

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

I.

Civil Writ Petition No.25960 of 2014

Date of decision: 8.1.2015

Yuvraj Katodia and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

II.

Civil Writ Petition No.26310 of 2014

Bharat Lumba

..... Petitioner

Versus

State of Punjab and another

..... Respondents

III.

Civil Writ Petition No.26370 of 2014

Amandeep Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

IV.

Civil Writ Petition No.26780 of 2014

Piara Singh and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

V.

Civil Writ Petition No.17 of 2015

Abhinandan Sharma

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Gurminder Singh, Sr. Advocate with
Mr.Manpreet S. Longia, Advocate,
for the petitioners in CWP No.25960 of 2014.

Mr.GBS Dhillon, Advocate,
for the petitioner in CWP No.26370 of 2014.

Mr.Jasmandeep, Advocate,
for the petitioner in CWP No.26310 of 2014.

Mr.Yagyadeep, Advocate,
for the petitioners in CWP No.26780 of 2014.

Mr.Saurabh Kaushik, Advocate,
for the petitioner in CWP No.17 of 2015.

Mr.Rajiv Prashad, Addl. AG, Punjab
for respondent No.1-State of Punjab.

Mr.Ashok Aggarwal, Advocate General with
Mr.Kamal Sehgal, Addl. AG, Punjab
for respondent No.2.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

This order will dispose of above mentioned 5 petitions as common questions of law and fact are involved in all these petitions. By consent, the lead petition is CWP No.25960 of 2014 and reference to facts and pages of the paper book are taken from that case in resolving issues raised by the petitioners.

2. The petitioners are the candidates and who have appeared in the main written examination in Stage-2 of the Punjab State Civil Services Combined Competitive Examination, 2013 conducted by Punjab Public Service Commission, 2nd respondent (in short, “the Commission”). Their grievance is that they have failed to make it for the interview in the result declared by the Commission on 8th December, 2014. It is stated that about 24,000 candidates appeared for the preliminary examination held on 23rd April, 2014, out of which, 1414 candidates cleared the preliminary examination including the petitioners to compete for Stage-III-interview/viva voce. The result of the main examination has led to only 213 candidates being called for interview. The physical test and the interviews were slated to begin on 6th January, 2015. It was at this stage the petitioners approached this Court invoking its jurisdiction under Article 226 of the Constitution.

3. The brief facts of the current recruitment drive are that the selection process was initiated by advertisement No. 9 dated 6th December, 2013 calling applications from eligible candidates for filling up 120 vacancies in different services ranging from PCS (Executive Branch), Excise & Taxation Officers, Tehsildars etc. in the services grouped for a single combined examination-cum-interview process. The procedure and scheme for conduct of the preliminary and main examination was notified by the Commission on 3rd January, 2014. Till the previous examinations held by the Commission, the candidates had to appear in 6 subjects. There were two optional subjects to be chosen by the candidates and there were two further papers in each optional subject. The candidates were required to obtain 45 percent marks in aggregate and not less than 33 percent marks in

Punjabi only. 33 percent marks did not cut across all subjects/papers.

4. In the present recruitment process, the procedure and the scheme of the main examination have been materially changed. The optional subjects have been dropped. The scheme provides for 4 subjects consisting of 7 papers namely Punjabi (one paper) for 100 marks, English (Compulsory), (one paper) for 100 marks, Essay (one paper) for 150 marks and General Studies divided into 4 papers each carrying 250 marks. The grand total marks for the main examination is 1500 of which 1350 marks are for the written examination (main) and 150 for the interview/viva-voce. It is provided that no candidate would be eligible to appear for the interview unless he obtains 45 percent marks in aggregate in all subjects for the general category candidates and 40 percent marks in aggregate in all subjects for Scheduled Castes and Scheduled Tribes. It was also provided that each candidate should obtain 33 percent marks in each subject to qualify for the interview. It was also provided in the scheme that the candidates not more than 3 times of the number of vacancies advertised in each category shall be called for interview. The syllabus and pattern of the examination was notified by the Commission by a public notice put in public domain on 5th March, 2014 through newspapers and uploaded on the official website of the Commission.

