

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 11844 of 2012

Reserved On : May 06, 2015

Pronounced On : 12.05.2015

Anil Kumar Sharma Petitioner

vs.

Punjab State Agriculture Marketing
Board and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. R. S. Ahluwalia, Advocate
and Mr. Gagneshwar Walia, Advocate
for the petitioner.

Mr. Gurminder Singh, Senior Advocate
with Mr. Yagyadeep, Advocate
for respondent no. 1.

Mr. Arihant Goyal, Advocate
for respondent no. 2.

None for respondent no. 3.

Mr. Akshay Bhan, Senior Advocate
with Mr. Parminder Singh, Advocate
for respondents no. 4 to 20, 23 to 28 and 30 to 50.

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DEEPAK SIBAL, J. :

The present judgment disposes of four writ petitions being C. W. P. No. 1369 of 2012 – Parget Singh vs. Punjab State Agriculture Marketing Board and others, C. W. P. No. 11844 of 2012 – Anil Kumar Sharma vs. Punjab State Agriculture Marketing Board and others, C. W. P. No. 12305 of 2012 – Parbhleen Singh Cheema vs. Punjab State Agriculture Marketing Board and others and C. W. P. No. 12502 of 2012 – Kanwal Preet Singh vs. Punjab State Agriculture Marketing Board and others as all these writ petitions involve similar questions of fact and law. However, for the sake of convenience, facts have been extracted from C. W. P. No. 11844 of 2012.

In April 2011, an advertisement was got published by the respondent – Punjab State Agriculture Marketing Board (hereinafter referred to as – the respondent Board), through which applications were invited for appointment to several posts including the posts of Secretary, Market Committee. In the said advertisement, the minimum academic qualifications prescribed for the post of Secretary, Market Committee was a degree of Bachelor of Science in Agriculture. It was further provided therein that a candidate, who had studied in schools situated in the rural areas for a minimum period of five years and had passed his middle standard examination (8th class) and senior secondary examination (12th class) from such schools, shall be deemed to be a candidate from the rural background and such candidate, along with persons having higher

qualifications of Masters Degree in Agriculture, Economics or Masters Degree in Business Administration would be given preference. A total number of 54 posts of Secretary, Market Committee, were advertised, out of which 27 were for the General Category and the remaining 27 were reserved to be filled up from amongst candidates belonging to the category of Scheduled Castes, Backward Classes, Ex-Servicemen etc. As per the prescribed selection procedure, selection was to be based purely on merit prepared on the basis of marks to be obtained in a written test and that there was no interview. Further, as per the advertisement, five additional marks were to be given to candidates having rural background i.e. candidates who had studied in schools situated in rural areas for 60 months and had passed their Class 8th and Class 12th examination from such schools. The advertisement further stipulated that three additional marks would be given to candidates having Masters Degree in Agricultural Economics and two additional marks would be granted to candidates, who were having the qualifications of Masters Degree in Business Administration.

Being fully eligible, the petitioner applied for consideration of his candidature for appointment to the post of Secretary, Market Committee. He appeared in the written test, which was held on 21.08.2011 and on the declaration of the results of the same, it was revealed that the petitioner has secured 59 marks, on the strength of which, he stood at merit position no. 36. Thereafter, counseling took place on 13.10.2011, but when the

petitioner was not appointed, he sought information under the Right to Information Act, 2005 and the information given in pursuance to his application revealed that candidates till merit no. 35 had been appointed and since the petitioner was at merit position no. 36, he was not offered appointment. The petitioner came to know that many of the 35 candidates, so appointed had stolen a march over the petitioner after the grant of five additional marks for having a rural background. Being aggrieved by the grant of additional marks for rural background and seeking appointment as Secretary, Market Committee, the petitioner has approached this Court through the present writ petition.

