

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

CWP No. 746 of 2009 (O & M)

Reserved on: 11.10.2017

Date of decision: 01.11.2017

Kishan Sahai and others

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. B.S. Rana, Sr. Advocate,
with Mr. Parveen Kaushik, Advocate,
Ms. Monika Arora, Advocate,
Mr. S.K. Bhardwaj, Advocate,
Mr. Jasbir Mor, Advocate,
for Mr. J.P. Dhull, Advocate,
and Mr. G.S. Dhillon, Advocate,
Mr. Sandeep Kumar, Advocate,
for Mr. Vikram Singh, Advocate,
Mr. K.K. Chahal, Advocate,
Ms. Rajni Gupta, Advocate,
for Mr. Arvind Seth, Advocate,
for the petitioners.

Mr. Shruti Jain Goyal, AAG, Haryana.

Mr. Sumit Sangwan, Advocate,
for respondents no. 14, 355, 356, 360, 361,
362, 652, 653, 675 and 730
(in CWP No. 746 of 2009).

Mr. B.K. Bagri, Advocate,
for respondents no. 161, 162, 165, 166, 167, 534, 296, 300,
301, 297, 299, 300, 302, 303, 304, 305,
306, 307, 308, 323, 333, 411, 416, 432,
535, 537, 790 (in CWP No. 746 of 2009).

Mr. Harinder Singh, Advocate,
for respondents no. 486 and 489 (in CWP No. 746 of 2009).

Mr. Ashok Verma, Advocate,
for respondents no. 179, 184 to 191, 193 to 199, 602, 603, 604,
606 to 614, 796, 797, 798, 800, 801 and
802 (in CWP No. 746 of 2009).

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of 12 writ petitions i.e. CWP Nos. 746, 5359, 11227, 12790, 13944, 13480, 15233 of 2009; 16383 of 2008; 2526 of 2010; 798, 3400 and 9314 of 2011 as common questions of facts and law are involved in all the writ petitions. Facts are being taken from ***CWP No. 746 of 2009, Kishan Sahai and others vs. State of Haryana and others***, which had been ordered to be treated as a lead case.

2. The petitioners seek quashing of the impugned selection and appointments of private respondents no. 3 to 112 on the posts of Drivers and for issuance of a writ in the nature of mandamus directing the respondents to decide the legal notice of the petitioners dated 10.11.2008 (Annexure P-6) wherein, prayer was made that they should be called for the interview in pursuance of advertisement dated 08.07.2007 (Annexure P-2).

3. The argument raised for quashing the selection by the senior counsel is that the criteria of the selection process was continuously being changed and, therefore, in the absence of any prescribed procedure being followed, the selection process is vague and arbitrary and, therefore, could not be sustained. It is further submitted that only 809 candidates had been appointed against the advertised posts of 910 and there is no valid reason to not fill up the unfilled vacancies and, therefore, directions should be issued to fill up the vacant posts while placing reliance upon judgment of the Apex Court in ***Shankarsan Dash vs. Union of India, 1991 (3) SCC 47***. Similarly, the grading which was done in the interview process whereby A+, A, B and C grades were given was questioned on the ground that it was vague and subject to tampering and variation and amounted to candidates of equal grading being arbitrarily selected without any appropriate criteria as

to whether the older one was to be given preference or the younger one. Accordingly, reliance was placed upon earlier stands taken by the State in other litigations pertaining to the same selection which was in variance with the stand taken in the present case that older candidates were being given preference. Lastly, argument raised was that out of the 809 candidates appointed, only 387 were of general category and the balance belonged to the reserved categories and, therefore, there was more than 50% reservation which was in violation with the judgment of the Apex Court in ***Indra Sawhney and others vs. Union of India and others, 1992 (suppl.) 3 SCC 217.***

4. In order to appreciate the present controversy, it would be necessary to fall back on the pleadings in the petition and the defence which has been raised including the additional affidavits which have been filed in view of the directions issued by this Court on various occasions. The claim is against the advertisement dated 08.07.2007 (Annexure P-2) whereby, 910 posts of drivers were advertised. A perusal of the advertisement would go on to show that the same were to be done on contract/daily wage basis in the Transport Department and reservation was to be for the various categories as per Haryana Government instructions, which was to be applicable to the bona fide residents of the State. The last date of submission of applications was 10.08.2007 and the candidates were to submit one application only to the General Manager in Haryana Roadways Depot of the State where he would like to appear for the test. The age limit was prescribed as 18 to 40 years and relaxation was to be given as per the Rules whereas, in the case of Ex-servicemen candidates, the upper age limit was to be relaxed by the continuous military service added by 3 years. The said applicants were

required to attach the eligibility certificate duly issued by the respective Zila Sainik Board and the eligibility was to be determined with regard to the last date to submit the application for i.e. 10.08.2007.

