

IN THE HIGH COURT OF ORISSA AT CUTTACK

(In the matter of an application under Articles 226 and
227 of the Constitution of India)

W.A. Nos.778,814 and 815 of 2021

1. W.A. No.778 of 2021

(Arising out of judgment and order dated 09.09.2021
passed by Hon'ble Single Judge in W.P.(C) No.5079 of
2021 and I.A. No.13515 of 2021 disposed of on
29.09.2021)

Jitendra Kumar Dash and Others ***Appellants***

-Versus-

State of Odisha and Others ***Respondents***

2. W.A. No.814 of 2021

(Arising out of order dated 09.09.2021 passed by Hon'ble
Single Judge in W.P.(C) No.3140 of 2021 and I.A.
No.13645 of 2021)

Brundabati Bhoi and Others ***Appellants***

-Versus-

State of Odisha and Others ***Respondents***

3. W.A. No.815 of 2021

(Arising out of order dated 09.09.2021 passed by Hon'ble
Single Judge in W.P.(C) No.199 of 2021 and I.A. No.13644
of 2021)

Ajit Kumar Sahu and Others **Appellants**

-Versus-

State of Odisha and Others **Respondents**

Advocates appeared in all the cases through Hybrid Mode:

For Appellants

: Mr. Sameer Kumar Das
(W.A. No.778 of 2021)

Mr. Manoranjan Mohanty (Senior Advocate) with Mz. Subhashree Mohanty (W.A. No.814 & 815 of 2021)

For Respondents

: Mr. L. Samantaray, AGA for official respondents (in all the Writ Appeals)

Mr. Budhadeb Routray, Senior Advocate with Mr. J. Biswal, Advocate for private respondents in W.A. No.778/2021

For interveners

: Mr. Goutam Mishra, Senior Advocate with Mr. Dinesh Kumar Patra, Advocate in W.A.No.778/2021

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

Date of Hearing: 13.07.2022 Date of Judgment: 13.07.2022

Jaswant Singh, J.

1. The present three (03) intra court Appeals are filed by the Appellants, who were writ petitioners in three separate writ petitions i.e. WP (C) No. 5079 of 2021 with I.A. No.13515 of 2021, W.P.(C) No.199 of 2021 with I.A. No.13644 of 2021 and W.P.(C) No.3140 of 2021 with I.A. No.13645 of 2021 involving identical facts and issues and are aggrieved by a common judgment and order dated 09.09.2021 passed in WP (C) No.5079 of 2021 and by the declination of IA No. 13515 of 2021 seeking the modification of the Order dated 09.09.2021.

2. The Appellants (Writ Petitioners in the Writ Petition) are the matriculate Constables who are seeking directions to consider their eligibility to undergo the training for promotion as ASI of Police based on the Orissa Police Manual Rules, which prescribes the requirement of 30% marks in the written examination to qualify for inclusion in the Select List for ASI training and the validity of such select List to be one year or till the vacancies exist for which the selection process is conducted, whichever is later: as against the amended

provision of Police Order 2020 wherein 40% marks in such written examination and the validity of such list to be 31 December of concerned year is prescribed.

Private respondents in W.A. No.778 of 2021 are constables who had secured 40% marks in the written test for being deputed to the ASI training course and whose names find mention in the select list dated 14th December, 2020/22nd December, 2020. An application to join the proceeding as intervener in W.A. No.778 of 2021 has been filed by the similar situated constables as the private respondents. The private respondents and the applicants had filed writ petitions seeking the validity of the select list till the exhausting of list of one year, whichever was later as per the un-amended rule i.e. PMR 660 instead of as prescribed under Police Order 2020. The writ petitions were also disposed of vide common order dated 09.09.2021.

3. For the sake of brevity, the facts and prayers, which are common to all the three writ petitions, are being noticed from

the pleadings in WP (C) No.5079 of 2021, out of which the present Letters Patent Appeal arises are reproduced below:

- “i) Admit the writ application*
- ii) Call for the record*
- iii) Issue a writ in the nature of mandamus or any other writ / writs direction / directions directing the opposite parties to allow the petitioners to undergo the ASI training on the basis of their seniority keeping in view the prevalent Rule relating to promotion to the post of ASI and the petitioners may be allowed to undergo the ASI training as has been done in the case of the other candidates who have been qualified in the written test under Rule 660 of PMR*
- iv) In the alternative issue appropriate order / direction directing the opposite parties to undergo the ASIO course training taking into consideration the petitioners long service as constables from the date of their initial appointment.*
- v) And pass any other order / orders for the ends of justice directing the opposite parties to extend the same benefit as has been extended to large number of Constables who were qualified in the previous written examination.*
- vi) And / or pass any other order/orders, direction/directions as this Hon’ble Court deems fit and proper for the ends of justice.”*

