

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

103

CWP No.2 of 2017 (O&M)
DATE OF DECISION : 22nd JANUARY, 2021

Aditya Marwaha & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

2. CWP No.27488 of 2016

Maninder Singh Brar

.... Petitioner

Versus

State of Punjab & others

.... Respondents

3. CWP No.27494 of 2016 (O&M)

Gurpiar Singh & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

4. CWP No.321 of 2017

Sandeep Singh & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

5. CWP No.899 of 2017

Satnam Singh

.... Petitioner

Versus

State of Punjab & others

.... Respondents

6. CWP No.13746 of 2017

Harjinder Pandhu & others

.... Petitioners

Versus

State of Punjab & another

.... Respondents

7. CWP No.13868 of 2017

Jatvinder Singh & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

8. CWP No.13869 of 2017

Gurinder Singh & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

9. CWP No.13899 of 2017 (O&M)

Mandeep Singh & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

10. CWP No.14394 of 2017

Rohit Kumar

.... Petitioner

Versus

State of Punjab & others

.... Respondents

11. CWP No.16004 of 2017

Harsandeep Sharma

.... Petitioner

Versus

State of Punjab & others

.... Respondents

12. CWP No.18116 of 2017

Hannyveer Singh & another

.... Petitioners

Versus

State of Punjab & others

.... Respondents

13. CWP No.24971 of 2017

Kuldeep Singh & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

14. CWP No.26440 of 2017

Sukhwinder Singh

.... Petitioner

Versus

State of Punjab & others

.... Respondents

15. CWP No.26973 of 2017 (O&M)

Daljit Singh

.... Petitioner

Versus

State of Punjab & others

.... Respondents

16. CWP No.2138 of 2018

Sukhpal Singh & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

17. CWP No.4363 of 2018

Suresh Pal & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

18. CWP No.4364 of 2018

Philips

.... Petitioner

Versus

State of Punjab & others

.... Respondents

19. CWP No.4914 of 2018

Arshdeep Singh & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

20. CWP No.5250 of 2018

Satnam Singh

.... Petitioner

Versus

State of Punjab & others

.... Respondents

21. CWP No.12995 of 2018

Balwinder Singh

.... Petitioner

Versus

State of Punjab & others

.... Respondents

22. CWP No. 14423 of 2018

Sukhjit Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

23. CWP No.28624 of 2018 (O&M)

Paramjit Lal & another

.... Petitioners

Versus

State of Punjab & another

.... Respondents

24. CWP No.543 of 2019 (O&M)

Har minder Singh & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

25. CWP No.4558 of 2019

Satnam Singh		 Petitioner
	Versus	
State of Punjab & others		 Respondents

26. CWP No.6529 of 2019

Balwinder Singh		 Petitioner
	Versus	
State of Punjab & others		 Respondents

27. CWP No.11678 of 2019

Sajan Kumar		 Petitioner
	Versus	
State of Punjab & others		 Respondents

28. CWP No.12942 of 2019

Sandeep Kumar		 Petitioner
	Versus	
State of Punjab & others		 Respondents

29. CWP No.7279 of 2019

Avtar Singh & others		 Petitioners
	Versus	
State of Punjab & others		 Respondents

119.

30. CWP No.5146 of 2020 (O&M)

Pritpal Singh & others		 Petitioners
	Versus	
State of Punjab & others		 Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. Balram Singh, Advocate
for the petitioners in CWP-2-2017.

Dr. Rau P.S.Girwar, Advocate
for the petitioner in CWP-2138-2018.

Mr. Kawaljyot Singh, Advocate
for the petitioner in CWP-5250-2018.

Mr. Raj Kumar Rana, Advocate
for the petitioner in CWP-4558-2019.

Mr. Rohit Ahuja, Advocate
for the petitioner(s) in CWP Nos. 4363& 4364 of 2018.

Mr. R.D.Rattewal, Advocate
for the petitioner in CWP-12995-2018.

Mr. B. S. Icchewal, Advocate
for the petitioner(s) in CWP-16004 of 2017,
CWP No.7279 and 6529 of 2019.

Mr. Gaurav Chopra, Advocate
for the petitioners in CWP-27494-2019

Mr. K. G. Chaudhary, Advocate
for the petitioner(s) in CWP-321 of 2017.

Ms. Sunaina, Advocate for Mr. H.C.Arora, Advocate
for the petitioner(s) in CWP-13899- 2017 and
for newly added respondents No.4 to 120 in
CWP-27494-2016.

Mr. Vishal Sharma, Advocate
for the petitioner(s) in CWP-12942-2019.

Ms. Alka Chatrath, Advocate
for the petitioner(s) in CWP-26973-2017.