5. All the answers in the main examination have to be answered in essay form. Though, the preliminary examination was of an objective type.

6. Mr.Gurminder Singh learned senior counsel for the petitioners submits that in the previous system prevalent under advertisement issued on 15th September, 2012, the result of the main competitive examination was declared categorywise. Previously, the minimum marks of 33 percent were

applied to each subject and not papers. This year while declaring the result of the main examination, the Commission has all of a sudden applied the minimum of 33 percent marks in each of the 4 papers consisting of 4 parts of the subject of General Studies. The aggregate of 45 percent was earlier reduced to 40 percent for the general category candidates and from 40 percent to 30 percent for SC/ST candidates.

7. The case of the petitioners is that the Commission has deviated from the procedure prescribed in the circular/public notice issued on 3rd January, 2014 and has declared the result paper-wise, i.e., it has applied 33 percent marks to each of the 4 papers that composes the subject of General Studies while the rules of the Commission as prescribed demand that 33 percent marks have to be applied cumulatively to all the 4 papers consisting of the subject of General Studies. As a result of this departure, the petitioners have failed to make it for the interview. The Commission is stated to have committed a mistake in reading the word, “paper” with that of “subject” and amounts to adding a new found meaning to words not known before. The Commission has midway changed the rules of the game after the game is almost done and only Stage-3 remains for interview/viva-voce. The argument centres on conditions 8 and 9. These provisions are substantive in nature while “Note” below conditions 1 to 11 is procedural in nature and lays down the formula of tie-breaking where marks obtained in the written examination and interview part of the main examination taken together of two or more candidates are equal.

8. Before going any further, it would be appropriate to reproduce paragraph B of the notification dated 3rd January, 2014 which lays down the syllabus and procedure for conducting the competition examination. The

same is reproduced : -

Sr.No.	Subject/Paper	Maximum Marks
1.	Punjabi (in Gurmukhi Script) Compulsory (of 10+2 standard)	100
2.	English Compulsory (of 10+2 standard)	100
3.	Essay	150
4.	General Studies Paper-I (History, Geography and Society)	250
5.	General Studies Paper-II (Indian Constitution & Polity, Governance and International Relations)	250
6.	General Studies Paper-III (Economy, Statistics and Security Issues)	250
7.	General Studies Paper-IV (Science & Technology, Environment, Problem Solving & Decision Making)	250
8.	Interview	150
	Grant Total :	1500

9. From this, it can be seen that subject of General Studies has been broken into 4 papers, i.e. Paper I to Paper IV each carrying equal marks. Each paper consists of a group of subjects. The object of each paper is to test candidates in General Studies on the prescribed standards specified in the syllabus covering clusters of subjects in each paper.

10. It may be mentioned that vide notification dated 20th October, 2009, Government of Punjab in the Department of Personnel (PCS Branch) have promulgated rules known as the Punjab State Civil Services (Appointment by Combined Competitive Examination) Rules, 2009. Rule 8 deals with syllabus and procedure and lays down that for conducting combined competitive examination, the syllabus and procedure prescribed under Punjab Civil Services (Executive Branch), Rules, 1976 shall be applicable. This means that the procedure and syllabus prescribed for PCS (EB) will be applicable to each of the services for which the recruitment is

envisioned. Therefore, the operating rules are these. Rule 13-A deals with the main competitive examination to be held for selection of candidates for Register-B. Appendix-III to the rules refers to rule 13-A. Clause 5 of Appendix III deals with compulsory and [optional subjects, now dropped from the criteria] and the maximum marks fixed for each subject for the main competitive examination especially as shown in the statement below which is tabulated as under : -

Serial No.	Subject	Maximum Marks
1.	English	100
2.	Essay	75
Note.—The candidates may opt to write the Essay either in English or Punjabi (in Gurmukhi Script)		
3.	Punjabi (in Gurmukhi Script)	100*
4.	General Knowledge	100
5.	Viva voce	75
	Total	450*

11. Below clause 5 are details of the optional subjects to which reference is not necessary since this part has been weeded out for the present selection. Rule 8 of the 2009 rules has suffered an amendment by notification dated 12th September, 2012 which now reads as part of the main rules as follows : -

“Rule 8 : Syllabus and Procedure- For conducting the combined competition examination, the syllabus and procedure shall be notified by the Commission with the prior approval of the Government.”

