

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

**CWP-19176-2022 (O&M)
Reserved on : 24.04.2023
Pronounced on : 14.07.2023**

Parul Goyal and others

..... Petitioners

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. D.S.Patwalia, Senior Advocate with
Mr. A.S. Chadha, Advocate
for the petitioners.

Ms. Shivani Sharma, DAG, Punjab.

Mr. Vijay Kumar Kaushal, Advocate and
Mr. Sathak Gupta, Advocate
for respondents No.2 and 3.

Mr. Harsh Goyal, Advocate
for respondent No.6.

Mr. A.P.S. Shergill, Advocate
for respondent No.7.

Mr. Rajesh Punj, Advocate
for respondent No.9.

PANKAJ JAIN, J.

CM-19734-CWP-2022

This is an application for placing on record written
statement on behalf of respondent No.9.

For the reasons mentioned in the application, the same is
allowed. Written statement alongwith form attached therewith are taken
on record.

CWP-19176-2022

Reply on behalf of respondent No.3 has been filed. The same is taken on record.

2. Senior counsel for the petitioners submits that there is no need to file replication and is ready to argue the case. With the consent of the counsel(s) representing the parties, the main case is taken up for hearing.

3. Petitioners pray for issuance of a writ in the nature of certiorari seeking quashing of order dated 01.12.2021 (P-7), whereby the merit list/selection list of the candidates who participated and were selected pursuant to advertisement dated 13.07.2011 (P-1) stands redrawn. Further challenge has been made to the consequential orders in the nature of appointment of P-9 as Sub Divisional Engineer w.e.f. 16.12.2011 alongwith all consequential benefits, the consequential revised merit list/selection list dated 10.12.2021 (P-9), the consequential tentative seniority list dated 17.02.2022 (P-14) and the order dated 21.12.2021 (P-12) whereby after redrawing the selection list, petitioners No.2 and 4 have been ordered to be treated as fresh appointees. Further challenge has also been made to quashing order dated 15.12.2021, whereby respondent No.9 has been granted additional charge of Executive Engineer (Works).

4. Petitioners are alumni of Thapar University. Thapar University evaluates the students adopting Cumulative Grade Point Average method (CGPA). The CGPA is convertible into percentage by applying multiplier which used to be determined by the University itself. The controversy in the present lis relates to the said conversion

and emanates out of 2011 recruitment based upon Annexure P-1, whereby 25 posts of Sub-Divisional Engineer (Civil) were filled by respondent No.2.

5. It is not the first time that the controversy has reached this Court with respect to conversion of CGPA grades awarded by Thapar University. Earlier it was brought before this Court in the batch of writ petitions with CWP No.7323 of 2012 being the lead case. In the batch of those writ petitions, the petitioners were aggrieved of the action of Punjab Public Service Commission, Patiala in applying multiplier of 9 for conversion of CGPA marks of the students passing out of Thapar University who were seeking selection for the post of Sub-Divisional Engineer (Civil), Sub-Divisional Engineer (Mechanical), Sub-Divisional Engineer (Electrical). Writ petitions were allowed by the Single Judge holding that multiplier of 10 ought to have been applied as decided by the Thapar University. However, judgment passed by Single Judge was reversed in judgment dated 07.11.2016 passed in LPA No.1334 of 2014. The relevant part reads as under:-

“xx xx xx

(19) Since the whole controversy revolves around the applicability of the multiplier for conversion of CGPA to the percentage of marks in the case of the Graduates of Thapar University, Patiala, it would be useful at the outset to refer to the stand taken by the Thapar University in CWP No.9606 of 2012 in which it was impleaded as respondent No.3. Para 10 of its affidavit reads as follows:-

“That the University till Academic Session, 2008, in order to compare the performance of the students, if converted to the percentage of the marks from CGPA was adopting the multiplication with 9. The relevant provision in this regard as mentioned in the mark sheet issued till December, 2007 is reproduced herein under:-

“In order to compare the students of this Institute vis-à-vis other Universities where percentage of marks are shown in the final result, the following conversion formula will be used for calculating the percentage of marks from CGPA.

Percentage of marks obtained by a student = (9.0 x C.G.P.A.)”