5. The selection process was to consist of DUG test, road test and followed by interview of the candidates who met all the eligibility conditions for which the educational qualification was prescribed as 10th class in Hindi from a recognized Board or University whereas the professional qualification was a valid driving license of transport vehicle and having an experience of two years of driving such a vehicle including a passenger vehicle. The 20 depots where the application could be submitted were accordingly mentioned in the advertisement itself. Reference was made to a news item in the vernacular *Amar Ujala* dated 01.09.2007 to submit that the Principal Secretary, Transport Department had stated that the candidates who passed the test would be called for written test comprising of 30 marks and the interview was to consist of 15 marks. Petitioner no. 4 had been found eligible and had been allotted a roll number and appeared before the General Manager, Gurugram where he was informed that there was no recruitment on 03.12.2007. Thereafter, he went to the General Manager, Faridabad where he was told that candidates would be interviewed on 04.12.2007 and he joined the recruitment process in the office of the General Manager, Gurugram and the said Manager had declared him fail and thereafter legal notice had been sent on 10.11.2008. The said petitioner was never asked to appear in any written test and was subjected to very formal and short interview in which no relevant question assessing any skill for the job was asked to him and the same was a farce.

The list of finally selected 810 candidates were obtained by the petitioners

on 18.09.2008 after applying under the Right to Information Act, 2005 and about 14000 persons had applied for the 910 posts advertised and 9000 persons had been found qualified. A DUG test and road test were minimum elimination rounds and only singular basis for selection was interview process and no heads were specified for allocating marks against different trades/criteria. There was no nexus with the job for which the selection was to be made and no marks were allocated under the relevant heads/criteria and there was denial of equal opportunity, objectivity, transparency and fairness etc. Accordingly, it was pleaded that more than 50% of the candidates were from the reserved category and the 52% were from SC, BC-A and BC-B categories comprising of 423 selected candidates and if the candidates belonging to reserved categories of sports, ESM and DESM are taken out, only 313 candidates i.e. 38.64% were from the non-reserved categories, which was in violation of the law laid down by the Apex Court. The gradings given in the interview as A+, A, B and C were without any guidelines and amounted to a large subjective discretion in the process of selection which constituted denial of equal opportunity in public employment.

6. The stand taken in the written statement on behalf of respondents no. 1 and 2 initially was that applications were invited in pursuance of the advertisement and 10 Committees were constituted for the purpose of recruitment. Separate letters for interview/test of drivers were issued asking the candidates to appear alongwith original certificates, HMTV license, experience certificate and other relevant record by the General Managers. Reference was made to the letter dated 16/21.11.2007 (Annexures R-1 to R-8) in this context. The petitioners had appeared and

had been tested for the DUG test/8 shape test, and road test alongwith other candidates. Those who qualified the ground test were interviewed. Petitioner no. 4-Jaswinder Singh had failed in the ground test at the preliminary stage itself. They were further tested for knowledge of safe driving practices, road signs, vehicle control and mechanisms, handling of emergencies in difficult conditions, accident and first aid attitude, alcohol and driving of fuel conservation etc. and besides their general knowledge. The list prepared had been forwarded to the Transport Commissioner, Haryana. It was admitted that there was no written test and none was to be held as per the instructions of the Transport Department and General Managers were directed to hold the interview of the candidates who had qualified the driving proficiency test. All except petitioner no. 4 had been interviewed and they had failed to achieve the requisite grades for selection. The candidates who had cleared all the ground test were called for interview and reference was made to letter dated 28/31.12.2007 (Annexures R-11 to R-16) issued by the General Manager, Haryana Roadways, Faridabad. It was accordingly averred that the petitioners did not obtain requisite level of grades in comparison to the selected candidates whereas, petitioner no. 4 had been called for the practical tests on 03.12.2007, who had failed at the initial stage in the 8 shape test which was a major driving test. It was admitted to the extent that initially communication dated 14.11.2007 (Annexure R-18) had been written by the Transport Commissioner that candidates had to appear in the written test before interview but the same was withdrawn vide letter dated 12.12.2007 (Annexure R-19). The whole selection procedure was conducted in a transparent manner and the list of selected candidates was prepared by respondent no. 1. The petitioners