12. The prescription for syllabus and procedure has therefore become a matter to be notified by the Commission with the approval of the Government.

13. Mr.Ashok Aggarwal, learned Advocate General, Punjab has extensively dilated on the amendment to submit that the 2012 amendment was a clear departure in the procedure from the past. In all earlier examinations, the Government would notify the syllabus and procedure which has now been left to the Commission in its new avatar after its reputation suffered a major setback in 2002 following the “cash for job” scam. It may be mentioned that when this matter came up for hearing on 7th January, 2015, it came to light that the State Government had issued a notification on 24th December, 2014 when this Court was in seisen of the matter and had passed an interim order keeping the interviews in abeyance. There was some hue and cry in Court about this notification and as to its effect in terms of rule 8 as amended. The Court has heard the learned Advocate General, Punjab at great length on this aspect in the pre-lunch session and have been persuaded to broadly agree with the learned Advocate General, Punjab that it is not such a flaw as would vitiate the entire recruitment process notified on 3rd January, 2014 even though the fact remains that stage-1 and stage 2 have been completed without the notification being published.

14. Mr.Gurminder Singh learned senior counsel has not joined issue on the notification dated 24th December, 2014 and that chapter will remain closed, if at all, to be examined in an appropriate case, if ever the situation presents itself again.

15. Be that as it may, when this matter came up for hearing for the first time in motion hearing on 18th December, 2014, this Court issued notice after having heard the learned senior counsel for the petitioners that candidates understood, before they appeared for the competitive

examination, that result of Stage-2 would abide the criterion for selection. It was only after completion of Stage-2, when the result was declared, that it was discovered that the Commission had split each subject paper-wise and imposed a condition precedent of minimum 33 percent marks to be called for interview not on the subject of General Studies but on the plurality of papers composing the subject grouping and due to which misapplication, an alarming situation has arisen where only 213 candidates have qualified for 121 posts to be called for interview whereas the minimum of 363 candidates should normally have been called calculated on the basis of rule calling 3 times of the number of the vacancies advertised. It is urged that when the game has begun, the rules of the game cannot be changed midway and the departure has caused serious prejudice to the petitioners whose valuable rights of consideration in terms of advertisement have been infringed.

16. While making the order on 18th December, 2014, this Court had asked Mr.Rajiv Prashad, learned Additional Advocate General, Punjab to take instructions from the Chief Secretary, Government of Punjab and the Chairman of the Punjab Public Service Commission whether the argument raised in the petition on which notice of motion is being issued merits their re-consideration before the interview process starts. On 18th December, 2014, this Court did not pass any interim order of stay etc. and posted the matter on 24th December, 2014 since Stage-3 was to begin on 6th January, 2015 and time was of the essence. When the matter came up for hearing on 24th December, 2014, I have passed a detailed order. It would be best to reproduce the entire order since it discloses what had weighed in the mind of the Court when it made the interim order restraining the respondents from holding physical tests/interviews till the next date of hearing : -

This Court was confronted with an ambiguity whether 33% qualifying marks were to be read “subject-wise” or “paper-wise”. This Court, on a prima facie consideration of Sub Clause 8 of Clause B of the advertisement which dealt with procedure and scheme of the main examination, had issued notice of motion and called upon Mr.Prashad, learned Addl. A.G., Punjab to take instructions from the Chief Secretary, Government of Punjab and the Chairman of the Commission to hold deliberations with respect to the dichotomy in the understanding of the words “subject” and “paper” and to place their tentative views before this Court on the next date of hearing. As the matter was taken up today, Mr. Prashad has made a statement that time was short for such a deliberation and that some more time would be required to carry out the request directions. On his part, he has made serious attempts to defend the action of the Commission on the strength of Clause 13.16 of the advertisement of the previous examination process held for appointments to the PCS and Allied Services to say that the main competitive examination then included compulsory and optional subjects which were enumerated in two parts- (A) and (B) and the marks for qualifying /aggregate were expressed in that notification. This year, the Commission has optional subjects and enumerated regulation no.5 (Sr.No.4) of Appendix 'III' to the Punjab Civil Service (Executive Branch) (Class I) Rules, 1976 which refers to Rule 13-A of the Rules. Sr.No.4 was between the 5 parts of the examination scheme under the Act which reads General Knowledge consisting of 100 marks with total marks for the examination was 450 including 75 marks for Viva Voce. This year, enumerating Sr.No.4 under the General head of General Knowledge, the Commission has bifurcated Sr.No.4 in to four papers which are Nos.I to IV seriatim from Sr.Nos. 4 to 7 of Clause B of the procedure and scheme for the main examination found at page 61 of the paper-book. General studies have been spelt into four papers each consisting of a group of subjects and each of those four papers is assigned 250 marks. Moot Clause B (8) is where the rub is in this case. It reads as follows:-

