

2023:PHHC:165735-DB

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

**CWP No. 11189 of 2023 (O&M)
Date of Decision:December 16, 2023**

Kanwal Marwaha

.....Petitioner

Versus

Punjab and Haryana High Court, Chandigarh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr.Sunil Chadha, Sr. Advocate
with Ms. Kashish Aggarwal, Advocate
for the petitioner.

Mr. Kanwal Goyal, Advocate
and Ms. Deepali Jindal, Advocate
for respondents no.1 and 2.

LISA GILL, J(Oral).

1. Prayer in this writ petition is for issuance of a writ of mandamus directing the respondents to strictly comply with directions passed by Hon'ble the Supreme Court in its judgment dated 29.08.2022, in SLP (C) No. 5079 of 2020 (Civil Appeal No. 5874 of 2022), (Annexure P-7) and further directing the respondents to carry out final selection in accordance with Punjab Superior Judicial Service Rules, 2007 (for short - 'Punjab Rules, 2007') and Haryana Superior Judicial Service Rules, 2007 (for short – 'Haryana Rules, 2007'). It is further prayed that petitioner

should be declared successful for selection and appointment in the Backward Caste category in the State of Punjab and in General category in the State of Haryana pursuant to advertisements dated 30.05.2019 and 07.08.2019, Annexures P-2 and P-4, for the post of Additional District and Sessions Judge.

2. Brief facts necessary for adjudication of the matter are that advertisement dated 30.05.2019, Annexure P-2, inviting applications for filling up eight (08) vacancies for appointment to Punjab Superior Judicial Service by way of direct recruitment from amongst eligible Advocates through competitive examination under Rule 7 (3) (c) of Punjab Rules 2007 was issued. Advertisement dated 07.08.2019, Annexure P-4, was published for inviting applications for selection to eleven (11) vacancies for appointment to Haryana Superior Judicial Service by way of direct recruitment from amongst eligible Advocates through competitive examination under Rule 6 (1) (c) of Haryana Rules 2007. Petitioner being eligible for selection and appointment applied in pursuance to both the abovementioned advertisements dated 30.05.2019 and 07.08.2019, Annexures P-2 and P-4. She applied under the Backward Caste (BC) category of Punjab in respect to advertisement dated 30.05.2019, Annexure P-2 and in respect to advertisement dated 07.08.2019, Annexure P-4, she applied under the General Category in the State of Haryana. Combined written examination (Mains) for recruitment qua both the advertisements/ notifications was held from 29.11.2019 till 01.12.2019. Result of the Mains written examination was declared on 18.12.2019, whereby the petitioner qualified for both the States. She was called for combined viva-voce on 26.02.2020.

3. In the meanwhile, CWP No. 1769 of 2020, was filed before this Court by an unsuccessful candidate namely Harkirat Singh Ghuman, seeking setting aside/quashing of the Mains written examination result dated 18.12.2019. CWP No. 1769 of 2020 was dismissed in *limine* by this High Court on 23.01.2020, Annexure P-5. Aggrieved therefrom, SLP (C) No. 5079 of 2020, was filed by Harkirat Singh Ghuman, wherein notice was issued while directing that the interview may go on but select list be not finalized in the meantime. Leave to appeal was granted and ultimately SLP (C) No. 5079 of 2020 was converted to Civil Appeal No. 5874 of 2022 and allowed on 29.08.2022 (Annexure P7) by Hon'ble the Supreme Court. Four (04) objections as detailed in para 11 of decision dated 29.08.2022, passed by Hon'ble the Supreme Court were raised by the appellant therein, which are reproduced as under:-

“11. The appellant, who appeared in person before us, has primarily raised four objections in reference to the procedure adopted by the respondents in holding written examination by the respondents pursuant to the advertisements for Punjab/Haryana Superior Judicial Service Examination, 2019, as follows:

i. Criminal Law Paper (Paper V) which was of 200 marks contained only four questions (1, 2, 3 and 5) and question no.4 was missing and it was of 160 marks which was made available to the candidates and after the discrepancy was brought to notice of the invigilator, a supplementary question paper was supplied indicating question no. 4 in the midst of examination calling upon the candidates to attempt question no. 4 and objection of the appellant is that the procedure which has been adopted by the respondents itself creates a doubt in the process of selection that from where this question no. 4 was generated and how it was made available to the candidates in the midst of the examination is a mystery and no justification has been

tendered by the respondents even in the counter affidavit filed before this Court and this fact has not been disputed that question no. 4 of Paper V(Criminal Law) was made available to the candidates during course of the examination. Thus, according to him, the procedure followed by the respondents is neither transparent nor fair and the written examination may be cancelled or at least this question paper deserves to be cancelled and the respondents be directed to hold Paper V (Criminal Law) afresh and only thereafter the merit list be declared of the candidates who qualified the main examination.

ii. The second objection of the appellant is that in the question paper of General Knowledge (Paper VI) which was of multiple choice/objective type paper, there were no instructions on the overleaf of the examination paper as to how and in which manner the paper has to be attempted by the candidates and the OMR Sheet was not supplied and the candidates were called upon to make a circle out of the four multiple choices, which according to them is correct option and the question paper supplied has to be returned back to the Invigilators.

