

**CWP No. 7469 of 2020 and
CWP No. 7204 of 2020**

:1:

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

*** * * * ***

CWP No. 7469 of 2020
Date of decision : 01-09-2020

*** * * * ***

Gurpreet Singh and others

.....Petitioners

Versus

Punjab State Power Corporation Limited, through its Managing Director and
anr.

.....Respondents

CWP No. 7204 of 2020
Date of decision : 01-09-2020

*** * * * ***

Pushp Garg

.....Petitioner

Versus

Punjab State Power Corporation Limited, through its Managing Director and
others

.....Respondents

*** * * * ***

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

*** * * * ***

Present: Mr. H.C Arora, Advocate for the petitioners.
(in CWP No. 7469 of 2020)

Mr. Rajat Garg, Advocate for the petitioner.
(in CWP No. 7204 of 2020)

Mr. Sehajbir Singh, Advocate for the respondents.

* * * * *

RITU BAHRI, J.

**C.M No. 4820 of 2020 in
CWP No. 7469 of 2020**

Prayer made in the application is allowed subject to all just exceptions.

**CWP No. 7469 of 2020 and
CWP No. 7204 of 2020**

By way of this common judgment, two writ petitions bearing no. **CWP No. 7469 of 2020** (Gurpreet Singh and others Versus Punjab State Power Corporation Limited and anr.) **CWP No. 7204 of 2020** (Pushp Garg Versus Punjab State Power Corporation Limited and others) shall be decided as both the present petitions involve similar set of facts and circumstances and identical question of law requires to be determined in both these writ petitions. For the sake of convenience and brevity, facts are being extracted from **CWP No. 7469 of 2020** (Gurpreet Singh and others Versus Punjab State Power Corporation Limited and anr.).

The petitioners have filed the present writ petition under Article 226 of the Constitution seeking issuance of a writ of certiorari for quashing the result of the written examination (Annexure P-5) dated 04/03/2020 on the ground that variation in the marks/result, of written test made by the Punjab State Power Corporation Ltd. (hereinafter referred to as 'the respondent-Corporation') by way of normalization is arbitrary without any guidelines or norms framed by the respondent-Corporation.

Advertisement dated 15/08/2019 (Annexure P-1) was issued for recruitment to 1000 posts of lower division clerks on the basis of marks obtained by the candidates in the online written test. As per clause 5.3 of the said advertisement, it was specifically provided that in case of the written examination/online examination being conducted for a particular post in various shifts, the respondent-Corporation shall resort to normalization process to neutralize the effect of difference in difficulty level of each set of papers in different shifts and that the final merit list shall be prepared on the basis of marks worked out after normalization. The relevant Clause 5.3 in advertisement dated 15/08/2019 (Annexure P-1) is hereby reproduced as under:

“5.3 The merit shall be prepared based on the marks secured in the online test (except Sportsperson category which shall be determined as per Sports gradation policy No. 47/26/83-5 education/2036 dated 10/12/1997). It is further informed that online exam conducted for a particular post could be spread across multiple shifts which will have different question paper for each shift. As such normalization will be done in order to neutralize the effect of difference in difficulty level of each set of papers in different shifts. The final merit list will be prepared on the basis of marks worked out after normalization. Thus, raw marks may vary with normalized marks in the final merit list.

However, in case online exam is conducted in a single shift, result/merit list shall be prepared on the basis

of actual marks secured by the candidate in online examination.

If two or more candidates secure same marks, then their relative merit shall be determined by their age with higher age candidates placed at higher merit. The minimum qualifying marks in the online test for general category candidates is 45% and for Reserve Category candidates is 35%. Herein reserve category candidate include Scheduled Caste, Backward Class, Ex-Servicemen, Freedom Fighter, Sportsperson & Person with Disability candidates. There will be 100 multiple-choice objective type questions with one correct answer and there will be negative marking for a wrong answer @ 0.25 (1/4th) of the marks allotted for correct answer.”