The multiplication factor to convert CGPA into percentage was 9 for those candidates who have passed before May, 2008. From June, 2008 to May, 2012, there was no conversion factor adopted by the University. However, from June, 2012, the multiplication factor considered and fixed by the University in order to convert CGPA into percentage was fixed at 10.”

(emphasis applied)

(20) Again in para 11 of its reply, Thapar University has reiterated:-

“That as the degrees are awarded in the course of Bachelor of Engineer by using Cumulative Grade Point Average system as per curriculum issued by All India Council for Technical Education (AICTE) which is regulatory body for education in respect of Engineering in India. Institutions/Universities had fixed different method/criteria to be adopted for conversion of CGPA to percentage of marks. Till the year 2008 University adopted the system for conversion of CGPA to percentage by multiplying the CGPA awarded to a student by 9 and thereafter there exist no formula as adopted by the University for conversion CGPA to percentage of the marks. Since the degrees are to be awarded on the basis of CGPA earned by a student in the entire course, therefore, the practice of mentioning the conversion system was abolished.”

(emphasis by us)

(21) It is also pertinent to mention at this stage regarding the decision taken by the Board of Governors of Thapar University in its 103rd Meeting held on 20.10.2012 **“TO CONSIDER THE REQUEST OF PRESIDENT, ALUMNI ASSOCIATION REGARDING CONVERSION FACTOR FOR THE STUDENTS WHO GRADUATED BETWEEN 2008 TO 2011”**. After reference to a brief history, the Board considered the recommendations made by the Senate and approved the same as

may be seen from the following:-

“Senate Recommendations:

The Senate discussed and recommended the conversion formula of 10 x CGPA for the students graduated during the period 2008 to 2011 for converting CGPA into percentage to the Board for approval.

Board of Governors Recommendations:

The Board considered and approved the recommendations of Senate to the conversion formula of 10 x CGPA for the students graduated during the period 2008 to 2011 for converting CGPA into percentage.”

(22) It stands crystallized from the sequence of facts that Thapar University used to follow the multiplier of ‘9’ for conversion of CGPA into the percentage of marks till the academic session 2008 but there was no conversion formula prescribed by the University during the period 2008 to 2011. In May, 2012, the University resolved to apply the multiplier of ‘10’ for conversion to the percentage of marks from CGPA. Since the candidates who graduated from the University during 2008 to 2011, namely, ‘no multiplier period’, were facing difficulties, they represented through the Alumni Association and the University accepted their request on the recommendations of the Senate and approved the conversion formula of 10xCGPA for the students graduated during the period 2008 to 2011 for converting CGPA into percentage.

(23) It would be equally apt to consider the viewpoint of the Commission who has uniformly applied the multiplier of ‘9’ for working out the percentage of academic merit of the Graduates of Thapar University. The Commission in its written statement dated 22.08.2012 filed in CWP No.7323 of 2012 has justified its decision for the following reason:-

4. *That the formula of scale 9 (Nine) has been adopted for all the candidates uniformly to the candidates who have passed there engineering degree from Thapar University, Patiala and no prejudice has been caused to the petitioner or any other candidate. On the other hand the adoption of formula of scale 10 (ten) would have caused prejudice to the candidates who have passed/obtained their degree before 2008. The Thapar University, Patiala itself has certified to the candidate that after 2008 the university has prescribed no formula for conversion of percentage which states “no*

formula for conversion of CGPA to percentage of marks exists in the academic regulations of this University for the students who graduated during or after June-2008 onwards". The copy of the certificate has already been attached with the writ petition as Annexure P-3, vide which the university has also used the multiple of Nine (9) for working out the percentage.

That most of the universities have issued the detail marks cards by stating the percentage of the candidates in their degree. However, the universities which prescribed no formula for CGPA, the answering respondent adopted the formula of Nine (9) for working out the percentage of the marks uniformly."

(emphasis applied)

(24) The Commission's standpoint is thus that before the year 2012 i.e. till the year 2011, Thapar University either prescribed multiplier of scale '9' or it did not prescribe any such scale at all. It was for this reason that the Commission used the multiplier of '9' for working out percentage on uniform basis and even in the case of other universities where no formula for conversion of CGPA into percentage of marks was prescribed, the Commission followed the multiplier of '9' only.

(25) Having given our thoughtful consideration to the rival submissions and the respective stand taken by Thapar University and the Commission, it appears that the view taken by learned Single Judge is mostly erroneous as the very foundation of it lies in clubbing of three different selection processes together.