4. By the Order dated 09.09.2021, the Single Bench in WP (C) 5079 of 2021, has passed the following directions:

*“2. It is agreed by learned counsel for the parties that the **issue involved in this case is analogous to one involved in W.P.(C) No. 863 of 2021 and W.P.(C) No. 1994 of 2021,***

which have been allowed on 09.09.2021 by this Court.

*3. Therefore, in view of the reasons stated in the detailed judgment dated 09.09.2021 passed in W.P.(C) No. 863 of 2021 and W.P.(C) No. 1994 of 2021, **this writ petition is allowed.***

*4. It is directed that **validity of the list, which was published on 14.12.2020, as modified on 22.12.2020, cannot be lapsed by 31.12.2020 and the same shall be implemented in terms of PMR-660, which is applicable to the petitioners.***”

In WP (C) 863 of 2021 decided on 09.09.2021, based on which the relief in toto in writ petition of the Appellants was mistakenly not allowed, the issue in controversy was of matriculate constables having secured 40% marks seeking the merit list of candidates prepared on 14.12.2020 to remain valid in terms of Rule 660 of Odisha Police Manual Rules for the reason to operate the list till it was exhausted and thus to allow the petitioners to undergo Assistant Sub-Inspector (ASI) of Police Training based on having qualified in the written test and seniority under Rule 660 of Odisha Police Manual Rules by not applying the Odisha Police Service (Method of Recruitment and Conditions of Service of Assistant Sub-Inspector) Order, 2020

(for short, “Police Order,2020”). The WP (C) 863 of 2021 was allowed by the Order dated 09.09.2021 in the following terms:

“20. In view of the facts and law, as discussed above, this Court is of the considered view that the validity of the select list published on 14.12.2020, as modified on 22.12.2020, shall continue for a period of one year or till the same is exhausted, whichever is later, and the petitioners are to be allowed to go for ASI training for promotion in terms of PMR 660 not by Order, 2020, which has come into force only w.e.f. 27.07.2021 and, as such, the same has got prospective effect. Accordingly, it is directed that validity of the list, which was published on 14.12.2020, as modified on 22.12.2020, cannot be lapsed by 31.12.2020 and the same shall be implemented in terms of PMR-660, which is applicable to the petitioners.

21. In the result, the writ petitions are allowed. However, there shall be no order as to costs.”

An IA No. 13515 of 2021 was filed before the Single Bench seeking modification of the order dated 09.09.2021 passed in WP (C) 5079 of 2021 by the Appellants / Writ Petitioners with a specific prayer to include the Writ Petitioners in the select list having secured 30% as per Rule 660 of the Orissa Police Manual Rules (hereinafter referred to as “**PMR**”) but by the order dated 29.09.2021, the application for modification was declined on the basis that since the matter was heard along

with batch of other Writ Petitions and at the time of hearing of the case, the counsel for the petitioner has not pointed out this fact before the Court and the modification is now sought after the judgement.

5. Though the Writ Petition filed by the Appellants has been allowed but the present Letters Patent Appeal is filed by the Writ Petitioners being aggrieved against the Order dated 09.09.2021 passed by the Single Bench on the ground that the said decision is self-contradictory wherein on one hand it is held that the ongoing selection process, which is subject matter of Writ Petition relating to promotion to the post of ASI shall be governed under Rule 660 of PMR but on the other hand, inadvertently, the Select List issued on 14.12.2020 as modified on 22.12.2020 (containing candidates with 40% marks) by applying qualifying conditions under the Orissa Police Service (Method of Recruitment and Criteria of Service of Assistant Sub Inspectors) Order 2020 (hereinafter referred to as **“Police Order 2020”**) has been validated.

Brief background

6. The factual matrix and the submissions in the Writ Petition are that, the Appellants-Petitioners were initially appointed as 'Constables' in the year 2002, 2008 and 2011. In the hierarchy of ranks, the promotional avenue from the post of 'Constable' is to the rank of 'Assistant Sub Inspector of Police' and in this regard Rule 660 of PMR prescribes the procedure for appointment by promotion to the post of Assistant Sub Inspector of Police. The Appellants-Petitioners claim that large number of vacancies in the rank of Assistant Sub Inspector of Police were available in last many years in different districts but no attempt was made to allow the Petitioners to be considered for promotion after completing the residency period, while other similarly situated persons were made to undergo ASI course of training.

