. We find that ESM category has been allotted five marks for the socio economic criteria such as Jogender Singh (General) shown at Sr. No.31 attached with the affidavit, Vikas Kumar (General), Rahul (B.C.), Arjun Singh (S.C.), Krishan Kumar (General), Subhash Chandra (General), Sunil Kumar (B.C.), Vikash(General) and Sandeep Kumar (General). While in the affidavit, it has been stated that no ESM category candidate has been awarded marks for socio economic criteria under the head “No family member has been in Government job”. Thus, the persons have been wrongfully allowed



the benefit of socio economic criteria marks from the ESM category also, who were themselves in job.

56. It is stated in the affidavit that the Commission has exercised abundant caution in preparation of the CET result before proceedings to the second stage of examination, but we find that the second stage examination was conducted on 07.08.2023 and till 29.07.2023, the candidates were being given option to forego their socio economic criteria marks. Thus, the CET score, which is to be calculated on the basis of the marks obtained in the CET + socio economic criteria, would have changed upon foregoing of socio economic criteria marks, but all these candidates were allowed to participate and applied under the second stage examination much before they opted for foregoing the same.

57. The advertisement after the second stage examination, as noticed above, was issued on 07.03.2023 and the candidates have applied in terms of the result declared on 10.01.2023 which stood revised on 25.07.2023, no opportunity has been given to candidates to apply thereafter. The CET score of the candidates was calculated by including marks in the written examination + weightage given to such candidates based on the socio economic criteria and that total marks were to be the basis for competing for the post under the advertisement dated 07.03.2023.

58. Since the result itself was revised on 25.07.2023, and the CET score continued to be changed even thereafter by giving an opportunity to candidates and as many as **6,223** candidates have withdrawn/foregone their claim, their CET score would have to be revised. It is noticed that the CET score was thereafter not revised and no result has been declared.



59. The facts which have come on record from the affidavit, reflect that the findings arrived at by the learned Single Judge are correct.

60. We also noticed that the learned Advocate General, Haryana had conceded to the fact that certain candidates who had claimed the benefit of extra marks against the weightage given under socio economic criteria, though they were not entitled for the same, have subsequently withdrawn/foregone their claims. This concession made before the learned Single judge is also reflected from the affidavit filed by the Secretary, Commission. The second stage examination, therefore, cannot be said to be in consonance and in accordance with law and Rules laid down by the State.

61. The contention of the Commission with regard to the short listing of the candidates is also found to be not acceptable on merits. It is to be noticed that as per the affidavit, the Commission had advertised 401 categories which were divided into 63 groups which required similar educational qualifications. Instead of filling the application forms for each 401categories, choice for filling of categories was given to the candidates and it was upto the candidates that they may apply for the categories/groups as per their qualifications and experience etc. required for the posts and therefore, there was no limitation on the number of posts to be applied by the candidates.

62. It is further stated in the affidavit that out of 63 groups, where the number of successful candidates is lesser than four/five times of the advertised posts, the Commission had conducted a skill written examination of those 24 groups wherein all the CET qualified candidates had been called for skill/written examination who had applied for that groups and the



examination was conducted in terms of the interim order passed by this Court on 19.12.2023. It would be apposite to quote the status of result of those 24 groups as mentioned by the Commission which is as under:-

“Where applicants are less than 4/5 times.

Group No.	Name of the Group	No. of Post	Applicants	Shortlisted	Ratio	
16	Staff Nurse	1554	2328	2328	1.50	Result out
17	Junior Coach	192	436	436	2.27	Result out
22	SA/ALM/Electrician	6576	15919	15919	2.42	Result out
23	VLDA	747	1506	1506	2.02	Result out
30	Fire Operator-cum-Driver	2108	3853	3853	1.83	Result out
32	MPHW	494	1168	1168	2.36	Result out
43	Dispenser Ayurveda	158	488	488	3.09	Result out
47	Ophthalmic Assistant	40	86	86	2.15	Result out
48	Operation Theater Assistant	121	272	272	2.25	Result out

Where Eligible candidates are less than 4/5 times.

Group No.	Name of the Group	No. of Post	Applicants	Eligible/ Shortlisted candidates	Ratio	
11	Dietician	26	365	65	2.50	Result out
12	Fire Station Officer	8	755	34	4.25	Result out
13	Feature Writer, AI&PRO Posts	14	563	38	2.71	Result out
19	Boiler Attendant	3	215	2	0.67	Result out
24	Sub Fire Officer	33	671	60	1.82	Result out
28	Modeller	4	141	1	0.25	Result out
35	Laboratory Technician-Veterinary	15	247	68	4.53	Result out
46	Dental Hygienist	35	181	20	0.57	Result out
51	Motor Winder	9	143	9	1.00	Result out
52	Dispender (Unani)	4	123	10	2.50	Result out
55	Work Supervisor	200	1125	127	0.64	Result out
20	Assistant Manager Dairying	168	1820	846	5.04	Result Pending
44	Radiographer	68	416	79	1.16	Result Pending
49B	(10+2) Science Group	304	1757	630	2.07	Result Pending
50	Indian Cook	10	419	56	5.60	Result Pending”

63. Thus, we find that while in some cases, the eligible shortlisted candidates are even less than the number of posts, other candidates who could not apply on account of their CET score lesser than others, who marched over them on account of socio economic criteria, have been left out. For Boiler



Attendant, there were three posts and only two candidates have been shortlisted without there being any reason although 215 candidates have applied. Similarly, for the four posts of Modeller, only one candidate has been shortlisted. For four posts of Dispender (Unani), there are only 10 candidates who have been shortlisted and for the post of Motor Winder, there are 9 posts and only 9 candidates have been shortlisted.

