

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

108

**CWP No.21026 of 2019
Date of Decision: 24.09.2019**

Dr. Gurbuneet Singh Randhawa

.....Petitioner

Versus

The Registrar General, Punjab and Haryana High Court, Chandigarh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. S.S. Khaira, Advocate for the petitioner.

ARUN KUMAR TYAGI, J.

The petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing clause 3(bb) of the notification No.97 Gaz.I/VI.F.2 dated 30.05.2019 (**Annexure P-1**) issued by the respondent inviting applications for filling up of 8 vacancies in the Punjab Superior Judicial Service by way of direct recruitment from amongst the Advocates on the ground of being violative of Articles 14 and 16 of the Constitution of India. The petitioner has also sought issuance of a writ in the nature of mandamus directing the respondent to consider the application/candidature of the petitioner for the above said posts.

2. The respondent vide notification No.97 Gaz.I/VI.F.2 dated 30.05.2019 (**Annexure P-1**) invited application for filling up 8 vacancies for appointment to the Punjab Superior Judicial Service by way of direct recruitment from amongst the eligible Advocates through

competitive examination under Rule 7(3)(c) of the Punjab Superior Judicial Service Rules, 2007 (for short 'the 2007 Rules'). In the said Notification, Clause 1 embodied the particulars of the vacancies and reservation, Clause 2 specified the minimum/maximum age limits for the candidates, Clause 3 prescribed conditions of eligibility and qualification, Clause 4 enumerated the disqualifications, Clause 5 pertained to examination fee, Clause 6 detailed the syllabus and format of examination, Clause 7 contained other important information and Clause 8 provided the information as to how the application was to be submitted. Clause 3 of the said Notification reads as under:-

“3. ELIGIBILITY/QUALIFICATION:

A candidate for direct recruitment to the service:

- (a) must be a citizen of India; and*
- (b) must have been duly enrolled as an Advocate and must have been in practice for a period not less than seven years as on the last date of submission of applications i.e. 31.07.2019;*
- (bb) The applicant shall be an income tax assessee for a period not less than three assessment years (preceding the date of application), with gross professional income of not less than rupees five lakh per annum. The applicant shall also be required to attach the proof of his independent engagement and conducting of not less than fifty cases (other than bunch cases) for general categories and forty cases for the scheduled caste, physically challenged persons and Ex-servicemen category, respectively, per year in the last preceding three years:*

Provided that the gross annual income in the case of candidates belonging to the Scheduled Castes, physically challenged persons and ex-

servicemen, shall be rupees three lakhs per annum.

- (c) *must have passed matriculation examination with Punjabi as one of the compulsory or elective subjects or any other equivalent examination in Punjabi language, which may be specified by the Government from time to time.*

Note:-In light of orders dated 10.05.2019, passed by Hon'ble Supreme Court of India in S.L.P. (C) No.14156 of 2015 titled as 'Dheeraj Mor Vs. Hon'ble High Court of Delhi, 'In-Service' candidates can not apply for the said posts."

3. The petitioner has challenged clause 3(bb) of the above said notification and averred in the petition that the petitioner was enrolled as an Advocate with the Bar Council of Punjab and Haryana and is practicing in this Court and its subordinate Courts since 2005. The petitioner acquired higher educational qualification of Post Graduation Degree in the year 2009 and received Doctorate Degree from Guru Nanak Dev University, Amritsar on 30.05.2018. The respondent vide notification No.97 Gaz.I/VI.F.2 dated 30.05.2019 (**Annexure P-1**) invited applications for filling up of 8 vacancies in the Superior Judicial Services in the State of Punjab by way of direct recruitment from amongst Advocates. Discriminating and unjustifiable clause 3(bb) of the notification seeking unjustified income tax return of Rs.5 lakhs per annum renders the petitioner ineligible for the said post and denies the right of fair competition to him. The criteria discriminates between similarly situated candidates as filing of higher income tax return cannot authenticate the competence of the candidates and there is no mention of any benefit to the candidates who do *pro*