12. The submission of the appellant-in-person is that in absence of the multiple-choice question paper being made available to the candidates to retain, it may not be possible to respond to which option out of the four options, is the correct option. According to him, the question paper, for the first time, is made available to the appellant along with the counter affidavit filed before this Court and it reveals to him that there are discrepancies in eight questions and in some questions either of the four options are not correct.

13. His submission is that even till today, provisional answer key has not been uploaded to make the candidates aware of the right option out of the four options available and the candidate has no liberty to raise any objection and if the answer key is uploaded after the final result is declared, obviously after the viva-voce is over, no one is going to entertain the objection, if

any, to be raised at the later stage and that became fait accompli.

iii. Further objection of the appellant is that Bare Acts were made available to the candidates but this fact was not indicated in the advertisement, which, according to him, is contrary to the Scheme of Rules.

iv. Further apprehension of the appellant is that the answer sheets were claimed to have been examined in haste and the reason to support is that the last examination was held on 1st December, 2019, and within a short period of 17 days, the result was declared of the written examination on 18th December, 2019 which was not humanly possible and to support his submission, the appellant submits that when he applied for obtaining the marks which he had secured in the written examination, under the right to information, that was declined and his application came to be rejected by the competent authority under the right to information by an order dated 6th January, 2020.”

Cancellation of the written examination was thus sought.

4. Hon’ble the Supreme Court while dealing with said objections rejected the objections with regard to bare acts being made available to the candidates as well as apprehension of haste in declaration of result being completely baseless. Action regarding non-disclosure of marks of the main written examination, before finalization and completion of viva-voce was held to be proper. While finding substance in the objection regarding Criminal Law Paper (Paper V), judgment dated 23.01.2020, passed by this High Court was set aside with the following directions:-

“35. The appeal accordingly succeeds and the impugned judgment of the High Court dated 23rd January, 2020, is hereby set aside and we direct the respondents to value the marks obtained of question nos. 1, 2, 3 and 5 of Paper V (Criminal Law) (out of total 160 marks) and after undertaking the process,

a fresh result of the written examination be declared of the candidates in reference to Punjab/Haryana Superior Judicial Service Examination, 2019, and those who qualify and fall in the zone of three times the number of vacancies may be called for viva-voce and result of the selection process, thereafter be finally declared in accordance with the scheme of Rules, 2007.”

5. Pursuant thereto marks obtained in Paper V (Criminal Law) were evaluated out of 160 marks instead of 200 marks and in order to obviate any kind of discrepancy, answer key of the General Knowledge paper was also revised and revised result was declared on 09.11.2022 after revision of both the said main written examination(s). Ten candidates, (including the petitioner) were shortlisted for both the States. Petitioner was again called for viva-voce on 16.11.2022 and accordingly interviewed. Final result for Punjab Superior Judicial Service, 2019 as well as Haryana Judicial Service, 2019, was declared on 21.11.2022. Petitioner was not reflected in the select list as she had not fulfilled the condition of scoring 50%/45% out of total marks fixed in the written examination and viva-voce in the final aggregate for the purpose of final selection in terms of specific condition in this regard in both advertisements in question i.e. Clause 6(iv) therein.

6. Petitioner filed application MA-149-50 of 2023 in Civil Appeal No. 5874 of 2022 before Hon’ble the Supreme Court for a direction to be issued to the respondents to revise final result of Punjab/Haryana Superior Judicial Service Examination, 2019, in compliance of directions issued by Hon’ble the Supreme Court on 29.08.2022. Counter affidavit on behalf of respondent no.1 was duly filed. The said MA was withdrawn by the petitioner on 20.03.2023, Annexure P-15 with liberty to avail remedy as may be permissible under law. Present writ petition was thereafter filed with the prayer as mentioned in the foregoing paras.

