

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

JUDGMENT RESERVED ON : 30.01.2023
JUDGMENT PRONNOUNCED ON : 11.04.2023

CWP-23267-2017

PARVEEN KUMARPetitioner

VERSUS

STATE OF PUNJAB AND OTHERSRespondents

CWP-14246-2018

GURVINDER RATTANPetitioner

VERSUS

STATE OF PUNJAB AND OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Rajvinder Singh Bains, Sr. Advocate with
Mr. Aman Raj Bance, Advocate
for the petitioner in CWP-23267-2017.

Ms. Sunaina, Advocate with
Mr. H.C. Arora, Advocate
for the petitioner in CWP-14246-2018.

Mr. Gaurav Garg Dhuriwala, Addl. A.G. Punjab.

Mr. Gurminder Singh, Sr. Advocate with
Ms. Harpriya Khanika, Advocate
for respondent No.3 in CWP-23267-2017 and
for respondent No.5 in CWP-14246-2018.

VINOD S. BHARDWAJ, J. (Oral)

1. The issues that arise for consideration in the present batch of writ petition relate to the power of executive to relax the rules of appointment under extra-ordinary/exceptional circumstances and the scope of judicial review by the High Court.

2. Both these writ petitions are being decided by a common judgment as they challenge the appointment of private respondent-Guriqbal Singh son of Tej Parkash Singh as Deputy Superintendent of Police in Punjab Police. The first writ petition i.e. CWP-23267-2017 raises a challenge to the appointment on the grounds of the same having been made in violation of the Punjab Police Services Rules, 1959 notwithstanding that the private respondent had crossed the eligibility age and also for the reason that the appointment being a compassionate appointment is invalid and illegal considering the financial and social status of the family. The second writ petition i.e. CWP-14246-2018 raises a challenge to the appointment on the ground that the Degree of Bachelor of Commerce held by the private respondent is not recognized.

3. FACTS IN BRIEF - CWP-23267-2017 :-

3.1 The petitioner claims to be a member of Khalra Mission Organization, Amritsar which was formed in the year 1995 and is working for the welfare of the victims of Anti-Sikh Riots. It is alleged that a large number of people were killed in extra judicial encounters by the police during regime of Ex-Chief Minister Beant Singh and the then D.G.P.

K.P.S. Gill. One Jaswant Singh Khalra had collected the data from the

cremation grounds and found that a large number of unclaimed & unidentified bodies were cremated by the Punjab Police. The Hon'ble Supreme Court of India ordered an inquiry to be conducted by the Central Bureau of Investigation which reported that about 2000 unclaimed bodies had been cremated during the said period. An inquiry was thereafter also conducted by the National Human Rights Commission and out of 2097 bodies shown as unidentified in the police encounters, 1513 bodies were eventually identified.

3.2 The petitioner, alongwith his father, two brothers and sister were allegedly picked up by the Deputy Superintendent of Police, Tarn Taran. Sister of the petitioner was however released on the intervention of the local people. All other members of the family of the petitioner were allegedly given beatings before releasing all except Gulshan Kumar. He was last seen till 21.07.1993, however, after 22.07.1993, the father of the petitioner was not allowed to meet Gulshan Kumar.

3.3 On 23.07.1993, family of the petitioner came to know about the death of Gulshan Kumar in Police encounter near Palasaur. The dead body was, however, not given to the family and the same was cremated as unclaimed.

3.4 It was alleged that Gulshan Kumar-the deceased brother of the petitioner had no connection with militancy and was killed in a fake encounter. It has also been averred that the respondent No.3-Guriqbal Singh is the grand son of Sardar Beant Singh, Ex-Chief Minister of Punjab and younger brother of the Member of Parliament Ravneet Bittu and cousin of Gurkirat Kohli-the MLA from Khanna.

3.5 It is submitted that the proposal to appoint the grandson of late Beant Singh i.e. the private respondent as Deputy Superintendent of Police on compassionate grounds has been initiated 22 years after the assassination of former Chief Minister. It is averred that the respondent No.3-Guriqbal Singh was ineligible for the appointment to the post of Deputy Superintendent of Police on the date when his case was initiated for recruitment and that the family did not suffer from any hardship considering the higher social, financial and political status of the family. It was stated in the application submitted by the Guriqbal Singh that since his grandfather was killed by militants for his tirade against militancy, he should be recruited as Deputy Superintendent of Police under the policy of the Government to give jobs to the families of those killed during the era of terrorism. The appointment of respondent No.3-Guriqbal Singh had been made in relaxation of all recruitment norms and notwithstanding the law laid down by the Supreme Court that compassionate appointments cannot be claimed as a matter of right and that the same was permissible only in exceptional cases of hardship on account of the death of the sole bread earner. The object of compassionate appointment is to enable the family to overcome the sudden financial crisis and to relive the family of its trauma. It is averred that considering that a member of the family is a Member of Parliament, the other member is a member of State Legislative Assembly, one daughter and son of the slain Chief Minister had served as Ministers in Government of Punjab, it could not be said that the family was suffering from any financial crisis on death of Sardar Beant Singh. Moreover, the application was submitted after 22 years of his assassination. As such, there was no pressing need or existential emergency for the family.

3.6 It has also been averred that compassionate appointments can only be offered in Group 'C' and 'D' and any post higher than that are not filled up by recruitment on compassionate basis. Besides, the upper age limit for appointment as Deputy Superintendent of Police in Punjab Police is 28 years while age of Guriqbal Singh, as on 01.01.2017, was 28 years and 07 months. An objection to his appointment on compassionate grounds was also raised by the Finance Department. Various other averments alleging the purported misrule during the then regime have also been made, however, the same are irrelevant for the adjudication of the present case and the same are accordingly not being adverted to.

4.1 Reply by way of an affidavit of Rajnish Kumar Sharma, Under Secretary to Government of Punjab, Department of Home Affairs & Justice was filed on behalf of respondent No.1 where it was stated that the then Chief Minister played a pivotal role in bringing "An Era of Peace" in the State through his courageous leadership during the span of three years, he remained as Chief Minister of the State of Punjab. He single handedly stirred peace to the troubled State and also brought it back on the path of development. He sacrificed his life for restoring peace and rule of law in the State of Punjab and led the State's fight against terrorism as a tireless crusader against communalism and social injustice.

4.2 It is submitted that the Director General of Police forwarded the proposal to the State Government to recruit private respondent-Guriqbal Singh, grandson of the former Chief Minister as Deputy Superintendent of Police in Punjab Police considering it as a "special case" as victims from terrorism. The proposal stated that the martyr late Sardar Beant Singh, Ex-Chief Minister of Punjab sacrificed his life for restoring peace, democracy

and law & order in the State of Punjab and that he was assassinated by the terrorists on 31.08.1995 at the Punjab Civil Secretariat. Despite a personal loss to the family members of the slain leader, they did not avail any Government job notwithstanding the Government scheme for providing job and rehabilitation to the families that had suffered violence during terrorism.

4.3 A strong case was recommended by the Director General of Police for recruitment of Guriqbal Singh as Deputy Superintendent of Police. It was also stated that the candidate was very young at the time of assassination of the former Chief Minister and has been brought up under threats from terrorists.

4.4 It is contended that in recognition of the ultimate sacrifice of his grandfather, he should be appointed to the post of Deputy Superintendent of Police as per latest government instructions. The same was thus considered to be a "Special Case" by the competent authority. It is averred that the case did not fall under the instructions No.11/105/98-4 PP-2/14420 dated 21.11.2002 and amended instructions No.11/99/2002/4PP2/18086 dated 28.12.2005 issued by the Department of Personnel, Government of Punjab as it was not being treated as a case of compassionate appointment/financial hardship and was rather proposed as an appointment made as a "Special Case" by granting him relaxation from Rules 6 and 7 of the Punjab Police Service Rules, 1959. One post of Direct Recruitment quota of Deputy Superintendent of Police was taken out of the purview of Punjab Public Service Commission (PPSC) and the matter was recommended by the Council of Ministers.

4.5 It was also pointed out even at earlier instances, the Government of Punjab has recruited DSPs by taking out post from the purview of Punjab Public Service Commission. The details thereof are extracted as under:

Sr. No.	Name of the Officer	Reasons of appointment
1.	Sh. Hans Raj Chadha, PPS, Now IPS (Retd)	He was recruited as DSP as a special case by the Govt. due to death of his father. He submitted his joining report in this office on 09.06.1972.
2.	Sh. Arpit Shukla, PPS, Now IPS	He was recruited as DSP as a special case by the Govt. due to death of his father. Sh. P.S. Shukla, IPS, DIG. He submitted his joining report in this office on 08.04.1987.
3.	Sh. Paramraj Singh, PPS, Now IPS.	He was recruited as DSP as a special case by the Govt. due to death of his father Sh. Sukhdev Singh of Village Umaranangal. He submitted his joining report in this office on 03.09.1987.
4.	Sh. Harcharan Singh Bhullar, PPS, now IPS	He was recruited as DSP as a special case by the Govt. He submitted his joining report in this office on 19.8.1994.
5.	Sh. Alam Vijay Singh, PPS.	He was recruited as DSP as a special case by the Govt. vide No.8/35/2011-1H3/889 dated 10.03.2011 due to death of his father Sh. Narinder Pal Singh, IPS, IGP. He submitted his joining report in this office on 16.04.2012.
6.	Sh. Maninder Pal Singh, PPS	He was recruited as DSP as a special case by the Govt. vide o. 7/54/2015-2H3/2734, dated 09.08.2016, due to death of his father Martyr Sh. Baljit Singh, Superintendent of Police. He submitted his joining report in this office on 12.08.2016.

4.6 That after considering all the facts of the case, the Council of Ministers, accorded its approval to appoint Sh. Guriqbal Singh as Deputy Superintendent of Police as “Special Case” by giving relaxation from Rule 6 and 7 of the Punjab Police Service Rules, 1959 in the upper age limit and as a “Special Case” and after taking out one post from direct quota of DSP from the purview of Punjab Public Service Commission. An order of appointment was thereafter issued vide letter No. 6/22/2017-2H3/3810, dated 07.06.2017 and that he joined duty in the Department of Police on 08.06.2017 A.N.