“8.No candidate shall be eligible to appear in the interview unless he/she obtains 45% marks in the aggre-

gate of all the subjects [read 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes] including at least 33% marks in each subject provided that if any main competitive examination, a sufficient number of candidates do not obtain 45% marks in the aggregate [read 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes], the Commission may at their discretion lower this percentage to not below 40% [read 35% for the candidates belonging to Scheduled Castes and Scheduled Tribes], however, the minimum percentage for each subject shall remain unchanged.”

On a plain reading of this Clause, a lay person such as a candidate is, may easily read 45% marks in the aggregate for the subjects. Upon which the right to be called for interview would mature. The further caveat is that in each subject, a candidate must secure at least 33% marks. While Sub Clause 8 of Clause B talks of “subjects” it makes no mention of “papers” whereas the word “papers” occurs at other sub clauses including 1, 2, 3 and 4. Even in sub clause (9) of Clause B, the word “subjects” has been used for the main examination to be passed with at least 45% marks in the aggregate in all the subjects before a candidate can be considered to have qualified the competitive examination. This order takes no note of lower marks meant for Scheduled Caste and Scheduled Tribe candidates as that issue is not involved in this case. As I see the word “subject” is generic and encompasses a field of studies while a “paper” in the context of an examination can refer only the techniques to test knowledge of subjects. If each subject falling collectively in the four parts of the test of General Knowledge broadly called by the Commission as General Studies, then it would have to be debated whether 33% marks are to be counted for distinct subjects falling under one umbrella of the four papers or the subjects when clubbed together, form a paper. The subject head under Clause B indicates that both subjects and papers are clubbed together as they are shown with hyphen between to read “subject/paper”. This further leads to little ambiguity on the subjects. Mr.Gurminder Singh, learned Sr. Counsel, apart from

sub clause 8, relies on Note to Sub Clause 11 which deals with situations of tie breaker. The Note reads as follows:-

“11.XXX XXX XXX

Note: In the event that the aggregate marks obtained in the Written and Interview parts of the Main Examination taken together of two or more candidates are equal, the candidate securing higher marks in the written part of the Main Examination shall be ranked higher. Should the marks in the written part of the Main Examination of such candidates are still equal, the candidate securing higher marks in the aggregate of the Genral Studies papers in the written part of the Main Examination shall rank higher. Should those also be equal, the candidate older in age shall rank higher.

(Emphasis supplied)”

Here the Commission has used specific words which read as underlined part for emphasis. Manifestly, Sub Clause 11 talks about aggregate of General Studies papers in the written part of the main examination and the one which goes higher, then one who secures marks in the writ ten part of the main examination when equals, the latter shall rule the roost. This indicates that General Studies have been treated as subject consisting of papers. There appears to be clarity here in this Note. Mr.Gurminder Singh, learned Sr. Counsel relies on the Major Law Lexicon, the Encyclopaedic Law Dictionary 4th Edition 2010 Vol.1 to cull out the meaning of the word “aggregate”. To quote:-

“Aggregate. Entire number, sum, mass, or quantity of some thing; total amount; complete whole. One provision under will may be the aggregate if there are no more units to fall into that class. Composed of several; consisting of many persons united together; a combined whole. Sum total.