bono cases for the poor. Exemption from filing of No Objection Certificate has been given to the applicants who are serving in Government Prosecution Departments who are to produce the same at the time of viva-voce. Similar exemption ought to have been granted to privately working lawyers and the criteria of the higher income tax return should be considered at the time of viva-voce and not at the time of preliminary stage. No benefit or exemption is given to the candidates having higher educational qualification or publication in the research and social journals. There was no such condition in the similar examinations recently conducted by the High Court of Madhya Pradesh, Jabalpur and the High Court of Judicature at Allahabad for filling up of similar posts in the Higher Judicial Services. The action of respondent is discriminatory, arbitrary, unjustifiable and against the provisions of the equality. Therefore, clause 3(bb) of the impugned notification may be quashed by issuing a writ of certiorari and the respondent may be directed to consider the application/candidature of the petitioner by issuing a writ of mandamus.

4. We have heard counsel for the petitioner and have perused the relevant record.

5. Learned Counsel for the petitioner has argued that clause 3(bb) of the notification imposing unjustified eligibility conditions of appearance in 50 cases in a year and filing of income tax return of Rs.5 lakhs per annum in case of candidates belonging to general category for three years renders the petitioner ineligible for the said post and denies the right of fair competition to him. These eligibility conditions are arbitrary and discriminate between similarly situated candidates.

The condition of filing of higher income tax return of Rs.5 lakh in case of candidates of general category (Rs.3 Lakhs per annum in case of candidates belonging to the Scheduled Castes, physically challenged persons and ex-servicemen) per annum cannot authenticate the competence of the candidates and completely ignores and discriminates against candidates who do *pro bono* cases for the poor. Clause 3(bb) of the notification is unjustifiable and violative of Articles 14 and 16 of the Constitution of India. No benefit or exemption is given to the candidates having higher educational qualification or publication in the research and social journals. There was no such condition in the similar examinations recently conducted by the High Court of Madhya Pradesh, Jabalpur and the High Court of Judicature at Allahabad for filling up of similar posts in the Higher Judicial Services. Therefore, Clause 3(bb) of the impugned notification may be quashed and the respondent may be directed to consider the candidature of the petitioner for the examination.

6. On consideration of the submissions made by learned Counsel for the petitioner and perusal of the record, we are of the considered view that the impugned notification is not arbitrary or discriminatory and is not liable to be set aside on the ground of being violative of Articles 14 and 16 of the Constitution of India and the petition being devoid of any merit is liable to be dismissed.

7. In order to adjudicate upon the questions involved in the present case it is essential to refer to the historical background as well as constitutional and statutory provisions regulating appointment of District and Sessions Judges/Additional District and Sessions Judges.

8. During the initial periods of British Rule, the post of District Judge was reserved for the Europeans. The disability regarding Indians was removed as a result of the Queens' Proclamation in 1870 and the rules were framed for the first time in 1873. In 1875 Lord Northbrooks's Government framed rules allowing Indians to be appointed and Lord Lytton's Government framed rules fixing one-fifth quota for the Indians. There was no fixed principle on which Indians were to be appointed. The Islington's Commission was constituted in 1918 to consider the demand for recruitment from Bar to the superior judicial service and separation of judiciary from the executive. The Commission stated in its report : "Opinion in India is much exercised on the separation of the executive and the judicial function of the officers" and suggested that "to bring this about, legislation would be required". The Commission made its report on 14.08.1915 a few days after the Government of India Act, 1915 was enacted which did not contain any special provision about the Judicial Services in India. The problem about the independence of Judicial Officer did not receive full attention. The Executive Government and Legislatures controlled them and the recommendation of the Islington's Commission remained a dead letter. When the Montague-Chelmsford enquiry took place the object was to find out how much share in the legislative and executive fields could be given to Indian. The same position more or less continued till the Government of India Act, 1935 was passed. The said Act contained special provisions (Sections 254 to 256) relating to district judges and subordinate judiciary. Although no attempt was made to put the subordinate criminal magistracy under the High Courts,

the posting and promotion of and grant of leave to persons belonging to the subordinate judicial service of a province was put in the hands of the High Courts with a right of appeal to the authorities prescribed in the rules. As regards District Judges, the posting and promotion was to be made by the Governor of a province exercising his individual judgment and the High Court was to be consulted before any recommendation to the making of such an appointment was submitted to the Governor. In this manner the independence of the subordinate judiciary and of the district judges was assured to certain extent. At the time of framing of the Constitution after independence, the said special provisions as contained in 1935 Act were initially lost sight of. However, by amendment of the draft constitution the provisions were not only incorporated in the Constitution but given a place of pride by including them in a separate chapter just after the chapter dealing with the High Courts in Part VI and not in Part XIV which deals with the services in general. (See ***State of West Bengal Vs. Nripendra Nath Bagchi : AIR 1966 Supreme Court 447***).