4.7 It was also averred that the petitioner has no cause of action to invoke the extra ordinary writ jurisdiction of this Court and the petitioner has nowhere claimed that he is entitled to be appointed to the said post and was also eligible and a proxy litigation has been instituted. It is further averred that the third party litigation is not maintainable in service matters.

5.1 Separate reply has been filed by the private respondent where locus of the petitioner to seek setting aside the appointment of private respondent despite not being aggrieved or affected by the appointment was questioned. It was reiterated that the appointment was made as a “Special Case” as a mark of honour for the sacrifice made by the grandfather of the private respondent. It was pointed out that the petitioner does not fall within the category of person aggrieved and he is at best a meddlesome interloper. Filing of the present petition is merely an act of nuisance and an abuse of the process of law which is resulting in wastage of precious judicial time. The maintainability of the writ petition was thus objected.

5.2 It was also stated that wrong and misleading facts have been given. The respondent is stated to be son of Sh. Tej Prakash, a former minister in the Cabinet and Ravneet Singh Bittu is claimed to be his brother whereas the same is factually incorrect since he is son of Sukhwant Singh. The mis-statement is deliberate and to prejudice the Court.

5.3 The private respondent or his family is not a recipient of any political largesse or favour. The election of the other members of the family as Member of Parliament and/or the State legislature is not conferment of any favour or benefit by the State. The members of the family having been elected in a democratic process cannot be equated as having received any benefit under any applicable State policies.

5.4 It was further pointed out that the case has been portrayed by the petitioner as if it is a compassionate appointment and violates the instructions. Since the appointment of the petitioner is not in nature of compassionate appointment, hence, the said instructions were not applicable. The post in question was taken out of the purview of the Punjab Public Service Commission by the Executive and a decision was taken by the Council of Ministers, which it was empowered to do under the special circumstances and noticing the sacrifices for the cause of the State and in recognition thereof, the appointment had been offered.

5.5 It is stated that Director General of Police had forwarded the letter to the Additional Chief Secretary to the Govt. of Punjab, Department of Home Affairs on 12.05.2017 with request to consider the case of the private respondent for appointment as DSP by withdrawing one post from the purview of Punjab Public Service Commission from the Direct Quota. It

is further submitted that 29 posts of the DSP were lying vacant. It is averred that due procedure for taking out post from the purview of Punjab Public Service Commission is laid down under paragraph 20 of the Regulations and Instructions governing the working of Punjab Public Service Commission. The same is extracted as under:

PART-III-B

(Procedure for exclusion of posts/services from the purview of the Punjab Public Service Commission)

20. For exclusion of posts/services and other matters from the purview of the Punjab Public Service Commission, the following procedure is to be followed:-

(1) Individual proposals for taking out posts from the purview of the Commission would be processed by the Administrative Departments concerned. After the Department had taken a tentative decision to take out certain posts from the purview of the Commission, the Department would obtain the views/comments of the Punjab Public Service Commission by making self contained reference to the Commission.

(ii) On receipt of the comments/views of the Commission, the matter would further be examined by the Department concerned keeping in view the comments/views so received and the advice of the Department of Personnel and Administrative Reforms. If the Department comes to definite conclusion that the posts in question must be taken out of the purview of the Commission, the Department would take the matter to the Council of Ministers incorporating the advice of the Department of Personnel and Administrative Reforms in the Memorandum placed before the Council of Ministers.

(iii) After the proposal of the Administrative Department is approved by the Council of Ministers, necessary action to

amend the Punjab Public Service Commission (Limitation of Functions) Regulations, 1955 would be taken by the Department of Personnel and Administrative Reforms.

5.6 It is averred that in consonance with the requirement prescribed in the procedure for exclusion of post from the purview of Punjab Public Service Commission, a communication was sent by the Department of Home Affairs, Justice & Jails, Govt. of Punjab to the Secretary of PPSC on 22.05.2017 requesting the PPSC to take out one post of DSP from the purview of PPSC which was replied by the PPSC on 24.05.2017 intimating that on the basis of the proposal submitted to the Commission, it has been decided to take out one post of DSP from its purview and that the same may be viewed as a One Time Measure. In furtherance thereto, a Memorandum was circulated before the Council of Ministers to deliberate on the issue of granting appointment alongwith the Punjab Police Service Rules, 1959 including relaxation of Rule 7. The said memorandum also listed out details of other similarly situated officers, who had been offered appointment to the post of DSP as a “Special Case” and as a One Time Measure. The opinion of the Finance Department was also received on 28.05.2017 wherein it was stated that as per policy then in existence, compassionate appointment could only be granted to next of kin and as the private respondent was not directly dependent on late Beant Singh, such relaxation would create future precedent. An objection was also raised that the Supreme Court of India has barred compassionate appointments on post higher than Group ‘C’ post. It was recommended in the Memorandum that the objection of the Finance Department are not applicable since the proposal did not envisage appointment of the private respondent on compassionate grounds and the same was recommended a “Special Case”.

5.7 The Council of Ministers took up the matter in its meeting on 30.05.2017 alongwith the comments received from the Department of Home Affairs, Justice & Jails; PPSC & Finance and approval was granted to afford relaxation from Rule 6 and 7 of the Punjab Police Service Rules, 1959 to appoint the private respondent. The appointment letter was thereafter issued on 07.06.2017 and he submitted his joining report and has been officiating since then. Reference was also made to earlier instances of special case appointments made by the Government of Punjab by the Council of Ministers already extracted above. All other objections raised in the petition were denied as being politically motivated, false and frivolous. It is also averred that other than the requirement of age, the respondent fulfilled all other eligibility requirements and that he had obtained his Degree of Graduation from Periyar University in Second Class in the examination period of December-January-2012.

6. An amended reply was thereafter filed by the Govt. of Punjab, Department of Home Affairs in which additional objections as raised in the reply filed by the private respondent were also taken. It is also averred in the amended reply that it is within the powers conferred upon the Council of Ministers under the provisions of Rules of Business 1992/Allocation Business Rules, 2005 to take out the post of DSP from the purview of Punjab Public Service Commission.

7. No rejoinder/replication has been filed by the petitioner to controvert the reply/amended reply by respondent No.1 and/or the written statement filed on behalf of respondent No.3. The factual claims raised by the respondents have thus remained uncontroverted.

8. FACTS IN BRIEF - CWP-14246-2018 :-

8.1 The petitioner has raised a challenge to the appointment of Guriqbal Singh (respondent No.5 herein), to the post of DSP on the ground that he did not possess the prescribed qualification. The petitioner is a Vocational Master (Computer Science) in Government Senior Secondary School (Boys) Sangrur on contractual basis. He has alleged that the appointment of the private respondent has been made despite the fact that the said respondent had acquired the Bachelor of Commerce Degree from Periyar University through the Distance Education mode. The said degree refers to the Examination Centre Code as "1385" which is the code for "M.S. Institute, New Delhi" whereas the said respondent had appeared for examination through Distance Education mode. It is averred that as per Rule 7, a person is required to be a graduate from a recognized University and possess knowledge of Punjabi upto Matriculation or its equivalent standard and that a large number of people are not being given appointments to any public post where they obtained their degrees from the Universities falling outside the territory of State of Punjab and through Distance Education mode. Reliance was placed on written statement filed in the matter of "***Dharminder Paul versus State of Punjab and others***" bearing ***CWP -19045 of 2014***. It was thus alleged that while the degree acquired through Distance Education mode by people in seat of power were being accepted, the similar degrees of other citizens were not being recognized.

8.2 Notice of motion in the above said writ petition was issued on 30.05.2018 and the same was ordered to be read alongwith CWP-23267 of 2017 and no formal reply by the State to the averments contained in the writ petition has been filed, however, written statement on behalf of respondent

No.5 has been filed wherein apart from the objections in relations to maintainability of petition, it was submitted that the private respondent was awarded the degree of Bachelor of Commerce from Periyar University, Tamil Nadu which is a recognized University and constituted under the statute. The degree granted by the University via Distance Education Mode are duly recognized. It was averred that the reliance placed on the reply filed in **CWP-19045 of 2014** titled “***Dharminder Paul versus State of Punjab and others***” was misplaced since reference was made to the UGC guidelines dated 23.08.2013 wherein the territorial jurisdiction of a State University had been confined to the boundaries of the State wherein it is situated. It is averred that the Degree of Bachelor of Commerce had been granted to him by the Periyar University in the year 2012 i.e. prior in time to the issuance of guidelines by the UGC dated 23.08.2013. Hence, at the time when respondent No.5 obtained his degree, the above UGC guidelines were not in force. The above guidelines/instructions issued by the UGC cannot be enforced retrospectively to invalidate the degrees awarded to the students prior to issuance of the said guidelines.

8.3 It was also averred that the State Government has not issued any final instructions or guidelines till date regarding the issue of recognition granted to Universities and to the degrees offered by them through Distance Education Mode. A writ petition raising the above issue and bearing CWP-21991 of 2014 was ordered to be listed after decision in LPA No. 1215 of 2015 which stands admitted. As such, there is no adjudication on the issue that the degrees obtained through Distance Education Mode are not to be recognized by the State Government. In the absence of any final decision, the degree awarded to the petitioner cannot be held to be invalid.

8.4 It is further averred that the petitioner himself has obtained his degree from Kamraj University, Madurai and continues to be employed by the Government on contractual basis which shows that the degrees from outside the State are being accepted. The petitioner thus has no grievance or occasion to challenge validity of degree awarded by a University outside Punjab. It is averred that the present petition is malicious and that the petitioner was never an applicant to the post of Deputy Superintendent of Police and has also not sought any such appointment. He is thus not a party interested or party aggrieved and hence has no locus to raise a challenge to the appointment of the respondent No.5.

8.5 It is also averred that the authenticity of the degree of the respondent No.5 was never under challenge whereas the degree of the petitioner was under scanner on account of dispute qua recognition of the Kamraj University, Madurai. The State Government constituted a Committee under the Chairmanship of the Chief Secretary, Govt. of Punjab to deliberate on the issues and that even though the case of the respondent is not similar to that of the petitioner, however, as and when the Committee takes up the issue of recognition of the universities and degrees, the case of the respondent No.5 would also be scrutinized. However, till then, there can be no question on the legality and validity of the degree possessed by the respondent No.5.