Formed by combining into a single whole or total

XXX XXX XXX

A collection of individual units or things, in order to form a whole.”

In absence of any clear language used in Clause B of the Scheme, the matter cannot be resolved without receiving the replies of both the States and the Commission in writing so

that the matter can be heard and decided after full debate on all three sides. Mr.Prashad, learned counsel for the State has been honest enough to confess that there is some ambiguity which needs to be resolved and for this, he has also brought a paper with him with notes on the meaning of the words which have caused concern to the Court where the life of many candidates is at stake. The serious question is whether the tentative oral defence of Mr.Prashad, learned counsel without benefit of written statement would confirm views of the respondents and whether the interviews should be permitted to be held as scheduled or whether serious prejudice would be caused to the petitioners in case their case is not heard and decided before the interviews are conducted so that all the parties know where they stand? The Court is informed that the stage three of the selection is stated to commence on 6th January, 2015. This Court, prima facie, believes that in these complicated circumstances, stage three should be put on hold till the next date of hearing and reception of the respective written statements in defence to the writ petition. In case the stay is not granted today which is the last working day of this Court before vacation, it would incur much labour and expenses of the Commission and loss of manpower in case the process is left to go on which will now depend on the final outcome of this petition. In order to avoid general chaos, this Court issues a direction to the respondents not to hold physical tests/interviews in the run up of the recruitment process to the Punjab Civil Service (Executive Branch) and Allied Services, 2013 till the next date of hearing.

List on 6.1.2015.

In the meanwhile, Mr.Prashad may file written statements of the respondents, if any, with an advance copy in the office of Mr.Gurminder Singh, learned Sr. Counsel. Copy of this order be given dasti under the signatures of Bench Secretary of this Court.”

17. In defence of the petition the State has filed a short affidavit of Mohinder Singh Prashar, Under Secretary to Government of Punjab, Department of Personnel on behalf of the State of Punjab. All that they have

said is this. The State Government had conveyed its approval to the Commission on 3rd January, 2014 with respect to the proposed syllabus and procedure; the Commission being an autonomous constitutional body, the State does not interfere in the conduct of the examination by the Commission. The affidavit was filed in Court and taken on record. A copy has been supplied to the opposite counsel.

18. From the perusal of the original record summoned by Court it is found that while according approval, the State Government had put two conditions in Note 8 and 9 under main examination scheme by which it reduced percentage limits for candidates in general category from 45 percent to 40 percent and in case the limit is decreased from 45 percent for other candidates, then there would be a corresponding reduction of 5 percent for SCs/STs. It is not disputed that in the final dispensation, the percentage limit prescribed for general category was reduced from 45 percent to 40 percent and for SC/ST from 40 percent to 35 percent.

19. The Commission has separately filed its reply through Shri Kamal Sehgal, Additional Advocate General, Punjab and has contested the case on merits.

20. Learned Advocate General, Punjab has made a statement that he together with Mr.Kamal Sehgal, Addl. Advocate General, Punjab appears for the Commission and Mr.Rajiv Prashad, Additional Advocate General, Punjab appears for the State

21. Mr.Ashok Aggarwal, learned Advocate General, Punjab has in his illuminating address to the Court dwelt in great detail on the question of “syllabus and procedure” in the scheme of the combined examination. He

has meticulously argued that each of 4 papers I to IV that compose the term, “General Studies” is distinct in its grouping of subjects. For instance, he submits that Paper-I in “General Studies” consists of History, Geography and Society. Each is a distinct and independent field of study and comprises a subject as are commonly understood. Similarly, he explains Paper-II to Paper-IV by alluding to the subject matter of each. What he says is that the State Government is looking for candidates who have had a liberal education in humanities and life sciences and are expected to know something about each of the subjects. This approach of study for the examination will go a long way in testing candidates on the generalities of a wide spectrum of subjects and help in making well rounded and able officers who are knowledgeable persons in many walks of life. The Government is not looking in its future administrators as specialists. The State Government has sufficient posts to run the administration in the departments where specialists are required in a wide range of activities undertaken by the State. It is only a liberal education that would equip civil servants manning the group services for the next three decades of governance that can wholesomely serve future State interests because it is only a liberal education which can make an effective and sensitive bureaucrat. He submits that each paper has been designed in such a manner that it tests only at the +2 level for Punjabi and graduation for other subjects. Take for instance, from the subject of history, neither the Government nor the Commission expects the candidates to be experts in those fields but have at least smattering knowledge or information relating to the history of the world, events from the 18th Century, industrial