(26) It may be stated at the cost of repetition that the first advertisement was issued on 28.12.2010 and selection pursuant stood finalized on 22.03.2012. As on that date, Board of Governors of Thapar University had not taken their decision dated 12.10.2012 whereby the multiplier of '10' for converting CGPA into percentage was made applicable 'retrospectively' for the students graduated during the period 2008 to 2011. In the absence of such decision, there were two categories of candidates before the Commission who had graduated from Thapar University, namely-

- (i) those who graduated before 2008 with the multiplier of scale '9' for converting CGPA into percentage;
- (ii) those who graduated after the year 2008 and before 17.01.2011 i.e. the last date to submit applications in response to Advt. No.3 dated 28.12.2010, without any

multiplier scale prescribed in their mark-sheet.

(27) The Commission was fully justified, in our considered view, in applying the multiplier scale of '9' in the case of candidates falling in category No.(ii) above, by treating them at par with the Graduates of the same University who fell in Category No.(i) as well also keeping in view the uniformity adopted by the Commission in respect of Graduates of other Universities. Such a recourse by the Commission neither amounted to interference with the 'academic affairs' of the University, nor it tinkered with the degrees awarded to the candidates. The decision taken by Thapar University on 20.10.2012 to apply the conversion formula of 10xCGPA by antedating it from the year 2008 onwards was neither here nor there, hence the Commission cannot be accused of deviating from any decision taken by the University. The finding returned by learned Single Judge that the Commission was obligated to apply the conversion formula of '10' instead of '9' irrespective of the selection process is thus palpably wrong and being contrary to the record, the same is set aside.

(28) The Commission as a Constitutional body is well within its rights to evolve a fair, just, uniform and transparent criteria to be applied to all the candidates irrespective of the university from where they graduated. Even if such a criteria puts candidates of one institute to some disadvantage or others to an advantageous condition, it would not be per se illegal or erroneous unless the Court, on lifting the veil, finds it grossly arbitrary, irrational, absurd and the one which defies the principle of merit. The observations made by learned Single Judge to the contrary therefore, are liable to be disapproved.

(29) As regard to the directions issued by learned Single Judge that the Commission ought to have applied the condition of 'minimum qualifying marks' while short-listing the candidates for the interview on the basis of their performance in the screening test, it would be useful to reproduce an important note (f) of the advertisement which reads as follows:-

“Prescribed Essential Qualifications are minimum and mere possession of the same does not entitle candidates to be called for interview. Where the number of applications received in response to the advertisement is large and if it will not be convenient or possible for the Commission to interview all the candidates, the Commission may restrict the number of candidates for interview to a reasonable limit

on the basis of short listing them by order of their academic merit as per their qualification/higher marks OR by holding a screening test.”

(emphasis applied)

(30) It may be seen that there were no minimum qualifying marks prescribed for the Screening Test which was only meant to short-list the number of candidates to be called for interview. Admittedly, the marks obtained in the screening test were not to be counted for the purpose of determining the final merit. The selection was to be made as per the selection criteria uploaded on the website according to which, 70 marks were reserved for the academic qualifications and 30 for the viva voce. Learned Single Judge has referred to the “Charter of Duties in General” notified by the Commission where it is stated that the Commission has also fixed a standard of merit in Screening Test i.e. 40% marks for SC/BC and 45% marks for others. Such like guidelines, in our considered view, cannot be pressed into service in every selection process unless these are incorporated, expressly or by implication, in the advertisement.

(31) Learned Single Judge ought not to have gone into the legality of short-listing the candidates. The writ-petitioners were admittedly aware of the criteria of short-listing the candidates evolved by the Commission. They participated in the selection process with open eyes and did not raise any objection at any stage. Even after they could not make it to the selection list in the first process, they remained silent and participated in the second selection process. Some of them were selected and appointed pursuant to the second and third advertisements. It was thereafter that they raked up the issue and that too without impleading the selected candidates as party respondents although they were fully aware that the acceptance of such a plea was likely to result into ousting of some of the candidates from the selection process, who had been meanwhile appointed also. We may usefully cite in this regard (i) ***Vijay Kumar Kaul vs. Union of India (2012) 7 SCC 610***; (ii) ***Ranjan Kumar & Ors. vs. State of Bihar & Ors. (2014) 16 SCC 187***; (iii) ***Madras Institute of Development Studies & Anr. vs. Dr.K.Sivasubramaniyan & Ors. & Ors. (2016) 1 SCC 454***.