8.6 Even though, the above said statement had been filed in the year 2019, however, no rejoinder/replication controverting the averments raised therein has been filed. Hence, the factual aspects raised by respondent have remained uncontroverted.

9. Learned counsel appearing on behalf of the petitioners, while reiterating their submissions noticed above have argued that the appointment of the respondent as Deputy Superintendent of Police in Punjab Police is clearly an illegality and in gross violation of the service rules. It was vehemently argued that as per the Punjab Service Rules, 1959 there is procedure for direct appointment which is by means other than by means of promotion from Inspector. Appointments are to be made to the service by the Government as per mode of recruitment prescribed thereunder as per which recommendations are to be made by the Punjab Public Service Commission. The procedure of recruitment set out in the Punjab Police Services Rules, 1959 and relied upon by the counsel for the petitioners read thus:-

*“6. **Method of recruitment** (1) Recruitment to the Service shall be made.*

1. Eighty per cent by promotion from the rank of Inspector, and twenty per cent by direct appointment:

Provided that only those inspectors will be eligible for promotion who-

(a) in the case of Inspectors (both promoted from subordinate rank and directly recruited) have got six years continuous service: (officiating as well as substantive) in the rank of Inspector;and

(b) in case they are Prosecuting Inspectors, have got eight years' continuous service (both officiating and substantive) in the rank of Prosecuting Inspector.

(2) Appointments by promotion shall be made by the Government from Inspectors brought on list 'G' which will be a list of officers considered fit for promotion to the rank of

Deputy Superintendent of police, prepared by Government in consultation with the Commission. The names in this list prepared at one time shall be arranged according to their inter se seniority. This list will be maintained in two parts; Part-I (for officers from the Executive line) and Part-II (for officers from the prosecution line).

3. Direct appointment to the Service shall be made on the result of a competitive examination conducted by the commission. The syllabus and rules relating to examination will be framed by the Government in consultation with Commission. The examination will include a viva voce. Only those candidates will be interviewed for the viva voce test who obtain not less than the minimum qualifying marks fixed by the Commission on the written examination. The Inspector General of Police, Punjab, will be present at the interview and will be entitled to put questions to the candidates and to express his views to the Commission. A candidate's position shall be determined by adding the marks obtained by him in the written examination and viva voce test.

Provided that other things being equal, preference will be given to a candidate who has worked for the cause of national independence or has rendered some outstanding social or public service.

Substituted by 3 (i) " Direct appointment to the service shall be made on the result of a competitive examination conducted by the Commission. A preliminary competitive examination for the post of Deputy Superintendent of Police shall be conducted by the Commission, the regulations and total marks of which have been specified in Appendix C to these rules. The candidates who qualify the said preliminary competitive examination, shall be allowed to compete in the main competitive examination. Candidates equal to thirteen times of the total numbers of vacancies shall be considered to have qualified for the main

competitive examination in accordance with merit of the preliminary competitive examination. The regulations of main competitive examination have been specified in Appendix 'D' to these rules.

(ii) The candidates who qualify the main competitive examination and obtain not less than the minimum qualifying marks fixed by the Commission shall be put to physical tests and only those candidates who qualify the physical test shall be allowed to compete in the viva-voce test which shall be conducted by the commission.

(iii) An officer of the rank of Inspector General of Police shall be present in the viva-voce and shall be entitled to put questions to the candidates and to express his views to the Commission. A candidate's position shall be determined by adding the marks obtained by him in the written examination and in viva-voce test" Amended vide Government of Punjab, Department of Home Affairs and Justice (Home-I Branch) notification No. G.S.R. 63/Const./Art.309/Amd./99 Dated 5th August, 1999.

7. Qualifications.- *(I) No person shall be recruited to the service by direct appointment unless*

(i) he is not less than twenty one years and not more than twenty five years of age on the first of February of the year in which appointment is to be made;.

Substituted by 7 (i) " he is not less than twenty one years and no more than twenty eight years of age on the first day of January of the year in which the vacancies are advertised by the Commission" Amended vide Government of Punjab, Department of Home Affairs and Justice (Home-I Branch) notification No. G.S.R. 63/Const./Art. 309/Amd./99 Dated 5th August, 1999.

(ii) he produces a certificate of physical fitness as prescribed by rule 3.1 of the Punjab Civil Services Rules, Volume I, Part I.

(iii) he has a minimum height of 5'- 7" and normal chest measurement of 33" with expansion of 1-1/2.

Substituted by 7 (iii-a) " In the case of female candidate, the height shall be 5'-3" and (iii) in the first proviso, for the word "thirty years", the word " relax able by the five years"shall be substituted" Amended vide Government of Punjab, Department of Home Affairs and Justice (Home-I Branch) notification No. G.S.R. 63/Const./Art. 309/Amd./99 Dated 5th August, 1999.

(iv) he is a graduate of a recognized University and possesses knowledge of both Hindi and Punjabi up to the Matriculation or its equivalent standard;

Provided that the upper age limit prescribed in sub-clause (i) shall be thirty years in the case of Scheduled Castes, Scheduled Tribes and Backward Classes.

Provided further that the physical standard prescribed in sub-clause (ii) shall not be relaxed without special sanction of the Government.

(2) No male candidate who has more than one wife living and no female candidate who has married a person having already a wife living shall be eligible for appointment to the service:

Provided that this disqualification shall not be applicable in cases where it was incurred before the 8th September, 1954, and the recruitment is to made by promotion.

(3) (i) The Government shall notify to the Commission the number of vacancies to be filled by direct appointment during the year, and the commission will proceed to given publicity to the proposed appointments and invite applications. If applications are invited before the results of the University Examinations have been notified; candidates appearing, or who have appeared in the Bachelor of Arts or equivalent examination, will be allowed to submit provision applications.

(ii) The applications received will be referred for scrutiny to the Inspector General of Police, Punjab, who may make such enquiries as he may think fit and shall thereafter return all the application with his remarks, if any, to the Commission.

(iii) The Commission will scrutinize all applications received and admit to the examination mentioned in sub-rule (3) of rule 6 all those candidates who are found to be eligible in accordance, with those rules.

(iv) Success in the examination will confer no right on any candidate to appointment, unless Government is satisfied after such enquiry as be considered necessary, that the candidate is suitable in all respects for appointment to the Service.

Xxx xxx xxx xxx xxx xxx xxx xxx xxx

Power to relax

14. General power to relax rules.- Where the Government is of the opinion that it is necessary of expedient so to do, it may, by order, for reasons to be recoded in writing, relaxation" of the provisions of these rules with respect to any class of category of persons.

10. By referring to the aforesaid provisions, it is contended that the method of recruitment as contained in the Rules of 1959 provides that the Direct appointment to the service has to be made on the outcome of competitive examination conducted by the Commission which also includes Viva Voice. A minimum qualifying marks is required to be obtained by a Candidate before he is short listed for the viva-voice. It is further submitted that the maximum age limit prescribed in the Rules of 1959 is 28 years as on 1st day of January of the year in which the vacancies are advertised by the Commission. He further argues that the relaxation under Rule 14 of 1959 can only be made with respect to any class or category of persons and that

the private respondent No.5 is not a class or category of persons. No such power of relaxation under Rule 14 of 1959 can be exercised in respect of an individual who is not a class. Thus, the relaxation as extended by the Council of Ministers was not in consonance with the Rules of 1959 and hence, suffered from an illegality. It is thus further submitted that the respondent No.5 belongs to an influential political family and has good financial capacity and social status. They are not under financial duress and the Department of Finance also raised an objection to the appointment of respondent No.5 directly to the post of Deputy Superintendent of Police and by specifically pointing out that a compassionate appointment cannot be made to post other than Group 'C' or Group 'D'. It was also argued that the respondent No.5 does not fall within the definition of a dependent of late Chief Minister Beant Singh as defined under the policies. He is a grandson and hence not covered under any of the rehabilitation/resettlement policies extended to terrorism affected families. He also referred to the document (Annexure P-4) to contend that the respondent No.5 is stated to have undergone his pilot training course from US which shows that the family was financially well off. Reliance was also placed on the judgment in the matter of "***Union of India (UOI) and another versus Shashank Goswami and another***" reported as ***AIR 2012 SC 2294*** to contend that compassionate appointment cannot be claimed as a matter of right since it is not a source of employment and can be resorted to only in terms of scheme. The relevant extract of the judgment above relied by the petitioner reads thus:-

"9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate

ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, Regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

11. Reference was also made to the judgment of the Hon’ble Supreme Court in the matter of **“State of Gujarat and others versus Arvind Kumar T.Tiwari and another”** reported as **AIR 2012 SC 3281** to contend that relaxation of eligibility criteria is not within the power of the Court and claim of compassionate appointment has to be considered strictly in accordance with the rules. The paragraphs relied upon by the counsel for the petitioner are extracted as under:

“8. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of Madhya Pradesh and Another Vs. Dharam Bir,,

this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under:

The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.

9. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of 'fair play', 'good conscious' and 'equity'. (Vide: State of Jammu & Kashmir Vs. Shiv Ram Sharma and Others, and Praveen Singh v. State of Punjab and Ors. (2000) 8 SCC 436).

10. In State of Orissa and Another Vs. Mamata Mohanty, this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law.”

12. Reference was also made to the judgment of the Hon’ble Supreme Court in the matter of **“Rajesh Awasthi versus Nand Lal Jaiswal and others”** reported as **AIR 2013 SC 78**. It is contended that a writ of Quo Warranto would be competent when an appointment is made contrary to the statutory provisions. The relevant extract of the said judgment reads thus:

“16. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. this Court in The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another, held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy (supra), this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bans Lal (supra) wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

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26. Before I proceed to deal with the justifiability of the order passed by the High Court, it is thought apposite to refer to certain authorities that fundamentally deal with the concept of writ of quo warranto. In *B.R. Kapur v. State of Tamil Nadu and Anr.* AIR 2001 SC 3435, in the concurring opinion Brijesh Kumar, J., while dealing with the concept of writ of quo warranto, has referred to a passage from *Words and Phrases Permanent Edition*, Volume 35, at page 647, which is reproduced below:

The writ of "quo warranto" is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or Corpn. or persons purporting to act as such from usurping a power which they do not have. State ex inf. Mc. Kittrick v. Murphy 148 SW 2d 527, 529, 530, 347 Mo. 484.