The petitioners participated in the written examination as per the roll numbers allotted to them. The result of 22 petitioners (Annexure P-2) has been placed on record which shows marks before normalization and after normalization for reference. The grievance of the petitioners is that the criteria or the method of normalization of result should have been incorporated in the advertisement itself. This is precisely the practice adopted by the other Selection Boards. To substantiate the aforesaid submission, the petitioners have enclosed a copy of Notice dated 07/02/2019 issued by the Staff Selection Commission of Government of India as Annexure P-3. This notice states the formula that would be used by the Commission to calculate final score of the candidates in the multi-shift examination. The petitioners have also placed on

record advertisement dated 02/08/2019 (Annexure P-4) issued by the Institute of Banking Personnel Selection for Recruitment to the Post of Probationary Officers/Management Trainees in various banks. As per the aforesaid advertisement dated 02/08/2019 (Annexure P-4) Clause E (IV) of the said advertisement refers to normalization to be applied in the following manner:-

“IV Scores

- *The corrected scores obtained by each of the candidates in different sessions (if held) will be normalized using equi-percentile method.*
- *Scores up to two decimal point shall be taken for the purpose of calculations.”*

Ld. counsel for the petitioners, Mr. HC Arora has argued that the respondent-Corporation did not notify the marks obtained by the candidates before normalization and the marks were notified after normalization. The formula of normalization was kept as a secret. By referring to the answer sheets of petitioner No. 1 Gurpreet Singh (Annexure P-6) and Sh. Ved Prakash Goyal (Annexure P-7), he has argued that Ved Prakash Goyal was entitled to 39.5% marks on the basis of answers given, however, he was given 54.337 after normalization and petitioner No. 1 Gurpreet Singh was entitled to 66.25 marks, but he was given 67.937 after normalization. Hence, Ved Prakash Goyal was given more marks after normalization than Gurpreet Singh. While referring to the case of one Kulvir Singh, he has argued that he was awarded 100 marks by the respondent-Corporation and in similar examination for recruitment to the same post of LDC, he secured only 16.910 marks. In the

same manner, one Beant Singh scored 100 marks after normalization in the current examination but in an earlier examination conducted by MARKFED in August 2019, only 3 months prior to the holding of the examination by the respondent-Corporation, he could obtain only 22 marks. He further submits that there is no delay in approaching this court as respondent-Corporation has issued a notice dated 12/05/2020 (Annexure P- 10) for the purpose of document checking by different committees after declaration of the final result.

Counsel for respondents No. 1 and 2 Mr. Sehaj Bir Singh has argued that in the advertisement dated 15/08/2019 (Annexure P-1) the respondent-Corporation had clearly mentioned under Clause 5.3 that the merit shall be prepared on the basis of the marks secured in the online test (except Sportsperson category which shall be determined as per Sports gradation policy No. 47/26/83-5Edu./2036 dated 10/12/1997). Counsel for the respondent-Corporation has argued that as per Clause 5.3 of the advertisement, there was already a provision for finalizing the merit after following the normalization procedure to neutralize the effect of difference in difficulty level of each set of papers in different shifts. The test conducting agency that is EdCIL decided to adopt normalization formula as is followed by all agencies conducting similar tests with a view to avoid any advantage or disadvantage to any candidate due to relatively difficult or simple question paper for the same post in different shifts. The entire process of normalization as undertaken by the test conducting agency that is EdCIL along with illustrations are annexed with the written statement as Annexure R-1. He has further argued that the process was done in a completely scientific manner and no arbitrariness