(32) In the light of the above discussion, we are of the considered view that since in the selection process originating out of Advt.No.3 dated 28.12.2010, the Commission has followed a

uniform criteria for converting CGPA into percentage of marks without impinging upon the academic autonomy of any University and strictly on the basis of the factual and legal statute of the mark sheets/degrees in the hands of the candidates as on the last cut-off date or even at the time of the interview, none of the reasons assigned by learned Single Judge are valid to invalidate the said selection process. The Letters Patent Appeals challenging the selection or re-determination of the merit of the candidates by applying the multiplier of scale '10', are thus allowed and writ petitions challenging the said selection process are hereby dismissed.

(33) Same principles would apply in respect of selection of 15 Sub Divisional Engineers (Civil) in Irrigation Department, Punjab made pursuant to Advt.No.3 dated 23.05.2012, for there was no material alteration in the criteria for the purpose of determining the percentage of marks from CGPA of the Graduates who have acquired their degrees in Engineering under the CGPA pattern.”

6. It further needs to be noticed herein that the Special Leave Petition No.23087 of 2017 preferred against the said order also stands dismissed in limine. Meaning thereby that the law laid down by the Division Bench stands affirmed and holds the field.

7. In the light of the aforesaid judgment private respondents herein approached the authorities and requested them to revisit the selection list by pegging down the multiplier from 10 to 9 as held by Division Bench. The authorities passed an elaborate order observing as under:-

- “5. The degrees and certificates submitted by the respondent No. 5 to 8 were sent to the Thapar University, Patiala for verification. In response to the request made by the Board, the University responded by stating that the certificate/degrees have been issued by them vide letter no. AS/2559/VC/994 dated 16-08-2021 and are as per their record.
6. CDAC Mohali was the agency which was appointed to scrutinize the applications and make recommendations after preparing merit list of the suitable candidates. This agency was also asked to clarify the position in regard to selections recommended by them. It has been submitted by them that while filling up of online applications, the candidates were

asked to fill the marks obtained and total marks. There was no provision of submitting grades in the online application forms. The same was clearly specified as mentioned below:

Note: In case of gradation system, the applicant is required to convert the Grades into equivalent marks as per the formula mentioned by the university on their respective Certificates/Mark sheets on the application form (copy enclosed)

Further, being a service provider the role of CDAC, Mohali was to prepare the provisional merit list on the basis of online data filled by the candidates and technically assist/support the department with computation of online data. Further, the scrutiny of document, rejection, selection and issue of appointment letters was done by your department being appointing authority. The complete data of the above said recruitment has already been handed over to the Board vide ref. No. C-DAC/STD/PWSSB/2011/09-02 dated 29-09-2011. CDAC, Mohali. CDAC has no authority in any manner to consider the representation of the candidate/s. The appointing authority is PWSSB, Chandigarh for the above said recruitment and they may decide the representation of the applicant in the manner whatsoever deemed fit by their department."

7. While filling up online registration forms regarding their application for appointment to the posts of Sub Divisional Engineers, respondent nos. 5 to 8 had made the following declaration:

i. *I have carefully gone through and understood the eligibility/selection criteria as mentioned by the board and do hereby accept the same and certify that I fulfill all the eligibility conditions.*

ii. *The information given by me in the application form is true to the best of my knowledge and belief and nothing has been concealed therein and application has been filled by me.*

iii. *If the information furnished by me in the application form of furnished later on at any stage, is found to be incorrect/false, the Board/Govt. shall have the right to cancel my candidature and also to take legal action.*

iv. *I also undertake not to contact/approach any Board official member or any person claiming rapport with the above said officials of Board to exert any outside and refrain from using unfair means for my selection.*

8. The Committee appointed by the Board to find out the facts of the case examined the certificates produced by Respondents nos. 5 to 8 and worked out the following correct position in respect of cumulative CGPA in the detail marks and formula to calculate percentage from CGPA which worked out as under:-