Mr. K.S. Brar, Advocate
for the petitioner in CWP27488-2016.

Mr. Digvijay Nagpal, Advocate
for the petitioner in CWP14394-2017.

Ms. Manmohan Kaur, Advocate
for the petitioners in CWP18116-2017.

Mr. K. S. Kang, Advocate
for the petitioners in CWP-13868 &13869-2017.

Mr. H. S. Aujla, Advocate,
for the petitioners in CWP-4914- 2018.

Mr. Avtar Singh Khinda, Advocate
for the petitioner in CWP-899-2017.

Mr. Sukhdev Kamboj, Advocate
for the petitioner in CWP-11678-2019.

Mr. Raman Kumar, Advocate for
Mr. Vinod Kumar Kaushal, Advocate
for the petitioner in CWP-14423-2018.

Mr.G.P.S.Bal, Advocate,
for the petitioner in CWP-24971, 26440 & 13746-2017,
CWP-28624-2018 & CWP-543-2019.

Ms. Meenu Salwan, Advocate
for the applicant-proposed petitioner No.6
in CM-7194- CWP-2019 in CWP-543-2019.

Mr. Pradeep Virk, Advocate for the petitioners
in CWP-5146-2020.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Gagneshwar Walia, Advocate
for the newly added respondents No.4 to 14 in CWP-2-2017
& respondents No.121 to 131 in CWP-27494- 2016.

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RAJBIR SEHRAWAT, J. (Oral)

1. This order shall dispose of a bunch of writ petitions as
mentioned below:

CWP No.27488 of 2016, CWP No.2 of 2017, CWP No.321
of 2017, CWP No.899 of 2017, CWP No.14394 of 2017, CWP No.16004

of 2017, CWP No.18116 of 2017, CWP No.2138 of 2018, CWP No.14423 of 2018, CWP No.4558 of 2019, CWP No.6529 of 2019, CWP No.7279 of 2019 and CWP No.11678 of 2019 are challenging the corrigendum dated 20.12.2016, published on 24.12.2016 (Annexure P-5) whereby the criteria of selection for the post of Male Constable (Drivers) in Punjab Police, was modified, as well as, the consequent selection.

CWP No.27494 of 2016, CWP No.13746 of 2017, CWP No.13868 of 2017, CWP No.13869 of 2017, CWP No.13899 of 2017, CWP No.24971 of 2017, CWP No.26440 of 2017, CWP No.4364 of 2018, CWP No.4363 of 2018, CWP No.4914 of 2018, CWP No.5250 of 2018, have arisen as a consequence of action taken by the authorities pursuant to the interim order dated 17.01.2017 passed by this court in CWP No.27494 of 2016, whereby the Police Department had revoked the orders of appointment, since those were alleged to be in violation of the interim order.

CWP No.28624 of 2018, CWP No.543 of 2019 and CWP No.5146 of 2020 are challenging the order of termination of services on account of license of the petitioners not being found to be either in conformity with the requirement prescribed in the advertisement or the driving license having been found fake, or issued after the cut-off date fixed in the advertisement or non-existent as such.

Still further CWP No.26973 of 2017, CWP No.12995 of 2018 and CWP No.12942 of 2019 have been filed claiming appointment to the posts which have been left vacant during the process of selection, asserting that these petitioners are in waiting list prepared by the

respondents and that the petitioners are entitled to be considered for appointment against such vacant posts

2. The common facts as involved in the present case and as pleaded in CWP No.2 of 2017 are that the respondents had issued an advertisement dated 15.10.2016 for recruitment to 750 vacancies of Male Constable (Drivers) in the District Police cadre of the Punjab Police. The said advertisement is attached as Annexure P-1 with petition. The advertisement prescribed the educational qualification to be 10+2 pass. Besides this the possession of driving license for Light Motor Vehicle (LMV), was also required. The said advertisement was based upon the standing order No.12 of 2016 issued by the Director General of Police (DGP), Punjab, exercising powers under Section 4 (d) and Section 45 (g) of the Punjab Police Act, 2007. The said standing order is annexed with the petition at Annexure P-2. For ready reference, the main provisions of the advertisement concerning the present case are reproduced herein-below.

“5. Driving License

The candidates must have a valid Driving License for LMV/LMV-NT/Heavy Motor Vehicle at the time of applying for the post. He will be required to upload the scanned copy of the original Driving License while filling up the Online Application Form, failing which he would be barred from taking the Test.