existed. After applying the normalization formula, final merit list was published on the website of the respondent-Corporation. Detailed marks scored by the petitioners before and after normalization has been given in paragraph 9 of the written statement. It has further been stated in paragraph 10 of the written statement that the petitioners, except petitioner No. 19 Ms. Surabhi who secured 79.093 marks in general category, could not secure enough marks in their respective categories to be called for document checking. In paragraph 10 cut-off marks of various categories have also been given. For the purpose of document verification, 1543 candidates had been called against 1000 posts of Lower Division Clerks advertised against advertisement No. 293 of 2019. Hence, the petitioners cannot be allowed to challenge the selection criteria after participating in the selection process. He has referred to a judgment of Hon'ble Supreme Court of India in the case of **Union of India versus S. Vinodh Kumar, (2007) 8 SCC 100**, wherein it has been held that *once a candidate appears for the interview and participates therein he cannot turn around and subsequently contend that the process of interview was unfair or there was some lacunae in the process just because the result of the interview is not palatable to him*. In the written statement respondent-Corporation admitted that candidates Kulvir Singh and Beant Singh obtained 100 marks post normalization. It was also admitted that in an earlier recruitment process Kulvir Singh obtained 16.910 marks however, the marks obtained by Beant Singh in an examination conducted by MARKFED were denied for want of knowledge. However, it was further submitted that marks obtained by a candidate in an earlier recruitment process, howsoever low they may be, cannot be made a ground to question or challenge the recruitment process. It has

further been mentioned therein that petitioners except petitioner No. 19 have not secured enough marks in the online examination and as such they did not fall within the zone of consideration. Thus, they had not been called for document checking.

Heard counsel for the parties. At the outset, reference can first be made to the advertisement dated 15.8.2019 (Annexure P-1), whereby apart from the 1000 posts of Lower Division Clerks, 4 posts of Accounts Officer, 54 posts of Revenue Accountant, 26 posts of the Superintendent (Divisional Accounts) and 50 posts of Steno Typist were also advertised. Apart from giving detailed breakup of posts in the advertisement, in clause 5.3, it has been clearly mentioned that normalization will be done in order to neutralize the effect of difference in difficulty level of each set of papers in different shifts and the final merit list will be prepared on the basis of marks worked out after normalization. Hence, first argument of the counsel for the petitioner that there was arbitrariness in giving marks after normalization process and that the respondent-Corporation has not uploaded the revised result is liable to be rejected. As per clause 5.3 of the advertisement (Annexure P-1), the candidates were well aware that they were participating in the online examination in different shifts and normalization process was to be followed for preparing the final merit list to neutralize the effect of difference in difficulty level of each set of papers in different shifts.

This issue has come up for consideration before the Telangana High Court in **Lubana Tabassum and others versus State of Telangana and another, 2019 (6) ALT 153** wherein a case relating to selection to the post of State Police Stipendiary cadet trainee and Reserve Sub-Inspector of

police (AR) (Men and Women) was being examined. It was held that the recruitment agency is the best authority to determine the procedure of selection. The normalization principal adopted by the police recruitment board to determine relative merit of men and women in pursuance to recruitment notification for the post of sub- inspector of police (armed reserve) was upheld in so far as inter se merit among women candidates was concerned. However, it was directed that the police recruitment Board may reconsider desirability of assessing their merit after completing the exercise to normalize the relative performance of men and women without applying normalization principal. The relevant paragraphs 25 and 26 are reproduced herein as under:

“25. On the scope of judicial review on the decisions of executive, more particularly decision involving technical matters, in Union of India V J.O.Suryavamshi (2011) 13 SCC 167, Supreme Court cautioned the Courts to resist the temptation to usurp the power of executive. The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant facts, eschews from considering irrelevant facts and acts reasonably within the parameters of the law, Courts should keep off the same [Paragraph 18, Federation of Rly. Officers Assn. V Union of India (2003) 4 SCC 289]. Legality of policy and not the wisdom or soundness of the policy, is the subject of judicial review. [Paragraph 16, Directorate of Film Festivals Vs Gaurav Ashwin Jain (2007) 4 SCC 737]. The modern trend points

to judicial restraint in administrative action. The Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision without the necessary expertise which itself may be fallible.

[Municipal Corporation, Ujjain v. BVG India Limited 2018 SCC Online SC 495].