7. It is necessary to refer to Rule 7(3) of Punjab Rules 2007, which deals with the method of appointment. The same reads as under:-

“(1) The appointment to the Service by promotion shall be made from amongst the members of the Punjab Civil Service (Judicial Branch), by the Governor on the recommendations of the High Court.

(2) The direct appointment to the Service shall be made by the Governor on the recommendations of the High Court from amongst the eligible advocates on the basis of the written test and viva-voce conducted by the High Court.

(3) Appointment to the Service shall be made in the following manner:-

(a) sixty-five per cent by promotion from amongst the Civil Judges (Senior Division), on the basis of merit-cum-seniority and passing of a suitability test;

(b) ten per cent by promotion on the basis of merit through departmental competitive examination of Civil Judges (Senior Division) having not less than five years qualifying service as Civil Judge (Senior Division);

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

8. Rule 11 thereof, reads as under:-

“Test for direct appointment-

(1) The High Court shall, before making recommendations to the Governor, invite applications by advertisement and may require the applicants to give such particulars as it may prescribe and may further hold written examination test and viva-voce for appointment under rule 7, in the following manner, namely:-

(i) Written Test 750 Marks; and

(ii) Viva-Voce 250 Marks.”

9. Rule 6 (1) of Haryana Rules 2007, providing for method of regular appointment reads as under:-

“6. Regular recruitment. –

(1) Recruitment to the Service shall be made,-

(a) 65 percent by promotion from amongst the Civil Judges (Senior Division)/Chief Judicial Magistrates/Additional Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;

[Provided that no person shall be promoted to the Service who is less than thirty-five years of age;]

(b) 10 percent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years qualifying service as Civil Judges (Senior Division)/Chief Judicial Magistrates/Additional Civil Judges (Senior Division); and who are not less than thirty five years of age on the last date fixed for submission of applications for taking up the limited competitive examinations:

Provided that if candidates are not available for 10 percent seats, or are not able to qualify in the examination then vacant posts shall to be filled up by regular promotion in accordance with clause (a); and

(c) 25 percent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test, conducted by the High Court.”

10. Condition regarding minimum benchmark as found in advertisement dated 30.05.2019 (Annexure P2) for appointment of Punjab Superior Judicial Service reads as under:-

“6. SYLLABUS AND FORMAT OF EXAMINATION:

(i) The selection would be on the basis of written test of 750 marks and viva voce of 250 marks, to be conducted by the High Court of Punjab and Haryana, Chandigarh.

(ii) The written test and viva-voce shall be conducted in English medium except the language paper.

(iii) Syllabus and format of written test will be as per Annexure-2 (page no 10).

(iv) Only the candidates securing 40% or more marks in each paper will be called for viva-voce. But merely securing 40% or more marks would not confer any right to be called for viva voce The High Court of Punjab and Haryana, Chandigarh shall have the discretion to shortlist the candidates equal to three times the number of vacancies for viva-voce. Further, no candidate will be considered to have successfully qualified the Punjab Superior Judicial Service Examination unless he/she obtains 50% marks (read 45% marks for the SC/BC/PH (Differently Abled Persons) category candidates) in the aggregate out of the total marks fixed for the written test and viva-voce. It is also made clear that no candidate will get the right to be appointed even if he/she obtains 50% marks (read 45% marks for the SC/BC/PH (Differently Abled Persons) category candidates) in the aggregate of the written test and viva-voce. However, candidates will be appointed strictly in the order of merit (category wise) in which they are placed after the result of written test and viva-voce.”

11. Identical condition as above regarding minimum benchmark above is present in advertisement dated 07.08.2019 (Annexure P4) for appointment of Haryana Superior Judicial Service and is not being reproduced for the sake of brevity.

12. Learned counsel for petitioner vehemently argued that direction of Hon’ble the Supreme Court vide order dated 29.08.2022, has not been complied with inasmuch as result has not been declared in accordance with the Scheme of 2007 Rules of both respective States. 2007 Rules applicable to respective States, do not provide for a minimum benchmark i.e. provision for the candidate to have secured 50% marks in aggregate out of total marks fixed for written test and viva-voce *qua*

General Category and 45% *qua* SC/ST/BC/PH (Differently Abled Persons)/ Ex-servicemen category. Therefore, insertion of such condition in the advertisements is not permissible there being no provision thereof in the applicable rules. Furthermore, while referring to the Rules in question, it was submitted that no such standard or norm has been provided in the statutory Rules applicable to each respective states, therefore there is no question of fixing of any higher standard. The committee, in any case, it was contended is not competent to impose any condition of having obtained aggregate of 50%/45% out of total marks in the absence of any provision for the same in respective rules applicable to both the States without obtaining prior approval from the State Governments, which alone are empowered to make regulations in consultation with the High Court. Respondents, it was contended have acted in an arbitrary manner in rejecting the case of petitioner on the ground of not achieving the minimum benchmark. Petitioner, it was submitted, was the only meritorious candidate in Backward Caste category in the State of Punjab. In the absence of any amendment in selection rules, such condition of minimum aggregate could not have been imposed merely on the basis of the minutes of meeting dated 23.01.2008, Annexure P-12 and 11.12.2011, Annexure P-13. Action having been taken in violation of the directions issued by Hon'ble the Supreme Court, the present writ petition it was submitted should be allowed.

13. Learned counsel for respondents no.1 and 2, *per contra* refuted the arguments as raised on behalf of petitioner while submitting that first and foremost petitioner is estopped from raising challenge to a condition of advertisement after having participated in the selection process and being unsuccessful therein. He has relied upon judgments of Hon'ble the Supreme

Court in **Pepsu Road Transport Corporation, Patiala Vs. Mangal Singh and others, 2011(11) SCC 702, Rakhi Ray and others Vs. The High Court of Delhi and others, 2010 AIR (Supreme Court) 932, Employee's State Insurance Corporation Vs. Union of India and others, 2022 AIR (Supreme Court) 1017, Dr. Krushan Candra Sahu Vs. State of Orrisa, 1996 AIR (Supreme Court) 352, Umesh Chandra Shukla Vs. Union of India and others 1985 AIR (Supreme Court) 1351 and All India Judges Association Vs. Union of India, 2002 AIR (Supreme Court) 1752**, to substantiate the said arguments. Hon'ble the Supreme Court in judgment dated 29.08.2022, it was submitted had not issued any direction for setting aside the condition regarding minimum benchmark as prescribed in the advertisement. Moreover, the High Court, it was submitted is entitled to lay down condition/criteria for ensuring selection and appointment of suitable candidates. 2007 Rules as applicable to the State of Punjab and Haryana are silent in respect to the percentage of aggregate marks required to be obtained in the written examination and viva-voce, therefore, in the absence of any express bar in statutory rules which are silent on this aspect, the same can be supplemented by addition of condition in terms of Articles 233, 234 and 235 of the Constitution of India. Reliance in this respect has been placed on the judgments of this High Court in **Jarnail Singh etc., Vs. State of Punjab etc., 2015(1) SLR 52 and Ashwani Kumar Vs. Punjab and Haryana High Court and another, 2016(4) PLR 1**. It was thus prayed that this writ petition be dismissed.

14. We heard learned counsel for parties and have perused the file carefully.

15. Learned counsel for petitioner consistently argued that

petitioner does not as such challenge the condition of advertisement which prescribes for minimum benchmark for the candidate of having secured 50%/45% in aggregate out of total marks fixed for written test and viva voce and that prayer of petitioner is for compliance of direction of Hon'ble the Supreme Court issued on 29.08.2022 inasmuch as it has been directed that result of selection process should be finally declared in accordance with scheme of Rules 2007. In our considered opinion, argument raised by learned counsel for petitioner is not tenable, hence rejected for reasons as discussed hereunder.

16. It is to be noted that petitioner by way of reliance upon judgment dated 29.08.2022 of Hon'ble the Supreme Court seeks setting aside of condition in both the advertisements in question, of condition of minimum bench mark to be achieved by the candidates to be eligible for selection. It is an admitted position that petitioner had participated in the entire selection process without challenging this condition at any stage. Contention of learned counsel for petitioner is that notwithstanding the absence of any deliberation and adjudication by Hon'ble the Supreme Court on this issue, it should be presumed that all finding in judgment dated 23.01.2020 are set at naught once it is set aside. As the argument as above was a ground raised before the High Court in CWP-1769-2020, judgment dated 23.01.2020 passed by the High Court in CWP-1769-2020 being set aside, right accrues to petitioner to challenge this condition despite not having challenged the same at any earlier point of time. This contention is rejected being absolutely misconceived and untenable. In the given factual matrix, it cannot be presumed that Hon'ble the Supreme Court by way of decision dated 29.08.2022 has set aside the condition in advertisement qua

minimum benchmark. Bare reading of decision dated 29.08.2022 reveals that firstly no such objection was raised by petitioner therein and secondly judgment dated 23.01.2020 passed by High Court was set aside only on one of the four objections raised as detailed in foregoing paras.

17. It is a settled position of law that a candidate who has not questioned advertisement/conditions therein but participated in selection process cannot turn around to question selection process on such grounds.