Through order dated 06.06.2012, while issuing notice of motion, this Court had directed that the present writ petition shall be heard along with **C. W. P. No. 11071 of 2011 – Abhishek Rishi vs. State of Punjab and others**. On 13.07.2012, on formulating of the following questions, **Abhishek Rishi's** case (*supra*), along with a bunch of other petitions, including the present writ petition, was referred to a Larger Bench :-

“1. Whether the grant of 5 additional marks to the candidates, who have passed Middle and Matriculation examination from the schools situated in rural areas of Punjab, is sustainable?”

2. *Whether conditions in Rules or in advertisements that the applicants should be domicile of State of Punjab or Union Territory of Chandigarh, is legal and valid ?*

3. *Whether the reservation to the extent of 70% of the posts amongst those candidates, who have passed Junior Basic Teachers Training or Elementary Teachers Training Course from the State of Punjab is sustainable when the candidates from the other States possess the same or equivalent qualifications ?*

4. *Whether the condition of granting one additional mark for each year of unemployment subject to maximum of 10 marks, is legal and justified ?*

5. *Whether the District-wise recruitment is legal and justified ?”*

A Full Bench of three Judges of this Court heard the petitions and vide order dated 03.04.2013, answered the reference as under :-

“81. *For the reasons recorded above*

and to summarize what we have said, we hold :

(1) The Division Bench decision of this Court in [Sudesh Rani v. State of Punjab and](#) connected cases reported in 2010 (5) SLR 768; 2010 (3) SCT 1 decided on 20.4.2010 (CWP No.6801 of 2008 etc.) sustaining grant of five additional marks to the candidates who have passed middle and matriculation examinations from schools situated in rural areas of Punjab does not lay down the correct law.

(2) As a consequence of (1) above and in absence of any quantifiable data available with the State Government as explained in [Kailash Chand Sharma v. State of Rajasthan and others AIR](#) 2002 SC 2877:(2002) 6 SCC 562 and in [M. Nagaraj and others v. Union of India and others;](#)

(2006) 8 SCC 212, the grant of five additional marks to candidates who have passed the 10th and 12th standard examinations from schools situated in rural areas of Punjab is ultra vires the constitution. Resultantly, Rule 11 (3) of the impugned rules is struck down.

- (3) xx xx xx**
- (4) xx xx xx**
- (5) xx xx xx**
- (6) xx xx xx”**

It is in compliance with the above order that this writ petition has been placed before me.

I have heard counsel for the parties and with their able assistance, have also gone through the record of this case as also of all the other connected cases.

Mr. Gagneshwar Walia, learned counsel for the petitioner submitted that grant of five additional marks to candidates, who have studied in rural areas for at least 60 months and have passed their 8th class and 12th class examination from schools situated in the rural areas, is arbitrary and violative of Articles 14, 15 and 16 of the Constitution of India.

After referring to the judgment in Abhishek Rishi's case (*supra*) in extenso, he submitted that the issue already stands settled by the Full Bench in favour of the petitioner.

Learned counsel for the petitioner then submitted that the judgment of the Full Bench in Abhishek Rishi's case (*supra*) was recently considered and followed by this Court in Kultar Singh vs. State of Punjab and others – C. W. P. No. 15645 of 2011, decided on 30.01.2014, wherein this Court, while considering a similar issue of fact and law, as raised in the case in hand, has held that the grant of additional marks to candidates seeking public employment, who had studied in schools situated in rural areas was unconstitutional.

It was thus brought to my notice that the judgment in Kultar Singh's case (*supra*) was taken up in an intra-court appeal being L. P. A. No. 332 of 2014 – Subeg Singh and others vs. State of Punjab and others, which was also dismissed on 13.08.2014.

In view of the above, learned counsel for the petitioner urged for the issuance of directions to the respondent Board to re-frame the entire merit list after ignoring five additional marks given to the candidates having rural background i.e. candidates who had studied for at least 60 months in schools situated in rural areas and had passed their 8th and 12th class examinations from such schools.