Sr. No.	Name	Documents Submitted	Cumulative CGPA Semester wise							
			I	II	III	IV	V	VI	VII	VII
1.	Sh. Jitin Vasudeva	Bachelor Degree & DMC of 1 st to 8 th Semesters	7.74	8.55	8.57	8.69	8.85	9.04	8.94	9.03
Remarks		- Formula for calculating CGPA to percentage given on the reverse of DMC is as under:- <i>In order to compare the students of this institute Vis-à-vis other Universities where percentage of marks are shown in the final result, the following conversion formula will be used for calculating the percentage of marks from CGPA.</i> <i>Percentage of marks obtained by a student = (9.0 X C.G.P.A.) (Only on 1st Semester)</i> - No Formula for calculating CGPA to percentage given on the reverse of DMC (On 2nd to 8th Semester)								
		Thapar University issued certificate Ref. No. AS/BE-2007 dated August 23, 2011 certified that there exists no formula for conversion of CGPA to percentage of marks in the Academic Regulations of this University for the students who graduated during or after June 2008 onwards. However, if still percentage of marks is required please calculate the same by "Dividing CGPA secured by the student with maximum possible CGPA and then multiplying the result by 100".								

Sr. No.	Name	Documents Submitted	Cumulative CGPA Semester wise							
			I	II	III	IV	V	VI	VII	VII
1.	Smt. Parul Goyal	Bachelor Degree & DMC of 1 st to 8 th Semesters	9.09	9.10	9.31	9.40	9.47	9.56	9.60	9.61
Remarks		- Formula for calculating CGPA to percentage given on the reverse of DMC is as under:- <i>In order to compare the students of this institute Vis-à-vis other Universities where percentage of marks are shown in the final result, the following conversion formula will be used for calculating the percentage of marks from CGPA.</i> <i>Percentage of marks obtained by a student = (9.0 X C.G.P.A.) (On 1st to 7th Semester)</i> - No Formula for calculating CGPA to percentage given on the reverse of DMC (On 8th Semester)								
		- Thapar University issued certificate Ref. No. AS/1040257 dated 8.12.2010, This is to certify that Ms. Parul Goyal S/o Sh. Surinder Kumar Goyal Regn. No. 1040257 has passed Bachelor of Engineering in Civil Engineering from this University in June 2008. Her Cumulative Grade Point Average on completion of the programme was 9.61 (10 point Scale). - Further certified that there exists no formula for conversion of CGPA to percentage of marks in the Academic Regulations of this University for the students who graduated during or after June 2008 onwards. However, if still percentage of marks is required please calculate the same by: "Dividing CGPA secured by the student with maximum possible CGPA and then multiplying the result by 100"								

Sr. No.	Name	Documents Submitted	Cumulative CGPA Semester wise							
			I	II	III	IV	V	VI	VII	VII
1.	Sh. Jugal Kishor	Bachelor Degree & DMC of 1 st to 8 th Semesters	7.02	7.19	7.74	7.96	8.15	8.39	8.54	8.64
Remarks		- Formula for calculating CGPA to percentage given on the reverse of DMC is as under:- <i>In order to compare the students of this institute Vis-à-vis other Universities where percentage of marks are shown in the final result, the following conversion formula will be used for calculating the percentage of marks from CGPA.</i> <i>Percentage of marks obtained by a student = (9.0 X C.G.P.A.) (Only on 1th Semester)</i> - No Formula for calculating CGPA to percentage given on the reverse of DMC (On 2nd to 8th Semester)								
		Thapar University issued certificate Ref. No. AS/BE-2007 dated August 23, 2011 certified that there exists no formula for conversion of CGPA to percentage of marks in the Academic Regulations of this University for the students who graduated during or after June 2008 onwards. However, if still percentage of marks is required please calculate the same by: "Dividing CGPA secured by the student with maximum possible COPA and then multiplying the result by 100"								