having not obtained the grades as per the desired criteria had been tested in the ground and had not met the grade. Candidates who had met the grade were selected for the posts of the drivers. Petitioner no. 4 had also moved an appeal against the 8 shape test failure and the videography of this test was scrutinized by respondent no. 1 and his appeal had been rejected. The grading was as per the policy of the State Government and the testing procedure was transparent and videography had been carried out and only candidates who qualified had been selected. The test of the vehicular driver was quite different from other recruitment test as the driver had to go through the ground test as well as his judgment of mental awareness and acquaintance with traffic rules had to be taken into consideration.

7. An affidavit of the Additional Transport Commissioner, Haryana, Sh. Kamlesh Kumar Bhadoo dated 09.05.2013 was also filed in view of the order passed on 25.04.2012 on the ground that the process of selection and preparation of the selection list and measures adopted for moderating of the result be filed since the selection was done by different Committees. In the said affidavit, it was clarified that the candidates were examined in the DUG test in the first round and no marks were awarded and only pass and fail was mentioned in the column of result. The candidates who had passed the same were taken into second round of the test which was a 'zig zag' test and again no marks were awarded and the third test was the road test. Thus, no marks were awarded to any of the candidates during any of the tests from first to third. Candidates who had succeeded in the third round were interviewed by the Selection Committee and the interviews were conducted on the basis of a pre-designed software issued by the Maruti Udyog Ltd. Under the name of "Maruti Driving School interactive CD Rom

for car drivers”. The said candidates were asked random questions selected by the pre-designed software itself and 4 options were provided to the candidates out of which one was correct. On an average, 5 questions were asked from each candidate and on the basis of correct answers given by particular candidate, grades were awarded accordingly A+, A, B or C. Accordingly, persons who had got higher grades in interview in their respective categories were selected and thereafter a joint selection list was prepared. Drivers older in age and having higher grade were appointed and the selection list was appended as Annexure R-2 with the said affidavit. Reliance had been placed upon the decision dated 09.02.2012 in CWP No. 2528 of 2009, Sajjan Kumar and others vs. State of Haryana and others which was subject matter of challenge in LPA No. 132 of 2012, which was stated to be pending at that stage.

8. By order dated 15.11.2013 passed during the proceedings, it was noticed that certain candidates had been diverted to other depots and that in *Sajjan Kumar's case* the Single Judge had recorded that the candidature had to be considered in that very depot in which he had applied. Resultantly, affidavit of the Director General, State Transport, Haryana dated 04.09.2014 came to be filed. In the said affidavit, it was specified that the cadre of drivers had been managed centrally at the headquarters level and the seniority of the drivers was to be maintained at State level and not at Depot level. The advertisements had specified that the applications were invited and the number of vacancies had not been mentioned depot wise. The option given to the candidates to appear before the depot manager were to make them convenient to appear in the test. The merit list was to be prepared centrally by consolidating the assessment given in the interview by

various Committees constituted for the purpose. Vide instructions dated 01.01.2008, the performance in the interview was to be assessed by awarding outstanding, very good, good and average grading in order to minimise the diversions in assessment across the various interview centres. It is denied that candidates who had applied in Hisar, Sirsa and Faridabad were given appointments in Chandigarh and Yamuna Nagar wrongly and those who did not take any tests were declared successful. The selection was made centrally and there was no depot wise bifurcation of vacant posts and the merit list was prepared in the State as a whole and not depot wise. The selected candidates were posted in various depots depending upon the number of drivers required in various depots. The number of candidates selected from different districts varied depending upon their performance and it was possible that candidates belonging to one district were posted in other districts. Opportunity had been given to file appeal before the Selection Committee against the result of the driving test in order to give an opportunity in the interest of justice and to make the recruitment process transparent and fair. Accordingly, reliance was placed upon the observations in LPA No. 1231 of 2012 against *Sajjan Kumar's case* wherein, it had been recorded that it was a composite advertisement inviting applications for the posts of drivers and there was nothing to show in the advertisement issued that if a candidate applies in 'A' depot, he was not entitled to be selected in 'B' depot. On 21.01.2016, an order was passed in CWP No. 798 of 2011, which reads thus:-