18. It is equally undeniable that High Court is well within its rights to supplement the rules to provide higher standards in order to draw the best talent. Relevant Rules qua both the states of Punjab and Haryana do not bar such a procedure from being adopted.

19. Hon'ble the Supreme Court in the case of **K.H. Siraj versus High Court of Kerala and others 2006 (6) SCC 395** while dealing with similar issue held as under:-

“35. In this background, two questions raise by Mr. L.N. Rao have to be considered.

1. The prescription of minimum mark for the oral examination as a condition of eligibility for selection as Munsif Magistrate is not authorized by Rule 7 of the Kerala Judicial Service Rules, 1991;

2. The select list has not been prepared in accordance with Rules 14 to 17 of KSSR 1958.

So far as the first submission is concerned, we have already extracted Rule 7 in paragraph supra. Rule 7 has to be read in this background and High Court's power conferred under Rule 7 has to be adjudged in this basis. The said Rule requires the High Court firstly to hold examinations written and oral. Secondly the mandate is to prepare a select list of candidates suitable for appointment as Munsif Magistrates. The very use of the word 'suitable' gives the nature and extent of the power conferred upon the High Court and the duty that it has to perform in the matter of selection of candidates. The High Court alone knows what are the requirements of the subordinate judiciary, what qualities the Judicial Officer should possess both on the judicial side and on the administrative side since the performance of duties as a Munsif or in the higher categories of subordinate Judge. Chief Judicial Magistrate or District Judge

to which the candidates may get promoted require administrative abilities as well. Since the High Court is the best Judge of what should be the proper mode of selection, Rule 7 has left it to the High Court to follow such procedure as it deems fit. The High Court has to exercise its powers in the light of the constitutional scheme so that the best available talent, suitable for manning the judiciary may get selected.

36. What the High Court has done by the Notification dated 26.3.2001 is to evolve a procedure to choose the best available talent. It cannot for a moment be stated that prescription of minimum pass marks for the written examination or for the oral examination is in any manner irrelevant or not having any nexus to the object sought to be achieved. The merit of a candidate and his suitability are always assessed with reference to his performance at the examination and it is a well accepted norm to adjudge the merit and suitability of any candidate for any service, whether it be the Public Service Commission (I.A.S., I.A.F. etc.) or any other. Therefore, the powers conferred by Rule 7 fully justified the prescription of the minimum eligibility condition in Rule 10 of the Notification dated 26.3.2001. The very concept of examination envisaged by Rule 7 is a concept justifying prescription of a minimum as bench mark for passing the same. In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high powered body like High Court to evolve its own procedure as it is the best Judge in the matter. It will not be proper in any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a high powered constitutional authority is left with such power and it has evolved the procedure which is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers. Reference in this connection may be made to the decision of this Court in 2006(1) SCC 779 wherein an action of the Chief Justice of India was sought to be questioned before the High Court and it was held to be improper.

37. The very scheme and amplitude of Rule 7 under which the selection is made is sufficient answer to the contention of the appellants. Under the scheme of the Indian Constitution, the High Court is vested with the entire administration of the subordinate judiciary under Arts. 233, 234 and 235 of the Constitution of India. The High Court is vested with the power to see that the high traditions and standards of the judiciary are maintained by the selection of proper persons to man the subordinate judiciary.”

20. It was further held that even though the rule in question did not prescribe any particular minimum, it was open to High Court to supplement the rule with a view of implement them by prescribing relevant standards in

the advertisement for selection. Setting a minimum benchmark of obtaining 50%/45% marks for SC/BC for Haryana Superior Judicial Service in Advertisement dated 29.04.2013 was upheld by Division Bench of this Court in **Ashwani Kumar versus Punjab and Haryana High Court 2016 (4) PLR 1**. Said decision in **Ashwani Kumar's** case (supra) was upheld by Hon'ble the Supreme Court on 03.10.2016 while dismissing SLP (c) No. 18543/2016. Gainful reference can also be made to judgment of Full Bench of this High Court in **Jarnail Singh versus State of Punjab 2014 (2) SCT 701**, which has been upheld by Hon'ble the Supreme Court vide order dated 05.07.2017 in SLP (c) No. 33891-92 of 2015. Present writ petition is clearly a futile attempt by petitioner to take up the issue at a belated stage which brooks no intervention.

21. Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to interfere in this writ petition, which is, accordingly, dismissed.

22. Pending application(s), if any, stand(s) disposed of.

(**LISA GILL**)
JUDGE

December 16, 2023
s.khan/rts

(**RITU TAGORE**)
JUDGE

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.