(Emphasis supplied)

Information in nature of "quo warranto" does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State Ex. Inf. Walsh v. Thactcher, 102 SW 2d 937, 938, 340 Mo. 865.

(Emphasis supplied)

13. Reference was also made to the judgment of the Hon'ble Supreme Court in the matter "***State of Punjab versus Salil Sabhlok and Others***" reported as ***(2013) 5 SCC 1*** to contend that where the appointment

challenged on the grounds of the same being influenced by politics and extraneous considerations, it cannot be held that such writ petition is just a service matter in which only an aggrieved party has the locus to initiate a legal action in a Court of Law. The relevant extract of the judgement is extracted as under:

Conclusion:

142. The appointment of the Chairperson of the Punjab Public Service Commission is an appointment to a constitutional position and is not a "service matter". A PIL challenging such an appointment is, therefore, maintainable both for the issuance of a writ of quo warranto and for a writ of declaration, as the case may be.

143. In a case for the issuance of a writ of declaration, exercise of the power of judicial review is presently limited to examining the deliberative process for the appointment not meeting the constitutional, functional and institutional requirements of the institution whose integrity and commitment needs to be maintained or the appointment for these reasons not being in public interest.

144. The circumstances of this case leave no room for doubt that the notification dated 7th July 2011 appointing Mr. Harish Rai Dhanda was deservedly quashed by the High Court since there was no deliberative process worth the name in making the appointment and also since the constitutional, functional and institutional requirements of the Punjab Public Service Commission were not met.

145. In the view that I have taken, there is a need for a word of caution to the High Courts. There is a likelihood of comparable challenges being made by trigger-happy

litigants to appointments made to constitutional positions where no eligibility criterion or procedure has been laid down. The High Courts will do well to be extremely circumspect in even entertaining such petitions. It is necessary to keep in mind that sufficient elbow room must be given to the Executive to make constitutional appointments as long as the constitutional, functional and institutional requirements are met and the appointments are in conformity with the indicators given by this Court from time to time.

146. Given the experience in the making of such appointments, there is no doubt that until the State Legislature enacts an appropriate law, the State of Punjab must step in and take urgent steps to frame a memorandum of procedure and administrative guidelines for the selection and appointment of the Chairperson and members of the Punjab Public Service Commission, so that the possibility of arbitrary appointments is eliminated.”

14. While controverting the submissions advanced by the counsel for the petitioner, learned Counsel appearing on behalf of the State of Punjab contends that the foundation of the objections raised by the petitioner is that the respondent No.5 was not in need of a compassionate appointment and that he did not fulfill the requirements of the scheme for being eligible for compassionate appointment and that compassionate appointments could only be made to post in Group ‘C’ or Group ‘D’ in light of the judgment of Hon’ble Supreme Court, are not be applicable to the facts of the present case since it not a case of compassionate appointment and is rather a case of special recruitment. He further argues that the appointment of respondent No.5 had been made by Council of Ministers as per procedure known to law

after taking the post out of the purview of the Punjab Public Service Commission. Accordingly, the rules of recruitment as applied to a recruitment made by the Punjab Public Service Commission cannot be relied upon to examine the legality of appointment of the respondent No.5. He further submits that Council of Ministers had exercised its powers and relaxed the age criteria. It is also averred that the respondent No.5 fulfilled all other eligibility conditions and that a decision to recruit respondent No.5 as Deputy Superintendent of Police had been taken by the Council of Ministers upon being mooted by the Director General of Police and after taking into consideration the previous instances and by following due process of law.

15. Senior Counsel appearing on behalf of respondent No.5 has reiterated the arguments noticed above and has submitted in addition that the Rules of Business of the Govt. of Punjab as notified by the Department of General Administration on 25.02.1992 empower the Council of Ministers to grant relaxation of the Rules. Such power was exercised by the Council of Ministers and there has been no concealment of an information or error in exercise thereof. He further submits that the post in question had been taken out from the purview of the Punjab Public Service Commission and its prior approval had also been obtained before taking the post out of the purview. The Council of Ministers thereafter took a conscious decision considering the sacrifice made by Sardar Beant Singh, former Chief Minister and grandfather of the respondent No.5. He argues that the procedure as provided under law has been duly followed and the policy relating to compassionate appointment cannot be read into special recruitment as it would amount to assessing the appointment under a policy that did not

govern such appointment. He also argued that the power of Judicial review of the High Court does not extent to substituting its opinion for the opinion of the Council of Ministers and if the procedure laid in law has been followed, a decision taken by the competent authority cannot be held to be bad merely because the constitutional Court does not agree to the priorities of the executive government. He submits that the power of judicial review is limited only to the extent of procedural review and not a substantive review into sufficiency of the reasons that may have weighed with the competent authority while taking a decision. He submits that the Govt. of Punjab had been making a special recruitments in the post as well in the same manner and that such appointments have been upheld by the Hon'ble Supreme Court. It is contended that an appointment other than by means of promotion and/or transfer/deputation has to be construed as a direct appointment. He places reliance on the judgment of Hon'ble Supreme Court in the matter of ***“Arun Kumar and others versus Union of India and others”*** reported as ***(2007) 5 SCC 580***. The aforesaid case relates to absorption of one Ms. Amrit Brar, an Assistant Commandant in CRPF as Deputy Superintendent of Police in Punjab Police alongwith all benefits including pay and seniority w.e.f. 09.06.1989 when she was appointed as Assistant Commandant in CRPF. The appellants who were Officers of the Punjab Police Service raised a challenge to her absorption and grant of benefits including pay and seniority on the ground that the same were contrary to the provision of the Punjab Police Rules, 1959. The writ petition filed by the petitioner was dismissed by the High Court. The matter was thereafter challenged before the Hon'ble Supreme Court. The relevant extract of the said judgment reads thus:

“7. At the outset, we may state that the country owes its gratitude to the brave officer, Shri Avinder Singh Brar, IPS, who was killed at the hands of the terrorists. The above facts show that Ms Amrit Brar was appointed rightly on compassionate grounds as an Assistant Commandant in CRPF on 9-6-1989. The State Government was right in initially appointing her as an Assistant Commandant in CRPF, since in 1989 terrorism was at its peak in the State and that her posting as an Assistant Commandant was relatively safer than her posting in Punjab Police. She was the only child of her old parents. She had to be, therefore, protected. However, that could not make her appointment a compassionate appointment. It was an exceptional appointment. There cannot be a second opinion on this count. After the situation improved, she was taken on deputation in Punjab Police. This was in 1993. We do not find any infirmity in the action of the State Government under the above circumstances in appointing Ms Amrit Brar as a deputationist even in Punjab Police Service. We make it clear that the Punjab Police Service Rules provide for two sources of recruitment. One is by direct recruitment, another is by way of promotion. Although, the said 1959 Rules do not provide for such appointment as a deputationist in the normal cadre, the Government, in exceptional cases, can appoint deputationists in Punjab Police Service. This is one such case. We do not find any infirmity in the action of the State Government in appointing Ms Amrit Brar as a deputationist in Punjab Police Service. She is entitled to those benefits under the above circumstances. Further, as stated above, Ms Amrit Brar stood absorbed in Punjab Police Service as Deputy Superintendent of Police on 11- 9-1998. Even her absorption has been made on giving relaxation, as

indicated above. This was by way of one-time exercise in an exceptional case. The only dispute, therefore, is whether Ms Amrit Brar was entitled to one more benefit of seniority with effect from 9-6-1989.”

16. The Hon’ble Supreme Court upheld the appointment of Ms. Amrit Brar, as an exceptional appointment and the issue was allowed only to the extent of the benefit of seniority. He also made a reference to the judgment of Division of this Court in the matter of **“Mohinder Singh Chahal and others versus Union of India and others”** reported as 2006 (6) SLR 683. The relevant extract of the said judgment is extracted as under:

8. The pointed issues, on the basis of which the absorption of respondent No. 4 into the State Police Service is sought to be challenged, is based on the 1959 Rules. Leamed counsel for the petitioners has invited our attention to Rule 2 (1) thereof, wherein the term "service" has been defined, and to Rule 2(b), wherein the term "direct appointment" has been defined. Rules 2(f) and (b) are, being extracted hereunder, for facility of reference. :-

"2. Definitions. In these rules, unless there is anything repugnant in the subject or context,-

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(b) "direct appointment" means an appointment made otherwise than by the promotion of an Inspector,

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(f) "Service" means the Punjab Police Service.

Our attention has also been invited to Rule 6 of the 1959 Rules, which lays down the sources of recruitment, as

also the ratio of appointments from the different sources of recruitment. Rule 6 is being reproduced hereunder :-

"6. Method of recruitment.- (1) Recruitment to the Service shall be made-

(i) Eighty per cent by promotion from the rank of Inspector and twenty per cent by direct appointment:

Provided that only those Inspectors will be eligible for promotion who-

(a) in the case of Inspectors (both promoted from subordinate rank and directly recruited) have got six years continuous service (officiating as well as substantive) in the rank of Inspector; and

(b) in case they are Prosecuting Inspectors, have got eight years' continuous service (both officiating and substantive) in the rank of Prosecuting Inspector.

(2) Appointments by promotion shall be made by the Government from Inspectors brought on list 'G' which will be a list of officers considered fit for promotion to the rank of Deputy Superintendent of Police, prepared by Government in consultation with the Commission. The names in this list prepared at one time shall be arranged according to their inter se seniority. This list will be maintained in two parts; Part; I (for officers from the Executive line) and Part II (for officers from the Prosecution line).

(3) Direct appointment to the Service shall be made on the result of a competitive examination conducted by the Commission. The syllabus and rules relating to the examination will be framed by the Government in consultation with the Commission. The examination will include a viva voce test. Only those candidates will be

interviewed for the viva voce test who obtain not less than the minimum qualifying marks fixed by the Commission in the written examination. The Inspector-General of Police, Punjab will be present at the interview and will be entitled to put questions to the candidate and to express his views to the Commission. A candidate's position shall be determined by adding the marks obtained by him in the written examination and in viva voce test.