The Appellants-Petitioners were, for years, awaiting to be considered to undergo the examination to qualify for training as per Rule 660 of PMR but the said legal obligation has not been discharged by the Respondents from the last 18 years

after the last exam was conducted in the year 2002. It is contended that, no doubt Police Order, 2020 was passed on 15.10.2020 under Article 309 of the Constitution of India but was awaiting its enforcement from the date of its notification/publication in the official gazette as provided in the said Police Order, 2020 itself.

7. In the meantime, by the order dated 23.10.2020, willingness of the eligible Constables was sought for the conduct of written examination for promotion to the rank of Assistant Sub Inspector of Police. The Petitioners exercised their option and appeared in the written examination conducted on 06.12.2020 for undergoing ASI course.

The Petitioners secured more than 30% marks and less than 40% marks by which they were qualified under the Orissa Police Manual Rule 660, even though in the yet to be notified/published in the official Gazette, Rule 5 of the Police Order 2020, the candidate appearing in the examination have to secure 40% marks in each subject and 40% in aggregate to qualify in the written examination.

8. Thus, the subject matter of the Writ Petition was whether 30% marks as required under Rule 660 PMR would be applicable to qualify the said examination and the impugned action of excluding the Appellants – Petitioners from the List of qualified candidates by applying the Police Order 2020 is illegal and unlawful.

It was claimed by the Appellants – Writ Petitioners that since the vacancies are available prior to 15.10.2020, at the time when Police Order 2020 was passed, therefore, the vacancies will be governed in accordance with the provisions made under Rule 660 of the PMR and the Petitioners having secured over 30% marks are eligible for undergoing ASI course of training. It is the case of the Petitioners-Appellants that their names were required to be included in the list of candidates published on 14.12.2020/22.12.2020 but their names were ignored and the said list remained valid till 31st December, 2020 i.e. only for 5 days in reference to Rule 5 (3) of the Police Order 2020.

It is in the said background that the aforesaid Writ Petitions were filed wherein directions were sought to allow the Petitioners to undergo ASI training on the basis of their seniority and having passed with more than 30% marks in the qualifying written test, keeping in view the Rule prevalent at the time of arising of vacancies as has been done in the past in case of other candidates who have qualified in written examination under Rule 660 of Orissa Police Manual Rules.

9. That the official Respondent Nos.1 to 3 herein filed their counter affidavit dated 21.12.2021 in writ petitions through Additional Superintendent of Police, Office of Director General and Inspector General of Police Odisha. In the counter affidavit, it was mentioned that the Orissa Police Service (Method of Recruitment and Criteria of Service of Assistant Sub Inspector) Order 2020 was published/circulated by the Government in Home Department by Notification dated 15.10.2020 **with the stipulation that the Rules will come into force from the date of its publication in the Orissa Gazette** but inadvertently due to lack of inter departmental

correspondence the said Rules were **published in the Gazette only on 27.07.2021**. It is mentioned that the written examination and the selection process was carried out in consonance with Police Order 2020.

10. In the pleadings, relevant to the issue in controversy, the following provisions are relevant and important :

Rule 660 PMR

Under the aforementioned Rule, matriculate constables as also non-matriculate constables, who had passed a constable course of training and possess at least seven years of service after the initial training becomes eligible to take the written test of qualifying nature provided in Clause (c) of PMR, 660 for being deputed to the ASI course of training against the seats/vacancies allotted to each district/unit/range, and such persons who were deputed of course are required to possess satisfactory record and are otherwise declared suitable.

11. The written test to be conducted as per Clause (c) of PMR, 660 provided that the written test ordinarily consists of law and rules and ability to write an essay in English. The mark

for each subject and the time to be allowed for each was to be prescribed by the I.G. It is a conceded case that prior to laying down of the exhaustive rule for conducting the written test as per Police Order, 2020, the D.G.P. with the prior approval had since many decades followed the bench mark of obtaining 30% marks for a constable to be declared as pass in the written test so conducted. This position was also acknowledged and laid down in a Division Bench judgment of this Court rendered on 19th June, 2003 in W.P.(C) No.1858 of 2002 reported as **2003 (II) OLR-206** and other connected cases. It is also conceded that prior to the amended Police Order, 2020, the select list so prepared based on 30% pass marks was to remain valid till it was exhausted for being deputed to the training course for promotion to the ASI. By virtue of the Police Order, 2020, the list now to be prepared based with 40% minimum marks is prescribed to be valid till the end of a calendar year in which the written exam is held. For better clarity, the relevant provisions of the amended rule are hereby noticed.

