

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.1918 of 2016**  
**Decided on : 01.02.2016**

Parminder Kaur & others

... Petitioners

Versus

State of Punjab & others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA**

Present : Mr.H.C.Arora, Advocate, for the petitioners.

**G.S. Sandhawalia , J. (Oral)**

The petitioners challenge Clause 3 of the advertisement dated 20.11.2015 (Annexure P4/1) wherein applications have been invited from eligible candidates for filling up of 1800 posts of Science Masters. Similar advertisements of even date for filling up posts of Mathematics, Social Studies, Hindi/English/Punjabi Masters/Mistresses, are also challenged on the same ground, wherein there is a minimum qualifying marks of 50% provided in the test, which is to be held.

The test is to consist of 150 marks and the candidate has to secure 75 marks for having passed, in addition to the marks obtained in the Punjab State Teachers Eligibility Test-2, which are to be basis for preparing the merit list. Relevant clause reads as under:

“3. Procedure for Selection :- Only those candidates who have passed Punjab State Teachers Eligibility Test-2 (P.S.T.E.T-2) are eligible for those posts. The written test shall be conducted at State level. The test shall consist of 150 marks for the concerned subject. Those candidates

who secured 75 marks shall be treated having passed. There shall be relaxation of 5% (i.e. 8 marks) to the candidates of S.C./S.T., O.B.C., and differently abled categories of candidates) and the final merit of the candidates who possess educational/professional qualifications and other necessary conditions for recruitment to the aforesaid posts shall be prepared on the basis of total marks obtained by such candidates in the Punjab State Teachers Eligibility Test-2 (P.S.T.E.T-2) and in the written test of the concerned subject.”

Challenge has been raised on the ground that there is no provision in the Punjab State Education Class-III (School Cadre) Service Rules, 1978 for taking such a written test and therefore, in the absence of any supporting provision contained, the criteria fixed is harsh.

Counsel for the petitioner has placed reliance upon two judgments of this Court, namely, **Jagdish Kaur Vs. State of Punjab & others 2004 (2) SCT 349** and **Shri Vidya Ram Vs. State of Haryana 1995 (3) RSJ 798** to contend that in the absence of any such provision in the Service Rules, the procedure to prescribe a test for preparation of the merit-list is wrong.

A perusal of the said judgments would go on to show that both the cases pertain to the promotion which was to be done of an employee and passing of the type-test in Punjabi was under challenge in the first case. In the second case, there was a test from amongst Class IV employees for promotion to the post of Clerks. The said judgments, thus, pertain to the issue of

promotion whereby in the Rules, the criteria prescribed for promotion, is itself provided. The judgments are, thus, passed on this aspect that in the absence of any such criteria being prescribed, the additional requirement was not justified. Thus, the said judgments are not applicable to the facts of the present case which do not pertain to promotion but only are pertaining to the initial drawing up of the merit list, for the purpose of recruitment.

The judgment of the Apex Court which has been relied upon in **State of Punjab & others Vs. Manjit Singh & others 2003 (4) SCT 310** to contend that a screening test was not permissible, is also, in the opinion of this Court, not applicable to the facts of the present case. In the said case, the challenge was also to the condition whereby the Public Service Commission had fixed the requirement that there should be a minimum of 45% marks for the General Category and 40% marks for the Scheduled Caste category candidates in the screening test which was to be held by the Commission. It was, accordingly, held that the said action would lead to rejection of the candidates who had already qualified for interview and it was within the domain of the State Government to provide the criteria for selection and the Commission could not impose its own criteria. Relevant observation reads as under:

“11. In the case in hand, it was not for the Commission to have fixed any cut-off marks in respect of reserved

category candidates. The result has evidently been that candidates otherwise qualified for interview stand rejected on the basis of merit say, they do not have the upto the mark merit, as prescribed by the Commission. The selection was by interview of the eligible candidates. It is certainly the responsibility of the Commission to make the selection of efficient people amongst those who are eligible for consideration. The unsuitable candidates could well be rejected in the selection by interview. It is not the question of subservience but there are certain matters of policies, on which the decision is to be taken by the Government. The Commission derives its powers under Article 320 of the Constitution as well as its limits too. Independent and fair working of the Commission is of utmost importance. It is also not supposed to function under any pressure of the government, as submitted on behalf of the appellant Commission. But at the same time it has to conform to the provisions of the law and has also to abide by the rules and regulations on the subject and to take into account the policy decisions which are within the domain of the State Government. It cannot impose its own policy decision in a matter beyond its purview.”

It was, in such circumstances, the action of the Commission was quashed since the State had taken a decision that there should be no test regarding the reserved candidates to check the suitability for appointment. A perusal of the clause under challenge would only go on to show that the respondents have prescribed the procedure of shortlisting the eligible candidates whereby they have to secure 75 marks out of 150, in the concerned subject and then only, they can be treated as pass. The other condition was to have passed the PSTET. The

combined marks of both the said test and the PSTET would be the criteria for preparing the merit and for calling the candidates for selection. No such fault can be found in the above-said criteria which is to shortlist the applicants.

Resultantly, the present writ petition is dismissed in limine.

**FEBRUARY 01, 2016**  
*sailesh*

**(G.S. SANDHAWALIA)**  
**JUDGE**