Provided that other things being equal, preference will be given to a candidate who had worked for the cause of national independence or has rendered some outstanding social or public service."

Collectively, on the basis of Rules 2(b) and (f) and Rule 6 of the 1959 Rules, it is the vehement contention of learned counsel for the petitioners, that the Rules envisage no other source of appointment, besides appointment by way of promotion and byway of direct recruitment. It is, therefore, the contention of learned counsel for the petitioners, that appointment by way of transfer or by way of absorption of respondent No. 4 into the State Police Service, against the rank of Deputy Superintendent of Police, is not permissible under the 1959 Rules.

9. We have perused Rule 6 (i) of the 1959 Rules, emphatically brought to our notice. It is, however, not possible for us to accept the first contention of learned counsel for the petitioner. Although, Rule 6 (1) envisages appointment to 80% of the cadre posts of Deputy Superintendent of Police by way of promotion from the rank of Inspectors, and to the remaining 20% of the cadre posts by way of direct recruitment, and no other source of recruitment has been prescribed, yet the issue canvassed by the learned counsel for the petitioners can easily be

resolved on the basis of Rule 2 (b) of the 1959 Rules, wherein direct appointment has been defined to mean "an appointment made otherwise than by promotion of any Inspector". Had the rule making authority decided to limit the ambit and scope of appointment by way of direct recruitment to its normal traditional meaning, it would not have extended the meaning of the term "direct appointment" in the definition clause through Rule 2(b) of the 1959 Rules. The instant submission of the learned counsel for the petitioners misses the real issue. The appointment of respondent No. 4 has been made by the relaxation of the 1959 Rules. The effort on the part of the petitioners to trace the source of recruitment of respondeat. No. 4 to a specific rule under the 1959 Rules is, therefore, clearly misdirected. Rule 14 of the 1959 Rules authorises the State Government to "....relax any of the provisions of these rules.....". The State Government admittedly appointed respondent No. 4 to the State Police Service, by exercising its jurisdiction under Rule 14 of the 1969 Rules, we therefore, find no merit in the instant submission."

17. A reference was also made to the constitutional Bench judgment in the matter of ***"Jasbhai Motibhai Desai versus Roshan Kumar Haji Bashir Ahmed and others"*** reported as (1976) 1 SCC 671 vide dealing with the scope of Writ of Certiorari and the necessity of person being an "aggrieved person". It was thus argued that locus standi has to apply for the Writ of Certiorari and that persons aggrieved have to be distinguished from a meddlesome interloper and that any such attempt ought not to be promoted by the Court. The relevant extract of the judgment reads thus:

"34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke

the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter. (see State of Orissa v. Madan Gopal Rungta"; Calcutta Gas Co. v. State of W. B"; Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa"; Gadde Venkateswara Rao v. Government of A. P.; State of Orissa v. Rajasaheb Chandanmall"; Dr. Satyanarayana Sinha v. M/s. S. Lal & Co.).

35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

36. In the United States of America, also, the law on the point is substantially the same.

No matter how seriously infringement of the Constitution may be called into question, said Justice Frankfurter in Coleman v. Miller' this is not the tribunal for its challenge except by those who have some specialist interest of their own to vindicate apart from a political concern which belongs to a To have a "standing to sue",

which means locus standi to ask for relief in a court independently of a statutory remedy, the plaintiff must show that he is injured, that is, subjected to or threatened with a legal wrong. Courts can intervene only where legal rights are invaded." "Legal wrong requires a judicially enforceable right and the touchstone to judiciability is injury to a legally protected right. A nominal or a highly speculative adverse affect on the interest or right of a person has been held to be insufficient to give him the "standing to sue" for judicial review of administrative action. Again the "adverse affect" requisite for "standing to sue" must be an "illegal effect". Thus, in the undermentioned cases, it was held that injury resulting from lawful competition not being a legal wrong, cannot furnish a "standing to sue" for judicial relief."

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. *The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".*

45. *Having seen that the appellant has no standing to complain of injury, actual or potential, to any statutory right or interest, we pass on to consider whether any of his rights or interests, recognised by the general law has been infringed as a result of the grant of no-objection certificate to the respondents? Here, again, the answer must be in the negative."*

18. While placing reliance on the aforesaid extract, it is contended that the petitioners in any of the writ petitions have not been able to reflect infringement of any legal right or suffering from any legal wrong or injury. In the absence of any legal interest having been effected prejudicially by the act or omission of the authority, the petitioners do not fall in the definition of persons aggrieved. He submits that facts of the present case clearly shows that the petitioner masquerades as crusader of justice and pretends to act in public interest by highlighting the alleged excesses and raising issues pertaining to fake encounter which have no concern with the issue of appointment of private respondent.

19. He further referred to the judgment in the matter of “**Sandeep Kumar Sharma versus State of Punjab and others**” reported as **(1997) 10 SCC 298** to contend that the provisions permitting relaxation have to be given a pragmatic construction so as to achieve effective implementation of the policy of the Government. When the consideration was to give relaxation as a recognition to scarifies of the people who have suffered during terrorism but still faced terrorism boldly, relaxation for the said reason is permissible. It was further argued that even though the statutory provision permits relaxation for any class or category of persons, however, even a single person can be covered by such expression. He submits that even in the aforesaid case, the relaxation of physical standards was granted in an individual case and that the same was upheld by the Hon’ble Supreme Court. The relevant extract of the aforesaid judgment read thus:

7. Before we proceed to consider the merits of the case, we may point out that none of the parties before us disputed about the worthiness in formulating a policy by the Government of Punjab for showing recognition to the services rendered by those police personnel who bravely faced the dastardly acts unleashed by the terrorists. If so, there is nothing improper in giving special consideration to the kith and kin of such policemen and those who suffered on account of terrorists' activities. We may also point out that before the High Court neither the Government nor the third respondent disputed the factual position that Satish Kumar Sharma, (appellant's brother) had rendered efficient and useful service as a police officer in tackling terrorists' menace. (Of course, a faint attempt was made by the third respondent before us to dispute that fact, but as he did not raise any dispute on that aspect before the High Court, we are not inclined to countenance the said contention now.)

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9. Rule 14 contains the general power of Government to relax the rules. It reads thus:

"14. General power to relax rules-Where the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons."

10. It is clear that while Rule 14 permits relaxation for a class or a category of persons, Rule 7 preserves the Government's power to relax the physical standard in individual cases. In the present case Rule 7 is the appropriate rule and it was not necessary to embark on Rule 14 at all. But we have noticed that the Deputy Secretary of Home (Government of Punjab) who had sworn to the counter-affidavit before the High Court for the State Government has sought to justify the relaxation made by the Government by confining to Rule 14 of the Service Rules alone. Why did he adopt such a stand when there is a specific rule which empowered the Government to give relaxation of the physical standard, is something we cannot understand or appreciate. Why should the deponent have bypassed Rule 7 which is so explicit in the context? Anyway since the appellant has referred to Rule 7 as the relevant rule we are not disposed to consider the amplitude of Rule 14 in the case. C

11. The High Court seems to have taken the view that the only beneficiary of the aforesaid relaxation is the appellant and hence considered it an act of favouritism shown to him. According to the learned Judges "the so-called policy was formulated after the result of the written test was announced with the sole object of securing selection and appointment of the aforesaid candidate because without clearing the standard of physical fitness he could not have been interviewed by the

Commission. This, in our opinion, is nothing but an act of sheer favouritism".

12. The appellant cannot be blamed for being the only candidate available at present seeking relaxation of physical standards. The same benefit could also have enured to anyone else situated in the same position as the appellant had there been any. Policy wise it is not possible to think that the appellant would have been the only kith and kin of those who suffered on account of the activities of the terrorists in Punjab or those who faced terrorism bravely. Perhaps, in this particular selection the appellant happened to be the only beneficiary of the policy. Nor can we find any mala fides merely because the Government evolved the policy on the occasion when the appellant approached for relaxation of the standard. The occasion would have provided to the Government an opportunity to recapitulate the events and thus to remind themselves of the plight of those families which suffered traumatic experiences when their kith and kin were relentlessly involved in continued operations fighting the terrorists who were possessed with highly lethal weapons and using hideouts to strike blitz against innocent people as well as the police force intermittently. A Government may have to act on some occasion for chalking out a particular policy. If any particular occasion has alerted the Government to the necessity for taking a policy decision it is hardly sufficient to attribute mala fide or favouritism to the Government."

20. Reliance was also placed on the constitutional Bench of the judgment of Hon'ble Supreme Court in the matter of **"Rai Sahib Ram Jawaya Kapur & others versus The State of Punjab"** reported as **AIR 1955 SC 549** to contend that Article 162 of the Constitution of India does not contain any definition as to what the executive function is and what activities would legitimately come within its scope. The language of Article

162 indicates that the power of the State executive extends to matter upon which the State Legislature is competent to legislate and are not confined only to matters upon which legislation has been passed already. The executive powers connote the residue of governmental functions that remain after the individual legislative functions are taken away. The relevant extract of the said judgment reads thus:

“7. Article 73 of the Constitution relates to the executive powers of the Union of India, while the corresponding provision in regard to the executive powers of a State is concerned in Article 162: The provision of these articles are analogous to those of sections 8 and 45 (2) respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following the same analogy as it provided in regard to the distribution of legislative powers between them Article 162. with which we are directly concerned in this case, lays down

“Subject to the provisions of this Constitution the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws. the executive power of the State shall be subject to, and limited by the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Thus under this article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the

Concurrent List except as provided in the Constitution itself or in any law passed by the Parliament. Similarly. Article 73 provides that the executive powers of the Union shall extend to matters with respect to which the Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engranted on clause (1) further lays down that although with regard to the matter in the concurrent List the executive authority shall be ordinarily left to the State it would be open to the Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also.

Neither of these articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the union on the one hand and the States on the other. They do not mean, as Mr. Pathak seem to suggest, that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them.

On the other hand, the language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the Constitution. These provisions of the Constitution therefore do not lend any support to Mr. Pathak's contention.

12. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away.

The Indian Constitution has not indeed recognised the doctrine of separation of powers in the absolute agility but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature:

It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.

13. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission

into law though the condition precedent to the exercise of this responsibility is its retaining confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State

14. In India, as in England, the executive has to act subject to the control of the legislature but in what way is this control excised by the legislature? Under Article 53 (1) of our Constitution, the executive power of the Union is vested in the President but under Article 75 there is to be a council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet.

The same provisions obtain in regard to the Government of States; the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the executive in the State but it is virtually the council of Ministers in each State that carries on the executive Government, in the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part." The Cabinet enjoying as it does a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions and as the Ministers constituting the Cabinet on presumably agreed on fundamentals and act on the

principle of collective responsibility, the most important questions of policy are all formulated by them.”

21. It was contended that the action of the Council of Ministers is within the confines of its powers and once the executive followed the procedure provided in law, the High Court would not, in exercise of its power of judicial review substitutes the decision of the State Government.

22. While refuting the challenge raised in the second writ petition, he has reiterated the submissions noticed and contended that the validity of the degree awarded to the respondent No.5 is not in dispute and that the UGC guidelines of 2013 cannot be made applicable retrospectively to the degree which was issued in the year 2012. Hence, the legality and validity of the aforesaid degree cannot be tested on the parameters of the guidelines issued by the UGC later in point of time. He further submits that the respondent-State of Punjab had constituted a Committee to look into the validity of the degrees granted by such Universities through Distance Education Mode and no recommendation has been made by the Committee to disregard such degrees. He further submits that the matter is pending before the High Court as regards to the legality and validity of the degrees acquired through Distance Education Mode from such Universities for adjudication before this Court and that the petitioner himself has secured appointments on the basis of degrees obtained by him through Distance Education Mode. Hence, he can have no grievance against the award of degree to the petitioner and/or its legality and validity. He further avers that the Government of Punjab has nowhere disputed or denied the legality and validity of the degree of the petitioner and therefore there can be no presumption against the academic qualification held by the petitioner.

23. It was further argued that even though the petitioner contends that degrees from outside the State were not being recognized, however, he failed to point out any similarities. Besides, in the absence of any decision to establish that degree of the respondent was invalid, non-acceptance of degree of any other person cannot be held against the private respondent.

24. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the instant petition.

25. The undisputed facts that emerge from the sequence noticed above are that the grand-father of the private respondent, who was the Chief Minister of the State of Punjab, was killed in act of terrorism in the year 1995. The Director General of Police, Punjab recommended the case of the Private Respondent for being appointed as Deputy Superintendent of Police, as a 'Special Case', in tribute to the efforts undertaken by the former Chief Minister to bring back normalcy in the State of Punjab, even at the cost of giving up his life for the said cause. The aforesaid recommendation was made as a 'Special Case' and after noticing that it was not under the instructions applicable to the compassionate appointments. Hence, the case was processed as a 'Special Case' by granting relaxation of Rules 6 & 7 of the Punjab Police Service Rules, 1959. One post of Deputy Superintendent of Police of direct recruitment was thus recommended to be taken out of the purview of the Punjab Public Service Commission. The decision in this regard was required to be taken by the Council of Ministers. It is also not disputed that the case of the private respondent was not an isolated instance of such exceptional appointment and that considering the circumstances in the State of Punjab, numerous other persons have also been offered

appointment in a similar manner. The above proposal of the Director General of Police was accepted by the Council of Ministers to treat the case of private respondent as a 'special case' by extending relaxation of Rules 6 & 7 of the Punjab Police Service Rules, 1959 against the upper age limit and by taking the said post out of the purview of the Punjab Public Service Commission. The matter was thereafter referred to the Punjab Public Service Commission for taking the post out of its purview on 22.05.2017 which approved the proposal vide communication dated 24.05.2017 and conveying its decision to allow Government to take one post of DSP out of its purview as a one-time measure. It was also duly noticed that 29 posts of the Deputy Superintendent of Police were lying vacant at the time when recommendation qua the private respondent was made. The memorandum alongwith the communications/permissions from the Punjab Public Service Commission was thereafter circulated with the Council of Ministers for deliberation and to take decision on the issue of granting appointment to the private respondent by relaxation of Rules of 1959.

26. The objections raised by the Finance Department raised an objection that the compassionate appointment was being made in violation of the judgment of the Hon'ble Supreme Court and that the private respondent was not next of kin of late Ex-Chief Minister Beant Singh was also considered by Council of Ministers and it is noticed that the proposal in question was not processed as a case of compassionate appointment, hence, the policy parameters governing compassionate appointment were not applicable. Finally, the Council of Ministers granted approval to afford relaxation from Rules 6 & 7 of the Punjab Police Service Rules, 1959 in its meeting held on 30.05.2017 and a letter of appointment was thereafter issued

on 17.06.2017. The private respondent thereafter submitted his joining report and has been working with the Punjab Police since then.

27. The primary question which thus arises for consideration is in relation to the executive powers of the State and the scope of judicial review when such power is exercised.

28. Article 162 of the Constitution is extracted as under:-

Article 162: Extent of executive power of State:-

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof.

29. The Constitution of India does not provide any definition as to what an executive function is and what activities would legitimately fall within its scope and ambit. The powers of executive are hence to the extent of the power of legislature to make laws. Exercise of the power under Article 162 is however not dependent upon the existence of a legislation by the State on the subject. The said power can be exercised even in the event where the legislature has the power but may or may not have legislated any Act or Rule in regard thereto. There is thus no impediment on the power of the executive to act merely on an absence of legislation on an issue. It cannot imply that the powers of the executive shall be confined for want of

legislation. However, when there is a statutory Rule or an Act on the subject matter, the executive must ordinarily abide by that statute and it cannot, in exercise of its executive powers under Article 162 of the Constitution of India ignore or act contrary to such Rule or Act. Any such transgression may be liable to be set aside by the competent Court as ultra vires. The executive power is thus co-extensive with the legislative powers of the State Legislature and confined by the proviso to the Article itself. So long as the State does not go against the provisions of the Constitution or of any law, the width and amplitude of its executive powers cannot be circumscribed.

30. It had been held by the Hon'ble Supreme Court in the matter of ***"Swaran Lata versus Union of India and others reported as 1979 (3) SCC 165*** that the executive is not prevented from making appointments under Article 162 even though no rules may have been framed under Article 309. The relevant paragraph reads as under:

*"43. It is not obligatory under the proviso to Article 309 to make rules of recruitment etc. before a service can be constituted, or a post created or filled. The State Government has executive power in relation to all matters in respect to which the Legislature of the State has power to make laws. It follows from this that the State Government will have executive powers in respect of List II, Entry 41 of the Seventh Schedule: 'State Public Services': **B. N. Nagarajan v. State of Mysore.** There is nothing in the terms of Article 309 of the Constitution which abridges the power of the Executive to act under Article 162 of the Constitution without a law. The same view has been taken by this Court in **T. Cajee v. U. Jormanik Siem and Sant Ram Sharma v. State of Rajasthan**". The same principle underlies Article 73 of the Constitution in relation to the executive power of the Union."*

(Emphasis supplied)

31. Further, the Hon'ble Supreme Court held in the matter of "**Dr. Ambesh Kumar versus Principal LLRM, Medical College, Meerut and others reported as AIR 1987 SC 400**" that the State Government is competent in exercise of its power under Article 162 to pass an order relating to the eligibility and qualification for the candidates to be considered on merits for admission to the post created for medical colleges in the State provided and does not encroach or infringe upon the powers of the Central Government as well as in the parliament. The relevant paragraph of the said judgment reads as under:

"19. The State Government can in exercise of its executive power make an order relating to matters referred to in entry 25 of the Concurrent List in the absence of any law made by the State legislature. The impugned order made by the State Government pursuant to its executive powers laying down the eligibility qualification for the candidates to be considered on merits for admission to the post-graduate courses in Medical Colleges in the State, is valid and it cannot be assailed on the ground that it is beyond the competence of the State Government to make such order provided it does not encroach upon or infringe the power of the Central Government as well as the Parliament provided in entry 66 of List 1. Entry 66 of List I is in the following terms:

Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

32. The Hon'ble Supreme Court further held in the matter of "**B.N. Nagrajan versus State of Mysore**" in Civil Appeal No. 430 to 461 of 1964

decided on 01.03.1966 that the executive can make appointments and lay down condition of service even without framing statutory rules. The power of regularization of appointment is thus aptly exercised under Article 162 of the Constitution of India. The relevant paragraph of the said judgment is reads as under:

*“5. It would be convenient to deal with this argument at this stage. Mr. Nambiar contends that the words "shall be as set forth in the rules of recruitment of such service specially made in that behalf" clearly show that till the rules are made in that behalf no recruitment can be made to any service. We are unable to accept this contention. First it is not obligatory under proviso to Article 309 to make rules of recruitment, etc., before a service can be constituted or a post created or filled. This is not to say that it is not desirable that ordinarily rules should be made on all matters which are susceptible of being embodied in rules. Secondly the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of List II, Entry 41, State Public Services. It was settled by this Court in **Ram Jawaya Kapur v. State of Punjab, 1955-2 SCR 225**, that it is not necessary that there must be a law already in existence before the executive is enabled to function and that the powers of the executive are limited merely to the carrying out of these laws. We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article*

162 of the Constitution ignore or act contrary to that rule or act.”

(Emphasis Supplied)

33. Further, Article 309 of the Constitution of India governs service which reads thus;

Article 309:- Recruitment and conditions of service of persons serving the Union or a State

Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State: Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

34. It is apparent from perusal of the above that the power conferred under Article 309 is subject to the provisions of the Constitution and Acts of State legislature, hence, Article 309 of the Constitution being subject to the other provisions of constitution cannot over-ride Article 162 which is far more wide in its amplitude and application. The legitimacy and constitutionality of an act carried out under Article 162 of the Constitution

of India cannot always be tested on the anvil of Article 309 or the Rules framed there under.