Per contra, Mr. Gurminder Singh, learned senior counsel

appearing on behalf of the respondent Board submitted that the criteria of grant of five additional marks to candidates having rural background duly found mention in the advertisement, in pursuance to which the petitioner had applied for consideration of his candidature. Without raising any objection to the same, the petitioner took part in the entire process of selection and only when he was not selected, has now turned around to challenge the criteria of awarding five marks to candidates having a rural background. It was submitted that once the petitioner had, without raising any protest, taken part in the entire process of selection, he would be estopped from challenging the criteria, on his non-selection.

Learned senior counsel further submitted that the additional five marks were being given to candidates, from a rural background, as per provisions of the Punjab State Agricultural Marketing Board, (Class II) Service Rules, 1989 (hereinafter referred to as – the Rules). The relevant portion of Appendix B, as appended to the Rules, which prescribed the qualifications for appointment as Secretary of a Market Committee, is reproduced below :-

*“(i) Should possess degree of Bachelor of
Science in Agriculture from a
recognized university :
Provided that the persons having
rural background, and the persons*

having higher qualifications of Master's degree Agricultural Economics or Master's degree of Business Administration from a recognized university will be given preference.

Explanation -

*For the purpose of this item, the persons, who have studied in the schools, situated in the rural areas for a minimum period of five years, and have passed Middle Standard Examination and Senior Secondary (Ten-plus-Two) Examination from such Schools, shall be deemed to have rural background;
.....”*

It was submitted that as per the above quoted rule, preference was required to be given to candidates having a rural background, as also to candidates, who had higher qualifications of Master's Degree in Agricultural Economics, as also Master's Degree in Business Administration, In view of the above, it was submitted that as the petitioner

has been granted additional marks for his higher qualifications of Master's degree in Agricultural and Master's degree in Business Administration, he was estopped from challenging one part of the Rule while taking benefit of the other part.

It was further argued that by awarding additional five marks, candidates having a rural background were being given preference as provided under the above quoted portion of the Rules. Thus, the action of the respondent Board fall within the purview of the Rules which had not been challenged by the petitioner.

It was further submitted that five additional marks were being given to the candidates with rural background, to achieve the object of selecting better candidates since Secretaries of the Market Committees were generally posted in the rural areas and were required to deal with purchase of agricultural produce. Thus, candidates who had a rural background were better suited for the job. It was in this background that additional marks were being given to the candidates hailing from the rural areas.

The next argument raised on behalf of the respondent Board was that the reliance of the counsel for the petitioner on **Abhishek Rishi's** case (*supra*) was misplaced as in that case, the primary issue before the Full Bench was with regard to preference given on the basis of residence. It was submitted that the issue of residence did not arise in the case in hand.

Abhishek Rishi's case (*supra*) was further sought to be distinguished by

the learned senior counsel by submitting that in that case, additional marks were being given to the candidates hailing from the rural areas to bring them at par with candidates, who had studied from urban schools and that case pertained to recruitment of teachers, whereas in the case in hand, additional marks were being given to candidates hailing from rural areas, keeping in view the above referred objectives i.e. to select better Secretaries for the Market Committees. On similar lines, **Kultar Singh's** case (*supra*) and **Subeg Singh's** case (*supra*) were also sought to be distinguished.

Mr. Akshay Bhan, learned senior counsel appearing on behalf of private respondents, while adopting the arguments raised on behalf of the respondent Board submitted that the private respondents, as on date, had served as Secretaries of the Market Committees for over three years. They had not committed any fraud or misrepresentation and thus, while relying upon a judgment of the Apex Court in **Rajesh Kumar & Ors. etc. vs. State of Bihar & Ors. etc.** reported as **2013 (4) SCC 690** and a judgment of this Court in **Sahil Aggarwal vs. State of Punjab and others** reported as **2014 (3) S. C. T. 813**, submitted that even if the case of the petitioner was to be allowed, it was not necessary while re-framing the merit list, to oust the private respondents. At the most, the petitioner, if found meritorious, could be ordered to be inducted into service.