64. We, therefore, fail to understand as to the method and manner examination has been conducted. It is apparent that there has been a complete non-application of mind in short-listing candidates or it can be said that there has been some favoritism done. When there are on record more than 10 times applications, there was no occasion to shortlist candidates less than the total number of posts.

65. This Court also notices that for various posts a common skill test/written examination was conducted with the condition that the distribution and allocation shall be on merit base and as per the options given by the successful candidates. Thus, there is no cut-off prepared and while an applicant has moved his application for different categories of posts in one group, he has been considered individually against the group as one candidate for all the posts.

66. The respondents have asserted in the affidavit that they have shortlisted four times candidates to the number of posts. It is also asserted that after short-listing 4 times candidates, if there is any shortage of candidates under one category, then more candidates from that category have been accommodated on merit, but factually, we find this to be not correct as per our finding hereinabove. It is apparent that against larger number of posts, less



number of candidates have been shortlisted. The affidavit is, thus, found to be incorrect and misleading.

67. We also find that only for groups 56 and 57, where the posts were in huge numbers, short-listing has been done amongst the candidates who have given their wrong CET score. The final result of the CET was never published. By our interim order, the result of posts namely Group-56 and 57 i.e. Common Graduate Level Post and Common High Secondary Level Post have not been declared. The result of Civil Engineer post and Electrical Engineer post has also been declared, while the other posts, where there was less number of posts, the respondents have appointed the persons.

68. We have already held that the socio economic criteria adopted by the respondents for giving bonus marks was illegal and the same has also been included upto maximum 2.5 marks in the examination conducted for filling the post in the second stage, the result of the second stage examination for the various posts has to be declared as illegal and is required to be struck down.

69. Having heard at length the Advocate General, Haryana and after having perused the consolidated reply filed by way of an affidavit of the Secretary, Commission, we find ourselves unable to accept the method and manner in which the entire selection has been conducted which has resulted in encouraging favoritism and illegally allowing candidates to participate in the selection process although they had wrongfully claimed bonus marks.

70. We find it surprising that the Commission should give opportunity to such unscrupulous candidates to withdraw/forego their claim of socio economic criteria which they have already availed and which was



made a basis for their being allowed to participate and apply for the selection conducted by the Commission based on the result published on 10.01.2023 which has been subsequently revised drastically on 25.07.2023. The result declared on 25.07.2023 has also been admitted to be not final as again candidates were allowed to forego their claim relating to the CET score upto 29.07.2023 and as per the affidavit **6,223** candidates were further allowed upto 29.07.2023 to get their CET score revised. Instead of taking action against such candidates who had claimed wrongfully benefit of socio economic criteria, the Commission has allowed these persons to participate in the examination and has also selected them. The entire examination smacks of bungling and favoritism.

71. The Commission which formed under Article 320 of the Constitution of India is a statutory body which is required to conduct examinations fairly and impartially. Although, the Advocate General, Haryana has conceded before the learned Single Judge about the irregularities, which have been noted by him, a different picture was presented before the Division Bench and interim orders were passed resulting in further complication of the selection. In the opinion of this Court, once a concession is made before the learned Single Judge, no Appeal would lie before the Division Bench.

72. We are satisfied that the result of CET declared by the respondents on 10.01.2023 which was further revised, are not in accordance with law and the same deserves to be scrapped.

73. Further, we also in the agreement with the findings of the learned Single Judge that the ineligible candidates have been given marks under socio



economic criteria which has resulted in their participation in the second stage examination, their subsequent result, therefore, on the second stage has also been vitiated.

74. Learned Single Judge has made the following findings:-

“ XXX XXXX XXXX

Once it is conceded before this Court that the candidates have been given marks merely on the basis that they have claimed the same in their applications without verifying the genuinity of the supporting documents attached by them with their applications, any merit list prepared in pursuance to the same cannot be treated as a result of fair and transparent process. The grievance being raised by the petitioners is very much genuine. Till the CET score is prepared in a transparent manner by evaluating the claim of all the eligible candidates qua their entitlement against extra marks under the socio economic criteria, revised merit list cannot be treated to be correct, satisfying or prepared through evolving a fair process.