revolution, world wars, redrawing of national boundaries, colonization, decolonization, political philosophies like communism, capitalism, socialism etc., their forms and effect on society. History is further divided into Indian Culture and the History of Punjab. A candidate is expected to know something about Art Forms, Literature, Architecture from ancient to modern times or modern Indian history, socio-religious reform movements in Punjab, significant events, personalities and issues from the middle of the 18th century in India, the freedom struggle, post-independence consolidation and re-organization within the country, Ranjit Singh's rise to power, civil and military administration and relations with the British and the Anglo-Sikh wars. He proliferates his argument to other topics to suggest that a candidate must exhibit basic knowledge in each subject of each group which can be best evaluated by uniformly testing each candidate in the minimum of 33 percent in each paper. He submits that General Study-I is broken into sections with the syllabus well defined. The 'syllabus' has got nothing to do with 'papers' and this is misnomer or a canard being projected in Court. History, Geography and Society are all parts of General Studies. To test a candidate on these 3 subjects, they are for convenience broken into Section-I to Section-III and in groups. They are only described for convenience under the label Paper-I to Paper-IV. "Paper" is nothing more than a portmanteau word used for convenience of classification. But if each of them is a distinct subject, then a candidate is expected to know of what might fall in all the 3 parts and be ready to be tested in paper-wise yet broken into 4 parts. He submits that not only subjects are prescribed but the standards which have to be achieved in subjects in the main examination are

clearly notified for candidates to have enabled themselves to prepare to meet the challenges of the examination for which they had sufficient time. There is nothing prejudicial in talking of minimum percentages in each subject group strung together to make one paper and to apply 33 percent to each of the four papers.

22. If the Commission has declared the result by applying minimum 33 percent in each of the 4 papers, and in this it cannot be said that their decision is so absurd or obnoxious as no reasonable person should ever adopt. He adds that the view taken is not impossible to hold. Mr. Aggarwal then poses a question to the Court, that when it is judicially reviewing the cause, the possibility of taking a better view, a clearer view a more proximate view is neither the province nor the business of the Court, unless action is per se arbitrary and to such an extent as it would violate the standards and principles of reasonableness in Article 14 of the Constitution of India. Mr. Aggarwal says that it is well settled, and I think he is right, that if two views are possible, the Court should lean in favour of the view taken by the competent authority, in this case, the Commission which is a constitutional body and works in its own wisdom, to which even the Government cannot interfere, what to speak of candidates or the Court which is no expert of where the best public interest lies or to select judicially which one is more appropriate. No prejudice can be said to have been caused to the candidates by applying the minimum percentage criterion when it was done uniformly and equally without any discrimination. When the syllabus is known and defined with sufficient precision, then the effort of the candidates was squandered if they did not learn something of each

subject and study accordingly for which they had plenty of time. He expatiates that there is a wide difference between “a possible view” and “not an impossible view”. The Commission cannot be accused of taking a view which is impossible on the question of subject and paper application of 33 percent, when really the words are interchangeable and synonymous. He holds forth that no malice in fact or in law has been practiced by the Commission or that its interpretation in applying 33 percent to each of the 4 papers is not in tune with the object sought to be achieved in finding the more meritorious to enter the fray of Stage-3 in search of the best possible talent to fill superior public posts and be the steel-frame of government for years to come. It is also not a decision of such a kind that it has to be baptized by fire or by strict judicial review.

23. The Government is entitled to think and so is the Commission that they do not want specialists. They want generalists, Jacks of all trades and master of none. After all, the minimum qualification for the posts is only Graduation. A fresh graduate is eligible to appear in the combined examination and compete for appointments in premier services under the state.