“While defending the selections in issue in CWP No. 728 of 2009 titled as “Sanjay and others vs. State of Haryana and others”, the Advocate General, Haryana had stated that from amongst the candidates

who were graded-A, those who were younger, were preferred. However, in the written statement filed to the present case, it is submitted that out of the candidates who were graded-A, the elder ones were preferred.

The aforesaid stand cannot be re-consiled. In this regard, let the Transport Commissioner, Haryana file an affidavit clarifying the above position.

Adjourned to 09.02.2016.”

9. Resultantly, another affidavit of the Director, State Transport, Haryana, Sh. Ram Chander Bidhan was filed in the said case clarifying that nowhere in CWP No. 728 of 2009, Sanjay and others vs. State of Haryana and others, any such stand had been taken that candidates who were younger were preferred. The copy of the written statement dated 28.08.2009 in the above said writ petition was also annexed as Annexure R-1. It was further deposed in the affidavit that the Court had not accepted the contention and rather recorded that the preference being given to younger persons over and above the petitioners need not be gone into.

10. On 29.03.2017, the co-ordinate Bench directed that on account of different affidavits having been filed in different cases giving piecemeal explanations, the State should take a consolidated view and check specific factual assertions which had been noted in the said order. Resultantly, affidavit of Sh. Narinder Ahuja, Deputy Secretary to Government of Haryana, Transport Department dated 19.05.2017 was filed, which reiterated the stand taken of holding of the practical tests and thereafter the interview. It was clarified that the General Manager was given guidelines for recruitment of the heavy vehicle drivers and as per the letter dated 25.10.2017, test was to be held at 10 different locations comprising of the

General Manager of the host depot as Chairman, General Managers of other depots were also involved, representative from Head Quarter and Works Manager and Traffic Manager of the concerned depots. The example was given by Selection Committees for Chandigarh, Ambala and Yamuna Nagar and the Committee was to be consisted of General Managers of the three depots and the Deputy Transport Controller, Traffic as representative of Headquarters, Works Managers, Traffic Managers of concerned depots. The three practical tests were Dug test, Zig-Zag test/driving proficiency test and road test. The same were directed to be videographed and the selection process was to be taken in full presence of all applicants/candidates. Those who were disqualified at any stage of the driving test were to be informed of their disqualification with reasons right there and then. As earlier averred, it was specified that the candidate who cleared the first test was allowed to appear in the next test and thereafter he was to go on to the next hurdle by clearing the next test. There was no marking of numbers or grading and this was not a determinant for the final selection list in case the candidates qualified all the tests. In the writ petitions, there were no allegations regarding these qualifying tests. However, it has been alleged that candidates who had not appeared in the depot had been selected in the final selection list. It was clarified that no such candidate who did not appear in the test and in the driving proficiency test has been selected who had gone through the interview. The applicants were to submit only one application in the office of the General Managers of any Haryana Roadways Depot and the candidates were at liberty to appear before any of the Committees where they had submitted the application. The selection was made for the entire State after clubbing the merit list.

11. The service condition for the post of driver was governed within the purview of the Haryana Transport Department (Group C) Haryana Roadways Service Rules, 1995. The eligibility conditions had accordingly been fixed as per Appendix B of the Rules. The post of driver was State cadre post and inter se seniority was also fixed as per Rule 11 at State level. Resultantly, the list of candidates who were interviewed by all the 10 Selection Committees were clubbed and a joint order of merit had been prepared. For the purpose of posting, vacancies in depot/district wise were calculated and posting in a particular district was made from the order of merit prepared at the State level. The allegation of selection from particular district or non-selection of candidate who qualified but was not in the final selection list was due to being lower in order of merit and was baseless. The final selection list was prepared jointly based on data/marks/grading from the recommended candidates from all 10 Selection Committees. Accordingly, the argument raised that candidates who had appeared before the particular Committee were to be selected only for those depots was repelled. The plea taken was that the selection was on the State level and formed after clubbing the selection of all Selection Committees and the vacancy was only for the purpose of posting. To minimize the divergence across the State, awarding of grade in interview was provided through well circulated instructions dated 01.01.2008. In the advertisement, it was mentioned that the selection process was by way of a driving proficiency test to be followed by interview, which, as noticed above, was to be on the basis of a pre-designed software issued by the Maruti Udyog Ltd. The process of evaluating the candidates on the basis of a pre-designed software was more transparent than the written test and the candidate was