9. The framers of the Constitution of India have made elaborate provisions in the Constitution not only regarding the Supreme Court and the High Courts but also for the Subordinate Judiciary for ensuring independence of judiciary. Chapter VI of the Constitution of India seeks to achieve the above-said goal by enactment of Articles 233 to 237.

10. Articles 233 and 235 of the Constitution of India, which are relevant to the questions involved in the present case,

read as under:-

"233. Appointment of District Judges.-

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

235. Control over Subordinate Courts.-

The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

11. Article 233 confers power on the Governor of the State to appoint persons either by direct recruitment from the Bar or by promotion from amongst those in the judicial service as District Judges but this power is hedged in with the condition that it can be exercised by the Governor in consultation with the High Court. Article 235 vests control over subordinate courts including the officers manning subordinate courts as well as the ministerial staff attached to such

courts in the High Court.

12. Part XIV of the Constitution of India contains provisions regarding services under the Union and the States. Article 309 of the Constitution of India, which provides for recruitment and conditions of service of persons serving the Union or a State, reads as under:-

"309. Recruitment and conditions of service of persons serving the Union or a State.-

Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

13. It may be observed here that the Rules enacted under Article 309 for regulating recruitment and conditions of service of District Judges and persons other than District Judges to the judicial service have to be in conformity with Articles 233 to 237.

14. The Governor of Punjab in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, and all other powers enabling him in this behalf and in consultation with the

High Court of Punjab and Haryana, Department of Personnel, Department of Finance and Punjab Public Service Commission made the Punjab Superior Judicial Service Rules, 2007 (for short, "the 2007 Rules"), vide Government of Punjab, Department of Home Affairs and Justice (Judicial Branch) Notification No.G.S.R.28/Const./Art.309/2007 dated 31.08.2007, for regulating the recruitment and the conditions of service of the persons appointed to the Punjab Superior Judicial Service.

15. Rule 1 of the 2007 Rules mentions short title and applicability of the 2007 Rules. Part-1 of the 2007 Rules contains provisions regarding Definition (Rule 2); Number and character of posts (Rule 3); Appointing authority (Rule 4); Age (Rule 5) and Examination Fee (Rule 6). Part II deals with method of appointment (Rule 7); Assessment of merit (Rule 8); Limited written competitive examination (Rule 9); Qualification (Rule 10); Test for direct appointment (Rule 11) and Seniority (Rule 12). Part III deals with Probation (Rule 13) while Part IV deals with pay and allowances (Rule 14) and Part-V makes miscellaneous provisions regarding Leave (Rule 15); Reservation of Posts (Rule 16); Regulations (Rule 17); Physical fitness (Rule 18); Death-cum-retirement benefits (Rule 19); Superannuation of members of service (Rule 20); Administrative control (Rule 21); Discipline, punishment and appeal (Rule 22); application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (Rule 23); Repeal and saving (Rule 24) and Interpretation (Rule 25).

16. Rule 7 of the 2007 Rules, which describes the Method of

Appointment, reads as under:-

"7.Method of appointment. -

- (1) The appointment to the Service by promotion shall be made from amongst the members of the Punjab Civil Service (Judicial Branch), by the Governor on the recommendations of the High Court.*
- (2) The direct appointment to the Service shall be made by the Governor on the recommendations of the High Court from amongst the eligible advocates on the basis of the written test and viva-voce conducted by the High Court.*
- (3) Appointment to the Service shall be made in the following manner:-*
 - (a) sixty-five per cent by promotion from amongst the Civil Judges (Senior Division), on the basis of merit-cum-seniority and passing of a suitability test;*
 - (b) ten per cent by promotion on the basis of merit through departmental competitive examination of Civil Judges(Senior Division) having not less than five years qualifying Service as Civil Judge (Senior Division):*

Provided that if no suitable candidate is available for promotion under this clause or a candidate fails to qualify the said examination in that case, the available post shall be filled up by regular promotion in accordance with the criteria laid down in clause (a) above; and

- (c) twenty-five per cent of the posts shall be filled by direct appointment from amongst the eligible advocates on the basis of the written test and viva-voce, as conducted by the High Court.*

Explanation. - For the purposes of clauses (a) and

(b), it is clarified that the qualifying service for promotion should be either on the post of Civil Judge (Senior Division) or Chief Judicial Magistrate or Additional Civil Judge (Senior Division) separately or by clubbing the service on any of the said posts.