24. I broadly agree with the submissions of the learned Advocate General, Punjab and what he says cannot be rubbished or discarded in the bin. There is sense in what he says in defence of the impugned action. But then at the same time, I asked him a pointed question, that if the initial view of this Court as recorded in the interim order was that there was some ambiguity, then do his submissions satisfy that ambiguity and clear the doubts. To this extent, he would not venture to go that far and I think quite

rightly so, since he is a wise man who knows the etymology of words and the English language, to suggest that the lexical terms of the advertisement of “subject”, “paper” “syllabus” etc, read howsoever carefully or meticulously can possibly indicate only one view that ambiguity is writ large sufficient to undo not a wrong committed but an error in reading condition 8 and the “Note” to the scheme of the examination.

25. Candidates when confronted with condition 8 and the “Note” in the context of the syllabus coupled with past practice of the Commission and learning from their peer groups and from those who have cleared the examination, they could hold a reasonable belief that all 4 papers would be clubbed together for purposes of applying minimum 33 percent marks. This was a reasonable belief which was not dispelled by any of the public declarations by the Commission in the process of recruitment. They had a reasonable belief that they could concentrate on subjects which may be more familiar to them, given the substantial range writ on a large canvass then they prepared themselves accordingly to meet the challenges of Stage-2.

26. If a candidate knew to start with that he would expect or be tested on in each of the subjects grouped in Paper-I to Paper-IV, he may have acted and studied differently and, therefore, I feel that if the interpretation which has been supplied today by the Commission, though it cannot be said to be bad in its intent or purpose, was a principle not clearly projected to start with and in as many words. The Commission had laid down rules which it had to adhere to and could not change it, while the river was being crossed on a tight rope by the candidates and to their detriment

midway.

27. If there is an ambiguity in the matter, as I see on reading Condition 8 and Note to Conditions 1 to 11, I am left with hardly any doubt that the ambiguity is sufficient to accommodate judicial interference by way of review of the action of the Commission. If the ambiguity exists, it is apt that it should be read on principles of utilitarianism and to bring more good to more people. The Court is conscious that many candidates would fall out and many might come in to the interview stage in case of judicial interference in favour of the petitioners. But the equities of both sides can be balanced in such a way that those who would fall out are protected by court orders as they are not at fault. I would like to make such an order to serve the ends of justice. Throwing the claims of those who might fall out of the present list may be too harsh, oppressive and unjust. They deserve not be forsaken on an ambiguity and on word play.

28. After all, I had found myself in agreement with Mr. Aggarwal in all that he has said but at the same time what he says should hold good in the next examination. The scheme that he has propounded so profoundly in the Court could be the operating scheme in the Commission and for it to see or give it a try in the future. I am inclined to think that a candidate ought to be tested in each of the papers in length and breadth and would not like to read the words, subject, paper, syllabus, topic etc. as words of art or of any special significance but still fall short of applying it as a legal test or a principle of law. They mean hardly more than grounds for a candidate to be tested in each of those parameters, call it subject, call it paper. But the language of condition 8 prohibits to go all the way to injure the petitioners

as they are not without an arguable case which indeed has substantial merit. The intention of the Commission in doing what it has may be good but as T. S. Eliot put it 'Most of the evil in this world is done by people with good intentions.'

29. Mr. Aggarwal is right when he says by way of illustration that what can we make of an officer who knows two bits about the freedom struggle; does not have the names of the great men of India on his finger tips; to know the history of Punjab, the milestones of the freedom struggle; to be acquainted in the fine arts, on cultural and human values, of the modern concepts of farming, issues faced by agriculturists, land reforms to serve in an agrarian State, the broad provisions of the Indian Constitution, the Panchayati Raj Institutions, valuable introduction of Article 243 to the Constitution, the separation of powers, how India relates to other nations, achievements of India in Science and Technology, intellectual property rights, life sciences, the relationship between the Courts and the Government and the legislature and Human Resources Development and so many other things, so on and so forth.

30. There would be nothing wrong if the Commission and the State Government expects its officers at least to know to start with in a broad based manner the fields of studies enumerated in the syllabus. Mr. Aggarwal is also right that the notification which sets the rules of the Commission talks about syllabus and not papers.