35. In the aforesaid background, the appointment of the private respondent as Deputy Superintendent of Police is being assessed and as to whether the decision can be interfered within judicial review. It was held by the Hon'ble Supreme Court in the matter of "***State of U.P. versus Maharaja Dharmander Parsad Singh***" reported as AIR 1989 SC 997 that the power of judicial review is directed not against the correctness of the decision but against the correctness of decision making process. The relevant extract of the said judgment is reads as under:

"28. It does not often happens that what appears to be a judicial review for breach of natural justice is, in reality, a review for abuse of discretion. It is true that amongst the many grounds put forward in the show cause notice dated 19-1-1986, quite a few overlap each other and are distinguishable from those urged for the cancellation of the lease itself. Some of the grounds might, perhaps, be somewhat premature. Some of them even if true are so trivial that no authority could reasonably be expected to cancel the permission on that basis. For instance the ground that the permission was applied for and granted in the name of one only of the two lessees would be one such.

However, Judicial review under Article 226 cannot be converted into appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process. In Chief Constable of the North Wales Police v. Evans, 1982(1) W.L.R. 1155 refers to the merits- legality distinction in judicial review. Lord Hailsham said:

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a

conclusion which is correct in the eyes of the Court."

Lord Brightman observed:

"...Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.."

And held that it would be an error to think

"...that the Court sits in judgment not only on the correctness of the decision-making process but also on the correctness of the decision itself."

When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant. factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision-making process includes examination, as a matter of law, of the relevance of the factors. In the present case, it is, however, not necessary to go into the merits and relevance of the grounds having regard to the view we propose to take on the point on natural justice.

It would, however, be appropriate for the statutory authority, if it proposes to initiate action afresh, to classify the grounds pointing out which grounds, in its opinion, support the allegation of fraud or misrepresentation and which, in its view constitute subsequent violations of the terms and conditions of the grant. The grounds must be specific so as to afford the Lessees an effective opportunity of showing cause.

36. The three heads or the grounds on which an administrative action is subject to control regulation are irregularity, irrationality and procedural impropriety as laid down in the judgment of the Hon'ble Supreme Court in the matter of ***“Union of India versus Flight Cadet Ashish Rai” reported as 2006 (2) SCC 364.*** The relevant paragraph of the

aforsaid judgment reads as under:

“6. There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the Court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable Tribunal would have reached; or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.”

37. A constitutional Court is expected to be generally slow to interfere in the matters relating to administrative functions unless such decisions are taken violating the principles of caution enumerated above. Characterizing a decision as “irrational”, the Court is required to materially hold that the decision is “so outrageous” as it totally defies objective standards. While interpreting the power of judicial review the Hon’ble Supreme Court went out to hold that where the action on part of the State is not wholly without jurisdiction, it does not require interference by the High Court in exercise of its power of judicial review. Such inference with administrative matters shall be done only if the order passed is in violation

of fundamental rights or basic principles of justice and fair play or suffer from any patent or flagrant error. A mere division or conflict in the standards, when an act is otherwise in conformity with the powers exercised and is supported by some reasoning and logic which cannot be held to be outrageous, would not be ordinarily interfered with on account of insufficiency of reasons and/or that the reasons to the contrary outweigh the reasons given for execution of such act. It is in the above backdrop of the powers vested with the executive viz-a-viz, the limitations imposed under Article 309 of the Constitution of India that the appointment made by the respondent-State of Punjab is being examined.

38. The Rules of the Business of the Government of Punjab in exercise of power under Article 166 of the Constitution of India were notified on 25.02.1992. The appointment to the gazetted post in the government service is to be done through the Punjab Public Service Commission. As per the authoritative pronouncements of the Hon'ble Supreme Court in the matter of ***“Ashok Kumar Uppal versus State of Jammu & Kashmir” reported as 1998 (4) SCC 179*** it has been held that the Government can relax the rules of Recruitment to remove hardship in any particular case or class of cases. The constitutionality of any action is not to be seen merely on the ground that the Court considers it unreasonable but the test to determine the same is whether it is within the competence of the authorities concerned to carry out such action. The relevant paragraph is reads as under:

“26. Power to relax the Recruitment Rules or any other Rule made by the b State Government, under Article 309 of the Constitution of which the corresponding provision is contained in Section 124 of the Constitution of Jammu

and Kashmir, is conferred upon the Government to meet any emergent situation where injustice might have been caused or is likely to be caused to any individual employee or class of employees or where the working of the Rule might have become impossible. Under service jurisprudence as also the Administrative Law, such a power has necessarily to be conceded to the employer particularly the State Government or the Central Government who have to deal with hundreds of employees working under them in different departments including the Central or the State Secretariat.

27. In *State of Maharashtra v. Jagannath Achyut Karandikar* it was held as under: (SCC p. 398, para 12)

"The power to relax the conditions of the rules to avoid undue hardship in any case or class of cases cannot now be gainsaid. It would be, therefore, futile for the respondents to make any grievance."

28. In *J.C. Yadav v. State of Haryana*, it was held as under: (SCC pp. 194-95, para 6)

"The relaxation of the Rules may be to the extent the State Government may consider necessary for dealing with a particular situation in a just and equitable manner. The scope of Rule is wide enough to confer power on the State Government to relax the requirement of Rules in respect of an individual or class of individuals to the extent it may consider necessary for dealing with the case in a just and equitable manner. The power of relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation. Many a time strict application of service rules create a situation where a particular individual or a set of individuals may suffer undue hardship and further there may be a

situation where requisite qualified persons may not be available for appointment to the service. In such a situation the Government has power to relax Requirement of Rules. The State Government may in exercise of its powers issue a general order relaxing any particular rule with a view to avail the services of requisite officers. The relaxation even if granted in a general manner would ensure to the benefit of individual officers."

29. This decision was followed in **Sandeep Kumar Sharma v. State of a Punjab** in which Hon'ble Punchhi, J. (as His Lordship then was), observed as under: (SCC p. 304, para 14)

"The power of relaxation even if generally included in the service rules could either be for the purpose of mitigating hardships or to meet special and deserving situations. Such rule must be construed liberally. according to the learned Judges. Of course arbitrary exercise of such power must be guarded against. But a narrow construction is likely to deny benefit to the really deserving cases. We too are of the view that the rule of relaxation must get a pragmatic construction so as to achieve effective implementation of a good policy of the Government."

30. In view of the above, the Government can exercise the power to c relax the Rules in all those cases in which hardship is caused in the implementation of those Rules to meet a particular situation or where injustice has been caused to either individual employee or class of employees. Of course, this power cannot be exercised capriciously or arbitrarily to give undue advantage or favour to an individual employee".

However, at the same time it is also been held that the Rules

once framed must be strictly followed. It was held by the Hon'ble Supreme Court in the matter of ***"A.K. Bhatnagar and others versus Union of India" and others*** reported as **1991 (1) SCC 544** that the government should be refrained from acting in a manner not contemplated by their own Rules. Even though the authorities are bound to follow the rule as notified, however, where a power of discretion has been conferred upon the authority and it is authorized to relax the Rule under proper circumstances. The relevant paragraph is reads as under:

"13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by th rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does not create problem and dislocation. Very often Government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the Government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs"

40. The Hon'ble Supreme Court held in the matter of ***"A. Janardan versus Union of India and others"*** reported as **1983 (3) SCC 601** that the Court cannot interfere in exercise of such discretion to relax unless such relaxation is perpetuated by mala fide or where it exceeds the quota. The relevant paragraph of the said judgment is reads as under:

"20. If Rule 3 provided methods of recruitment

indicating the sources from which recruitment could be made and if rule confers discretion on Government to make recruitment from either source because Rule 4 opens with a limitation, namely, that it is subject to Rule 3. Now if as held in Bachan Singh's case '1949 Rules' while prescribing the quota conferred power on the Union Government to make recruitment in relaxation of the rules, it is implicit in this power to make recruitment in relaxation of the quota rule and it is admitted that because of the emergency and because of the exigencies of service, recruitment was made in relaxation of the rules. Now, where the rule provides for recruitment from two sources and simulatenously prescribes quota, unless there is power to relax the rule as has been held in a catena of decisions.

Xx xxx xxx xxx xxx xxx xxx xx

*20. In reaching this conclusion, the Court held that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. The Court observed that in a system, governed by rule of law discretion, when conferred upon executive authorities, must be confined within clearly defined limits. This view was to some extent reaffirmed in **B.S. Gupta v. Union of India, 1975 Supp SCR 491** and **B.S. Gupta v. Union of India, (1975) 1 SCR 104**. But this result will not follow where even though the rules prescribe sources of recruitment, methods of recruitment and quota, if the very rules simultaneously confer power on the Government to make recruitment in relaxation of the rules, unless mala fides are alleged and attributed. Where rules thus confer a discretion on the Government to relax the rules to meet with the exigencies of service. any recruitment made in relaxation of the rules would not be invalid. This is no more res integra in view of the*

decision of this Court in N.K. Chauhan v. State of Gujarat, (1977) 1 SCR 1037.

41. It was also held by the Hon'ble Supreme Court that it was competent for the government, in its discretion to lay down qualifications such as academic qualifications, age etc. for the appointment to the post service and to relax such rules in a particular case, provided the rules confer such power of relaxation for the government as per its authoritative pronouncement in the judgment of "***G.S. Lamba and other versus Union of India and others***" *reported as 1985 (2) SCC 604*, to meet the exceptional circumstances of particular case. When such rules do not contravene any constitutional provision or the relaxation is not vitiated by *mala fide* in the absence of any such power of relaxation, the Government cannot lower the qualification. The position in law is thus well settled. The government is competent to carry out any such act which falls within its legislative domain. The appointment to public post are to be carried out ordinarily as per the statutory rules unless where for valid and bona fide reasons, the power of relaxation is exercised by the Government. Once such a power of relaxation is exercised in conformity with the applicable Rules and for *bona fide* considerations, the power of judicial review of the High Court is confined to a procedural review and not a substantive review. High Court would not determine the priority for the executive and the same has to be ordinarily left to their discretion and reason. The Court, in exercise of its power of judicial review would not interfere with the exercise of discretion or power of relaxation exercised by the competent authority merely because it holds a view different from the view adopted by the competent authority exercising the discretion so long as exercise of such a discretion is not the prejudice of

right of any person in service.