Further, the assertion of the learned Advocate General, Haryana that in case a candidate has been given extra marks under the socio economic criteria wrongly, his candidature will be rejected even if he participates in the selection process in pursuance to the advertisement dated 07.03.2023 at the stage of verification of the documents but the said arguments cannot be accepted for the reason that the said candidate who has been wrongly given the benefit of extra marks will not just participate in the selection process without entitlement but will also oust a genuine candidate from the zone of consideration who is otherwise eligible from participating for selection and appointment in pursuance to the advertisement dated 07.03.2023, which selection process restricts the number of candidates to be called for selection/appointment in pursuance to the said advertisement to three/four times of the vacancies advertised.

XXX XXXX XXXX”



75. The said findings of the learned Single Judge are perfectly in consonance with law and reflect the wrongful manner in which the entire selection process has been conducted. We cannot, therefore, uphold the selection made on the basis of the advertisement dated 07.03.2023 and the appointments if any made, cannot be sustained in law.

76. Since, several persons have been impleaded as parties to these petitions/LPAs. In view of the judgement passed by the Supreme Court in the case of Arun Tewari Vs. Zila Mansavi Shikshak Sangh; 1998(1) SCT 533 wherein it is held as under:-

12. All the original applicants before the Tribunal who have challenged the provisions for recruitment of Assistant Teachers under the Operation Black Board Scheme did not possess the requisite qualifications for being selected under the said scheme as Assistant Teachers. Their names do not figure among the lists forwarded by the concerned District Employment Exchanges. Surprisingly, the applications filed by all these persons and/or groups before the Tribunal did not make the selected/appointed candidates who were directly affected by the outcome of their applications, as party respondents. The Tribunal has passed the impugned order without making them parties or issuing notice to any of them. The entire exercise is seriously distorted because of this omission. They have now filed the present appeals after they have been granted leave to file the appeals. In the case of Prabodh Verma & Ors. Vs. State of Uttar Pradesh & Ors. (1984 [4] SCC 251 at page 273), this court observed that in the case before them there was a serious defect of non-joinder of necessary parties and the only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. The employees who were directly concerned were not made parties -- not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. This Court observed that High Court ought not have decided a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least



some of them before it as respondents in a representative capacity. These observations apply with equal force here. The same view has been reiterated by this Court in Ishwar Singh & Ors. Vs. Kuldip Singh & Ors. (1995 Supp [1] SCC 179), where the Court said that a writ petition challenging selection and appointments without impleading the selected candidates was not maintainable. (Vide also J. Jose Dhanapaul Vs. S. Thomas & Ors. (1996 [2] SCT 512, paragraph 4). On this ground alone the decision of the Tribunal is vitiated. However, even on merit we do not find that the judgment of the Tribunal can be sustained.”

77. In view of the sufficient representation, we need not implead each and everyone as parties to these cases.

78. It is apparent that since the selections and appointments have been made by the respondents during the pendency of these cases, it is for the State/Commission to have taken a decision at their own risk and costs. Any appointment made by them in terms of theory of *lis pendence* will, therefore have to go.

79. Keeping in view our aforementioned findings, we conclude as under:-

- A) The socio economic criteria introduced vide amendment notification dated 05.05.2022 is quashed and set aside. The bonus marks granted on the basis of socio economic criteria held to be violative of Articles 14, 15 and 16 of the Constitution of India.
- B) CET result declared on 10.01.2023 as well as subsequent result dated 25.07.2023 are quashed. It is directed that the fresh merit shall be now prepared solely on the basis of the CET marks of the candidates who have appeared in the same.



Making it as a basis, the State/Commission shall now issue a fresh advertisement for filling up various posts and each candidate shall be allowed to apply strictly in accordance with the Rules for the posts and if more than four times applicants are available for the posts, the respondents may lay down a cut-off of the CET for the purpose of participation. The Rules for examination shall accordingly follow. The result shall be declared accordingly.

- C) Those candidates, who have been appointed on various posts on the basis of the earlier result, shall be allowed to participate in the fresh selection process if they fall in the new merit list of the CET. Till fresh selection is prepared they shall be allowed to continue to perform their duties on the posts to which they have appointed. However, if they are not selected ultimately in the fresh process, they shall have to leave the posts and their appointments shall stand terminated forthwith. No right shall be created in their favour on account of continuing on the posts nor will they be entitled to claim any benefit on account of the same except the salary for the period during which they perform their duties.
- D) Keeping in view our findings relating to conducting of examination without declaring the result of CET finally by the Commission, we direct the Chief Secretary, Haryana to take steps to appoint a suitable candidate having experience of conducting examinations as Secretary of the Haryana Staff



Selection like the Controller of Examinations of any State Universities.

- E) In order to maintain transparency and consistency, the Commission is henceforth directed to frame Rules of the Commission for conducting of its examinations without leaving any discretion for its officials or Members to take decisions on their whims and fancies which has resulted in the present litigation.
- F) The exercise shall be completed afresh positively within a period of six months.

80. All the Writ Petitions are accordingly allowed and all the LPAs are dismissed.

81. Pending applications, if any, shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SUDEEPTI SHARMA]
JUDGE

May 31, 2024
Ess Kay

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No