subjected to live testing with no scope of interference. On account of non-finding of suitable candidates, 910 vacancies advertised could not be filled up and only 809 could be selected. The petitioners were wrongly calculating the percentage of categories only out of selected candidates and they were wrongly calculating that the candidates from reserved categories had been selected more than 50% of the selected candidates. The age part was varying from 18 to 40 years and relaxation of 5 years was for candidates belonging to SC, BC, ESM and outstanding sports persons. No person less than the age of 20 years was to drive a transport vehicle as per Section 4(2) of the Motor Vehicles Act, 1988. Section 2(47) of the said Act defined the transport vehicle which means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. A Committee had been constituted of 3 General Managers which functioned under the Chairmanship of Director, State Transport, Haryana vide Government order dated 20.04.2017 which had submitted a report dated 02.05.2017 (Annexure R-1/A) in which after verifying and checking of the record available apart from the record of Haryana Roadways, Nuh which had been burnt on 02.04.2017 and could not be verified and checked.

12. Anomalies had been noticed regarding 41 candidates and Government had decided to issue notices to the such selected candidates regarding age and experience as on the cut off date and why their services be not terminated since they had placed documents for recruitment which were *ex facie* illegal. The General Manager in the State (competent authorities) had been directed to issue notices and take such notice to the logical end in due course of law. The candidates who had not taken part in all the stages of the driving proficiency test and had participated in the one

test but did not appear in the second test had been given a second chance by some General Managers. Accordingly, a uniform view had been taken that candidates who were absent for reasonable reason at one or more stages shall be given a chance. An appeal was, thus, provided to submit such appeals which were to be forwarded to Headquarters alongwith the footage of videography for review. Similarly, with respect to the result of the driving proficiency test, an appeal was provided to the General Manager, which was to be filed latest by 25.12.2007 and which was to be submitted to the Headquarters alongwith the footage of videography for review. Reference was also made to the earlier affidavit filed by the Director, State Transport, Haryana dated 26.02.2016 that there was no such averment made in the written statement filed in CWP No. 728 of 2009 regarding the preference to be given to younger candidates. The Committee had reported the date of birth of all selected candidates with minimum grade and tabulation was done to show the date of birth of the selected candidates of lowest age in various categories apart from minimum grades obtained by such candidates in the interview process in various categories. The break up of the candidates selected in various categories was given accordingly alongwith the last affidavit.

13. State counsel, Ms. Shruti Goyal Jain, has ably countered the argument raised by the senior counsel and other counsels by pointing out that no such criteria had been changed time and again, as argued. The arguments that the written test was to be held which had been scrapped or that the marks in interview were replaced by grading and an appeal had been provided were without any basis. Reference was firstly rightly made to the advertisement itself (Annexure R-1) wherein, there was no such

prescription that any written test would be held. It was pointed out that the letters were issued on 16/21.11.2007 (Annexure R-1 to R-8) alongwith written statements that candidates were only called alongwith original certificates HMV driving license, experience certificate and other relevant record for the interview/DUG test. As noticeable, the advertisement dated 08.07.2007 and letter dated 25.10.2007 (Annexure R-1) was issued by the Transport Commissioner which has been appended alongwith written statement in CWP No. 13480 of 2009. In the same, it was mentioned that 10 Selection Committees had been constituted and the composition of the Committee was given including the fact that the General Manager of the Host Depot was to be the Chairman of the Committee as has been averred in the last affidavit of Sh. Narinder Ahuja. It was specifically provided that the DUG test followed by a driving proficiency test within the depot and a road test was to be done and then an interview. Candidate who failed at any of the stages were to be disqualified and only those candidates who were found to be successful were to proceed ahead. It was also prescribed to get the entire process of the practical test videographed and the fact that who were disqualified were to be informed of their disqualifications with the reasons right there and then. The tests were to start from 12.11.2007 and a schedule was to be prepared and sent to the Headquarters. Thereafter, schedule for the interview was to be prepared as per the instructions which were to be issued and letters were to be dispatched informing each of the candidates for the driving test time and venue. Necessary instructions were issued that the process was to be completed within a month and arrangements were to be made at the host depots for the tests apart from providing sitting of candidates, drinking water facilities etc. Candidates