42. The provisions of the Punjab Police Service Rules, 1959 have to be examined in the said backdrop. Rule 14 of the Rules empowers the Government to relax the provision of the Rule with respect to any class or category of persons. Hence, the power of Relaxation is duly vested. It was in exercise of the aforesaid power of relaxation that Rules governing the recruitment had been relaxed.

43. Counsel for the petitioner had challenged the appointment on the ground of the same being in conflict with the Rules and made reference to Rules 6 & 7. The aforesaid rules having however been relaxed by the Government, legitimacy of the appointment cannot be tested on the said parameters. The procedure of recruitment provided under recruitment Rules cannot be invoked to impugn the appointment. It is undisputed that Rules have a power to relax and that the said power has been invoked. The relaxation is with respect to the age and method of recruitment and not the academic eligibility or other physical standards. Even though, the petitioner in the second writ petition challenges the qualification held by the private respondent, however, he has placed reliance on the notification of UGC which is issued after the acquisition of qualification by the respondent. The said notification is also not applicable retrospectively nor so pleaded by the petitioner. There is no other material available on record on the basis whereof the degree held by the private respondent is being impugned. In the absence of any material to demonstrate that the degree of graduation relied upon by the respondent is invalid. This Court cannot presume existence of such fact and annul the appointment.

44. The next question which comes up for consideration of this

Court is as to whether the relaxation could be extended to a class or a category of persons and as to whether an individual can be a class or category or not.

45. A 'category' may have different connotations in terms of its understanding. However, it is ordinarily understood for division of things on the basis of some intelligible differentia and/or any other mode of indentifying distinct groups. In the present circumstances, the relaxation has been extended to the private respondent as a tribute to the sacrifice made by his ancestors i.e. his grandfather. Such stand alone exceptional circumstances cannot be tested against ordinary a straight jacket formula of 'category'. Since such circumstances are rare and the State acknowledges such isolated acts of sacrifice while extending the honors to the successors, the ordinary understanding of category cannot be applied to such exceptional circumstances. The individual may thus in such rare cases constitute a category unto himself. Such exceptional circumstances are rarity unto themselves and have no parallel. Consequently, the defining line of the individual and the category may blur and merge. Hence, the ordinary tests of a category to have more than one person would not apply to the present circumstances. Assuming for the sake of argument that all similarly placed qualified family members of the late Chief Minister would fall in the class/category to claim appointment as DSP, however, right to challenge the appointment in such eventuality would be to the other persons of the family who met the same yardstick. The challenge to an exclusive relaxation can thus be raised only by similarly placed person who may allege discrimination. No such challenge has been brought before this Court and the petitioners do not claim or even seek the appointment. The same thus

leads to the next question i.e. the issue as to whether the decision of the Government of Punjab to relax the applicability of the Rules and to offer appointment to the private respondent on the post of Deputy Superintendent of Police given the special circumstances is correct or not. It is significant to point out that a Division Bench of this Court in *LPA No.07 of 2007* decided on 21.07.2009 titled “*Sh. Rajiv Prashar versus Sh. Naresh Dubey and others*” was examining the issue whether the appointment of the appellants therein (Old Wards of Terrorist Victims) to the post in Punjab Civil Services (Executive Branch) were valid or not. Their appointments were challenged by the persons falling in General Category on the ground that had the appellants therein not been appointed, the vacancies would have been available in the General Category against which the writ petitioners could have made a claim. The State justified its stand by giving similar details of the procedure followed and the permission having been taken from the Punjab Public Service Commission and the posts being held out of the purview of the Punjab Public Service Commission. The question that arose for determination is as to whether the State was competent to take the posts of PCS (Executive Branch) out of the purview of the Commission and thereby affecting quota of direct recruitments and that if there was indeed such a power, whether the same had been exercised in accordance with Rules. The Division Bench noticed the decision taken by the Council of Ministers in its meeting qua offering appointments to appellants in the abovesaid appeal and that even though the appointments have an element of compassion on account of the circumstances of the candidates, yet, they are not considered as compassionate appointments. The appellants therein were victims of an extra-ordinary situation and that in exercise of its executive

power, it was open for the State to take a decision even without any Rule or policy whenever an extra-ordinary situation so warrants. The action of the State Government in drawing the post from the purview of the Punjab Public Service Commission and for considering the appellants therein for appointment to the said post was affirmed and the findings recordings by the Single Judge was set aside. It was also noticed that Government of Punjab had introduced a policy dated 11.11.1993 for giving appointments to the wards of class one officers dying on account of terrorist violence on a priority basis to Class III and Class IV posts or even to higher post on account of their higher qualification and also prescribed that post of Class I or Class II may be taken out of the purview of Punjab Public Service Commission. Noticing that the category of persons who have been given appointment to Class I post are indeed an outcome of an extra ordinary situation and that they should be treated as a separate class. Right of equality was held to be not a matter of mere semantics and but of substance. The said right could not act as a prohibition against making of reasonable classification to advance any valid object.

46. Even though, all public appointments are required to be given strictly as per rules by giving an opportunity to all candidates to compete alike, however, the same is to prohibit against an exception being made in an extra-ordinary situation. The object being not merely to rehabilitate the wards of victims of violence but also to create confidence in the services and to boost their morale against being intimidated by terrorist acts in their role as functionaries of the State. Such a situation could not be equated to a normal situation and no other person who was not similarly placed as wards of victims could claim equal right and to be given the same benefit and of

being given a special treatment. The rule of making appointment except without competitive selection thus could not be pressed into service to negate the right of the State to make a policy or to give appointments in such an extra-ordinary situation. The same aspect had also been recognized by the Hon'ble Supreme Court in the matter of "**Sandeep Kumar Sharma (Supra)** held that there was nothing improper in giving special consideration to the kith and kin of the policemen and those who suffered on account of terrorist activities. The question had arisen in the context of power of relaxation under Rule 14 of the Punjab Police Rules, 1959. It was specifically observed that power of relaxation could be exercised for mitigating hardships or meeting special or deserving situations.

47. The judgment of **Sandeep Kumar Sharma (Supra)** was followed in the judgment of **Ashok Kumar Uppal (Supra)** as well as in the matter of **Arun Kumar (supra)**. The appointments so made were thus affirmed while sounding a rule of caution that the observations made may not be treated as general application for every situation and are to be applied only in exceptional circumstances. The circumstance noticed by the Council of Ministers in the present case is one amongst such extreme and rare circumstances where an incumbent Chief Minister is assassinated in an act of terrorist violence. To hold that there can be no detraction from the Rule in such an exceptional circumstances would be an infringement on the powers of the State and would be held that it has no authority to exercise the power of relaxation.

48. It is also note worthy that the petitioner has no personal grievance against the aforesaid appointment and is in fact agitated against the alleged excesses/atrocities committed by the Police during the peak of

terrorism. He concedes that he neither applied for nor is a candidate seeking appointment to the Police. Similarly, the petitioner in the second petition also do not fall in a category where they may have any right to raise a challenge to the appointment. Even otherwise, the said writ petition seeks to impugn the degree held by the private respondent on the strength of notification of the UGC which was issued much after the respondent had already obtained his degree. Hence, the challenge would not be sustainable on the unproved allegation that the petitioner did not fulfill the eligibility in the present case.

49. A writ in the nature of quo warranto is not to be invoked merely because of an allegation that there is an improper exercise of a lawful authority. It gets attracted when an authority exercises a power it does not wield. The distinction is fine but real. The allegation leveled in the present case revolve around undue exercise of discretion and relaxation by the State. Vesting of such power thus is not disputed. Considering the totality of circumstances noticed above, I am of the view that :-

- i) The powers of the executive under Article 162 cannot be settled or circumscribed by Article 309 of the Constitution of India;
- ii) The executive power extends to all segments of the legislative power of the State notwithstanding whether any Act or statutory Rules/Regulations have been enacted or not;
- iii) The State would ordinarily be bound by the statutory rules in its action unless the extra-ordinary circumstances necessitate exceptional measures;
- iv) The State may for valid reasons exercise its power of relaxation from the rules, except the mandatory eligibility, provided such

power is stipulated in the Rules;

- v) The discretion exercised by the executive is subject to a procedural judicial review and not a substantive review and confined to the basis question of illegality; irrationality-namely Wednesbury unreasonableness and procedural impropriety as interpreted through various judgments;
- vi) The constitutional Court would not ordinarily go into the sufficiency of reasons or fix the priorities for the government or substitute its reasons for the reason that weighed with the executive while making its decision.
- vii) In a particular case, even an individual may be a class unto himself;
- viii) A writ of a quo warranto is not a means to impugn a decision merely on an improper exercise of a lawful authority but the act aggrieved of must be without authority. A legal wrong should in other case of challenge exist for maintaining the cause, a legal wrong requires existence of a judicially enforceable right distinct from a nominal or highly speculative adverse affect on the interest of a person. The person bringing about a challenge should display a legal wrong and prejudicial affect (distinct from speculative; nominal or remote affect) by an act or omission of the authority, even if he has no fiduciary or proprietary interest.
- ix) The petitioners could not bring any material on record to establish that the qualification held by the private respondent was invalid. The U.G.C. Notification is later than his degree and is not established to have retrospective effect. Besides, the petitioner in

second writ himself possesses a degree from a University outside the State. No material other than bold assertion has been brought on record to show that any decision has been taken by the State to not recognize degree of the University in question. No such instances were even mentioned and pleading of respondent to the contrary has not been controverted.

- x) The appointment of the private respondent is an exceptional appointment as a special case under the exigent circumstances that have no parallel. Even though there is an element of compassion, but it can not be tested on the policy parameters of compassionate appointment.
- xi) The appointment has been made as per procedure prescribed and after taking the post out of preview of Punjab Public Service Commission; within the quota and after taking all circumstances into account, by the Council of Ministers which is competent under the Constitution of India to take such decision and as per the Rules of Business. The legality of the same cannot be tested against relaxed recognized rules.

I thus do not find myself to be in agreement with the petitioners in both the petitions. The present petitions are accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 11, 2023

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No