31. But as I say so I add that these are mostly matters in the realm of speculation in the absence of a clear language in the moot provisions, since the Court is confined to the examination and the interpretation of

Condition 8 and the Note [supra]. A close reading of Condition 8 leaves hardly any manner of doubt in my mind that only such candidates will be called for interview as have obtained in aggregate of all the subjects in aggregate 40/35 percent and in each subject 33 percent. Condition 8 does not speak of 'papers'. Clubbing the words "Subject/Paper" is also not of much help as a tool or key to unravel the mystery. Therefore, subject of "General Studies" remains divided into 4 "papers". If the real intention was to impose a minimum of 33 percent in each paper, it could have easily been spelled out in condition 8 and then the result would have been different. The candidates would have known that they have to work hard on all the subjects consisting of 4 papers multiplied by its internal subjects and each would earn 33 percent. This would mean concentrated preparatory work in all the components of one paper. In other words, they would have to get 33 percent in each paper. This would have drastically changed the approach of the candidates before they came to the examination hall. This is the grievous ambiguity left in condition 8 which is beyond judicial dissection. Even when there is an ambiguity, it is unfortunately doomed by the "Note" which prescribes the principle of tie-breaking. In this Note to conditions 1 to 11, the mind of the Commission is printed large, when it speaks about higher marks **in the aggregate of General Studies papers in the written part of the main examination.** Papers here is in plural. Obviously, an aggregate would be seen cumulatively in General Studies which in the rules is one of the subjects. In the Punjab Civil Services (Executive Branch) (Class-I Rules), 1976, 'General knowledge' is classified as one of the 4 subjects in Appendix III. General knowledge has been divided and converted into

General Studies which is fair enough, but it remains a subject of its own steam till date. All that has been done is to divide old General Knowledge today called General Studies into 4 papers to accommodate a large syllabus consisting of multifarious distinct subjects with many topics of study. It still remains a 'Subject' under Clause 5 of Appendix III to be read with rule 13-A of 1976 rules which have been read into the examination. If there was a doubt in condition 8, it has been clarified by the Note, reducing the ambiguity but not completely obliterating it.

32. Consequently, the petitions are allowed. The interpretation placed by the Commission in declaring the result of the [Mains] by counting 33 percent minimum marks in each paper is declared impermissible and ultra vires the syllabus and the procedure published in the notification dated 3rd January, 2014. It is well settled by the successive Full Benches of our Court that the terms and conditions of the advertisement are sacrosanct and binding between the parties . [See different facets of the issue in **Amardeep Singh Sahota v. State of Punjab**, 1993 (4) SCT 328, **Sachin Gaur v. Punjabi University, Patiala**, 1996 (1) SCT 837 and **Rahul Prabhakar v. Punjab Technical University, Jalandhar**, 1997 (3) SCT 526]

33. Therefore, the principle on which the result of the main examination is based is set aside. A writ of mandamus is issued to the Commission to re-draw the result by applying 33 percent minimum marks cumulatively in all the 4 papers of the General Studies and to publish the same and to accordingly notify the fresh dates of Stage-3 for conduct of physical tests and interviews/viva-voce in accordance with law.

34. However, those candidates who may suffer due to this order are saved, for the reasons recorded above. They will have every right to be interviewed and to compete for the posts and to be tested on merits with a right to declaration of their result amongst the successful, even though mere selection does not give an indefeasible right to appointment, since their merit position in Stage-2 has become a valuable asset for them. This order will have no effect on their rights in the recruitment process and it is so declared. In case the limit of three times the number of candidates to be called for the interview is exceeded, then arithmetic will not be applied, the entire lot may be called for physical test and interview/viva voce to remove any vestiges of unfair discrimination. The court would not injure anyone one who was not heard by it nor deserve to be dislodged. But this order will not be treated as a precedent in the future. It has been passed only to meet an extraordinary situation without causing needless hurt to any one.

35. Besides, within the frame work of this order, the Commission is free to devise ways and means, which in its wisdom it thinks is fair and just in the peculiar circumstances and to meet any other problem it might face which are not foreseen by Court.

(RAJIV NARAIN RAINA)
JUDGE

January 8, 2015

Paritosh Kumar