were not permitted to change the venue of the driving test and recommendations for selection on the basis of merit was to be made to the concerned general manager as per the procedure laid down in the advertisement.

14. No doubt, letter dated 14.11.2007 (Annexure III), was issued by the Transport Commissioner that the passed candidates had to appear in the written test before interview and the question paper in this regard would be supplied by the office. But a perusal of the same letter would go on to show that it was confidential and it was never publicised at any stage that the written test was to be held and it is only a mere internal communication. There is neither any averment in the writ petition also that there was any such official publication also and candidates had been put to notice about the holding of the written test by way of any communication. Rather, a perusal of letter dated 12.12.2007 which is within a period of one month issued by the Transport Commissioner would go on to show that a decision was taken that there would be no written test for the applicants and a schedule was to be prepared for interviews by giving notice of at least one week to the candidates. The relevant question bank for driving knowledge and aptitude testing purpose in the form of CD was to be sent to the General Managers to carry out the remaining part of the driving selection process. It was notified that no more than 40 candidates were to be called for interview per centre per day. Vide the same communication, benefit was granted to appear again in the driving test to candidates who were absent since certain general managers had given such opportunities and, therefore, to maintain uniformity and equal opportunity, the same decision was taken. Similarly, a provision for appeal was provided with respect to those candidates who had

not qualified the driving proficiency test. The appeals were to be filed with demand draft of Rs.500/- and the appeals were to be sent to the headquarters alongwith their comments and the footage of the videography for the review of the decision of the Committee constituted for this purpose at the headquarter. Thus, the argument raised that there was a written test prescribed at any stage or the criteria having been changed during the selection process is without any basis the same having been not part of the advertisement. Merely because one confidential letter was written but the candidates as such were never informed of the same, no benefit will flow to the petitioners on account of the said communication dated 14.11.2007. Even otherwise, if any benefits have been granted to the candidates who were absent for one reason or the other, same was only for the purposes of maintaining a level playing field and giving another opportunity in cases where candidates had failed to appear at one of the stages of the proficiency tests. No prejudice has been caused to the petitioners as such who, even otherwise, have failed to make the grade or qualifying at a subsequent stage on the basis of not making the cut in the interview. The purpose of providing the appeal also is only regarding the failing in the driving proficiency test and only to give a forum to the aggrieved candidates and for scrutinization at a higher level as to whether the failure was on account of the candidates not being well versed with the driving skills which could be examined by the footage of the videography. Therefore, on that account also, the petitioners can have no such grouse if persons were disqualified without any basis and have been given the benefit of any appeal.

15. Similarly, reliance upon the letter dated 27.12.2007 (Annexure P-2) in CWP No. 798 of 2011 whereby, communication was addressed by

the Transport Commissioner, Haryana to the General Managers that while taking interview marks be given from 1 to 50 numbers keeping in view their knowledge would be without any basis since at a subsequent point of time on 01.01.2008 (R-III), a decision was taken that the process would likely to lead to a divergence in assessment by way of award of marks of numerical scores to the interviewees. Accordingly, the system of grading had been adopted for better measures for assessment of the candidates and there were 4 grades to be assigned which would standardize the award of marks across the centres as it is noticeable that there were 10 Committees across the State.

16. A large number of candidates had crossed the first hurdle of the proficiency driving test and, therefore, if the grades were being awarded as such and the criteria was prescribed during the selection process and before the first set of interviews, the same cannot be said to be arbitrary or changing the rules of the game as such, as has been contended by the senior counsel. Equal parameters were applied to one and all and as noticed, it was on the basis that 5 questions were to be asked on the basis of a pre-designed software of Maruti Udyog Ltd., which would help the Committee to assess the person between the 4 grades of outstanding, very good, good and average. As noticed, the 4 options were to be given for each question and by virtue of those 5 questions, the Committee was to assess the grading of the candidates. It is on this basis that the selection was made depot wise of candidates of different categories and whose names were then forwarded to a common pool of the headquarters and the candidates had accordingly been adjusted on the basis of the grading across the State. One cannot lose sight of the fact that the appointment is for the post of a driver in the Haryana

Roadways and the driving skills of the selected candidates alongwith the petitioners had duly been assessed by holding the practical test. Therefore, the private respondents had crossed the necessary hurdle of the DUG test, 8 shape test and the road test and were having the basic essential qualifications and the driving licenses and the candidates were being duly selected.

17. Regarding the second issue which has been raised regarding the non-filling up of the posts and that the State has given no valid reasons to fill up the complete posts against the 910 posts advertised, Ms. Shruti Goyal Jain was well justified in holding out that the post of the driver was of a State level cadre and, therefore, there were vacancies in different categories in different depots. The applications though received on depot level had been combined at a headquarter stage and persons had been appointed on the basis of merit of A+ grading initially and then of A, B etc. keeping the vacant posts available in particular categories. If suitable candidates were not available in various categories, for example, Ex-servicemen, then the dependents were to be considered as per the instructions. Thus, vacancies have not been filled up in particular categories itself on account of the non-availability of suitable candidates and, therefore, no such grouse can be there of the petitioners. The judgment also in *Shankarsan Dash's case (supra)* rather lays down the law that the petitioners only have a right of consideration and no right of appointment and pertains to the issue of non-filling up the vacancies. State has accordingly given a valid justification that there were suitable candidates not available in the respective categories and, therefore, the said posts have not been filled up. No fault as such can be found in the decision of the State and the same cannot be held to be

arbitrary in any manner.

18. The issue of grading being vague of criteria specially tampering also cannot be accepted as it was a criteria applied to one and all and as mentioned on the basis of a pre-designed software of the Maruti Udyog Ltd. The 4 options had been given to the candidates who were to answer the 5 questions and, therefore, the assessment was to be made across the Board on the same pattern through 10 committees which also were initially questioned by the co-ordinate Bench vide interim order dated 21.01.2016, which has now been duly justified. It is settled principle also that the candidates cannot challenge the criteria prescribed after being unsuccessful in the selection process and reliance can be placed upon judgment in ***Madan Lal and others vs. State of Jammu & Kashmir, 1995 (1) SCR 908;*** ***Chandra Prakash Tiwari and others vs. Shakuntala Shukla, 2002 (6) SCC 127*** and the recent judgment of the Apex Court in ***Civil Appeal Nos. 8345-46 of 2009, D. Sarojakumari vs. R. Helen Thilakom and others*** dated 13.09.2017. The petitioners having taken a calculated chance and having not made the grade now cannot turn around and say that the process of grading was to their detriment. Even otherwise, since a large number of candidates had been selected by different Committees, this Court is of the opinion that since they had crossed the hurdle of the initial practical road tests and the qualification was only 10th class with Hindi and the drivers had been recruited, it was more important to see their practical ability. The Committees have insured that the ones who had crossed that hurdle and had reached the final stage were given 5 questions to answer and then the gradings were accordingly provided. It is also to be noticed that the selection process was also subject matter of challenge in ***CWP No. 728 of***

2009, Sanjay and others vs. State of Haryana and others. As noticed above, the said Court had called for the complete records but the record pertaining to Sonapat Depot could not be produced. The aspect of grading was also noticed to record a finding that the selection process was fair and transparent but since the Sonapat record had not been produced, the selection for Sonapat had been set aside. The relevant portion in *Sanjay's case (supra)* reads thus:-