(4) These posts shall be filled in accordance with the Roster attached as Appendix-B."

17. Rule 10 of the 2007 Rules prescribes the qualification for appointment to the Punjab Superior Judicial Services by way of direct recruitment, as under:-

"10. Qualification.-Qualifications for direct recruitment shall be as follows:-

- (a) must be a citizen of India; and*
- (b) must have been duly enrolled as an advocate for a period of not less than seven years and must have practiced, as such, during the said period;*

(bb) The applicant shall be an income tax assessee for a period not less than three assessment years (preceding the date of application), with gross professional income of not less than rupees five lakh per annum. The applicant shall also be required to attach the proof of his independent engagement and conducting of not less than fifty cases (other than bunch cases) for general categories and forty cases for the scheduled caste, physically challenged persons and Ex-servicemen category, respectively, per year in the last preceding three years:

Provided that the gross annual income in the case of candidates belonging to the Scheduled Castes, physically challenged persons and ex-servicemen, shall be rupees three lakhs per annum.

(c) *must have passed matriculation examination with Punjabi as one of the compulsory or elective subjects or any other equivalent examination in Punjabi language, which may be specified by the Government from time to time."*

(emphasis supplied)

18. The question which arises is as to whether clause 3(bb) of the impugned notification based on sub-rule (bb) of Rule 10 of the 2007 Rules is ultra virus the Constitution being violative of Articles 14 and 16 of the Constitution of India.

19. Judicial Service is not just an employment comparable to other administrative services and is widely recognised as partaking the character of an opportunity as well as divine duty to serve the people by adjudication of their disputes in exercise of sovereign powers of the State which by itself necessitates different qualities of head and heart and working in strenuous conditions.

20. In ***All India Judges' Association & Others Vs. Union of India : 1993(4) SCC 288*** Hon'ble Supreme Court observed as under:-

“.....The judicial service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the state- power are the

ministers, the legislators and the judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the legislators and the Judges and not between the Judges and the administrative executive. In some democracies like the U.S.A., members of some State judiciaries are elected as much as the members of the legislature and the heads of the State. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on par with the members of the judiciary, either constitutionally or functionally.”

21. In ***Delhi Bar Association Vs. Union of India & Others : 2002(1) SCT 238***, Hon’ble Supreme Court highlighted the requisites for appointment as judicial officer by observing as under:-

“...what has to be seen is the potential in the candidate : Whether a person is intelligent and will in due course of time become a good Judge. It may not be necessary for him to be academically brilliant or knowing all the law at the time when the process of selection is undertaken. What has to be seen is, as we have already observed, whether the candidate has the attributes of becoming a good Judicial Officer, namely, integrity, honesty, basic knowledge of law and robust common sense.”

22. In ***K.H. Siraj Vs. High Court of Kerala : 2006 (3) SCT 146***, Hon'ble Supreme Court further specified the requisite qualities of a Judicial Officer as under:-

“The qualities which a Judicial Officer would possess are delineated by this Court in Delhi Bar Association v. Union of India & Ors., 2002(1) SCT 238 : (2002)10 SCC 159. A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations, to control the examination of witnesses and also lengthy irrelevant arguments and the like.....”

23. In ***Lila Dhar Vs. State of Rajasthan : (1981) 4 SCC 159*** Hon'ble Supreme Court made the following observations regarding the object of selection process as under:-

"The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service.'A system of recruitment almost totally dependent on assessment of a person's academic knowledge and skills, as distinct from ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrow--.We venture to suggest that our recruitment procedures should be such that we can select candidates who cannot only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems."