6. SELECTION PROCESS

Regional Recruitment Boards shall conduct the recruitments for male candidates at such Recruitment Centres as specified by the Chairman Central Recruitment Boards. The Substance Abuse

(Drug Addiction) Test (SAT), Physical Screening Test (PST) and Physical Measurement Test (PMT) shall be conducted at such centres as may be decided. The Substance Abuse (Drug Addiction) Test (SAT), the Physical Screening Test (PST) and the Physical Measurement Test (PMT) of a candidate shall be conducted on a single day, and the entire process shall be got video-graphed. After the qualifying the above said test the Board will conduct written test which is of 50 marks. From the candidates who qualify the written examination, double the number of vacancies advertised will be called for Driving proficiency test according to the merit of written examination. The same shall be conducted at such number of centres as may be decided by the Chairman of the Central Recruitment Board.

7. xxx..... xxx..... xxx.....

8. **WRITTEN EXAMINATION TEST (WET)**

The candidates who qualify the physical trial (SAT, PST and PMT) will be required to appear in a Written Examination Test (WET) to be held at such number of Centres as the Central Recruitment Board may decide. The WET shall be of 50 Marks and will consist of the Objective Type Questions. The candidate will be required to mark his answers on an OMR Sheet that will be provided. The WET shall broadly cover the questions on Driving Aptitude, the knowledge about the Motor Machinery, Road and Traffic Signs, General Awareness etc. And will also test the candidate's Road sense. There will be no negative marking.

It is mandatory to get minimum of 45% marks to qualify this examination by the

candidates belonging to SC/ST/BC categories, whereas other candidates have to get minimum of 50% pass marks. The date and the place of written test will be uploaded subsequent to the completion of physical trials on the website of Punjab police www.punjabpolice.gov.in and www.punjabpolicerecruitment.in.

9. **DRIVING PROFICIENCY TEST (DPT)**

The candidates who have qualified in the Physical Trials and passed written test shall be required to appear in a Driving Proficiency Test (DPT) which will be involving the hands on experience of the candidate on a vehicle. DPT shall be of qualifying nature and the candidates will have to qualify in the DPT to be considered for preparation of Provisional Merit List. The list & admit cards for such candidates will be uploaded after the result of written test. The venue of the Centre for DPT will be mentioned in the admit card & also uploaded on the website.

10. xxx..... xxx..... xxx.....

11. **GENERAL INSTRUCTIONS TO THE CANDIDATES:**

(i) to (iv) xxx.. xxx... xxx...

(vi) Candidates are advised to go through the guidelines/instructions for filling up the Application Form online as well as the Standing Order (SO) of the office of Director General of Police vide no.12 of 2016, which is the governing document for the Recruitment process (2016) of constables (Drivers) in Punjab Police. The Standing Order contains detailed criteria / eligibility conditions, etc, which is available on the recruitment website (www.punjabpolicerecruitment.in). ”

3. Besides this, clause 11 of the advertisement stipulated that the details of the qualifications, eligibility and the procedure of selection was contained in the above mentioned standing order No.12 of 2016 and the same is available on the website of the Police Department. The candidates should refer to the said standing order at the time of filling of the application form. Although the advertisement contained mainly the contents of the standing order, however, some of the provisions which are mentioned in the standing order and which can be of relevance in the present case, are reproduced herein-below:

5.3 DRIVING PROFICIENCY TEST (DPT)

The candidates who have qualified in the Physical Trials and passed written test shall be required to appear in a Driving Proficiency Test (DPT) which will be involving the hands on experience of the candidate on a vehicle. DPT shall be of qualifying nature and the candidates will have to qualify in the DPT to be considered for preparation of Provisional Merit List. The list & admit cards for such candidates will be uploaded after the result of written test. The venue of the Centre for DPT will be written in the admit card & also uploaded on the website.

5.4 DOCUMENT VERIFICATION:

On the basis of merit position in the Statewide Preliminary Merit Lists so prepared, the Central Recruitment Board shall shortlist candidates for Document Verification, which will be for the total number of vacancies & 20% waiting list.

The candidates shall be required to bring al their relevant certificates and supporting

documents, in original, along with at least one self-attested photocopy of each to the specified Recruitment Centres, where Driving Proficiency Test is to be taken.

The documents shall be thoroughly scrutinized and only those candidates whose documents have been found correct and in order shall be considered for the preparation of the Final merit List which shall be prepared based on the marks obtained in the Written Examination Test (50 Marks).

xxx..... xxx..... xxx.....

8. WAITING LIST

The board shall also prepare and maintain separate Waiting Lists of 20% candidates from each category (minimum one candidate of each category) out of the Combined Final Merit Lists. The Waiting Lists shall be valid till the completion of entire Selection Process.

9. xxx..... xxx..... xxx.....

10 COMPLETION OF SELECTION PROCESS

The entire Selection Process shall be deemed to have been completed at the expiry of 180 days from the date of declaration of the final results.

xxx..... xxx..... xxx.....