26. It is not in dispute that principle of Normalization based on formula adopted by the recruitment Board, was applied uniformly to all the candidates. No mala fides are attributed; no personal prejudice is alleged; no illegality of all perverse are alleged in the selections in applying the Normalization principle. In a given circumstance, it may have caused hardship to a person in as much as though the person secured more merit in the written examination, but based on the points secured in physical efficiency test, by applying Normalization principle, her marks are reduced and in the order of merit, pushed down, but that cannot be a ground for this Court to interfere and direct the respondent-Board to follow different formula.

A Coordinate Bench of this court in the case of **Navjeet Singh**

versus Punjab State Electricity Board 2018 (1) SCT 672 was examining a case for selection to the post of Junior Engineer Grade-II (Electrical). While dismissing the said petition, this court held that even a selected candidate has no indefeasible right to seek appointment. In case any candidate has participated in the selection process without any protest he cannot be allowed to turn around and question the very process having failed to qualify. It was observed that the petitioner participated in the selection process and when his name was not there in the list of successful candidates he cannot be allowed to question the criteria or the process. Petitioner was well aware about the qualifying criteria and has also participated in the selection process till the declaration of the result of written test and, therefore, he was not entitled for the discretionary relief under Article 226 of the Constitution of India. Writ petition was dismissed on the ground that it had been filed after delay as well.

Hon'ble the Supreme Court in the case of **Ramesh Chandra Shah and others vs. Anil Joshi and others 2013 (3) SLR 397** was examining a case of recruitment of Group C posts by Uttarakhand Board of Technical Education, wherein, it was challenged that the advertisement and the test conducted by the Board were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. It was held by Hon'ble the Apex Court that the respondents having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules 2008 had waived their right to question the advertisement or the methodology adopted by the Board for making selection. High Court was held to have committed grave error by entertaining the grievance made by the respondents. Impugned order

passed by the High Court was set aside and the writ petition filed by the private respondents was dismissed. On the principal of doctrine of waiver Hon'ble the Supreme Court observed in paragraphs 23 and 24 as under :

“23. The doctrine of waiver was also invoked in Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others 2010 (4) SCT 556: (2011) 1 SCC 150 and it was held:

“When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and

opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.”

24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

In the case of **Ranjan Kumar Versus State of Bihar and others** **2014 (3) AIR Jhar R. 238** , wherein appointments to the post of Medical Laboratory Technicians were challenged by unsuccessful candidates on the ground that procedure for appointment was vitiated. It was held by Hon’ble the Apex Court that when the respondents had appeared in the interview knowing fully well the process, they could not have resiled later on or take a somersault saying that the procedure as adopted by the Department was vitiated. In paragraph 13, it was observed as under:-

“The next submission which has been presented before us is that when the respondents had appeared in the interview knowing fully well the process, they could not have resiled later on or taken a somersault

saying that the procedure as adopted by the department was vitiated. In this connection, it is apt to refer to the principle stated in Om Prakash Shukla v. Akhilesh Kumar Shukla and others[1986 (Supp) SCC 285], in the said case a three-Judge Bench, taking note of the fact that the petitioner in the writ petition had appeared for the examination without protest and filed the petition only after he realized that he would not succeed in the examination, held that the writ petitioner should not have been granted any relief by the High Court.”

As per Annexure R-1 which has been followed by the respondent-Corporation in conducting the written examination, the criteria for choosing the base for normalization is generally taken as the shift with highest average of raw scores and normalization score for each candidate has also been mentioned therein. At page no. 21 details of the shift summary sheet has also been mentioned.

Hence, after going through the case file thoroughly and on perusal of Annexure R-1, in the opinion of this Court, the normalization followed by the respondent-Corporation has been scientifically followed and correctly applied. The petitioners, at this stage, i.e after participating in the selection process cannot have a grievance against the normalization procedure undertaken by the test conducting agency. In the present case, the petitioners had a right to challenge the advertisement when the same was issued on 15/08/2019 (Annexure P-1) but after participating in the selection process and

**CWP No. 7469 of 2020 and
CWP No. 7204 of 2020**

:15:

declaration of the result, they cannot challenge the selection process.

In view of all the judgments referred to above and in view of all that has been discussed above, both the petitions are hereby dismissed.

01-09-2020
ritu

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No