24. When appointment is to be made from the Bar or promotion is to be given from amongst those belonging to subordinate judicial service, the High Court unquestionably will be competent to decide whether a person is fit for appointment or promotion. The Governor who would be acting on the advice of the Minister would hardly be in a position to have intimate knowledge about the quality and qualification of person belonging to the Subordinate Judicial service for promotion. Similarly when a person is to be directly recruited as District Judge from the Bar the reasons for attaching full weight to the opinion of the High Court for its recommendation in case of subordinate judicial service would mutatis mutandis apply because the performance of a member of the Bar is better known to the High Court than the Governor.

25. In ***Chandra Mohan Vs. State of Uttar Pradesh & Others : AIR 1966 Supreme Court 1987***, a Constitution Bench of Hon'ble Supreme Court observed as under :

"The object of consultation is apparent. The High Court is expected to know better than the Governor in regard to the suitability or otherwise of a person, belonging either to the 'judicial service' or to the Bar, to be appointed as a district judge. "

26. This view was reaffirmed by Hon'ble Supreme Court in ***Chandramouleshwar Prasad Vs. Patna High Court & Ors. : 1970 (2) SCR 666*** while observing that the High Court is the body which is intimately familiar with the efficiency and quality of officers who are fit to be promoted as District Judges. The High Court alone knows their merits as also demerits.

27. In ***K.H. Siraj's case (supra)*** Hon'ble Supreme Court held that High Court is the best judge in the matter of selection and is required to exercise its powers in the light of the constitutional scheme so that the best available talent suitable for manning the judiciary may get selected and this action cannot be questioned. Hon'ble Supreme Court observed in that case as under:

"The High Court alone knows what are the requirements of the subordinate judiciary, what qualities the Judicial Officer should possess both on the judicial side and on the administrative side. Since the performance of duties as ADSJ require administrative abilities as well. Since the High Court is the best Judge of what should be the proper mode of selection and follow such procedure as it deems fit. The High Court has to exercise its powers in the light of the constitutional scheme so that the best available talent, suitable for manning the judiciary may get selected."

28. In ***Hari Dali Kainthala Vs. State of Himachal Pradesh : AIR 1980 Supreme Court 1426*** it was observed that it is for the High Court to decide which criteria should be followed in the matter of appointment of District Judges/Additional District Judges.

29. In ***Mahinder Kumar and Others Vs. High Court of Madhya Pradesh through Registrar General and others : (2013) 11 SCC 87***, a three Judges Bench of the Hon'ble Supreme Court has clearly held that the High Court is fully empowered to evolve its own procedure of selection for direct recruitment and promotion in respect of entry level District Judge and can also specify such procedure depending on exigencies from time to time.

30. It may be observed here that in the present case sub-rule (bb) of Rule 10 of the 2007 Rules was accordingly inserted by amendment of the 2007 Rules vide notification dated 26.3.2001 on the recommendation of the High Court. When it is acknowledged that High Court plays a predominant role in the selection process for appointment of entry level District Judges and knows the suitability or otherwise of a person, belonging either to the 'judicial service' or to the Bar, to be appointed as a District Judge, fixation of eligibility conditions for adjudging the qualities/capacities of the candidates from the Bar will be a legitimate exercise giving a demarcating choice to the High Court.

31. In ***Gujarat State Sales Tax Non-Gazetted Employees' Association Vs. The State of Gujarat and another : 1977 (1) SLR 452*** 120 posts of Sales tax Inspectors were required to be filled in by direct selection. An advertisement was issued in the newspapers and as many as 15,000 candidates applied in response thereto. This necessitated screening of the candidates at the threshold. It was found that more than 1000 applicants were holding first class degrees in different faculties of recognised Universities : 580 of them were first class Commerce graduates, 101 first class Arts graduates and about 500 first class Science graduates. Having regard to the number of vacancies the field of choice was restricted to first class graduates only and it was decided not to call for interview a second class or third class graduate including graduates having Commerce degree with Accountancy as a subject. It was this decision which was put in issue before the learned Single Judge by candidates who were eliminated at the threshold from consideration. The relevant rule provided that the appointment to the