Sr. No.	Name	Documents Submitted	Cumulative CGPA Semester wise							
			I	II	III	IV	V	VI	VII	VII
1.	Sh. Vikas Kumar	Bachelor Degree & DMC of 3 rd to 8 th Semesters	-	-	6.65	7.63	8.25	8.42	8.62	8.59
Remarks		- Formula for calculating CGPA to percentage given on the reverse of DMC is as under:- <i>In order to compare the students of this institute Vis-à-vis other Universities where percentage of marks are shown in the final result, the following conversion formula will be used for calculating the percentage of marks from CGPA.</i> <i>Percentage of marks obtained by a student = (9.0 X C.G.P.A.) (On 3rd to 7th Semester)</i> - No Formula for calculating CGPA to percentage given on the reverse of DMC (On 8th Semester)								
		- Thapar University issued certificate Ref. No. AS/1055204 dated November 30, 2009, This is to certify that Mr. Vikas Kumar Regn. No. 1055204 was a bonafide student of Bachelor of Engineering in Civil Engineering at this University. His Cumulative Grade Point Average is 8.59 on 10 point Scale. - Further certified that there exists no formula for conversion of CGPA to percentage of marks in the Academic Regulations of this University for the students who graduated during or after June 2008 onwards. However, if still percentage of marks is required please calculate the same by: "Dividing CGPA secured by the student with maximum possible CGPA and then multiplying the result by 100"								

9. That the Committee submitted its report on 25-11-2021 while making the following recommendations:-

- i. *Record of recruitment of concerned persons may be placed in lock & key by the Assistant Incharge.*
- ii. *Regarding criminal investigation, committee is of the opinion that separate High Level authority be deputed for investigations of the allegations leveled in the representation.*
- iii. *While deciding the representations the decision taken by Division Bench In LPA No. 1334 of 2014 titled as State of Punjab and anr VS Simran Sra & ors. by Punjab and Haryana High Court which has been approved up to the level of Hon'ble Supreme Court be kept in view."*

And the authorities held as under:-

"13. I have gone through the entire case in length and breath, and have also considered the contention of all the stakeholders, and also gone through the entire gamut of litigation and the judgements of the Hon'ble Higher Court, and the Hon'ble Supreme Court of India, as well, in this case.

The genesis and the entire edifice of this case is based not only upon the correct and factual reading of the facts of this case, but also upon the Finality accorded to it by the Hon'ble Supreme Court of India by dismissing the SLP No: 23087/2017, filed against the Judgement of the Division Bench of the Hon'ble Punjab and Haryana High Court in LPA No:1334 of 2014 decided on 07 11.2016.

Consequently, after going through the microscopic details of this case, and after juxtaposing the same with the judgement of the Division Bench of the Hon'ble High Court, which was upheld by the Hon'ble Supreme Court of India, vide its judgement dated 15.04.2019, it is irrefutably clear and I have no hesitation to hold that the representations dated 18.10.2021 (P-10) and dated 08.02.2021 (P-11) deserve acceptance and are hereby accepted. The Selection of Sub Divisional Engineers under challenge be corrected/modified on the basis of their merit list by applying factor '9' instead of '10' while calculating the percentage from CGPA in the case of candidates who passed from Thapar University Patiala during 2008 to 2011.

It is, however, pertinent to mention and highlight over here that in the CM No.8423-CWP-2021 filed in CWP-6633-2021, the Hon'ble High Court has granted status quo order till the next date of hearing. Since, preparation of a fresh seniority list of the SDEs is a natural consequence and outcome of the amended selection list, therefore, the Hon'ble High Court may be moved accordingly for vacation of status quo order dated July 16, 2021.

On vacation of status quo order, fresh seniority list of SDEs be drawn up after ting objections from the concerned officials. An Enquiry Officer may also be appointed for conducting the enquiry proceedings into the charges of misrepresentation of CGPA by Respondent nos. 5 to 8 (In CWP No. 6633 of 2021) at the time of seeking their appointments in

PWSSB. The record of recruitment of these officials be kept in safe custody/lock & key of Manager Personnel & General Admn. Consequential benefits, if any, be also paid to the representationists. Thus, all the contentions of the petitioners as raised in CWP No.6633 of 2021 which have acquired finality upto the level of Hon'ble Apex Court such as re-drawing the fresh merit and selection list by correctly applying factor '9' CGPA instead of '10', initiation of inquiry by appointing an Enquiry Officer, finalisation of seniority list and grant of consequential benefits have been accepted as per the letter and spirit of the Hon'ble Division Bench Judgement of Hon'ble High Court of Punjab and Haryana. The selection record of SDEs be kept in the lock & key of the responsible officer as ordered above."