Rule 5 of the Police Order 2020

Under Rule 5 the relevant amendment from Rule 660 PMR was carried out and under the aforementioned amended provision Rule 5, the candidate has to secure **40% of marks** to qualify the written examination and the list of qualified candidates remains **valid for that calendar year only**.

In this regard towards the enforceability of Police Order 2020 and aforementioned amended provision by way of Rule 5, a bare perusal of the Notification dated 15.10.2020 in its Clause 1 provides as under:

“1. Short title and commencement – The Order may be called the Odisha Police Service (Method of Recruitment and conditions of service of Assistant Sub Inspectors) Order 2020.

*(ii) **This shall come into force from the date of its publication in the Odisha Gazette.**”*

There is no dispute regarding the fact that the Police Order 2020 came to be **published in the Odisha Gazette on 27.07.2021** and by the said provision the Police Order, 2020 would come into force on 27.07.2021.

12. The common issues as in the Writ Petition of the Appellants was also under challenge to an extent in WP (C) No.

863 of 2021 and WP (C) No.1994 of 2021 which came to be decided by a common order on 09.09.2021 and was allowed. The Writ Petition No. 5079 of 2021 of Appellants was allowed in same terms as that of WP (C) No.863 of 2021 and WP (C) No.1994 of 2021.

In WP(C) No.863 of 2021 and WP (C) No.1994 of 2021, the Writ Petitioners therein also included the candidates who though have qualified the written examination with over 40% marks were aggrieved against the application of Police Order 2020 on the process of selection and by applying Rule 5 (3) of said Police Order, the Select List was to elapse at the end of calendar year (31.12.2020) to their detriment and exclusion from being detailed/deputed for ASI training.

13. The Appellants – Writ Petitioners are aggrieved against the order dated 09.09.2021 passed in their WP (C) No. 5079 of 2021 to the extent that on one hand the Single Bench has allowed the Writ Petition filed by the Appellants – Writ Petition (wherein the Appellants – Writ Petitioners questioned for being excluded from the list of qualified candidates based on

eligibility of 40% marks as prescribed in Police Order 2020) and on the other hand held the list dated 14.12.2020 which was prepared with the Constable securing marks more than 40% as per Police Order 2020 to be valid.

The Appellants have submitted that in the Writ Petition, it was their specific case that the Selection List dated 14.12.2020 has been prepared based on Rule 5 (3) of the Police Order 2020 and thus the Order dated 09.09.2021 passed in WP (C) 863 of 2021 and WP (C) 5079 of 2021 is self-contradictory as on one hand, the Single Bench has allowed the writ petition only on the premise that Police Order 2020 has no application to the selection and PMR-660 is to operate and selection is to be made based on PMR-660, however, on the other hand, the Single Bench upheld the Select List dated 14.12.2020 which is prepared on the basis of Police Order 2020.

Furthermore, the Appellants have submitted that it is an undisputed fact that the name of the Appellants does not find mention in the Select List dated 14.12.2020 as modified on 22.12.2020 on the premise that the Appellants have not scored

more than 40% marks in the written examination as per the eligibility requirement under Rule 5 (3) of Police Order 2020.

14. We have heard the rival contentions of the parties and gone through the record of the case. The order dated 09.09.2021 under challenge in the present Letters Patent Appeal is passed in Writ Petition No. 5079 of 2021 based on the Order dated 09.09.2021 passed by the Single Bench in WP (C) No. 863 of 2021 and WP (C) No. 1994 of 2021. Therefore, the findings and observations of the Single Bench in Order dated 09.09.2021 in WP (C) 863 of 2021 and WP (C) 1994 of 2021 assumes importance and relevant for consideration of the grounds and challenge raised by the Appellants in the present Appeal.

15. In the Order dated 09.09.2021 in WP (C) No. 863 of 2021 and WP (C) No. 1994 of 2021, the Single Bench has made the following observations :

“9. On perusal of aforementioned rules, it is made clear that in order to fill up the posts in the rank of ASI of Police, the District Superintendent/Heads of Police establishments were under obligation to report the vacancy and anticipated vacancy positions in respect of ASI by 15th of April and by 15th of October of every

year to the Director General of Police. Despite such statutory provision, no steps were taken in respect of vacancies and anticipated vacancies in the rank of ASI.....