post of Sales Tax Inspectors shall be made either (a) by direct selection or (b) by promotion. Insofar as direct selection was concerned, the educational qualification required was stated to be a degree of a recognised University. The proviso laid down that preference shall be given to a candidate who possesses the degree of B.Com with Accountancy or Chartered Accountants, or possesses a qualification recognised to be equivalent to such examination by the Govt. of Gujarat. In the context of this preference rule it was observed in para 7 of the judgment that to hold that the rule of preference was enacted to give to Commerce graduates with Accountancy or to candidates having other prescribed qualifications an absolute preference over the graduates of other faculties would be to denude the substantive provision of much of its force and effect and to convert the rule of preference into a rule of reservation thereby obliterating altogether the right of other candidates possessing degree of recognised Universities in various other faculties to be considered for the post such could not be the reasonable construction of the rule and it could not even have been the intention of the framers of the rules. It was further observed that it is well-settled that though the Recruitment Rules may prescribe the minimum eligibility qualification, it is competent to an appointing authority to demarcate the field of choice, that is to say, to prescribe some rational screening test by the adoption of which the necessity of calling for interview or for examination, as the case may be, every eligible candidate is eliminated and the zone of selection is restricted to candidates with merit bearing a reasonable proportion to the number of vacancies to be filled up. In other words, though an obligation to

consider every qualified candidate may be implicit in the recruitment rules as also in the equal opportunity right enshrined in Articles 14 and 16 of the Constitution, screening a candidate out of consideration at an initial stage of the process of selection is not illegal or unconstitutional, if a legitimate field demarcating the choice by reference to some rational formula is carved out..... In the present times of large-scale unemployment, unless such power is recognised, the appointing authority will have to allow every eligible candidate to compete in the process of selection at all stages; upto the final appointment, involving such waste of public time, money and energy and arousing false hopes in the minds of the competing candidates. There is, therefore, nothing inherently wrong in restricting the field of choice in the present case to First Class graduates of various faculties, The test adopted is undoubtedly rational and time-honoured and it has direct nexus with the object of selection, for the object is to draw upon the best talent in order to fill up the requisite number of posts. Thus, the challenge based on Articles 14 and 16 of the Constitution was repelled. In ***Govt. of A.P. Vs. P. Dilip Kumar : 1993 (2) SCC 310*** Hon'ble Supreme Court expressed agreement with ratio of the above-said case and observed that classification on the basis of higher educational qualification with a view to achieving improvement in administrative performance is not abhorrent to Articles 14 and 16 of the Constitution.

32. In **Shri Ajay Malik Vs. Punjab University through its Registrar, Punjab University, Chandigarh and others : AIR 1992 Punjab and Haryana 308**, this court held that in the matter of admission to LL.B. course the University could fix a condition of

eligibility for admission which was higher than the minimum qualification prescribed by the Bar Council of India under the Advocates Act, 1961. This court said that the power of the Bar Council was to prescribe a minimum condition of eligibility for admission for purposes of recognising a University degree so that a certain level of legal education could be maintained but it did not imply that a University to maintain its own academic standards was prohibited from raising the minimum qualification as prescribed by the Bar Council. In **Jayshree Ravi and another Vs. University of Delhi and another : 1994(53) DLT 801**, the case of the petitioner was that the decision of the University of Delhi to lay down eligibility condition of minimum 50% marks in aggregate for appearance in the entrance test for admission to LL.B. course was illegal, arbitrary, irrational and was violative of Articles 14 and 21 of the Constitution. The Court by majority held that the eligibility condition of 50% as cut off percentage was in no way violative of Articles 14 and 21 of the Constitution.

33. In ***State of Haryana Vs. Subhash Chander Marwaha and others : 1974 (3) SCC 220*** an advertisement was published in the *Government Gazette on February 3, 1970* to the effect that the Haryana Public Service Commission will hold an examination for recruitment of candidates for 15 vacancies in the Haryana Civil Service (Judicial Branch). In response to the advertisement a number of candidates appeared for the examination held in November, 1970. The result of the competitive examination was declared and published in the Haryana Government Gazette on April 6, 1971. It was a list of 40 candidates who obtained 45% or more marks in the examination. The State