8. Learned senior counsel for the petitioners submits that ratio of law laid down by Division Bench of this Court in ***LPA No.1334 of 2014*** titled as ***State of Punjab and another vs. Simran Sra and others*** cannot be made applicable to the selection of the petitioners which stands finalized way back in 2011 and the merit list/seniority list thus ought not have been altered. It has been further submitted that order Annexure P-12 cannot be sustained, whereby petitioners No.2 and 4 have been seriously prejudiced by ordering that for all and intents and purposes they shall be deemed to be fresh appointees and would not be entitled to any back wages, seniority or any other benefits based on their position which itself would be in the teeth of law laid down by Apex Court in the case of ***Vikas Pratap Singh and others vs. State of Chhattisgarh and others, (2013) 14 SCC 492 and Rajesh Kumar and others vs. State of Bihar and others, (2013) 4 SCC 690.***

9. It has been argued by learned senior counsel representing petitioners with eloquence that LPA judgment only dealt with three advertisements dated 28.12.2010, 23.05.2012 and 22.12.2012 and at no point of time did the advertisement pursuant to which the petitioners have been appointed form the subject matter of the aforesaid lis. The

alternation of seniority list/merit list that too to the peril of the petitioners after 10 years and when there is no cloud on the work and conduct is itself arbitrary and thus cannot be sustained.

10. Counsel representing respondents on the other hand submits that the multiplier of 10 having been applied at the time of selection to convert CGPA grades of the petitioners into percentage that too by the petitioners themselves, was error apparent on the face of the record. There was no provision of submitting CGPA grades in the application forms and it was clearly specified in the note appended that:-

“Note: In case of gradation system, the applicant is required to convert the Grades into equivalent marks as per the formula mentioned by the university on their respective Certificates/Mark sheets on the application form (copy enclosed)”

11. Further, a declaration was made by all the petitioners that the information given by them in the application form is true to the best of their knowledge and in case any information furnished by them is found to be incorrect, false at any later stage, the Board/Government shall have the right to cancel their candidature and to take legal action.

12. I have heard counsel for the parties and have gone through the records of the case.

13. The certificates pertaining to the petitioners wherein the formula calculating percentage of marks obtained by them has been specifically provided specifying multiplier of 9 and yet the petitioners calculated their percentage by applying multiplier of 10. After representations were received on 18.01.2021 from various candidates, who competed alongwith petitioners to recast the selection list, an order was passed by Writ Court in CWP No.6633 of 2021 dated 22.03.2021,

whereby the competent authority was mandated to decide the aforesaid representations observing as under:-

“This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

It is, inter alia, submitted that at the time of selection of respondents No. 5 to 8, multiplier of scale 9 has to be applied for converting into percentage and not of scale 10 Cumulative Grade Point Average (CGPA) as was done. Learned counsel for the petitioners refers to Division Bench judgment of this Court in LPA-1334-2014 (State of Punjab and another versus Simran Sra and others) (Annexure P8), which was upheld by the Hon’ble Supreme Court on 15.04.2019. It is further submitted that the petitioners became aware of this on 31.12.2020 (Annexure P7) and immediately representations dated 18.01.2021 (Annexure P10) and 08.02.2021 (Annexure P11) were submitted by them in order to obviate further prejudice being caused to them by wrongful promotion of respondents No. 5 to 8. However, no action is being taken by the respondents.

Notice of motion.

Mr. Abhay Pal Singh Gill, AAG, Punjab accepts notice on behalf of respondent No. 1.

Notice be issued to respondents No. 2 to 8 for 29.07.2021.

Notice re: stay.

Dasti as well.

In the meanwhile, competent authority to decide representations dated 18.01.2021 (Annexure P10) and 08.02.2021 (Annexure P11) and report be filed well before the next date of hearing.”

14. After the order dated 22.03.2021 passed in CWP No.6633 of 2021 was served upon the respondent, a Multi Member Committee under the Chairmanship of Engineer-in-Chief cum Technical Advisor, Punjab Water Supply and Sewerage Board was constituted to examine the representation. The Committee comprehensively examined the record and sought reply from all the effected parties including the petitioners and made following recommendations:

- “1. Record of recruitment of concerned persons may be placed in lock & key by the Assistant Incharge.
2. Regarding criminal Investigation, committee is of the opinion that separate High Level authority be deputed for investigations of the allegations leveled in the representation.
3. While deciding the representations, the decision taken by Division Bench in LPA No. 1334 of 2014 titled as State of Punjab and anr. VS Simran Sra & ors. by Punjab and Haryana High Court which has been approved up to the level of Hon'ble Supreme Court, be kept in view.”