It was further submitted that the law laid down by the Full Bench in **Abhishek Rishi's** case (*supra*) could not be applied to the facts

of the case in hand as the selections in this case were prior to the date of the judgment in Abhishek Rishi's case (*supra*), which could only have prospective application.

The first issue, referred to be decided by the Larger Bench in Abhishek Rishi's case (*supra*), was as under :-

“1. Whether the grant of 5 additional marks to the candidates, who have passed Middle and Matriculation examination from the schools situated in rural areas of Punjab, is sustainable ?”

After having quoted the question referred to a Larger Bench, it would be appropriate to refer to the criteria in question in the case in hand, which is as under :-

“However, for preparing for merit for the post of Secretary, Market Committee the candidates having rural background will be given 5 additional marks.

For reckoning rural background, it is clarified that the candidate should have studied for a total period of five years (60 months) in

school/schools situated in the rural areas and should have passed 8th class and 12th class from any of these schools.”

A comparison of the above quotes clearly shows that the impugned criteria in the case in hand is virtually the same as in **Abhishek Rishi's** case (*supra*).

The Full Bench, in **Abhishek Rishi's** case (*supra*), after scrutinizing the entire law on the subject, held as under :-

“54. Grant of five additional marks to candidates who have passed middle and matriculation examination from school situated in rural areas of Punjab can be justified only on the touchstone of Article 15 (5) which enables the State to make special provision for advancement of any socially and educationally backward classes. This would necessitate a finding that all students of eighth and tenth standard passing out of school situated in rural areas would form a single homogenous class of socially and educationally backward classes. Mere fact that a student has passed out from the rural

school would not make him per se socially and educationally backward by virtue of residence in rural area. A distinction would have to be drawn between the purpose and object of Articles 15(4) and 16 (3) & (4). The expression socially and educationally backward classes has been used in Article 15(4) whereas these words have not been so used in Article 16(4) which deals with equality of opportunity in matters of public employment.

xx xx xx xx

81. *For the reasons recorded above and to summarize what we have said, we hold :*

(1) *The Division Bench decision of this Court in [Sudesh Rani v. State of Punjab](#) and connected cases reported in 2010 (5) SLR 768: 2010 (3) SCT 1 decided on 20.4.2010 (CWP No.6801 of 2008 etc.) sustaining grant of five additional marks to the candidates who have passed middle and*

matriculation examinations from schools situated in rural areas of Punjab does not lay down the correct law.

(2) *As a consequence of (1) above and in absence of any CWP No.11071 of 2011 -60- quantifiable data available with the State Government as explained in [Kailash Chand Sharma v. State of Rajasthan and others AIR 2002 SC 2877](#); (2002) 6 SCC 562 and in [M. Nagaraj and others v. Union of India and others](#); (2006) 8 SCC 212, the grant of five additional marks to candidates who have passed the 10th and 12th standard examinations from schools situated in rural areas of Punjab is ultra vires the constitution. Resultantly, Rule 11 (3) of the impugned rules is struck down. [Emphasis supplied]”*

The law laid down in **Abhishek Rishi's** case (*supra*) was considered and followed in **Kultar Singh's** case (*supra*), where also a similar provision, as in the case in hand, was under challenge and it was held as under :-

“Hence, as far as the issue regarding award of additional marks in the present case to the candidates who had passed their Middle and Matriculation examination from the schools in rural areas is concerned, the same is contrary to the law laid down by Full Bench of this Court in Abhishek Rishi's case (supra), therefore, deserves to be set aside.”

Kultar Singh's case (*supra*) was taken up in an intra court appeal i.e. **L. P. A. No. 332 of 2014 – Subeg Singh and others vs. State of Punjab and others**, which was dismissed by a Division Bench of this Court on 13.08.2014.

The above quoted portions of the judgments delivered in **Abhishek Rishi's** case (*supra*) and **Kultar Singh's** case (*supra*), (which was upheld by a Division Bench) clearly show that virtually the same provisions, as in the present case, have been considered by this Court and have been held to be unconstitutional. It has categorically been held that the grant of additional marks to candidates having a rural background while seeking public appointment is constitutionally impermissible.

The argument raised on behalf of the respondent Board that the above weightage was being given to the candidates to achieve the

objective of selecting better Secretaries of the Market Committees, is required to be considered only to be rejected. In the light of identical weightage having been held to be per se unconstitutional, the above argument has no legs to stand on. Once it has authoritatively been held by the Full Bench in Abhishek Rishi's case (*supra*), following a catena of judgments of the Apex Court, that persons having a rural background, while seeking public employment, cannot be granted any weightage as the same is not permissible under the Constitution of India then irrespective of the object sought to be achieved, no such weightage can be allowed to be granted. Even otherwise, nothing has been placed on the record of this Court through facts and figures to support the above stand taken on behalf of the respondent Board. The argument so raised is vague, unsubstantiated and thus not acceptable. It is further not disputed that the Secretaries of the Market Committees are posted not only in rural areas, but also in the urban areas. So far as their dealing with agricultural produce is concerned, once the essential qualification for consideration of the candidature of an applicant for the post of Secretary, Market Committee, is B.Sc. Agriculture, then such candidate is academically fully equipped to deal with issues with regard to procurement of agricultural produce. He may or may not have a rural background.

So far as the rule of prospective application of Abhishek Rishi's case (*supra*) is concerned, this issue has been already dealt with and

decided in **Kultar Singh's** case (*supra*), a case involving similar questions of law and fact, wherein it was decided as under :-

“The contention raised by learned counsel for the respondents that judgment of Full Bench of this court in Abhishek Rishi's case (supra) should be taken to be laying down law for prospective application is to be noticed and rejected. There was no such observation made by the Full Bench of this Court in Abhishek Rishi's case (supra). Even the judgment of Full Bench of this Court in Amarbir Singh's case (supra), which has been cited by learned counsel for the private respondents in support of this argument, provides an answer against him. While referring to various judgments of Hon'ble the Supreme Court on the issue, it was opined that prospective declaration of law is a device innovated to avoid re-opening of settled issues. However, there shall be no prospective over-ruling unless it is so

indicated in a particular judgment. The relevant paras thereof are extracted below:

*“65. The preposition of doctrine of prospective overruling has been considered in several other decisions as well i.e. **Ashok Kumar Gupta v. State of U. P.** 1997(2) SCT 381, **M/s Raymond Ltd. v. M. P. Electricity Board**, 2001(1) RCR (Civil) 330, **Somaiya Organics (India) Ltd. and another v. State of U. P. and another** (2001) 5 SCC 519, **Harsh Dhingra v. State of Haryana** 2002(2) RCR (Civil) 450, **M. A. Murthy v. State of Karnataka and others** 2003(4) SCT 251; 2003(7) SCC 517, **Dr. Saurabh Choudhary and others v. Union of India and others**, 2004(2) SCT 890; 2004(5) SCC 618, **Employees State Insurance Corporation and others v. Jardine Henderson Staff Association and others**, 2006(3) SCT 691; 2006 (6) SCC 581, **Amrik Singh Lyallpuri v. Union of India and others** 2011 (6) SCC 535.*

66. The consistent view of the Supreme Court is that prospective declaration of law is a device innovated to avoid reopening of

*settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. The object of prospective declaration of law is that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in larger public interest. According to the Supreme Court, it was a rule of “all judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly effecting the rights of people who acted upon the law adopted prior to the date of judgment overruling the previous law. There shall be no prospective overruling unless it is so indicated in the particular decision by the Supreme Court under Article 142 of the Constitution. Recently in **Bangalore City Cooperative Housing Society Ltd. v. State of Karnataka and others** 2012 (3) R. C.R. (Civil) 779; 2012(3) **Recent Apex Judgments (R.A.J.)** 497; 2012 AIR SC 1395, the Supreme Court has upheld the quashing of the*

notifications under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 on the ground that there was no useful scheme approved by the State Government prior to the issue of notifications. In the absence of such approval the land could not be acquired for public purpose. The society's prayer for invoking the doctrine of prospective overruling in favour of those members of the society who had already constructed the houses may not suffer incalculable harm was declined. The Estate Agent had charged huge money from the Society for getting the notifications issued under Sections 4(1) and 6(1) of the 1894 Act and sanction of lay out plan by the BDA. The Supreme Court found no justification to invoke the doctrine of prospective overruling and legitimate the illegal acts committed by the Estate Agent.”

[Emphasis supplied]

The issue had also been gone into by a Full Bench of this Court in Commissioner of Income-Tax v. Smt. Aruna Luthra, (2001) 252 ITR 76, wherein it was

opined that a declaration by the court is--

This was the law, this is the law. This is how the provisions have to be construed. The court merely declares law. An earlier decision by the court is "simply no law".

Relevant paras thereof are extracted below:

"A court decides a dispute between the parties. The cause can involve decision on facts. It can also involve a decision on a point of law. Both may have bearing on the ultimate result of the case. When a court interprets a provision, it decides as to what is the meaning and effect of the words used by the Legislature. It is a declaration regarding the statute. In other words, the judgment declares as to what the Legislature had said at the time of the promulgation of the law. The declaration is – This was the law. This is the law. This is how the provision shall be construed.

Julius Stone in Social Dimensions of Law and Justice (First Indian Reprint 1999) (Chapter XIV), while dealing with the subject of Judge and

Administrator in Legal Ordering, observes as under:

“If, then, a main impulse underlying the stare decisis doctrine is that justice should respect reasonable reliance of affected parties based on the law as it seemed when they acted, this impulse still has force when reliance is frustrated by an overruling. Despite this, it has long been assumed that a newly emergent rule is to be applied not only to future facts, and to the necessarily past facts of the very case in which it emerges, but to all cases thereafter litigated, even if these involved conduct, which occurred before the establishment of the new rule. This has proceeded ostensibly on the conceptual basis, clearly formulated since Blackstone, that the new holding does not create, but merely declares, law. So that any prior putative law under which the parties acted is to be regarded as simply not law”. (emphasis supplied).

The above observations clearly support the principle that the court merely declares law. An earlier decision as

declared by the court is “simply no law”.

In the case in hand, nothing has been pointed out from the judgment of Full Bench in Abhishek Rishi's case (supra) that the judgment will have prospective effect.

Still further, the selection in the case had not attained finality but were subject-matter of challenge before the court before the judgment in Abhishek Rishi's case (supra) was pronounced. If the criteria followed for selection is considered in the light of law laid down by this Court, the same has to be set aside as to the selected candidates, marks have been awarded for having qualified Middle and Matriculation examination from rural area schools, which has been declared to be ultra vires to the Constitution of India. Selections cannot be upheld at this stage relying on Division Bench judgment of this court, which has been overruled. A Full Bench of this Court in Aruna Luthra's case (supra) clearly

*provides that the court only declared law.
An earlier law declared by the court is
simply no law. Hence, even this contention
of learned counsel for the private
respondents is rejected being misconceived.
[Emphasis supplied]”*

The above judgment in **Kultar Singh's** case (*supra*) was challenged in an intra-court appeal in **Subeg Singh's** case (*supra*), wherein the Division Bench, while dismissing the appeal, held that **Abhishek Rishi's** case (*supra*) would not have prospective application as under :-