Government which is the appointing authority made seven appointments in the serial order of the list according to merit. Respondents who ranked 8, 9 and 13 respectively in that list did not get an order of appointment although there were vacancies. The reason for not making the appointments was that in the view of the State Government, which was the same as that of the High Court previously intimated to the State Government, candidates getting less than 55% of marks in the examination should not be appointed as Subordinate Judges in the interest of maintaining high-standards of competence in Judicial Service. Respondents 1 to 3 who expected to be appointed filed the petition claiming that since, there were 15 vacancies and they had the necessary qualifications for appointment the State Government was not entitled to pick and choose only seven out of them for appointment, because to do so would be to prescribe a standard which was not contemplated by the rules. The High Court issued a mandamus to the appellant to select respondents 1 to 3 under Rule 10(ii) of Part C of the Punjab Civil Service (Judicial Branch) Rules so that their names are brought on the High Court Register for appointment as Subordinate Judges in Haryana State. It was contended before Hon'ble Supreme Court that rule 8 of Part C made candidates who obtained 45% or more in the competitive examination eligible for appointment; the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55% and the State Government acted arbitrarily in fixing 55% as the minimum for selection which is contrary to the rule referred to above. While repelling the contention Hon'ble Supreme Court observed as

under :-

“The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who, is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why rule 10(ii), Part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for mere eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a minimum of 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act that the Punjab Government later on fixed a lower score is no reason for the Haryana, Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who get less than 55% have no right to

claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking that the State Government had somehow contravened rule 8 of Part C.”

34. In ***M.P. Public Service Commission Vs. Navneet Kumar Potdar and another (1994) 6 SCC 293***, an advertisement was issued inviting applications for appointment, to the post of Presiding Officers of the Labour Courts constituted under the provisions of the M.P. Industrial Relations Act, 1960. In view of Section 8(3)(c) of the above-said Act in the advertisement it was prescribed that the applicant should have practiced as an Advocate or a pleader for a total period of not less than five years. In view of the large number of applications received from the general category candidates against 4 posts, only 71 applicants, who had completed seven and half years of practice were called for interview, although 188 applicants having practice of more than five years were eligible. The challenge in the writ petitions was that in view of statutory requirement of only five years of practice, as an Advocate or a pleader, it was not open to the Public Service Commission to raise the said period up to seven and half years and to debar applicants who had applied for those posts and who fulfilled the statutory requirement. The High Court allowed the said writ petitions taking the view that as the statutory qualification in respect of the practice was only five years, raising the said period from five to seven and half years amounted to laying down a criteria in violation of the prescribed statutory criteria. A direction was given either to call all the applicants for interview who had completed 5 years of practice as

required by Section 8(3)(c) of the above said Act or to screen the applicants through some test and thereafter to call only such applicants for interview who qualify at the said screening test. Hon'ble Supreme Court held that short listing which is done by fixing the benchmark to recruit best candidates on rational and reasonable basis is legal and valid. while upholding the raising of the period of practice from five to seven and half years Hon'ble Supreme Court observed as under:-

“On behalf of the respondents, it was pointed out that there is no presumption that an Advocate having seven and half years of experience will be more suitable for the post of Presiding Officer of the Labour Courts than an Advocate having only five years of experience because it all depends on the personal merit of the candidate concerned. It is true that it has been found that sometimes the persons with lesser years of experience and practice have proved to be better Advocates and they excel in profession. The success in profession is not necessarily linked with the years of practice. But that may be an exception. Normally, it is presumed that with longer experience an Advocate becomes more mature. In any case, this fixing the limit at seven and half years instead of five years of the practice for purpose of calling the interview cannot be said to be irrational, arbitrary having no nexus with the object to select the best amongst the applicants.”

35. Hon'ble Supreme Court has considered it imperative that only persons with the prescribed minimum qualities/capacities should be selected as otherwise the standard of judiciary would get diluted and sub-standard stuff may get selected. Reference in this regard may be made to the following observations of Hon'ble Supreme Court in ***Ramesh Kumar Vs. Delhi High Court and another : 2010(3)***