“What is interesting to note is that in the depots pertaining to Karnal and Chandigarh as also the few others, the Selection Committee has awarded the grades in their own hand and each page has been signed by them and thus forwarded to the Head Office. In some of the proceedings the total tabulation of the candidates who have received A+, A, B and C grades have also been recorded and to verify further the total number of candidates interviewed have been tallied with the persons who have been granted these grades. This reflects an insight into the mind of the Selection Committee which is conducting the process in a fair and transparent manner. But in so far as Sonapat depot is concerned, no such proceedings are available on record despite the persistence of this Court. Learned Advocate General with vehemence at his command has contended repeatedly that the list sent by the Sonapat depot is a compilation and even if this plea is accepted, the Court wants to know the foundation and the basis from which such compilation is carried out in print. It is not conceivable that the members of the Selection Committee would have prepared this list at the time of conducting the interviews and what transpired during the interview has to find its manifestation in the proceedings which the members

would have resorted to ordinarily and prudently.

xxx

xxx

xxx

Once the Court comes to this conclusion that the selection list was tampered with and the original record has not been made available to persuade this Court to conclude otherwise. The second contention that has been raised by the learned Advocate General regarding the preference being given to younger persons over and above the petitioners need not be gone into.

The writ petition is thus accepted. The impugned selection of the Drivers pertaining to the Sonapat depot is set aside and the respondents-State of Haryana is directed to hold the selection afresh by considering all the 100 candidates who have passed the three tests afresh. After the same is done, the list of the selected candidates shall be sent to the Head Office which shall prepare a fresh selection list of the entire State of Haryana by including the result of the fresh selection of Sonapat depot.”

19. The counsel for the State was also well justified that an argument has been raised that the younger candidates available had been selected but it is pertinent to notice that the Court recorded a finding that it was not going into the issue whether younger persons had been selected or not, as has been reproduced above. The written statement in the said case has also now been appended alongwith the additional affidavit filed, as noticed. It could not be pointed out from the said written statement by counsel for the petitioners that any such stand had been taken by the State that younger persons were being appointed and, therefore, the argument that a contrary stand was taken is also without any basis.

20. Similarly, the argument which has been raised that more than 50% were from reserved category is also without any basis. The break up of

the candidates had never been specified in the advertisement and the averments had been made on the basis of number of candidates being selected. The appointments were being made on the basis of vacancies which were available in various categories all over the State and which now have been filled up and are shown as under:-

LIST OF DRIVERS (2008)

BCA	212
DESM BCA	2
ESM BCA	8
OSP BCA	1
BCB	89
DESM BCB	10
ESM BCB	5
OSP BCB	6
GENERAL	313
DESM GENERAL	26
DFF GENERAL	2
ESM GENERAL	38
OSP GENERAL	8
SC	84
DESM SC	2
ESM SC	3
	809

21. If vacancies were available in the reserved categories which were to be filled up, no fault as such can be found that the appointments were made in excess of 50% as the vacant posts had to be filled up across the various categories. The judgment in *Sajjan Kumar's case (supra)* by the Division Bench also set asides the finding of the Single Judge whereby observations had been made by holding that the selection was at the Depot level and the petitioners were held entitled to be appointed if they were eligible and meritorious. The relevant part reads as under:-

“There is nothing on record to show that the posts were advertised depot wise. Advertisement dated 11.07.2007 is a composite advertisement inviting applications for the post of drivers. For the purpose of convenience, it was stated that the applicant can submit only one application and that can be submitted before General Manager of Haryana Roadways Depot in the State of Haryana where he would like to appear for the test. The above said clause was added only for the purpose of receiving the application and to conduct the test. There is further nothing to show in the advertisement issued that if a candidate applies in 'A' depot, he would not be entitled to be selected in 'B' depot even if he was eligible and meritorious. The ground taken to deny the benefit to the appellant is imaginary and is not borne out from the record.”

22. In such circumstances, once a categorical stand has been taken that as per the Rules the selection was at the State level and it was a universal grading which had been given across the Board by all Depots and the vacancies were filled up on the strength of those no fault as such can be found in the recruitment process which had been adopted. Accordingly, finding no merit in the writ petition, the same is dismissed. However, respondent no. 1 would ensure that the show cause notices which have been issued to 41 candidates whose qualifications are not as per the Rules and the advertisement and have been found not eligible by the Committee will be given due opportunity of hearing and then appropriate orders will be passed in each case where they have been found to be not fulfilling the prescribed criteria for appointment. The said exercise will be conducted within a period of 3 months from the date of receipt of certified copy of the

judgment.

01.11.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