*“The argument that, selection
was carried out and stood finalized in
terms of the decision by the Division Bench
in **Sudesh Rani's** case (*supra*) before a
judgment rendered by the Full Bench in the
case of **Abhishek Rishi**, therefore, the
decision by the Full Bench would have a
prospective application, does not appeal
us. Once the policy of the State awarding
five extra marks was held to be ultra vires
the Constitution or unconstitutional, that
indeed was a declaration of law i.e. as to*

what was the law and what the law is. And anything which was not in sync with the said declaration is no law or not a good law. That is how it is being submitted that doctrine of prospective overruling be invoked and the law enunciated by the Full Bench be held to have prospective application. It would be apposite, at this stage, to refer to some crucial observations that were made by another Full Bench of this Court and were noticed even by the learned Single Judge. The same read as thus:

“...the issue had also been gone into by a Full Bench of this Court in Commissioner of Income-Tax v. Smt. Aruna Luthra, (2001) 252 ITR 76, wherein it was opined that a declaration by the court is – This was the law, this is the law. This is how the provisions have to be construed. The court merely declares law. An earlier decision by the court is “simply no law”.

Thus, the short question that

*arises here is, does it have a prospective application? The answer is No. The position of law is settled that there shall be no prospective overruling unless it is so indicated in a particular judgment. That is what, the learned Single Judge has recorded after a thorough analysis of the various decisions on the issue. Faced with this situation, learned senior counsel urged that even in the absence of any observation by the Full Bench in this regard, we could consider the issue whether the said decision can be construed to have a prospective application vis-a-vis the matter in hand. We are afraid that we cannot tread that path. The decision of the Full Bench does not state that the interpretation as given will have prospective effect or the earlier Division Bench judgment in **Sudesh Rani's case** (supra) was overruled prospectively. [Emphasis supplied]"*

Thus, it has conclusively been held that the judgment in

Abhishek Rishi's case (*supra*) would not have prospective application and therefore, the law as declared by the Full Bench, has to be applied to the facts of the case in hand. Further, it was this very petition which had been heard and decided along with the writ petition filed by Abhishek Rishi. Thus, there is no reason in law or in fact not to apply the law laid down in **Abhishek Rishi's** case (*supra*) to the facts of the case in hand. Still further, the impugned appointments in the case in hand were made on 13.12.2011, which was after the detailed order dated 10.06.2011, passed by the Division Bench, while issuing notice of motion and restraining the respondents therein from making any further appointments in **Abhishek Rishi's** case (*supra*). In this regard, it would be useful to refer to the following observations of the Division Bench in **Subeg Singh's** case (*supra*) :-

*“We also consider it appropriate, just to notice as a fact that the Division Bench while issuing notice of motion in **Abhishek Rishi's case** (*supra*) had seriously doubted the correctness of the decision by the Division Bench in **Sudesh Rani's case** (*supra*) by passing a detailed order on 10.06.2011. So much so, the respondent-State was restrained to take any further step in furtherance of the*

*advertisement (Annexure P-7).
Subsequently, the Division Bench of this
Court had referred the said case to a Larger
Bench on 13.07.2012. This aspect assumes
significance as the appellants were
appointed in July, 2011.”*

The issue of estoppel raised on behalf of the respondents also needs to be rejected. Once a Full Bench, as also a Division Bench of this Court has authoritatively held the impugned criteria to be unconstitutional then the petitioner is well within his rights to challenge the same in a Court of law irrespective of the fact that he had taken part in the selection process. Once the criteria has been declared to be unconstitutional, it would mean that the impugned criteria should have not been there at all. Further, there can be no estoppel against enforcement of fundamental rights and as the impugned criteria has been declared to be violative of Articles 14, 15 and 16 of the Constitution of India, on the issue of estoppel, the petitioner cannot be denied relief.