17. CREATION OF HELPDESK/CALL CENTRE

A Helpdesk/Call Centre shall be created to guide and assist the applicants in case of any

query related with the filling up of the Application Form as well as other queries related to the recruitment process. Designated Helpline Numbers will be given in the Advertisement and the Call Centre shall be manned from 9 AM to 9 PM everyday till the time the Recruitment Process is on. The Helpdesk/Call Centre will be manned by qualified and trained persons. Applicants who have any doubts about their candidature or have not received their Roll Numbers till the date specified in the advertisement can contact the Helpdesk/Call Centre for answer to their queries.

This Standing Order shall remain in force until revoked and may be modified, changed or revoked only by the DGP Punjab.”

4. Pursuant to the above said advertisement the applications were invited. Physical test was held on 17.11.2016 and 18.11.2016. The drug test was also conducted. Thereafter, the documents were obtained from the candidates. The respondents conducted the written examination on 17.12.2016. Thereafter; vide the impugned corrigendum dated 20.12.2016 published on 24.12.2016; the requirement of driving proficiency test, which was prescribed in the advertisement, was dropped and it was decided that the merit list of the candidates shall be prepared without conducting driving proficiency test; and based only on the basis of their respective merits obtained in the written examinations. The petitioners have challenged the issuance of the corrigendum and the decision of doing away with the requirement of driving proficiency test during the process of selection.

5. During the hearing in CWP No.2 of 2017 an interim order dated 06.01.2017 was passed, whereby it was ordered that the appointment made by the respondents shall be subject to the final outcome of the writ petition. Since several other writ petitions were also filed; therefore, all these matters were being heard as a bunch of writ petition. The respondents were stated to be making appointments even after issuances of notice of motion. Therefore, vide order dated 17.01.2017 passed in CWP No.27494 of 2016 the Court further ordered that in case the appointment letters had not been issued to the selected candidates, then the same shall not be issued till the next date of hearing. This order continued. Some of the petitioners challenging the process of selection and appointments alleged that despite this interim order passed by the High Court the respondents had issued appointment letters to certain candidates and; therefore; they filed contempt petition before this court. On getting notice of the contempt petition, the respondent-department revoked the appointment letters issued to some of the candidates, who has also filed the writ petition challenging those termination orders. Some of the candidates filed writ petitions at the stage of show-cause-notice only, even before such termination orders could actually be passed. These writ petitions are also being heard in this bunch.

6. Further, during the process of document verification the driving license of some of the candidates were found to be fake. Therefore, their services were terminated. Still further, in case of some of the candidates, the services were terminated on the ground that their licenses were only qua Motor Cars/Tractors/Jeeps and not for driving

LMV, as prescribed in the advertisement. Even those persons have approached this court and their writ petitions are also being taken up.

7. Since the entire issue of appointments was pending before this court and even the service of some of the persons who were issued appointment letters, were terminated, therefore, no person was issued any appointment letter from the waiting list. Accordingly, those on the waiting list have also come for seeking appointment as per their merit from the waiting list.

8. While arguing the case the learned counsel for the petitioners in the writ petitions challenging the dropping of the driving proficiency test through the corrigendum has submitted that the respondents had issued advertisement in which driving proficiency test was one of the prescribed conditions. The said condition has been changed during the process of recruitment. Since the respondents could not have changed the criteria of selection during the process of selection, therefore, the action of the respondents is illegal. Hence, the respondents deserve a direction to conduct the driving proficiency test and then to determine the merit of the selected candidates. The counsel has relied upon the judgment rendered in ***Hemani Malhotra v. High Court of Delhi, 2008(2) SCT 736; Bishnu Biswas v. Union of India, (2014) 5 SCC 774***, to buttress their claim. It is further submitted that since the recruitment was being made pursuant to the statutory standing order issued by the DGP, therefore, without amendment of the said standing order no corrigendum could have been issued. At the time when the condition of driving proficiency test was dropped the amendment in the standing order had not been carried out. Hence, the action of the

respondents in dropping the condition of driving proficiency test is in violation of the standing order. Referring to the language of the advertisement and the standing order, it has been argued by this group of the petitioners that the driving proficiency test was mandatory in nature. As per the provisions the driving proficiency test was qualifying in nature. Hence, if a person failed in driving proficiency test he would not have been selected irrespective of his merit in the written test. Therefore, the requirement of driving proficiency test, being a mandatory condition and inseparably integrated with the criteria of the selection, could not have been done away with by the respondents. No final merit list could have been prepared by the respondents except by making the candidates to undergo the driving proficiency test. Another argument of this group of the petitioners is that the candidates with fake license have crept in the select list. Therefore, they have wrongly been appointed by the respondents. It has further been pointed out by the counsel for the petitioners that since the process of elections had commenced in the State of Punjab and the Model Code of Conduct was imposed, therefore, the respondents could not have issued any appointment letters to the selected candidates. The action of the State authorities is in violation of the Model Code of Conduct. Hence all such appointments, which were made in violation of the Model Code of Conduct, have to be set aside by the court.