10. On receipt of the vacancy position, the Director General of Police under the PMR-660 is obliged to conduct the departmental written examination among the constables, who have got seven years of experience after constable training by fixing minimum marks to qualify in the said written examination with approval of Government. On passing of the departmental written examination, such constables become qualified under PMR-660 for nomination by their respective police district/establishment to be considered for being deputed to ASI training. After the select list was drawn for deputing them for ASI training, the same shall be placed for approval of the Director General of Police and finally the selected constables are to go for ASI training. After completion of such training, the trained constables are to appear in a test/examination at the training centre and their performance in the said test/examination conducted at the end of the training and final appointments in the rank of ASI are to be made on that seniority basis which is to be followed by the authority for consideration for promotion from constable having seven years of experience to the post of ASI.

11. This PMR 660 has not been followed for years together, consequentially the qualified constables were deprived of getting for promotion to the post of ASI.....

12. PMR 660, when is in operation, a notification was issued on 15.10.2020 in exercise of powers conferred under Section 2 of the Police Act, 1861, by the State Government in order to regulate the method of recruitment and conditions of service of Assistant Sub-Inspector of Police called "Odisha Police Service (Method of Recruitment and Conditions of Service of Assistant

Sub-Inspectors) Order, 2020, wherein it has been specifically mentioned under Sub- rule (ii) of Rule-1 that “the same shall come into force from the date of its publication in the Odisha Gazette”. Though such notification was issued on 15.10.2020, as has been admitted on behalf of the State by way of reply to the rejoinder affidavit filed in W.P.(C) No.863 of 2021, the same was published in official gazette on 27.07.2021. **Thereby, Order, 2020 has come into force w.e.f. 27.07.2021 and any action taken prior to such Order, 2020, cannot sustain in the eye of law. Rather, it would be under the provision of PMR 660 by allowing qualified constables to appear at the written test to enable them to go for ASI training for promotion.**

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14. As regards the contention raised by Mr. Manoranjan Mohanty, learned Senior Counsel appearing in W.P.(C) No.863 of 2021, that right has been accrued in favour of the petitioners in view of PMR 660 and the same cannot be divested by framing Order, 2020, this Court is of the considered view that since the authorities, instead of going for consideration of the case of the petitioners those who were working as constables for more than 7 years for promotion to the post of ASI, resorted to notification dated 15.10.2020, which was admittedly published in the official gazette on 27.07.2021, the Order, 2020 can only be effective after 27.07.2021 and it may be prospective one. Therefore, any action taken pursuant to notification dated 15.10.2020 cannot sustain in the eye of law.

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19. In view of the law laid down by the apex Court, as discussed above, **it is made clear that since the notification dated 15.10.2020 has come into force from the date of its publication in official gazette on 27.07.2021 and the process of selection was done prior to commencement of said Order, 2020**

and that is in conformity with the PMR 660, the same should be given effect to in terms of PMR 660 instead of resorting to Order, 2020 fixing cut off date of validity of select list dated 14.12.2020, as modified on 22.12.2020, to 31.12.2020.....”.

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The Single Bench has observed that the due process of filling of the vacancies of Assistant Sub-Inspector of Police as per the statutory provisions has not been followed by the respondent authorities over the years to the detriment of the Writ Petitioners. It has been observed that Police Order, 2020 has come into force w.e.f. 27.07.2021 and the process of selection in question has taken prior thereto and completed by conduct of written examination, still further by drawing of the Select List on 14.12.2020. It is only towards the final conclusions, the Single Bench has inadvertently observed that the process of selection in the present case is in conformity with PMR 660 though the observations and conclusion regarding the non-applicability of the Police Order 2020 and the findings and conclusion regarding the applicability of PMR 660, to the present selection process, remains unaffected and unaltered.

16. The present case is not a plain case involving the legal proposition regarding the applicability of the rules / legal prevalent on the date of availability of vacancy or relatable to the vacancy position. The said legal position is no longer *res integra* now after the passing of the latest judgment by the Supreme Court of India in Civil Appeal No.9746 of 2011, titled as ***State of Himachal Pradesh and Others Versus Raj Kumar and Others***¹ decided on 20.05.2022. The findings of the Hon'ble Supreme Court in the aforementioned decision dated 20.05.2022 which are very relevant to the present controversy are :

“71. The above-referred observations made in the fifteen decisions that have distinguished Rangaiah's case demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished Rangaiah hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in Rangaiah is confined to the facts of that case.

72. The decision in Deepak Agarwal (supra) is a complete departure from the principle in Rangaiah, in as much as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in

¹ 2022 SCC OnLine SC 680

force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of Union of India v. Krishna Kumar (supra). In fact, in Krishna Kumar Court held that there is only a “right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion take place.”

73. The consistent findings in these fifteen decisions that Rangaiah's case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in Rangaiah is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;

(a) The statement in Y.V. Rangaiah v. J. Sreenivasa Rao that, “the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules”, does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.

(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.”

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From the aforementioned observations and findings, it is enunciated as held in case of **Deepak Agarwal v. State of**

U.P.², and in **Union of India v. Krishna Kumar³**, that the candidate has a right to be considered as per the Rules existing on the date of consideration. In the present case, the application of the aforementioned principle, clearly shows that on the date of letter declaring the conduct of written examination, the date of declaration of result, drawing of select list which is the final step of consideration towards the qualification of candidates for being qualified for ASI training, the Orissa Police Manual Rules were applicable and the Police Order 2020 had not been enforced. Thus Rule 660 of PMR was applicable and the existing Rule on the date of such consideration.

As informed at the time of hearing, the respondent-State has now filed Writ Appeals along with applications for condonation of delay to challenge the findings *qua* the non-applicability of the Police Order, 2020 in the decision dated 9th September, 2021 passed in the aforesaid writ petitions. Learned counsel for the State submits that the entire process of

² (2011) 6 SCC 725

³ (2019) 4 SCC 319

selection was initiated as per the provisions provided in the Police Order, 2020 in as much as format of the question papers was as per the Rules, although concededly, the Police Order, 2020 was published in the official Gazette on 27.07.2021. He further submits that in the present selection, it was nowhere provided that 30% would be the pass marks even as per the un-amended provision i.e. PMR, 660. We afraid that we are unable to accept the contentions and hence reject it. It is an admitted case that till the enforcement of the Police Order, 2020, the pass marks adopted by the Authorities in the said written examination has throughout been 30%. The said position was initially approved by the Government and also acknowledged by a Division Bench of this Court, to follow anything contrary at this stage is not only unfair but also preposterous.

Therefore, based on the long standing past practice, it is hereby held that the pass marks for the selection in question has to be 30% even if there is no specific administrative order passed by the I.G.P.

The other contention in respect of validity of the select list so prepared to be restricted to the time frame provided under the Police Order, 2020 must also fail for the same reasoning and accordingly based on the similar premise, the select list shall be valid till it is exhausted as per the past long standing practice.

17. In the present case, the peculiar feature is that on the date the selection process was initiated, carried out and completed upto the date of the declaration of the result of the written examination and drawing of the select list for detailment of the candidates for training of ASI, the amended Rules were not effectuated by notification in the Orissa Gazette which was the inbuilt necessary requirement for the enforcement of the Police Order 2020. The admitted factual position will not get altered if there is delay due to any inadvertence on the part of the State authorities by issuing the Orissa notification after much delay. The delay cannot be cured by creating a legal fiction to lend enforceability to the Police Order 2022 with retrospective

effect from 15.10.2020 instead from the actual date of notification on 27.07.2021 in the official Gazette.

18. Thus, in the peculiar facts and circumstances, the present Writ Appeals call for interference only to the extent of returning the finding that the applicability of provisions of Police Order, 2020, which has concededly come into force w.e.f. 27.07.2021 after the completion of process of selection in question, to the validity of select list dated 14.12.2020/22.12.2020 cannot be sustained and is in fact illegal and unlawful.

Accordingly, the select List dated 14.12.2020 as modified on 22.12.2020 is required to be redrawn on the basis of the process and eligibility of selection prescribed under Rule 660 PMR with its past long standing practice.

The order dated 09.09.2021 passed in WP (C) No.5079 of 2021 is modified to the aforementioned extent and the respondent authorities are directed to redraw the select list on the basis of Rule 660 PMR within the period of two weeks from the date of receipt of certified copy of the order and detail

further batches of the ASI training as per the redrawn Select List prepared as per PMR 660 with 30% pass marks and the select list shall remain valid till exhausted as per past practice.

19. The present Writ Appeals stand disposed of in the aforementioned terms.

(Jaswant Singh)
Judge

M.S. Raman, J. I agree.

(M.S. Raman)
Judge

Orissa High Court, Cuttack,
The 13th July, 2022/ Sipun