In this regard, the following observations made by a Constitution Bench of the Apex Court in **Olga Tellis and others vs. Bombay Municipal Corporation** reported as **1985 (3) SCC 545** may usefully be referred to :-

“29. *The plea of estoppel is closely*

connected with the plea of waiver, the object of both being to ensure bona fides in day-to-day transactions. In Basheshar Nath v. The Commissioner of Income Tax Delhi, [1959] Supp. 1 S.C.R. 528 a Constitution Bench of this Court considered the question whether the fundamental rights conferred by the Constitution can be waived. Two members of the Bench (Das C.J. and Kapoor J.) held that there can be no waiver of the fundamental right founded on Article 14 of the Constitution. Two others (N.H.Bhagwati and Subba Rao, JJ.) held that not only could there be no waiver of the right conferred by Article 14, but there could be no waiver of any other fundamental right guaranteed by Part III of the Constitution. The Constitution makes no distinction, according to the learned Judges, between fundamental rights enacted for the benefit of an individual and those enacted in public interest or on grounds of

public policy.”

An argument was raised on behalf of the respondent Board that the petitioner has taken benefit of one part of the Rule i.e. additional marks for having higher qualifications i.e. M.Sc. (Agriculture) and MBA and that being so, the petitioner was estopped from challenging a part of the same Rule. This argument needs to be rejected as in a selection process, grant of higher marks for academic excellence is permissible and it is always open for a litigant to sever and challenge the offending part of the same Rule.

The issue raised on behalf of the private respondents that they having served the respondent for over three years and there being no fault on their part, they should not be ousted, is an issue, which has already been considered and rejected by the Division Bench in Subeg Singh's case (*supra*), by holding as under :-

*“No doubt, the appellants have
been serving for the last about three years,
but the question that stares us in the faces
is, what about those who were kept out of
service for three years because of them. And
also for no fault of theirs. And being more
meritorious. We are mindful of the fact that
the situation could have been altogether
different had the policy of the State formed*

*part of the criteria that was originally finalized on 12.03.2009. As in that case even if awarding five extra marks was held to be unconstitutional by the Full Bench in **Abhishek Rishi's case** (supra), yet it could be maintained and considered that appellants being bona fide participants in the process of selection could not be made to suffer for no fault of theirs. And we could still consider moulding the relief. Unfortunately, in the matter in hand besides the unconstitutional advantage of five extra marks that was afforded to the appellants and decision of Full Bench in **Abhishek Rishi's case** (supra), alteration of criterion for selection when the process was at an advance stage, completely vitiates the selection and resultant appointments. It is also discerned from the records that the orders dated 30.11.2013 (Annexure A-8) regarding successful completion of probation period of the appellants were*

issued subject to the decisions of this Court in CWP No.15646 of 2011 and CWP No.15645 of 2011. That being so, we are unable to persuade ourselves to mould the relief, as is being prayed for. [Emphasis supplied]”

Further, it has not been projected whether any of the private respondents have become overage for fresh recruitment. No exercise was done by counsel for the respondents to bring about the fact so as to how many of the private respondents would actually be ousted if a fresh merit list is drawn up after ignoring five additional marks, awarded to the candidates with rural background. In any case, as held by the Division Bench in Subeg Singh's case (*supra*), the private respondents cannot be allowed to reap the benefits of marks, the grant of which has been held to be constitutionally impermissible, especially when there is no delay on the part of the petitioner to have approached this Court through the present petition.

For the reasons mentioned above, the present writ petitions being C. W. P. No. 1369 of 2012 – Parget Singh vs. Punjab State Agriculture Marketing Board and others, C. W. P. No. 11844 of 2012 – Anil Kumar Sharma vs. Punjab State Agriculture Marketing Board and others, C. W. P. No. 12305 of 2012 – Parbhleen Singh Cheema vs. Punjab State Agriculture Marketing Board and others and C. W. P.

No. 12502 of 2012 – Kanwal Preet Singh vs. Punjab State Agriculture Marketing Board and others are allowed. The impugned selections are set aside and the Authorities are directed to re-cast the merit list after ignoring the five additional marks awarded to the candidates having rural background and offer appointment to the candidates, who fall in the fresh merit list. The necessary exercise be done within the period of two months from the date of receipt of a certified copy of this order.

No costs.

**(DEEPAK SIBAL)
JUDGE**

Pronounced On : 12.05.2015

monika