SCC 104:-

“In State of U.P. v. Rafiquddin & Ors., AIR 1988 SC 162; Dr.Krushna Chandra Sahu & Ors. v. State of Orissa & Ors. 1995(4) S.C.T. 560 : AIR 1996 SC352; Majeet Singh, UDC & Ors. v. Employees' State Insurance Corporation & Anr. AIR 1990 SC 1104; and K.H. Siraj v. High Court of Kerala & Ors. 2006(3) S.C.T. 146 : AIR 2006 SC 2339, this Court held that Commission/Board has to satisfy itself that a candidate had obtained such aggregate marks in the written test as to qualify for interview and obtained "sufficient marks in viva voce" which would show his suitability for service. Such a course is permissible for adjudging the qualities/capacities of the candidates. It maybe necessary in view of the fact that it is imperative that only persons with a prescribed minimum of said qualities/capacities should be selected as otherwise the standard of judiciary would get diluted and sub-standard stuff may get selected. Interview may also be the best mode of assessing the suitability of a candidate for a particular position as it brings out overall intellectual qualities of the candidates. While the written test will testify the candidate's academic knowledge, the oral test can bring out or disclose overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a Judicial Officer.”

36. It may also be mentioned here that similar provision, parimateria to rule 10(bb) of the Punjab Superior Judicial Service Rules, 2007 and clause 3(bb) of the impugned notification, has been made in rule 11(bb) of the Haryana Superior Judicial Service Rules, 2007 notified vide Gazette Notification dated 06.06.2014 which was

challenged in the Hon'ble Supreme Court by the Punjab and Haryana High Court Bar Association by filing writ petition (Civil) No.579 of 2015 titled as 'The Punjab and Haryana High Court Bar Association Vs. The Registrar (Recruitment), Punjab and Haryana High Court', which was subsequently, on leave sought in this regard, dismissed as withdrawn vide order dated 20.04.2018.

37. The object of sub-rule (bb) of Rule 10 of the 2007 Rules is to enable the High Court to get the candidates of the desired level of excellence in the Punjab Superior Judicial Service to cater to the exigencies thereof. The requirements of the job can be taken into consideration to prescribe higher eligibility conditions as part of a well structured process for making a selection which would advance the cause of efficiency. Higher eligibility conditions can always be introduced by the competent authority for the purpose of maintenance of higher standards in service in furtherance to its decision taken in the interest of administrative excellence. What has been done by the Notification dated 30.05.2019 is to evolve a procedure to choose the best available talent. It cannot for a moment be stated that prescription of the condition is in any manner irrelevant or not having any nexus to the object sought to be achieved. The merit of a candidate from the Bar and his suitability for direct recruitment have to be assessed with reference to his performance at the Bar. Therefore, the prescription of the eligibility conditions of appearance in 50 cases in a year and income of Rs.5 Lakhs per annum (Rs.3,00,000/- per annum for candidates of SC/ST/BC categories) in Rule 10 (bb) of the 2007 Rules reproduced by way of clause 3(bb) in the Notification dated 26.3.2001 is necessary

and fully justified for assessment of suitability of the candidates for direct recruitment from the Bar. It will not be proper to strike down the Rule framed by the Governor in consultation with the High Court laying down the qualification, which is germane and best suited to achieve the object, as being arbitrary or discriminatory. No doubt, there was no such condition in the similar examinations recently conducted by the High Court of Madhya Pradesh, Jabalpur and the High Court of Judicature at Allahabad for filling up of similar posts in the Higher Judicial Services but that fact is not by itself sufficient to hold the said clause to be arbitrary and discriminatory and strike down the same. When scrutinized in the context of law on the subject, we do not perceive any error in fixation of higher eligibility conditions which otherwise have uniform application and which cannot be treated to be irrelevant, irrational or illegitimate to the object to be thereby achieved. The action of respondent is not discriminatory, arbitrary, unjustifiable and against constitutional provisions guaranteeing equality. Consequently, prescription by Rule 10 (bb) of the 2007 Rules of higher eligibility condition of appearance in 50 cases in a year and income of Rs.5 Lakhs per annum (Rs.3,00,000/- per annum for candidates of SC/ST/BC categories) not being arbitrary or discriminatory and violative of Articles 14 and 16 of the Constitution of India is not liable to be struck down on the ground of being ultra vires to the Constitution of India.

38. It follows from the above discussion that no grounds have been made out by the petitioner for quashing clause 3(bb) of the notification dated 30.05.2019 (**Annexure P-1**) and directing the

respondent to consider application/candidature of the petitioner for the said post.

39. The writ petition is, therefore, devoid of any merit and is accordingly dismissed with no order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

24.09.2019

Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No