9. The counsel for the petitioner in the group, challenging notice or order of termination, have submitted that they have unnecessarily been deprived of their rightful due despite the fact that they had been offered the appointment, only after having participated in the

process of selection, which was conducted by the respondents. The petitioners were issued appointment letters well before the enforcement of the Model Code of Conduct. Even if there was any violation of the interim order of the court by the Police authorities in issuing appointment letters to the petitioners, that can, at the best, be a ground for action against them, however, that would not be sufficient to withdraw their appointment as such. Qua their conditions of eligibility this group of the petitioners has submitted that they are possessing the license for driving Motor Cycle/Motor Cars/Tractors/Jeeps; as per the licenses of the individual petitioners. The Motor Cars, Tractors and Jeeps are also covered under the definition of the LMV, as prescribed under the Motor Vehicles Act. Since, these petitioners were issued the driving licenses under the old format, therefore, instead of writing LMV in their driving licenses, the concerned authorities had written Motor Cars/Tractors/Jeeps etc. as prevalent at that time. However, after this issue was raised by the respondents-department the petitioners had approached even the concerned authorities who had issued the driving licenses to these petitioners, for rectification of the said driving licenses. Accordingly, the authorities have even issued the driving licenses as per the proforma under the new Act. Hence, no fault could be found with their driving licenses. Therefore, the adverse orders passed against them be set aside and the petitioners be permitted to continue in service.

10. Another group of petitioners, who are seeking appointment on the basis of waiting list, have submitted that the advertisement as well as the standing order provided for preparation of waiting list to the extent of 20% of the advertised post. The candidates from the waiting list were

to be issued appointment against the posts left vacant during the process of selection on account of non-joining of some candidates and also on account of the licenses of some of the candidates having been found fake. Therefore, the petitioners are having a right to get appointed as per their merit. It is also submitted that all these petitioners are in waiting list, as prepared by the respondents.

11. On the other hand, the learned counsel for the State has submitted that dropping of the driving proficiency test by the respondents, does not amount to change of criteria. It is further submitted that all changes or modification to the criteria made during the process of the selection, cannot be held to be vitiating the selection. It is only that change of the criteria which creates any inequality or introduces arbitrariness or causes prejudice to the candidates; which can be held to be bad in law. Otherwise, the selecting agency has a right to devise any selection criteria. The counsel has relied upon the judgment in case of ***Andhra Pradesh Public Service Commission v. Balaji Badhavath & others, 2009 (2) SCT 694***. Further, he has relied upon the judgment in case of ***Yogesh Yadav vs. Union of India and others, (2013) 14 SCC, 623***, to contend that the authorities can change the criteria if it is applied uniformly to all the candidates and which does not cause any prejudice to any particular section of the participating candidates. The counsel has further submitted that the driving proficiency test is not mandatory in nature. The driving proficiency test is intended only to test the practical driving skills of the candidates. As per the procedure prescribed under the Motor Vehicles Act, the said driving skills are already tested by the licensing authority at the time of issuance of the licenses in a particular

category of motor vehicle. Moreover, the department provides specialized training for driving the vehicles meant for the specific purposes of the police department; after the candidates are selected. Hence, it was considered by the authorities that conducting the driving proficiency test is only superfluous exercise and same need not to be adhered to. Regarding language of the advertisement and the standing order, it has been argued by the counsel for the State that even as per these provisions holding of the driving proficiency test is not mandatory at all. As per the standing order, the final merit list is to be prepared only on the basis of the merit obtained by the candidates in the written test. The driving proficiency test; even if it was to be held, had no marks affecting the merit of any candidate as such. Since the driving proficiency test was not the actual criteria for determining the final selection list, therefore, the provisions providing for driving proficiency test, cannot be held to be mandatory.

12. Regarding dropping of driving proficiency test during the process of selection, it is also submitted that the recruitment board had made a proposal qua dropping of the driving proficiency test, after having been found as a superfluous exercise and the matter was put up before the competent authority, i.e. DGP who had issued the original standing order No.12 of 2016 qua the present recruitment process. The said proposal was duly approved by the DGP. It is only after the approval from the DGP/the authority issuing standing order, under the Punjab Police Act; that the requirement of driving proficiency test was dropped. The standing order No.12 of 2016 itself had said that the said standing order shall remain in force till it is revoked and that the DGP may modify or

change the standing order at any time. Therefore, the approval granted by the DGP, on 20.12.2016 was taken as modification of the standing order itself. Although, inadvertently; earlier the formal amended standing order could not be issued pursuant to the above said approval granted by the DGP, however, during the pendency of the present petitions, now the authorities have even issued the formal amended standing order as well. It has further been pointed out that from 2016 till today no other recruitment was conducted under the un-amended standing order. Therefore, it is immaterial whether the formal amendment was issued in the year 2016 or it is issued in the year 2021. The fact remains that the authority issuing the standing order has carried out the amendment as well, according to its earlier approval; without any action adverse to anybody else having been taken in the interregnum under the un-amended standing order.

13. Qua the argument of violation of Model Code of Conduct, the counsel for the State has relied upon the judgment rendered in the case of ***Sarvesh Bisaria versus State of Punjab, 2014(4) SCT, 460*** and has submitted that the provisions of the Model Code of Conduct are not statutory in nature. Therefore, any alleged violation of the code of conduct qua issuance of the appointment letters, invites no consequences qua the selection process. Hence, denying the selection and appointment to a candidate, who otherwise has been found in merit, may not be legally sustainable. Counsel has further submitted that the petitioners challenging the corrigendum qua dropping of the driving proficiency test has unnecessarily raked up the issue because as per the prescribed requirement for qualifying the written test, the candidates were required

to obtain 50% and 45 % marks in general and reserve categories, respectively. However, the petitioners challenging the corrigendum had not obtained even the cut-off marks in the written test except the three candidates. Those three candidates have not found place in competitive merit as per the last cut-off. Hence, the petitioners have raised only academic issue; having no consequences qua them.

14. Qua non-issuance of the appointment letters to the candidates from the waiting list, it has been submitted by the counsel for the State that although certain posts were left vacant in the process of selection, yet the same could not be filled up because of the interim order of this court. Once this court finally decides the bunch of writ petitions, then the candidates from the waiting list could be considered in accordance with their merit; if the selection process is upheld by the court. Accordingly, it is submitted that the candidates on the waiting list would be considered for appointment as per their merit, in case the process of selection sustains.

15. Even qua the issue of validity of the driving licenses of the candidates, it has been pointed out by the counsel for the State that four candidates have been found to possess fake or non-existent licenses. In case of one candidate it was found to have been issued after the cut-off date. Hence, such persons could not be offered appointment. Otherwise, the authorities have discussed the matter with the transport department of the State and the respondent-department itself is of the view that the matter deserves reconsideration qua those candidates who had submitted the driving license issued for Motor Cars/Tractors/Jeeps. Accordingly, in case the process of selection sustains, then their cases would also be

reconsidered by the authorities in view of the provisions contained in the Motor Vehicles Act qua the driving licenses.

16. This court has heard the counsel for the parties and has perused the record. It is not in dispute that in the original advertisement, the requirement of driving proficiency test was prescribed in compliance of the standing order No.12 of 2016, which was issued by the DGP, Punjab; specifically for the present recruitment. However, during the process of recruitment the authorities had found the exercise of conducting the driving proficiency test to be a superfluous exercise. This conclusion of the authorities was supported by the reason that before issuance of the driving license, the licensing authority also conducts the said test and repeating the same process is an irrelevant exercise. Even the written test contained the questions regarding the driving knowledge and driving skills; along with the general awareness and general knowledge. Still further, even after the selection and appointment, the candidates are put to specialized driving training meant for specific purpose of the police department. Hence, this court does not find the exercise of dropping of the driving proficiency test, as such, to be arbitrary exercise of power. The reasons given by the respondents are quite justified and sustainable in law.

17. Although, the counsel for the petitioners challenging the issuance of the corrigendum has argued that the corrigendum was issued in violation of the standing order, however, this court finds substance in the argument of the learned State counsel that before finally dropping the driving proficiency test from the criteria, the due approval was obtained from the authority competent to frame the standing order qua this

recruitment. It is only after the approval from the DGP, that the criterion has been modified by the respondents. Although, earlier a formal amendment of the standing order may not have been issued immediately in the year 2016, however, this fact becomes insignificant; because now even that amendment notification has been issued by the standing order issuing authority. Since the original standing order itself provided that the standing order shall remain in force till it is revoked and that the DGP could modify or change the standing order at any time, therefore, the approval by DGP qua the change of process of recruitment being made pursuant to the standing order, would in effect, be nothing but the decision to amend the standing order itself. As observed above, now the DGP has even issued a formal amendment pursuant to the approval granted by him way back in the year 2016 itself. It has also come on record that no further action was taken for any other recruitment on the basis of the un-amended notification in the interregnum. Therefore, the delay in issuance of formal amended standing order, pursuant to the approval granted way back in the year 2016, becomes irrelevant. What the DGP could have done in 2016 he could do even in the year 2021. It is only the passage of the time which has intervened and not any other action under the un-amended standing order; which was existing despite the approval for change having been granted by the DGP in the year 2016. There has not been any implementation of the un-amended standing order qua any other selection process in the meantime. Therefore, the selection of the candidates cannot be faltered even on the ground that no formal amended standing order was issued by the DGP pursuant to his approval granted in the year 2016.