15. It is only thereafter that the order dated 01.12.2021 impugned in the present writ petition was passed. Apex Court in ***‘Assistant Commissioner Income-Tax, Rajkot vs. Saurashtra Kutch, Stock Exchange Limited’*** to submit that the judge does not make law but only declares it. So far as principle of prospective overruling is concerned, the same will not be applicable in the present case in the light of declaration submitted by the petitioners themselves and this being a case of correction of error.

16. The issue as to whether multiplier of 9 or 10 will be applicable while converting CGPA grades into percentage is no more *res integra*.

17. Learned Senior counsel representing petitioners also is not in a position to dispute law laid down by Division Bench of this Court in **Simran Sra’s case (supra)**. It is also borne out of the fact that the multiplier was applied by the petitioners themselves to convert their grades into percentage. It has also come on record that the certificates of the petitioners themselves provided that the multiplier will be 9 and despite that they applied multiplier of 10.

18. In the considered view of this Court, definitely the error on the face of record would fall within the ambit of declaration submitted

by the petitioners and thus no fault can be found with the action of the respondents in correcting the same.

19. In view thereof, this Court does not find any reason to interfere with the impugned order dated 01.12.2021 (Annexure P-7) and the consequential orders altering the seniority and the selection list. However, since Annexure P-14 has itself tentative seniority list, this Court refrain itself from commenting thereupon apart from the fact that the same has to abide P-7. Likewise, no fault can be found with the impugned orders Annexures P-8, P-9 and P-10. Having said so, this Court finds that Annexure P-12 cannot be sustained. The reason is evident from the order itself. The operative part of the order reads as under:-

“33. Accordingly, I direct but the applicants be not ousted from the service and they be adjusted at the bottom of Revised Selection/Merit List, issued vide Office Order No.PWSSB_2021/EB(A6)/755 dated 10.12.2021.

34. It is also clarified that their placement shall for all intents and purposes be deemed to be a fresh appointment which would not entitle the applicants to any back wages, seniority or any other benefits based on the position.

The application of the applicants regarding their non-ouster deserves acceptance and the same is hereby accepted. Keeping in view the ratio of the Judgements delivered by Hon’ble Apex Court, it is ordered that the services of both the applicants shall not be dispensed with and they will continue as such on their post/s of selection and original appointment. Further, this order of mine will have no effect on the independent enquiry proceedings to be conducted against the applicants as ordered separately by me, in Office Order No.PWSSB-2021/EB(A6)710 issued vide endst. no.PWSSB-2021/EB(A6)/20363-66 dated 01/12/2021.”

20. In the considered opinion of this Court, para 34 and the concluding part of the order cannot be reconciled together and are self

upon law laid down by Apex Court in the case of Vikas Pratap Singh (supra) observed as under:-

“xx xx xx

(37) Having accepted the claim of Amit Soni – writ petitioner in CWP No.8710 of 2013, we are further of the view that in case as a result of re-shuffle of the merit list, Simranjeet Singh – the last selected candidate is affected, he is entitled to continue in service and shall have to be adjusted against the unfilled post(s) keeping in view the principles laid down by Hon’ble Supreme Court (i) Vikas Pratap Singh & Ors. vs. State of Chhattisgarh & Ors. (2013) 14 SCC 494; and (ii) Rajesh Kumar & Ors. vs. State of Bihar & Ors. (2013) 4 SCC 690.”

21. In the light of settled proposition of law, this Court finds that P-12 cannot be sustained. Petitioner No.2 and 4 cannot be said to be fresh appointees. They shall be allowed to continue in terms of their selection and shall if need arises be adjusted against unfilled post. They shall be deemed to be in continuous service from the date of their appointment and shall be entitled for all benefits including the seniority etc. but in terms of Annexure P-7 i.e. after adjusting their merit by applying multiplier of 9 which means that they shall be placed at the bottom of the selection list qua advertisement dated 13.07.2011 (P-1).

22. In view of above, the present writ petition is partly allowed.

(PANKAJ JAIN)
JUDGE

14.07.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes