

The advertisement specified that for the purpose of selection there would be an objective test of two hours duration consisting of 100 objective type questions with multiple choice answers. The criteria prescribed for the written test was as under:

Sr. No.	Subjects	Questions
1.	English	10
2.	General Knowledge/Awareness	20
3.	Mental Ability/ Aptitude/ Numerical Ability	20
4	Job Related (As per the minimum qualifications)	50

For every wrong answer 1/4th mark was to be deducted.

Selection was to be made as per merit prepared on the basis of written test only. It was indicated that the candidates who qualified for selection on the basis of written test would be called by the Selection Committee for verification of original documents and thereafter list of selected candidates would be put on the department website.

Petitioner No.1 has completed the 66 Station Officer and Instructor Course from the National Fire Service College, Nagpur and also passed Advanced Diploma in Fire Engineering from National Fire Service College, Nagpur. He had applied for both the posts of Assistant Divisional Fire Officer and Fire Station Officer. Petitioner No.2, who had successfully cleared the Sub Officers Course from National Fire Service College as also the 68 Station Officer and Instructor's Course from the National Fire Service College applied for the post of Fire Station Officer. Both the petitioners appeared in the

written test held on 29.03.2014 and were hopeful of their selection and appointment on the respective posts.

Before the result of the written examination was declared, respondent No.3 (Selection Committee) issued public notice dated 10.05.2014 (Annexure P-8). As per this notice, the successful candidates would be additionally required to conform to the physique and physical fitness standards fixed for the posts as under:

“Physique for all posts for direct recruitment.

- a) Height 5'5” minimum*
- b) Chest 33.5” unexpanded with 1.5” expansion*
- c) Eye sight 6/6 both eyes without glasses*

Physical Fitness standard

- a. Running a distance of 100 yards with a weight of 60 kg stones in one minute.*
- b. Lifting the hook ladder to a vertical position from 3rd and 6th round.*
- c. Climbing a rope or a vertical pile to a height of 8-10 feet from the ground.”*

It was stated that the candidates would be required to appear before the Sub- committee constituted for the physical test, the date and time whereof would be intimated separately.

Aggrieved of the prescription of the physical standards and physical fitness test through the public notice (Annexure P-8), the petitioners have filed the present writ petition impugning the same.

It is contended that such a test is not envisaged in the service Rules, nor was any such condition laid down in the

advertisement. It is also contended that the criteria for selection cannot be changed and additional qualifications prescribed, once the selection process is under way. Moreover, the selection committee cannot prescribe any additional criteria.

In the written statement filed on behalf of respondents No.1 and 3, it has been stated that the recruitment and conditions of service of the Assistant Divisional Fire Officer and Fire Station Officer are governed by the Punjab Municipal Corporation Services (Recruitment and Conditions of Service) Rules, 1978 (hereinafter referred to as the `1978 Rules`) in the Municipal Corporations and the Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975, (hereinafter referred to as the `1975 Rules') in the Municipal Council/ Nagar Panchayat cadres respectively. The qualification prescribed for the post as per the Service Rules are as under:

Sr. No.	Name of Post	Qualifications for direct recruitment
1.	Assistant Divisional Fire Officer	Advance Diploma in Fire Engineering from National Fire Service College Nagpur.
2.	Fire Station Officer	Diploma in Fire Engineering from National Fire College, Nagpur.

Apart from these, there are specific physical standards prescribed for all the Fire Brigade Staff in the “Standing Orders, 2004” approved by the Government of India, Ministry of Home Affairs, Directorate General Civil Defence, New Delhi (Annexure R/1).

Annexure-D of the Standing Orders stipulates the physical standard for these posts which have been indicated in the impugned public notice. The Selection Committee in its meeting held on 09.05.2014 decided to issue a clarification through a public notice that the candidates would have to fulfil the physical standards as per the Standing Order. Consequently the impugned public notice was issued.

Learned counsel for the petitioners has raised the following contentions:

(i) No physique or physical fitness standards have been prescribed in the Service Rules nor were any such standards prescribed in the original advertisement. No additional qualification can be prescribed once the selection process is under way.

(iii) The Selection Committee cannot lay down any additional qualification.

Ld. Counsel for the respondents to the contrary justified the imposition of the conditions of the physique and the physical fitness standards as having been prescribed for the Fire Brigade Staff in terms of the Standing Orders.

I have heard Ld. Counsel for the parties and perused the record.

The primary question that arises for consideration is whether the Standing Orders relied on by the respondents are applicable to the posts in question.

To answer this question the relevant provisions of the Punjab Municipal Act, 1911, (for short “1911 Act”), The Punjab Municipal Corporation Act, 1976 (for short “1976 Act”) under which the services in question have been constituted and the Rules governing them have to be noticed.

Section 38 of the 1911 Act, deals with the Constitution of Municipal Services. As per this section, the State Government may, by notification, constitute various classes of Municipal Services and make rules for the recruitment and conditions of service of the members of such service.

Section 38 in so far as relevant is reproduced below:

“38. Constitution of municipal services. – (1) *Notwithstanding anything contained in this Act, the State government may by notification, constitute in the prescribed manner all or any of the following Municipal Services, namely: -*

- (i) Punjab Service of Municipal Executive Officers;*
- (ii) Punjab Service of Municipal Engineers and Sectional Officers.*
- (iii) Punjab Service of Municipal Health Officers;*
- (iv) Punjab Service of Municipal Secretaries;*
- (v) Punjab Service of Municipal Accountants: and*
- (vi) Such other Municipal Services as the State Government may decide.*

(2) The State Government may make rules for regulating the recruitment and the conditions of service of members of the Municipal Services referred to in sub-section (1) and for the classification of such Services.

(3) The State Government may transfer any member of a

Municipal Service from a post in one committee to a post carrying the same scale of pay in another committee.

(4) The salary, allowances, gratuity, annuity, pension and other payments required to be made to the members of the Municipal Services in accordance with the conditions of their service shall be charged from the municipal fund in the prescribed manner.

(5) Creation of posts in a Municipal Service and appointment of members thereto shall be made by the State Government or by an authority empowered by the State Government in this behalf after taking into consideration the requirements of the Committees and their financial capacity but no such members shall be deemed to have been appointed to any civil service or post under the State.

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(7) Recruitment of members of the Municipal Service referred to in sub-section (1) shall be made by the State Government or by any authority empowered by the State Government in this behalf and nothing contained in the Punjab Public Service Commission (Additional Functions) Act, 1955, shall be deemed to apply to or require consultation with the Punjab Public Service Commission in respect of such requirement.”

As per the provisions of Section 38, the 1975 Rules have been framed by the State Government. These Rules apply to all services specified in Appendix 'A'. The posts of Assistant Divisional Fire Officer and Fire Station Officer are mentioned at Sr. No.13 and 15 in Appendix A. Thus, these services are governed by the 1975 Rules.

As per Rule 4, the qualifications necessary for direct

recruitment and for promotion to the posts in a service shall be as detailed in Appendix 'B' against that Service.

The relevant part of Appendix B is reproduced below:

Sr. No.	Name of Post	Qualification for direct recruitment	Qualification for promotion
1.	2	3	4
1 to 12	xx	xx	Xx
13.	Assistant Divisional Fire Officer.	Advance Diploma in Fire Engineering from National Fire Service College, Nagpur.	Should be a Fire Station Officer/ Superintendent or Fire Station Superintendent having diploma in Fire Engineering from National Fire Service, Nagpur with a working experience of any one or more of these posts for a minimum period of three years.
14.	xx	xx	Xx

15.	Fire Station Officer	Diploma in Fire Engineering from the National Fire Service College, Nagpur.	From amongst the Sub-Fire Officers, working under the control of the Directorate, who have passed the Station Officer's course from the National Fire Service College, Nagpur or possess a diploma in Fire Engineering from the said college or its equivalent and have an experience of working as such for a minimum period of three years: Provided that if no suitable Sub-Fire Officer is available then the post will be filled up from amongst the Leading Fireman, working under the control of the Executive Officer, who have passed the Station Officer's Course from the National Fire Service College Nagpur or possess a diploma in Fire Engineering from the said College or its equivalent and have an experience of working as such for a minimum period of five years.
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As per these Rules the appointing authority for these posts is the authority specified in Appendix `C'.

The relevant part of Appendix C is reproduced below:

<u>Sr. No.</u>	<u>Designation of the employees</u>	<u>Name of Penalty</u>	<u>Appointing authority</u>	<u>Punishing Authority</u>	<u>Appellate Authority</u>
1	2	3	4	5	6

1 to 5	Xx	xx	Government in the case of Executive Officers, Secretaries, Superintending Engineer (Civil), Engineers, Law Officers, Town Planners and Architects of Class I Municipal Committees.	Xx	xx
6	Assistant Divisional Fire Officer		(2) Director Local Government, Punjab in case of all other services		
7 to 18	Xx	xx	Xx	Xx	xx
19	Fire Station Officers	the grade of post or service from which the Municipal employee was reduced and his seniority and pay on such restoration to that grade post or service.			

A perusal of the above Rules makes it clear that the appointing authority for these posts is the Director, Local Government Punjab. The qualification for direct recruitment to the post of Assistant Divisional Fire Officer is Advance Diploma in Fire Engineering from National Fire Service College, Nagpur and for the post of Fire Station Officers the qualification is Diploma in Fire Engineering from the National Fire Service College, Nagpur.

Rule 6 prescribes the age on entry and the physical fitness required. The said Rule is reproduced below:

6. Age on entry and physical fitness (1) *No person shall be appointed to a Service by direct recruitment if he is less than seventeen years or more than forty years of age on the last date of receipt of application for the post fixed by the Selection committee or the appointing authority as the case may be:*

Provided that in case of candidates belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes, the maximum age limit shall be such as may be fixed by the government from time to time.

(2) *A person appointed to the Service by direct recruitment shall be required to produce certificate of physical fitness from the Civil Surgeon of the District before joining his Service. Such a person shall, before being examined make and sign a declaration in Form I appended to these rules and the Medical Officer shall examine him and furnish a certificate in Form II appended to these rules:*

Provided that the aforesaid condition shall not apply while filling up temporary vacancies of [less than six months duration.”

Apart from the above requirement of producing a physical fitness certificate in the specified form, there is no provision in these Rules for any specific physique or passing of a physical fitness test.

There are similar provisions in the 1976 Act and the Rules framed thereunder.

Besides the Punjab Municipal Services constituted under

Section 38, Section 39 enables the Committees to employ other

officers and servants. It may assign them such remuneration as it may deem fit and may suspend, remove or dismiss such employees. As distinct from the officers appointed to the Services constituted under Section 38 who are appointed either by the State Government or the Director Local Government, the officers and employees referred to in Section 39 are employed by the Municipal Committee itself.

Section 39 is reproduced below:

“39. *Employment of other officers and servants.* – (1) *Subject to the provisions of this Act and the rules and bye-laws made thereunder, a committee may, and if so required by the State Government shall, employ other officers and servants and may assign to such officers and servants such remuneration as it may think fit, and may suspend, remove, dismiss, or otherwise punish any officer or servant so appointed.*

[Provided that no person who is a member of a committee shall be employed by a committee during the tenure of his term and for a period of twelve months thereafter.

[(2) Nothing in this section shall prevent the State Government from making any provision in the rules under this Act for the reservation of appointment or posts and to lay down methods to secure such reservation in favour of members of the Scheduled Castes, the Scheduled Tribes and such other backward classes of citizens which in the opinion of the State Government are not adequately represented in the services under the Municipal Committee.]”

Another relevant provision is Section 93 which requires

that for the prevention and extinction of fire a Committee may establish and maintain a fire-brigade, and provide implements, machinery or means of communicating intelligence for the efficient discharge of their duties by the brigade.

“93. Establishment and maintenance of Fire-Brigade:-

1[For the prevention and extinction of fire, the committee may and, if the State Government so direct shall, establish and maintain a fire-brigade, and provide implements, machinery or means of communicating intelligence for the efficient discharge of their duties by the brigade.]

Section 240(i) empowers the State Government to make rules prescribing the qualifications required in the case of persons appointed by the Committee to the offices requiring professional skill. As per Section 240 (m) the State Government has the power to make rules for the formation and working of municipal fire-brigades; and the provision of implements, machinery or means of communicating intelligence for the efficient discharge of their duties by such brigades.

240. Power of state government to frame forms and

make rules: - (1) The State Government may frame forms for any proceeding of a committee [and may make any rules consistent with this Act to carry out the purposes thereof and in particular and without prejudice to the generality of the foregoing power may make rules]-

(a) to (d) xx xx xx

(i) prescribing the qualification requisite in the case or persons appointed by a committee to offices requiring professional skill:

(j) to (l) xx xx xx

(m) As to formation and working of municipal fire-brigades; [and the provision of implements, machinery or means of communicating intelligence for the efficient discharge of their duties by such brigades];

(n) xx xx xx

(nn) the manner of constitution of municipal services, the classification, method of recruitment and the conditions of service of persons appointed to such services;”

In exercise of the powers conferred by Section 240(i) and

(m) the State Government has framed The Punjab Municipal Fire Brigade Rules, 1977 (hereinafter referred to as the “1977 Rules”).

Rule 3 of these Rules requires every Committee establishing a Fire Brigade to frame standing orders to regulate the formation and working of the Fire Brigade constituted under Section 93. The relevant Rule 3(a) is reproduced below:

“3. Standing order to regulate the formation and working of Fire Brigade (Sections 93 and 240). -----

(a) Every Committee establishing a Fire Brigade shall with the approval of the Director frame standing orders to regulate the formation and working of such brigade. The standing Order shall, among other matters, provide for the strength of organisation, place of residence, discipline nature of duty, training, drill and alarm procedure of the brigade, and shall comprise a detailed account and inventory of such appliances for the communication of intelligence and extinguishing of fire as may be provided by the Committee together with general orders for co-operation with the police on the occasion of an outbreak of fire.”

By referring to the provisions of Section 240(i) and (m) of the 1911 Act, Ld. Counsel for the petitioners contends that Standing Orders, that are relied upon by the respondents to justify the condition of physique and physical standards do not and cannot apply to the posts of the petitioners. It is his case that the Standing Orders have been framed as required under Rule 3(a) of the 1977 Rules. The 1977 Rules, in turn, have been framed in exercise of the powers under Section 240(i) and (m) which are restricted to prescribing the qualification for persons appointed by a committee to offices requiring professional skill and for formation and working of municipal fire-brigades; and the provision of implements, machinery or means of communicating intelligence for the efficient discharge of their duties by such brigades. It is his case that the post of Assistant Divisional Fire Officer and Sub Fire Officer are Municipal Services constituted by the State Government under Section 38 and the Rules governing these services namely the 1975 Rules have been framed in exercise of powers conferred under Section 38 (2) and Section 240 (nn) of the 1911 Act. The Standing Orders on the other hand having been framed under the 1977 Rules which being referable to Section 240(i) and (m), can and, in fact, only prescribe qualification for the persons appointed by the Committee to posts requiring professional skill or for organizing the fire brigade cannot apply to the posts which are covered by the 1975 Rules. It is his case that the qualifications prescribed by way of the Standing Orders in fact only apply to the persons appointed by the Committee under Section 39

of the 1911 Act and not to the services constituted under Section 38 of the 1911 Act.

The above argument of the Ld. Counsel for the petitioner necessarily merits acceptance as it flows from a reading of the provisions of 1911 Act and Rules framed there under.

A perusal of Annexure R-1 reveals that the Standing Orders have been framed for the formation and working of Fire Brigades in the State as required under Rule 3(a) of the 1977 Rules. They were circulated to all the Municipal Corporations and Municipal Committees for adoption vide communication dated 9.7.2004 after having been duly vetted by the Directorate General of Civil Defence, Government of India, Ministry of Home Affairs. These contain general orders dealing with the formation and working of the Fire Brigades in the State. As per these orders, the Assistant Divisional Fire Officer, the Fire Station Officer or the Sub-Fire Officer shall be the officers in charge of the Fire Brigade and responsible to the Committee for the strict compliance of these orders, the maintenance of discipline, upkeep of appliances, welfare of staff etc. It contains separate Annexures detailing the powers of members of the Fire Brigade on occasion of Fire/ Emergency call, list of items of uniform of various ranks, the general duties and responsibilities of the various categories of officers namely the Assistant Divisional Fire Officer, the Fire Station Officer or the Sub-Fire Officer etc. Clause 25 in the Section titled 'General Orders' requires that the entire operational staff viz the Assistant Divisional Fire Officer, the Fire Station Officer

or the Sub-Fire Officer, leading fireman, driver/ operators and fireman etc. shall for the purposes of fitness, alertness and suppleness of action, undergo squad, physical and fire drills daily according to the programme as per Annexure E.

Clause 28 states that all appointments and promotions in the fire brigade staff should be made with the prior approval of the Director Local Govt. Punjab in the case of Municipal Council and the Joint Secretary, Local Government Punjab in the case of Municipal Corporations, subject to the qualifications as per Annexure D.

Annexure D is reproduced as under:

“Qualification fixed for the recruitment of fire brigade staff

Sr. No	Name of Post	For Direct Recruitment	Fire Promotion
1.	Sub Fire Officer	1. Graduate, preferably in Science 2. He should have passed Sub-Officer course from NFSC Nagpur	1. Minimum matric, Punjabi as one of the language required for the technical post according to the Govt. instructions. 2. He should have at least 5 years experience as leading Fireman or 12 years experience as a Fireman. 3. He should have passed the Sub-Officer Course from NFSC Nagpur.
2.	Leading Fireman	1. Matric in second division with Punjabi as one of the Language required for the Technical post according to Govt. instructions.	1. Matric or middle standard with 10 years experience as fireman may be promoted in order of seniority/ merit. 2. Preference will be given to those who have got training in first aid and water supply distribution system and having Heavy motor Driving Licence.

3.	Driver Operators	1. Middle standard minimum. 2. Holding Licence of driving heavy vehicles of not less than five years prior to the date of recruitment in fire service. 3. He must have experience of carrying out running repairs to vehicles and other fire Service appliances.
4.	Fireman	1. Minimum matric should preferably the demobilized soldiers or other able bodies person all below the age of 30 years who are quite fit to undergo rigors of the duties of a fire brigade personnel.

Note:**1. Physique for all posts, for direct recruitment or by promotion**

- a) Height 5'5' minimum
- b) Chest 33.5" unexpanded with 1.5" expansion.
- c) Eye sight 6/6 both eyes without glasses.

2. Physical fitness standard:

- a) Running a distance of 100 yards with a weight of 60 kg stones in one minute.
- b) Lifting the hook ladder to a vertical position from 3rd and 6th round.
- c) Climbing a rope or a vertical pipe to a height of 8-10 feet from the Ground."

Thus, apart from what follows on a reading of the relevant provisions of the 1911 Act and the Rules framed thereunder, even on its own terms, the qualification as prescribed in Annexure D and the requirement of physique and physical fitness standard prescribed therein are only for the posts which find mention in Annexure D.

These posts are Sub Fire Officer, Leading Fireman, Driver Operators and Fireman. Neither the post of Assistant Divisional Fire Officer nor the post of Fire Station Officer is mentioned therein.

Thus, there is no statutory or legal provision, whereby, the physique and physical fitness standards which are a part of the Standing Orders can be prescribed as essential qualification for recruitment to the post of Assistant Divisional Fire Officer or Fire Station Officer. Resultantly, there is no merit in the stand of the respondents that the qualifications in Annexure D of the Standing Orders can be insisted upon for the post of Assistant Divisional Fire Officer or Fire Station Officer .

Apart from the above, Ld. Counsel for the petitioners has argued that additional qualifications cannot be prescribed after the selection process has been initiated and the process is underway. In this regard, he has pointed out that the advertisement was issued on 19.01.2014; the written test for the post was held on 29.3.2014; the result of the examination was declared on 4.7.2014, and the impugned public notice was issued on 10.5.2014 after the written test had been conducted. Ld. Counsel has relied on various decisions of the Hon'ble Supreme Court in **K.Manjusree vs. State of A.P., 2008(3) SCC 512**, **Hemani Malhotra vs. High Court of Delhi, 2008(7) SCC 11** and **Maharashtra State Road Transport Corporation vs. Rajendra Bhimrao Mandve, 2001(10) SCC 51** among others in support of his contention.

Ld. State Counsel on the other hand has relied on a

decision of this court in **CWP No.19459 of 2011 Akashdeep and others Vs. State of Punjab and others** decided on **February 14, 2013**.

The decision in the aforesaid case can be of no help to the respondents. In that case applications had been invited for 530 posts of clerks in the Punjab Civil Secretariat vide advertisement dated 27.7.2011. While laying down the educational qualifications, it was also mentioned that the applicant would be required to pass the type test conducted by the Punjab Government from time to time. The last date for submission of applications was 24.8.2011. Before that, vide notification dated 17.8.2011 the State Government amended Rule 15 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 and requiring the passing of Punjabi Type test prior to appointment to the post, instead of the earlier provision, as per which the type test could be passed within one year of appointment. The candidates were duly informed by public notice dated 13.9.2011 about the requirement to pass the Punjabi Type test. The written test for selection was held on 1.10.2011. It was in this context that the Hon'ble Court upheld the change in the criteria based on an amendment of the relevant Rules before the last date of submission of the applications, which had been duly intimated to the candidates before the date of exam.

The present case is wholly different. Here, the additional qualifications have been specified without any amendment in the applicable Service Rules. The public notice was issued after the

written test had already been conducted. Hence, the action is illegal and impermissible.

It was next argued by the Ld. Counsel for the petitioners that the public notice dated 10.05.2014 requiring the candidates to appear before a Sub-committee for the physical test regarding their conformity with the physical standards referred to in the notice has been issued by the Selection Committee. In this regard, it is contended that such action of the Selection Committee is illegal because as per settled law, unless the Rules provide otherwise, the Selection Committee has no jurisdiction to prescribe additional qualifications over and above those laid down in the Rules and the advertisement.

The Ld. State Counsel was asked to produce the records to know on whose authority the public notice has been issued. Photocopies of the original record were produced, which reveal that a meeting of the Departmental Selection Committee was held on 9.5.2015 under the Chairmanship of Sh. Prem Chand, P.C.S., Chairman of the Selection Committee. At this meeting, it was decided that apart from the qualifications prescribed in the Service Rules, the candidates for the posts of Assistant Divisional Fire Officer and Fire Station Officer be required to possess the physical standards as prescribed in the Standing Orders approved by the Directorate General Civil Defence, Ministry of Home Affairs and that a public notice in this regard be got published.

It is thus clear that this public notice was issued only on

the authority of the Selection Committee. No provision of any Rule or Statute has been pointed out as per which the Selection Committee could prescribe any additional qualification. So quite apart from the earlier reasons, the public notice is liable to be quashed also on the ground that the action of the Selection Committee in prescribing the additional condition is without jurisdiction. In this regard, reference may be made to **P.K.Ramachandra Iyer vs. Union of India, (1984) 2 SCC 141**, **Umesh Chandra Shukla vs. Union of India, (1985) 3 SCC 721** and **Dr.Krushn Chandra Sahu and others vs. State of Orissa and others, (1995)6 SCC 1**.

As the public notice cannot be upheld for the above reasons, there is no need to go into the other contentions of the Ld. Counsel for the petitioners that this action is mala fide and discriminatory as such condition has not been insisted upon while making promotions to these posts.

For the afore-mentioned reasons, this writ petition is allowed. The public notice dated 10.5.2014 (Annexure P-8) is quashed. It is directed that the appointments be made as per the procedure of selection, prescribed in the advertisement dated 19.1.2014 (Annexure P-1).

28.05.2015.

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**(HARINDER SINGH SIDHU)
JUDGE**