18. This court does not find any substance in the argument of the counsel for the petitioners challenging the corrigendum to the effect that the criterion of selection has been changed by the respondents after starting of the process of the selection and thus; the selection process stands vitiated. Undisputedly, it is for the selecting agency or the appointing authority to lay down a criterion for selection. Every change to criteria of selection made during the process of selection does not vitiate the process of selection. Even if the said criterion is laid down before the start of the selection process, the same can be modified at any time, subject to the condition that the modified criteria is applied to all the participating candidates uniformly, the change is not arbitrary and it does not introduce any extra scope for bias on the part of the selecting agency, does not cause prejudice to any participant in the process of selection, and is not in violation of a statutory provision; and further; subject to condition that such change does not introduce new and onerous condition impinging upon the eligibility of such candidates who would have been otherwise eligible for the selection in question; but for such a modification of criteria. This court finds support on this point from the judgments cited by learned counsel for the State in the case of ***Andhra Pradesh Service Commission (supra)***, wherein even change in qualifying marks was upheld by the courts and it was held that it is for the selecting agency to devise any criteria for the process of selection. The withdrawal of the driving proficiency test, in the present case, is not meant and intended to harm any particular candidate or group of candidates. Rather it extends benefit to all the participating candidates that they would not be required to undergo one more test for assessment

of their merit. The change in criterion in present case does not include any new condition in the selection criterion, rather, it only deducts one of the conditions to which the candidates were to be uniformly subjected to. Hence, introduction of such a criterion would not be forbidden under the law. This change in criteria does not cause any definite prejudice to anyone of the participating candidates.

19. Although, the learned counsel for the petitioners challenging the corrigendum, has submitted that condition of driving proficiency test was qualifying in nature and no merit could have been finalized but for this test, therefore, the same was mandatory in nature, however, this court does not find any substance in this argument of the counsel for the petitioners as well. The standing order itself prescribes that the final merit is to be determined only with reference to the marks obtained in the written test by the participating candidates. No marks have been provided for the driving proficiency test. The driving proficiency test could, at the best, be said to be a step introduced by the respondents by way of abundant caution to ensure that the participating candidates can actually handle the vehicle in a proper manner. Beyond that, even if the test was held, the respondents could not have determined anything else. Moreover, although some of the candidates, who were higher in merits might not have been found to be capable of handling the vehicles properly, during the driving proficiency test, however, equally true is that all of them might also have been found to be perfectly handling the vehicles during the driving proficiency test. Hence, the assertion of the petitioners that the conduct of driving proficiency test could have changed the final merit of the selected candidates, is nothing but a

speculative exercise based upon the subjective desire and wishful thinking of the petitioners. Such wish on the part of the non-selected candidates can always be expected. However, the court of law cannot hold the process to be wrong on the basis of speculative arguments. Except this speculative argument on the part of the petitioners challenging the corrigendum, there is nothing either in the process of selection or in the language of the advertisement or in the standing order because of which this condition could be held to be mandatory in nature. Needless to say that the competent authority had the power to modify the standing order at any time and it was only pursuant to the standing order issued by of the DGP that the present selection process was being conducted. A condition, which can be modified at the will of the authority, cannot be held to be mandatory otherwise also.

20. On the aspect of the Model Code of Conduct; the counsel for the petitioners challenging the process of selection have failed to bring any judgment to the notice of the court, which held the Model Code of Conduct to be mandatory to such an extent that it is sufficient to set aside the selection process for violation of Model Code of Conduct. On the contrary, this court finds that the reliance of the counsel for the State on the judgment rendered in the case of ***Sarvesh Bisaria (supra)*** is well founded. The Model Code of Conduct, by its nomenclature itself; is clearly indicative of the fact that this is only a code of conduct which is expected of the political parties and the authorities concerned to follow; without risking the adverse consequences qua the election process; and not over any other aspect. Therefore, the Model Code of Conduct always provides that the authority can still make appointments with permission

of the Election Commission concerned. Hence, at the best, it could have been said by the counsel for the petitioners that the necessary permission was not obtained by the respondents before issuing the appointment letters. This would be only an irregularity for which, although, the Election Commission might have taken the necessary step qua the election process in absence of any such permission, however, a court of law cannot set aside the process of selection merely because any such permission was missing. Needless to say that civil service is a state subject under the scheme of the Constitution. The State executive is fully authorized to conduct its business for appointment to the public service in accordance with law. The Election Commission or any other authority has not been given any role in the matter qua the selection in question, though any deviation from the Model Code may invite some other consequences under some other law; qua the election as such.

21. In view of the above, this court does not find any substance in the writ petitions whereby the issuances of the corrigendum by the State authority have been challenged. Hence all such petitions are liable to be dismissed.

22. Qua the petitions filed by those persons who were appointed after the interim order passed by this court and whose services have been either terminated or who has been given notice for termination, this court is of the considered opinion that even if this court had passed the order for not issuing appointment orders any further, then having issued the appointments on their own; the respondents themselves could not have terminated the service merely because of the interim order passed by this court. Since such appointments were subject matter of the interim order,

therefore, respondents could not have terminated the service of such petitioners without bringing to the notice of the court and without obtaining an order from the court itself. Moreover this is the positive assertion of the petitioners in this bunch of petitions, as well as, of the respondents-authorities; that all these appointment orders were issued well before the passing of the interim order, though all these persons had actually joined after the Model Code of Conduct was over, but in the meantime the interim order was passed by this court. In view of this situation, no fault could be found with the petitioners as such, although if otherwise established, the authorities of the respondents could have been taken to task by this court for violation of the interim order, as such. However, now since the main matter itself is being disposed of and this court has not found any substance in the challenge to the issuance of the corrigendum, therefore, even any action against the respondents-authorities would not be justified. Hence, the writ petitions filed by this group of petitioners are liable to be allowed and these candidates deserves to be continued in service, subject to fulfillment of other conditions relating to their eligibility and license etc., which may be verified by the respondents-authorities.

23. So far as the writ petitions, where the action have been taken on the ground of licenses being found fake or licenses being not for driving LMV, as prescribed under the advertisement, is concerned, this court is of the view that no relief can be granted to these persons whose licenses have been found to be fake or non-existent or whose licenses have been issued after the last date of receipt of application forms for the selection in question. So far as the issue of the license of the other

petitioners not being in conformity with the standards required under the advertisement, is concerned, it would be appropriate to have a reference to the definition of motor car and the LMV, as prescribed under Section 2(21) and 2(26) of the Motor Vehicles Act which are as reproduced below.

2. Definitions.—In this Act, unless the context otherwise requires,—

(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms.

(26) “motor car” means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.

24. A bare perusal of the definition itself shows that there is an overlapping in the definition qua the Motor car and the LMV. Therefore, Motor Cars/Tractors/Jeeps can very well be considered under the definition of LMV, unless otherwise excluded by the exclusionary factors as mentioned under the Act itself. However, in the present case the respondents had taken action against the petitioners only on the basis of the fact that in their driving licenses words LMV/LMV (NT) was not mentioned, rather, only Motor Cars/Tractors/Jeeps was mentioned. As mentioned above, faced with this overlapping situation the respondents themselves have come up with a proposal that they will reconsider such candidates who were possessing and had furnished the license for Motor

Cars/Tractors/Jeeps, in view of the provisions of the Motor Vehicles Act. Hence, the writ petitions which are challenging the action taken against them on the basis of their above-said entries in licenses, deserves to be disposed of with a direction to the respondents to reconsider the issue of driving license in view of the above observations made by this court and as per their own undertaking.

25. Qua the claim of the petitioners claiming appointment on the basis of waiting list, it deserves to be noticed that there is a provision for preparation of waiting list to the extent of 20% of the advertised posts. The standing order itself makes a provision for making appointments from the waiting list, till the process of selection is complete. It has further been prescribed that process of selection shall be deemed to be complete on completion of 180 days from the date of declaration of final result. Hence, but for the intervention by this court through the interim orders, these persons would have been entitled for consideration for appointment in accordance with their merit. Accordingly, the respondents themselves have undertaken that the cases of the petitioners who are in waiting list would be considered for appointment against the posts left vacant due to non-joining of the candidates or occurring due to termination of service of such persons whose licenses have been found to be fake or not genuine. Accordingly, this group of writ petitions deserves to be disposed of with a direction to the respondents to consider the petitioners in the waiting list for their appointment to above mentioned vacant posts, in accordance with their merit.

26. Accordingly, all the writ petitions wherein the issuance of corrigendum dropping the driving proficiency test is challenged, are dismissed.
27. The other writ petitions are disposed with in the above said terms. The respondents are directed to consider their case in terms hereinabove mentioned. However, the writ petitions qua those persons whose licenses have been found to be fake, non-genuine or issued after the cut-off date, are also dismissed.
28. All the pending applications, if any, shall stand disposed of accordingly.

22nd JANUARY, 2021
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>